

In the United States Court of Federal Claims
NOT FOR PUBLICATION
No. 05-121C

(Filed September 6 , 2005)

MAURO C. PALACIO, PRO SE,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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OPINION

This *pro se* case comes before the court on defendant’s motion to dismiss for lack of subject matter jurisdiction. Defendant contends that plaintiff’s claim falls outside the court’s jurisdiction because he failed to invoke a money-mandating provision. Defendant also avers in a footnote that, even if plaintiff’s complaint is construed to allege pain and suffering or physical injury, such claims are based in tort and also outside the court’s jurisdiction.

Plaintiff asserts, in his complaint, that, while awaiting the outcome of a federal criminal trial at a county detention center, in the custody of the United States Marshals Service, United States Department of Justice, due to the substandard conditions, “Unhealthy Premises, Lack of Maintenance, [] Lack of proper Medical treatment” and “Promiscuos [sic] Living Conditions” of the center, he required medical treatment, including surgery.¹ The only statute he cites in his complaint is 18 U.S.C. § 4013(a)(2), which authorizes the “Attorney General, in support of United States prisoners in non-Federal institutions,” to make payments for “medical care and necessary guard hire.” 18 U.S.C. § 4013(a)(2). He also contends that he experienced “severe pain, fever, [and] limited mobility” before the surgery and after the surgery

¹ Complaint at 1.

he was unable to walk or perform simple tasks and was disabled for 50 days.² In his response to defendant's motion to dismiss, plaintiff alleges that the United States Department of Justice is responsible for the security of any person in its custody, along with the payment of medical bills, and demands \$20,917.25 in reimbursement of hospital bills.³ Plaintiff confirms in his response that he is proceeding with a tort claim in the amount of \$5,000.⁴ It appears that he is withdrawing this claim, as his amended demand for \$20,917.25 in his conclusion is for the amount originally claimed in his complaint -- \$25,917.25 -- less \$5,000.⁵

Discussion

Rules of the court require that “[a]ll pleadings shall be so construed as to do substantial justice.” **RCFC** 8(f). 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 undertook great effort to liberally construe plaintiff's 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. *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 will only dismiss plaintiff's claim if it appears beyond a reasonable doubt that plaintiff has failed to allege facts sufficient to support his claim. *Conley v. Gibson*, 355 U.S. 41, 45-56 (1957). The court must accept as true the complaint's undisputed factual allegations and should construe them in a light most favorable to plaintiff. *Papasan v. Allain*, 478 U.S. 265, 283 (1986). “[C]onclusory allegations unsupported by any factual assertions will not withstand a motion to dismiss.” *Briscoe v. LaHue*, 663 F.2d 713, 723 (7th Cir. 1981), *aff'd*, 460 U.S. 325 (1983). “[L]egal conclusions, deductions, or opinions couched as factual allegations are not

² *Id.* at 1-2.

³ Response at 2.

⁴ *Id.*

⁵ *Id.* at 3.

given a presumption of truthfulness.” *Blaze Constr., Inc. v. United States*, 27 Fed. Cl. 646, 650 (1993) (internal quotations omitted).

The jurisdiction of the United States Court of Federal Claims is set forth in the Tucker Act. 28 U.S.C. § 1491. Under the Tucker Act, the court “shall have 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.” *Id.* § 1491(a)(1). The Tucker Act is jurisdictional only, and does not create any substantive right enforceable against the United States for money damages. *United States v. Testan*, 424 U.S. 392, 398 (1976); *Tippett v. United States*, 185 F.3d 1250, 1254 (Fed. Cir. 1999). Rather, the Tucker Act “merely confers jurisdiction upon [this court] whenever the substantive right exists.” *Testan*, 424 U.S. at 398. “When a contract is not involved, to invoke jurisdiction under the Tucker Act, a plaintiff must identify a constitutional provision, a statute, or a regulation that provides a substantive right to money damages.” *Tippett*, 185 F.3d at 1254-55. Plaintiff has only cited 18 U.S.C. § 4013(a)(2) to support this court’s jurisdiction over his claims. This statute is not money-mandating, and plaintiff has failed to identify a money-mandating statute to support the jurisdiction of this court.

The Tucker Act makes clear that cases sounding in tort are beyond the jurisdiction of this court. 28 U.S.C. § 1491(a)(1); see also *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). Therefore, if plaintiff’s complaint and response are read to construe that he is making claims sounding in tort, the court is without jurisdiction to hear said claims.

The court’s holding reflects the reality of jurisdictional constraints, which rightfully cannot be disregarded. Subject matter jurisdiction may not be waived by either the court or the parties, and the jurisdiction of this court is to be strictly construed. *United States v. Cotton*, 535 U.S. 625, 630 (2002). Although the court liberally construed all aspects of plaintiff’s complaint, the court concludes that under any reading plaintiff’s causes of action are jurisdictionally barred. See *Estelle*, 429 U.S. at 106; see also *Young v. United States*, 60 Fed. Cl. 418, 426-28 (2004).

Conclusion

After careful review and consideration, the court concludes that plaintiff has failed to set forth any facts or causes of action whatsoever which would fall within the court's jurisdiction. For the above-stated reasons, defendant's motion to dismiss is hereby GRANTED. The Clerk of the Court is directed to DISMISS the complaint for lack of subject matter jurisdiction. No costs.

IT IS SO ORDERED.

BOHDAN A. FUTEY
Judge