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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

U.S. DISTRICT COURT
NORTHERN DISTRICT OF
CALIFORNIA
CLERK

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FILED

LILLIAN BLAKE PUZZ, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 UNITED STATES DEPARTMENT OF)
 INTERIOR, BUREAU OF INDIAN)
 AFFAIRS, et al.,)
)
 Defendants,)
)
 _____)
 ELSIE G. RICKLEFS, et al.,)
)
 Defendants, Counter-)
 Claimants and Cross-)
 Claimants.)
 _____)

NO. C 80-2908 TEH

MEMORANDUM OPINION AND ORDER

The question before the Court is what effect, if any, the case of Short, et al. v. United States, et al., 486 F.2d 561, 202 Ct. Cl. 870 (1973), cert. denied, 416 U.S. 961 (1974), 661 F.2d 150, 228 Ct. Cl. 35 (1981), cert. denied, 455 U.S. 1034 (1982), 719 F.2d 1133 (Fed. Cir. 1983), cert. denied, ___ U.S. ___, 104 S.Ct. 3545 (1984), should have on the present action. On April 20, 1981, plaintiffs filed a motion for summary judgment based on the collateral estoppel effect of Short. After a number of intervening developments in the present action and the Short litigation, and after three rounds of briefing on the col-

1 lateral estoppel question, the Court heard final oral argument
2 on plaintiffs' motion on June 18, 1984 and took the matter under
3 submission at that time. Having carefully considered the briefs
4 and arguments of counsel and the entire record in this action,
5 the Court hereby denies the motion except to the extent of estab-
6 lishing that certain material facts exist without controversy.
7 Fed. R. Civ. P. 56(d). Specifically, as is explained more fully
8 below, the Court hereby grants collateral estoppel effect only
9 to those few core issues actually and necessarily decided in
10 Short and relevant to the present action, but otherwise denies
11 summary judgment on all of plaintiffs' major claims.

12 BACKGROUND

13 Plaintiffs are Indians residing on, or otherwise con-
14 nected to, the Hoopa Valley Reservation in Northern California.
15 Defendants are the United States Department of Interior, the
16 Bureau of Indian Affairs, and certain officials thereof (collec-
17 tively referred to as the "federal defendants"), and certain
18 individuals who are members of the Hoopa Valley Business Coun-
19 cil, the governing body of the Hoopa Valley Tribe (collectively
20 referred to as either the "non-federal defendants" or the "Hoopa
21 defendants").

22 A background description and history of the Hoopa
23 Valley Reservation and the development of the Hoopa Valley Tribe
24 are amply set out in Short, supra, 486 F.2d 561, 202 Ct. Cl. 870
25 (1973), cert. denied, 416 U.S. 961 (1974) (hereinafter "Short -
26 1973"). Additional background may be found in the subsequent
27 Short decisions, cited at the start of this opinion, and in
28 Hoopa Valley Tribe v. United States, 596 F.2d 435, 219 Ct. Cl.

1 492 (1979). We will not attempt to summarize that factual
2 history here, but will briefly describe how the two other
3 actions referred to differ from the present one.

4 The Short case was filed in 1963 in the United States
5 Court of Claims on behalf of a class of individuals who consider
6 themselves Indians of the Hoopa Valley Reservation (hereinafter
7 "the Reservation") but who are not eligible for membership in
8 the Hoopa Valley Tribe. The plaintiffs sued the government for
9 a money judgment on the ground that it had improperly distri-
10 buted per capita shares of timber revenues, derived from certain
11 unallotted trust lands of the Reservation, only to those Indians
12 on the membership rolls of the Hoopa Valley Tribe. In its 1973
13 decision, the Court of Claims affirmed and adopted the recommend-
14 ed findings and conclusions of Trial Judge David Schwartz grant-
15 ing judgment for plaintiffs on the liability issues in the case.
16 It is those findings and conclusions which form the basis of the
17 present summary judgment motion.

18 The case of Hoopa Valley Tribe v. United States, supra,
19 (hereinafter "HVT v. US") was filed in 1976 in the Northern Dis-
20 trict of California. In this action, the Hoopa Valley Tribe
21 sought to enjoin the government from escrowing timber revenues
22 pending outcome of Short. The case was transferred to the Court
23 of Claims, which ultimately affirmed the recommendations of
24 Trial Judge Schwartz and dismissed the action on grounds of res
25 judicata and collateral estoppel. Despite the continuing pro-
26 ceedings in Short to determine which plaintiffs are entitled to
27 recovery (a process that continues to this day), the Court of
28 Claims found in 1979 that the 1973 liability decision in Short

1 was sufficiently final to make collateral estoppel appropriate
2 in HVT v. U.S. (See also this Court's Order and Opinion of
3 February 26, 1982 at p. 7 n.).

4 In July 1980, plaintiffs filed the present action, seek-
5 ing declaratory and injunctive relief. Specifically, the com-
6 plaint seeks a declaration that the Reservation is a single
7 political entity; that as Indians of the Reservation, plaintiffs
8 have substantive rights equal to those of all other Indians of
9 the Reservation with respect to its governmental and business
10 affairs; and that the actions of the non-federal defendants are
11 without legal authority. Plaintiffs also seek to enjoin the
12 federal defendants from recognizing the non-federal defendants
13 as the governing council of the Reservation or any part of it,
14 and to require the federal defendants to promulgate and imple-
15 ment regulations and take other necessary actions to ensure
16 equal substantive rights for plaintiffs with all other Indians
17 of the Reservation. Complaint (Prayer for Relief) at ¶¶ 1-3,5,
18 7.

19 Nine months after filing the complaint, plaintiffs
20 moved for complete summary judgment on all claims based solely
21 on the collateral estoppel effect of Short. It is that motion
22 that is before the Court.

23 The Motion

24 In their opening brief in support of the motion, filed
25 April 20, 1981, plaintiffs identified "four indisputable facts"
26 that they claim were conclusively determined in Short-1973 and
27 should resolve the present action. See Memorandum in Support
28 of Plaintiffs' Motion for Summary Judgment (hereinafter "Plain-

1 tiffs' 1981 Memorandum") at 3. Specifically, plaintiffs argued
2 that in Short-1973,

3 [t]he court held four points to be essential facts
4 about the reservation: 1) The Square and the Addition
5 constitute one unified reservation for all purposes,
6 not simply for administrative purposes; 2) There never
7 were and there are not now any such things as tribes on
8 the reservation in the sense of political or ethnic
9 entities with vested rights; 3) The Indians of the
10 Reservation hold equal substantive rights on the
11 reservation as individuals rather than as members of
12 tribes or bands; and 4) The United States acted
13 arbitrarily in recognizing the so-called Hoopa Valley
14 Tribe as an entity with rights to the Square.

15 Id.^{1/}

16 Plaintiffs' argument is that granting collateral estop-
17 pel effect to these four indisutable facts, on the ground that
18 they were conclusively and necessarily determined in Short, is
19 sufficient basis for granting plaintiffs complete declaratory
20 and injunctive relief in the present action.^{2/}

21 Developments since the filing of the motion for summary judgment

22 After plaintiffs filed their motion for summary judg-
23 ment, other motions were filed and then, on June 26, 1981, the
24 Court continued all motions pending the Court of Claims' review
25 of Trial Judge Schwartz's July 1980 decisions in Short. These
26 two decisions addressed the government's motion to substitute

27 1/The Court notes that plaintiffs reformulate three of these
28 "four indisputable facts" in their December 1983 Memorandum,
although they fail to note the differences. See Plaintiffs'
Memorandum on the Issues to be Given Collateral Estoppel Effect
from the Jessie Short Case, December 27, 1983, (hereinafter
"Plaintiffs' 1983 Memorandum") at 2.

29 2/The relief sought in the complaint and the motion for
summary judgment are the same, see Complaint (Prayer for Relief)
at ¶¶ 1-9, and Motion for Summary Judgment in Favor of
Plaintiffs at ¶¶ 1-9.

1 the Yurok Tribe as plaintiff and the Hoopa Valley Tribe's motion
2 to dismiss due to the existence of non-justiciable political
3 questions. On September 23, 1981, the Court of Claims issued
4 its opinion affirming the Trial Judge's decisions and denying
5 both motions. 661 F.2d 150, 228 Ct. Cl. 35 (1981)(hereinafter
6 "Short-1981").

7 The briefing schedule on plaintiffs' motion for summary
8 judgment was thereafter resumed, and additional motions to dis-
9 miss were filed by defendants. On February 26, 1982, after a
10 hearing on all pending motions, this Court issued its Order and
11 Opinion. The Court denied the defendants' motions to dismiss,
12 and stayed consideration of plaintiffs' motion for summary judg-
13 ment pending resolution by the U.S. Supreme Court of pending
14 petitions for certiorari in Short.

15 In that February 26, 1982 Order and Opinion, we reject-
16 ed defendants' contention that plaintiffs' complaint presented a
17 non-justiciable political question. However, we noted that:

18 This does not mean that the plaintiffs' claim could
19 never give rise to a non-justiciable political question.
20 The question for decision posed by the complaint is
21 whether the Congress intended to create a Reservation
22 for individual Indians or for tribes of Indians. If,
23 based on the evidence and applicable legal principles,
24 a tribal reservation is found to have been intended, the
25 case would end because, as the defendants point out,
26 questions of the status of particular tribes are
27 political questions that the courts ought not undertake
28 to resolve. Baker v. Carr, 369 U.S. 186, 215-217
(1962). On the other hand, if the evidence establishes
that the Hoopa Valley Reservation was intended to be
administered by and for individual Indians, the
recognition of tribes for purposes of Reservation
administration would appear to be an ultra vires act on
the part of the federal government and one subject to
judicial correction.

Order and Opinion, February 26, 1982, at 3. In addition, the

1 Court expressed certain concerns about plaintiffs' motion for
2 summary judgment:

3 First, the jurisdiction of the Court of
4 Claims is limited to the granting of money judgments, with equitable powers confined to those
5 incident to this limited general jurisdiction. 17 Wright and Miller, Federal Practice and Procedure
6 § 4101. To the extent that the "indisputable facts" contended for by the plaintiffs concern
7 political rights, the Court of Claims would thus appear to be powerless to find them, except
8 to the extent that those facts are necessary to grant money damages.

9 A second point follows from the observation
10 made above. Even if the Court of Claims made the findings asserted by the plaintiffs to have been
11 made, it would seem that such findings would be limited to their relationship to what is at issue
12 in Jessie Short. Without irrevocably characterizing the decisions in Jessie Short, we note that it
13 appears that the issue there presented for decision concerns the distribution of shares of income from
14 unallotted timber resources of the Reservation. It would thus appear that, for example, the second
15 "indisputable fact" alleged by the plaintiffs, i.e., that there are no such things as tribes with vested
16 rights on the Hoopa Valley Reservation, would be limited to a determination that there are no
17 tribes with vested rights to the income from unallotted trust-status timber resources. What
18 this Court would then be required to determine is the relevance of the limited Court of Claims
19 findings to the case here.

20 Third, assuming that findings limited to
21 the jurisdiction of the Court of Claims were in fact made and are relevant in this case, it is
22 unclear which of those findings was necessary to the decision in Jessie Short so as to operate
23 as collateral estoppel here. Segal v. American Telephone & Telegraph Co., Inc., 606 F.2d 842,
845 (9th Cir. 1979).

24 Id. at 6-7. Although those comments were only intended to be
25 non-binding observations, we asked the parties to address them
26 in their subsequent briefing. Despite this invitation, plaintiffs
27 have failed to dispel our concerns.

1 On July 26, 1982, we further stayed consideration of
2 plaintiffs' summary judgment motion pending a decision by the
3 Court of Appeals for the Federal Circuit on exceptions to the
4 Trial Judge's recommended opinion of March 31, 1982 in Short.
5 However, the non-federal defendants were permitted to file a
6 brief in support of their position that Short has no collateral
7 estoppel effect in this litigation. Order: Re: Briefing
8 Schedule, July 26, 1982, at 2. In this new brief, the non-
9 federal defendants argued that given the underlying policies and
10 limitations of the collateral estoppel doctrine, the jurisdic-
11 tional and procedural limitations of the Court of Claims, the
12 differences between the claims at issue in Short and Puzz, and
13 the changes in the legal context since 1973, it was inappropri-
14 ate to grant collateral estoppel effect in Puzz to any issues
15 decided in Short. The non-federal defendants also argued that
16 it would be unfair to apply collateral estoppel because the
17 Hoopa Valley Tribe did not control much of the early litigation
18 in Short and the later preclusion of issues raised in Short
19 was not foreseeable.

20 The non-federal defendants' position was opposed by
21 both plaintiffs and the federal defendants. In particular, the
22 federal defendants, who oppose plaintiffs' present motion,
23 argued that the Hoopa Valley Tribe had sufficiently participated
24 in Short so as not to render application of collateral estoppel
25 inherently unfair. They also argued that the claims in Short
26 and Puzz were not totally unrelated; that the procedural and
27 jurisdictional differences between the Court of Claims and the
28 District Court did not preclude all estoppel effect; and that

1 the Hoopa defendants could not demonstrate either lack of fore-
2 seeability or lack of judicial review such that no collateral
3 estoppel should apply.

4 On April 13, 1983, we rejected the Hoopa defendants'
5 contentions, and instead agreed with the federal defendants that
6 the collateral estoppel doctrine required an issue-by-issue
7 analysis.

8 The Federal Circuit decision and the latest round of briefing

9 On October 6, 1983, the Court of Appeals for the
10 Federal Circuit, the successor to the Court of Claims, issued
11 its decision affirming the March 31, 1982 opinion of Trial Judge
12 Schwartz establishing standards for qualifying the various plain-
13 tiffs in Short. 719 F.2d 1133 (Fed. Cir. 1983), cert. denied,
14 ____ U.S. ____ (1984). The court also denied new motions to
15 dismiss brought by both defendants on jurisdictional grounds.
16 Id. In its opinion, the court addressed and clarified a number
17 of issues relevant to the present motion. It noted that the
18 question of standards to be applied in determining which plain-
19 tiffs are qualified to share in the Reservation's income "is a
20 matter of individual entitlement not of tribal membership for
21 other purposes. See Short v. United States, supra, 661 F.2d at
22 154." 719 F.2d at 1137. See also id. at 1138, n.10, and 1143.
23 The court then added the following:

24 This is solely a suit against the United States for
25 monies, and everything we decide is in that connection
26 alone; neither the Claims Court nor this court is issu-
27 ing a general declaratory judgment.
28

1 Id. at 1143.^{3/}

2 In their opening memorandum following the Federal
3 Circuit's decision, plaintiffs fail to address this narrowing
4 language. See Plaintiffs' 1983 Memorandum. Indeed, after incor-
5 porating their 1981 Memorandum in its entirety, plaintiffs focus
6 on trying to demonstrate that Findings 175-189 in Short-1973
7 establish the "four indisputable facts," and that those facts
8 were all necessary to the Short decision.^{4/} Defendants, in
9 their two opposition briefs, reiterate some of the arguments
10 made in earlier briefing; they also raise additional objections
11 based on the narrowing language in the Federal Circuit decision
12 and its focus on 25 U.S.C. § 407 as a basis for plaintiffs'
13 claims, and also on what defendants argue is an acceptance of
14 tribal or communal rights in the Federal Circuit opinion. See
15 Hoopa Defendants' Response to Plaintiffs' Memorandum at 33-35;
16 Federal Defendants' Memorandum in Response to Plaintiffs' Memo-
17 randum at 18-19. In response to this last argument, plaintiffs
18 make an unexpected concession in their Reply:

19 _____
20 ^{3/}The court also explained the relevance of both the Act of
21 April 8, 1864, 13 Stat. 39, and 25 U.S.C. § 407 to the Short
22 decision. The court noted that the Act of 1864 helped establish
23 the government's fiduciary relationship to qualified plaintiffs
24 and the arbitrariness of the government's distribution scheme.
25 719 F.2d at 1126.

24 _____
25 ^{4/}However, plaintiffs' reliance on such "proof" as the use of
26 "rights" in the plural instead of the singular in Short-1973,
27 and the strict rules that Court of Claims Trial Judges are
28 supposed to follow in finding facts, see id. at 9-10, is not
persuasive. Similarly, the brief reference in Short-1973 to
political issues, cited in Plaintiffs' 1983 Memorandum at 11,
does not constitute evidence that the question of political
rights, and all other substantive rights, was necessarily
decided in Short.

1 In spite of insinuations to the contrary [citations
2 omitted], plaintiffs have always maintained that their
3 Reservation rights are communal. [Citations omitted.]
4 The defendants are playing a semantic game, but the
5 issue is and always was what community (or "tribe", if
6 you will) shares the Reservation and its benefits and,
7 as consequence, is entitled to administer the Reserva-
8 tion in accordance with principles of self-determina-
9 tion, the 1864 Act, 13 Stat. 39, the 1891 Executive
10 Order, 1 Kapp. 815, and the Reservation's history.

11 Plaintiffs' Reply to Defendants' Responses at 4, n.2.

12 DISCUSSION

13 It is beyond question that the wording of Judge
14 Schwartz's findings and conclusions, as adopted by the Court of
15 Claims in Short-1973, supra, and of his two July 25, 1980
16 decisions (see Exhibits B & C to Plaintiffs' 1981 Memorandum)
17 which were affirmed by the Court of Claims in Short-1981, if
18 taken out of the context of the claims in Short, the limited
19 jurisdiction of the Court of Claims, and the Federal Circuit's
20 own narrowing language in Short-1983, could lend support to some
21 of plaintiffs' claims herein.

22 For example, in the "Ultimate Findings and Conclusions
23 on the Common Issue of the Exclusive Rights of the Hoopas in the
24 Square," Findings 175-189, in Short-1973, the Court of Claims
25 affirmed and adopted the following findings:

26 Fdg. 175: ... No Indian tribe resident upon a reserva-
27 tion creatd under the [1864 Act] could obtain vested
28 rights to the exclusion of another group or tribe of
Indians thereafter authorized by the President to share
in the benefits of the reservation.

* * *

Fdg. 183: ... The plain and natural effect of the [1891
Executive Order] was to create an enlarged ressertation
in which the Indians of the original reservation and
the Indians of the added tracts would have equal rights
in common....

Fdg. 184: An exhaustive study ... shows no sign of a
plan, intention or understanding, ... that the
executive order of 1891 should join the [Addition] to
the Square for administrative or "technical" purposes

1 only ... or otherwise than as a single, integrated
2 reservation in which all the Indians of the
reservation should have equal substantive rights....

3 Similarly, Judge Schwartz's decision of July 25, 1980 denying
4 the government's motion to substitute the Yurok Tribe as
5 plaintiff in Short, contains the following:

6 The contention that the property is tribal is without
7 merit.... The Hoopa Valley Reservation was created as
8 a non-tribal reservation for such Indians as the
9 President might settle thereon.... There were no tribes
on the reservation in the sense of entities with a
claim to property rights, until the Hoopa Valley Tribe
was created by the Government in 1950....

10 Exhibit B to Plaintiffs' 1981 Memorandum at 11.

11 However, the doctrine of collateral estoppel is a limit-
12 ed one that requires us to focus carefully and apply certain
13 rules before determining that such statements in prior decisions
14 are entitled to preclusive effect. As a result, plaintiffs'
15 reliance on such excerpts as those above is problematic.

16 Legal Standard

17 In order to preclude relitigation of an issue on the
18 basis of collateral estoppel, a court must find that (1) the
19 party against whom estoppel is sought was given a "full and fair
20 opportunity to litigate" the issue or claim in the previous liti-
21 gation, and (2) the issue or claim was "actually and necessarily
22 determined" by the prior court. Montana v. United States, 440
23 U.S. 147, 153 (1979). In addition,

24 [t]he burden of pleading and proving the
25 identity of issues rests on the party as-
26serting the estoppel. Haung Tang v. Aetna
27 Life Insurance Co., 523 F.2d 811, 813 (9th
28 Cir. 1975). To sustain this burden a party
must introduce a record sufficient to reveal
the controlling facts and pinpoint the exact
issues litigated in the prior action. United
States v. Lasky, 600 F.2d 765, 769 (9th Cir.
1979).

