BEFORE THE INDIAN CLAIMS COMMISSION

C. W. McGHEE, ET AL., ex rel. CREEK NATION EAST OF THE MISSISSIPPI, Plaintiffs,	)	
v.	)	Docket No. 280
THE UNITED STATES OF AMERICA, Defendant.	)	

Decided: November 13, 1969

Appearances:

Carl Elliott, of Elliott & Naftalin, Attorney for Plaintiffs. C. LeNoir Thompson and R. P. Warfield were on the briefs.

Lester Reynolds and Craig A. Decker, with whom was Mr. Assistant Attorney General Shiro Kashiwa, Attorneys for Defendant.

OPINION ON PLAINTIFFS' MOTION TO AMEND PETITION AND DEFENDANT'S ALTERNATIVE MOTION TO DISMISS IN PART OR TO CONSOLIDATE IN PART

Yarborough, Commissioner, delivered the Opinion of the Commission.

On August 14, 1950, and on July 23, 1951, Seminole Indians of Florida and Oklahoma, respectively, filed wholly overlapping claims for compensation for lands approximately identified as the whole of the present State of Florida. These claims were assigned Docket Nos. 73 and 151, and were consolidated. On August 9, 1951, the captioned Creek plaintiffs filed a claim, assigned Docket No. 280, for

compensation for 8,616,960 acres of land in northern Florida, said to be lost to these plaintiffs by the Treaty of August 9, 1814 (7 Stat. 120) or the Treaty of September 18, 1823 (7 Stat. 224).

Although the location of the eight-million-plus acres was not identified with particularity, there was, nevertheless, an apparent overlap between the claims of the Seminoles and the claim of the Creek Nation East of the Mississippi. In its Answer to the original Petition in Docket No. 280, the defendant specifically invited the attention of these plaintiffs to the fact that their claim, as stated, seemed to constitute an overlap of the Seminole claims (Third Defense, paragraphs 26 through 28). Plaintiffs thus had actual notice of the Seminole claim, but took no apparent notice of the progress of the Seminole claim toward judgment, although fully charged with notice of it. Neither plaintiff, defendant, nor Commission suggested a consolidation.

On May 8, 1964, this seeming overlap was resolved without the aid of the Creek plaintiffs when this Commission determined that the Seminoles had Indian title [i.e., exclusive use and occupancy for a sufficiently long time] to such portions of Florida as lay south and east of The Old Spanish Road. Seminole Indians, et al. v. United States, 13 Ind. Cl. Comm. 326 (1964).

In the course of resolving the Seminole claims to Florida, one defense which the defendant seemed to think held considerable promise was the argument that "Seminole" was but a fictive description of

Creek and other Indians and runaway slaves; that those who mistakenly claimed to be "Seminoles" were really Creek Indians if they were Indians at all; and that the Creeks were at one point in history willing to be "reunited" with the Seminoles "as one people" (Answer, Second Defense).

Considering this proposition to be a substantial issue, the Commission received and considered extensive evidence and testimony which, as it turned out, compelled the conclusion that from the mid-1700's the Indians in Florida were indeed Seminoles and not Creeks (Seminole, supra, Find. Nos. 12, 17, 21; Op. pp. 361, 362). The Court of Claims on appeal concurred. Seminole Nation, et al. v. United States, 180 Ct. Cl. 375 (1967).

On July 3, 1969, the Creek plaintiffs filed a pretrial statement which altered the thrust of their case from what was assumed to be a claim to any Florida lands north of the Seminoles. In that statement, they contended for the first time that Seminole Indians in Florida were really Creek Indians and a part of the Creek Nation or Confederacy. Subsequently, these plaintiffs filed on July 16, 1969, a "Motion for Leave to Amend Petition by Interlineation and Deletion" and a "correction" of their pretrial statement in which they had seemed to claim compensation for the 8,616,960 acres somewhere in Florida. Taken together, the Motion and the "correction" amounted to the argument that the Seminoles were really Creeks, and thus the Creeks were entitled to

compensation for most of Florida, including more than was awarded to the Seminoles.

The defendant countered on July 31, 1969, with objections to the proposed amendments and a "Motion Either to Dismiss in Part or Consolidate in Part" such portion of Docket No. 280 as might, after amendment, be permitted to constitute an overlap of the awarded Seminole lands. The defendant's objections to the proposed amendment, in summary, were that the amendment constitutes a new cause of action barred by the limitation contained in the Indian Claims Commission Act of 1946 (25 U.S.C. 70k), or that the amendment is barred by prior litigation in which the captioned plaintiffs were parties (C. W. McGhee, et al. v. Creek Nation and United States, 122 Ct. Cl. 380 (1952) cert. denied 344 U. S. 856) or in which ownership of the claimed lands was adjudicated (Seminole Nation, supra).

The Creek plaintiffs contend that there is no new cause of action, that only the quantum of relief varies from that originally claimed. The Commission finds that not only the quantum of relief varies, so does the theory of recovery, so does the property upon which the claim of relief is founded. In fact, all varies save only the parties plaintiff. The Commission is of the opinion that the defendant's point is well taken; that the proposed enlargement of the original claim to comprise "Seminole" in "Creek", does in fact constitute a new cause of action. Since the last date on which a new cause of action could be filed before this Commission was August 12, 1951, the Commission is without jurisdiction to permit the proposed enlargement.

There remains the matter of the plaintiffs' newly-revived claim to overlap, to some unspecified extent, the award heretofore made to the Seminole Indians. In order to prevail in this contention, these plaintiffs must demonstrate the fallacy of the decision rendered by the Commission and subsequently affirmed. However, the Creek plaintiffs may not mount a collateral attack through proceedings in this Docket for it is well-established that the order or determination of an administrative body, acting within its jurisdiction and under authority of law, is not subject to collateral attack in the absence of fraud or bad faith, the only method of attack being by appeal as permitted by statute. Callanan Road Improvement Company v. United States, et al., 345 U. S. 507 (1953), affirming 107 F. Supp. 184 (DC N.Y., 1952), reh den. 345 U.S. 978 (1953).

The Creek plaintiffs would avoid this principle by citing a line of decisions founded on Ashbacker Radio Company v. Federal Communications Commission, 326 U.S. 327 (1945), holding that where a regulatory agency has the power to award a valuable commercial privilege to one of two ostensibly equally meritorious applicants, it must hear both before awarding that privilege to either. That is inherently a comparative process unlike the posture of the case at bar. This Commission took voluminous evidence on the whole historical background of the area and all the Indians therein and reached the conclusions that as a matter of historic fact, the Creeks and the Seminoles did not have equally meritorious claims to being the Indians in Florida at a given point in

history and that, also as a matter of fact, at that point in history the Indians in Florida were Seminole Indians. Seminole Nation, supra. It follows that again these Creek plaintiffs are mounting a collateral attack on the Commission's prior judgment which we hold they are barred from doing.

We find no merit in the suggestion that the cases be consolidated at this stage. Consolidation may be ordered for convenience in considering the same or related facts at one sitting. Here the relevant facts as to aboriginal identity and use of Florida have been determined and tested and approved on appeal; the value and offsets have been tried and briefing is far advanced. The Commission declines to initiate such an action delaying the final judgment in Docket Nos. 73 and 151.

In view of the foregoing discussion, it is apparent that the Creek plaintiffs' Motion to Amend Petition must be denied. Likewise, the defendant's Motion to Consolidate in Part is denied. The defendant's Motion to Dismiss in Part is granted and Docket No. 280 is dismissed, with prejudice, to the extent that it may have overlapped lands awarded in Docket Nos. 73 and 151 consolidated.

So ordered.

Richard W. Yarborough, Commissioner

We concur:

Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner

Margaret A. Pierce, Commissioner

Brantley Blue, Commissioner