

BEFORE THE INDIAN CLAIMS COMMISSION

GILA RIVER PIMA-MARICOPA INDIAN)	
COMMUNITY, et al.,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 236-G
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: July 25, 1974

Appearances:

Z. Simpson Cox, Attorney for Plaintiff.

David M. Marshall, with whom was Assistant Attorney General Wallace H. Johnson, Attorneys for Defendant.

OPINION OF THE COMMISSION

Yarborough, Commissioner, delivered the opinion of the Commission.

This is an action brought under Section 2, Clause 2, of the Indian Claims Commission Act (25 U.S.C. § 70a(2)). Plaintiff's claim in this case was filed as Docket 236-G on June 12, 1968, pursuant to the Commission's order of November 6, 1959, in Docket 236, ordering plaintiff to file amended petitions separating the claims of its original petition. It has previously been determined that plaintiff is an identifiable group of American Indians residing on the Gila River Reservation in Arizona. Docket 228, 24 Ind. Cl. Comm. 301 (1970).

Plaintiff maintains in this suit that defendant wrongfully imposed liens on plaintiff's land for the construction costs of "certain dams,

diversions, canals, power plants, power transmission facilities, and other works." Plaintiff further alleged that such liens were excessive. It appears that the amount of such liens is \$1,516,149.95.^{*/}

On March 18, 1971, plaintiff filed a motion seeking (1) that the Commission enter summary judgment in favor of plaintiff on the ground that there is no genuine issue as to any material fact and plaintiff is entitled to a judgment as a matter of law, or, in the alternative (2) that this claim abide the determination of Docket 236-E for the reason that the sole issue presented in Docket 236-E is almost identical to the primary issue in Docket 236-G.

The Commission thereupon ordered that the scheduled trial on liability in Docket 236-G be removed from the calendar pending either the defendant's response to the plaintiff's motion and the Commission's decision thereon, or the decision of the Commission in Docket 236-E.

The Commission issued its decision on liability in Docket 236-E on January 10, 1974, 33 Ind. Cl. Comm. 18. The defendant's response to plaintiff's motion was filed on February 12, 1974, making the time ripe for a Commission decision on plaintiff's motion. Defendant argues in its response that plaintiff does not state a claim upon which relief can be granted.

^{*/} Plaintiff included with its motion filed on March 18, 1971, a copy of a letter dated March 12, 1971, from Mr. Kendall Cumming, Superintendent of the Pima Agency of the Bureau of Indian Affairs, to Mr. Alexander Lewis, Sr., Governor of the Gila River Indian Community. In the letter Mr. Cumming reports that "construction loans due" defendant, "accrued to the San Carlos Project, Indian Works," amount to \$1,516,149.95. Mr. Cumming also reported other "reimbursable balances" due defendant in the amount of \$1,957,537.88, making a total of \$3,473,687.83. In its motion, plaintiff asks for judgment against defendant for the full amount of \$3,473,687.83. It is not clear from the motion why plaintiff requests judgment for the full sum.

The construction liens which are the subject of this litigation were created by Congress by the Act of June 7, 1924, 43 Stat. 475, referred to as the San Carlos Act. This act authorized the construction of Coolidge Dam, at a cost of five and one-half million dollars, and thereby completed the San Carlos Irrigation Project. See Docket 236-E, supra, at 19, 35-39. Section 1 of the act provides that the total cost of the project is to be equally divided per each acre served among Indian and non-Indian lands. Section 2 of the act deals with the construction charges assessed against only the Indian lands, and makes the charges reimbursable under rules prescribed by the Secretary of the Interior. Section 2 further states that a lien is created against all such lands, which must be recited in any patents issued, prior to reimbursing all charges against the land.

Under the Leavitt Act of July 1, 1932, 47 Stat. 564, Congress authorized the Secretary of the Interior to adjust and eliminate reimbursable charges, subject to congressional approval. Congress further deferred the enforcement of construction liens until Indian title to the lands subject to the liens was extinguished. Plaintiff does not claim that any of the lands subject to liens have as yet been sold, or that the construction liens have ever been enforced, and defendant specifically denies that there have been any such sales.

Plaintiff's petition requests two remedies, in the alternative. First plaintiff asks for declaratory relief. But the Commission has never issued a declaratory judgment, and has no authority to do so.

The Indian Claims Commission Act, 25 U.S.C. 70, contemplates monetary relief only, as is indicated in section 70a, where reference is made to the Commission's determination of "the quantum of relief." The legislative history of the act nowhere indicates that Congress ever contemplated that the Commission should have jurisdiction to grant declaratory judgments. See United States v. King, 395 U.S. 1 (1969). We must therefore deny plaintiff's petition for such relief in this case.

In the alternative, plaintiff requests monetary damages in the amount of the liens. But clearly, the liens never having been enforced, plaintiff has not suffered any such damages. Plaintiff recognizes this when it states in its motion (p. 13) that defendant is entitled to an offset in the same amount as the lien. Such a decision, however, would in effect be nothing more than a declaratory judgment.

We therefore conclude that this docket must be dismissed for failure to state a claim upon which relief can be granted. We will issue an order to show cause, to allow plaintiff to respond before we issue a final order.

We will mention in passing certain additional issues raised by the parties. Defendant points out that plaintiff's claim is formed to include liens on allotted lands. The Commission does not have jurisdiction to hear claims of individual Indians. If plaintiff's claim were viable, our consideration would be limited to liens on tribal lands. Absentee Shawnee Tribe v. United States, 165 Ct. Cl.

510 (1963); Creek Freedmen v. United States, Docket 25, 1 Ind. Cl. Comm. 156 (1949).

Plaintiff's motion requested that the determination of the claim in this docket abide the determination of the claim in Docket 236-E, arguing that the claims in the two dockets presented identical issues. We have reviewed the two dockets, and conclude that the respective claims are distinguishable on two grounds.

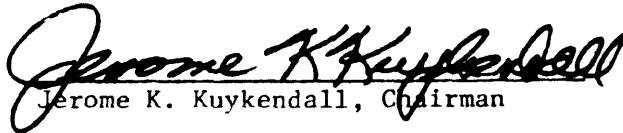
In our decision in Docket 236-E, supra, we found that plaintiff has paid for operation and maintenance charges from tribal funds. Hence plaintiff has suffered real damages in Docket 236-E, in contrast to the instant case, where defendant has not sought to collect construction liens against plaintiff's lands. In addition, in the instant docket the construction liens have been created by Congress pursuant to the San Carlos Act, supra, while in Docket 236-E we concluded that Congress, in enacting the San Carlos Act, did not authorize the imposition of operation and maintenance charges of the San Carlos project on plaintiff. 33 Ind. Cl. Comm. at 28.

Finally, we observe that under the Levitt Act of July 1, 1932, supra, construction liens such as are under consideration herein are not to be collected until Indian title to encumbered lands is extinguished. But the Indian Reorganization Act of 1934, 25 U.S.C.A. 461 et seq., stopped virtually all alienation of Indian lands unless further Congressional action were to be taken. If the imposition of the liens by the 1924 Act of Congress were wrongful, another Act of Congress

would be necessary to do the plaintiff damage. Our determination that plaintiff's claim is one upon which we cannot grant relief does not mean that it is without possible remedy if title to plaintiff's lands were somehow to be extinguished: If defendant were then to assert its liens, plaintiff would still have adequate opportunity at that time to seek legal redress.



Richard W. Yarborough, Commissioner

We concur:


Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner


Margaret A. Pierce, Commissioner


Brantley Blue, Commissioner