In the United States Court of Federal Claims

No. 11-719C

(Filed May 30, 2012)

DAVID LEE SMITH, PRO SE	*
	*
Plaintiff,	*
	*
v.	*
	*
THE UNITED STATES,	*
	*
Defendant.	*
	*

David Lee Smith, pro se, Denver, Colorado.

Ryan M. Majerus, Department of Justice, Civil Division, with whom was ***Assistant Attorney General Stuart F. Delery***, for Defendant. ***Jeanne E. Davidson***, Director and ***Steven J. Gillingham***, Assistant Director.

OPINION & ORDER

***Futey*, Judge.**

This case comes before the Court on defendant's Motion To Dismiss. Plaintiff, David Lee Smith, representing himself *pro se*, alleges that the government violated a number of Constitutional provisions when various courts disbarred him.

I. Background[1]

Plaintiff was suspended from the bar of the United States Court of Appeals for the Tenth Circuit on November 29, 1993. ***In re Smith***, 329 Fed. Appx. 805, 806 (10th Cir. 2009). According to plaintiff, this suspension was done without a "due process evidentiary hearing" and thus was "null and void *ab initio*." Pl.'s Compl. 2. This suspension was converted into a disbarment on February 13, 1996. ***In re Smith***, 329 Fed. Appx. at 806. As a result, the United States District Court for the District of Colorado ("Colorado district court") reciprocally disbarred him on April 26, 1996, and the Colorado Supreme Court followed suit on October 14, 1999. *Id.*

[1] The following background is taken from plaintiff's complaint.

The Court of Appeals for the Tenth Circuit, on May 4, 2007, allowed plaintiff's motion for reinstatement, provided that he met certain conditions. ***In re Smith***, 2007 WL 4953041 (10th Cir. May 4, 2007). Once these conditions were satisfied, plaintiff was reinstated on May 17, 2007. Various federal and state courts around the country, which had reciprocally disbarred plaintiff, then readmitted him to their bars.

The Colorado district court and the Colorado Supreme Court did not, however, readmit plaintiff. The district court denied his motion for reinstatement because he "remained disbarred by the Colorado Supreme Court," and the Tenth Circuit affirmed this decision. ***In re Smith***, 329 Fed. Appx. 805, 806 (10th Cir. 2009). On June 8, 2011, the Supreme Court of Colorado denied a "Verified Motion to Vacate Disbarment Order" that plaintiff had filed. Pl.'s Compl. 4. The district court then, on August 11, 2011, denied a "Verified Motion to Vacate Disbarment Order and Order Denying Reinstatement and Relief From Rule of Good Standing." *Id.*

Plaintiff filed suit in the Court of Federal Claims on October 31, 2011. Plaintiff asks for $5,000,000 in compensation, as well as interest, costs, attorney's fees, and a variety of equitable relief. Defendant filed a Motion To Dismiss on February 28, 2012. Plaintiff filed a Response In Opposition To Defendant's Motion To Dismiss on March 26, 2012. Defendant then filed a Reply To Plaintiff's Response To Defendant's Motion To Dismiss on April 20, 2012.

II. Discussion

Defendant has moved to dismiss, and plaintiff opposes, representing himself *pro se*. Courts allow *pro se* litigants more latitude in their pleadings and do not hold them to the rigid formalities imposed upon represented parties. *See* ***Estelle v. Gamble***, 429 U.S. 97, 106 (1976). A plaintiff, however, still must meet the jurisdictional requirements of the Court of Federal Claims. *See, e.g.*, ***Baker ex rel. Baker v. Sec'y of Health & Human Servs.***, 61 Fed. Cl. 669, 670–71 (2004) (noting that "*pro se* status does not relieve plaintiffs of their jurisdictional burden") (internal quotations removed).

A. *Standard of Review*

Defendant has moved to dismiss under RCFC 12(b)(1), for lack of subject matter jurisdiction, and 12(b)(6), for failure to state a claim. Before "proceeding to the merits" of a case, a "court must satisfy itself that it has jurisdiction to hear and decide" the case. ***Hardie v. United States***, 367 F.3d 1288, 1290 (Fed. Cir. 2004). When a party moves to dismiss for lack of subject matter jurisdiction, a court generally accepts "the facts alleged in the complaint to be true and correct." ***Reynolds v. Army & Air Force Exch. Serv.***, 846 F.2d 746, 747 (Fed. Cir. 1988). A party must establish jurisdiction by a preponderance of the evidence. *Id*. at 748.

Similarly, with a motion to dismiss for failure to state a claim, a court considers "all well-pleaded factual allegations as true and draws all reasonable inferences in the claimant's favor." ***Lindsay v. United States***, 295 F.3d 1252, 1257 (Fed. Cir. 2002). A plaintiff must allege "enough facts to state a claim to relief that is plausible on its face," and the pleadings must be detailed enough to nudge his claims "across the line from conceivable to plausible." ***Bell Atl. Corp. v. Twombly***, 550 U.S. 544, 570 (2007); *see also* ***Cambridge v. United States***, 558 F.3d 1331, 1335 (Fed. Cir. 2009). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." ***Ashcroft v. Iqbal***, 556 U.S. 662, 678 (2009).

B. *The Court of Federal Claims Lacks Jurisdiction over Plaintiff's Due Process and Equal Protection Claims.*

Plaintiff has alleged a number of Constitutional violations that this Court lacks jurisdiction to hear. He has claimed that his "right to substantive and procedural due process of law and to the equal protection of the laws under the Fifth Amendment" has been violated. Pl.'s Compl. 4. According to plaintiff, "the United States' actions and decisions" violated these rights by interfering with his ability to practice law. *Id.*

Although the Tucker Act grants the Court of Federal Claims jurisdiction over claims founded upon the Constitution, that Act does not itself "create a substantive cause of action." ***Jan's Helicopter Serv., Inc. v. F.A.A.***, 525 F.3d 1299, 1306 (Fed. Cir. 2008); *see also* ***United States v. Mitchell***, 463 U.S. 206, 212 (1983). A plaintiff therefore "must identify a separate source of substantive law that creates the right to money damages." ***Fisher v. United States***, 402 F.3d 1167, 1172 (Fed. Cir. 2005).

The law is well settled that the due process clauses of both the Fifth and Fourteenth Amendments do not mandate the payment of money and thus do not provide for a cause of action in this Court. *See* ***LeBlanc v. United States***, 50 F.3d 1025, 1028 (Fed. Cir. 1995) ("[T]he Due Process Clauses of the Fifth and Fourteenth Amendments . . . [are not] a sufficient basis for jurisdiction because they do not mandate payment of money by the government."). The law is also settled that the Fourteenth Amendment's Equal Protection Clause does not mandate the payment of money. *See id.* (finding no jurisdiction based upon "the Equal Protection Clause of the Fourteenth Amendment"). The Court thus has no jurisdiction over plaintiff's alleged violations of these rights.

C. *The Court of Federal Claims does not have Supplemental Jurisdiction over the State of Colorado under 28 U.S.C. § 1367.*

Plaintiff has also claimed that the Court possesses supplemental jurisdiction over actions of the Supreme Court of Colorado based on 28 U.S.C. § 1367 (2009). He therefore seeks to join the State of Colorado as a defendant.

Section 1367 grants "district courts . . . supplemental jurisdiction" over some claims that are "related" to claims in an action for which district courts have original jurisdiction. *Id.* The Court of Federal Claims, however, is not a "district court" within the meaning of that statute. *See* ***Waltner v. United States***, 98 Fed. Cl. 737, 765 (2011) (finding that 28 U.S.C. § 1367 confers no jurisdiction on the Court of Federal Claims); ***Hall v. United States***, 69 Fed. Cl. 51, 57 (2005) (finding the same "because only the United States District Courts are authorized to exercise supplemental jurisdiction"). In some situations, the Court of Federal Claims may be able to exercise pendent jurisdiction for claims "over which it would not otherwise have jurisdiction" when "the claim arises from the same transaction or occurrence as another claim that is properly before the court." BLACK'S LAW DICTIONARY 930 (9th ed. 2009); *see* ***Liberty Ammunition, Inc. v. United States***, 101 Fed. Cl. 581, 589–92 (discussing extensively the Court of Federal Claims' ability to use pendent jurisdiction). Plaintiff has only, however, relied upon Section 1367, which clearly does not apply to the Court of Federal Claims. The Court thus cannot exercise jurisdiction over plaintiff's claims against the State of Colorado based upon Section 1367.

D. *Plaintiff's Takings Claims Accrued Outside of the Court's Six-Year Statute of Limitations.*

A six-year statute of limitations governs all claims filed in this Court. 28 U.S.C. § 2501 (2006). Since this six-year time limit is a "jurisdictional requirement," the Court of Federal Claims lacks jurisdiction over any claim that accrued outside of it. ***Holmes v. United States***, 657 F.3d 1303, 1317 (Fed. Cir. 2011) (citing ***John R. Sand & Gravel Co. v. United States***, 552 U.S. 130, 133–34 (2008)). A "claim first accrues when all the events have occurred which fix the alleged liability of the defendant and entitle the plaintiff to institute an action." ***Hopland Band of Pomo Indians v. United States***, 855 F.2d 1573, 1577 (Fed. Cir. 1988) (internal quotations omitted). Here, plaintiff alleges that defendant's actions constitute a Fifth Amendment taking. "'[A] claim under the Fifth Amendment accrues when that taking action occurs.'" ***Goodrich v. United States***, 434 F.3d 1329, 1333 (Fed. Cir. 2006) (quoting ***Alliance of Descendants of Tex. Land Grants v. United States***, 37 F.3d 1478, 1481 (Fed. Cir. 1994)).

Plaintiff claims that the "disbarment order[s]" entered against him by the Tenth Circuit, Colorado district court, and Supreme Court of Colorado were "null and void *ab initio*." Pl.'s Compl. 2. These orders were filed, respectively, on February 13, 1996, April 29, 1996, and October 14, 1999. The essence of plaintiff's takings claim is that these disbarment orders took away his license to practice law, which he alleges is private property protected by the Fifth Amendment. His takings claims thus accrued when he was disbarred, since, according to plaintiff's theory of the case, those disbarment orders "fix the alleged liability" of the government. ***Hopland Band***, 855 F.2d at 1577. Since plaintiff's claim was filed in this Court on October 31, 2011, these takings claims accrued far outside of the six-year statute of limitations.

Plaintiff raises two arguments, neither of which have merit. First, plaintiff states that his claims are for "judicial takings" based upon the Supreme Court's June 17, 2010 decision in ***Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection***. 130 S. Ct. 2592 (2010). In that case, the Supreme Court recognized for the first time that a taking claim can be based upon the action of a court itself. *Id.* at 2602 ("In sum, the Takings Clause bars *the State* from taking private property without paying for it, no matter which branch is the instrument of the taking."). Plaintiff argues that because the Supreme Court did not "create[] a cause of action for judicial takings" until 2010, his claims did not accrue until then. The standard for claim accrual, however, focuses on when the "particular" government actions in a case are "imposed" upon the particular plaintiff. ***CRV Enters., Inc. v. United States***, 626 F.3d 1241, 1249 (Fed. Cir. 2010); *see also* ***Fallini v. United States***, 56 F.3d 1378, 1383 (Fed. Cir. 1995) ("[I]t is necessary . . . to look to the nature and timing of the governmental action that constituted the alleged taking."). Plaintiff's claims thus accrued when courts took actions to disbar him in 1996 and 1999, not when the Supreme Court recognized that court actions could constitute takings in 2010.

Plaintiff's second argument is that three more recent decisions of various courts "constitute[] a separate and/or new cause of action." Those decisions are (1) the May 12, 2009 decision of the Tenth Circuit affirming the Colorado district court's refusal to readmit plaintiff, (2) the June 8, 2011 decision of the Supreme Court of Colorado denying plaintiff's motion to vacate his disbarment order, and (3) the August 11, 2011 decision of the Colorado district court denying plaintiff's motion to vacate his disbarment order. Plaintiff's theory of the case, however, is that he had "an interest in his law licenses and bar admissions." Pl.'s Compl. 9. None of these actions took those admissions or licenses from him; plaintiff was fully disbarred in 1996 and 1999 by the courts at issue. Plaintiff's claims accrued, therefore, in those years and are time-barred.[2]

[2] Plaintiff also notes that these later decisions are "continuing violations." Construed broadly, plaintiff's pleadings may reference the continuing claims doctrine. Under this doctrine, if a claim is "inherently susceptible to being broken down into a series of independent and distinct events or wrongs, each having its own associated damages," a claim filed outside of the six-year time limit may be cognizable. ***Brown Park Estates-Fairfield Dev. Co. v. United States***, 127 F.3d 1449, 1456 (Fed. Cir. 1997). That doctrine, however, would not apply here, since it does not apply if a claim is "based upon a single distinct event, which may have continued ill effects later on." *Id.* For instance, in a suit by a military widow related to survivor benefits, the Federal Circuit held that the widow's claim accrued when her husband died and that no "new claim accrued" each time the government failed to pay her a survivor annuity. *Id.* at 1457 (discussing ***Hart v. United States***, 910 F.2d 815, 816–17 (Fed. Cir. 1990)). The court found that "'[b]ecause all events necessary to her benefits claim had occurred when her husband died,'" her claim accrued then and was not a continuing one. *Id.* (quoting ***Hart***, 910 F.2d at 817). Similarly, here, all events necessary to plaintiff's claim that various courts took his bar admissions occurred when those courts

III. Conclusion

For the above-mentioned reasons, the Court lacks jurisdiction over plaintiff's claims.[3] Defendant's Motion To Dismiss is therefore GRANTED. The Clerk is directed to dismiss the complaint without prejudice.

No costs.

IT IS SO ORDERED.

s/Bohdan A. Futey
BOHDAN A. FUTEY
Judge

rendered decisions stripping him of his admissions. That occurred in 1996 and 1999.

[3] Since the Court finds that it lacks jurisdiction over plaintiff's taking claims, it is unnecessary to consider the merits of defendant's motion to dismiss for failure to state a claim upon which relief can be granted.