

In the United States Court of Federal Claims

No. 07-319C

Filed: October 31, 2007

NOT FOR PUBLICATION

TERRY A. JONES,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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Federal Torts Claims Act,

28 U.S.C. § 1346(b)(1);

Jurisdiction;

Pro Se;

Summary Judgment;

Tucker Act, 28 U.S.C. § 1491;

42 U.S.C. § 1983;

RCFC 12(b)(1).

Terry Allen Jones, Houston, Texas, *pro se*.

William P. Rayel, United States Department of Justice, Civil Division, Washington, D.C., counsel for Defendant.

MEMORANDUM OPINION AND FINAL ORDER

BRADEN, *Judge*.

I. RELEVANT FACTUAL BACKGROUND AND PROCEDURAL HISTORY.

On May 25, 2007, Plaintiff filed a Complaint in the United States Court of Federal Claims alleging various torts and/or criminal violations and seeking \$10 million in damages. *See* Compl. at 17. On July 18, 2007, the Government filed a Motion to Dismiss. Plaintiff failed to respond.

The Complaint alleges that employees of the United States, acting within the scope of their official duties, engaged in a variety of tortious acts against Plaintiff. Specifically, the Complaint alleges that the following individuals attempted to kill Plaintiff at the direction of the Government: an employee at Diehl BGT Defense Plant in Ueberlingen, Germany; a Pennsylvania police officer; Plaintiff's former spouse; unnamed employees of Raytheon Missile Systems; Plaintiff's former physicians; and Plaintiff's parents. *Id.* at 1-15.

The Complaint also alleges that certain persons have attempted to "continually poison, needlessly medicate, intentionally cripple, confuse, deceive, assault, blackmail, fornicate and adulter with for profit, imprison, murder, castrate, mutilate, defraud, rob, torture, defile, and violate" Plaintiff. *Id.* at 16. In addition, the Complaint alleges that Plaintiff has been denied certain constitutional rights and is entitled to money damages, based upon employment agreements with

“SUNY Buffalo, CEDARTECH, Inc., and all other employers.” *Id.* at 14, 18. The Complaint, however, “denies that any contract is or was binding between the parties.” *Id.* at 5.

The Complaint mentions federal entities at two places:

[First] respondents have knowingly and intentionally involved others such as it[]s sponsors, including the USPS, the IRS, the DOD, the Army, the Navy, the Department of Justice, the CIA and other corporate entities in its abuse, harassment, fraud, attempted murder, and other crimes against the petitioner, and it has used support from those entities to fund and support the respondents['] crimes against the petitioner.

Id. at 10.

Second, the Complaint references federal entities in paragraph 117 and alleges: “Another recent event in Miami Florida would have [a] federal agent driving his Toyota Tundra truck nearly run[ning] the [Plaintiff] over as he walked from the bank.” *Id.* at 17.

Based on these alleged actions, Plaintiff seeks \$10 million in damages, as well as:

the dissolution of all debts owed by the petitioner, the restoration of the petitioner’s good name and credit rating, an explanation as to the nature and circumstances of the events that have crippled and harmed petitioner, contrition from those involved, and an appropriate extension of protection from those that have harmed petitioner, and a guarantee that the petitioner will not be criminally charged as a result of his requests, in retaliation for his requests, or as a result of these proceedings and the events that have transpired in these intentional attempts to murder the petitioner.

Id. at 17-18.

II. DISCUSSION.

A. Subject Matter Jurisdiction.

The jurisdiction of the United States Court of Federal Claims is established by the Tucker Act. *See* 28 U.S.C. § 1491. This Act grants the court with “jurisdiction 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 it whenever the substantive right exists.” *United States v. Testan*, 424 U.S. 392, 398 (1976). Therefore, in order to pursue a substantive right within the jurisdictional reach of the Tucker Act, a plaintiff must identify and plead an independent contractual relationship, constitutional provision, federal statute, 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.”).

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

A challenge to the “court’s general power to adjudicate in specific areas of substantive law . . . is properly raised by a [Rule] 12(b)(1) motion.” *See 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, cross-claim, 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.” *See 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, it [is] incumbent upon [plaintiff] to come forward with evidence establishing the court’s jurisdiction.”).

C. Pleading Requirements Of A Pro Se Plaintiff.

In the United States Court of Federal Claims, the pleadings of a *pro se* plaintiff are held to a less rigid standard than litigants represented by counsel. *See Castro v. United States*, 540 U.S. 375, 386 (2007) (Scalia, J., concurring) (“[T]he allegations of a pro se litigant’s complaint are to be held ‘to less stringent standards than formal pleadings drafted by lawyers.’” (quoting *Haines v. Kerner*, 404 U.S. 519, 520 (1972))). 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.” *Manuel v. United States*, 78 Fed. Cl. 31, 34 (2007) (quoting *Ruderer v. United States*, 188 Ct. Cl. 456, 468 (1969)). Nevertheless, “[t]his latitude . . . does not relieve a pro se plaintiff from meeting jurisdictional requirements.” *Skillo v. United States*, 68 Fed. Cl. 734, 739 (2005) (quoting *Bernard v. United States*, 59 Fed. Cl. 497, 499 (2004), *aff’d*, 98 Fed. Appx. 860 (Fed. Cir. 2004)).

D. The Court’s Resolution Of The Government’s July 18, 2007 Motion For Summary Dismissal.

1. The United States Court Of Federal Claims Does Not Have Jurisdiction To Adjudicate Tort Claims.

The majority of the allegations in the May 25, 2007 Complaint involve intentional torts and/or criminal activities undertaken by the Government. *See* Compl. at 2-6, 15. The Federal Tort

Claims Act, 28 U.S.C. § 1346(b)(1), grants United States District Courts exclusive jurisdiction over civil actions sounding in tort against the federal government. *See* 28 U.S.C. § 1346(b)(1) (providing that “the district courts . . . shall have exclusive jurisdiction of civil actions on claims against the United States for money damages . . . for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government”). Section 1346(b)(1), however, does not authorize the United States Court of Federal Claims to adjudicate civil tort actions. *See Awad v. United States*, 301 F.3d 1367, 1372 (Fed. Cir. 2002) (providing that jurisdiction for claims brought under the Federal Tort Claims Act lies in United States District Courts, not in the United States Court of Federal Claims). Accordingly, the court does not have jurisdiction to adjudicate Plaintiff’s tort claims. In addition, the Tucker Act does not authorize the United States Court of Federal Claims to adjudicate criminal actions. *See* 28 U.S.C. § 1491.

2. The United States Court Of Federal Claims Does Not Have Jurisdiction To Adjudicate Claims Arising Under 42 U.S.C. § 1983.

The Complaint also asserts a claim of discrimination by the Government. *See* Compl. at 4. Claims of discrimination by a federal entity are properly brought pursuant to 42 U.S.C. § 1983. (“Every person who, under color of [law] . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”). Jurisdiction under Section 1983, however, is exclusively conferred to United States District Courts. *See* 28 U.S.C. § 1343(a) (“The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person . . . (4) To recover damages or to secure equitable or other relief under any act of Congress providing for the protection of civil rights[.]”) (emphasis added). Accordingly, the United States Court of Federal Claims does not have jurisdiction to adjudicate Plaintiff’s claims arising under 42 U.S.C. § 1983.

3. The United States Court of Federal Claims Does Not Have Jurisdiction For Constitutional Injuries That Are Not Money-Mandating.

In addition, the Complaint asserts that the Government has denied the Plaintiff “due process as well as violated the petitioner’s rights afforded him under the U.S. Constitution.” Compl. at 3. Plaintiff may not appreciate that the Tucker Act does not create a cause of action, but instead requires a plaintiff to base a claim on a money-mandating constitutional provision, statute, or regulation that is “reasonably amenable to the reading that it mandates a right to recovery in damages.” *Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (en banc) (citing *United States v. White Mountain Apache Tribe*, 537 U.S. 465, 472 (2003)). The United States Court of Appeals for the Federal Circuit has held that claims based on the Due Process Clauses of the Fifth and the Fourteenth Amendments are not money-mandating. *See LeBlanc v. United States*, 50 F.3d 1025, 1028 (Fed. Cir. 1995) (holding that claims under the Due Process Clauses of the Fifth and Fourteenth Amendments do not invoke United States Court of Federal Claims’ jurisdiction because “they do not mandate payment of money by the government”); *see also Collins v. United States*, 67 F.3d 284, 288 (Fed. Cir. 1995) (“[T]he due process clause does not obligate the [G]overnment to pay money damages.”); *Mullenberg v. United States*, 857 F.2d 770, 773 (Fed. Cir. 1988) (holding that the Due Process clauses of the Fifth and Fourteenth Amendments “do not trigger Tucker Act

jurisdiction in the courts”). Accordingly, the court does not have jurisdiction to adjudicate Plaintiff’s claims for relief under the Due Process Clause.

4. The Complaint Does Not Allege Sufficient Facts To Establish An Express Or An Implied-in-Fact Contract.

Finally, the Complaint requests recovery of “monies lost in relation to the respondent[’]s handling of the petitioner’s divorce action against the petitioner’s former spouse, Heike Helga Jones [and] for its employment agreement made with the petitioner at SUNY Buffalo, CEDARTECH, Inc.” Compl. at 18. The United States Court of Federal Claims has jurisdiction to entertain monetary claims founded upon contracts with the United States. *See* 28 U.S.C. § 1491(a)(1); *see also United States v. Mitchell*, 463 U.S. 206, 215 (1983). To invoke the Tucker Act, a complaint must allege sufficient facts to evidence the existence of an express or implied-in-fact contract with the federal Government. *See Trauma Serv. Group v. United States*, 104 F.3d 1321, 1325 (Fed. Cir. 1997). The elements that must be plead to prove a contract with the government are: (1) mutuality of intent to contract; (2) consideration; (3) lack of ambiguity in offer and acceptance; and (4) a Government representative who had actual authority to bind the Government in contract. *See City of El Centro v. United States*, 922 F.2d 816, 820 (Fed. Cir. 1990). Plaintiff has failed to plead any of these requirements. Moreover, the Complaint “denies that any contract is or was binding between the parties.” Compl. at 18. Therefore, as a matter of law, the Complaint does not satisfy the requisite elements either of an express or implied contract. *See Girling Health Sys., Inc. v. United States*, 949 F.2d 1145, 1147 (Fed. Cir. 1991) (dismissing Plaintiff’s complaint for failure to plead contractual elements).

III. CONCLUSION.

For the aforementioned reasons, although Plaintiff may have a claim that may be pursued in a United States District Court or a State Court, the United States Court of Federal Claims has not been authorized by Congress to adjudicate the claims presented in the May 25, 2007 Complaint. Accordingly, the Government’s July 18, 2007 Motion for Summary Dismissal must be granted. *See* RCFC 12(b)(1).

IT IS SO ORDERED.

SUSAN G. BRADEN
Judge