

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No. 21-1570

ESTATE OF CHERYL MONTILEAUX, (DEC.),
CHARLES T. MONTILEAUX SR., NAOMI MONTILEAUX,
CHARLES T. MONTILEAUX, JR. (DEC.), AND
MIRIAM C. MONTILEUX,

Appellants,

vs.

THE DIOCESE OF SOUTH DAKOTA (EPISCOPAL),
CHAPTER OF CALVARY CATHEDRAL (HOLDING COMPANY FOR
DIOCESE), THE RT. REV. JONATHAN FOLTS, (BISHOP),
RANDY REINARTZ, TRUSTEE, FIRST NATIONAL BANK IN SIOUX
FALLS, SOUTH DAKOTA, EMPLOYEES, TOM BENZ, ALAN MEYERS OF
WEALTH MANAGEMENT DEPT. AND PRESIDENT OF BANK BOB
BAKER, AND CHRIS EKSTRUM,

Appellees.

**Appeal from the U.S. District Court for the District of South Dakota
(5:19-cv-05075-KES)**

**BRIEF OF APPELLES FIRST NATIONAL BANK
IN SIOUX FALLS, TOM BENZ, ALAN MEYERS,
BOB BAKER, AND CHRIS EKSTRUM**

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SUMMARY AND STATEMENT REGARDING ORAL ARGUMENT

The Appellants-Montileauxs filed suit in district court against The First National Bank in Sioux Falls and three of its employees, among others, asserting that it “participat[ed] in criminal behavior” by allegedly withholding trust funds related to a wrongful death settlement. Bank employees informed the Montileauxs that no such trust exists. Nonetheless, the Montileauxs took legal action, demanding that The First National Bank in Sioux Falls release the non-existent funds and pay the Montileauxs \$40 million in punitive damages. The district court dismissed the Montileauxs’ claims in their entirety for lack of subject matter jurisdiction. The Montileauxs appealed.

The First National Bank in Sioux Falls opposes the Montileauxs’ arguments. The district court did not err in dismissing the Montileauxs’ claims based on lack of subject matter jurisdiction. Alternatively, this Court could affirm the dismissal of the Montileauxs’ Complaint because it failed to state a claim upon which relief can be granted.

The First National Bank in Sioux Falls respectfully submits that the facts and legal arguments are adequately presented in the briefs and record. Accordingly, The First National Bank in Sioux Falls does not request oral argument. If oral argument is allowed, however, The First National Bank in Sioux Falls requests equal time to that granted to the Montileauxs.

CORPORATE DISCLOSURE STATEMENT

The First National Bank in Sioux Falls is wholly owned by Minnehaha Bancshares, Inc. Minnehaha Bancshares, Inc. has no parent corporation and no publicly-held corporation owns more than ten percent (10%) of its stock.

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JURISDICTIONAL STATEMENT

The district court had jurisdiction pursuant to 28 U.S.C. § 1331. On February 24, 2021, the district court issued a final judgment disposing of all of the Montileauxs' claims. The Montileauxs filed a timely Notice of Appeal on March 10, 2021. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Whether the district court properly dismissed the Montileauxs' claims.

Most Apposite Authorities:

Ashcroft v. Iqbal, 556 U.S. 662 (2009).

Cheyenne & Arapaho Tribes v. United States, 151 Fed. Cl. 511 (2020).

STATEMENT OF THE CASE

A. Background

Miriam C. Montileaux (“Miriam”); Charles T. Montileaux, Sr. (“Charles Sr.”), individually and as special administrator of the estate of Cheryl Montileaux and Charles T. Montileaux, Jr.; Naomi Montileaux; Cheryl Montileaux (“Cheryl”) (deceased); and Charles T. Montileaux, Jr. (deceased) (collectively, the “Montileauxs”), are enrolled members of the Oglala Sioux Tribe on the Pine Ridge Indian Reservation. (App. 6.)¹ They initiated an action in federal court against The First National Bank in Sioux Falls and Bank employees Tom Benz, Alan Meyers, Bob Baker, and Chris Ekstrum (collectively, “The First National Bank in Sioux Falls”), among others.² (*Id.* at 1-11.)

The allegations in the Montileauxs’ Complaint are difficult to follow. According to the Montileauxs, Charles Sr. and Cheryl were involved in a medical malpractice suit in 1986, which ultimately settled for \$500,000. (*Id.* at 7.) The funds were supposedly distributed via two checks that were sent to the Montileauxs’ Chicago-based attorney. (*Id.*) The Montileauxs claim this attorney

¹ Citations to the Montileauxs’ appellate brief will be cited as “AB” followed by the specific page number(s). Citations to Appellee The First National Bank in Sioux Falls’s addendum will be cited as “Add.” followed by the specific page number(s). Citations to Appellee The First National Bank in Sioux Falls’s appendix will be cited as “App.” followed by the specific page number(s).

² In their Complaint, the Montileauxs refer to Mr. Bob Baker and both Bob Baker and Bill Baker.

thereafter sent the settlement checks to Farmers State Bank in Winner, South Dakota, so they could be addressed in Cheryl's probate proceedings.³ (*Id.*) The Montileauxs now incorrectly believe that such funds showed up decades later to be held in trust at The First National Bank in Sioux Falls.

According to the Montileauxs' Complaint, on Friday, August 16, 2019, Miriam contacted The First National Bank in Sioux Falls, inquiring about alleged trust funds. (*Id.* at 6.) They claim that Miriam spoke with two bank employees, providing them with her date of birth and social security number. The Montileauxs claim the employees discovered that Miriam's name was located under Chapter of Calvary Cathedral, the holding company for the Diocese of South Dakota ("Episcopal Church"). (*Id.* at 6-7.) The Montileauxs claim the employees informed Miriam that Mr. Tom Benz would telephone her back. (*Id.* at 7.)

Miriam and Charles Sr. allegedly placed a second call to The First National Bank in Sioux Falls on August 19, 2019, where they claim they spoke to Mr. Benz and Mr. Alan Meyers with The First National Bank in Sioux Falls's Wealth Management Department. (*Id.*) Mr. Benz and Mr. Meyers both informed Miriam

³ Cheryl passed away on March 29, 1988. (App. 8.)

that she “was not a beneficiary” of any trust for which The First National Bank in Sioux Falls had any account. (*Id.*)

B. Procedural History

Based only upon these two phone calls, on November 19, 2019, the Montileauxs filed suit in United States District Court for the District of South Dakota alleging claims under the 1868 Fort Laramie Treaty (the “Fort Laramie Treaty”). Specifically, the Montileauxs demanded that The First National Bank in Sioux Falls release the alleged trust funds and pay \$40 million in punitive damages for “participating in criminal behavior and knowingly and willingly concealing and not cooperating with [the Montileauxs] when they were contacted.” (*Id.* at 7-10.) (emphasis omitted). The Montileauxs raised no other allegations against The First National Bank in Sioux Falls. They did raise additional allegations against other named defendants, however, including but not limited to: that Cheryl was potentially murdered; that the Bishop of the Episcopal Church ordered that Cheryl be buried without an autopsy; that the Episcopal Church instructed a spy to keep it informed of Miriam’s activities; and that the Honorable Andrew Bogue, former United States District Court Judge, colluded with the Episcopal Church’s attorney in dismissing the Montileauxs’ 2005 complaint against the Church. (*Id.*; *see also* AB 2-5.)

On June 17, 2020, The First National Bank in Sioux Falls filed a Motion to Dismiss, arguing that the Montileauxs' Complaint failed to state any plausible claim for relief. (App. 18-20.) Other named Appellees-Defendants also filed motions to dismiss, arguing, *inter alia*, that the district court lacked subject matter jurisdiction over the Montileauxs' claims. (*See id.* at 21-26.)

The district court granted the motions to dismiss in their entirety on February 24, 2021. (Add. 1.) The court held that pursuant to the Fort Laramie Treaty, "Indian plaintiffs who have been injured have a right to sue the United States for their loss. . . . [but] the Montileauxs filed suit in the District of South Dakota against individual and entities who are not the United States." (*Id.* at 6.) Accordingly, the Montileauxs may not bring a claim under the Fort Laramie Treaty against The First National Bank in Sioux Falls or any of the other named Appellees-Defendants because they are not the United States. (*Id.* at 7.)

Moreover, the court held that even if the Montileauxs claims were, in fact, asserted against the United States, the district court would still lack subject matter jurisdiction because — 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." (*Id.*) (emphasis added.) The Montileauxs have appealed the dismissal.

SUMMARY OF ARGUMENT

In their Complaint, the Montileauxs have asserted several outlandish and frivolous allegations against The First National Bank in Sioux Falls under the “bad men” provision of the Fort Laramie Treaty. They accuse The First National Bank in Sioux Falls of concealing and colluding with others to hide alleged trust funds they believe are held at the Bank.

The district court correctly determined that it does not have jurisdiction to hear the Montileauxs’ claims under the Fort Laramie Treaty. The “bad men” provision of the Fort Laramie Treaty only permits the Montileauxs to file suit against the United States, not individual entities such as The First National Bank in Sioux Falls. Accordingly, the Montileauxs’ suit is improper. Moreover, even if the Montileauxs had brought claims against the United States instead of The First National Bank in Sioux Falls — which they did not — the district court would still lack subject matter jurisdiction over the action. Indeed, claims brought under the Fort Laramie Treaty exceeding \$10,000 belong to the exclusive jurisdiction of the Court of Federal Claims. Thus, the district court properly dismissed the Montileauxs’ Complaint against The First National Bank in Sioux Falls for lack of subject matter jurisdiction.

Alternatively, the district court could have appropriately dismissed the Montileauxs’ Complaint for failure to state a claim upon which relief can be

granted. The claims against The First National Bank in Sioux Falls make little sense as there is no trust at The First National Bank in Sioux Falls for any of the Montileauxs, and the Montileauxs have been informed of such. Summarily alleging the Bank is hiding assets for their beneficial enjoyment as part of some fanciful conspiracy does not bring Montileauxs' claims within the realm of plausibility. The Montileauxs' Complaint thus cannot satisfy the plausibility requirement needed to survive a motion to dismiss.

The district court had multiple grounds to properly dismiss the Montileauxs' Complaint. Its judgment should be affirmed.

ARGUMENT

I. THE DISTRICT COURT PROPERLY DISMISSED THE MONTILEAUXS' COMPLAINT

A. Standard of Review

The appellate court reviews de novo a district court's grant of a motion to dismiss for lack of subject matter jurisdiction. *Hastings v. Wilson*, 516 F.3d 1055, 1058 (8th Cir. 2008). It likewise reviews do novo a district court's dismissal of a complaint for failure to state a claim upon which relief can be granted. *Butler v. Bank of America, N.A.*, 690 F.3d 959, 961 (8th Cir. 2012). In reviewing motions to dismiss, the court accepts as true all factual allegations of the complaint and affords the "non-moving party all reasonable inferences from those allegations." *Id.* The complaining parties must still establish, however, that the court has

jurisdiction over their claims by a preponderance of the evidence. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

B. The District Court Lacked Subject Matter Jurisdiction Over The Montileauxs' Claims

The district court lacked subject matter jurisdiction over the Montileauxs' claims under the Fort Laramie Treaty. Jurisdiction is a threshold issue that must be resolved before a court can take action on the merits. *Remote Diagnostics Techs. LLC v. United States*, 133 Fed. Cl. 198, 202 (2017) (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998)). "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). Here, jurisdiction belongs exclusively to the United States Court of Federal Claims; thus, the district court properly dismissed the Montileauxs' Complaint for lack of subject-matter jurisdiction.

Because the Montileauxs are members of a federally recognized tribe, they are "beneficiar[ies] of several treaties entered into with the United States," including the Fort Laramie Treaty. *Cheyenne & Arapaho Tribes v. United States*, 151 Fed. Cl. 511, 514 (2020). The Fort Laramie Treaty contains a "bad men" provision, which states in relevant part:

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.

Treaty with the Sioux, art. 1, Apr. 29, 1868, 15 Stat. 635. This provision allows individual Indians to assert claims against the United States, seeking reimbursement. *See Jones v. Norton*, 809 F.3d 564, 577 (10th Cir. 2015). It does not permit individuals to assert claims against the “bad men” themselves. *Id.* Here, although the Montileauxs state their claims arise under the “bad men” provision of the Fort Laramie Treaty, the claims asserted are against individuals and private entities, not the United States. Accordingly, such claims cannot be properly asserted under the “bad men” provision of the Fort Laramie Treaty.

Even if the Montileauxs did assert proper claims under the Fort Laramie Treaty — which they did not — the district court still would not have jurisdiction over this matter. In 1996 Congress amended the Tucker Act, a purely “jurisdictional statute,” which grants exclusive jurisdiction to the United States Court of Federal Claims “to render judgment upon any money claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department,” exceeding \$10,000. 28 U.S.C. § 1491; *see also Cheyenne*, 151 Fed. Cl. at 516. Stated another way, United States district courts lack jurisdiction over any claims arising under the Fort Laramie Treaty in which alleged damages exceed \$10,000. *See id.*

The Montileauxs' claims in this matter far exceed the \$10,000 limit of the district court's jurisdiction. (*See* Add. 8.) Indeed, the Montileauxs claim that the trust at issue initially contained \$500,000. (App. 7.). The Montileauxs' Complaint also sought \$40 million in punitive damages against The First National Bank in Sioux Falls. (*Id.* at 11.) Accordingly, the Court of Federal Claims would have sole jurisdiction over this action. The district court thus properly dismissed the Montileauxs' Complaint for lack of subject matter jurisdiction.

C. In the Alternative, Dismissal of the Montileauxs' Complaint is Appropriate Because It Failed to State a Claim Upon Which Relief Can Be Granted

In the alternative, dismissal of the Montileauxs' Complaint is appropriate because it failed to state a claim upon which relief can be granted as required under Fed. R. Civ. P. 12(b)(6). Although the district court did not reach this issue below, it is properly before this Court as the factual and pertinent record has been fully developed. *See Scott v. Ross*, 140 F.3d 1275, 1283 (9th Cir. 1998) (internal quotation omitted) (holding that it is within the appellate court's discretion to review issues not reached below when the factual or pertinent record has been fully developed).

As The First National Bank in Sioux Falls argued at the district court level, a complaint must satisfy the pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 8(a)(2) (a complaint must contain "a short

and plain statement of the claim showing that the pleader is entitled to relief.”). While Rule 8 “does not require detailed factual allegations, . . . it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotation omitted).

A complaint does not meet Rule 8 requirements, and will not survive a motion to dismiss under Rule 12(b)(6), if it “offers labels and conclusions or a formulaic recitation of the elements of a cause of action.” *Id.* (quotation omitted). Thus, to survive a motion to dismiss under Rule 12(b)(6), “a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Id.* (quotation omitted). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* A plaintiff’s “[f]actual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678.

“[T]he tenet that a court must accept as true all allegations contained in a complaint is inapplicable to legal conclusions.” *Id.* “Second, only a complaint that states a plausible claim for relief survives a motion to dismiss.” *Id.* at 679 (citation omitted). Importantly, “[d]etermining whether a complaint states a plausible claim

for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* (citation omitted).

As the Supreme Court has stated, “[i]n keeping with these principles a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth.” *Id.* Legal conclusions can provide the framework of a complaint, but they must be supported by factual allegations. *Id.* Only when there are well-pleaded factual allegations, should a court “assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Id.*

Just like the complaint in *Iqbal*, the Montileauxs’ Complaint has failed to cross the line from conceivable to plausible. In fact, the allegations in the Complaint simply do not state a claim that is even remotely conceivable. The allegations are nothing “more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Id.* at 678 (quotation omitted). The misconduct alleged in the Montileauxs’ Complaint is that that The First National Bank in Sioux Falls “participat[ed] in criminal behavior and knowingly and willingly conceal[ed]” and failed to cooperate with the Montileauxs when they were contacted. (App. 11.) The same sort of elaborate and fanciful allegations have continued in Montileauxs’ brief to this Court, where they allege The First National Bank in Sioux Falls participated in “VERY SERIOUS MAFIA LIKE ACTIVITY,” by allegedly

helping conceal what they now assert are millions of dollars in trust held at First National Bank. (AB pp. 4-6) (emphasis in original).

The only facts to support these outlandish and wild allegations are that the Montileauxs made two phone calls to The First National Bank in Sioux Falls. The Montileauxs admit that during the second phone call, The First National Bank in Sioux Falls employees informed them that no trust exists for Miriam. (App. 7.) The Montileauxs have no other basis for their claims. That should not carry the day and permit the Montileauxs to proceed.

Indeed, the Montileauxs' bare assertions do not provide the claim with any facial plausibility because they have not pleaded any factual content that allows this Court to draw any reasonable inference that The First National Bank in Sioux Falls is liable for any misconduct. *Iqbal*, 556 U.S. at 678. Plausibility would require the Montileauxs to explain or plead facts, including, but not limited to: (1) when the money arrived at The First National Bank in Sioux Falls; (2) how the money showed up at The First National Bank in Sioux Falls 35 years after it was apparently first disbursed; (3) what the terms are of the alleged trust; (4) who the parties are to the trust agreement; and (5) what criminal or tortious act was committed resulting in damages. Not one of these questions is addressed in Montileauxs' Complaint or even in their brief to this Court. Accordingly, the plausibility prong of the analysis is simple – the Complaint fails to state a claim.

This Court's inquiry is a context-specific one, requiring the Court to draw on its judicial experience and common sense. *Id.* at 679 (citation omitted). Stated simply, the Montileauxs' Complaint does not state any plausible claim against The First National Bank in Sioux Falls upon which relief can be granted. This Court should affirm the district court, concluding that the Montileauxs' Complaint was properly dismissed.

CONCLUSION

Based on the aforementioned reasons, the judgment of the district court should be affirmed.

Dated at Sioux Falls, South Dakota, this 4th day of May, 2021.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of FED. R. APP. P. 32(a)(7)(B) because this brief contains 3,334 words, excluding the parts of the brief exempted by FED. R. APP. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word 2003 with 14-point Times New Roman.

3. A digital version of the brief in Portable Document Format (PDF) is being provided to the clerk and to each party separately represented by counsel pursuant to 8th CIR. R. 28A(d).

4. The computer diskette containing the brief has been scanned for viruses and is virus-free. **OR** The file copied to the CD-ROM has been scanned for viruses, and it is virus free.

Dated at Sioux Falls, South Dakota, this 4th day of May, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on 4th day of May, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are CM/ECF users and that service will be accomplished by the CM/ECF system or by United States mail, postage prepaid.

/s/ Ashley R. Brost