

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JAKE C. PELT, DAN BENALLY,)
JIM BENALLY, HELEN CLY, and)
FRED JOHNSON, for themselves)
and for and on behalf of a)
class of persons consisting)
of all Navajo Indians residing)
in San Juan County, Utah,)
including a sub-class of)
persons consisting of all other)
Indians the Secretary of)
Interior saw fit to settle on)
lands described in the 1933)
Act prior to may 17, 1968,)
Plaintiffs,)
vs.)
STATE OF UTAH,)
Defendants.)

Case No. 92-C-0639-s

MEMORANDUM DECISION
ADDRESSING DEFENDANT’S
MOTION FOR JUDGMENT ON
THE PLEADINGS AND
PLAINTIFFS’ CROSS-MOTION
FOR JUDGMENT ON THE
PLEADINGS

I. INTRODUCTION

Pursuant to Fed. R. Civ. P. 12(c), defendant State of Utah (“Utah”) moves for judgment on the pleadings¹ requesting that the court “(a) adopt the procedures used in federal Indian accounting cases for framing the issues; (b) dismiss plaintiffs’ accounting claims that are time barred; and (c) dismiss plaintiffs’ non-accounting claims.” Utah’s Motion at 1. The facts surrounding this beleaguered matter are adequately set forth in the numerous pleadings filed in

¹ Because the court has not considered matters outside the pleadings in reaching its decision, Utah’s motion will not be treated as one for summary judgment as suggested by plaintiffs.

this case and will not be repeated here. Plaintiffs have filed a cross-motion for judgment on the pleadings to dismiss Utah's laches defense for failure to state a claim.

II. STANDARD FOR DISMISSAL

"A motion for judgment on the pleadings under Fed. R. Civ. P. 12(c) is treated as a motion to dismiss under Fed. R. Civ. P. 12(b)(06). Mock v. T.G.&Y. Stores Co., 971 F.2d 522, 528 (10th Cir. 1992). When a motion to dismiss is filed, the burden is on the movant to prove that the non-movant can prove no set of facts in support of his claim which would entitle him to relief. Shoultz v. Monfort of Colorado, Inc., 754 F.2d 318 (10th Cir. 1985), cert. denied, 475 U.S. 1044 (1986); Conley v. Gibson, 355 U.S. 41 (1957). The court is to presume for purposes of considering the motion that all allegations by the non-movant are true and all reasonable inferences are made in favor of the non-movant. Lafoy v. HMO Colorado, 988 F.2d 97 (10th Cir. 1993); Miree v. DeKalb County, 433 U.S. 25 (1977). Legal conclusions, deductions, and opinions couched as facts are, however, not given such a presumption. Mitchell v. King, 537 F.2d 385 910th Cir. 1976); Swanson v. Bixler, 750 F.2d 810 (10th Cir. 1984). The likelihood that the plaintiff may or may not prevail at trial is immaterial at the time of decision on a motion to dismiss. Boudeloche v. Grow Chem. Coatings Corp., 728 F.2d 759 (5th Cir. 1984).

III. DISCUSSION

A. Accounting Procedure

Utah first urges the court to adopt the procedure used in federal Indian accounting cases to frame the issues in this case. Under that procedure, as described by Utah, “(a) the United States files an accounting in response to the Complaint; (b) within 90 days, the Indians identify transactions they believe are improper; and (c) the United States responds or answers those objections.” Utah’s Amended memo in Support at 8 (citing Sioux Tribe of Indians v. United States, 12 Ind. Cl. Comm. 541 (1963)). Plaintiffs consent to using the foregoing procedure but assert that “the precise details regarding what Utah’s initial accounting report should include, motions for supplemental accountings, supplemental discovery, and all other issues and procedures merely attendant to the equitable accounting action must be referred to the U.S. Magistrate Judge.” Plaintiffs’ Memo in Support of Cross-Motion and in Opposition to Utah’s Motion at 2.

The court agrees with Utah that, until such issues arise and are presented to the court, plaintiffs concerns are premature. In view of the parties’ agreement to adopt the accounting procedure stated above, the court views Utah’s motion with respect to this issue as moot and the same is denied.

B. Accounting Claims -- Statute of Limitations/Laches

Utah next urges that the absence of a federal statute of limitations for 1933 Act² claims, the one year Utah Governmental Immunity Act statute for claims against Utah is the most analogous statute of limitations for plaintiffs' accounting claim. See Utah Code Ann. § 63-30-15(2). Utah, therefore, contends that all claims for an accounting occurring one year prior to the filing of the complaint should be dismissed. Utah further contends that, even if plaintiffs' claim for an accounting is construed as an equitable claim, rather than one at law for damages for which the one year litigations period would apply, it is still barred to the extent it seeks an accounting for more than four years. See Utah Code Ann. § 78-12-25.

Plaintiffs contend, among other things, that, because this is an action in equity seeking a judicial settling of accounts, rather than an action for damages, the Utah law most applicable tolls the clock from running until Utah repudiates the trust and Utah has never repudiated the trust. See, Utah Code Ann. § 75-7-307; Walker v. Walker, 404 P.2d 253, 257 (Utah 1965) (no time-bar on action against trustee absent repudiation).

² The phrase "1933 Act" has been used throughout the course of this litigation as an abbreviated referred for An Act to Permanently Set Aside Certain Lands in Utah as an Addition to the Navajo Indian Reservation, and for Other Purposes, 47 Stat. 1418 (1933), as amended by Pub. L. No. 90-306, 82 Stat. 121 (1968).

It has previously been determined in this case that plaintiffs have an implied right of action against Utah by virtue of the 1933 Act and federal common law trust principals. Pelt v. State of Utah, 104 F.3d 1534 (10th Cir. 1996). There does not appear to be any controlling federal statute of limitations with regard to plaintiffs' right of action. "In the absence of a controlling federal limitations period, the general rule is that a state limitations period for an analogous cause of action is borrowed and applied to the federal claim, provided that the application of the state statute would not be inconsistent with underlying federal policies." Oneida County of N.Y. v. Oneida Indian Nation of New York State, 470 U.S. 226, 240 (1985) (footnote omitted) (emphasis added). The court concludes that borrowing a state limitations period, under the facts presented by this case, would be inconsistent with federal policy against the application of state statutes of limitations in the context of Indian property rights. In Oneida, the Supreme Court, in rejecting application of a state statute of limitations defense to Indian property claims, discussed in detail the unique federal jurisprudence which has developed with respect to Indians, including Congressional "concern that the United States had failed to live up to its responsibilities as trustee for the Indians." Oneida, 470 U.S. at 244. Here Utah acts, and has acted, in a trust capacity similar to that traditionally filled by the United States. The property, or fund, over which Utah assumed control was clearly intended to benefit plaintiffs. Although fund beneficiaries have no property interest for purposes of a Fifth Amendment takings claim, United States v. Jim, 409 U.S. 80 (1972), plaintiffs, nevertheless, have a recognizable property interest in the fund. That interest, for example, is sufficient enough to permit plaintiffs to seek judicial redress as beneficiaries of the fund. See, Pelt, 104 F.3d at 1542 n.9 ("no title is necessary for the [plaintiffs] to have an equitable cause of action as beneficiaries of the fund").

See also, Restatement (Second) of Trusts § 199 (1959) (listing equitable remedies of beneficiaries against trustee). For purposes of Utah's state of limitations defense, the court finds no viable distinction between this case and Oneida or other cases reaching similar conclusions. See e.g., Grand Traverse Band of Chippewa and Ottawa Indians v. Director, Michigan Dept. of Natural Resources, 971 F. Supp. 282, 288 (W.D. Mich. 1995) aff'd, 141 F.3d 635 (6th Cir.), cert. denied, 119 S. Ct. 590 (1998) (“[b]orrowing a state statute of limitations for a claim brought by native Americans . . . for property rights established by a treaty with the United States would be inconsistent with Congressional intent); Ute Distribution Corp. v. Secretary of Interior, 934 F. Supp. 1302, 1313 (D. Utah), rev'd on other grounds, 149 F.3d 1260 (10th Cir. 1998) (borrowing state limitations period would be inconsistent with federal policy in view of trust responsibility of United States to protect Indian property interests with respect to water rights); Mille Lacs Band of Chippewa Indians v. State of Minn., 835 F. Supp. 1118, 1125 (D. Minn. 1994), aff'd, 124 F.3d 904 (8th Cir. 1997) cert. granted, 118 S. Ct. 2295 (1998) (“Congress has repeatedly affirmed its intention to exclude suits by Indians for property rights from any statute of limitation). The matters at issue in this case are of uniquely federal concern. The Tenth Circuit observed that “[t]he overriding legal area implicated in this case is the care of Native Americans -- a uniquely federal question” and “this case involves an area of law not within the purview of the states, but rather one that is solidly within the federal realm.” Pelt, 104 F.3d at 1544. In short, the court finds that borrowing a state statute of limitations for a claim brought by Native Americans relating to property rights established pursuant to an act of Congress and federal common law would be inconsistent with federal policy. The court, therefore, declines to borrow any state statute of limitations.

Laches

Utah also urges that plaintiffs' accounting claims are barred by laches. Plaintiffs contend in their cross-motion for judgment on the pleadings that Utah's laches defense should be dismissed for failure to state a claim because the pleadings failed to allege that Utah will be unfairly prejudiced if forced to provide plaintiffs with an accounting. The court agrees. Utah's seventh defense alleges simply "[p]laintiffs' claims are barred by the Equitable doctrines of waiver, estoppel and laches." Utah's Answer at 11. "Laches is an affirmative defense requiring a showing of (1) lack of diligence by the [plaintiff] and (2) prejudice to [defendant]." F.D.I.C. v. Hulsey, 22 F.3d 1472, 1491 (10th Cir. 1994). As plaintiffs suggest, Utah's answer offers no "hint" of why it might be prejudiced by accounting for trust money received. "Affirmative '[d]efenses which amount to nothing more than mere conclusions of law and are not warranted by any asserted facts have no efficacy.'" Shechter v. Comptroller of the City of New York, 79 F.3d 265, 270 (2nd Cir. 1996) (quoting National Acceptance Co. of America v. Regal Products, Inc., 155 F.R.D. 631, 634 (E.D. Wis. 1994)). Accordingly, plaintiffs' cross-motion as to Utah's laches defense is granted.³

³ There is also some basis for concluding that laches, similar to the statute of limitations, also violates federal policy with regard to plaintiffs' property rights asserted in the present case and, therefore, is not applicable. See, Oneida, 470 U.S. at 244 n.16 (suggesting that the application of laches to bar Indian property claims is inconsistent with federal policy).

C. “Non-accounting” claims

Lastly, Utah urges that plaintiffs’ “non-accounting” claims should be dismissed because they are conclusory and unsupported by any factual allegations and violation of Fed. R. Civ. P. 8(a)(1). For purposes of Utah’s present motion, the court finds that plaintiffs’ complaint satisfies the liberal notice pleadings standard of Rule 8.

All the rules require is “a short and plain statement of the claim” that will give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests . . . Such simplified “notice pleading” is made possible by the liberal opportunity for discovery and other pretrial procedures established by the rules to disclose more precisely the basis for both claim and defense and to define more narrowly the disputed facts and issues.

Perington Wholesale, Inc. v. Burger King Corp., 631 F.2d 1369, 1373 (10th cir. 1979) (quoting Conley v. Gibson, 355 U.S. 41, 47-48 (1957)). In contrast to Utah’s affirmative defense of laches, plaintiffs so called “non-accounting” claims are plead with numerous supporting factual allegations. Utah’s motion as to this issue is therefore denied.

IV. CONCLUSION

For the foregoing reasons, Utah’s motion for judgment on the pleadings is DENIED. Plaintiffs’ motion for judgment on the pleadings is GRANTED.

DATED this 31st day of March, 1999.

BY THE COURT:

DAVID SAM
U.S. DISTRICT JUDGE

United States District Court
for the
District of Utah
April 5, 1999

* * MAILING CERTIFICATE OF CLERK * *

Re: 2:92-cv-00639

True and correct copies of the attached were mailed by the clerk to the following:

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