

BEFORE THE INDIAN CLAIMS COMMISSION

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| LAWRENCE ZANE, et al., ON |) | |
| BEHALF OF THE WYANDOTTE |) | |
| TRIBE AND NATION, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Docket Nos. 212 and 213 |
| |) | |
| THE UNITED STATES OF AMERICA, |) | |
| |) | |
| Defendant. |) | |

Decided: February 9, 1977

Appearances:

Rodney J. Edwards, Attorney for
Plaintiffs.

James M. Upton, with whom was
Assistant Attorney General Peter A.
Taft, Attorneys for the Defendant.

OPINION OF THE COMMISSION

Blue, Commissioner, delivered the opinion of the Commission.

The Commission issued on August 5, 1976, an opinion and interlocutory order in which it entered conclusions of law as to the fair market value of certain lands plaintiffs ceded to defendant in the Nineteenth Century. 38 Ind. Cl. Comm. 561. The order stated that the case would proceed to a determination of the consideration paid by defendant and of allowable gratuitous offsets.

On October 29, 1976, the defendant filed a motion for leave to file a motion for extension of time, and a motion for an extension of time

of forty days from October 4, 1976, to and including November 13, 1976, in which to file its amended answer on consideration and offsets in the above-mentioned dockets. Counsel for defendant stated that because of the pressure of his workload he inadvertently failed to file the motion for extension of time within the sixty-day period provided in Rule 12(a) of the General Rules of Procedure of the Indian Claims Commission.

Plaintiffs filed on November 8, 1976, a response in opposition to defendant's motion. In addition, plaintiffs filed on the same date a motion that the Commission certify the aforesaid interlocutory order as a final judgment, or in the alternative, that the Commission sever the claims adjudicated by the August 5, 1976 decision, from all other claims.

On November 9, 1976, defendant filed its amended answer as to consideration and offsets, and on November 18, 1976, defendant filed its reply to plaintiffs' response, and its response to plaintiffs' motion.

There are two issues presented by these motions. The first is whether to allow defendant to file late its amended answer on consideration and offsets, or in the alternative, whether to certify the interlocutory order as a final judgment. If the first issue is decided in favor of defendant, a second issue is whether to sever the claims heretofore adjudicated from all other claims.

I.

The Commission is somewhat lenient in procedural matters where the interest of justice will be served, and the parties are not prejudiced thereby. E.g., Confederated Salish and Kootenai Tribes v. United States,

189 Ct. Cl. 319 (1969), Sioux Tribe v. United States, Docket 119, 34 Ind. Cl. Comm. 230 (1974). In this instance, defendant filed its motion for an extension of time to file its amended answer some 25 days late, and has subsequently filed its amended answer. Plaintiffs have not alleged that they are prejudiced by this relatively minor delay, and the interests of justice are clearly served by allowing defendant to file its answer on consideration and offsets, as provided for by Rule 12(b) of the Commission's General Rules of Procedure.

We therefore conclude that it is proper to grant defendant's motion to file late its amended answer, and to deny plaintiffs' motion to certify the interlocutory order as a final judgment.

II.

In support of its motion to sever the adjudicated land claims from the remaining claims in these dockets, plaintiffs state that the remaining claims are separable, and that proceedings have yet to be initiated as to the remaining claims. Plaintiffs then state:

If the claims are not severed and allowed to proceed to separate judgments, Plaintiffs will be penalized by not having the benefit of their judgment money or the earning of interest upon their recovery for the ceded land claims which were adjudicated by the Commission's decision entered August 5, 1976, until after the other claims have been finally adjudicated.

Plaintiffs' concern is without foundation. The Commission may, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, relating to multiple claims in a single action, enter a final judgment as to the

land claims adjudicated by our August 5, decision. See Lower Sioux Indian Community v. United States, Docket 363, 33 Ind. Cl. Comm. 389 (1974). It is not necessary to sever the claim in order to achieve the result desired by plaintiffs. We will therefore deny plaintiffs' motion to sever. We will, however, pursuant to the Lower Sioux procedure, hereinafter designate the land claims which were subject to the August 5 decision as "Docket Nos. 212 and 213 (1818-1842 Cessions)". Remaining claims will be given appropriate designations at a later date.

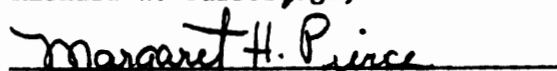

Brantley Blue, Commissioner

We Concur:


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner