In the United States Court of Federal Claims

NOT FOR PUBLICATION
No. 03-92C

(Filed May 10, 2005)

* *

DAVID GEORGE ALLEN, and ELEANOR McCLINTOCK ALLEN, PRO SE,	*
Plaintiffs,	*
v.	*
THE UNITED STATES,	*
Defendant.	*

* *

OPINION & ORDER

This *pro se* case is before the court on defendant's motion to dismiss for lack of subject matter jurisdiction. Defendant maintains that plaintiffs' claims are barred as they fall outside the court's six-year statute of limitations set forth in 28 U.S.C. § 2501. Defendant also avers that plaintiffs' claims cannot be characterized as an "eligible complaint" and, therefore, are not preserved by the statute of limitations waiver in 7 U.S.C. § 2279, applicable to certain nonemployment discrimination cases. Further, defendant contends that the court cannot entertain plaintiffs' claims because plaintiffs failed to invoke a money-mandating provision. On the other hand, plaintiffs assert that their complaint was filed in a timely manner because it was brought within 180 days of the United States Department of Agriculture's (USDA) final decision. While plaintiffs acknowledge that their "charges . . . may not 'fit within the box,'" they allege the court possesses jurisdiction over said charges because they "are closely interwoven and are a direct result of . . . defendant's fraud upon their contract."[1]

---

[1] Plaintiffs' Response To Defendant's Motion To Dismiss (Plaintiffs' Resp.) ¶ 10, at 6.

Factual Background

In 1988, plaintiffs, David George Allen and Eleanor McClintock Allen, began borrowing money through the Farmers Home Administration (FmHA). Plaintiffs applied for both an operating loan, which was obtained that year, and for a farm ownership loan, which did not become available until the spring of 1990. On April 17, 1990, plaintiffs closed on the loan at the offices of Citizen's Title and Escrow (CTE), the closing agent. Plaintiffs were aware going into the meeting that they would be required to pledge several tracts of land as collateral for the loan. Both sides do not dispute that the agreement, as originally structured, required plaintiffs at a minimum to secure the loan with four parcels of land - - Parcels "A," "B," "D," and "E." The parties, however, espouse divergent positions concerning the inclusion of Parcel "C," plaintiffs' homestead.

According to defendant, FmHA appraised plaintiffs' property prior to the April 17, 1990, meeting and determined that five parcels of land, including Parcel "C," were necessary to secure the loan. Defendant alleges that plaintiffs' awareness that Parcel "C" was being used to secure the loan was evidenced by plaintiffs' signature on a form entitled "Acknowledgment That Property Is Not Exempt From Foreclosure."[2] Defendant argues that plaintiffs would not have been required to sign such a form unless their homestead was included as collateral. Defendant also claims that FmHA loan files, the preliminary title commitment, and the mortgage, likewise indicate that Parcel "C" was intended to serve as collateral.

On the other hand, plaintiffs claim they had reached an agreement with the Assistant County Supervisor that only four parcels of land would be needed to secure the loan. Plaintiffs allege that they carefully reviewed the documentation provided to them on April 17, 1990, and Parcel "C" was not referenced. For that matter, plaintiffs argue that Ms. Allen asked Mr. Allen, in the presence of the closing officer, "Where is Parcel C?"[3] Plaintiffs also represent that the closing officer, believing the question was directed toward him, responded "That's the house and three acres - mind if we add it?"[4] Plaintiffs claim that Mr. Allen "immediately replied, 'Yes, I do mind. You've got enough collateral already.'"[5] Plaintiffs allege that there were no further discussions regarding Parcel "C," and that their review of the loan packet later that day confirmed its absence from the materials.

---

[2] Complaint Exhibit (Ex.) D at 26.

[3] ***Id.*** ¶ 1, at 3.

[4] ***Id.***

[5] ***Id.***

The issue of whether Parcel "C" was included as collateral would reemerge in late 1992/early 1993. At that time, Mr. Allen sought to purchase a semi truck and trailer. In order to do so, Mr. Allen needed to offer a portion of Parcel "C" as collateral for a loan. Mr. Allen obtained a copy of the recorded mortgage and allegedly discovered that Parcel "C" was encumbered by the FmHA mortgage. Plaintiffs specifically allege that "[o]n April 23, 1993, [they] drove to the . . . FmHA office and spoke to . . . the new County Supervisor, regarding the unauthorized addition of Parcel C to the mortgage."[6] Although plaintiffs disagreed with his assessment of their situation, it is not disputed that the County Supervisor refuted plaintiffs' allegations in writing on April 27, 1993.

In February of 1997, plaintiffs commenced a civil action against CTE in the Montana Eleventh Judicial Circuit, Flathead County, alleging that CTE fraudulently included Parcel "C" as collateral for the FmHA loan. On October 6, 1998, the case was dismissed with prejudice in accordance with the terms of the parties' settlement agreement. Subsequently on April 28, 1997, plaintiffs filed a complaint with the USDA. An administrative law judge issued a decision denying plaintiffs' claim on November 9, 2001. That decision was affirmed by the Assistant Secretary for Administration of the USDA on July 15, 2002. Plaintiffs were informed that they could appeal the decision, if they so chose, within 180 days.

Plaintiffs brought suit in this court on January 16, 2003, setting forth the following causes of action:

> [Plaintiffs] are seeking review for Deception, Concealment, Conspiracy, Contract Violations, Tampering with Government Documents/Destruction of Government Property, Violation of Good Faith, Dereliction of Duty, Violations of ECOA, Unlawful [Encumbrance] of Real Property, Loss of Crop Production for the years 1991 through 2002, Denial of Due Process, Denial of FOIA requests, Abuse of Discretion, Non-compliance with Established Rules and Regulation, Discrimination and Reprisal by the United States Department of Agriculture/Farmers Home Administration.[7]

Plaintiffs calculated their damages to total $563,389.00 and requested that "any and all contracts between [plaintiffs] and USDA/FmHA . . . be declared null and void immediately and [plaintiffs] . . . be given clear title to any and all of their

---

[6] ***Id.*** ¶ 3, at 4.

[7] ***Id.*** ¶ 2, at 1.

property . . . ."[8] Plaintiffs also asked the court to "order the Defendants (from the Secretary down to every county employee) [to] sign the Declaration of Compliance . . . ."[9]

On January 13, 2005, defendant filed its Motion To Dismiss. Plaintiffs filed their response on February 14, 2005, and defendant replied on March 29, 2005. The court deems oral argument unnecessary.

Discussion

In ruling on a motion to dismiss for lack of jurisdiction under **RCFC** 12(b)(1), the court must accept as true the complaint's undisputed factual allegations and construe the facts in the light most favorable to plaintiff. ***Scheuer v. Rhodes***, 416 U.S. 232, 236 (1974); see also ***Hamlet v. United States***, 873 F.2d 1414, 1416 (Fed. Cir. 1989); ***Farmers Grain Co. of Esmond v. United States***, 29 Fed. Cl. 684, 686 (1993). A plaintiff must make only a *prima facie* showing of jurisdictional facts through the submitted material in order to defeat a motion to dismiss. ***Raymark Indus., Inc. v. United States***, 15 Cl. Ct. 334, 338 (1988) (citing ***Data Disc, Inc. v. Sys. Tech. Assocs., Inc.***, 557 F.2d 1280, 1285 (9th Cir. 1977)). If the undisputed facts reveal any possible basis on which the non-moving party might prevail, the court must deny the motion. ***Scheuer***, 416 U.S. at 236; see also ***Lewis v. United States***, 32 Fed. Cl. 59, 62 (1994). If, however, the motion challenges the truth of the jurisdictional facts alleged in the complaint, the court may consider relevant evidence in order to resolve the factual dispute. ***Rocovich v. United States***, 933 F.2d 991, 994 (Fed. Cir. 1991); see also ***Lewis***, 32 Fed. Cl. at 62.

It is well-established that this court is one of specific and defined jurisdiction. ***United States v. Testan***, 424 U.S. 392, 397-98 (1976); ***United States v. King***, 395 U.S. 1, 3 (1969); ***Dynalectron Corp. v. United States***, 4 Cl. Ct. 424, 428, *aff'd*, 758 F.2d 665 (Fed. Cir. 1984). The court's jurisdiction to entertain claims and to grant relief extends only so far as the United States has waived its sovereign immunity from suit. ***Testan***, 424 U.S. at 399 (citing ***United States v. Sherwood***, 312 U.S. 584, 586 (1941)); ***Booth v. United States***, 990 F.2d 617, 619 (Fed. Cir. 1993). The waiver of sovereign immunity must be expressed unequivocally and cannot be implied. ***United States v. Mitchell***, 445 U.S. 535, 538 (1980); ***Testan***, 424 U.S. at 399; ***Zumerling v. Marsh***, 783 F.2d 1032, 1034 (Fed. Cir. 1986). Any grant of jurisdiction to this court must be strictly construed. ***Mitchell***, 445 U.S. at 538; ***Cosmic Constr. Co. v. United States***, 697 F.2d 1389, 1390 (Fed. Cir. 1982).

---

[8] ***Id.*** ¶ 3, at 8.

[9] ***Id.*** ¶ 12, at 10.

Pursuant to the Tucker Act, this court has:

> 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) (1994). The Tucker Act, however, is "only a jurisdictional statute; it does not create any substantive right enforceable against the United States for money damages." ***Testan***, 424 U.S. at 398. The provisions a plaintiff relies upon must contain language which could fairly be interpreted as mandating recovery of compensation from the government. ***Cummings v. United States***, 17 Cl. Ct. 475, 479 (1989), *aff'd*, 904 F.2d 45 (Fed. Cir. 1990) (citations omitted).

As an initial matter, plaintiffs make a sweeping allegation that "[w]here rights secured by the Constitution are involved, there can be no rulemaking or legislation which would abrogate them."[10] It is well-established that a "constitutional claim can become time-barred just as any other claim can. Nothing in the Constitution requires otherwise." ***Hair v. United States***, 350 F.3d 1253, 1260 (Fed. Cir. 2003) (quoting ***Block v. North Dakota***, 461 U.S. 273, 292 (1983)); see also ***Consolidation Coal Co. v. United States***, 54 Fed. Cl. 14, 17-18 (2002), *rev'd on other grounds*, 351 F.3d 1374 (Fed. Cir. 2003). In addition, the Federal Circuit previously endorsed this principle in ***Stone Container Corp. v. United States***, 229 F.3d 1345, 1350 (Fed. Cir. 2000): "Both the Supreme Court and this court have repeatedly held that the federal government may apply statutes of limitations to just compensation claims [under the Fifth Amendment]." Accordingly, plaintiffs' constitutional claims are not immune from statute of limitations constraints.

Defendant contends that plaintiffs' claims are barred because plaintiffs were aware in 1993 that Parcel "C" was allegedly improperly used to secure their loan. Defendant maintains that plaintiffs did not bring their claims within six years of possessing knowledge of the purported harm as required by 28 U.S.C. § 2501. Further, defendant avers that plaintiffs' resort to the administrative process established in 7 U.S.C. § 2279 does not save their claims. Defendant maintains that plaintiffs' claims remained subject to the court's six-year statute of limitations because they were never properly before the USDA. Defendant asserts that the court lacks jurisdiction over the action because plaintiffs' complaint does not fall within the statutory definition of an "eligible complaint." Defendant contends that plaintiffs' complaint suffers from a second fatal flaw as it did not allege

---

[10] Plaintiffs' Resp. at 1 (quoting ***Miranda v. Arizona***, 384 U.S. 436 (1966)).

discrimination with the requisite degree of specificity. On the other hand, plaintiffs assert that they sought to exhaust their administrative remedies prior to bringing suit in this court. Plaintiffs also aver that their claims were brought in a timely manner in accordance with 7 U.S.C. § 2279(c) and 7 C.F.R. § 15f.26.

Plaintiffs were aware on April 23, 1993, that Parcel "C" was used to secure their loan. The Federal Circuit has held that "pleadings are judicial admissions and a party may invoke the language of the opponent's pleading to render the facts contained therein indisputable." ***E.C. McAfee A/C Bristol Metal Indus. Of Canada, Ltd. v. United States***, 832 F.2d 152, 154 n.* (Fed. Cir. 1987). Plaintiffs' complaint indicates, on more than one occasion, that "[o]n April 23, 1993, [plaintiffs] drove to the . . . FmHA office and spoke to . . . the new County Supervisor, regarding the unauthorized addition of Parcel C to the mortgage."[11] Plaintiffs' complaint also states that on April 27, 1993, the County Supervisor confirmed, contrary to plaintiffs' assertion, that Parcel "C" had been properly designated as collateral for the FmHA loan.[12] Under routine circumstances, plaintiffs, therefore, would have had six years from April 27, 1993, in which to file suit in this court.

Plaintiffs' situation, however, was far from routine. Reports began to surface that USDA deliberately "dismantled its civil rights enforcement program in the early 1980s . . . ." ***Wise v. Glickman***, 257 F. Supp. 2d 123, 126 (D.D.C. 2003). Accompanying these reports were allegations that USDA programs were being administered in a discriminatory fashion. ***Id.*** On October 21, 1998, President William Jefferson Clinton signed into law legislation which provided new life for certain nonemployment discrimination claims which typically would have been considered stale claims. ***Pigford v. Glickman***, 185 F.R.D. 82, 90 (D.D.C. 1999) (citing Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, Pub. L. No. 105-277, § 741, 112 Stat. 2681 (codified at 7 U.S.C. § 2279, Notes)). The legislation tolled the statute of limitations for discrimination claims which satisfied statutory requirements. The Notes to 7 U.S.C. § 2279 provided, in pertinent part, the following:

> (a) To the extent permitted by the Constitution, any civil action to obtain relief with respect to the discrimination alleged in an eligible complaint, if commenced not later than 2 years after the date of the

---

[11] Complaint ¶ 3, at 4; see also ***id.*** ¶ 9, at 6 ("The fact that USDA/FmHA refused to address the issue of the fraudulent mortgage created an ongoing damage which commenced the day [plaintiffs] addressed the County Supervisor, April 2[3], 1993 . . . .").

[12] ***Id.*** ¶ 3, at 4; see also ***id.*** Ex. F.

enactment of this Act [Oct. 21, 1998], shall not be barred by any statute of limitations.
(b) The complainant may, in lieu of filing a civil action, seek a determination on the merits of the eligible complaint by the Department of Agriculture if such complaint was filed not later than 2 years after the date of enactment of this Act [Oct. 21, 1998] . . . .

***

(c) Notwithstanding subsections (a) and (b), if an eligible claim is denied administratively, the claimant shall have at least 180 days to commence a cause of action in a Federal court of competent jurisdiction seeking a review of such denial.
(d) The United States Court of Federal Claims and the United States District Court shall have exclusive original jurisdiction over --
(1) any cause of action arising out of a complaint with respect to which this section waives the statute of limitations; and
(2) any civil action for judicial review of a determination in an administrative proceeding in the Department of Agriculture under this section.
(e) As used in this section, the term "eligible complaint" means a nonemployment related complaint that was filed with the Department of Agriculture before July 1, 1997 and alleges discrimination at any time during the period beginning on January 1, 1981 and ending December 31, 1996 --
(1) in violation of the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) in administering --
(A) a farm ownership, farm operating, or emergency loan funded from the Agricultural Credit Insurance Program Account; or
(B) a housing program established under title V of the Housing Act of 1949 [42 U.S.C. § 1471 et seq.]; or
(2) in the administration of a commodity program or a disaster assistance program.

***

(g) The standard of review for judicial review of an agency action with respect to an eligible complaint is de novo review. Chapter 5 of title 5 of the United States Code shall apply with respect to an agency action under this section with respect to an eligible complaint, without regard to section 554(a)(1) of that title.

The statute provided plaintiffs with two avenues of legal redress. First, plaintiffs could have initiated their suit in federal court without any antecedent agency review. 7 U.S.C. § 2279(a). Plaintiffs, however, did not exercise that option and the court at this juncture could not possess jurisdiction under § 2279(a). Plaintiffs did not file their complaint in this court until January 16, 2003, whereas viable claims under § 2279(a) were to be filed by October 21, 2000. Second, plaintiffs were permitted, which they did, to first obtain an agency determination prior to initiating an action in federal court. ***Id.*** § 2279(b). Given § 2279(b)'s permissive language, it would appear at an initial glance that the statute of limitations would have continued to run during the pendency of plaintiffs' administrative case. ***Mitsubishi Elecs. Am., Inc. v. United States***, 44 F.3d 973, 978 (Fed. Cir. 1994) (holding that "[a]n administrative proceeding does not toll the limitations period unless the proceeding is a mandatory prerequisite to filing suit"); ***Brighton Village Assocs. v. United States***, 52 F.3d 1056, 1060 (Fed. Cir. 1995) (noting that "permissive administrative remedies . . . do not toll the limitations period"). The statute, however, expressly provides that the USDA's conclusion could subsequently be appealed to either this court or a United States District Court within 180 days of the agency's decision. ***Id.*** § 2279(c), (d)(2). In sum, provided plaintiffs met the requirements of 7 U.S.C. § 2279(b), the April 27, 1993, date would neither be controlling nor act to defeat plaintiffs' claims.

Defendant, however, asserts that plaintiffs should not be able to avail themselves of § 2279's procedure because the USDA concluded that plaintiffs did not submit an "eligible complaint." Although the agency acknowledged that it received plaintiffs' complaint on April 28, 1997, it found that plaintiffs had not alleged discrimination with the requisite degree of specificity and that plaintiffs' addendum alleging reverse discrimination could not be considered as it was not filed until after the statutory deadline had passed. Defendant seizes upon these holdings to argue that the USDA's conclusions divest this court of jurisdiction over the matter. Defendant's argument is untenable.

Title 7 U.S.C. § 2279(d)(2) does not limit the court's review only to "eligible complaints," but provides for "judicial review of a determination in an administrative proceeding in the Department of Agriculture under this section." The agency's conclusion with respect to the factors for an "eligible complaint" is an agency "determination." Defendant's argument would effectively make the agency's holding binding on this court and foreclose judicial review any time the agency concluded that a plaintiff's action did not derive from an "eligible complaint." Stated another way, an agency's determination that an "eligible complaint" was lacking would be immune from judicial review. The court, however, believes that the better reading of the statute is that determinations concerning statutory prerequisites as well as decisions on the merits are reviewable by this court. See ***Mients v. United States***, 50

Fed. Cl. 665, 669-70 (2001) (examining as a matter of first impression whether the plaintiff had previously submitted an "eligible complaint").

Several additional legal principles buttress the court's conclusion. Allowing an agency decision to dictate whether this court possesses jurisdiction would run contrary to the well-established proposition that the court is obligated to determine its own jurisdiction. ***Hicks v. United States***, 23 Cl. Ct. 647, 652 (1991) (citing ***Hambsch v. United States***, 857 F.2d 763 (Fed. Cir. 1988)). Moreover, § 2279 contemplated that the court would be capable of ascertaining, without the benefit of an agency's prior determination, a complaint's eligibility. Under § 2279(a), a plaintiff may directly seek review in a federal court. Because the existence of an "eligible complaint" is a jurisdictional prerequisite, the court's fulfillment of its obligations under the procedural mechanism contained within § 2279(a) necessarily entails a determination regarding whether the matter before it derived from an "eligible complaint." Further, the statute provided that the court should apply a *de novo* standard of review to agency action. 7 U.S.C. § 2279(g). In other words, the court is not required to afford the agency's interpretation any deference when analyzing an issue which originated there; in this case, whether plaintiffs submitted an "eligible complaint." Lastly, defendant's position is implicitly contradicted by the Assistant Secretary's conclusions. If the Assistant Secretary's determination that plaintiffs' allegations were not properly before the USDA deprived this court of jurisdiction, there would have been no reason to inform plaintiffs of any purported appeal rights. Accordingly, the agency's determination that plaintiffs' complaint was not properly before it does not correlate to a *per se* jurisdictional bar in this court.

The above analysis, however, should not be read to mean that plaintiffs have overcome their jurisdictional hurdle. Rather, it merely stands for the proposition that plaintiffs, as the party seeking review by this tribunal, bear the burden of establishing the existence of an "eligible complaint." See ***McNutt v. General Motors Acceptance Corp. of Indiana, Inc.***, 298 U.S. 178, 189 (1936) (explaining that the party seeking to invoke a court's jurisdiction bears the burden of proving jurisdictional prerequisites and that if the party's "allegations of jurisdictional facts are challenged by his adversary in any appropriate manner, he must support them by competent proof"). To invoke this court's jurisdiction under § 2279(b), the following prerequisites must be shown: "(1) the USDA action must be filed by October 21, 2000, two years after the enactment of the statute; and (2) the discrimination that is the subject of the action must have been alleged previously in an 'eligible complaint.'" ***Mients***, 50 Fed. Cl. at 670. A complaint constitutes an "eligible complaint" where it: "[1] was filed with the Department of Agriculture before July 1, 1997[;] and [2] alleges discrimination at any time during the period beginning on January 1, 1981 and ending December 31, 1996 . . . ." ***Id.*** § 2279(e). What constitutes an "eligible complaint" is further circumscribed by § 2279(e)(1)-(2), which limit the USDA programs to which the statute applies.

The court recognizes that "[a]ll pleadings shall be so construed as to do substantial justice." **RCFC** 8(f); ***Figueroa v. United States***, 57 Fed. Cl. 488, 495 (2003). The court also acknowledges that *pro se* plaintiffs receive more latitude in their pleadings and are not held to the rigid standards as well as formalities imposed upon parties represented by counsel. ***Estelle v. Gamble***, 429 U.S. 97, 106 (1976). Against this backdrop, the court took great effort to liberally construe plaintiffs' complaint and "held [it] to 'less stringent standards than formal pleadings drafted by lawyers . . . .'" ***Id.*** (quoting ***Haines v. Kerner***, 404 U.S. 519, 520-21 (1972)). Nevertheless, the leniency accorded *pro se* plaintiffs cannot be extended to permit a complete abdication of any pleading requirements. ***Dethlefs v. United States***, 60 Fed. Cl. 810, 811-12 (2004); ***Demes v. United States***, 52 Fed. Cl. 365, 372 n.9 (2002) (explaining that "*pro se* status does not relieve plaintiffs of their jurisdictional burden"); ***Myers v. United States***, 50 Fed. Cl. 674, 680 n.14 (2001) ("[A]lthough the plaintiff is proceeding *pro se*, he still has the burden of establishing jurisdiction.") (citing ***Sanders v. United States***, 252 F.3d 1329, 1333 (Fed. Cir. 2001)). The court, therefore, cannot simply "overlook" jurisdictional shortcomings.[13]

There is no dispute that plaintiffs filed their complaint with the agency on April 28, 1997, prior to the October 21, 2000, deadline. The court, however, has carefully reviewed the documents and materials before it as well as those provided to the agency, and concurs with the USDA's conclusion that plaintiffs failed to allege discrimination with the requisite degree of particularity. Plaintiffs merely stated that they had been the victims of discrimination, without specifying any basis for the discrimination, i.e., whether the discrimination was on the basis of "race, color, religion, national origin, sex or marital status, or age . . . ." 15 U.S.C. § 1691(a)(1); see also ***McNutt***, 298 U.S. at 189 (rejecting "the idea that jurisdiction may be maintained by mere averment"). While plaintiffs maintain that their pleadings adequately set forth that they were subjected to reverse discrimination, the incidents referenced do not directly pertain to the inclusion of Parcel "C" as collateral for the FmHA loan and do not conform to the program criteria listed in 7 U.S.C. § 2279(e)(1)-(2). In any event, the allegations raised by plaintiffs in their December 11, 2001, letter could not convert a defective complaint into an "eligible complaint" as any newly proffered allegations would have been filed after the July 1, 1997

[13] Plaintiffs' Resp. ¶ 2, at 4.

deadline.[14] The court, therefore, concludes that plaintiffs failed to submit an "eligible complaint," thereby depriving the court of jurisdiction over the matter.[15]

Because plaintiffs are proceeding *pro se*, the court will also examine whether plaintiffs' claims are independently cognizable in this court, apart from the statute of limitations waiver in 7 U.S.C. § 2279. See ***Mients***, 50 Fed. Cl. at 671 ("The court's duty to scour the complaint for 'any possible basis on which the non-movant might prevail,' does not mean that the court must adjudicate every possible cause of action plaintiff might have pleaded . . . and the court will address only those claims that [plaintiff] actually presents."). It is well-established that this court does not possess jurisdiction over a Federal Tort Claims Act (FTCA) claim. ***Seay v. United States***, 61 Fed. Cl. 32, 36 (2004) (citing ***Mients***, 50 Fed. Cl. at 672). The district courts are vested with exclusive jurisdiction to adjudicate FTCA claims and a party properly avails itself of that forum's jurisdiction only when it satisfies statutorily imposed administrative prerequisites. 28 U.S.C. §§ 1346(b), 2675; ***Tindle v. United States***, 56 Fed. Cl. 337, 340 (2003). In addition, to the extent plaintiffs' claims, including their fraud and conspiracy based claims, sound exclusively in tort, the court is without jurisdiction to hear said claims. ***Shearin v. United States***, 992 F.2d 1195, 1197 (Fed. Cir. 1993) (citing 28 U.S.C. § 1491(a)(1)); ***Moden v. United States***, 60 Fed. Cl. 275, 279 (2004); ***Brown v. United States***, 35 Fed. Cl. 258, 265 (1996), *aff'd*, 105 F.3d 621 (Fed. Cir. 1997).[16]

---

[14] Complaint Ex. K. The same line of reasoning would apply to plaintiffs' Response To Agency's Motion To Dismiss dated October 30, 2001. ***Id.*** Ex. J.

[15] Plaintiffs also request permission to amend their complaint given the "short amount of time for preparation and if future events and/or discoveries prove that [plaintiffs] . . . failed adequately to comprehend the full extent of the damage(s) . . . ." Complaint ¶ 5, at 2. The court, however, possesses the discretion to deny a motion to amend the complaint where the amendment would be futile. ***Mitsui Foods, Inc. v. United States***, 867 F.2d 1401, 1403-04 (Fed. Cir. 1989) (citing ***Foman v. Davis***, 371 U.S. 178, 182 (1962)). Given the court's conclusion that there was a want of jurisdiction on the basis of pre-July 1, 1997, pleadings, any amendment at this juncture proffering new allegations would be untimely. 7 U.S.C. § 2279(e); ***Mients***, 50 Fed. Cl. at 670.

[16] The court acknowledges the proposition that "[i]n so far as [plaintiffs'] references to defendant's alleged misrepresentations are merely another way of asserting that a breach of contract has occurred, the . . . claim is not barred simply because it might also be stated as a tort." ***Beauchamp v. United States***, 6 Cl. Ct. 400, 403 (1984) (quoting ***Olin Jones Sand Co. v. United States***, 225 Ct. Cl. 741, (continued...)

The court's jurisdiction likewise does not extend to "suits against the Government for discrimination, whether stated as a violation of equal protection, due process, or otherwise." ***Mients***, 50 Fed. Cl. at 671-72; ***Bernard v. United States***, 59 Fed. Cl. 497, 502 (2004). The court also does not possess jurisdiction over denials of Freedom of Information Act requests. ***Bernard***, 59 Fed. Cl. at 503. Lastly, and most importantly because it is an across-the-board jurisdictional bar, plaintiffs' claims were not brought within the court's six-year statute of limitations. Plaintiffs' complaint, filed in this court on January 16, 2003, was untimely given plaintiffs' admission that they were aware that Parcel "C" was allegedly improperly included as collateral by the end of April 1993. ***Dwen v. United States***, 62 Fed. Cl. 76, 81-83 (2004) (explaining that the plaintiffs' claims were untimely because their cause of action did not arise within the six-year period preceding the date on which plaintiffs filed their complaint). Accordingly, without the benefit of the jurisdictional waiver in 7 U.S.C. § 2279, plaintiffs' claims are "forever barred." ***Hair***, 350 F.3d at 1256.

Conclusion

For the above-stated reasons, defendant's Motion To Dismiss is hereby GRANTED. The Clerk of the Court is hereby directed to DISMISS the complaint for lack of subject matter jurisdiction. No costs.

IT IS SO ORDERED.

s/ Bohdan A. Futey
BOHDAN A. FUTEY
Judge

[16](...continued)
745 (1980)). Assuming *arguendo* that this principle applies to plaintiffs' predicament, plaintiffs' claims would nevertheless be barred, as will be discussed in greater detail below, by the court's six-year statute of limitations.