

In the United States Court of Federal Claims

No. 09-030

Filed: August 3, 2009

UNPUBLISHED

*
FRANK BAFFORD, *
*
Plaintiff, *
*
v. *
*
THE UNITED STATES, *
*
Defendant. *
*

Frank Bafford, Plaintiff, *pro se*.

Richard Schroeder, United States Department of Justice, Civil Division, Washington, D.C., for Defendant.

MEMORANDUM OPINION AND FINAL ORDER

BRADEN, *Judge*.

I. RELEVANT FACTUAL BACKGROUND. ¹

In 2006, Plaintiff filed a Complaint in the United States District Court for the Middle District of Florida, alleging that the Township Apartments Association (“Township Apartments”) and other entities violated 42 U.S.C. §§ 1981, 1982, because Township Apartments did not sell certain property to Plaintiff despite a prior agreement. *See Bafford v. Township Apartments Assoc., et al.*, No. 06-00657-CV-T-27-TGW (M.D. Fla. Apr. 12, 2006) (“*Township*”); *see also* Pl. Ex. 7 at 1. As early as July 2008 in the *Township* litigation, Plaintiff took issue with being unable to access, as a *pro se* litigant, the court’s electronic docketing system, CM/ECF. *See* Compl. ¶¶ 3-9; *see also* Pl. Ex. 2, 4. Plaintiff submitted several motions requesting that the United States District Court for the Middle District of Florida enter an order allowing Plaintiff to access the CM/ECF system. *See* Pl. Ex. 2, 3. All such motions were denied by the court. *See* Pl. Ex. 4. Ultimately, the United States District Court for the Middle District of Florida dismissed the 2006 Complaint and prohibited

¹ The facts recited herein were derived from the January 14, 2009 Complaint (“Compl.”) and Plaintiff’s Exhibits In Support (“Pl. Ex. 1-13”).

Plaintiff from submitting other filings in that court related to the *Township* case. See Pl. Ex. 8 at 1; Compl. ¶ 10.

In 2008, Plaintiff appealed the denial of CM/ECF access to the United States Court of Appeals for the Eleventh Circuit. See Pl. Ex. 2. On October 1, 2008, the United States Court of Appeals for the Eleventh Circuit denied Plaintiff's appeal and ordered the clerk not to accept any additional filings from Plaintiff on this issue, because the appeal was closed. See Pl. Ex. 6.

II. PROCEDURAL HISTORY.

On January 14, 2009, Plaintiff filed a *pro se* Complaint in the United States Court of Federal Claims against the United States District Court for the Middle District of Florida and the United States Court of Appeals for the Eleventh Circuit, alleging a Fifth Amendment takings claim regarding Plaintiff's property rights at issue in *Township* as well as a Fifth Amendment Due Process claim and First Amendment claim challenging the denial of access to CM/ECF. See Compl. ¶¶ 5, 10, Prayer 1. The January 14, 2009 Complaint requests: five million dollars in compensation for the alleged constitutional violations, an order requiring that all communications concerning access to court technology include information on *pro se* access, and an order requiring the development of court technology guidelines and procedures to be approved by the United States Court of Federal Claims. *Id.* ¶ 9. In addition, the January 14, 2009 Complaint requests that the court grant Plaintiff property rights and damages in *Township* or, in the alternative, a new trial. *Id.* ¶¶ 1, Prayer 2.

On January 14, 2009, Plaintiff also filed an Application To Proceed *In Forma Pauperis*, that was granted on February 3, 2009. On February 20, 2009, Plaintiff filed an Emergency Motion To End Litigation ("Pl. Emer. Mot."), which states that Plaintiff's CM/ECF accessibility claims are barred by *res judicata*, because the United States Court of Federal Claims has decided that CM/ECF should be accessible to all parties and that the court does not have jurisdiction because of a prior "state court agreement" involving Township Apartments. See Pl. Emer. Mot. at 1. On March 5, 2009, the Government filed a Response.

On March 13, 2009, the Government filed a Motion To Dismiss ("Gov't Mot."), pursuant to both Rule 12(b)(1) and Rule 12(b)(6) of the Rules of the United States Court of Federal Claims ("RCFC"). On March 24, 2009, Plaintiff filed a Response, together with a Second Emergency Motion To Grant Emergency Motion To End Litigation ("Pl. Resp."). On March 25, 2009, Plaintiff filed a Motion To Transfer to the United States District Court for the Middle District of Florida ("Pl. Mot."). On March 30, 2009, Plaintiff filed an Additional Response To Defendant's Motion To Dismiss ("Pl. Add'l Resp."). On April 6, 2009, the Government filed a Reply, together with a Response To Defendant's Motion To Transfer ("Gov't Reply").

On May 14, 2009, Plaintiff filed a Notice Of Validity, reasserting the allegations in the January 14, 2009 Complaint.

III. DISCUSSION.

A. Jurisdiction.

The United States Court of Federal Claims has jurisdiction under the Tucker Act, 28 U.S.C. § 1491, “to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.” 28 U.S.C. § 1491(a)(1). The Tucker Act, however, is “a jurisdictional statute; it does not create any substantive right enforceable against the United States for money damages . . . the Act merely confers jurisdiction upon [the United States Court of Federal Claims] whenever the substantive right exists.” *United States v. Testan*, 424 U.S. 392, 398 (1976) (citations omitted). Therefore, to pursue a substantive right under the Tucker Act, a plaintiff must identify and plead an independent contractual relationship, constitutional provision, federal statute, and/or executive agency regulation that provides a substantive right to money damages. *See Todd v. United States*, 386 F.3d 1091, 1094 (Fed. Cir. 2004) (“[J]urisdiction under the Tucker Act requires the litigant to identify a substantive right for money damages against the United States separate from the Tucker Act[.]”); *see also Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (*en banc*) (“The Tucker Act . . . does not create a substantive cause of action; in order to come within the jurisdictional reach and the waiver of the Tucker Act, a plaintiff must identify a separate source of substantive law that creates the right to money damages. In the parlance of Tucker Act cases, that source must be ‘money-mandating.’”) (citations omitted).

B. Standard For Decision On A Motion To Dismiss, Pursuant To RCFC 12(b)(1).

A challenge to the “[United States Court of Federal Claims’] general power to adjudicate in specific areas of substantive law . . . is properly raised by a [Rule] 12(b)(1) motion[.]” *Palmer v. United States*, 168 F.3d 1310, 1313 (Fed. Cir. 1999); *see also* RCFC 12(b)(1) (“Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter[.]”). When considering whether to dismiss an action for lack of subject matter jurisdiction, the court is “obligated to assume all factual allegations to be true and to draw all reasonable inferences in plaintiff’s favor.” *Henke v. United States*, 60 F.3d 795, 797 (Fed. Cir. 1995). Nonetheless, the plaintiff bears the burden of establishing jurisdiction by a preponderance of the evidence. *See Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988) (“[O]nce the [trial] court’s subject matter jurisdiction [is] put in question . . . [plaintiff] bears the burden of establishing subject matter jurisdiction by a preponderance of the evidence.”).

C. Standard For Decision On A Motion To Dismiss, Pursuant To RCFC 12(b)(6).

Although a complaint “attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the grounds of entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). In order to survive a motion to dismiss, however, the court “[does] not requir[e] heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570; *see also* RCFC 12(b)(6) (“Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted[.]”).

When reviewing a motion to dismiss for failure to state a claim upon which relief may be granted, the court should “begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1950 (2009). Legal conclusions must be supported by factual allegations. *Id.* “When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Id.*

D. Pleading Requirements Of A *Pro Se* Plaintiff.

The pleadings of a *pro se* plaintiff are held to a less stringent standard than those of litigants represented by counsel. *See Hughs v. Rowe*, 449 U.S. 5, 9 (1980) (*Pro se* complaints, “however inartfully pleaded,” are held to “less stringent standards than formal pleadings drafted by lawyers.”) (internal quotation and citation omitted). Indeed, it has been the tradition of this court to examine the record “to see if [a *pro se*] plaintiff has a cause of action somewhere displayed.” *Ruderer v. United States*, 412 F.2d 1285, 1292 (Ct. Cl. 1969). Nevertheless, while the court may excuse ambiguities in a *pro se* plaintiff’s complaint, the court “does not excuse [a complaint’s] failures.” *Henke*, 60 F.3d at 799.

E. The Government’s March 13, 2009 Motion To Dismiss.

1. The Parties’ Arguments.

a. The Government’s Argument.

The Government moves to dismiss Plaintiff’s January 14, 2009 Complaint, pursuant to RCFC 12(b)(1). *See* Gov’t Mot. at 4. The Tucker Act limits the court’s jurisdiction to claims against the United States based on a statutory or constitutional provision that mandates compensation. *See* 28 U.S.C. § 1491. The January 14, 2009 Complaint alleges that the Government violated the Due Process Clause of the United States Constitution and denied Plaintiff equal access to the courts, because the United States District Court for the Middle District of Florida and the

United States Court of Appeals for the Eleventh Circuit ruled that Plaintiff, as a *pro se* litigant, could not access the CM/ECF system. *See* Gov't Mot. at 2, 4. The Due Process Clause, however, is not money-mandating. *Id.* at 4.

The Government also argues that the court does not have jurisdiction to adjudicate the January 14, 2009 Complaint's Fifth Amendment takings claim regarding CM/ECF system access, because CM/ECF is not Plaintiff's private property. *Id.* at 5. Nor does the January 14, 2009 Complaint allege any other facts on which a takings claim would lie. *Id.* Denial of access to CM/ECF, "if anything, would be an alleged due process violation, which . . . is beyond the scope of this [c]ourt's jurisdiction." *Id.* In the alternative, the Government argues that Plaintiff's Fifth Amendment takings claim should be dismissed, pursuant to RCFC 12(b)(6). *Id.* at 7. The January 14, 2009 Complaint does not allege that Plaintiff had any legal interest in the CM/ECF, or that this "property" was taken for public use. *Id.* Accordingly, the January 14, 2009 Complaint fails to state a claim under RCFC 12(b)(6). *Id.*

The January 14, 2009 Complaint also alleges that the Government violated Plaintiff's First Amendment right to redress when the United States District Court for the Middle District of Florida directed the Clerk to accept no further filings from Plaintiff in the underlying matter. *Id.* at 6. The United States Court of Federal Claims does not have jurisdiction to review the decisions of the United States District Courts or their appellate forums. *See Maracalin v. United States*, 52 Fed. Cl. 736, 741 (2002) (citing *Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994)). Therefore, Plaintiff's First Amendment claim must be dismissed, pursuant to RCFC 12(b)(1).

b. Plaintiff's Response.

Plaintiff responds that since less stringent pleading standards are afforded to *pro se* litigants, the court should construe the January 14, 2009 Complaint as stating a claim upon which relief can be granted. *See* Pl. Resp. at 1. The United States Court of Federal Claims has an obligation to "construe [*pro se*] pleadings liberally," to "construe the facts in the complaint in the light most favorable to Plaintiff," and to "accept any undisputed allegations of fact as true." *Id.*

Plaintiff argues that the United States Court of Federal Claims has jurisdiction "through the Tucker Act and the Fifth Amendment Takings Clause." *Id.* The United States District Court for the Middle District of Florida's dismissal of Plaintiff's property claim in *Township* amounted to a taking, which was exacerbated by the United States District Court for the Middle District of Florida's Fifth Amendment Due Process violation, *i.e.*, preventing Plaintiff from accessing the CM/ECF system. *Id.* The Government's violation of the Fifth Amendment's Takings Clause triggers the Fifth Amendment's Just Compensation Clause, a money-mandating provision that requires the Government to pay Plaintiff for failing to acknowledge Plaintiff's property rights in *Township*. *Id.* at 2. Therefore, the United States Court of Federal Claims has jurisdiction to hear this claim, because it is against the United States and is based on a constitutional money-mandating provision. *Id.* at 1. Plaintiff adds, however, that "[m]oney damages are not adequate, as the property [at issue in *Township*] is unique and the awarding of the property is the only just compensation." *Id.* at 2.

Plaintiff also raises a 42 U.S.C. § 1983 claim in the March 30, 2009 Additional Response. *See* Pl. Add'l Resp. at 1. Plaintiff argues that the United States District Court for the Middle District of Florida's decision to deny Plaintiff access to CM/ECF violates Section 1983, a money-mandating provision. *Id.* Furthermore, Plaintiff urges the court to "ignore all district court determinations," as they are void. *Id.* Instead, the court should defer to the state court agreement acknowledging Plaintiff's property rights because the United States District Court for the Middle District of Florida lacked jurisdiction. *Id.*

c. The Government's Reply.

The Government replies that "Fifth Amendment due process and equal protection claims are not 'a sufficient basis for jurisdiction because they do not mandate payment of money by the government[.]'" *See* Gov't Reply at 2 (quoting *LeBlanc v. United States*, 50 F.3d 1025, 1028 (Fed. Cir. 1995)). In addition, the United States Court of Federal Claims does not have jurisdiction to review decisions of the United States District Court for the Middle District of Florida or the United States Court of Appeals for the Eleventh Circuit. *Id.* at 3.

Moreover, Plaintiff's Fifth Amendment takings claim fails to allege sufficient facts upon which relief may be granted. *Id.* The January 14, 2009 Complaint does not allege that Plaintiff had a property interest or that a taking has occurred. *Id.*

As for the claim asserted under 28 U.S.C. § 1983 in Plaintiff's March 30, 2009 Additional Response, only the United States District Courts have jurisdiction to adjudicate such claims. *Id.* at 4 (citing *Schweitzer v. United States*, 82 Fed. Cl. 592, 596 (2008); *Stamps v. United States*, 73 Fed. Cl. 603, 609-10 (2006); *Anderson v. United States*, 22 Cl. Ct. 178, 179 (1990)).

2. The Court's Resolution.

a. The United States Court Of Federal Claims Does Not Have Jurisdiction To Adjudicate Claims Arising Under The Fifth Amendment Due Process Clause.

Plaintiff asserts that the United States District Court for the Middle District of Florida and the United States Court of Appeals for the Eleventh Circuit violated Plaintiff's Fifth Amendment Due Process rights and denied him equal access to the courts because of their failure to provide Plaintiff with access to CM/ECF. *See* Compl. ¶ 5. In addition, the Government violated Plaintiff's Fifth Amendment Due Process rights when the United States District Court for the Middle District of Florida entered an order directing the clerk to reject any further filings regarding Plaintiff's CM/ECF access claims. *Id.* ¶ 10. Under the Tucker Act, the United States Court of Federal Claims has jurisdiction over claims based on constitutional violations when the constitutional provision obligates the Government to pay money damages. *See* 28 U.S.C. § 1491(a)(1). The Due Process Clause of the Fifth Amendment, however, does not create a right to money damages. *See* U.S. CONST. amend. V; *see also* *Collins v. United States*, 67 F.3d 284, 288 (Fed. Cir. 1995) ("[T]he [D]ue

[P]rocess [C]lause does not obligate the [G]overnment to pay money damages.”) Accordingly, the United States Court of Federal Claims does not have jurisdiction over Plaintiff’s Fifth Amendment Due Process claim and therefore must dismiss the claim for lack of subject matter jurisdiction. *See James v. Caldera*, 159 F.3d 573, 581 (Fed. Cir. 1998) (holding that it is “well established” that the United States Court of Federal Claims does not have jurisdiction over Due Process claims, as the Due Process Clause is not a money-mandating provision).

b. The United States Court Of Federal Claims Does Not Have Jurisdiction To Adjudicate Claims Arising Under The First Amendment.

Plaintiff alleges that the Government violated the First Amendment right to redress when the United States District Court for the Middle District of Florida ordered the clerk to reject further filings regarding Plaintiff’s access to the CM/ECF system. *See* Compl. ¶ 10. As stated above, the Tucker Act confers jurisdiction over constitutional claims, but only when they obligate the Government to pay money damages. *See* 28 U.S.C. § 1491(a)(1). The First Amendment is not money-mandating. *See United States v. Connolly*, 716 F.2d 882, 887 (Fed. Cir. 1983) (“[T]he literal terms of the [F]irst [A]mendment neither explicitly nor implicitly obligate the federal government to pay damages.”). Therefore, the United States Court of Federal Claims does not have subject matter jurisdiction over Plaintiff’s First Amendment right to redress claim, which must be dismissed as a matter of law. *Id.* at 887-88.

c. The January 14, 2009 Complaint Has Failed To State A Claim Under The Fifth Amendment Takings Clause.

The January 14, 2009 Complaint requests that the court “grant [Plaintiff] property rights and damages against the Defendants in Case No: 06-00657-CV-T-27-TGW,” because “[t]he Fifth Amendment forbids the refusing of property rights by the government based on void and illegal determinations.” Compl. ¶ Prayer 1. The court reads the Complaint as alleging that the Government took Plaintiff’s property (the apartment complexes at issue in *Township*) when the United States District Court for the Middle District of Florida found that Plaintiff did not have a property interest in them. This claim, however, must be dismissed, pursuant to RCFC 12(b)(6).

The Takings Clause of the Fifth Amendment provides that “private property [shall not] be taken for public use, without just compensation.” U.S. CONST. amend. V. Thus, a claimant alleging a Fifth Amendment takings claim in the United States Court of Federal Claims “must show that the United States, by some specific action, took a private property interest for public use without just compensation.” *Short v. United States*, 50 F.3d 994, 1000 (Fed. Cir. 1995). The United States Court of Appeals for the Federal Circuit has developed a two-part test to evaluate takings claims. *See Am. Pelagic Fishing Co., L.P. v. United States*, 379 F.3d 1363, 1372 (Fed. Cir. 2004). First, “as a threshold matter, the court must determine whether the claimant has established a property interest for purposes of the Fifth Amendment.” *Id.* “If the claimant fails to demonstrate the existence of a legally cognizable property interest, the court[’]s task is at an end.” *Id.* Second, “after having

identified a valid property interest, the court must determine whether the government action at issue amounted to a compensable taking of that property interest.” *Id.*

The January 14, 2009 Complaint does not satisfy the pleading requirements for a Fifth Amendment takings claim because it fails to allege that Plaintiff had any property interest in the property at issue in *Township*. See Compl. ¶ 10; Pl. Ex. 11. In fact, the United States District Court for the Middle District of Florida’s decision held that Plaintiff had no property interest in the *Township* apartment complexes because of the sale to a party other than Plaintiff. See Compl. ¶ Prayer 1. Accordingly, Plaintiff’s Complaint fails to state a claim upon which relief can be granted. See *Am. Pelagic Fishing Co.*, 379 F.3d at 1372.

The January 14, 2009 Complaint also asks the court to review the decision of the United States District Court for the Middle District of Florida See Compl. ¶ Prayer 1. The United States Court of Federal Claims, however, does not have such jurisdiction. See 28 U.S.C. § 1491; see also *Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994) (“[T]he [United States] Court of Federal Claims does not have jurisdiction to review the decisions of district courts or the clerks of district courts relating to proceedings before those courts.”).

F. Plaintiff’s March 25, 2009 Motion To Transfer.

1. The Parties’ Arguments.

a. Plaintiff’s Argument.

In the event that this court determines that it does not have jurisdiction over the January 14, 2009 Complaint, Plaintiff requests that the court transfer this action to the United States District Court for the Middle District of Florida, pursuant to 28 U.S.C. § 1631. See Pl. Mot. at 1. In support, Plaintiff argues that the United States District Court for the Middle District of Florida’s decision in *Township* is “void for violating the Full Faith and Credit Act [and] the Rooker-Feldman Doctrine,” and that the United States District Court for the Middle District of Florida maintains jurisdiction to assess damages in *Township*, pursuant to 42 U.S.C. §§ 1981-1982. *Id.* Therefore, Plaintiff requests that the court issue an order: (i) holding that the United States District Court for the Middle District of Florida acted without jurisdiction and that the proceedings in *Township* are void, and (ii) directing the United States District Court for the Middle District of Florida to award Plaintiff property rights and damages. *Id.*

b. The Government’s Argument.

The Government responds that Plaintiff cannot transfer this case under 28 U.S.C. § 1631, unless: (1) “the transferor court lacks subject matter jurisdiction;” (2) “at the time the case was filed, it could have been brought in the transferee court;” and (3) “such transfer is in the interest of justice.” See Gov’t Reply at 5 (citing *Matthews v. United States*, 72 Fed. Cl. 274, 280 (2006)). The second element of the 28 U.S.C. § 1631 test is not satisfied here, as Plaintiff could not have filed this action

in the United States District Court for the Middle District of Florida since that court already entered a final judgment on the merits of Plaintiff's CM/ECF claims. *Id.* "The fact that [the United States District Court for the Middle District of Florida and the United States Court of Appeals for the Eleventh Circuit] have barred [Plaintiff] from making additional filings further establishes that this case could not have been brought in the district court at the time it was filed in [the United States Court of Federal Claims]." *Id.* at 5-6. For these reasons, it would not be in the interest of justice to transfer the case to the United States District Court for the Middle District of Florida. *Id.* at 5. Therefore, Plaintiff's Motion To Transfer should be denied. *Id.* at 6.

2. The Court's Resolution.

Section 1631 of Title 28 of the United States Code provides that if a court does not have jurisdiction it "shall, if it is in the interest of justice, transfer such action . . . to any other such court in which the action . . . could have been brought at the time it was filed." 28 U.S.C. § 1631. The court does not have jurisdiction to adjudicate Plaintiff's Fifth Amendment Due Process and First Amendment claim regarding the CM/ECF system. Transferring Plaintiff's CM/ECF access claims is unnecessary, however, because a final judgment denying those claims has been entered. *See* Pl. Ex. 4, 6. Therefore, Plaintiff's transfer request is denied, because Plaintiff's CM/ECF claims could not have been brought in the transferee court, and the transfer of such claims would not be "in the interest of justice." *See* 28 U.S.C. § 1631. In addition, because Plaintiff's Fifth Amendment takings claim was dismissed for failure to state a claim, that claim is not eligible for transfer under Section 1631. *See* 28 U.S.C. § 1631 (when a "court finds that there is *a want of jurisdiction*, the court shall, if it is in the interest of justice, transfer such action . . . to any other such court in which the action . . . could have been brought at the time it was filed") (emphasis added).

IV. CONCLUSION.

For the above reasons, the Government's March 13, 2009 Motion To Dismiss is granted. Plaintiff's March 25, 2009 Motion To Transfer is denied. The Clerk of the Court for the United States Court of Federal Claims is directed to dismiss Plaintiff's January 14, 2009 Complaint.

IT IS SO ORDERED.

SUSAN G. BRADEN
Judge