

In the United States Court of Federal Claims

**No. 05-500T
(Filed: January 13, 2006)**

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JANICE WEEKS -KATONA, Pro-Se, *
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Plaintiff, *
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v. *
*
THE UNITED STATES, *
*
Defendant. *
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OPINION ON MOTION TO DISMISS

This case comes before the court on a motion by the defendant, the United States (“defendant,” “government” or “United States”), to dismiss the complaint of the plaintiff, Janice Weeks-Katona, a pro-se plaintiff (“plaintiff”), for lack of jurisdiction pursuant to Rules 12(b)(1) and 12(b)(6) of the Rules of the United States Court of Federal Claims (“RCFC”). In this action, the plaintiff seeks a refund of all taxes she allegedly paid for 1961 through 1990. In addition, the plaintiff seeks unspecified damages for a variety of tort-type and criminal-type claims, including the alleged unlawful collection of a debt by the Federal Bureau of Prisons and the defendant’s theft of her records. The plaintiff also raises a claim for breach of a settlement agreement with the United States and for a taking under the Fifth Amendment of the United States Constitution. The plaintiff further seeks

declaratory and injunctive relief, including the return of all records allegedly stolen by the government and the removal of a receiver who was appointed to marshal and recover assets from the plaintiff's fraudulent enterprise known as the Premier Benefit Capital Trust ("Premier Trust"). The plaintiff also demands the return of her tax records for the years 1944 through 2005, so that she can compute the income tax refund to which she believes she is due.¹ Finally, the plaintiff seeks to have Marsha Ann Leigh substituted as the "real party in interest." The plaintiff contends that all interests she has in her property and in her person have been transferred to Ms. Leigh, as a "Secured Party/ Creditor."

The defendant moves to dismiss portions of Ms. Weeks-Katona's first amended complaint under RCFC 12(b)(1) for lack of subject matter jurisdiction. In particular, the defendant contends that this court does not have jurisdiction over the plaintiff's tax refund, tort-type, and criminal-type claims, as well as her requests for declaratory and injunctive relief. Regarding the plaintiff's takings and breach of contract claims, the defendant moves for dismissal of the first amended complaint under RCFC 12(b)(6) for failure to state a claim on which relief can be granted.

On December 27, 2005, the plaintiff filed a series of motions, including a motion for the court to strike the defendant's motion to dismiss or in the alternative to transfer her claims to the United States District Court for the District of Columbia. The plaintiff also

¹ The plaintiff alleges that her tax records were stolen by certain Premier Trust "Litigation Trustees" and by Charles L. Stutts, who was appointed by the district court as receiver and charged with recovering Premier Trust assets. Claim No. 02 ¶ 6 (1st Am. Compl. 18).

filed a motion for an interlocutory appeal and to have Ms. Leigh substituted as the “real party in interest.”

STATEMENT OF FACTS

The following facts, taken from the United States’ motion to dismiss and reply brief, have not been disputed. In 1994, the plaintiff was indicted and convicted on nine counts of fraud, conspiracy to defraud, money laundering, conspiracy to murder a district court judge, and firearms and weapons charges in the United States District Court for the Middle District of Florida.² These charges arose from the plaintiff’s involvement in a scheme to defraud investors in the Premier Benefit Capital Trust (“Premier Trust”). On August 7, 1996, the plaintiff was sentenced to serve approximately 24 years in federal prison.³ In addition, the plaintiff was ordered to disgorge \$3,311,000 of defrauded investors’ funds in the Premier Trust scheme.

About nine months before the plaintiff’s indictment, in July 1993, the Securities and Exchange Commission (“SEC”) commenced a civil suit against Premier Trust and the plaintiff in her capacity as a principal of Premier Trust, seeking a permanent injunction respecting sales of Premier Trust securities and other relief.⁴ On July 16, 1993, the United States District Court for the Middle District of Florida, Tampa Division, appointed Charles

² See Indictment, Judgment, United States v. Weeks, No. 8:94-cr-0065-SCB-ALL (M.D. Fla.), aff’d 134 F.3d 385 (11th Cir. 1997) (Table).

³ The plaintiff is incarcerated in federal prison in California, serving the sentence imposed in 1996.

⁴ See SEC v. Premier Benefit Capital Trust, No. 8:93-cv-01079-HLA (M.D. Fla.).

L. Stutts as receiver, who was charged with marshaling and preserving the books, records, and assets of Premier Trust for the benefit of the defrauded investors. After investigating the activities of Premier Trust and the plaintiff, Mr. Stutts concluded that the plaintiff, individually and through trusts that she controlled, had misappropriated Premier Trust assets to the detriment of the investors. Mr. Stutts thereafter commenced actions against the plaintiff to recover the assets. One of the assets was a condominium located at 1340 Gulf Boulevard in Clearwater, Florida. As to that asset, after a lien search and appraisal revealed that there was little equity in the property, Mr. Stutts took no action to bring it within the receivership estate. Mr. Stutts states in his declaration that the condominium subsequently went into foreclosure, and that the mortgagor ultimately regained title and possession. Mr. Stutts further states in his declaration that the plaintiff did not defend against any of his actions because she had fled from the Middle District of Florida, eventually ending up in Mexico. When she returned to Florida, she was arrested, prosecuted, and convicted in 1994 as described above. In the SEC action, on November 7, 1997, the plaintiff was permanently enjoined from selling securities and defrauding potential investors in violation of the Securities Act of 1933, 15 U.S.C. §§ 77e(a), 77e(c), 77q(a) (2000), and the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) (2000).

Finally, on June 8, 2004, the plaintiff received a letter from the United States Attorney's Office for the Middle District of Florida. The letter stated that the plaintiff could arrange to retrieve certain items seized by the government as evidence in the case against her. The plaintiff responded by letter stating that she accepted the government's

“settlement offer” and agreed to her release from prison and the return of all items taken from her. On June 30, 2004, the U.S. Attorney wrote back to the plaintiff to clarify that the “United States Attorney for the Middle District of Florida is merely putting you on notice that you may designate someone to retrieve some items of a non-contraband nature which federal agents seized during execution of search warrants. . . . No other action or concession is implied at all.”

DISCUSSION

I. The Plaintiff’s Motion for Substitution of Parties

In her first amended complaint, the plaintiff included a Notice of Joinder naming Marsha Ann Leigh as an indispensable party to this suit and the real party in interest. 1st Am. Compl. 3-5. The plaintiff has allegedly pledged all of her real and personal property, including her body, to Ms. Leigh, a purported secured creditor of the plaintiff. In an order dated July 7, 2005, the court returned the plaintiff’s Notice of Joinder respecting Ms. Leigh’s alleged secured interest in the plaintiff’s property and person, stating, “[t]o the extent that Ms. Leigh is the real party in interest with respect to any of plaintiff’s claims, Ms. Leigh’s interest must be identified and addressed in [plaintiff’s] response to [defendant’s] motion for a more definitive statement.”

In response to the court’s order, the plaintiff filed a motion for substitution of parties on December 27, 2005. In the motion, the plaintiff reiterates her contention that Ms. Leigh is the real party in interest because the plaintiff has given all of her property and her body over to Ms. Leigh as a Secured Party/Creditor under “UCC-1 Financing

Statement” filed with the State of Iowa, 2005.” Pl.’s Mot., Dec. 27, 2005, at 5.

The United States contends that Ms. Leigh may not be substituted as the real party in interest on the grounds that the plaintiff has not satisfied the criteria for transferring claims under the Anti-Assignment Act, 31 U.S.C. § 3727(b) (2000). Tax refund claims are assignable, if at all, only “after a claim is allowed, the amount of the claim is decided, and a warrant for payment of the claim has been issued.” The same rule would apply to the plaintiff’s takings claim. In addition, the United States contends that the Anti-Assignment Act for Contracts, 41 U.S.C. § 15 (2000), prohibits the transfer of breach of contract claims except in circumstances that are not relevant here.

The court agrees with the government that the plaintiff may not legally transfer her claims to Ms. Leigh. Accordingly, the plaintiff’s motion for substitution of parties is **DENIED.**

II. The Defendant’s Motion to Dismiss

A. This Court Lacks Subject Matter Jurisdiction over the Plaintiff’s Tax Refund Claims.

The plaintiff seeks a refund of “all taxes on income, social security earnings, medicare earnings, and any other federal taxes Defendant wrongfully collected” from her for the years 1961 through 1990. Claim No. 02 (1st Am. Compl. 17). The plaintiff alleges that in June 2004 and March 2005 she filed a claim for refund of income taxes with an office of the Internal Revenue Service (“IRS”) in Tampa, Florida, referencing Exhibits C and D to the first amended complaint in support of her allegation. Claim No. 06, F.(A)1-2

(1st Am. Compl. 23). But only two documents included in Exhibits C and D to the first amended complaint were authored by the plaintiff, and neither is a claim for refund of taxes.

To establish subject matter jurisdiction in this court, the plaintiff must demonstrate, inter alia, that she timely filed a claim for refund for each taxable year in dispute. I.R.C. § 6511(a). The plaintiff has failed to demonstrate that she filed a timely claim for refund with the IRS for each of the years in dispute, 1961 through 1990. Under I.R.C. § 7422(a), a claim for refund must be duly filed before a refund suit can be maintained in any court. See, e.g., Stelco Holding Co. v. United States, 42 Fed. Cl. 101, 104 (1998) (“[A] properly filed administrative claim for refund is the indispensable prerequisite to this court’s exercise of jurisdiction over a taxpayer’s suit for refund.”); United States v. Felt & Tarrant Mfg. Co., 283 U.S. 269, 272 (1931) (citing Tucker v. Alexander, 275 U.S. 228 (1927)).

Further, “[t]o be ‘duly’ filed, within the meaning of § 7422, a claim must comply with the requirements of § 6511.” Wall Indus. v. United States, 10 Cl. Ct. 82, 95 (1986). Under § 6511(a), the claim must be filed within the applicable statutory period. Section 6511(a) states in pertinent part:

(a) Period of limitation on filing claim.—Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later. . .

The timeliness requirements of the Internal Revenue Code are jurisdictional, not procedural, and are strictly construed. See United States v. Brockamp, 519 U.S. 347

(1997) (holding that no implied equitable exception may be read into § 6511); United States v. Sherwood, 312 U.S. 584, 590-91 (1941) (holding that waiver of sovereign immunity must be strictly construed).

Applying the formula of § 6511(a) to the facts of this case, to be timely, the plaintiff would have had to have filed claims with the IRS for refund of taxes paid for 1961 through 1990 within three years of the dates her income tax returns, if any, were filed for those years, clearly well before June 2004 and March 2005, when plaintiff alleges she filed a claim with the IRS for overpayment of the unknown taxes in dispute. Claim No. 06 ¶ F.(A) (1st Am. Compl. 23). Therefore, assuming merely for purposes of argument that the documents the plaintiff proffers as refund claims were indeed otherwise duly filed claims, the alleged claims were not timely filed with the IRS for any of the years in suit. Because the plaintiff has not demonstrated that she filed with the IRS timely refund claims for the years in dispute, 1961 through 1990, the plaintiff's claims for tax refunds are barred and must be dismissed.

B. This Court Lacks Subject Matter Jurisdiction Over Claims Sounding in Tort and Criminal Law.

In her first amended complaint, the plaintiff seeks unspecified monetary damages for the defendant's allegedly tortious and criminal acts. The plaintiff alleges that:

(1) The United States has required her to pay a debt that does not exist, and that filing charges against her without an assessment or proof of claim is a felony. Notice of Default ¶¶ 13-17 (1st Am. Compl. 8).

(2) The defendant "embezzled Fiduciary lock-box account at Bank of Boston containing car notes with estimated value of \$25 million." Id. ¶ 18 (1st Am. Compl. 9); Claim No. 06 (1st Am. Compl. 21).

(3) The defendant "perpetrated a fraud upon the Court," Notice of Default, ¶ 18 (1st Am. Compl. 9); and "deliberately[,] knowingly, [and] intentionally withheld records and knowledge of records and facts material to this case by concealment, a fraud upon the court and abuse of process." Id. ¶ 24 (1st Am. Compl. 10).

(4) From 1992 through 1994, the United States, together with the Premier Trust receiver and others, unlawfully seized her records, including personal tax records and records of Premier Trust, which the defendant holds in "adverse possession." Requested Information ¶¶ 2-6 (1st Am. Compl. 11).

(5) At the time the plaintiff's records were seized, defendant controlled all information by mail tampering. Id. ¶ 8 (1st Am. Compl. 12).

(6) Charles Stutts, the receiver appointed by the federal district court in the SEC

case involving the plaintiff and Premier Trust, embezzled \$3,311,000 from the trust.⁵ Id.

(7) The defendant obtained the plaintiff's birth certificate and Social Security number "by fraud in the inducement, without full disclosure, and with false and misleading statements, and concealed material facts detrimental to" the plaintiff.⁶ Id. ¶ A.4 (1st Am. Compl. 13); Claim No. 06 (1st Am. Compl. 26).

(8) The Federal Bureau of Prisons has "perpetrated a fraud" upon the district court by "extract[ing] payments on a debt without proof of claim, which does not exist." Claim No. 03 (1st Am. Compl. 20).

This court does not have jurisdiction to reach these claims. The Tucker Act, 28 U.S.C. § 1491(a)(1) (2000), on which this court's jurisdiction is founded, expressly states that this court does not have jurisdiction over claims "sounding in tort." See Keene Corp. v. United States, 508 U.S. 200, 214 (1993); Brown v. United States, 105 F.3d 621, 623 (Fed. Cir. 1997). Rather, jurisdiction over tort claims is granted exclusively to the United States district courts under 28 U.S.C. § 1346(b) (2000). See Wood v. United States, 961 F.2d 195, 197 (Fed. Cir. 1992). Further, this court lacks jurisdiction over claims brought under the federal criminal code, such as the plaintiff's contention that the United States has committed felonious acts. See Joshua v. United States, 17 F.3d 378, 379 (Fed. Cir.

⁵ The sum of \$3,311,000 is the amount of the restitution that the plaintiff was ordered to pay under the sentence imposed against her by the federal district court in 1994. See Def's. Ex. 2, App. B at 50.

⁶ Plaintiff alleges that her birth certificate and Social Security number created a contract "designed to extract taxes and payments of debts and other tributes to Defendant." Id. ¶ A.4 (1st Am. Compl. 13).

1994) (affirming dismissal of, inter alia, claims of conspiracy, criminal fraud, perjury).

Therefore, the plaintiff's tort-type and criminal-type claims must be dismissed.⁷

C. The Plaintiff's Takings and Contract Claims Must Be Dismissed for Failure to State a Claim Upon Which Relief Can Be Granted.

The plaintiff alleges that, in the SEC suit brought against the plaintiff and Premier Trust, receiver Stutts took a condominium she owned in Clearwater, Florida, without just compensation in violation of the Fifth Amendment to the United States Constitution. The plaintiff's claim is without foundation. As the plaintiff concedes, the condominium in question was foreclosed by the mortgagor, rather than seized by the receiver in the SEC case for the defendant. Thus, the plaintiff has not alleged a taking by the United States. Moreover, to the extent that the receiver took any of the plaintiff's property, it is well-settled that seizure of property in connection with law enforcement does not implicate the takings clause. Brown v. United States, 73 F.3d 1100, 1103 n.3 (Fed. Cir. 1996). Accordingly, the plaintiff's takings claims must be dismissed with prejudice for failure to state a claim upon which relief can be granted.

Similarly, the plaintiff's breach of contract claim must be dismissed for failure to state a claim. The plaintiff contends that she accepted a "settlement offer" by the United States Attorney for the Middle District of Florida to release the plaintiff from prison in

⁷ This court also lacks jurisdiction to consider the plaintiff's claim that she was sold into slavery by receiver Stutts in violation of the Thirteenth Amendment to the United States Constitution. This court has jurisdiction over constitutional claims that mandate the payment of money damages. The Thirteenth Amendment does not mandate the payment of money damages for its violation. See Carter v. United States, 228 Ct. Cl. 898 (1981); Eastport S.S. Corp. v. United States, 178 Ct. Cl. 599, 607, 372 F.2d 1002, 1008-09 (1967); 28 U.S.C. § 1491(a)(1).

order for her to retrieve certain records that the government has been holding as evidence in the criminal trial against her. A careful review of the subject correspondence between the United States Attorney's office and the plaintiff indicates that the United States Attorney's office had not offered any settlement to the plaintiff but had merely informed plaintiff that she could arrange for the retrieval of evidence obtained by the government for use at her criminal trial. The correspondence does not in any way suggest an agreement by the government to release the plaintiff from prison or to return all items allegedly taken from her. Therefore, the plaintiff's claim based on breach of a settlement agreement must be dismissed for failure to state a claim.

D. The Plaintiff's Claims for Declaratory and Injunctive Relief Plaintiff Must Be Dismissed.

The plaintiff asks the court to order the following declaratory and injunctive relief:

(1) The defendant is to return all of the plaintiff's tax records for the period of 1944 through 2005, which the defendant allegedly took from the plaintiff. Claim No. 01 (1st Am. Compl. 14).

(2) The defendant is to return all Premier Trust records, which were allegedly taken by the defendant in 1993 and were not returned to the plaintiff. The defendant also is to return all Premier Trust records which were generated by the "Defendant Litigation Trustees" and receiver Stutts. Claim No. 03 (1st Am. Compl. 19).

(3) The defendant is to turn over to the plaintiff all Federal Bureau of Prison Records of "debt collection from labor contract, FRP contracts, financial restraints,

medical distrains, [and] security status distrains” involving plaintiff and account/bond no. 17493-018. Claim No. 04 (1st Am. Compl. 20).

(4) The Federal Bureau of Prisons is to cease all collection activity with respect to any debt she owes the United States, because the debt allegedly has been charged back and therefore does not exist. Claim No. 05 (1st Am. Compl. 20).

(5) The Federal Bureau of Prisons is to transport plaintiff to the Mayo Clinic or, in the alternative, to the temporary headquarters of the Premier Trust in St. Petersburg, Florida. Claim No. 06 (1st Am. Compl. 21).

(6) Receiver Stutts is to be removed from his position, because he allegedly has “perpetrated a fraud upon the court” by collecting “a discharge debt that does not exist.” Claim No. 07 (1st Am. Compl. 26).

This court cannot award the plaintiff the declaratory and injunctive relief she seeks. In Brown, 105 F.3d at 624, the Court of Appeals for the Federal Circuit explained that “[t]he Tucker Act does not provide independent jurisdiction over such claims [declaratory or injunctive] for equitable relief.” And in United States v. King, 395 U.S. 1, 5 (1969), the United States Supreme Court stated, “In the absence of an express grant of jurisdiction from Congress, we decline to assume that the Court of Claims has been given the authority to issue declaratory judgments.” For these reasons, the plaintiff’s above-cited claims for relief – Claims No. 01 (1st Am. Compl. 14) and Nos. 03 through 07 (1st Am. Compl. 19-21, 26) – must be dismissed for lack of subject matter jurisdiction.

CONCLUSION

For the reasons stated herein, the plaintiff's tax refund claim (Claim No. 02) and tort-type and criminal-type claims, as well as her requests for declaratory and injunctive relief (Claims Nos. 01, 03-07) must be dismissed for lack of subject matter jurisdiction.⁸ The plaintiff's takings and contract claims must also be dismissed for failure to state a claim upon which relief can be granted.⁹ Accordingly, the government's motion to dismiss is **GRANTED**.¹⁰ The Clerk of the Court is directed to enter judgment accordingly. Each party to bear its own costs.

IT IS SO ORDERED.

s/Nancy B. Firestone
NANCY B. FIRESTONE
Judge

⁸ The plaintiff's motion, filed on December 27, 2005, for the transfer of her case to the United States District Court for the District of Columbia, is **DENIED** as moot.

⁹ The plaintiff's motions, filed on December 27, 2005, for interlocutory appeal, to strike various filings by the government, and for relief from various orders limiting the plaintiff's filings on the basis that these motions, are **DENIED** as moot.

¹⁰ The plaintiff's motion "for leave to augment for clarity (agents) D.O.J. letters culminating in (principal) Treasury's assent to settlement in support of plaintiff's motion to strike defendant's motion to dismiss 'reply to answer' and opposition to response," filed on January 9, 2006, is **DENIED** as moot.