

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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DISTRICT OF COLUMBIA

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ELOUISE PEPION COBELL, et al.,)
)
Plaintiffs,)
)
v.)
)
GALE A. NORTON, Secretary of the)
Interior, et al.,)
)
Defendants.)

Case No. 1:96CV01285
(Judge Lamberth)

**INTERIOR DEFENDANTS'
MOTION AND MEMORANDUM TO REQUIRE PLAINTIFFS' COMPLIANCE
WITH COURT'S ORDERS CONCERNING "ATTACHMENT C"**

Interior Defendants respectfully move for an order requiring Plaintiffs to (1) remove from their website (Indiantrust.com) all references to "Attachment C" that are covered by the Court's October 18, 2002 Order and the Court's April 11, 2003 Memorandum Opinion and accompanying Order of the same date; and (2) return to Defendants all copies of Attachment C in their possession or control. Defendants' counsel met and conferred with Plaintiffs' counsel and Plaintiffs' counsel stated that Plaintiffs would oppose this motion.

The Memorandum Opinion holds that the Court "elected to maintain the seal on Attachment C" as protected by the deliberative process privilege and concludes that the Court will "strike from the record in this case any references to [the content of Attachment C] in any other filings in this case." Memorandum Opinion at 5, 6 (April 11, 2003). In furtherance of the Memorandum Opinion, on the same date the Court issued an Order (April 11, 2003), which states in part:

ORDERED that the references by plaintiffs' counsel Dennis Gingold to the contents of Attachment C be stricken from the record of the November 5, 2002 hearing in the present case. . . .

ORDERED that references to the contents of Attachment C in plaintiffs' second reply in support of the public disclosure of Attachment C shall be stricken from the record of this case. . . .

ORDERED that section IV(5) of plaintiffs' response to defendants' historical accounting plan for individual Indian money accounts and section IV.E of plaintiffs' motion for order to show cause why Interior defendants and Bert T. Edwards should not be held in civil and criminal contempt shall be stricken from the record in this case.

Id. at 2-4.

In addition to the hearing transcript and the filings expressly referenced in the Order, Plaintiffs' Consolidated Opposition to Defendants' Motions to Strike Plaintiffs' Comments Regarding References to Attachment C "Red-Lined Version" and "Interesting Notes in the Margins that Identify Certain People who Appear to be Attorneys" (Nov. 21, 2002) not only references the content of Attachment C in its title, but quotes the now-stricken comments of Mr. Gingold at the November 5, 2002 court hearing. Plaintiffs' Opposition to Gale Norton's and Aureen Martin's Motion to File under Seal the Declaration of David Longly Bernhardt (Feb. 25, 2003) also refers to the content of Attachment C.

In an effort to avoid unnecessary motion practice, on April 10, 2003, Interior Defendants faxed a letter to Plaintiffs requesting that they "ensure that the offending portions of these documents are removed from your website immediately." Letter from John R. Kresse to Keith M. Harper at 1 (April 16, 2003) (Exhibit "A" attached). Plaintiffs never responded to that letter and did not remove the offending text from their website.

One week later, Interior Defendants again wrote to Plaintiffs seeking compliance with the Court's orders. Letter from John R. Kresse to Keith M. Harper at 1 (April 24, 2003) (Exhibit "B"

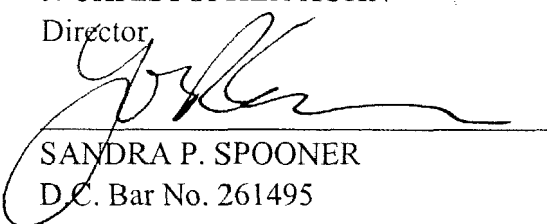
attached). In that letter, Interior Defendants again requested removal of the Attachment C material from Plaintiffs' website, and also requested that Plaintiffs "return [to Defendants' counsel] all copies of Attachment C in Plaintiffs' possession." Id. Again, Plaintiffs did not respond. As of 5:00 p.m. today, none of the offending text had been redacted from the respective documents as posted on Plaintiffs' website, Indiantrust.com. Plaintiffs not only have flouted the Court's Memorandum Opinion and Order, but have failed to protect the seal of Attachment C as required by the Court's October 18, 2002 Order. That first Order concerning Attachment C was the basis for Defendants' motions to strike Plaintiffs' numerous unsealed filings related to Attachment C. In sum, Plaintiffs' at best ignored but more apparently have defied the Court's orders concerning this privileged document. Their defiance should not be tolerated.

For the reasons set forth above, Interior Defendants respectfully request that the Court enter an Order requiring Plaintiffs to immediately remove all documents and references to Attachment C from their website consistent with the Court's October 18, 2002 Order and particularly its April 11, 2003 Order striking such documents and references from the record, together with such other and further relief as to this Court seems appropriate.

May 1, 2003

Respectfully submitted,

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ELLOUISE PEPION COBELL, et al.,
Plaintiffs,
v.
GALE NORTON, Secretary of the Interior, et al.,
Defendants.

ORDER

IT IS FURTHER ORDERED that plaintiffs' consolidated opposition to defendants' motions to

strike plaintiffs' comments regarding references to Attachment C (Nov. 21, 2002) shall be removed from the Plaintiffs' website, Indiantrust.com;

IT IS FURTHER ORDERED that Plaintiffs return to Interior Defendants all copies of Attachment C within Plaintiffs' possession and control;

IT IS FURTHER ORDERED that Plaintiffs delete all electronic versions of Attachment C from all computer storage devices (hard drives, floppy drives, compact discs, etc.) within Plaintiffs' possession and control, including computer backup or "recycle bin" files; and

IT IS FURTHER ORDERED that Plaintiffs take all steps necessary to ensure that they make no further references to the content of Attachment C, unless such references are made under seal.

SO ORDERED this ____ day of _____, 2003.

ROYCE C. LAMBERTH
United States District Judge

cc:

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