

U.S. District Court
District of South Dakota (Western Division)
CIVIL DOCKET FOR CASE #: 5:19-cv-05075-KES

Montileaux v. The Diocese of South Dakota (Episcopal) et al
Assigned to: U.S. District Judge Karen E. Schreier
Cause: 42:1983 Civil Rights Act – Civil Action for Deprivation
of Rights

Date Filed: 11/15/2019
Date Terminated: 02/24/2021
Jury Demand: Both
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Miriam C. Montileaux

represented by **Miriam C. Montileaux**
P.O. Box 246
Kyle, SD 57752
605-773-6636
PRO SE

Plaintiff

Charles T. Montileaux, Sr.
*individually and as special administrator
of the estate of Cheryl Montileaux and
Charles T. Montileaux, Jr.*

represented by **Charles T. Montileaux, Sr.**
P.O. Box 246
Kyle, SD 57752
605-455-2115
PRO SE

Plaintiff

Naomi Montileaux

represented by **Naomi Montileaux**
P.O. Box 246
Kyle, SD 57752
605-455-2115
PRO SE

Plaintiff

Cheryl Montileaux
Deceased

Plaintiff

Charles T. Montileaux, Jr.
Deceased

V.

Defendant

The Diocese of South Dakota
Episcopal

represented by **Gregory J. Bernard**
Thomas Braun Bernard & Burke, LLP
4200 Beach Drive – Suite 1
Rapid City, SD 57702
348-7516

Fax: 348-5852
Email: gbernard@tb3law.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lonnie R. Braun
Thomas Braun Bernard & Burke, LLP
4200 Beach Drive – Suite 1
Rapid City, SD 57702
348-7516
Fax: 348-5852
Email: lbrown@tb3law.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Chapter of Calvary Cathedral
Holding Company for Diocese

represented by **Gregory J. Bernard**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lonnie R. Braun
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Jonathan Folts
The Right Reverend

represented by **Gregory J. Bernard**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lonnie R. Braun
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Randy Reinartz
Bishop

represented by **Gregory J. Bernard**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lonnie R. Braun
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

represented by

Trustee First National Bank
in Sioux Falls, South Dakota

Justin T. Clarke
Davenport, Evans, Hurwitz & Smith, LLP
PO Box 1030
Sioux Falls, SD 57101-1030
(605) 357-1232
Fax: (605) 335-3639
Email: jclarke@dehs.com
LEAD ATTORNEY
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Vincent M. Roche
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PO Box 1030
Sioux Falls, SD 57101-1030
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Fax: (605) 335-3639
Email: vmr@dehs.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Tom Benz
Employee

represented by **Justin T. Clarke**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Vincent M. Roche
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Alan Meyers
of Wealth Management Dept.

represented by **Justin T. Clarke**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Vincent M. Roche
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Bob Baker
President of Bank

represented by **Justin T. Clarke**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Vincent M. Roche
(See above for address)
LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Defendant

Chris Ekstrum

represented by **Justin T. Clarke**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Vincent M. Roche
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Page	Docket Text
11/15/2019	<u>1</u>		COMPLAINT with Jury Demand, filed by Miriam C. Montileaux. (SLT) (Entered: 11/15/2019)
11/15/2019	<u>2</u>		MOTION for Leave to Proceed in forma pauperis by Miriam C. Montileaux. (SLT) (Entered: 11/15/2019)
11/15/2019	<u>3</u>		REQUEST for Electronic Notice by Miriam C. Montileaux. Pro se party Miriam C. Montileaux will now receive electronic notice of unsealed documents filed in this case. Refer to the CM/ECF User Manual located on the court website at www.sdd.uscourts.gov for information about accessing documents. (SLT) Modified on 11/18/2019 document incomplete missing 2nd and 3rd page (SLT). (Entered: 11/15/2019)
11/15/2019	4		<p>NOTICE TO PLAINTIFF: The Clerks Office has received your Complaint together with an Application to Proceed without Prepaying Fees or Costs. A new case has been opened. Copy of docket sheet sent to plaintiff.</p> <hr/> <p>Any further documents or correspondence you send to the Clerks Office concerning your case must include the case number. All documents submitted for filing must also contain an original signature. Submitted documents are electronically scanned for filing and they become the official court record. The quality of the official court record is determined by the quality of the original documents received for filing. Writing should only be on one side of the paper and writing must be dark enough for scanning. All documents must be on 8.5 x 11 inch paper. PLEASE NOTE: The complaint was only signed by Miriam Montileaux, therefore that is the only plaintiff that has been added. Original signatures are required from all plaintiffs. (SLT) (Entered: 11/15/2019)</p>
11/18/2019	<u>5</u>		LETTER with enclosed Pro Se Litigant Application Form and Docket Sheet sent by Clerk's Office to Miriam C. Montileaux. (SLT) (Entered: 11/18/2019)
11/18/2019	<u>6</u>		AMENDED REQUEST for Electronic Notice by Miriam C. Montileaux. Pro se party Miriam C. Montileaux will now receive electronic notice of unsealed documents filed in this case. Refer to the CM/ECF User Manual located on the court website at www.sdd.uscourts.gov for information about accessing documents. (SLT) (Entered: 11/18/2019)
11/19/2019	<u>7</u>		

		COMPLAINT with Jury Demand, filed by Naomi Montileaux, Miriam C. Montileaux, Charles T. Montileaux, Sr. Complaint has been signed by Charles T. Montileaux, Sr. and Naomi Montileaux. (Attachments: # <u>1</u> Estate Documents) (SLT) (Entered: 11/19/2019)
12/09/2019	<u>8</u>	MOTION for Leave to Proceed in forma pauperis by Charles T. Montileaux, Sr. (SLT) (Entered: 12/09/2019)
12/09/2019	<u>9</u>	MOTION for Leave to Proceed in forma pauperis by Naomi Montileaux. (SLT) (Entered: 12/09/2019)
04/01/2020	<u>10</u>	ORDER granting <u>2</u> Motion for Leave to Proceed <i>in forma pauperis</i> ; granting <u>8</u> Motion for Leave to Proceed <i>in forma pauperis</i> ; granting <u>9</u> Motion for Leave to Proceed <i>in forma pauperis</i> . Signed by U.S. District Judge Jeffrey L. Viken on 4/1/20. (SB) (Entered: 04/01/2020)
04/01/2020	<u>11</u>	Service LETTER with enclosed Screening Order and Order Directing Service <u>10</u> , Sample Summons, Sample USM 285, blank Summonses and USM 285s and AO 85 sent by Clerk's Office to Miriam C. Montileaux. Also sent Screening Order and Order Directing Service <u>10</u> to Charles T. Montileaux and Naomi Montileaux. (DLC) Modified Docket Text on 4/1/2020 (DLC) After confirming with Miriam Montileaux via telephone I updated her address on the Docket Sheet and mailed everything to the PO Box in Kyle per her request even though the letter has a physical address in Black Hawk on it. (Entered: 04/01/2020)
04/07/2020	<u>12</u>	Summons Issued as to Bob Baker, Tom Benz, Chris Ekstrum, Jonathan Folts, Alan Meyers, Randy Reinartz. 6 Summonses, 6 USM 285, copy of <u>1</u> , <u>7</u> , and <u>10</u> for each defendant delivered to RC USMS via hand-delivery. (SLT) (Entered: 04/07/2020)
04/28/2020	<u>13</u>	Summons Returned Unexecuted as to Bob Baker, Tom Benz, Chris Ekstrum, Alan Meyers. (SLT) Modified on 4/28/2020 delivered to all plaintiffs (SLT). (Entered: 04/28/2020)
04/28/2020	<u>14</u>	SUMMONS Returned Executed Jonathan Folts served on 4/21/2020, answer due 5/12/2020. (SLT) Modified on 4/28/2020 delivered to all plaintiffs (SLT). (Entered: 04/28/2020)
04/28/2020	<u>15</u>	Service LETTER with enclosed <u>13</u> , <u>14</u> , 8 summons forms, 8 usm 285 forms, sample summons and usm 285 sent by Clerk's Office to Miriam Montileaux. (SLT) (Entered: 04/28/2020)
04/30/2020	<u>16</u>	Summons Re- Issued as to Bob Baker, Tom Benz, Chris Ekstrum, Alan Meyers & Randy Reinartz. 5 Summons(es), a Rule 73 Memo, a copy of Fed.R.Civ.P.4, and AO 85s for each party delivered to USM via email with copy of <u>1</u> , <u>7</u> , and <u>10</u> . (SLT) Modified on 5/1/2020 to correct docket text (SLT). (Entered: 04/30/2020)
05/01/2020	<u>17</u>	Summons Returned Unexecuted as to Randy Reinartz. (SLT) (Entered: 05/01/2020)
05/12/2020	<u>18</u>	NOTICE of Appearance by Lonnie R. Braun on behalf of Chapter of Calvary Cathedral. (Braun, Lonnie) (Entered: 05/12/2020)
05/12/2020	<u>19</u>	NOTICE of Appearance by Lonnie R. Braun on behalf of The Diocese of South Dakota. (Braun, Lonnie) (Entered: 05/12/2020)

05/12/2020	<u>20</u>	NOTICE of Appearance by Lonnie R. Braun on behalf of Randy Reinartz. (Braun, Lonnie) (Entered: 05/12/2020)
05/12/2020	<u>21</u>	<i>Separate ANSWER to 7 Complaint, 1 Complaint with Jury Demand , Separate by Jonathan Folts. (Braun, Lonnie) Modified Docket Text on 5/13/2020 (DLC). (Entered: 05/12/2020)</i>
06/03/2020	<u>22</u>	<i>ANSWER to 7 Complaint, 1 Complaint with Jury Demand , by Randy Reinartz. (Braun, Lonnie) Modified Docket Text on 6/4/2020 (DLC). (Entered: 06/03/2020)</i>
06/12/2020	<u>23</u>	SUMMONS Returned Executed Bob Baker served on 5/29/2020, answer due 6/19/2020; Tom Benz served on 5/29/2020, answer due 6/19/2020; Chris Ekstrum served on 5/29/2020, answer due 6/19/2020; Alan Meyers served on 5/29/2020, answer due 6/19/2020; Randy Reinartz served on 5/29/2020, answer due 6/19/2020. (SLT) (Entered: 06/12/2020)
06/17/2020	<u>24</u>	<i>MOTION to DISMISS by Bob Baker, Tom Benz, Chris Ekstrum, First National Bank, Alan Meyers. (Clarke, Justin) (Entered: 06/17/2020)</i>
06/17/2020	<u>25</u>	MEMORANDUM in Support re <u>24</u> MOTION to DISMISS filed by Bob Baker, Tom Benz, Chris Ekstrum, First National Bank, Alan Meyers. (Clarke, Justin) (Entered: 06/17/2020)
06/23/2020	<u>26</u>	<i>AMENDED ANSWER to AMENDED SEPARATE ANSWER OF RANDY REINARTZ by Randy Reinartz. (Braun, Lonnie) (Entered: 06/23/2020)</i>
06/23/2020	<u>27</u>	MOTION to Amend/Correct <i>MOTION TO AMEND THE SEPARATE ANSWER OF THE RIGHT REVEREND JONATHAN FOLTS</i> by Jonathan Folts. (Braun, Lonnie) (Entered: 06/23/2020)
06/23/2020	<u>28</u>	MEMORANDUM in Support re <u>27</u> MOTION to Amend/Correct <i>MOTION TO AMEND THE SEPARATE ANSWER OF THE RIGHT REVEREND JONATHAN FOLTS</i> filed by Jonathan Folts. (Attachments: # <u>1</u> Attachment AMENDED SEPARATE ANSWER OF THE RIGHT REVEREND JONATHAN FOLTS) (Braun, Lonnie) (Entered: 06/23/2020)
06/24/2020	<u>29</u>	NOTICE of Appearance by Vincent M. Roche on behalf of Bob Baker, Chris Ekstrum, First National Bank, Alan Meyers. (Roche, Vincent) (Entered: 06/24/2020)
07/02/2020	<u>30</u>	<i>MOTION to DISMISS Defendants the Episcopal Diocese of South Dakota and Chapter of Calvary Cathedral's Motion to Dismiss by Chapter of Calvary Cathedral, The Diocese of South Dakota. (Braun, Lonnie) (Entered: 07/02/2020)</i>
07/02/2020	<u>31</u>	MEMORANDUM in Support re <u>30</u> MOTION to DISMISS <i>Defendants the Episcopal Diocese of South Dakota and Chapter of Calvary Cathedral's Motion to Dismiss</i> filed by Chapter of Calvary Cathedral, The Diocese of South Dakota. (Attachments: # <u>1</u> Case, # <u>2</u> Summons, # <u>3</u> Notice, # <u>4</u> Order) (Braun, Lonnie) (Entered: 07/02/2020)
07/02/2020	<u>32</u>	<i>MOTION to DISMISS Defendant Randy Reinartz's Motion to Dismiss or Judgment on the Pleadings by Randy Reinartz. (Braun, Lonnie). Added MOTION for Judgment on the Pleadings on 7/6/2020 (DLC). (Entered: 07/02/2020)</i>

07/02/2020	<u>33</u>	MEMORANDUM in Support re <u>32</u> MOTION to DISMISS <i>Defendant Randy Reinartz's Motion to Dismiss or Judgment on the Pleadings</i> filed by Randy Reinartz. (Attachments: # <u>1</u> Case, # <u>2</u> Summons, # <u>3</u> Notice, # <u>4</u> Order) (Braun, Lonnie) (Entered: 07/02/2020)
07/02/2020	<u>34</u>	MOTION to DISMISS <i>Defendant Bishop Jonathan Folt's Motion to Dismiss or Judgment on the Pleadings</i> by Jonathan Folts. (Braun, Lonnie). Added MOTION for Judgment on the Pleadings on 7/6/2020 (DLC). (Entered: 07/02/2020)
07/02/2020	<u>35</u>	MEMORANDUM in Support re <u>34</u> MOTION to DISMISS <i>Defendant Bishop Jonathan Folt's Motion to Dismiss or Judgment on the Pleadings</i> filed by Jonathan Folts. (Attachments: # <u>1</u> Case, # <u>2</u> Summons, # <u>3</u> Notice, # <u>4</u> Order) (Braun, Lonnie) (Entered: 07/02/2020)
08/07/2020	<u>36</u>	STATEMENT and MOTION by Charles T. Montileaux, Sr. (SLT) (Entered: 08/07/2020)
08/11/2020	<u>37</u>	RESPONSE to <u>36</u> Motion for Miscellaneous Relief <i>Response to Plaintiff's Statement and Motion</i> filed by Chapter of Calvary Cathedral, Jonathan Folts, Randy Reinartz, The Diocese of South Dakota. (Attachments: # <u>1</u> Exhibit Exhibit 1 Police Report) (Braun, Lonnie) (Entered: 08/11/2020)
08/11/2020	<u>38</u>	MOTION to Strike <u>36</u> MOTION <i>and Statement of Plaintiffs</i> by Bob Baker, Chris Ekstrum, First National Bank, Alan Meyers. (Roche, Vincent) (Entered: 08/11/2020)
08/11/2020	<u>39</u>	BRIEF by Defendants Bob Baker, Chris Ekstrum, First National Bank, Alan Meyers re <u>38</u> MOTION to Strike <u>36</u> MOTION <i>and Statement of Plaintiffs</i> (Roche, Vincent) (Entered: 08/11/2020)
08/17/2020	<u>40</u>	RESPONSE to Motion re <u>32</u> MOTION to DISMISS <i>Defendant Randy Reinartz's Motion to Dismiss or Judgment on the Pleadings</i> MOTION for Judgment on the Pleadings, <u>30</u> MOTION to DISMISS <i>Defendants the Episcopal Diocese of South Dakota and Chapter of Calvary Cathedral's Motion to Dismiss</i> , <u>24</u> MOTION to DISMISS , <u>34</u> MOTION to DISMISS <i>Defendant Bishop Jonathan Folt's Motion to Dismiss or Judgment on the Pleadings</i> MOTION for Judgment on the Pleadings filed by Charles T. Montileaux, Sr. (SLT) (Entered: 08/17/2020)
08/18/2020	<u>41</u>	REPLY to <u>24</u> Motion to Dismiss <i>IN SUPPORT OF MOTION TO DISMISS</i> filed by Bob Baker, Tom Benz, Chris Ekstrum, First National Bank, Alan Meyers. (Roche, Vincent) (Entered: 08/18/2020)
09/30/2020	<u>42</u>	MOTION for Recusal by Charles T. Montileaux, Sr. (SLT) (Entered: 09/30/2020)
10/01/2020	<u>43</u>	ORDER OF RECUSAL. U.S. District Judge Jeffrey L. Viken recused. Signed by U.S. District Judge Jeffrey L. Viken on 10/1/20. (SB) Modified on 10/1/2020 (SB). (Entered: 10/01/2020)
10/06/2020	<u>44</u>	Mail sent to Miriam C. Montileaux was returned as undeliverable. <u>43</u> Order of Recusal was returned. (SLT) Modified on 10/6/2020 No forwarding address found (SLT). (Entered: 10/06/2020)
10/07/2020	<u>45</u>	

			ORDER OF ASSIGNMENT. Signed by Chief Judge Roberto A. Lange on 10/7/2020. (CLR) Modified on 10/7/2020 delivered to each pro se plaintiff via USPS (CLR). (Entered: 10/07/2020)
10/20/2020	<u>46</u>		Mail sent to Miriam Montileaux was returned as undeliverable. <u>45</u> Order Reassigning Case was returned. No forwarding address (SLT) (Entered: 10/20/2020)
11/02/2020			NOTICE of Change of Address by Miriam C. Montileaux: Address updated to P.O. Box 246, Kyle, SD 57752 per phone call from Miriam Montileaux. (SLT) (Entered: 11/02/2020)
11/05/2020	<u>47</u>		MOTION by All Plaintiffs. (SLT) (Entered: 11/05/2020)
11/09/2020	<u>48</u>		RESPONSE to Motion re <u>47</u> MOTION of Plaintiffs to Order Defendants to Return Stolen Trust Funds filed by Bob Baker, Tom Benz, Chris Ekstrum, First National Bank, Alan Meyers. (Roche, Vincent) (Entered: 11/09/2020)
11/09/2020	<u>49</u>		RESPONSE to Motion re <u>47</u> MOTION Defendants The Episcopal Diocese of South Dakota, Chapter of Calvary Cathedral, Bishop Jonathan Folts, and Randy Reinartz's Response to Plaintiffs' Motion to Return Stolen Trust Funds filed by Chapter of Calvary Cathedral, Jonathan Folts, Randy Reinartz, The Diocese of South Dakota. (Braun, Lonnie) (Entered: 11/09/2020)
11/13/2020	<u>50</u>		MOTION for Immediate Intervention by Charles T. Montileaux, Sr. (Attachments: # <u>1</u> Attachment) (SLT) (Entered: 11/13/2020)
01/22/2021	<u>51</u>		LETTER Received from Miriam Montileaux to Judge Schreier. (Attachments: # <u>1</u> Attachment) (SLT) (Entered: 01/22/2021)
02/24/2021	<u>52</u>	9	ORDER granting <u>30</u> Motion to Dismiss; granting <u>32</u> Motion to Dismiss; granting <u>34</u> Motion to Dismiss; granting <u>32</u> Motion for Judgment on the Pleadings; granting <u>34</u> Motion for Judgment on the Pleadings; denying as moot <u>36</u> Motion ; denying as moot <u>38</u> Motion to Strike ; denying as moot <u>47</u> Motion ; denying as moot <u>50</u> Motion ; granting <u>24</u> Motion to Dismiss; denying as moot <u>27</u> Motion to Amend/Correct. Signed by U.S. District Judge Karen E. Schreier on 2/24/2021. (SLT). Modified on 2/24/2021 delivered to Charles T. Montileaux, Sr., Miriam C. Montileaux, and Naomi Montileaux via usps (SLT). (Entered: 02/24/2021)
02/24/2021	<u>53</u>	16	JUDGMENT. Signed by U.S. District Judge Karen E. Schreier on 2/24/2021. (SLT) Modified on 2/24/2021 delivered to Charles T. Montileaux, Sr., Miriam C. Montileaux, and Naomi Montileaux with non-prisoner appeal packet via usps (SLT). (Entered: 02/24/2021)
03/10/2021	<u>54</u>	17	NOTICE OF APPEAL as to <u>53</u> Judgment by Charles T. Montileaux, Sr.. (SLT) (Entered: 03/10/2021)
03/10/2021	<u>55</u>	20	TRANSMITTAL of Notice of Appeal to 8th Circuit Court of Appeals re <u>54</u> Notice of Appeal. (SLT) (Entered: 03/10/2021)

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

MIRIAM C. MONTILEAUX, CHARLES
T. MONTILEAUX, SR., individually and
as special administrator of the estate
of Cheryl Montileaux and Charles T.
Montileaux, Jr., NAOMI MONTILEAUX,
CHERYL MONTILEAUX, Deceased, and
CHARLES T. MONTILEAUX, JR.,
Deceased,

Plaintiffs,

vs.

THE DISOCESE OF SOUTH DAKOTA,
Episcopal, CHAPTER OF CALVARY
CATHEDRAL, Holding Company for
Diocese, JONATHAN FOLTS, The Right
Reverend, RANDY REINARTZ, Bishop,
TRUSTEE FIRST NATIONAL BANK, in
Sioux Falls, South Dakota, TOM
BENZ, Employee, ALAN MEYERS, of
Wealth Management Dept., BOB
BAKER, President of Bank, and CHRIS
EKSTRUM,

Defendants.

5:19-CV-05075-KES

ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS

Plaintiffs, Miriam C. Montileaux, Charles T. Montileaux, Sr., individually and as special administrator of the estate of Cheryl Montileaux and Charles T. Montileaux, Jr., Naomi Montileaux, Cheryl Montileaux, deceased, and Charles T. Montileaux, Jr., deceased, filed a complaint against the Episcopal Diocese of South Dakota, Chapter of Calvary Cathedral, holding company for the diocese, the Right Reverend Jonathan Folts, Bishop Randy Reinartz, Trustee First

National Bank in Sioux Falls, South Dakota, and First National Bank employees Tom Benz, Alan Meyers, Bob Baker, and Chris Ekstrum. Dockets 1, 7. Each defendant filed a motion to dismiss the complaint. Dockets 24, 30, 32, 34. The Montileauxs oppose the motions to dismiss. Docket 40. Also outstanding are Folts's motion to amend his answer (Docket 27), Charles Montileaux, Sr.'s statement and motion for settlement conference (Docket 36), bank defendants' motion to strike the statement and motion for settlement conference (Docket 38), the Montileauxs' motion for immediate return of their trust funds (Docket 47), and a motion for Miriam Montileaux to be protected from state custody (Docket 50). The court grants defendants' motions to dismiss (Dockets 24, 30, 32, 34) and denies as moot the remaining pending motions (Dockets 27, 36, 38, 47, 50).

FACTS

The Montileauxs are "enrolled members of the Oglala Sioux Tribe on the Pine Ridge Indian Reservation." Docket 7 at 6. In 1986, Charles Montileaux, Sr., and Cheryl Montileaux (now deceased) were involved in a medical malpractice lawsuit against four doctors in Chicago, Illinois. *Id.* at 7. Both were ordained Episcopal ministers in the Diocese of South Dakota. *Id.* The doctors settled the claim for \$500,000, and the money was distributed via two checks to the Montileauxs' attorney in Chicago. *Id.*

On March 29, 1988, Cheryl Montileaux died. *Id.* at 8. Charles Montileaux, Sr., and Cheryl Montileaux's attorney mailed settlement checks and documents to Farmers State Bank in Winner, South Dakota, because the

money was to go through Cheryl Montileaux's estate proceeding. *Id.* Plaintiffs allege that the settlement money is now held in trust at First National Bank in Sioux Falls, South Dakota. *See id.* at 11. The funds are held "under chapter of Calvary Cathedral," the Episcopal Church's holding company, with Reinartz named as the trustee. *Id.* at 10.

The Montileauxs filed suit against the Episcopal Diocese of South Dakota, Chapter of Calvary Cathedral, Folts, Reinartz, First National Bank, and First National Bank employees Benz, Meyers, Baker, and Ekstrum, asserting federal jurisdiction under Article I of the 1868 Fort Laramie Treaty (the 1868 Treaty). *Id.* at 6; *see* Treaty between the United States of America and different Tribes of Sioux Indians art. I, April 29, 1868, 15 Stat. 635. The Montileauxs seek return of the funds held in trust at First National Bank, \$40 million in punitive damages from the Diocese of South Dakota, and \$40 million in punitive damages from First National Bank. Docket 7 at 11. Additionally, they ask that Folts be held accountable because he is president of the Episcopal Diocese of South Dakota that is allegedly hiding their funds and that all documents relating to the trust funds and all interest accumulated be returned. *Id.*

DISCUSSION

Subject matter jurisdiction is a court's power to decide a certain type of case. *LeMay v. United States Postal Service*, 450 F.3d 797, 799 (8th Cir. 2006) (citation omitted). It is a threshold question in the federal courts. *See Herden v. United States*, 726 F.3d 1042, 1046 (8th Cir. 2013) (en banc) (citation omitted).

“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” Fed. R. Civ. P. 12(h)(3).

“[F]ederal courts are courts of limited jurisdiction.” *Home Depot U.S.A. Inc. v. Jackson*, 139 S.Ct. 1743, 1747 (2019) (quoting *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994)). “[L]ower federal-court jurisdiction ‘is further limited to those subjects encompassed within a statutory grant of jurisdiction.’ ” *Id.* (quoting *Ins. Corp. of Ir., LTD v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 701 (1982)). Thus, “the district courts may not exercise jurisdiction absent a statutory basis.” *Id.* (quoting *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005)).

Courts must construe all pleadings so “as to do justice.” Fed. R. Civ. P. 8(e). Pro se filings are “to be liberally construed.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). “[A] pro se complaint . . . must be held to less stringent standards than formal pleadings drafted by lawyers[.]” *Id.* (quoting *Estelle*, 429 U.S. at 106). But a pro se plaintiff must still show jurisdictional grounds for the causes of action in his or her complaint. *See, e.g., Williams v. United States*, 715 F. Supp. 272, 276 (W.D. Mo. 1988).

The Montileauxs’ complaint alleges that defendants violated Article I of the 1868 Treaty. Article I of the 1868 Treaty provides that:

If bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington city, proceed at once to cause the offender to

be arrested and punished according to the laws of the United States, and also reimburse the injured person for the loss sustained.

1868 Treaty art. I, Feb. 16, 1898, 15 Stat. 635. “Article I of the 1868 Treaty . . . concerns the rights of and obligations [of the United States] to individual Indians.” *Elk v. United States*, 87 Fed. Cl. 70, 78 (Fed. Cl. 2009) (omission in the original) (quoting *Hebah v. United States*, 428 F.2d 1334, 1337 (Ct. Cl. 1972)).

The “bad-men provision” gives Indian plaintiffs who have been injured a right to sue the United States for reimbursement for their loss. *See id.*; *see also Cheyenne & Arapaho Tribes v. United States*, 151 Fed. Cl. 511, 517-18 (Fed. Cl. 2020) (“bad men” provisions of similar treaties between the United States and Cheyenne and Arapaho tribes create a right of action for individual Indians to sue the United States). The bad-men provision allows individual Indians to file suit against the United States for reimbursement—not against the “bad men” themselves. *See Richard v. U.S.*, 677 F.3d 1141 (Fed Cir. 2012); *Hebah*, 428 F.2d at 1337; *Cheyenne & Arapaho Tribes*, 151 Fed. Cl. at 517-18; *Elk*, 87 Fed. Cl. at 78. *See also Jones v. Norton*, 809 F.3d 564, 577 (10th Cir. 2015) (“Even though the Treaty can be read to grant individual rights to [tribal] members, the text is clear that those rights only arise directly *against the United States*, and must be enforced through the mechanism prescribed in the Treaty”) (emphasis in original).

Here, the Montileauxs filed suit in the District of South Dakota against individuals and entities who are not the United States. Docket 7. The

Montileauxs may sue the United States under the “bad men” provision of the treaty, but not the individuals they allege committed wrongdoings against them. Thus, the Montileauxs may not bring a claim under the 1868 Treaty’s “bad men” provision against these individual defendants and may only bring a claim against the United States for any alleged harm.

“[T]he 1868 Treaty’s ‘bad men’ provision created an individual third-party contractual right through which an individual claimant could directly pursue a suit against the United States.” *Elk*, 87 Fed. Cl. at 79 (citing *Hebah*, 428 F.2d at 1338). Under the Tucker Act, the Court of Federal Claims possesses exclusive jurisdiction over all Constitutional and contractual claims against the United States exceeding \$10,000. 28 U.S.C. § 1491(a)(1); 28 U.S.C. § 1346(a)(2); *see also Ford Motor Co. v. United States*, 571 U.S. 28 (2013) (Tucker Act jurisdiction is proper only in the Court of Federal Claims for a claim exceeding \$10,000); *Tsosi v. United States*, 825 F.2d 393, 394 (Fed. Cir. 1987) (Bad-men provision of the treaty between the United States and Navajo was enforceable by suit in the Court of Federal Claims under the Tucker Act, 28 U.S.C. § 1491); *Richard v. United States*, 677 F.3d 1141 (2012) (The bad men provision is enforceable “by suit in the Claims Court under the Tucker Act, 28 U.S.C. § 1491[]” (quoting *Tsosi*, 825 F.2d at 394)); *Cheyenne & Arapaho Tribes*, 151 Fed. Cl. at 516 (The Tucker Act “gives [the Court of Federal Claims] the power ‘to render judgment upon any claim against the United States founded either upon the Constitution or any Act of Congress’”) (quoting 28 U.S.C. § 1491(a)(1))).

Here, while the Montileauxs do not specify the value of the trust at issue, they claim that it initially contained \$500,000. Docket 7 at 3, 9-10. The Montileauxs also seek \$80 million in punitive damages. *Id.* at 11. Even if the Montileauxs only sought recovery of the trust assets and any interest and did not seek punitive damages, their claim would well exceed \$10,000. Thus, the Court of Federal Claims has exclusive jurisdiction over the action. This court does not have jurisdiction and dismisses the Montileauxs' case.

CONCLUSION

The Court of Federal Claims possesses exclusive jurisdiction over suits under the "bad men" provision of the 1868 Treaty that seek damages exceeding \$10,000. Thus, this court does not have jurisdiction to hear the Montileauxs' case. Because the court lacks jurisdiction, the remaining pending motions are denied as moot. It is

ORDERED that defendants' motions to dismiss (dockets 24, 30, 32, 34) are granted. It is further

ORDERED that the remaining pending motions (Dockets 27, 36, 38, 47, 50) are denied as moot.

Dated February 24, 2021.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

<p>MIRIAM C. MONTILEAUX, CHARLES T. MONTILEAUX, SR., individually and as special administrator of the estate of Cheryl Montileaux and Charles T. Montileaux, Jr., NAOMI MONTILEAUX, CHERYL MONTILEAUX, Deceased, and CHARLES T. MONTILEAUX, JR., Deceased,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>THE DISOCESE OF SOUTH DAKOTA, Episcopal, CHAPTER OF CALVARY CATHEDRAL, Holding Company for Diocese, JONATHAN FOLTS, The Right Reverend, RANDY REINARTZ, Bishop, TRUSTEE FIRST NATIONAL BANK, in Sioux Falls, South Dakota, TOM BENZ, Employee, ALAN MEYERS, of Wealth Management Dept., BOB BAKER, President of Bank, and CHRIS EKSTRUM,</p> <p>Defendants.</p>	<p>5:19-CV-05075-KES</p> <p>JUDGMENT</p>
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Under the court's order granting defendants' motions to dismiss, it is ORDERED, ADJUDGED, AND DECREED that the above-entitled action is dismissed without prejudice and the parties shall bear their own costs, expenses, and attorney fees.

Dated February 24, 2021.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE

Non-Prisoner IFP 6/15

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

Western DIVISION

MIRIAM C. MONTILEAUX, CHARLES T. MONTILEAUX SR.
ET. AL

CIV. 5:19-CV-05075- KES

Plaintiff/Petitioner,

vs.

NOTICE OF APPEAL

THE DIOCESE OF SOUTH DAKOTA, EPISCOPAL
CHAPTER OF CALVARY CATHEDRAL ET. AL

Defendant/Respondent.


Notice is hereby given that MIRIAM C. MONTILEAUX ET. AL, Plaintiff/Petitioner above

named, hereby appeals to the United States Court of Appeals for the Eighth Circuit from the
Judgement order.

FEB. 24, 2021 Karen Schrier (Judgment, Order, etc.) entered in this action on the

24 day of February, 2021.

Dated this 8th day of march, 2021.


Ret. Judge Charles T. Montileaux Sr.
Plaintiff/Petitioner (Pro Se)

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**United States District Court
District of South Dakota**

Andrew W. Bogue Federal Building
& United States Courthouse
Office of the Clerk
515 Ninth Street, Room 302
Rapid City, SD 57701

Matthew W. Thelen
Clerk of Court

Telephone
(605) 399-6000

March 10, 2021

TRANSMITTAL OF NOTICE OF APPEAL IN A CIVIL CASE

1. **Short Caption & Case No.:** Montileaux v. The Diocese of South Dakota (Episcopal) et al
2. **Date Notice of Appeal filed:** 3/10/2021
3. **Have other appeals been filed in this case? If so, Appeal No.:** No
4. **Court Reporter:** N/A
5. **Fee Status:**

☐ Paid ☐ Not Paid ☒ IFP granted ☐ IFP Pending

NOTE: If this is a prisoner civil appeal, do *not* transmit the appeal until the filing fee has been paid or the district court rules on IFP. Otherwise, the Eighth Circuit will issue a limited remand.

6. **Are there any other pending motions?** No

If yes, list pending motions and document numbers: N/A
7. **If this is a §2255 or §2254 appeal, has there been a ruling on COA?** N/A

NOTE: Do *not* transmit the appeal until the district court rules on the COA or the Eighth Circuit will issue a limited remand

8. **Additional comments:**

None

MATTHEW W. THELEN,
CLERK