The United States Court of Federal Claims

No: 06-294 C
July 19, 2006

Not for Publication

AARON BEN NORTHROP,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

OPINION AND ORDER

Before this court is plaintiff's *pro se* complaint alleging that the defendant breached a tort "settlement agreement" with the plaintiff. Allegedly, plaintiff made an offer to defendant in February 2005 to settle a tort claim for the mere sum of $483,625,000.00. Pl. Comp. ¶¶ 1, 22. The "settlement" offer was mailed to defendant with specific instructions that defendant must accept or reject the offer within six months. Pl. Comp. ¶ 4. According to plaintiff, "as part of the offer, the United States and its agents were all made to understand that their silence and/or failure to respond to the offer would operate as an acceptance . . . ." Pl. Comp. ¶ 5. Plaintiff claims defendant did not respond to the settlement offer by November 2005, at which point plaintiff considered the settlement offer "accepted" by virtue of defendant's silence. Pl. Comp. ¶ 15. Plaintiff now brings a complaint alleging a breach of contract since defendant has not paid the amount specified in the settlement offer.

I. DISCUSSION

Pro se litigants are afforded great leeway in presenting their issues to the court. *See, e.g., Forshey v. Principi*, 284 F.3d 1335, 1357-58 (Fed. Cir. 2002). "An unrepresented litigant should not be punished for his failure to recognize subtle factual or legal deficiencies in his claims." *Hughes v. Rowe*, 449 U.S. 5, 15 (1980). This broad latitude extended to *pro se* litigants does not, however, exempt them from meeting this court's pleading requirements. *Henke v. United States*, 60 F.3d 795, 799 (Fed. Cir. 1995) (noting that the fact a litigant "acted *pro se* in the drafting of his complaint may explain its ambiguities, but it does not excuse its failures"). One such requirement is found in Rules of Court of Federal Claims ("RCFC") 12(b)(6), which requires that the complaint must state a claim upon which relief can be granted.

Dismissal under Rule 12(b)(6) is "appropriate when the facts asserted by the plaintiff do not entitle him to a legal remedy." *Boyle v. United States*, 200 F.3d 1369, 1372 (Fed. Cir. 2000). When considering dismissing a complaint under Rule 12(b)(6), the court "must accept all well-pleaded factual allegations as true and draw all reasonable inferences in [plaintiff's] favor." *Id.* A court "may dismiss *sua sponte* under Rule 12(b)(6), provided that the pleadings sufficiently evince a basis

for that action." *Anaheim Gardens v. United States*, 444 F.3d 1309, 1315 (Fed. Cir. 2006). *Sua sponte* dismissal under Rule 12(b)(6) is warranted "if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Id.* (citing *Hishon v. King & Spalding,* 467 U.S. 69, 73 (1984)).

In this instance, plaintiff's breach of contract claim is premised on defendant's acceptance of the settlement offer. For a contract with the United States to be binding, a showing of unambiguous acceptance is required. *Hometown Fin., Inc. v. United States*, 409 F.3d 1360, 1364 (Fed. Cir. 2005). Plaintiff acknowledges that the only basis he offers for acceptance is defendant's silence—defendant did not respond to plaintiff's offer within six months of plaintiff submitting it. However, against the United States, ratification of an agreement must be based on a demonstrated acceptance of the contract. *Harbert/Lummus Agrifuels Projects v. United States*, 142 F.3d 1429, 1434 (Fed. Cir. 1998). "Silence in and of itself is not sufficient to establish a demonstrated acceptance of the contract . . . ." *Id.*; *see also Radioptics, Inc. v. United States*, 621 F.2d 1113, 1121 (Ct. Cl. 1980) ("Silence may not be construed as an acceptance of an offer in the absence of special circumstances existing prior to the submission of the offer which would reasonably lead the offeror to conclude otherwise.") (citing 1 WILLISTON ON CONTRACTS, § 91 (3d ed. 1957)). Defendant cannot be assumed to have accepted plaintiff's settlement offer simply by not responding to plaintiff within the time plaintiff requested.

Since plaintiff offers no alternative explanation for defendant's acceptance, and since defendant's silence cannot act as acceptance, there is no alternative but for this court to conclude plaintiff's settlement offer was never accepted by defendant. Without acceptance, no binding contract between plaintiff and defendant ever existed. *Hometown Fin.*, 409 F.3d at 1364. Thus, plaintiff is left with no basis for his claim.

II. CONCLUSION

The only proper course of action is for the court to *sua sponte* dismiss the complaint, without prejudice, for failure to state a claim for which relief can be granted. "In order to justify the dismissal of a *pro se* complaint, it must be 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" *Platsky v. CIA*, 953 F.2d 26, 28 (2d Cir. 1991) (quoting *Haines v. Kerner*, 404 U.S. 519, 521 (1972)). That is the case here, as plaintiff's complaint fails to demonstrate the type of facts that might state a claim.

Accordingly, plaintiff's motion for leave to proceed in this court *in forma pauperis* is **GRANTED**. Further, the court *sua sponte* dismisses plaintiff's complaint and directs the clerk of the court to take appropriate action.

It is so ORDERED.

s/ *Lawrence J. Block*
Lawrence J. Block
Judge