

BEFORE THE INDIAN CLAIMS COMMISSION

THE NAVAJO TRIBE OF INDIANS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket Nos. 69, 299, and 353
	)	(Accounting Claims)
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: November 10, 1976

Appearances:

William C. Schaab of Rodney, Dickason, Sloan, Akin & Robb, Attorney for the Plaintiff.

Dean K. Dunsmore, with whom was Assistant Attorney General Wallace H. Johnson, Attorneys for the Defendant.

OPINION OF THE COMMISSION

Kuykendall, Chairman, delivered the opinion of the Commission.

We have before us in this accounting claim motions presented by both parties concerning alleged commingling of funds. Defendant filed a motion on June 30, 1976, requesting partial summary judgment concerning plaintiff's supplemental exception 4(c), or in the alternative, dismissal of that exception. Plaintiff responded on September 7, 1976, and also filed on that date a motion to strike or for more definite statement as to certain parts of defendant's motion. On September 15, 1976, defendant filed its reply to plaintiff's response, and a response to plaintiff's motion. Plaintiff filed a reply to defendant's response on September 28, 1976.

We will briefly outline the background of the aforesaid pleadings. On May 31, 1975, plaintiff filed supplemental exceptions to defendant's

accounting reports in this docket. Plaintiff alleged in supplemental exception 4(c) that defendant had commingled Navajo funds with the funds of other tribes, stating that the reports failed "...to disclose revenues, disbursements and balances of various Navajo trust funds maintained . . . jointly with other tribes . . ."

Defendant responded by filing a motion, on July 16, 1975, to stay proceedings in this action. Defendant argued that inasmuch as plaintiff alleged that Navajo funds were commingled with Hopi funds, the Hopi and Navajo accounting cases should be consolidated, and that a stay was necessary until the Court of Claims had ruled on a pending appeal of the Hopi case.

The Commission denied defendant's motion on October 30, 1975, but ordered plaintiff to submit all information it had concerning which Navajo funds had been commingled with funds of other tribes, and ordered defendant to file a report thereon within 30 days after receipt thereof.

Plaintiff filed its submission on December 4, 1975, and defendant responded with a motion for a more complete statement. The Commission determined, by its order of March 17, 1976, that plaintiff's submission, which was accompanied by 29 exhibits, was sufficiently definite to enable defendant to determine which, if any, of certain appropriations were for, or expenditures were from, plaintiff's trust fund accounts, and if so, whether the appropriations were jointly maintained with other tribes' funds, or the expenditures were made jointly for other tribes' benefit. Accordingly, defendant's motion was denied, and defendant was given sixty days to respond to plaintiff's submission. Defendant's response to our order was to file its motion under consideration here.

Defendant makes four contentions in its motion for partial summary judgment. Defendant contends first that four funds, designated 14 X 7854, 14 X 7680, 14 X 7354, and 14 X 7180, were established subsequent to August 13, 1946, the jurisdictional cut-off date of the Commission. Defendant's remaining three contentions are that for various reasons defendant is not required to account for appropriations of the nature which constitute the allegedly commingled funds. In its motion to dismiss, defendant contends that plaintiff has failed to show any commingling of funds over which the Commission has jurisdiction, and that any allegations concerning disbursements benefitting non-Navajos are contained in other exceptions.

Plaintiff's response to defendant's first contention states that the four accounts established subsequent to August 13, 1946, designated above, "are not in dispute, and plaintiff concedes that defendant's motion with respect thereto is well taken." However, plaintiff asks that defendant's motion with regard thereto be granted without prejudice to "plaintiff's right hereafter to seek a judicial determination of its rights in such accounts." We decline to accede to plaintiff's suggestion in this regard. Inasmuch as the basis for granting defendant's motion as to the designated accounts is jurisdictional, dismissal of plaintiff's exception as to these accounts here will not prejudice plaintiff's rights as to these accounts in other tribunals.


Plaintiff's response then goes on directly to defendant's motion to dismiss supplemental exception 4(c), and states that "plaintiff does not now know of any other accounts in which its funds were commingled with funds of

other tribes," and therefore agrees to a dismissal of the exception "without prejudice." Plaintiff adds that it "reserves the right to reinstate this claim, if it later develops proof that plaintiff's funds were in fact commingled with funds of other tribes." Subsequent language in plaintiff's response indicates that it is concerned that information which still may be furnished by defendant as part of supplemental accounting reports yet to be filed may show commingled funds.

Plaintiff's request is ill founded. Dismissal of supplemental exception 4(c) has no effect on plaintiff's rights as to supplemental accounting reports which are yet to be filed. After such reports are filed plaintiff may file additional supplemental exceptions thereto. Exception 4(c) deals only with accounting reports which have heretofore been filed.

Since the parties are in agreement that exception 4(c) can be dismissed, all other issues presented as to this exception, including plaintiff's motion of September 7, 1946, are moot. We will therefore order plaintiff's supplemental exception 4(c) in this accounting action, and plaintiff's aforesaid motion, to be dismissed.

Concurring:

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner

  
Jerome K. Kuykendall, Chairman