Julie CHALMERS, Plaintiff-Appellant,

v.

CITY OF LOS ANGELES, Defendant-Appellee.

No. 82-6112.

United States Court of Appeals, Ninth Circuit.

Nov. 1, 1984.

Marcia Haber Kamine, Deputy City Atty., Los Angeles, Cal., for plaintiff-appellant.

John B. Murdock, Santa Monica, Cal., for defendant-appellee.

Appeal from the United States District Court for the Central District of California.

Before: WALLACE, TANG, and SKOPIL, Circuit Judges.

ORDER

The petition for rehearing is granted. The opinion issued by this court on May 10, 1984 in the above-entitled case, No. 82-6112, is hereby withdrawn. The parties shall file briefs addressing the following issues:

1. Whether the existence of conflicting municipal ordinances on street vending proximately caused Chalmers' alleged deprivation of liberty;

2. Whether municipal legislators have a duty to assure the internal consistency of municipal legislation;

3. Whether a municipal policy or custom existed that interpreted the inconsistent ordinances to prohibit street vending;

4. Whether a city violates due process by enforcing a regulatory scheme that it knows to be internally inconsistent;

5. Whether the Los Angeles Police Department knew or should have known that the street vending ordinances were internally inconsistent;

6. Whether the City may claim a derivative immunity based on (a) the immunity of municipal legislators; or (b) the immunity of police officers acting in good faith; and

7. Whether the promulgation of conflicting ordinances and the subsequent inconsistency between the actions of the City's licensing authorities and enforcement officers render enforcement of the prohibitive ordinance a violation of due process.

Chalmers shall file her brief within fourteen (14) days of the date of this order. The City shall then have fourteen (14) days to file a responding brief. If Chalmers wishes, she may file a reply brief within seven (7) days after the responding brief is filed. Opening briefs of the parties shall be limited to forty (40) pages and Chalmers' reply brief shall be limited to fifteen (15) pages.

After the final brief is filed, this case will be calendared for oral argument before this panel at the earliest possible date. Counsel will be notified of the time and location of the oral argument.

INUPIAT COMMUNITY OF the ARCTIC SLOPE and Ukpeagvik Inupiat Corporation, et al., Plaintiffs-Appellants,

v.

UNITED STATES of America, et al., Defendants-Appellees.

No. 82-3678.

United States Court of Appeals, Ninth Circuit.

Argued and Submitted Oct. 7, 1983.

Decided Nov. 2, 1984.

Members of Inupiat Community of the Arctic Slope brought suit to enjoin oil development off the North Slope of Alaska. The United States District Court for the

District of Alaska, James M. Fitzgerald, J., 548 F.Supp. 182, granted summary judgment against plaintiffs, and plaintiffs appealed. The Court of Appeals held that: (1) any aboriginal rights plaintiffs may have had were extinguished by Alaska Native Claims Settlement Act, and (2) plaintiffs' general trust claims were barred by collateral estoppel.

Affirmed.

1. Indians ⟹6

Any aboriginal rights members of Inupiat Community may have had based upon centuries of occupancy and use of sea ice many miles from shore for subsistence hunting and fishing were extinguished by Alaska Native Claims Settlement Act. Alaska Native Claims Settlement Act, §§ 2–29, as amended, 43 U.S.C.A. §§ 1601–1626.

2. Judgment ⟹715(1)

General trust claims brought by members of Inupiat Community, suing to enjoin oil development off North Slope of Alaska, were barred by collateral estoppel.

3. Indians ⟹6

Assuming applicability of Final Act, Conference on Security and Cooperation in Europe, Helsinki, and International Covenant on Civil and Political Rights, there was no provision of either that could be interpreted as imposing upon United States a greater obligation to protect subsistence culture of Alaska natives than that imposed upon United States by federal domestic law, an obligation already satisfied. Alaska Native Claims Settlement Act, §§ 2–29, as amended, 43 U.S.C.A. §§ 1601–1626.

Mason D. Morisset, Ziontz, Pirtle, Morisset, Ernstoff & Chestnut, Seattle, Wash., for plaintiffs-appellants.

Kathryn A. Oberly, Asst. Sol. Gen., Brice M. Clagett, Covington & Burling, Washington, D.C., R. Collin Middleton, Baenen, Timme, De Reitzes & Middletown, Anchorage, Alaska, for defendants-appellees.

Appeal from the United States District Court for the District of Alaska.

Before BROWNING, Chief Judge, HUG, Circuit Judge, and REED *, District Judge.

PER CURIAM:

Appellants, members of the Inupiat Community of the Arctic Slope, sued to enjoin oil development off the North Slope of Alaska in the Beaufort and Chukchi Seas.

Appellants rest their suit primarily upon a claim of aboriginal title based upon centuries of occupancy and use of sea ice many miles from shore for subsistence hunting and fishing.

[1] For reasons stated in *People of the Village of Gambell v. Clark*, 746 F.2d 572 (9th Cir.1984), argued and decided with this case, we hold that any aboriginal rights appellants may have had were extinguished by the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601–1626.

[2] We agree with the district court (*Inupiat Community of the Arctic Slope v. United States*, 548 F.Supp. 182, 188 (D.Alaska 1982)), that appellants' general trust claims are barred by collateral estoppel. *See North Slope Borough v. Andrus*, 642 F.2d 589, 611–13 (D.C.Cir.1980). *See also California v. Watt*, 668 F.2d 1290, 1324–25 (D.C.Cir.1981).

[3] We also reject appellants' claim based upon the Final Act, Conference on Security and Cooperation in Europe, Helsinki, *reprinted in* 73 U.S.Dept. State Bull. 323 (1975) and the International Covenant on Civil and Political Rights, G.A.Res. 2200, 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966). Assuming these international understandings are applicable, ap-

* Honorable Edward C. Reed, Jr., United States District Judge for the District of Nevada, sitting by designation.

pellants point to no provision of either that could be interpreted as imposing upon the United States a greater obligation to protect the subsistence culture of the Natives than that imposed upon the United States by federal domestic law—an obligation already satisfied. *See North Slope Borough v. Andrus, supra.* Nor have appellants made any showing of a universal recognition of such a greater obligation that would be necessary to establish a claim based on the law of nations. *See Filartiga v. Pena-Irala,* 630 F.2d 876, 881–84 (2d Cir.1980).

AFFIRMED.

The PEOPLE OF the VILLAGE OF GAMBELL, an Alaskan Native IRA Association, and the People of the Village of Stebbins, an Alaskan Native IRA Association, Plaintiffs-Appellants,

v.

William CLARK *, Secretary of the Interior and the United States Department of Interior, Defendants-Appellees

and

Arco Alaska, Inc., et al., Defendants-Appellees.

Nos. 83-3735X, 83-3781.

United States Court of Appeals, Ninth Circuit.

Argued and Submitted Oct. 7, 1983.

Decided Nov. 2, 1984.

Alaskan natives brought action against the Secretary of Interior to enjoin sale of oil and gas exploration leases for shelf lands in the Norton Sound basin off the western shore of Alaska. The United States District Court for the District of Alaska, James A. von der Heydt, J., granted the Secretary's motion for summary judgment, and plaintiffs appealed. The Court of Appeals, Browning, Chief Judge, held that: (1) if plaintiffs had an exclusive aboriginal right to hunt and fish in offshore areas adjacent to Alaska, that right was extinguished by the Alaskan Native Claims Settlement Act, but (2) the Alaska National Interest Land Conservation Act applied to outer continental shelf lands and waters.

Affirmed in part, reversed in part, and remanded.

1. Indians ⚷6

"Aboriginal title or right" is a right of exclusive use and occupancy held by natives in lands and waters used by them and their ancestors prior to assertion of sovereignty over such areas by the United States; those rights are superior to those of third parties, including the states, but are subject to the paramount powers of Congress.

See publication Words and Phrases for other judicial constructions and definitions.

2. Indians ⚷6

Aboriginal rights based on occupation and use are entitled to protection of federal law even when they are not formally recognized as ownership by treaty or statute, but such unrecognized aboriginal rights can be extinguished by Congress without compensation; however, Congress' intention to extinguish must be clear and will not be lightly implied.

3. Indians ⚷6

If Alaska natives had an exclusive aboriginal right to hunt and fish in offshore areas adjacent to Alaska, that right was extinguished by the Alaska Native Claims Settlement Act. Alaska Native Claims Set-

* William Clark is substituted for James G. Watt as Secretary of the Interior pursuant to Fed.R.App.P. 43(c).