

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, <u>et al.</u> ,)	
)	
Plaintiffs,)	No. 1:96CV01285 (RCL)
v.)	
)	
GALE A. NORTON, Secretary of)	
the Interior, <u>et al.</u> ,)	
)	
Defendants.)	

**DEFENDANTS’ RESPONSE TO PLAINTIFFS’ NOTICE THAT INTERIOR
DEFENDANTS CONTINUE TO RETALIATE AGAINST CARMEN PATRICIO**

On September 30, 2005, Plaintiffs filed their Notice that Interior Defendants Continue to Retaliate Against Carmen Patricio (“Third Notice”). Although its title suggests the revelation of recent events, Plaintiffs’ Third Notice merely rehashes allegations that were already disputed by Defendants several months ago. In addition, Plaintiffs use their Third Notice to misleadingly assert that such allegations of retaliation are “undisputed fact,” even though Defendants have already disputed these allegations in filings with this Court.

In their Third Notice, Plaintiffs mischaracterize as “undisputed fact” their allegations that Elizabeth Siow, a realty officer with the BIA Papago Agency, “withheld Ms. Patricio’s trust check,” and also “withheld [Ms. Patricio’s] appraisal.” Third Notice at 2. However, Defendants have already disputed these allegations through the Declaration of Nina Siquieros, filed with the Court on December 14, 2004. See Declaration of Nina Siquieros, attached as Exhibit 1 to Defendants’ Notice Regarding Plaintiffs’ Emergency Notice Regarding Ongoing Retaliation in Violation of This Court’s Orders, at ¶¶ 4-10 (detailing the manner in which Ms. Patricio’s lease payments were disbursed in the ordinary course of business and stating that such disbursement was unrelated to any Court orders in this litigation); Id. at ¶¶ 11-20 (describing the processing of

Ms. Patricio’s appraisal and stating the Papago agency did not retaliate against Ms. Patricio in the handling of her appraisal). Similarly, Plaintiffs label as “undisputed fact[s]” their allegations that Ms. Siow “lied to Ms. Patricio that this Court barred all communications with individual Indian trust beneficiaries” and also that “for more than three months [Ms. Siow] led Ms. Patricio to believe that defendants ‘could not do anything with the land because of Cobell.’” Third Notice at 2. Ms. Siow’s declaration, filed with the Court back on April 1, 2005, rebutted these allegations as well. See Declaration of Elizabeth Siow, attached to Defendants’ Notice Regarding Plaintiffs’ Notice of Further Retaliatory Actions Taken Against Individual Indian Trust Beneficiaries (“Siow Declaration”), at ¶ 3 (Ms. Siow explained to Ms. Patricio that she could either lease or partition her allotment); Id. at ¶ 5 (Ms. Siow explained to Ms. Patricio “on several occasions” that “she must sign either a Notice and Waiver or a Confirmation of Consultation.”); Id. at ¶ 7 (Ms. Siow states “I have not retaliated against Ms. Patricio. I believe that this was a misunderstanding, which I am hopeful was resolved at our meeting with her on March 18, 2005.”). Thus, the facts on which Plaintiffs seek to rely to claim retaliation are anything but “undisputed,” and labeling them so misrepresents the record.

Plaintiffs’ personal attacks on Interior employees continue in their Third Notice as well. They accuse Ms. Siow of perjury and accuse her of maliciously attempting to “trick” Ms. Patricio into waiving her right to consult with counsel during their telephone conversations.¹ Third Notice at 3. That allegation was already rebutted by Ms. Siow’s declaration, which states,

“I explained to Ms. Patricio on several occasions, that before our office may proceed with a

¹ Plaintiffs again resurrect their long failed “defective jurat” argument and simply ignore controlling precedent of the D.C. Circuit – in this case – rejecting that argument. Compare Plaintiffs’ Notice at 2 with Cobell v. Norton, 391 F.3d 251, 260-61 (D.C. Cir. 2004).

land transaction, she must sign either a Notice and Waiver or a Confirmation of Consultation.”² Siow Declaration at ¶ 5. In fact, when Interior employees met with Ms. Patricio on March 18, 2005, Ms. Patricio decided to execute a Confirmation of Consultation form, indicating that she had consulted with counsel concerning her land transaction.³ Siow Declaration at ¶ 6. In any event, this argument is a red herring. The Court’s October 22, 2004 Order explicitly excepts oral communications from the Waiver and Confirmation of Consultation form process and Ms. Siow’s communications with Ms. Patricio were telephone conversations. Cobell v. Norton, 224, F.R.D. 266, 281 (D.D.C. 2004).

Finally, Plaintiffs allege that Ms. Siow retaliated against Ms. Patricio by allegedly giving her incorrect advice, which prevented her from leasing her land. Third Notice at 3-4. In fact, Ms. Siow stated in her April 1, 2005 declaration that she believed there had been a misunderstanding that she was hopeful was resolved by the March 18, 2005 meeting. Siow Declaration at ¶ 7. Indeed, as Plaintiffs acknowledge, Interior employees met with Ms. Patricio on March 18, 2005, to provide her additional assistance in this matter. Id. at ¶ 6; Third Notice at

² Counsel for Defendants also provided both forms to Plaintiffs’ counsel by mail to forward to Ms. Patricio. See Letter from Timothy E. Curley, Trial Attorney, Department of Justice to Dennis M. Gingold, dated March 2, 2005, attached to Defendants’ Notice Regarding Plaintiffs’ Notice of Further Retaliatory Actions Taken Against Individual Indian Trust Beneficiaries (filed April 1, 2005).

³ Although Plaintiffs argue that Ms. Patricio was not aware of her right to consult with counsel prior to March 18, 2005, Plaintiffs’ counsel filed Notices on Ms. Patricio’s behalf in November 2004 and in February 2005, that attached Ms. Patricio’s affidavits on this subject, as well as an affidavit from Geoffrey Rempel that revealed Plaintiffs’ counsel’s office had been conferring with Ms. Patricio on this matter since at least October 2004. See, e.g., Emergency Notice Regarding Ongoing Retaliation in Violation of This Court’s Orders (filed Nov. 15, 2004) (attaching affidavits by Carmen Patricio and Geoffrey Rempel); Plaintiffs’ Notice of Further Retaliatory Actions Taken Against Individual Indian Trust Beneficiaries (filed Feb. 24, 2005) (attaching an affidavit by Carmen Patricio).

4. Regardless of what Ms. Patricio understood as a result of her telephone conversations with Ms. Siow and the March 18, 2005 meeting, those efforts to assist Ms. Patricio hardly establish a case of retaliation. Plaintiffs present no evidence demonstrating that Ms. Siow retaliated against Ms. Patricio.

Dated: October 17, 2005

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that, on October 17, 2005 the foregoing *Defendants' Response to Plaintiffs' Notice That Interior Defendants Continue to Retaliate Against Carmen Patricio* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

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