

IN THE
Supreme Court of the United States

OCTOBER TERM, 1976

No. 73, Original

STATE OF CALIFORNIA,

Plaintiff,

v.

STATE OF NEVADA,

Defendant.

**NEVADA'S REPLY TO OPPOSITION TO
MOTION FOR LEAVE TO FILE AMENDED
ANSWER SETTING FORTH COUNTERCLAIM
AND AMENDING PREVIOUS MOTION**

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- I. California Fails To Address Nevada's Assertion That The Counterclaim Is Compulsory And That Res Judicata Is Applicable.

Nevada's motion for leave to amend asserts that the counterclaim is a

compulsory counterclaim. Moreover, Nevada specifically alleges that the counterclaim must be raised in the case *sub judice* or she will be barred by the legal doctrine of *res judicata*.

Significantly, California *does not* contest the position of Nevada that the counterclaim is of a compulsory nature. Nor, does California contest Nevada's legal position that the doctrine of *res judicata* would bar raising the issues attempted to be set forth by the counterclaim in subsequent litigation. By failing to address the issues of whether the counterclaim is of a compulsory nature and the effect of the doctrine of *res judicata* upon future litigation, California should be deemed to have conceded that the counterclaim is compulsory in nature and that the doctrine of *res judicata* would bar the raising of the issues addressed therein in future litigation.

II. California's Belief That The Counterclaim Is Meritless Is Immaterial To A Decision On The Motion.

In essence, California's opposition is limited to an attack on the merits of the counterclaim. California does contend that the counterclaim raises no controversy. However, it should be sufficient to note from the length of California's opposition that it is evident a controversy does exist with respect to the issues attempted to be

raised by the counterclaim.

California urges at page 1 of her opposition that the motion to amend be denied because the issues addressed by the counterclaim are issues "which plaintiff State of California believes have no merit". If decisions to permit counterclaims and affirmative defenses are to be based on a plaintiff's belief with respect to the merits thereof, it is self-evident that few, if any, counterclaims would ever be allowed by way of amendment.

III. California Wrongly Asserts
Defense Of Failure To State
A Claim Which Is Normally
Raised By A Motion To
Dismiss Or A Reply

California states at page 7 in her opposition that count I of Nevada's proposed counterclaim relating to the oblique portion of the boundary "should not be permitted as it fails to state facts entitling Nevada to relief." This allegation of failure to state a claim for relief permeates the remainder of California's opposition. California is attempting to assert a defense normally reserved as a ground for a motion to dismiss or in a reply, that is, failure to state a claim upon which relief can be granted. The Federal Rules of Civil Procedure were enacted to simplify pleading so that only the "bare bones" need be exposed. California, however, urges the Court to look to the merits of

the counterclaim, and specifically to whether the counterclaim states a cause upon which relief can be granted, before Nevada has had an opportunity to support the counterclaim with factual evidence. California's position is contrary to the spirit and purpose of the Federal Rules of Civil Procedure, Rule 1.

IV. California Seeks To Add To
Her Complaint An Issue
Which She Says "Has Merit"
And Yet Opposes Nevada's
Proposed Counterclaim As
Meritless.

Finally, it should be noted that on the same date that California filed her opposition to Nevada's Motion for Leave to File an Amended Answer Setting Forth Counterclaim, California also filed a Motion for Leave to amend her Complaint to add an additional claim for relief. Nevada does not contest California's Motion for Leave to Amend since it is Nevada's position that the Court should allow the parties to plead all legal theories of relief in the case *sub judice*. However, California apparently does not adhere to the same theory of litigation. In short, California seeks leave to amend to add what she considers an issue which "has merit" while simultaneously urging the Court to refuse to permit Nevada to set forth alternative legal theories which should be considered if the Court should determine that the "Von Schmidt" line is not the appropriate boundary. California's position

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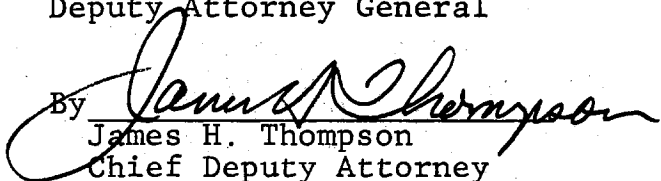
is untenable from every viewpoint.

Dated this 12th day of May, 1978.

Respectfully submitted,

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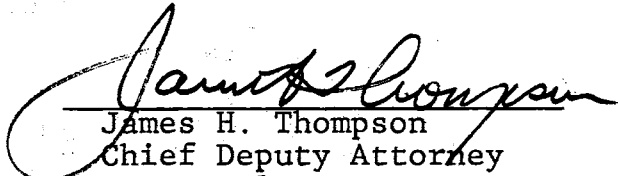
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CERTIFICATE OF SERVICE

I, JAMES H. THOMPSON, Chief Deputy Attorney General of Nevada, hereby certify that on the 12th of May, 1978, I mailed by first class mail, postage prepaid, three copies to each of the following:

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