

9/20/84 ruling

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THE COURT: On the record. I'm going to give an oral opinion in this case, and the transcript of this proceeding will serve as my opinion. I do reserve the right to make grammatical corrections to the transcript, but not varying the substance, and I also reserve the right later on to possibly render a formal written opinion, if necessary.

The Defendant-Intervenor, the Hoopa Valley Tribe, has moved the Court to disqualify two classes of plaintiffs (the Government has joined in one of those motions). Those classes of plaintiffs are those who are not Indians residing on the reservation and those who have died. The Plaintiffs oppose this motion, and at least one group of plaintiffs has moved to sanction the Intervenor for raising the abatement defense in bad faith.

I deny all the motions. With regard to jurisdiction: the Court of Appeals for the Federal Circuit has held that 25 U.S.C. Section 407 gives this Court its jurisdiction and the Plaintiffs their cause of action. That statute directs the United States to sell timber on the unallotted lands of ~~Indian~~ reservations and to use the proceeds for the benefit of the Indians who are members of the tribe or tribes concerned. In defining the beneficiaries of this statute the Federal Circuit remarked that "the word 'tribe' (as related to Indians) has no fixed, precise or definite meaning but can appropriately include 'Indians residing on one reservation. See the definition in 25 U.S.C. Section 479 (part of the Indian Reorganization Act of

1 June 18, 1934). With respect to the Hoopa Valley Reservation,
2 that is its meaning in 25 U.S.C. Section 407." I have just been
3 quoting the Circuit Court opinion, at 719 Fed.2d 1137.

4 On these remarks the Hoopa Valley builds the follow-
5 ing syllogism. Only members of the tribe or tribes concerned
6 have a claim against the United States under Section 407, and
7 "tribe" means "Indians residing on one reservation". Many of
8 the plaintiffs are not Indians residing on one reservation, and
9 therefore, many of the plaintiffs have no claim against the
10 United States and cannot invoke this Court's jurisdiction under
11 the Tucker Act.

12 This argument seems to rest upon a narrow definition
13 of "tribe" that the Intervenor insists is required both by the
14 Constitution and by the timber statute as interpreted by the
15 Federal Circuit.

16 With regard to the constitutional argument relating
17 to equal protection: Because of the equal protection guarantees
18 implicit in the Fifth Amendment's due process clause, the
19 Defendant-Intervenor contends the Government cannot distribute
20 timber proceeds to Indians simply as members of a racial group.
21 The statute, therefore, can benefit only Indians who are members
22 of separate political communities, so the Intervenor argues.

23 But the plaintiffs in this case are bringing suit not
24 merely as Indians but as member os "the general Indian groups
25 communally concerned with the proceeds". That is taken from the

1 Short decision at page 1136. Under the classifications devel-
2 oped by Judge Schwartz all qualified plaintiffs ^{must} have con-
3 nections with the land and peoples to which the Government owes
4 a fiduciary duty under Section 407.

5 With regard to the Indian Commerce clause argument:
6 The Constitution gives Congress power to regulate commerce with
7 the Indian tribes. Of course, Congress cannot arrogate power
8 by banding Indians together at random, calling them a tribe,
9 and managing their affairs, and U.S. v. Sandoval at 231 U.S. 28,
10 46 stands for that proposition.

11 Therefore, the Intervenor argues, plaintiffs must have
12 essential tribal characteristics like common leadership and
13 common territory if they wish to sue for benefits Congress has
14 reserved for members of tribes; and apparently, many of the
15 plaintiffs in this case have either left the reservation or
16 have never seen it, says the Defendant-Intervenor.

17 Therefore, to keep the statute from violating the
18 Constitution, the Defendant-Intervenor argues, this Court must
19 interpret it as denying recovery to these non-tribal plaintiffs.
20 I believe that this argument fails because plaintiffs who qual-
21 ify as members of the tribe or tribes concerned are not a random
22 group. Judge Schwartz carefully classified the plaintiffs who
23 are Indians of the reservation entitled to a share of the
24 timber revenues. The Federal Circuit affirmed that classifica-
25 tion and held that the same plaintiffs qualify under Section 407.

1 The statute so interpreted is within the power of
2 Congress. If Congress has not acted arbitrarily then "in re-
3 spect to a distinctly Indian community the questions whether,
4 to what extent, and for what time they shall be recognized and
5 dealt with as dependent tribes requiring the guardianship and
6 protection of the United States are to be determined by Congress
7 and not by the Courts". I'm quoting from Sandoval, 231 U.S. at
8 46. The qualified plaintiffs defined by Judge Schwartz consti-
9 tute a distinctly Indian community, even if they are not members
10 of a formally organized tribe or residents of a single
11 reservation.

12 With regard to the statutory argument: The Hoopas
13 argue that the Federal Circuit denied the benefits of Section
14 407 to all plaintiffs except members of a "tribe", as defined
15 in Section 25 U.S.C. Section 479, which has as specific language
16 "the Indians residing on one reservation".

17 The Court did say with respect to the Hoopa Valley
18 Reservation, "that is its meaning in 25 U.S.C. Section 407", the
19 word "its" referring to "tribe". But the Court affirmed Judge
20 Schwartz's classification of plaintiffs who qualify as Indians
21 of the reservation, and those classes include persons who did
22 not reside on one reservation. The Court also noted - and I'm
23 quoting - "the 1964 substitution of 'members of the tribe or
24 tribes concered' for 'Indians of the reservation' was obviously
25 not designed to cut off rights of Indians of a reservation with

1 regard to communal land (or to change the definition of those
2 entitled) but rather more clearly to allow coverage of Indians
3 who are entitled to proceeds from reservation property, but who
4 happen to reside elsewhere than on the reservation." That is
5 at page 1136 of the Short opinion.

6 Therefore, the Court must have referred to the defini-
7 tion of "tribe" in Section 479 to illustrate the word's meanings,
8 not to impose new qualifications on the plaintiffs. As the
9 Court stated, "The word 'tribe' as related to Indians has no
10 fixed, precise or definite meaning, but can appropriately include
11 'Indians residing on one reservation'". That is at page 1137 of
12 the Short opinion.

13 This Court concludes that it has jurisdiction over
14 the claims of all plaintiffs described in Judge Schwartz's
15 classifications.

16 With regard to the abatement issue: The tribe also
17 argues that death extinguished the claims of deceased plaintiffs
18 because Congress passed Section 407 to benefit tribes, not indi-
19 vidual Indians. If an individual's cause of action survives
20 him, tribal funds will pass to non-Indian heirs and the tribe
21 will lose revenue, so argues the Intervenor.

22 This Court, however, doubts if Congress meant to deny
23 the benefits of the timber program to an Indian's heirs. First,
24 the legislative history suggests that Congress may have wished
25 Section 407 to benefit even non-Indian heirs of reservation

1 residents. If you look at the hearings on H.R. 6287, H.R. 4394
2 and S. 1656 before the Subcommittee on Indian Affairs of the
3 House Committee on Interior and Insular Affairs, 88th Congress,
4 Second Session, 204 in 1964, the testimony of Mr. Graham Holmes,
5 you will find some language to support that proposition.

6 The nature of Indian property should also be discussed
7 here. Individual Indians have no right to communally held
8 property until the community distributes it. The tribe argues
9 that the deceased plaintiffs had no individual claims to timber
10 revenue because they never received payment; therefore, no
11 rights can pass to their heirs or legatees. But a cause of
12 action accrued to members of the tribe or tribes concerned as
13 soon as the Government paid the communal property to the wrong
14 persons. Since the deceased plaintiffs claimed property that
15 had been mispaid or misappropriated, their claims survive them
16 and pass to their heirs or legatees. I call your attention to
17 the case of In re: Will of McDonald cited in the August 1, 1984
18 brief of Plaintiffs relating to abatement, where the Government
19 admitted to probate a will that bequeathed the testatrix's
20 interest in this case.

21 Also, I call your attention to the case of Almure v.
22 Pace, 193 Fed.2d 699, 700 n.2. That stands for the proposition
23 that absent controlling statute, actions to vindicate contract
24 or property rights survive since they affect the estate of the
25 deceased.

1 The Court concludes that it has jurisdiction over
2 qualified plaintiffs and that the claims of the deceased plain-
3 tiffs survive. For those reasons, the Court denies the
4 Intervenor's Motion for Partial Summary Judgment with regard to
5 those two issues.

6 With regard to the Plaintiffs' Motion for Sections:
7 The Court has considered the Plaintiffs' Motion for Sanctions
8 against the Intervenor. The record fails to show that the
9 Intervenor acted in bad faith, and for that reason the motion
10 is denied.

11 This essentially summarizes my reasons. I know you
12 wanted a prompt decision, and I have it to you.

13 MR. LUNDQUIST: I appreciate that, Your Honor; Weyman
14 Lundquist.

15 MR. BROOKSHIRE: Judge, this is Jim Brookshire at
16 Justice.

17 THE COURT: Yes.

18 MR. BROOKSHIRE: We do appreciate your prompt ruling.
19 Just a point of sort of technical clarity, when I was listening
20 I was hearing you refer to the Hoopa Valley Tribe's motion on
21 whether or not the causes of action survive. I take it it is
22 also applicable to the Government?

23 THE COURT: Yes.

24 MR. SHEARER: Your Honor, William Shearer. With re-
25 gard to the three plaintiffs for whom I made motions, and for