United States Court of Federal Claims

No. 10-880 L
September 2, 2011
UNPUBLISHED

Willie L. Williams,

***Plaintiff*,**

v.

United States of America,

***Defendant*.**

Willie L. Williams, *pro se*, plaintiff.

Daniel G. Steele, Environment & Natural Resources Division, Natural Resources Section, United States Department of Justice, Washington, DC, for defendant.

OPINION *and* ORDER

Block, *Judge*.

Pro se plaintiff, Willie L. Williams,[1] brings this suit for a wide array of grievances against the United States. Before the court is defendant's motion to dismiss the complaint for lack of jurisdiction or, in the alternative, for failure to state a claim, pursuant to Rules 12(b)(1) and 12(b)(6) of the Rules of the United States Court of Federal Claims ("RCFC"). After reviewing plaintiff's pleadings the court concludes that plaintiff either fails to state a claim or requests relief beyond the scope of this court's jurisdiction. Therefore, the court grants defendant's motion to dismiss.

I. BACKGROUND

Plaintiff, allegedly a Choctaw Indian and chief of the "Choctaws East of the Mississippi River, Florida" ("Florida Choctaws"),[2] has filed the instant complaint purportedly on behalf of

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[1] Although plaintiff has not submitted a formal application to proceed *in forma pauperis* in accordance with 28 U.S.C. § 1915(a)(1), her complaint includes an apparent request to do so. Plaintiff's request to proceed *in forma pauperis* is GRANTED.

[2] As plaintiff acknowledges, the Florida Choctaws (also referred to by plaintiff as the "Choctaw Nation Tribe of Florida," Pl.'s Sur-Reply at 17–18) are not a federally recognized Indian tribe. *See* Pl.'s Resp. at Ex. 1; *see also* Final Determination Against Federal Acknowledgment of the Choctaw Nation of Florida, 76 Fed. Reg. 23, 621–23 (Apr. 27, 2011).

herself, her predecessors, and the Florida Choctaws. Compl. at 1; *see* Pl.'s Resp. to Def.'s Mot. to Dismiss ("Pl.'s Resp.") at 17; Pl.'s Sur-Reply 17. Therein, plaintiff asserts the following claims for monetary or equitable relief with little or no factual support for such claims.

As regards her claims for monetary compensation, plaintiff first seeks to recover "benefits from . . . [an] Indian Claims Commission" ("ICC")[3] judgment on the "Joseph Chitto Claim."[4] Compl. at 1; *see* Pl.'s Resp. at 19–20. Plaintiff also seeks to recover the Florida Choctaws' portion of an alleged judgment in the amount of "40 million dollars that the Choctaw Indians claimed from the U.S. government." Compl. at 3, Ex. 8 at 18 (citing an Australian newspaper article from 1949).

Additionally, plaintiff seeks compensation allegedly due under treaties executed between 1786 and 1837 for unidentified "reservation land, natural resources," and "goods produced and extracted from" said lands. Compl. at 1–2. More specifically, plaintiff requests compensation for "dispossession of land and waters" on behalf of the Florida Choctaws and three named individuals (Asbury Hunter, Burton Hunter, and Lucy Pope). *Id*. Plaintiff's only factual support for this "dispossession" claim is her reference to the former location of a "Choctaw village" and the locations of six parcels of land that she alleges were "illegal[ly] exact[ed]" between 1920 and 2001. Pl.'s Resp. at 8. Lastly, plaintiff finishes her complaint with two broad requests, the first, for royalties allegedly owed to the Florida Choctaws by the "former colonial power[s,]" "organizations," and "private collectors" for their "use of historical records for financial gain," and the second, for "compensation for war damage to territorial properties" as a remedy for alleged genocide. *Id.* at 2–3.

Plaintiff also asserts a medley of claims requesting general equitable relief ranging from the return of ancestral land, "sacred and cultural objects," and historical records that were "illegally obtained by the former colonial powers[,]" to the removal of pollution left in the Florida Choctaws' land and waters from the "European sponsored wars of domination of the Americas." *Id*. at 1–2. Also included in plaintiff's complaint is a claim against the former "colonial powers" for "character assassination" whereby she states that the Florida Choctaws are "legally and morally entitled to have the truth told" about their "hospitabl[e] and peaceful" nature. *Id*. at 3. Lastly, plaintiff's complaint includes some allegations with unclear remedy requests that primarily recount the alleged historical "ethnocide" and "rape" of the Florida Choctaws by the United States. *Id.* at 1–3.

[3] The ICC was created by Congress in 1946 to hear and settle claims asserted by Indian groups against the United States accruing before August 13, 1946. Act of Aug. 13, 1946, ch. 959, 60 Stat. 1049 (1946). Congress thereafter terminated the ICC and transferred claims still pending to this court's predecessor, the Court of Claims. Act of Oct. 8, 1976, Pub. L. No. 94-465, 90 Stat. 1990 (1976).

[4] In 1954, the ICC awarded compensation, in the amount of $417,656, to Joseph Chitto on a land compensation claim arising out of the Treaty of 1830. *Chitto v. United States*, 3 Ind. Cl. Comm'n 293, 331 (1954). That award, however, was later reversed by this court's predecessor, the Court of Claims. *Chitto v. United States*, 133 Ct. Cl. 643, 661 (1956).

In support of her various claims, plaintiff cites to a hodge-podge of authorities, including several treaties signed by the United States and the Choctaw Nation between 1786 and 1837, two Acts of Congress, various sections of the federal criminal code, and the Fifth Amendment of the United States Constitution. *See* Compl. 1–3; Pl.'s Resp. 8, 19–21 (citing 18 U.S.C. §§ 1091, 1151 in support of her genocide and illegal dispossession claims).

II. DISCUSSION

A. Standards for Jurisdiction and Failure To State a Claim

In considering a motion to dismiss for lack of jurisdiction, the court accepts as true all factual allegations in the complaint and construes them in the plaintiff's favor. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). In doing so, the court construes a *pro se* plaintiff's pleadings with particular leniency. *See Erickson*, 551 U.S. at 94 (confirming that "a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers"). That leniency, however, cannot forgive a *pro se* plaintiff's failure to state a claim upon which relief can be granted[5] and that falls within the court's jurisdiction. *See Henke v. United States*, 60 F.3d 795, 799 (Fed. Cir. 1995). And, in any factual dispute, it is the plaintiff that bears the burden of establishing jurisdiction. *McNutt v. Gen. Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936); *accord Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

The Court of Federal Claims is a court of limited and special jurisdiction. Setting the primary boundary of the court's jurisdiction is the Tucker Act, which grants this court authority to hear any claim against the United States in contract or "upon the Constitution[] or any Act of Congress . . . for liquidated or unliquidated damages in cases not sounding in tort." 28 U.S.C. § 1491(a)(1). The Tucker Act, in combination with the Fifth Amendment,[6] also confers jurisdiction upon this court to hear takings claims. *See United States v. Mitchell*, 445 U.S. 535, 540 n.2 (1980); *Moden v. United States*, 404 F.3d 1335, 1341 (Fed. Cir. 2005). To be sure, important to this case is the Indian Tucker Act which extends the court's jurisdiction to encompass "any claim against the United States accruing after August 13, 1946, in favor of any tribe, band, or other identifiable group of American Indians," when such claim is founded upon "treaties of the United States,[7] or Executive orders of the President." 28 U.S.C. § 1505.

Finally, the Tucker Act's grant of jurisdiction is circumscribed by a statute of limitations, which rescinds jurisdiction over claims that are not filed "within six years after such claim[s]

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[5] RCFC 12(b)(6) provides that a party may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." In order to survive such a motion, the complaint must "contain sufficient factual matter" to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). For a claim to be plausible, it must be supported by sufficient "factual content," not just "labels and conclusions." *Id.*

[6] U.S. Const. amend. V, cl. 4.

[7] Treaties, along with the Constitution and the laws of the United States, are the "supreme law of the land." U.S. Const. art VI, cl. 2.

first accrue[].” 28 U.S.C. § 2501. The Supreme Court considers the time limit imposed by this statute of limitations to be “jurisdictional,” *i.e.*, a threshold requirement, which if not met mandates the court’s dismissal of the case. *See John R. Sand & Gravel v. United States*, 552 U.S. 130, 134 (2008) (explaining that this statute of limitations is similar to subject matter jurisdiction in that it cannot be waived and can be raised *sua sponte* if applicable); *see also* RCFC 12(h)(3) (stating that “the court must dismiss” an action if, at any time, it determines that there is a lack of subject matter jurisdiction).

As explained below, neither the Tucker Act nor the Indian Tucker Act confer jurisdiction upon this court to adjudicate any of plaintiff’s claims.

B. This Court Lacks Jurisdiction To Adjudicate Plaintiff’s Claims

Because of its nature as supreme law of the land, the court turns first to the constitutional dispute here—that over the Fifth Amendment Takings Clause. But the court need not reach the constitutional claims because they suffer from two terminal defects. First, a problem as to who here may assert a claim arises. It is black letter law that *pro se* litigants may only represent themselves (or in some cases their immediate family members). RCFC 83.1(a)(3); *see, e.g.*, *First Hartford Corp. Pension Plan & Trust v. United States*, 194 F.3d 1279, 1291–92 (Fed. Cir. 1999); *C. E. Pope Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987); *Fuselier v. United States*, 63 Fed. Cl. 8, 11 (2004). Here, plaintiff’s *pro se* status prevents her from asserting the alleged claims of the Florida Choctaw Nation or from representing the three individuals regarding their purported takings claims. In other words, plaintiff has no standing to assert these claims. *See Dept. of Labor v. Triplett*, 494 U.S. 715, 720 (1990) (“In the ordinary course, a litigant must assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties.”); *Singleton v. Wulff*, 428 U.S. 106, 113 (1976) (stating that federal courts “should not adjudicate” the rights of third persons not parties to the litigation because the “third parties themselves usually will be the best proponents of their own rights”).

The second fatal problem involves time. These takings claims, whether asserted on behalf of the Florida Choctaws, the three named individuals, or plaintiff herself, are beyond this court’s jurisdiction because they are all time barred. To be sure, the most recent proffered constitutional claim is for an “illegal exaction [commencing in] 2001,” Pl.’s Resp. at 8, which obviously exceeds the six-year statute of limitations, 28 U.S.C. § 2501.

Next, turning to the Indian Tucker Act claims, plaintiff’s claims fail because jurisdiction over treaty disputes between the United States and Indians is expressly limited only to those disputes that have accrued after 1946. 28 U.S.C. § 1505. Plaintiff’s claims on behalf of the Florida Choctaws for land and natural resources are based upon treaties signed between 1786 and 1837. Compl. at 1–3. The Florida Choctaws’ treaty claims necessarily accrued long before 1946 and are thus beyond the scope of this court’s jurisdiction. *See* 28 U.S.C. § 1505; Act of Aug. 13, 1946, ch. 259, § 12, 60 Stat. 1049, 1052 (1946) (providing that any claims existing prior to the date of enactment must be presented to the ICC within five years of enactment and cannot later “be submitted to any court or administrative agency for consideration”).

Furthermore, jurisdiction over these claims dies for another reason. Treaty dispute claims must be brought on behalf of an identifiable group of Indians. *See Fields v. United States*, 423 F.2d 380, 383 (Ct. Cl. 1970) (holding that the Indian Tucker Act did not confer jurisdiction upon this court's predecessor to hear claims brought by individual Indians, but only claims brought by an "identifiable group" of Indians); 28 U.S.C. § 1505. Thus, to the extent that plaintiff asserts her own claims based upon treaties between 1786 and 1837, those individual claims are not viable. Relatedly, any claim that plaintiff asserts under the Act of March 3, 1853, ch. 104, 10 Stat. 226, 227 (1853) (which authorizes the Secretary of the Interior to examine and pay claims under the Treaty of 1830) is no longer feasible because a treaty between the Choctaws and the United States, effective in 1855, settled all claims arising out of prior treaties. *See* Treaty with the Choctaws and Chickasaws ("Treaty of 1855") art. 12, June 22, 1855, 11 Stat. 611, 614.

Turning to claims for compensation from ICC judgments, the court finds that plaintiff's claim based on the Australian newspaper article most likely refers to the ICC's judgment in *Chitto*, 3 Ind. Cl. Comm'n 293.[8] However, this court's predecessor reversed the ICC's judgment on the *Chitto* claim. *Chitto*, 133 Ct. Cl. at 661. Nevertheless, even assuming *arguendo* that the judgment had not been reversed, this court would still lack jurisdiction over plaintiff's claim for compensation from the ICC's judgment because Congress has not approved the distribution of funds to plaintiff. *See Timbisha Shoshone Tribe v. Salazar*, 766 F. Supp. 2d 175, 185–86 (D.D.C. 2011) (detailing the extent of Congress's "plenary power over Indian property and especially distribution of ICC judgment funds").

Plaintiff also presents omnibus claims that are equitable in nature and thus beyond this court's jurisdiction. *See, e.g.*, *United States v. Testan*, 424 U.S. 392, 398 (1976) (explaining that the Tucker Act does not grant jurisdiction over claims requesting equitable relief). Thus, the court cannot grant plaintiff's request for the Florida Choctaws' land to be returned to trust. (Furthermore, such relief is solely reserved for the Secretary of the Interior to administer. *See* 25 U.S.C. § 465 (conferring broad discretion upon the Secretary of the Interior to acquire land in trust for Indians); 25 C.F.R. § 151.12 (stating that the "Secretary shall review all requests" from Indians for land acquisition)).

Indeed, the court "has no power 'to grant affirmative non-monetary relief unless it is tied and subordinate to a money judgment.'" *James v. Caldera*, 159 F.3d 573, 580–81 (Fed. Cir. 1998) (quoting *Austin v. United States*, 206 Ct. Cl. 719, 723 (1975)). Here, claims such as those for dispossession and use of historical records and cultural artifacts, or for environmental damage and character assassination, *see* Compl. at 1–3; Pl.'s Resp. at 8, are claims for equitable relief and cannot be considered "tied and subordinate to a money judgment," *Caldera*, 159 F.3d at 580–81.

It is for this same reason that the court finds that it cannot grant relief in regards to plaintiff's allegations of genocide, "ethnocide," and rape. This is true regardless of whether plaintiff styles these claims as torts or crimes, which the court assumes is her intent by citing federal criminal code sections 1091 and 1151. *See* Pl.'s Resp. at 19–21 (citing 18 U.S.C. §§ 1091, 1151). Reaching this conclusion is inevitable because "the court has no jurisdiction to

[8] The newspaper article refers to a Joseph Chitto pursuing a claim at the ICC for unfulfilled treaty obligations. *See* Compl., Ex. 8 at 18.

adjudicate any claims whatsoever under the federal criminal code," *Joshua v. United States*, 17 F.3d 378, 379 (Fed. Cir. 1994), and because the Tucker Act clearly states that this court does not have jurisdiction over tort cases, 28 U.S.C. § 1491(a)(1).

Lastly, the court addresses plaintiff's request for royalties. In the instant case, plaintiff's request for royalties rests entirely upon the statement that historical records were "illegally obtained by former colonial powers." Compl. at 2. At a minimum, however, pleadings must include more than "an unadorned, the defendant-unlawfully-harmed-me accusation." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (explaining the need for factual support of claims under Rule 8 of the Federal Rules of Civil Procedure, which are virtually identical to the RCFC). This means that, in order to survive a motion to dismiss for failure to state a claim, a complaint must provide sufficient "factual content" to establish the plausibility of the defendant's liability, not just "labels and conclusions." *Ashcroft*, 129 S. Ct. at 1949. Here, however, plaintiff does not provide or even allege any facts to support her bare assertion that the former colonial powers "illegally obtained" historical records from the Florida Choctaws. *See* Compl. at 2. Therefore, plaintiff's royalty request must be dismissed for failure to state a claim, pursuant to RCFC 12(b)(6).

III. CONCLUSION

For the foregoing reasons, defendant's MOTION to dismiss the complaint for lack of jurisdiction and for failure to state a claim is GRANTED. Also, plaintiff's "MOTION for clarity" and her "MOTION to compel judgment" are DENIED AS MOOT. The Clerk is directed to take the necessary steps to dismiss this matter.

IT IS SO ORDERED.

Lawrence J. Block
Judge