

BEFORE THE INDIAN CLAIMS COMMISSION

THE SEMINOLE NATION,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 248
)	
THE UNITED STATES,)	
)	
Defendant.)	

Decided: December 23, 1964

Appearances:

Roy St. Lewis and Paul M. Niebell,
Attorneys for Plaintiff

Clifford R. Stearnes, with whom
was Mr. Assistant Attorney General,
Ramsey Clark,
Attorneys for Defendant

OPINION OF THE COMMISSION

Scott, Associate Commissioner, delivered the opinion of the Commission.

The plaintiff herein asserts a claim for the fair market value of an oil and gas lease covering 320 acres of land known as the Mekasuky Mission School Tract located in Seminole County, Oklahoma.

Under Article III of the Treaty of March 21, 1866 (14 Stat. 755) between the United States of America and the Seminole Nation, 200,000 acres of land previously purchased from the Creek Tribe by the United States were purchased from the United States by the Seminoles. The tract in question was originally a part of that tract, and along with

another tract was specifically reserved from allotment for school purposes under an agreement dated December 16, 1897 (30 Stat. 567).

Plaintiff claims that at the time of the sale of the oil and gas lease on the subject tract known as the Mekasuky Mission School Tract, the United States stood in the relationship of trustee of the Seminole Nation and, as such, had control over its property; that the sale of the lease was not sufficiently advertised, nor was it advertised in the manner prescribed by the Commissioner of Indian Affairs under date of March 14, 1924, which would have offered interested persons sufficient opportunity to bid on the lease; that the sale was not advertised for the prescribed period of not less than 30 days prior to the sale, and only three times beginning 28 days before the date of sale in a weekly oil and gas journal of limited circulation and at a place some distance from the land in question; that at the time of such sale there was great activity in the development of several pools in the vicinity of the land in question; that had the sale of the lease been advertised in accordance with existing rules and regulations, and in the usual accepted manner, a greater price could have been obtained; that the amount received was inadequate, far below the market value of the lease when sold, and prevailing prices for such leases on lands in the area surrounding the Mekasuky Mission School Tract; that the United States was derelict in its duty as trustee of the Seminole Nation in failing to obtain the fair market price for the lease; and that the sale did not meet exacting fiduciary standards, and violated the principles of fair and honorable dealings.

On the other hand, the defendant has contended that the claim has been previously litigated in the Court of Claims, and therefore is res judicata; that the transaction involved was fair and honorable in all respects; that there is no substantial evidence in the record that the amount obtained by the United States for the oil and gas leases was not its fair market value.

The plaintiff is the Seminole Nation of Indians, an Indian tribe residing within the territorial limits of the United States, with a tribal organization recognized by the Secretary of the Interior and, as such, has authority to prosecute this claim under the Indian Claims Commission Act (60 Stat. 1049).

The matters now before this Commission for determination are (1) the nature of the relationship between the United States and the Seminole Nation with respect to the Mekasukey Mission School tract, (2) whether the defendant was derelict in its obligations with respect to leasing the Mekasukey Mission School tract, and (3) if there was such dereliction, the amount of the damages suffered by the plaintiff.

As to defendant's contention that this claim is res judicata, that has been previously litigated in the Court of Claims and dismissed on the grounds it was not a valid claim. After careful consideration of the decisions of the Court of Claims, this Commission finds that this claim was not a part of any of the claims cited by the defendant, including Seminole Nation v. United States, 82 C. Cls. 135; Seminole Nation v. United States, Docket L-87, and Seminole Nation v. United States, Docket No. L-233, and accordingly is not barred. The issue in the cited cases

had to do with the disbursement of Indian funds under treaty and statutory provisions, whereas the subject claim involves the government's dereliction in its duty as trustee to protect the monetary well-being of the Seminole Nation in the sale of property. No accounting of funds is involved in this claim.

The subject claim comes within the scope of Section 2, subsection 1, arising out of a trust created by the Act of April 30, 1908 (33 Stat. 70, 71), which authorized the Secretary of the Interior to assume control of certain property belonging to the Five Civilized Tribes, including school properties, to sell them, deposit the proceeds in the U. S. Treasury to the credit of the respective tribes and to lease such lands temporarily for the tribes' benefit.

Accordingly, this Commission cannot agree that this claim is res judicata.

Plaintiff contends that the United States was derelict in its duty and obligation of trust in its conduct of the sale of the Mekasuky Mission School tract in that defendant violated its fiduciary obligation to the petitioner.

As set forth in the Commission's Findings Nos. 3 and 4, the Mekasuky Mission School Tract was created under the provisions of the Act of July 1, 1898 (30 Stat. 567). Subsequently the Secretary of the Interior was given authority to assume control and direction of all tribal schools belonging to the Five Civilized Tribes, together with the lands on which they were located, under the provisions of the Act of April 26, 1906 (34 Stat. 137). The authority of the Secretary of the Interior was extended

to permit temporary leasing of buildings and lands for the benefit of the owner tribes by the Act of April 30, 1908 (35 Stat. 70, 71).

The Act of April 17, 1926 (44 Stat. 300) authorized the Secretary of the Interior "under such rules and regulations as he may prescribe to lease at public auction upon not less than thirty days' notice for mining purposes land on any Indian reservation reserved for Indian agency or school purposes, in accordance with existing law applicable to other lands in such reservation * * * Provided, that a royalty of at least one-eighth shall be reserved in all leases."

Under the provisions of the Act of April 17, 1926 (44 Stat. 300) the Secretary of the Interior had full administrative control and authority to lease the Mekasuky tract for oil and gas purposes.

Plaintiff's claim embraces an issue which has been heard and determined a number of times by this Commission. In United States v. Seminole Nation, 146 C. Cls. 171, at pages 180 and 181, the Court said:

* * *

Whether the Commission's finding that the Government breached its duty to the Seminole Nation is supported by substantial evidence necessarily depends upon the nature of that duty and the standards of conduct which it imposes. The relationship between the United States and Indian Tribes has been described by courts as similar to that existing between "guardian and ward." It has also been characterized as a fiduciary relationship. Gila River Pima-Maricopa Indian Community, et al v. United States, 135 C. Cls. 180, 185-189. Whatever the expression or term used, the relationship is one founded upon a distinctive obligation of trust. The obligation owed by the Government basically grows out of the dependent status of its Indian "wards." Seminole Nation v. United States, 316 U. S. 286, 296-297. Preciseness in the relationship is found in the treaty, agreement, order, or statute under which the claim is brought. Gila River Pima-Maricopa Indian Community, et al v. United States, supra. * * *

Here the obligation of the government to the Seminole Nation is found in the Acts of April 30, 1908, and April 17, 1926. Accordingly, the United States was charged with an obligation to take all necessary precautions that the sale of the lease of the Mekasuky tract was conducted in accord with all pertinent statutes and regulations, and to obtain the highest possible price for the lease in question.

Further, the Supreme Court stated in Seminole Nation v. United States, 316 U. S. 286, 296-297:

* * * this Court has recognized the distinctive obligation of trust incumbent upon the Government in its dealings with these dependent and sometimes exploited people. * * * In carrying out its treaty obligations with the Indian tribes, the Government is something more than a mere contracting party. Under a humane and self imposed policy which has found expression in many acts of Congress and numerous decisions of this Court, it has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should therefore be judged by the most exacting fiduciary standards.

The evidence introduced in this claim fails to establish that the Government discharged its obligation of highest responsibility and trust in the sale of the leasehold interest in the subject tract.

In the matter of advertisement of the sale, after some correspondence on the matter of sale of the lease, the Inspector was authorized to proceed with the sale of the oil and gas lease on terms set forth in the Inspector's letter to the Commissioner of Indian Affairs of May 24, 1926, i.e., notices to be prepared in his office, a supply to "be mailed to the Field Clerk and Probate Attorneys; and to the Post Office for posting" and notices mailed to all oil and gas operators. He also recommended that he be authorized to advertise for 30 days prior

to the date of sale in the Oil and Gas Journal published at Tulsa, Oklahoma. The record shows that the sale was not advertised for a full 30 days prior to the sale, but rather for only 28 days, the first publication being in the June 17, 1926 issue of the Oil and Gas Journal. There is nothing in the record to establish that the other procedures outlined in the Inspector's letter were followed. It is the opinion of this Commission that the persons responsible for the sale were remiss in their duties and the sale was not conducted in accordance with statutory regulations and procedures authorized by the Commissioner of Indian Affairs.

The record concerning the sale of a mineral lease on the same lands on July 25, 1925, is referred to in the letter of Acting Superintendent Hunt dated August 22, 1925 when he said "The notices of this sale which were posted and distributed to the best advantage and were in accordance with the instructions of the Hon. Chas. H. Burke and approved by Hon. F. M. Goodwin, Assistant Secretary, on March 16, 1924." It would appear that if the advertising in the later sale had also been conducted as outlined in the letter of the Commissioner of Indian Affairs dated March 14, 1924, there would be the same proof available. The only notice referred to in connection with this sale is publication of notice in the Oil and Gas Journal which as we have stated was defective.

One of the important contentions of the plaintiff is that the price obtained for the lease at public auction was considerably less than the fair market value at the time of the sale.

The term of the lease was for a period of 5 years "from and after

the approval hereof by the Secretary of the Interior." In Section 5 of the lease there appears the words "Commencing from the date of the approval of this lease." The Secretary of the Interior, upon information that a productive well or wells had been brought in near the tract in question, increasing the value of lands and mineral leases in the surrounding areas, could have cancelled the lease, readvertised the property and obtained a higher price therefor. The lease shows that it was signed by H. H. Fiske, Inspector-in-Charge for and on behalf of the Seminole Tribe of Indians, on July 22, 1926; that he forwarded the lease for approval on July 28, 1926; that it was submitted to the Secretary of the Interior with the recommendation that it be approved by the Commissioner of Indian Affairs on August 4, 1926; and it was finally approved by the Secretary of the Interior on August 6, 1926.

The actual sale was held on July 15, 1926. One day after that, on July 16, 1926, Independent-Garlands' No. 1 Fixico well was completed, giving great impetus to activity in the fields in Seminole County. It cannot be disputed that the effect of bringing in such a well was to increase the price of leases, and royalties of lands in the region. Both plaintiff and defendant have introduced evidence indicating that at the time of the sale of the lease all the lands in the vicinity were under lease and there were none with acceptable titles to be acquired.

The United States Oil Inspector Bradley stated in his letter of May 22, 1926, "The land in the vicinity of the Mekusukey Mission is all under lease and conditions are such at this time that this tract may be considered attractive from a leasing standpoint."

Apart from that, it is evident that knowledge of the completion of Fixico No. 1 well on July 16, 1926, by the Inspector and by him transmitted to the Secretary of the Interior should have alerted the Secretary of the Interior and Commissioner of Indian Affairs of the possibility of obtaining a greater price for the benefit of the Seminole Nation, and the period between July 16, 1926, and the date of final approval, i.e., August 8, 1926, was sufficient to have permitted cancellation of the lease. It became incumbent upon the defendant to make such cancellation in its carrying out its fiduciary obligation to the plaintiff.

Substantiating the plaintiff's assertions as to knowledge of the importance of the well are the following question and answer:

- Q. (Niebell) Will you explain what happens when a well comes in, before it is registered; before the record is made? Is there a lapse between the two dates?
- A. (Rogers) There is. It was generally known that they had the Wilcox sand saturated for two or three weeks before the well was completed, as I understand it.

The plaintiff depended to a great extent upon the testimony of one W. G. Rogers, an oil and gas producer, who testified that he had personal knowledge of the development of the several oil fields in the Seminole area over a long period of time; that he had bought and sold oil leases, mineral rights, and oil royalties in the area for many years both before and after this sale; that he still owned leases and land in the area; that he had kept voluminous files and records concerning such transactions and had been able to refresh his memory by a study of such records. It is apparent from his testimony that he was knowledgeable as to sales and the market value of leases and royalty sales in and

about the area, and while the prices he quoted were nearly all based upon royalty interests rather than bonus leases, they reflected the general tendency of increased value in the area due to discovery wells, the first of sizeable production being in March, 1926. The tract closest to the Mekasuky tract was 1/4th mile from the south boundary of that tract, and according to Mr. Rogers' computation, was sold for \$350.00 per acre. Another tract located about 1-1/2 miles from subject tract was sold for \$1,600.00 per acre; another 2-3/4 miles from subject tract was sold for \$300.00 per acre; another tract located approximately 3 miles from subject tract was sold for about \$366.66 per acre, another tract also located about 3 miles from subject tract was sold for \$11,000.00 per acre. All of these sales were royalty sales and consummated after the auction of the Mekasuky tract. The price per acre was computed by Mr. Rogers by dividing the total acreage covered by the royalty interest conveyed by the percentage of royalty, i.e., 1/16th royalty interest in 80 acres is the equivalent of purchase of lease on 5 acres, and if the purchase price of 1/16th interest was \$55,000.00, the value of a lease per acre would be \$11,000.00.

Only two transactions recalled by Mr. Rogers took place prior to the sale of the lease on the Mekasuky tract. Those also were in the spring or early summer of 1926 and were sales of royalty interest in Section 26, T9N, R6E, for which Mr. Rogers stated \$1,000.00 was paid per acre for royalty interest according to his method of computation, and the purchase in March or April of 1926 of 52-1/2 acres for which he paid from \$500.00 to \$1,000.00 per acre, also computed as explained

herein, soon after the completion of the first discovery well in the Seminole City Pool in March, 1926.

The defendant has objected to the introduction of evidence as to sale of royalty interests in land as indicative of values at the time of the sale of the lease, maintaining that evidence should concern transactions of the same character as that in issue. Since the Seminole area in which the subject tract was located was in a known oil producing area, leases on the land involved had all been previously purchased with the exception of subject tract, and as of the date of the sale there were no comparative sales of leases - only royalty sales. The petitioner in presenting that evidence was presenting the best evidence available as to value of the lands at the time of the sale in question.

In summation of his opinion as to the value of the oil and gas lease on the 320 acres contained in the Mekasuky tract, Mr. Rogers stated:

THE WITNESS: I would say that the 320 acre Mission tract was worth a minimum of \$150,000, for a five-year lease, with a regular one-eighth royalty, after March 24, 1926, which was the date the Hunton Lime well was completed.

After July 16, or the latter part of June, 1926, I would say, the lease was worth considerably more money.

Further, the transcript includes the following questions and answers by Mr. Rogers:

Q. It is your testimony that after No. 1 Fixico came in, that land would increase in value, for the purpose of buying for lease?

A. It was already high in value, but it increased from \$700 to \$1,000 an acre, after that well -- as I said this morning -- within a radius of six miles around. That was my testimony this morning.

Q. After that well, it increased from \$700 to \$1,000?

A. That was worth \$300 to \$500 an acre, before the well came in.

Commissioner Holt: Before that well came in, your estimate is that it was worth \$350?

The Witness: Yes, I have testified that it was at least worth \$350 an acre -- the subject lease and other acres were worth \$500 an acre before this came in, and it was selling for that.

The second witness on whose testimony the plaintiff relied was Lewis H. Horn of Chicago, Illinois, who testified that he had been in the oil business for 42 years and had bought and sold leases in major oil fields in the United States, Canada, and Cuba. He testified that he was sent to Seminole County in April of 1926 to purchase promising leases, but that he could find none to purchase for as high a price as \$550.00 per acre.

The defendant maintains that the testimony of both plaintiff's witnesses should be given little weight because they, to a great extent, were drawing upon their memory concerning events which occurred more than 30 years before. However, it is the opinion of this Commission that their testimony carries considerable weight and should be considered.

From a careful consideration of the record in this claim, the Commission has concluded that the Secretary of the Interior was derelict in his duty in failing to cancel the original sale, and in failing to re-advertise and re-offer the lease for sale in order to obtain the highest possible price for the lease; that the sale did not meet the exacting fiduciary standards imposed upon the Secretary of the Interior

in his role as Trustee; that the mineral lease on the Mekasuky Mission School tract was worth \$300.00 per acre as of July 15, 1926, the date of sale; that the Seminole Nation is entitled to recover from the defendant the difference between the original price obtained of \$101.00 per acre, or \$32,320, and the value determined by this Commission of \$300.00 per acre, or \$96,000, which is \$63,680.00.

T. Harold Scott
Associate Commissioner

We concur:

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner