In the United States Court of Federal Claims

No. 10-346 C

(Filed November 17, 2010)

UNPUBLISHED

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ISAAC A. POTTER, JR.,	*	
	*	
Pro Se Plaintiff,	*	
	*	*Pro Se* Plaintiff; Copyright and
v.	*	Trademark Infringement by
	*	Parties Other Than the United
THE UNITED STATES,	*	States.
	*	
Defendant.	*	
* * * * * * * * * * * * * * * *	*	

Isaac A. Potter, Jr., Orlando, FL, *pro se*.

Kirby W. Lee, United States Department of Justice, with whom were *Tony West*, Assistant Attorney General, *John J. Fargo*, Director, Washington, DC, for defendant.

OPINION

BUSH, *Judge*.

Mr. Isaac A. Potter, Jr. filed his complaint in this court on June 4, 2010.[1]

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[1]/ Mr. Potter listed an additional "Doe Plaintiff" in his complaint, and on July 6, 2010 was ordered to file a notice identifying the additional plaintiff. Mr. Potter did not respond to the court's order; the court therefore assumes he is proceeding *pro se* and representing only himself, as permitted by Rule 83.1(a)(3) of the Rules of the United States Court of Federal Claims

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The nature of the injury alleged in his suit is one of copyright infringement and trademark infringement. The court has before it defendant's motion to dismiss the complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Rules of the United States Court of Federal Claims (RCFC). Defendant's motion has been fully briefed. For the reasons set forth below, defendant's motion is granted.

BACKGROUND[2]

Plaintiff asserts that he possesses a valid copyright and trademark in a creation titled "Zodiac Knights 2000," which is described in attachments to the complaint as drawings for use in media, games and toys.[3] Compl. at 5, Exs. A-D. Another creation, "Knights of the Zodiac," is alleged to have infringed upon Mr. Potter's intellectual property rights in various media and goods in commerce. *Id.* at 6. In Count One of the complaint, Mr. Potter seeks injunctive relief against various entities such as the Cartoon Network and Toei Animation Co., Ltd. to prevent "all future infringement" of his rights. *Id.* at 8. In Count Two of the complaint, plaintiff seeks damages, including $1,000,000,000 in punitive damages, against the Cartoon Network, Toei Animation Co, Ltd., and other business entities, as well as against the United States, "for infringement of this copyright and trademark." *Id.* In Count Three, plaintiff seeks "statutory damages," attorney fees, court costs, and any other relief deemed just. *Id.*

The court notes that Count One of the complaint is directed entirely against private parties, and that the other counts of the complaint also implicate private parties. Plaintiff repeatedly refers to individual corporations as "defendants" in his complaint. Compl. at 6-7. As to the United States, the named defendant in this suit, plaintiff states this charge:

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[1]/ ...continue
(RCFC). *See* RCFC 83.1(a)(3) ("An individual who is not an attorney may represent oneself or a member of one's immediate family, but may not represent a corporation, an entity, or any other person in any proceeding before this court.").

[2]/ The facts recited here are taken from plaintiff's complaint and attachments thereto. The court makes no findings of fact in this opinion.

[3]/ It appears that some of these rights may be owned by Mr. Potter and his brother, or by entities formed by one or both of them. *See* Compl. at 8, Exs. A-C. For the purposes of the motion before the court, plaintiff's ownership of these rights is presumed.

> The plaintiff alleges that the government agent of the Copyroyalty Board, the TTAB, the Copyright Office, the U.S. Patent and Trademark Office allowed infringement of a US citizens copyright and trademark rights from 1992 to 2010.

Id. at 9.

DISCUSSION

I. Standards of Review

The court acknowledges that Mr. Potter is proceeding *pro se*, and is "not expected to frame issues with the precision of a common law pleading." *Roche v. U.S. Postal Serv.*, 828 F.2d 1555, 1558 (Fed. Cir. 1987). *Pro se* plaintiffs are entitled to a liberal construction of their pleadings. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972) (requiring that allegations contained in a *pro se* complaint be held to "less stringent standards than formal pleadings drafted by lawyers"). Accordingly, the court has examined the complaint and response brief thoroughly and has attempted to discern all of plaintiff's legal arguments.

In rendering a decision on a motion to dismiss for lack of subject matter jurisdiction pursuant to RCFC 12(b)(1), this court must presume all undisputed factual allegations to be true and construe all reasonable inferences in favor of the plaintiff. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *abrogated on other grounds by Harlow v. Fitzgerald*, 457 U.S. 800, 814-15 (1982); *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 747 (Fed. Cir. 1988). However, plaintiff bears the burden of establishing subject matter jurisdiction, *Alder Terrace, Inc. v. United States*, 161 F.3d 1372, 1377 (Fed. Cir. 1998) (citing *McNutt v. Gen. Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936)), and must do so by a preponderance of the evidence, *Reynolds*, 846 F.2d at 748 (citations omitted). If jurisdiction is found to be lacking, this court must dismiss the action. RCFC 12(h)(3).

It is well-settled that a complaint should be dismissed under RCFC 12(b)(6) "when the facts asserted by the claimant do not entitle him to a legal remedy." *Lindsay v. United States*, 295 F.3d 1252, 1257 (Fed. Cir. 2002). When considering a motion to dismiss under this rule, "the allegations of the complaint should be

construed favorably to the pleader." *Scheuer*, 416 U.S. at 236. The court must also inquire whether the complaint meets the plausibility standard described by the United States Supreme Court, *i.e.*, whether it adequately states a claim and provides a "showing [of] any set of facts consistent with the allegations in the complaint." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 563 (2007) (citations omitted).

II. Analysis

A. Overview

The Tucker Act delineates this court's jurisdiction. 28 U.S.C. § 1491 (2006). This statute "confers jurisdiction upon the Court of Federal Claims over the specified categories of actions brought against the United States . . . ." *Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (*en banc*) (citations omitted). These include claims "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). Thus, a plaintiff may bring certain types of claims before this court, as permitted by the Tucker Act, and those claims may only be brought against the United States, not private parties.

The Tucker Act concurrently "waives the Government's sovereign immunity for those actions." *Fisher*, 402 F.3d at 1172. The statute does not, however, create a substantive cause of action or right to recover money damages in the Court of Federal Claims. *Id*. "[T]o 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." *Id.* (citations omitted). In other words, the source underlying the cause of action must be money-mandating, in that it "'can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained.'" *United States v. Testan*, 424 U.S. 392, 400 (1976) (quoting *Eastport S.S. Corp. v. United States*, 372 F.2d 1002, 1009 (Ct. Cl. 1967) and citing *Mosca v. United States*, 417 F.2d 1382, 1386 (Ct. Cl. 1969)). If the provision relied upon is found to be money-mandating, the plaintiff need not rely upon a waiver of sovereign immunity beyond the Tucker Act. *Huston v. United States*, 956 F.2d 259, 261 (Fed. Cir. 1992) (citing *United States v. Mitchell*, 463 U.S. 206, 218 (1983)). If, on the other hand, no money-mandating provision supports jurisdiction for a cause of action, this court must dismiss the suit. RCFC 12(h)(3).

The complaint before the court presents a straightforward factual scenario, accompanied by citations to numerous federal statutes. These statutes are apparently offered as sources of law supporting the relief requested in this suit. To decide the jurisdictional challenge raised by defendant, however, the court must inquire into the true nature of plaintiff's claims. *See, e.g.*, *Katz v. Cisneros*, 16 F.3d 1204, 1207 (Fed. Cir. 1994) ("Regardless of the characterization of the case ascribed by [the plaintiff] in its complaint, we look to the true nature of the action in determining the existence or not of jurisdiction." (citing *Livingston v. Derwinski*, 959 F.2d 224, 225 (Fed. Cir. 1992))). The court must determine whether plaintiff's claims fall within the "specified categories of actions against the United States" that are within this court's jurisdiction. *Fisher*, 402 F.3d at 1172.

The court will not, therefore, discuss every statute cited in the complaint, because most of these statutes have no bearing on plaintiff's claims against the United States. Instead, the court will review relevant statutes governing the intellectual property rights asserted by Mr. Potter, and apply them to the infringement activities he has alleged that might be ascribed to the United States. If these statutes, as a general matter, mandate the payment of money by the United States, this suit may proceed. If no money-mandating statute supports plaintiff's claims against the United States, jurisdiction for his suit does not lie with this court and this case must be dismissed.

The court is also bound by precedent that determines whether or not a claim may succeed in this court. Thus, the facts and claims asserted by Mr. Potter must be reviewed in light of rulings issued by the United States Court of Claims, the United States Court of Appeals for the Federal Circuit and the United States Supreme Court. This court cannot permit a claim to go forward if precedent instructs that under the facts asserted in the complaint, no relief is available to Mr. Potter.

B. Count One - Equitable Relief

Count One seeks injunctive relief against private parties, not the United States. "It is well established that the jurisdiction of this court extends only to claims against the United States, and obviously a controversy between private parties could not be entertained." *Nat'l City Bank of Evansville v. United States*, 163 F. Supp. 846, 852 (Ct. Cl. 1958) (footnotes omitted). For this reason, Count

One is beyond this court's jurisdiction. Furthermore, the injunctive relief requested in Count One is not within this court's powers. *See, e.g.*, *Massie v. United States*, 226 F.3d 1318, 1321 (Fed. Cir. 2000) ("Except in strictly limited circumstances, *see* 28 U.S.C. § 1491(b)(2), there is no provision in the Tucker Act authorizing the Court of Federal Claims to order equitable relief.") (citations omitted). Plaintiff's request for injunctive relief must be dismissed for lack of jurisdiction.

C. Count Two - Damages

Although plaintiff seeks damages from several entities in Count Two for copyright and trademark infringement, only claims against the United States may be entertained by this court.[4] The statement of facts in the complaint does not assert that the United States has itself infringed on his intellectual property rights. Instead, plaintiff asserts that the government has allowed others to infringe upon his rights to the creation "Zodiac Knights 2000." Compl. at 9. The court will examine copyright and trademark law to determine whether a money-mandating statute supports plaintiff's claims against the United States.

1. Copyright Infringement

The United States has waived its sovereign immunity from suit for copyright infringement, but only in three specified instances where the infringing activity can be attributed to the United States, not some other party. *Boyle v. United States*, 200 F.3d 1369, 1373 (Fed. Cir. 2000) (referencing 28 U.S.C. § 1498(b) (2006)). Section 1498(b)'s waiver of sovereign immunity must be narrowly read, because "any statute that creates a waiver of sovereign immunity must be strictly construed in favor of the government." *Boyle*, 200 F.3d at 1373 (citing *United States v. Sherwood*, 312 U.S. 584, 590 (1941)). None of the instances mentioned in section 1498(b) is found in plaintiff's recitation of facts in the complaint. Instead, plaintiff alleges that the United States owes him damages for allowing others to infringe upon his copyright. This type of claim does not fall within a waiver of sovereign immunity by the United States, therefore plaintiff's copyright infringement claim

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[4]/ The court does not read the complaint to include a claim for patent infringement. If plaintiff intended to bring such a claim, the facts alleged in the complaint support neither the existence of a patent held by plaintiff, nor the infringement of any such patent by the United States.

against the United States must be dismissed for failure to state a claim upon which relief can be granted.

2. Trademark Infringement

The United States has not waived its sovereign immunity from suit for trademark infringement. *Lockridge v. United States*, 218 Ct. Cl. 687, 690 n.2 (1978) (citing *Turton v. United States*, 212 F.2d 354, 355 (6th Cir. 1954)). Thus, even if plaintiff asserted that the United States itself had infringed upon his trademark rights, that claim could not be heard in this court. Here, plaintiff asserts that the United States allowed others to infringe upon plaintiff's trademark or trademarks. There is no waiver of sovereign immunity for such a claim, and plaintiff's trademark infringement claim against the United States must be dismissed. Further, "trademark infringement sounds in tort," and this court has no jurisdiction over tort claims. *Lockridge*, 218 Ct. Cl. at 688. For these reasons, plaintiff's trademark infringement claim must be dismissed for lack of jurisdiction.

D. Count Three - Statutory Damages

This count apparently seeks "enhancement" of any damages award obtained through Count Two of the complaint, pursuant to statutes that are not specifically identified, as well as any attorney fees, court costs or other relief deemed just. As the court has noted *supra*, none of plaintiff's claims may be heard in this court, and thus there are no damages to be enhanced. Because the court cannot reach the merits of plaintiff's claims, the award of any statutory damages is also beyond the powers of this court.

E. Plaintiff's Arguments against Dismissal[5]

In plaintiff's response brief, Mr. Potter cites numerous statutes which fail to advance a jurisdictional basis for his claims. Plaintiff also states that his copyright infringement claim against the United States is cognizable, but has provided no argument in support of his contention. Finally, in the conclusion section of his

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[5]/ Plaintiff's brief, in addition to arguments discussed *infra*, suggests that procedural infirmities invalidate defendant's motion to dismiss and should result in a default judgment in his favor. Pl.'s Resp. at 1. This argument is not supported by the court's rules. Defendant's motion conforms with RCFC 12(a)-(b) and renders any request for a default judgment untenable.

brief, plaintiff appears to argue that the United States is liable to him for allowing infringement of his intellectual property rights, although this argument is not perfectly clear. The court reproduces plaintiff's argument in its entirety:

> The defendant is committed to an intervening cause, whereas these are multiple causative agents; vicarious liability is present and or defendant is jointly liable, which allows res [ipsa] to be applied.

Pl.'s Resp. at 3. To the extent that plaintiff wishes to apply certain tort principles to challenge actions or inaction of the United States, this court cannot consider tort claims against the United States. 28 U.S.C. § 1491(a)(1). After full consideration of the complaint and plaintiff's response brief, the court concludes that plaintiff's claims must be dismissed for lack of jurisdiction and for failure to state a claim upon which relief can be granted.

CONCLUSION

For the foregoing reasons, plaintiff's claims must be dismissed. The court has considered transfer of the claims over which this court lacks jurisdiction, but concludes that it is not in the interest of justice to do so.[6]

Accordingly, it is hereby **ORDERED** that:

(1) Defendant's Motion to Dismiss, filed August 3, 2010, is **GRANTED**;

(2) Plaintiff's Motion for Summary Judgment, filed July 6, 2010, and plaintiff's Miscellaneous Motion, filed August 9, 2010, are **DENIED** as moot;

(3) The Clerk's Office is directed to **ENTER** final judgment in favor of defendant **DISMISSING** the complaint, **without prejudice**, as to plaintiff's trademark infringement claims and requests for injunctive

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[6]/ It appears that plaintiff's claims against private parties have already been litigated in the United States District Court for the Northern District of Georgia. Compl. Ex. A. As to any of plaintiff's claims against the United States which cannot be heard in this court, the court is unaware of any federal court that could reach the merits of plaintiff's claims.

relief, and **with prejudice** as to plaintiff's copyright infringement claims; and

(4) Each party shall bear its own costs.

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LYNN J. BUSH
Judge