In the United States Court of Federal Claims

No. 10-466C
(Filed: December 21, 2010)
NOT FOR PUBLICATION

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TARIQ BELT,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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ORDER DISMISSING CASE

The plaintiff, Tariq Belt ("Mr. Belt"), has filed a complaint against the United States[1] alleging that the Drug Enforcement Administration ("DEA") is currently retaining Mr. Belt's currency and personal property unlawfully and that its seizure was a taking and in violation of Mr. Belt's constitutional right to due process. Compl. 2, 4. The defendant moves to dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the Rules of the United

[1] In his complaint, the plaintiff lists the defendants as "United States Department of Justice DEA Baltimore District Office, An Entity of Agency, and DEA ASAC Carl Kotowski, DEA Baltimore District Managing Agent." The jurisdiction of this court, however, only includes claims against the United States, see United States v. Sherwood, 312 U.S. 584, 588 (1941), not against private parties or individual government officials, Brown v. United States, 105 F.3d 621, 624 (Fed. Cir. 1997). Therefore, the court interprets the complaint as one brought against the United States and dismisses the complaint with respect to Mr. Kotowski.

States Court of Federal Claims ("RCFC") for lack of subject matter jurisdiction and failure to state a claim upon which relief may be granted. The court has reviewed the pleadings and determined that oral argument is not necessary. As discussed below, because the plaintiff's complaint is not within this court's jurisdiction and otherwise fails to state a claim upon which relief may be granted, the defendant's motion is **GRANTED** and the plaintiff's complaint is **DISMISSED**.

I. BACKGROUND[2]

In 2003, pursuant to a search and arrest warrant, DEA agents arrested Mr. Belt and seized $137,238 in currency and $150,000 in personal property from Mr. Belt's house, car, and person. Compl. 3-4; Pl.'s Resp. 14. Of the $137,238 in seized currency, Mr. Belt alleges that $15,948 was "outright stolen" and that the $150,000 worth of personal property is currently being held without reason. Compl. 3-4. Mr. Belt further alleges that $5,000 of the seized currency was seized in 2005. Pl.'s Resp. 14. On December 8, 2005,

[2] In considering the defendant's motion to dismiss, the court takes as true the plaintiff's alleged facts. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974) abrogated on other grounds by Harlow v. Fitzgerald, 457 U.S. 800 (1982); Boyle v. United States, 200 F.3d 1369, 1372 (Fed. Cir. 2000) ("In reviewing the dismissal, we must accept all well-pleaded factual allegations as true and draw all reasonable inferences in [the plaintiff's] favor."); see also Anaheim Gardens v. United States, 444 F.3d 1309, 1314-15 (Fed. Cir. 2006) ("In reviewing a dismissal for failure to state a claim, we must assume all well-pled factual allegations are true and indulge in all reasonable inferences in favor of the nonmovant." (quoting Gould, Inc. v. United States, 935 F.2d 1271, 1274 (Fed. Cir. 1991)).

It is also well settled that when the court considers a motion to dismiss for lack of jurisdiction, it may look beyond the pleadings and "inquire into jurisdictional facts" to determine whether jurisdiction exists. Rocovich v. United States, 933 F.2d 991, 993 (Fed. Cir. 1991). Therefore, the court is permitted to rely upon the public records of the DEA seizure and Mr. Belt's convictions. Def.'s Mot. App'x 1-13. Accordingly, the plaintiff's motion to strike the government's appendix is **DENIED**.

after pleading guilty, Mr. Belt was sentenced to 212 months in prison for conspiracy to distribute and possession with intent to distribute powder and crack cocaine. United States v. Tariq Belt, Case No. WDQ-03-0376 (W.D. Md. Mar. 7, 2006); Def.'s Mot. App'x 2. On February 27, 2006, Mr. Belt was sentenced to another year in prison after pleading guilty to possessing cocaine on November 4, 2005. United States v. Tariq Belt, Case No. WDQ-05-0549 (W.D. Md. Feb. 28, 2006) Def.'s Mot. App'x 8. Mr. Belt is currently incarcerated at the Allenwood Federal Correctional Complex. Compl. 1, 5.

On July 13, 2010, Mr. Belt filed a complaint against the government alleging a taking under the Fifth Amendment, theft of currency, and "default" by the government. On September 13, 2010, the government filed a motion to dismiss Mr. Belt's complaint for lack of jurisdiction and failure to state a claim upon which relief may be granted. In his response to the government's motion to dismiss, filed September 30, 2010, Mr. Belt realleges each of his previous claims and asserts that he is entitled to the return of his property because the seizures violated the Fourth, Fifth, Eighth, and Fourteenth Amendments. U.S. Const. amend. IV, V, VIII, XIV. In its reply, filed October 14, 2010, the government reasserts its previous arguments and further moves to dismiss Mr. Belt's additional claims for lack of jurisdiction.

II. STANDARDS OF REVIEW

Because the plaintiff is proceeding pro se, he is entitled to a liberal construction of his pleadings, Hughes v. Rowe, 449 U.S. 5, 9 (1980) (holding that pro se complaints

should be held to "less stringent standards than formal pleadings drafted by lawyers" (quoting Haines v. Kerner, 404 U.S. 519, 520 (1972)). However, all those seeking to invoke this court's subject matter jurisdiction ultimately retain the burden of establishing that the jurisdictional requirements are met. Keener v. United States, 551 F.3d 1358, 1361 (Fed. Cir. 2009); Bernard v. United States, 59 Fed. Cl. 497, 499 (2004) ("This latitude, however, does not relieve a pro se plaintiff from meeting jurisdictional requirements."), aff'd, 98 F. App'x 860 (Fed. Cir. 2004).

In order to avoid dismissal pursuant to RCFC 12(b)(1), the 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, 298 U.S. 178, 189 (1936)), and must do so by a preponderance of the evidence, Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 748 (Fed. Cir. 1988). Because jurisdiction is a threshold matter, a case can proceed no further if a court lacks jurisdiction to hear it. See Arbaugh v. Y&H Corp., 546 U.S. 500, 514 (2006) ("[W]hen a federal court concludes that it lacks subject-matter jurisdiction, the court must dismiss the complaint in its entirety." (citation omitted)); Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94 (1998). Subject matter jurisdiction may not be waived or forfeited; when a court concludes that it lacks jurisdiction, the complaint must be dismissed. See John R. Sand & Gravel Co. v. United States, 457 F.3d 1345, 1354 (Fed. Cir. 2006), aff'd, 552 U.S. 130 (2008).

In order to avoid dismissal pursuant to RCFC 12(b)(6) for failure to state a claim upon which relief may be granted, a complaint must allege facts plausibly suggesting (not merely consistent with) a showing of entitlement to relief. Acceptance Ins. Cos., Inc. v. United States, 583 F.3d 849, 853 (Fed. Cir. 2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 557 (2007)). At the same time, a court is not bound to accept as true a legal conclusion couched as a factual allegation. Id. (citing Twombly, 550 U.S. at 555).

III. DISCUSSION

The United States Court of Federal Claims is a court of limited jurisdiction. See Jentoft v. United States, 450 F.3d 1342, 1349 (Fed. Cir. 2006) (citing United States v. King, 395 U.S. 1, 3 (1969)). It is well settled that the Court of Federal Claims may only hear a claim brought against the United States if Congress has specifically and unambiguously waived the government's sovereign immunity for such a suit. United States v. Testan, 424 U.S. 392, 397-98 (1976). The jurisdiction of this court is set forth in the Tucker Act, 28 U.S.C. § 1491 (2006). Under the Tucker Act, this court may hear only claims seeking primarily monetary relief against the United States based upon the money-mandating provisions of "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); see also Testan, 424 U.S. at 397-98; In re United States, 463 F.3d 1328, 1333-34 (Fed. Cir. 2006) (citing Todd v. United States, 386 F.3d 1091, 1094 (Fed. Cir. 2004)).

A. The Plaintiff's Alleged Fifth Amendment Takings Claims

1. The Plaintiff's Alleged Takings Claims Resulting from the 2003 Seizure Are Time-Barred.

The Tucker Act is subject to the six-year statute of limitations set forth in 28 U.S.C. § 2501 (2006). Under Section 2501, "Every claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues." 28 U.S.C. § 2501 (2006). Section 2501 is jurisdictional in nature and cannot be waived or equitably tolled. John R. Sand & Gravel, 552 U.S. at 135-36. A takings claim accrues "when all the events have occurred which fix the liability of the Government and entitle the claimant to institute an action." Goodrich v. United States, 434 F.3d 1329, 1333 (Fed. Cir. 2006). However, the claim only accrues if the claimant "knew or should have known" that the claim existed. Id.

The plaintiff alleges in his complaint and response that all of the property seized by the government was seized in 2003, with the exception of the $5,000 seized in 2005. Compl. 3; Pl.'s Resp. 14. The defendant argues that to the extent the plaintiff has alleged a taking under the Tucker Act, with respect to all but $5,000, his cause of action accrued no later than 2003, more than six years prior to the filing of his complaint on July 13, 2010. The defendant argues that the plaintiff knew or should have known that the alleged 2003 seizure had taken place at the time of his arrest, because the seizure took place contemporaneously with the plaintiff's arrest. The defendant argues, therefore, that the plaintiff's Tucker Act claims resulting from the seizure that occurred in 2003 are time-

barred under the six-year statute of limitations set forth in 28 U.S.C. § 2501 and must be dismissed for lack of subject matter jurisdiction. In response, the plaintiff argues that the statute of limitations did not begin to run until the DEA rejected his attempts to claim the forfeited currency and that "intervening events . . . altered the awareness of the need to file a claim." Pl.'s Resp. 2.

The court finds the plaintiff's arguments for tolling the statute of limitations beyond the time of seizure unavailing. As stated above, 28 U.S.C. § 2501 is jurisdictional and cannot be waived or equitably tolled. John R. Sand & Gravel, 552 U.S. at 135-36. The court agrees with the defendant that to the extent there was a taking, the date of the 2003 seizure (the date on which the government took possession of the currency and property and deprived the plaintiff of its further use) is the date on which all events had occurred which fixed the liability of the Government, and would entitle the plaintiff to institute an action. See Wood v. United States, 104 F. App'x 179, 179-80 (Fed. Cir. 2004) (affirming dismissal of complaint as time-barred, where complaint stemmed from a government seizure of plaintiff's property during an arrest that took place more than six years prior to filing of complaint). The court agrees with the defendant that to the extent the plaintiff has alleged a taking under the Tucker Act, with respect to all but $5,000, his cause of action accrued no later than 2003, and therefore the plaintiff's Tucker Act claims resulting from the 2003 seizure are time-barred under the six-year statute of limitations. Accordingly, these claims must be dismissed pursuant to RCFC 12(b)(1) for lack of

jurisdiction.

2. The Plaintiff's Alleged Takings Claims Resulting from either the 2003 Seizure or the 2005 Seizure Fail to State a Claim Upon Which this Court May Grant Relief.

In his complaint, the plaintiff seeks a "finding that takings and/or continued detention of property is erroneous, without lawful authority, and unconstitutional." Compl. 1. The plaintiff alleges that the government "stole property and currency from" the plaintiff and that DEA agents were "involved in taking and retention violated controlling company policy." Compl. 2. The plaintiff notes that the seizure of his property was pursuant to a bench warrant and a search warrant, Compl. 4, but argues that if "the 'seizure' under guise of fed[eral] warrant . . . was in fact an unlawful transaction in the first instance . . . then there was no legitimate exercise of police power . . . ." Pl.'s Resp. 6, 13.

The defendant argues that the plaintiff's alleged takings claims resulting from either the 2003 seizure or the 2005 seizure are not properly construed as Fifth Amendment takings claims at all, and therefore must be dismissed for failure to state a claim upon which this court may grant relief. First, the defendant argues that to state a takings claim, a plaintiff must concede the validity of the taking, but that here the plaintiff has repeatedly claimed that the seizures of his property were unlawful and therefore cannot be Fifth Amendment takings. Additionally, the defendant argues that the court should distinguish between property seized pursuant to the government's eminent domain

power and property seized pursuant to the government's police power. Therefore, the defendant contends that the plaintiff has not stated a takings claim where, as here, the seizure was done pursuant to the government's police power, and therefore the complaint must be dismissed for failure to state a claim upon which this court may grant relief.

The court agrees with the defendant. While the defendant is correct that to state a takings claim, the plaintiff must concede the validity of the government action, see Florida Rock Indus., Inc. v. United States, 791 F.2d 893, 898 (Fed. Cir. 1986) ("The Tucker Act suit in the Claims Court is not . . . available to recover damages for unauthorized acts of government officials"); Gahagan v. United States, 72 Fed.Cl. 157, 162 (2006) ("To state a takings claim . . . a plaintiff must concede the lawfulness of the actions of the government that resulted in the alleged taking."), the court shall presume, for the purposes of its takings analysis, that the DEA's confiscation of plaintiff's money was valid. See Rhaburn v. United States, 88 Fed. Cl. 310, 313 (2009).[3] Items properly seized by the government under its police power are not seized for "public use" within the meaning of the Fifth Amendment. See Bennis v. Michigan, 516 U.S. 442, 452-53 (1996) ("the government may not be required to compensate an owner for property which it has

[3] To the extent that the plaintiff maintains that the DEA's confiscation of his money was unlawful, his remedy does not lie under the Fifth Amendment's Takings Clause. See Acadia Tech., Inc. v. United States, 458 F.3d 1327, 1330 (Fed. Cir. 2006) ("[A] takings claim is separate from a challenge to the lawfulness of the government's conduct . . . ."); Rith Energy, Inc. v. United States, 247 F.3d 1355, 1365 (Fed. Cir. 2001) ("[A]n uncompensated taking and an unlawful government action constitute two separate wrongs [that] give rise to two separate causes of action . . . ." (internal quotation omitted)).

already lawfully acquired under the exercise of governmental authority other than the power of eminent domain."); AmeriSource Corp. v. United States, 525 F.3d 1149, 1153 (Fed. Cir. 2008) ("Property seized and retained pursuant to the police power is not taken for a 'public use' in the context of the Takings Clause."); Acadia Tech., Inc. v. United States, 458 F.3d 1327, 1331 (Fed. Cir. 2006) ("When property has been seized pursuant to the criminal laws . . . such deprivations are not 'takings' for which the owner is entitled to compensation."); Rhaburn, 88 Fed. Cl. at 313-14 (DEA seizure of money incident to plaintiff's arrest on drug-related charges was not a Fifth Amendment "taking"), aff'd, 2010 WL 3034666 (Fed. Cir. Jul 30, 2010).

Further, as the defendant notes, Federal Rule of Criminal Procedure 41(g) provides the proper mechanism for a plaintiff to challenge a seizure and forfeiture in district court. Fed. R. Crim. Proc. 41(g) ("A person aggrieved by an unlawful search and seizure of property or by deprivation of property may move for the property's return. The motion must be filed in the district where the property was seized."); see also 28 U.S.C. § 1356 (2006) ("The district courts shall have original jurisdiction, exclusive of the courts of the States, of any seizure under any law of the United States"). This remedy is not available in the Court of Federal Claims, because this court lacks jurisdiction to adjudicate claims under the criminal code. Joshua v. United States, 17 F.3d 378, 379 (Fed. Cir. 1994).

Accordingly, as the plaintiff has not stated a Fifth Amendment takings claim related to either the 2003 or 2005 seizures, insofar as his complaint alleges a taking, it

must be dismissed pursuant to RCFC 12(b)(6) for failure to state a claim upon which relief may be granted.

B. This Court Does Not Possess Jurisdiction Over the Plaintiff's Non-Tucker Act Claims

In his complaint, the plaintiff alleges that the DEA "stole" his property, Compl. 4; that the indictment, search, and arrest violated his right to due process, Compl. 1, 4; and that the defendant is liable for a "written default known to all parties," Compl. 3. In his response to the defendant's motion to dismiss, the plaintiff realleges each of these claims and asserts that he is entitled to the return of his property because the seizures violated the Fourth, Fifth, Eighth, and Fourteenth Amendments. Pl.'s Resp. 5, 6, 9, 15-16. The defendant argues that the court does not possess jurisdiction to hear any of these claims. The court agrees with the defendant.

Pursuant to the Tucker Act, this court does not possess jurisdiction over most cases "sounding in tort." 28 U.S.C. § 1491(a). Claims of theft, such as the plaintiff's claims that the DEA "stole" his property, have consistently been held to sound in tort, and therefore do not fall within this court's jurisdiction. See Husband v. United States, 90 Fed. Cl. 29, 35 (2009) (allegation of theft sounds in tort); Edelmann v. United States, 76 Fed. Cl. 376, 381 (2007) (same). Rather, the Federal Tort Claims Act grants jurisdiction to hear tort claims to the district courts. See 28 U.S.C. § 1346(b)(1) (2006). The plaintiff asserts, however, that a claim sounding in tort is changed to a claim sounding in contract when a party puts into writing a demand for redress to make the party whole for an

alleged injury. Pl.'s Resp. 7. While this court's jurisdiction does encompass relief for certain torts stemming from a breach of contract, see Awad v. United States, 301 F.3d 1367, 1372 (Fed. Cir. 2002) ("[e]ven where the claim is framed under non-tort law, the court lacks jurisdiction if the essence of the claim lies in tort"), the plaintiff is mistaken as to the breadth of this court's jurisdiction and invites this court to recognize a new contract between a plaintiff and the government stemming out of any alleged tort. The court declines this invitation. The plaintiff's complaint does not allege any of the required elements of either an express or implied contract. Rather, the plaintiff's claim of theft arises in tort and therefore falls outside of this court's jurisdiction.

Similarly, though the plaintiff alleges a "written default known to all parties," he has not alleged any of the required elements of either an express or implied contract. See Harbert/Lummus Agrifuels Projects v. United States, 142 F.3d 1429, 1434 (Fed. Cir. 1998); City of El Centro v. United States, 922 F.2d 816, 820 (Fed.Cir.1990) ("An implied-in-fact contract requires findings of: 1) mutuality of intent to contract; 2) consideration; and, 3) lack of ambiguity in offer and acceptance. When the United States is a party, a fourth requirement is added: the Government representative whose conduct is relied upon must have actual authority to bind the government in contract." (internal quotation and citation omitted)). Therefore this court does not have jurisdiction over the plaintiff's alleged claim of "default."

It is also well established that the Court of Federal Claims lacks jurisdiction over

Fifth Amendment due process claims because the Due Process Clause is not a money-mandating provision of the Constitution. See, e.g., Flowers v. United States, 321 F. App'x 928, 934 (Fed. Cir. 2008) (citing James v. Caldera, 159 F.3d 573, 581 (Fed. Cir. 1998)); LeBlanc v. United States, 50 F.3d 1025, 1028 (Fed. Cir. 1995) (The Due Process Clause of the Fifth Amendment cannot provide the Court of Federal Claims with jurisdiction because it does not mandate payment of money by the government). Similarly, to the extent that the plaintiff alleges violations of the Equal Protection Clauses of the Fifth or Fourteenth Amendments or the Due Process Clause of the Fourteenth Amendment, the same is true. LeBlanc, 50 F.3d at 1028.

Finally, because they are not money-mandating provisions of the Constitution, this court also does not possess jurisdiction over claims of violations of the Fourth Amendment, see Smith v. United States, 36 F. App'x 444, 445-46 (Fed. Cir. 2002), or the Eighth Amendment, see Trafny v. United States, 503 F.3d 1339, 1340 (Fed. Cir. 2007).

Accordingly, the plaintiff's non-Tucker Act claims alleging violations of other constitutional provisions and torts must be dismissed pursuant to RCFC 12(b)(1) for lack of jurisdiction.[4]

IV. CONCLUSION

For the reasons stated above, the defendant's motion to dismiss pursuant to RCFC

[4] Having concluded that the plaintiff's complaint is not within this court's jurisdiction and otherwise fails to state a claim upon which relief may be granted, the defendant's motion to suspend discovery pending resolution of the defendant's motion to dismiss, filed December 3, 2010, is **DENIED-AS-MOOT**.

12(b)(1) and (12)(b)(6) is **GRANTED**. The Clerk is directed to enter judgment accordingly. Furthermore, the Clerk is directed to accept no future complaints from the plaintiff absent an order from this court approving the filing. Each party shall bear its own costs.

IT IS SO ORDERED.

s/Nancy B. Firestone
NANCY B. FIRESTONE
Judge