

1984 WL 23255

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United States District Court, N.D. California.

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.

|  
Oct. 2, 1984.

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#### Attorneys and Law Firms

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#### MEMORANDUM OPINION AND ORDER

THELTON E. HENDERSON, District Judge.

\*1 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, 467 U.S. 1256, 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 collateral estoppel question, the Court heard final oral argument on plaintiffs' motion on June 18, 1984 and took the matter under submission at that time. Having carefully considered the briefs and arguments of counsel and the entire record in this action, the Court hereby denies the motion except to the extent of establishing that certain material facts exist without controversy. Fed. R. Civ. P. 56(d). Specifically, as is explained more fully below, the Court hereby grants collateral estoppel effect only to those few core issues actually and necessarily decided in Short and relevant to the present action, but otherwise denies summary judgment on all of plaintiffs' major claims.

#### BACKGROUND

Plaintiffs are Indians residing on, or otherwise connected to, the Hoopa Valley Reservation in Northern California. Defendants are the United States Department of Interior, the Bureau of Indian Affairs, and certain officials thereof (collectively referred to as the "federal defendants"), and certain individuals who are members of the Hoopa Valley Business Council, the governing body of the Hoopa Valley Tribe (collectively referred to as either the "non-federal defendants" or the "Hoopa defendants").

A background description and history of the Hoopa Valley Reservation and the development of the Hoopa Valley Tribe are amply set out in Short, supra, 486 F.2d 561, 202 Ct. Cl. 870 (1973), cert. denied, 416 U.S. 961 (1974)(hereinafter "Short - 1973"). Additional background may be found in the subsequent Short decisions, cited at the start of this opinion, and in Hoopa Valley Tribe v. United States, 596 F.2d 435, 219 Ct. Cl. 492 (1979). We will not attempt to summarize that factual history here, but will briefly describe how the two other actions referred to differ from the present one.

The Short case was filed in 1963 in the United States Court of Claims on behalf of a class of individuals who consider themselves Indians of the Hoopa Valley Reservation (hereinafter “the Reservation”) but who are not eligible for membership in the Hoopa Valley Tribe. The plaintiffs sued the government for a money judgment on the ground that it had improperly distributed per capita shares of timber revenues, derived from certain unallotted trust lands of the Reservation, only to those Indians on the membership rolls of the Hoopa Valley Tribe. In its 1973 decision, the Court of Claims affirmed and adopted the recommended findings and conclusions of Trial Judge David Schwartz granting judgment for plaintiffs on the liability issues in the case. It is those findings and conclusions which form the basis of the present summary judgment motion.

\*2 The case of Hoopa Valley Tribe v. United States, supra, (hereinafter “HVT v. US”) was filed in 1976 in the Northern District of California. In this action, the Hoopa Valley Tribe sought to enjoin the government from escrowing timber revenues pending outcome of Short. The case was transferred to the Court of Claims, which ultimately affirmed the recommendations of Trial Judge Schwartz and dismissed the action on grounds of res judicata and collateral estoppel. Despite the continuing proceedings in Short to determine which plaintiffs are entitled to recovery (a process that continues to this day), the Court of Claims found in 1979 that the 1973 liability decision in Short was sufficiently final to make collateral estoppel appropriate in HVT v. U.S. (See also this Court’s Order and Opinion of February 26, 1982 at p. 7 n. ).

In July 1980, plaintiffs filed the present action, seeking declaratory and injunctive relief. Specifically, the complaint seeks a declaration that the Reservation is a single political entity; that as Indians of the Reservation, plaintiffs have substantive rights equal to those of all other Indians of the Reservation with respect to its governmental and business affairs; and that the actions of the non-federal defendants are without legal authority. Plaintiffs also seek to enjoin the federal defendants from recognizing the non-federal defendants as the governing council of the Reservation or any part of it, and to require the federal defendants to promulgate and implement regulations...

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... addressed the government’s motion to substitute the Yurok Tribe as plaintiff and the Hoopa Valley Tribe’s motion to dismiss due to the existence of non-justiciable political questions. On September 23, 1981, the Court of Claims issued its opinion affirming the Trial Judge’s decisions and denying both motions. 661 F.2d 150, 228, Ct. Cl. 35 (1981)(hereinafter “Short-1981”).

The briefing schedule on plaintiffs’ motion for summary judgment was thereafter resumed, and additional motions to dismiss were filed by defendants. On February 26, 1982, after a hearing on all pending motions, this Court issued its Order and Opinion. The Court denied the defendants’ motions to dismiss, and stayed consideration of plaintiffs’ motion for summary judgment pending resolution by the U.S. Supreme Court of pending petitions for certiorari in Short.

In that February 26, 1982 Order and Opinion, we rejected defendants’ contention that plaintiffs’ complaint presented a non-justiciable political question. However, we noted that:

This does not mean that the plaintiffs’ claim could never give rise to a non-justiciable political question. The question for decision posed by the complaint is whether the Congress intended to create a Reservation for individual Indians or for tribes of Indians. If, based on the evidence and applicable legal principles, a tribal reservation is found to have been intended, the case would end because, as the defendants point out, questions of the status of particular tribes are political questions that the courts ought not undertake 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 Court expressed certain concerns about plaintiffs' motion for summary judgment:

First, the jurisdiction of the Court of Claims is limited to the granting of money judgments, with equitable powers confined to those incident to this limited general jurisdiction. 17 Wright and Miller, Federal Practice and Procedure § 4101. To the extent that the “indisputable...

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..., plaintiffs have failed to dispel our concerns.

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

The non-federal defendants' position was opposed by both plaintiffs and the federal defendants. In particular, the federal defendants, who oppose plaintiffs' present motion, argued that the Hoopa Valley Tribe had

sufficiently participated in Short so as not to render application of collateral estoppel inherently unfair. They also argued that the claims in Short and Puzz were not totally unrelated; that the procedural and jurisdictional differences between the Court of Claims and the District Court did not preclude all estoppel effect; and that the Hoopa defendants could not demonstrate either lack of foreseeability or lack of judicial review such that no collateral estoppel should apply.

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

The Federal Circuit decision and the latest round of briefing

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

This is solely a suit against the United States for monies, and everything we decide is in that connection alone; neither the Claims Court nor this court is issuing a general declaratory...

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... than as a single, integrated reservation in which all the Indians of the reservation should have equal substantive rights....

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

The contention that the property is tribal is without merit.... The Hoopa Valley Reservation was created as a non-tribal reservation for such Indians as the 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....

Exhibit B to Plaintiffs' 1981 Memorandum at 11.

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

Legal Standard

\*7 In order to preclude relitigation of an issue on the basis of collateral estoppel, a court must find that (1) the party against whom estoppel is sought was given a "full and fair opportunity to litigate" the issue or claim in the previous litigation, and (2) the issue or claim was "actually and necessarily determined" by the prior court. *Montana v. United States*, 440 U.S. 147, 153 (1979). In addition,

[t]he burden of pleading and proving the identity of issues rests on the party asserting the estoppel. *Haung Tang v. Aetna Life Insurance Co.*, 523 F.2d 811, 813 (9th 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).

*Hernandez v. United States*, 624 F.2d 935, 937 (9th Cir. 1980). The prior decision must also be a valid and final judgment. *Fibreboard Paper Products Corporation v. East Bay Union of Machinists, Local 1304*, 344 F.2d 300, 306 (9th Cir. 1965).

The requirement that the identical issue was actually litigated in the prior action is essential to the collateral estoppel doctrine. *Levi Strauss & Co. v. Blue Bell, Inc.*, 732 F.2d 676 (9th Cir. 1984), citing *Parklane Hosiery & Co. v. Shore*, 439 U.S. 322, 326 (1979). In addition, the issue must also have been necessarily litigated, i.e., essential to the prior judgment. *Montana*, supra; *Fibreboard*, supra; *Restatement (Second) of Judgments*, § 27, comment "h". Thus, even if an issue was litigated in the prior action, and a finding made on that issue, a party will not be barred from relitigating it if the issue was not necessary to the prior judgment. *Memorex Corp. v. IBM Corp.*, 555 F.2d 1379, 1384 (9th Cir. 1977).

Furthermore, when considering a prior judgment from the Court of Claims, it is necessary to view that judgment in light of that court's jurisdictional constraints. See 28 U.S.C. § 1491; *United States v. Testan*, 424 U.S. 392, 398 (1976). As we noted in our Order and Opinion of February 26, 1982, the Short-1973 opinion could only have addressed political rights in the context of an action for a money judgment properly within the Court of Claims' jurisdiction. Order and Opinion at 6.

Issues that were actually litigated in Short

As we stated above, the wording of the 1973 “Ultimate Findings and Conclusions” in Short could, on its face, indicate that a full range of substantive rights had been actually litigated. However, it is clear from the court's own Finding 189 that what was necessary to the judgment in that case was considerably more narrow:

It follows that defendant acted arbitrarily in recognizing only the persons on the official roll of the Hoopa Valley Tribe, whose rules...

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..., equally unconvincing on this point.

In comparing plaintiffs' proposed “four indisputable facts” with the more limited set of issues that were actually and necessarily determined in Short, we arrive at four modified “indisputable facts” (or established facts) that are relevant to the present inquiry:

- (1) The Square and the Addition constitute one unified reservation for the purpose of distributing income from unallotted trust lands of the Reservation to “Indians of the Reservation.”
- (2) There are no tribes on the Hoopa Valley Reservation having vested rights to the income from unallotted trust lands on the Reservation.
- (3) The Indians of the Reservation hold equal rights to income from the unallotted trust lands of the Reservation.
- (4) The United States Department of Interior, Bureau of Indian Affairs, acted arbitrarily in recognizing only the persons on the official roll of the Hoopa Valley Tribe as the persons entitled to the income from the unallotted trust lands on the Square.

These four facts were actually litigated in Short, they were necessary to the judgment, they have been upheld and reaffirmed during eleven years of litigation in Short,

and they are relevant to, though not dispositive of, the claims at issue in the present litigation. Accordingly, it is appropriate to apply collateral estoppel to these limited findings and thus bar both the federal defendants and the Hoopa defendants from relitigating these issues in the present litigation.

\*9 Having reached that conclusion, however, we do not mean to imply that the...