

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LEATRICE TANNER-BROWN, et al.)	
)	
Plaintiffs,)	
v.)	
)	
SCOTT DE LA VEGA,)	
Secretary of the Interior,)	Civil Action No. 21-565(RC)
)	
Defendants.)	
_____)	

**MOTION OF LEATRICE TANNER-BROWN, ET AL. TO ALTER OR AMEND JULY 8,
2022 ORDER OF DISMISSAL**

In accordance with the provisions of Fed. R. Civ. P. 59(e), the putative class of Freedmen minors represented by Leatrice Tanner-Brown, move to alter or amend the July 8, 2022 Order dismissing this action, ECF Docket #20, for the reason the Court's standing analysis ignores settled principles of trust law that entitle the beneficiaries of a trust to an accounting without a preliminary showing of trust mismanagement or injury to the trust corpus . The injury for standing purposes is the Trustee's failure to provide the requested accounting not alleged mismanagement of the trust res. The Court's July 8, 2022 Order improperly shifts this burden to Plaintiffs. A memorandum in support of this motion is attached.

Dated: August 5, 2022

s/Percy Squire
Percy Squire, Esq.
341 S. Third St., Suite 10
Columbus, Ohio 43215
[614 224 6528\(T\)](tel:6142246528)
[614 224 6529\(F\)](tel:6142246529)
psquire@sp-lawfirm.com

MEMORANDUM

Plaintiffs in this action, minor Freedmen, have alleged they are entitled under the Act of May 27, 1908, to an accounting by the Secretary of Interior in relation to the management of both real estate and the disposition of royalties arising from land allotments received under post antebellum treaties between the Five Civilized Indian Tribes and the United States. Plaintiffs have alleged they are entitled to know how their trust property was managed, the disposition of proceeds, if any, from that property, and all information concerning management and oversight of their allotments, given the economically strategic location of Plaintiffs' allotments.

In its July 8, 2022 ruling the Court stated Plaintiffs' Complaint was being dismissed because Plaintiffs failed to state a concrete particularized injury that is traceable to Defendants or to present any evidence of trust mismanagement. The Court's July 8, 2022 Order should be altered or amended because it departs from well settled trust law that this Court and the United States Supreme Court has stated is applicable where fiduciary duties have been imposed by Congress on the Secretary of Interior.

A beneficiary of a trust is entitled to an accounting, whether or not an injury is known in advance. Until an accounting is provided, a beneficiary has no means to determining whether the res has been mismanaged. The Court's July 8, 2022 Order improperly shifts this burden of the Trustee to the beneficiary. In this connection, settled authority states:

The duty to inform and account to beneficiaries of a trust is so embedded in trust law that "the Restatement of Trusts acknowledges the duty to inform, which is echoed in the Restatement (Second) of Trusts ["the beneficiary is always entitled to such information as is reasonably necessary to enable him to enforce his rights under the trust or to prevent or redress a breach of trust"] and the Restatement (Third) of Trusts ["beneficiaries are entitled to information needed to enforce their interests.]" Further, the duty to inform is found in the Uniform Trust Code ("The duty to keep the beneficiaries reasonably informed of the administration of the trust is a fundamental duty of a trustee") and has been included in the Uniform Probate Code since its inception. A trustee's duty to keep the beneficiaries informed of a

trust's administration is well-recognized in American law and continues to develop."

See, Phillip J. Ruce, The Trustee and the Remainderman: The Trustee's Duty to Inform, 46 Real Prop., Tr. & Est. L. J. 173, 179 (2011).

The Cour's July 8, 2022 Order ignores fundamental tenants of the Trustee-Beneficiary relationship. *Ruce* states: "if a fiduciary can be rendered free from the duty of informing the beneficiary concerning matters of which he is entitled to know equity has been rendered impotent. See, "The Trustee's Duty to Inform" Philip J. Ruce. The Trustee and Remainderman. The Trustee's duty to Inform Real Property, Probate and Trust Law Journal, Vol. 46 No. 1 2011.

Here the Court's July 8, 2022 Order states before a beneficiary has standing, the beneficiary must have evidence that the trust res has been mismanaged. That is contrary to general trust law.

In this connection, the *Ruce* article cited above which capsulizes preeminent authorities on Trust law states:

A. Uniform Trust Code

Section 813 of the UTC covers the duty to inform. Under this section, "[a] trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests."

B. Restatement of Trusts

The Restatement covers the trustee's duty to inform in section 82. Specifically, section 82 states that a trustee has the following duties:

- (a) promptly to inform fairly representative beneficiaries of the existence of the trust, of their tatus as beneficiaries and their right to obtain further information, and of basic information concerning the trusteeship;
- (b) to inform beneficiaries of significant changes in their beneficiary status; and
- (c) to keep fairly representative beneficiaries reasonably informed of changes involving the trusteeship and about other significant developments concerning the trust and its administration, particularly material information needed by the beneficiaries for the protection of their interests.

The trustees must promptly inform the fairly representative beneficiaries of the pertinent information relating to the trust. This duty includes all things a beneficiary needs to properly enforce their rights as beneficiaries. The comments to section 82 state that the duty to inform covers the following information: the existence, source, and name of the trust; the extent and nature of the beneficiary's interest; the names of the trustees; trustees' contact and compensation information; the roles of co-trustees; and the beneficiary's right to further information, including information concerning the terms of the trust or a copy of the trust instrument.

Comment (d) further explains that this section does not impose a regular or routine requirement of reporting or accounting. However, section 82(c), noted above, and as restated in comment (d) imposes an affirmative requirement that "the trustees inform fairly representative beneficiaries of important developments and information that appear reasonably necessary for the beneficiaries to be aware of in order to protect their interests."

Note first that this is an affirmative duty of the trustee; also, only the fairly representative beneficiaries enjoy the benefits of this affirmative duty. This duty encompasses the current beneficiaries and the vested remainder beneficiaries; contingent beneficiaries do not enjoy the benefits of this duty.

Given the departure of the July 8, 2022 Opinion from basic principles of trust law it should be altered or amended.

Rule 59(e) of the Federal Rules of Civil Procedure permits a party to file "[a] motion to alter or amend a judgment" within "28 days after the entry of the judgment." Fed. R. Civ. P. 59(e). "[R]econsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." *Mohammadi v. Islamic Republic of Iran*, 782 F.3d 9, 17 (D.C. Cir. 2015) (quoting 11 Charles Wright & Arthur Miller, *Federal Practice & Procedure* § 2810.1 (3d ed. 2012)). "Motions under Rule 59(e) are 'disfavored' and the moving party bears the burden of establishing 'extraordinary circumstances' warranting relief from final judgment." *Schoenman v. FBI*, 857 F. Supp. 2d 76, 80 (D.D.C. 2012) (quoting *Niedermeier v. Office of Baucus*, 153 F. Supp. 2d 23, 28 (D.D.C. 2001)).

"A Rule 59(e) motion is discretionary and need not be granted unless the district court finds that there is an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Ciralsky v. CIA*, 355 F.3d 661, 671 (D.C. Cir. 2004) (quoting *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996)). "Manifest injustice," requires a demonstration not only of "clear and certain prejudice to the moving party, but also a result that is fundamentally unfair in light of governing law." *Slate v. Am. Broad. Cos., Inc.*, 12 F. Supp. 3d 30, 35-36 (D.D.C. 2013).

The applicability of general trust law to the relationship between the Five Civilized Tribes and the United States was confirmed in *United States v. Mitchell, II*, 463 US 206 (1983) and reaffirmed in *Cobell v. Babbitt*, 52 F. Supp. 2d 11 (D.D.C. 1999). Plaintiffs here are not only members of the Five Civilized Tribes, they were also the less sophisticated slaves of the Five Civilized Tribes and required greater protection and paternalistic treatment from the United States than the United States admits in *Mitchell* and *Cobell* was accorded by the United States to Plaintiffs' slave masters.

Here, it is respectfully requested that the July 8, 2022 Order be altered or amended due to its departure from basic trust law and the manifest injustice arising therefrom.

Dated: August 5, 2022

s/Percy Squire
Percy Squire, Esq.
341 S. Third St., Suite 10
Columbus, Ohio 43215
[614 224 6528\(T\)](tel:6142246528)
[614 224 6529\(F\)](tel:6142246529)
psquire@sp-lawfirm.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via the Court's electronic filing upon counsel of record August 5, 2022

s/Percy Squire.
Percy Squire, Esq.