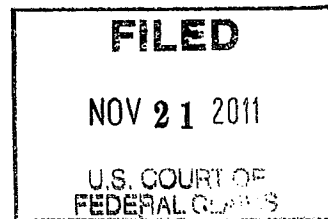


In the United States Court of Federal Claims

No. 11-176 C  
(Filed November 21, 2011)



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PERRY L. BROCK D/B/A \*  
MACHINE TECHNOLOGIES, \*

*Plaintiff,* \*

v. \*

THE UNITED STATES, \*

*Defendant.* \*

\*\*\*\*\*

**ORDER**

On August 29, 2011, defendant filed a motion to dismiss the second amended complaint in this case pursuant to Rule 12(b)(1) and Rule 12(b)(6) of the Rules of the United States Court of Federal Claims (RCFC). In its motion, defendant argues that the claims set forth in the second amended complaint are beyond the subject matter jurisdiction of this court, and that plaintiff has also failed to state a claim upon which relief can be granted.

On September 29, 2011, defendant filed a motion with the court in which it requested a thirty-day suspension of further proceedings in this case. In support of that motion, the government stated that some of the claims raised by plaintiff in the second amended complaint may in fact be within this court's jurisdiction. Defendant sought a suspension of proceedings for the purpose of conducting an investigation into those claims. In an order dated October 11, 2011, this court granted defendant's motion, stayed all proceedings in this case, and ordered defendant to file a status report informing the court as to whether defendant intends to resume briefing of its pending motion.

On October 26, 2011, defendant filed a status report, which indicates that, contrary to the arguments set forth in defendant's pending motion to dismiss, one of the claims set forth in the complaint is within the subject matter jurisdiction of

this court. For that reason, defendant requests that the court afford defendant forty-five days in which to file a comprehensive dispositive motion in this case and allow plaintiff an equal amount of time in which to file a response to that motion.

On November 14, 2011, the Clerk's Office received a submission from plaintiff entitled "Motion for Sanctions." The Clerk's Office stated that the motion was defective because all proceedings in this matter were stayed on October 4, 2011 until further order of the court.

In his motion for sanctions, plaintiff appears to argue that defendant's motion to dismiss contained fraudulent statements, and that defendant should not now be permitted to withdraw that motion. For that reason, plaintiff requests that the court impose sanctions upon defendant and defendant's counsel pursuant to RCFC 11(c). In addition, plaintiff requests a default judgment against defendant pursuant to RCFC 55. Finally, plaintiff presents a number of arguments related to this court's subject matter jurisdiction as well as the merits of certain of his claims. Plaintiff's motion for sanctions shall be filed by leave of the court and denied for the following reasons.

In its pending motion to dismiss, the government argues that this court is without subject matter jurisdiction over Mr. Brock's contract claims because he failed to meet the exhaustion requirements of the Contract Disputes Act (CDA), 41 U.S.C. §§ 601-613 (2006) (current version at 41 U.S.C. §§ 7101-7109). The submission of a claim to the contracting officer, and the subsequent denial of that claim, are jurisdictional prerequisites to a suit in this court under the CDA. *See England v. Swanson Group, Inc.*, 353 F.3d 1375, 1379 (Fed. Cir. 2004). Following the submission of the second amended complaint, the government concluded that Mr. Brock had not met the exhaustion requirements of the CDA. Upon its examination of the documents attached to Mr. Brock's response to the motion to dismiss, however, the government conceded that this court does in fact possess jurisdiction over a contract claim raised in the second amended complaint. For that reason, the government seeks to withdraw its initial motion to dismiss and proceed to the merits of Mr. Brock's contract claim.

Because the submission of a claim to the contracting officer and the denial of that claim are jurisdictional prerequisites to any subsequent suit under the CDA

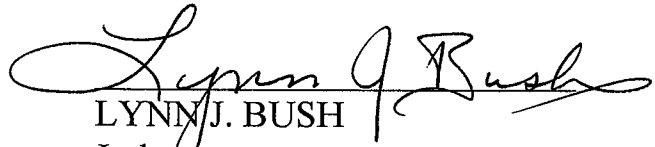
in this court, Mr. Brock has the burden of demonstrating the existence of both. *See Alder Terrace, Inc. v. United States*, 161 F.3d 1372, 1377 (Fed. Cir. 1998) (holding that the plaintiff bears the burden of establishing this court's subject matter jurisdiction). However, Mr. Brock failed to attach to his complaint any claim submitted to the contracting officer or any final decision denying that claim. Instead, he attached a number of documents to his response to defendant's motion to dismiss. Those documents, submitted two weeks after defendant filed its motion to dismiss, persuaded the government that its initial assessment of this court's subject matter jurisdiction over one of Mr. Brock's claims was incorrect. In other words, the government's misapprehension of the court's jurisdiction over Mr. Brock's claims is attributable not to any fraudulent conduct by defendant, but to Mr. Brock's failure to establish – or even coherently allege – the existence of a claim and its denial by the contracting officer in his complaint. Rule 11 sanctions are wholly inappropriate in this case, at least with respect to the government.

Even if Mr. Brock had attached the purported claim and denial to his second amended complaint, moreover, the subsequent submission of a motion to dismiss that complaint for lack of subject matter jurisdiction would not be “fraudulent.” In his prior case before this court, for example, Mr. Brock asserted that he satisfied the exhaustion requirements of the CDA, and he attached a number of purported “claims” to his complaint and to his other submissions to the court. However, the court held that Mr. Brock had not in fact submitted a proper claim for purposes of the CDA. *See Brock v. United States*, No. 09-384C, slip op. 16 (April 6, 2010). In that case, the allegations set forth in the complaint were not fraudulent; they were simply incorrect. In the early stages of litigation, it is not always clear whether a contractor has submitted a proper claim to the contracting officer or whether the contracting officer has rendered a final decision denying the claim. Mere disagreement as to whether a particular document constitutes a claim for purposes of the CDA is not the type of conduct subject to sanctions under Rule 11.

Finally, the court denies Mr. Brock's request for a default judgment pursuant to RCFC 55 because he has not demonstrated that he is entitled to a judgment against the government, nor has the government failed to respond to the second amended complaint. *See RCFC 55(a)*.

For the foregoing reasons, and for good cause shown, it is hereby **ORDERED** that:

- (1) The Clerk's Office is directed to **LIFT** the existing stay of proceedings in this matter;
- (2) The Clerk's Office is directed to **FILE** plaintiff's submission as **Plaintiff's Motion for Sanctions** as of the date of this order;
- (3) Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint, filed August 29, 2011, is **DENIED**;
- (4) Plaintiff's Motion for Sanctions, filed November 21, 2011, is **DENIED**;
- (5) Defendant shall **FILE** a **Dispositive Motion**, on or before **January 6, 2012**;
- (6) Plaintiff shall **FILE** his **Response** to defendant's dispositive motion, on or before **February 24, 2012**; and
- (7) Defendant shall **FILE** its **Reply**, if any, in accordance with the rules of this court.

  
LYNN J. BUSH  
Judge