BEFORE THE INDIAN CLAIMS COMMISSION

FILED
NOV 26 1956
James Hampton Clerk
INDIAN CLAIMS COMMISSION

No. 210

HOPI VILLAGE OF SHUNGOPOVI

v.

UNITED STATES OF AMERICA

MOTION TO DISMISS

Comes now the defendant, by its Assistant Attorney General, and moves the Commission to dismiss the petition in Docket No. 210 on the following grounds:

1. The petition fails to state a claim or cause of action against the United States.

2. The petition fails to state a claim upon which relief may be granted. The petition seeks to recover the land itself whereas the Commission is only empowered to award relief which is compensable in money.

WHEREFORE, defendant prays

(1) That the Commission enter an order dismissing the petition.

(2) That oral argument be had hereon.

Perry W. Morton
PERRY W. MORTON
Assistant Attorney General

William H. Lundin
William H. Lundin
Attorney

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POINTS AND AUTHORITIES

I

THE PETITION FAILS TO STATE A CLAIM OR CAUSE OF ACTION.

The term "cause of action" has been held to be synonymous with the term "claim". Newberry v. Wilkinson, 190 F. 62, 67, affirmed 199 F. 673 (C.A. 9, 1912); Harvey Aluminum Inc. v. American Cyanamid Co. (CA.2, 1953) 203 F.2d 105, 108, cert. den. 345 U.S. 964, 97 L. Ed. 1383.

The courts have defined the phrase "cause of action" and have held that a "cause of action" must be stated in a complaint or petition in order to enable a court to render judgment. In F. L. Mendez & Co. v. General Motors Corporation, 161 F.2d 695, 696 (C.A. 7, 1947) the court said:

> Every legally valid cause of action must involve a right possessed by the plaintiff and a duty devolving upon defendant to observe that right; a wrong done by defendant which results in a breach of defendants' duty and violation of the right of the plaintiff; a remedial right recognized by the law in favor of plaintiff and a corresponding reciprocal duty resting on the defendant and finally the relief to be rendered by the court.

In Vinson v. Graham, 44 F.2d 772, 776, 777 (C.A. 10, 1930) the court discussed at length the elements required to constitute a cause of action, and stated as follows:

> Perhaps no definition of the phrase "cause of action" could be framed which would be entirely free from criticism. The courts and textbook writers have expressed divergent views in respect to the meaning of the phrase "cause of

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action," and the definitions which have been given have been generally subjected to criticism. See "The Code Cause of Action," Columbia Law Review, vol. 30, No. 6, June, 1930; 1 C. J., p. 935, § 28.

However, the definition which has met most frequently with judicial approval, and which seems to us to define most accurately the phrase "cause of action," is that given by Mr. Pomeroy in his treatise on Code Remedies. At section 347 of the fifth edition thereof, Mr. Pomeroy, in discussing this phrase, says:

"Every action is brought in order to obtain some particular result which we term the remedy, which the code calls 'relief', and which, when granted, is summed up or embodied in the judgment of the court. This result is not the 'cause of action' as that term is used in the codes. It is true this final result, or rather the desire of obtaining it, is the primary motive which acts upon the will of the plaintiff and impels him to commence the proceeding, and in the metaphysical sense it can properly be called the cause of this action, but it is certainly not so in the legal sense of the phrase. This final result is the 'object of the action' as that term is frequently used in the codes and in modern legal terminology. It was shown in the introduction that every remedial right arises out of an antecedent primary right and corresponding duty and a delict or breach of such primary right and duty by the person on whom the duty rests. Every judicial action must therefore involve the following elements: a primary right possessed by the plaintiff, and a corresponding primary duty devolving upon the defendant; a delict or wrong done by the defendant which consisted in a breach of such primary right and duty; a remedial right in favor of the plaintiff, and a remedial duty resting on the defendant springing from this delict, and finally the remedy or relief itself. Every action, however complicated or however simple, must contain these essential elements. Of these elements, the primary right and duty and the delict or wrong combined constitute the cause of action in the legal sense of the term, and as it is used in the codes of the several States. They are the legal cause or foundation whence the right of action springs, this right of action being identical with the 'remedial right' as designated in my analysis. In accordance with the principles of pleading adopted in the new American system, the existence of a legal right in an abstract form is never alleged by the plaintiff; but, instead thereof, the facts from which that right arises are set forth, and the right itself is inferred therefrom. The cause of action, as it appears in the complaint when properly pleaded, will therefore always be the facts from which the plaintiff's primary right and the defendant's corresponding primary duty have arisen, together with the facts which constitute the defendant's delict or act or wrong.

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The petition in Docket No. 210 lacks every one of the elements of a cause of action as these elements are set forth in the cases cited above.

The petition does not state, nor can it be inferred from the petition's language, that there was any duty owed by the defendant to the petitioner, that the defendant breached any duty to petitioner, or that defendant committed any wrong or injury whatsoever.

The petition states, at pages 5 and 6, that "our claim . . . is for our rights to the full use of our resources, our ceremonial shrines and hunting areas." Nowhere in the petition is there any statement that defendant has prevented or is preventing or hindering the petitioner in the full use of their resources, shrines and hunting areas.

II

The petition in Docket No. 210 is in narrative form and on page 5 thereof the petition states: "Our petition to you is for full restoration of the land to us and the freedom to govern its use. We cannot, by our tradition, accept coins or money for this land, but must persist in our prayers and words for repossession of the land itself, to preserve the Hopi life."

The Commission has already ruled that it lacks the power to give any type of relief other than that which is compensable in money. In Osage Nation of Indians v. United States, 1 Ind. Cls. Comm. 43, 65, 66, the Commission said:

> The Indian Claims Commission Act does not specifically state the character of relief the Commission may grant, but this lack of specificity

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is not vital, for its provisions plainly limit the relief to that which is compensable in money. That this must be so is shown by the following provisions of the Act:

(a) In the third paragraph of Section 2 the Commission is required to make certain deductions "in determining the quantum of relief:"

(b) In Section 19 it is required that the "final determination" shall state the "amount" of relief;

(c) And in Section 22 provision is made for the appropriation of "such sums as are necessary to pay the final determination of the Commission" and that the "payment of any claim * * * shall be a full discharge" of all claims and demands, etc. /Italics ours./

No other kind of relief is provided in the act.

III

An order should be entered dismissing the petition on the ground that the petition fails to state a claim or cause of action and that petition fails to state a claim upon which relief may be granted.

Respectfully submitted,

William H. Lundin

William H. Lundin
Attorney

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I hereby certify that on the 21 day of November, 1956, one copy of the foregoing motion, together with Points and Authorities, was mailed to Wadsworth Nuvangoitewa, Shungopovi, Second Mesa, Arizona, one of the signers of the petition in Docket No. 210.

William H. Lundin

William H. Lundin
Attorney

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