BEFORE THE INDIAN CLAIMS COMMISSION

PUEBLO OF SANTA CLARA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 356
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: October 5, 1977

Appearances:

Darwin P. Kingsley, Jr., Attorney for Plaintiff
Arthur Lazarus, Jr., Jay R. Kraemer, Fried, Frank, Harris, Shriver & Kampelman were on the Briefs.

Craig A. Decker and Roberta Swartzendruber with whom was Assistant Attorney General Peter R. Taft, Attorneys for Defendant.

OPINION ON MOTION FOR SUMMARY JUDGMENT: TOWNSITE OF ESPANOLA

Yarborough, Commissioner, delivered the opinion of the Commission.

The plaintiff is asking summary judgment in the amount of $37,465.64, plus interest, for the townsite of Espanola, N. M., which is located within its patented pueblo grant but was confirmed to third parties by decision of the Pueblo Lands Board.

The plaintiff's claim to certain land along the Rio Grande, based upon a supposed Spanish land grant, was confirmed by Congress in the Act of December 22, 1858, c. 5, 11 Stat. 374. The Spanish grant

is not in evidence.[1/] The confirmation by Congress was only a quitclaim from the United States, and expressly stated that it should not affect adverse valid rights, if any existed.

By the early Twentieth Century, whether as a result of prior adverse grants, unapproved Indian conveyances or simple intrusion, numerous non-Indians were claiming titles within pueblo land grants, including that of the present plaintiff.

Partially the situation was a result of the Supreme Court decision in United States v. Joseph, 94 U. S. 614 (1876), where it was held that the Federal law prohibiting settlement on lands belonging to Indian tribes (25 U. S. C. § 180) did not apply to the pueblos of New Mexico. When this case was in effect overruled by United States v. Sandoval, 231 U. S. 28 (1913), Congress adopted the Pueblo Lands Act of June 7, 1924, c. 331, 43 Stat. 636, to remedy the uncertainty of many land titles. This law conferred title on non-Indian intruders on pueblo lands who had paid taxes upon them and had held adverse possession, if under color of title since January 6, 1902, and if without color of title since March 16, 1889. The Government was to compensate the pueblos for lands so lost only where the United States could have recovered them by seasonable prosesution. In such cases, the Board was to find the fair market value of

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1/ Plaintiff's counsel states in his brief that the grant was received in 1689. Report No. 2 of the Pueblo Lands Board on Santa Clara Pueblo (Attachment A accompanying the motion for summary judgment) refers to "the original grant by a Spanish governor in 1763." See page 10956. Judge R. H. Hanna, testifying in a hearing before the Committee on Indian Affairs of the United States Senate in 1932 (Attachment D to the Motion) as representing the Pueblo Indians of New Mexico, stated, "The original grant to the Indians has been lost although sufficient evidence was produced to justify the confirmation and patent to the Indians."

the lost tracts and award "the amount of loss, if any, suffered by said Indians through failure of the United States seasonably to prosecute. . ." In most cases the Board awarded only a fraction of the fair market value of the tract. After the awards had been paid, Congress determined the Board was unfair and except in a few instances appropriated and paid the difference between the award and fair market value. The "fair market value" used by Congress in voting additional money to most of the pueblos was that shown in the expert appraisals made for the Board, not the fair market value as found by the Board itself. See Attachment F to motion for summary judgment. A fuller discussion of the Pueblo Lands Act, and our view of its consequences, is found in Pueblo of Taos v. United States, Docket No. 357-A, 33 Ind. Cl. Comm. 82 (1974), aff'd 207 Ct. Cl. 53, 515 F.2d 1404 (1975).

In the case of Santa Clara, the present plaintiff, the Board found title extinguished under the Pueblo Lands Act to 3,416 acres of its land, including the townsite of Espanola, and that all but 22.724 acres of the loss could have been recovered by the United States through seasonable prosecution. The said 22.724 acres did not include the Espanola townsite. The Board found a fair market value of $226,366.43 for the lost lands that could have been recovered, but awarded the Indians only $86,821.87. Plaintiff's Attachment A at 10957. According to testimony of Judge H.R. Hanna[2/] before the Senate Indian Affairs Committee, title was extinguished to an additional 901 acres on

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2/ Hanna was unofficial legal advisor for the Pueblo of Taos, and perhaps also the present plaintiff, under retainer of the American Indian Legal Defense Association. See Pueblo of Taos v. United States, Docket 357-A, 33 Ind. Cl. Comm. 82, 103 (1974).

judicial review of the Board's decision. The Board found the fair market value of the additional area to be $98,487.72, but made an additional award of only $27,146.87. Pl. Attachment D at 11153. The total values and awards to Santa Clara, including those for the additional acreage whose title was extinguished on judicial review, are as follows:

Fair Market Value As Determined By Appraisal	Fair Market Value As Found By Board	Award By Board
$332,556.57	$324,854.15	$113,968.74

The difference between the appraisal and the award was $218,587.83.

Congress voted Santa Clara additional compensation only in the amount of $181,114.19. Act of May 31, 1933, c. 45, 48 Stat. 108. The value of the Espanola townsite, $37,348.69, plus an unexplained additional $124.95, was deducted from the amount the plaintiff would otherwise have been entitled to. See Pl. Attachment F at 10.

The only reason for the deduction of the value of the Espanola townsite we can discover in the papers accompanying the motion for summary judgment appears in the statement of Judge Hanna in Pl. Attachment D at 11153. The judge testified as follows:

> We take up next the Santa Clara pueblo where no awards were made in connection with the Santa Cruz and Santa Nino areas. The amount involved is but $2,202.89 appraised value of which the board states an award of $779.18 would have been made for 22.8 acres involved. It was a small area included in a town grant probably made in 1695. The original grant to the Indians has been lost although sufficient evidence was produced to justify the confirmation and patent to the Indians.

> If we were indulging in presumptions, we might contend that the Indians were the first comers and that this situation is no different from the rest. We prefer, however, to waive our claims to these areas rather than undertake to prove an unprovable fact.
>
> For the same reason we are making no claim in connection with the town of Espanola, located upon this grant of the Santa Clara Indians. The appraised values in both instances referred to are not included in the amounts we ask for this pueblo under section 2 of the act now under consideration.

The amount the plaintiff now seeks by summary judgment is the value of the Espanola townsite, plus the additional $124.95, less an $8.00 adjustment for partial payment, plus 5 percent annual interest from the date of the Pueblo Lands Board's report. Plaintiff contends the decision of the Board constituted an expropriation of the townsite for which it is entitled to just compensation under the Fifth Amendment to the Constitution. It relies on the Taos case cited above, where we made such a finding.

We can render summary judgment only when the record before us shows clearly that the moving party is entitled to judgment as a matter of law. Indian Claims Commission, General Rules of Procedure 11(c)(iii). The factual record before us leaves too much unexplained to permit such a ruling here. The Pueblo Lands Board found that the United States could have recovered the Espanola townsite for the plaintiff by seasonable prosecution, but this record does not contain the factual basis for that finding. From the testimony of Judge Hanna it appears that the Board may have been mistaken. Plaintiff is arguing that Congress could change the unfavorable part of the Board's decision -- the low compensation -- but

not the favorable part -- that the Government could have recovered the land by seasonable prosecution. But we do not see how Congress, if it correctly discovered that the Town of Espanola had a title predating American sovereignty of New Mexico, had any obligation to pay plaintiff more money despite the Board's prior erroneous finding to the contrary. Without a trial we cannot find out who was really right, the Pueblo Lands Board or Judge Hanna. In Taos, supra, the award was made only after the plaintiff conclusively proved its case by producing the finding of the Court of Private Land Claims that the Fernando de Taos grant did not overlap the Pueblo de Taos grant. See 33 Ind. Cl. Comm. at 121, 122. The present case, however, is like Pueblo of Santo Domingo v. United States, Docket 355, 39 Ind. Cl. Comm. 241 (1976), reh. denied 40 Ind. Cl. Comm. 101 (1977), where the plaintiff's own exhibits accompanying the motion show a factual question that cannot be resolved on summary judgment.

The defendant contends that the five year statute of limitations set out in Section 12 of the Indian Claims Commission Act, 25 U. S. C. 70k, is a bar to this claim. We are of the opinion that the plaintiff sufficiently identified the area of its grant in the petition, complained of deprivation of lands to which it once had full title, and accused defendant of improper administration of funds, personal and real property held in trust for plaintiff. Pursuant to Rule 7(c) of the General Rules of Procedure of the Indian Claims Commission we construe the pleadings so as to do substantial justice. We hold the claim to have been presented within the time fixed by statute. See

Yankton Sioux Tribe v. United States, 175 Ct. Cl. 564 (1966).

The defendant also urges that the claim is barred by the acceptance of appropriations constituting an accord and satisfaction under which the plaintiff is compelled to forego all further claims arising out of the operation of the Pueblo Lands Act. We reserve decision on this defense pending further briefing, but note that accord and satisfaction by a prior Congressional appropriation is not a favored defense under the Indian Claims Commission Act. Loyal Creek Indians v. United States, 118 Ct. Cl. 373, cert. denied, 342 U. S. 813 (1951), rev'g. Docket 1, 1 Ind. Cl. Comm. 195 (1950).

Several additional defenses are urged which are unnecessary to rule upon at the present incomplete state of the record.

The motion for summary judgement will be denied, and the attorneys for the parties will be ordered to a conference to discuss further proceedings on this claim.

Richard W. Yarborough, Commissioner

We Concur:

Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner