

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NAVAJO NATION and CURTIS BITSUI,
Plaintiffs,

v.

No. 1:16-cv-888 WJ/LF

HONORABLE PEDRO G. RAEL, Judge, New Mexico
Thirteenth Judicial District, and LEMUEL L. MARTINEZ,
District Attorney, New Mexico Thirteenth Judicial District,
Defendants.

**DEFENDANT MARTINEZ' RESPONSE TO PLAINTIFFS' MOTION
FOR RECONSIDERATION**

COMES NOW Defendant District Attorney Lemuel L. Martinez, by and through his counsel, Attorney General Hector Balderas, Angelica Anaya Allen appearing, and responds to Plaintiffs' Motion for Reconsideration. Defendant District Attorney Martinez (hereinafter DA Martinez) respectfully suggests that Plaintiffs have failed to meet the standard required for reconsideration, "to correct clear error or prevent manifest injustice", and their Motion must be denied.

I. Collateral Estoppel bars the claims raised by Plaintiffs

Collateral estoppel has four elements: "(1) the issue previously decided is identical with the one presented in the action in question, (2) the prior action has been finally adjudicated on the merits, (3) the party against whom the doctrine is invoked was a party or in privity with a party to the prior adjudication, and (4) the party against whom the doctrine is raised had a full

and fair opportunity to litigate the issue in the prior action.” *Frandsen v. Westinghouse Corp.*, 46 F.3d 975, 978 (C.A. 10 (Utah) 1995).

All four elements exist in this matter. First, the issue raised by Plaintiff Bitsui, and joined by Plaintiff Navajo Nation, in his defense of the state court action, in the instant complaint, in the motion for judgment and in the motion for reconsideration is identical: whether the state court lacks jurisdiction in a matter involving Indian country. Second, the trial court action reached a final adjudication; said finality is indicated by the appeal filed to the Court of Appeals challenging the trial court’s decision. Third, Plaintiff Bitsui was a party in the prior action and Plaintiff Navajo Nation is in privity with Plaintiff Bitsui. Fourth, Plaintiffs had a full and fair opportunity to litigate the issue in the prior action.

In *Lowell Staats Min. Co., Inc. v. Philadelphia Elec. Co.*, the Tenth Circuit Court of Appeals discussed privity in the context of collateral estoppel as follows:

“Privity requires, at a minimum, a substantial identity between the issues in controversy and showing the parties in the two actions are really and substantially in interest the same. *St. Louis Baptist Temple*, 605 F.2d at 1174. Privity has been held to exist in the following relationships: concurrent relationship to the same property right (i.e. trustee and beneficiary); successive relationship to the same property or right (i.e. seller and buyer); or representation of the interests of the same person. 1B J. Moore, J. Lucas, T. Currier, *Moore's Federal Practice*, p 0.411 at 392 (2d. ed. 1988).

Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision precludes relitigation of that fact or issue in a second suit on a different cause of action involving the same party or their privy.

Montana v. United States, 440 U.S. at 153, 99 S.Ct. at 973 (citing *Parklane Hosiery Co.*

v. Shore, 439 U.S. 322, 326 n. 5, 99 S.Ct. 645, 649 n. 5, 58 L.Ed.2d 552 (1979)); *St. Louis Baptist Temple*, 605 F.2d at 1175.”

878 F.2d 1271, 1274-75 (C.A.10 (Colo.) 1989). Utilizing this analysis, Plaintiff Navajo Nation is in privity with Plaintiff Bitsui. Plaintiffs Navajo Nation and Bitsui have presented an identical interest in identification of the property as Indian trust land. In the state court proceedings, Bitsui is represented by the Navajo Nation Department of Justice, which presented the same jurisdictional arguments that have been presented to this Court.

Plaintiffs argue in their Motion for Reconsideration that this Court should consider their case to be an exception to the general rule of finality of jurisdictional determinations, relying on *U.S. v. Bigford*, 365 F.3d 859, 864, citing *Durfee v. Duke*, 375 U.S. 106. Reliance on *Bigford* is misplaced. *U.S. v. Bigfoot* provides that default judgments rendered without jurisdiction are subject to collateral attack. 365 F.3d at 865. “Of course, a collateral attack on jurisdictional grounds is precluded in a subsequent proceeding where the jurisdictional issue was “fully and fairly litigated and finally decided” in the prior proceeding.” *Bigford*, 365 F.3d at 864 (citing *Durfee*, 375 U.S. at 111, 84 S.Ct. 242). In the instant case, there was no default; the jurisdictional issue was fully litigated and finally decided by the trial court. The collateral attack suggested by Plaintiffs in their Motion for Reconsideration is, therefore, precluded, as held in the Court’s Memorandum Opinion.

For the reasons set forth herein, Defendant District Attorney Lemuel Martinez respectfully requests the Court deny Plaintiffs’ Motion for Reconsideration.

Respectfully submitted,

HECTOR H. BALDERAS
NEW MEXICO ATTORNEY GENERAL

/s/Angelica Anaya Allen
Angelica Anaya Allen
Assistant Attorney General
111 Lomas Blvd. NW, Suite 120
Albuquerque NM 87102
505.717.3500
aanaya@nmag.gov
Attorneys for Defendant Martinez

CERTIFICATE OF SERVICE

I certify that on June 6, 2017, I served the foregoing on counsel of record for all parties via the CM/ECF system.

/s/Angelica Anaya Allen
Angelica Anaya Allen