IN THE UNITED STATES COURT OF FEDERAL CLAIMS

No. 03-1956C

(Filed: February 13, 2004)
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LAN-DALE COMPANY,	*	Identity of claims test per 28 U.S.C. § 1500; related matters pending in another forum; equitable jurisdiction under the Tucker Act; specific performance.
Plaintiff,	*	
v.	*	
THE UNITED STATES,	*	
Defendant.	*	

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James M. Sakrison, Tucson, Arizona, attorney of record for plaintiff.

Carolyn J. Craig, Washington, D. C., with whom was *Peter D. Keisler*, Assistant Attorney General, for defendant.

OPINION

On Friday, January 9, 2004,[1] defendant filed a motion to dismiss, or in the alternative, motion to strike portions of plaintiff's first amended complaint filed on December 19, 2003. Defendant's motion to dismiss asserted that this court lacked jurisdiction to hear this claim based on 28 U.S.C. § 1500, infra. In addition to its citation of 28 U.S.C. § 1500 as grounds for dismissal, defendant argues that plaintiff's first amended complaint should also be dismissed for failure to state a claim upon which relief may be granted, per RCFC 12(b)(6). Alternative to dismissal on the two foregoing grounds, defendant seeks to strike portions of the first amended complaint. For the foregoing reasons, defendant's motion to dismiss per 28 U.S.C. § 1500 is granted, thus the alternative ground for dismissal and the motion to strike are not reached inasmuch as said issues are now moot.

[1]On January 21, 2004, the defendant filed a corrected copy of this motion.

I. Background

The underlying action arises from a settlement agreement to a contract entered into by the parties on January 18, 2000. (1st Am. Compl. App. W.) This settlement agreement operated to fully release the government from all claims relating to contract M00264-92-C-0010, which was an award/contract for the exchange and flight delivery of aircraft and related equipment owned by plaintiff and/or the Marine Corps Air Ground Museum (MCAGM) entered into in 1992. The 1992 contract was an agreement in two parts. The first part called for, in essence, the transfer of title of one of the Museum's planes (a CD-117D) to Lan-Dale[2] in exchange for a VC-118B plane that Lan-Dale owned. This transfer was done because the Museum needed the plane flight-delivered from Quantico, VA to Cherry Point, NC, and Museum regulations forbid Museum-owned aircraft to be flown. By transferring the title of the CD-117D to Lan-Dale, this restriction lifts and Lan-Dale can accomplish lawfully what the Museum alone cannot. The record shows that this portion of the two-part agreement was carried out without a problem.

The second part of the 1992 agreement required Lan-Dale to, upon flight-delivery to Cherry Point, NC, transfer title of the CD-117D to the Museum in exchange for trade stock. The Museum did not have sufficient trade stock to compensate Lan-Dale at the time of contracting, so instead, Lan-Dale was allegedly assured that they had priority over all others with respect to newly-acquired trace stock, and the return exchange portion of the contract would be ongoing "until such time as a mutually agreed upon exchange is consummated." (Compl. App. C.) Without belaboring all of the nuances of the parties' entanglements throughout the performance of the second part of 1992 contract, it is fair to say that numerous issues arose. For example, Lan-Dale was, allegedly, not given priority over all other contractors. Additionally, Lan-Dale alleged that the valuation of the original exchange, which determined the value of the trade stock Lan-Dale was ultimately entitled to, was fraudulently altered.

After the passage of significant time, and investigations had been undertaken and completed, the parties entered into a settlement agreement on January 18, 2000 ("2000 settlement agreement") in an attempt to definitively resolve their dispute. This settlement agreement superceded the original 1992 agreement, and extinguished all claims emanating therefrom. It is the 2000 settlement agreement, and its alleged resulting breach, that gives rise to the case at bar.

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[2]The Museum also gave Lan-Dale title to several small items in the first part of the 1992 contract.

The amended complaint at bar avers that the government violated the 4th, 5th, and 14th amendments by unlawfully retaining the airplanes that the settlement agreement allegedly confers to plaintiff. In addition, plaintiff alleges that it has incurred approximately $8,000,000 in damages flowing from the government's alleged breach of the settlement agreement, the Award/Contract, and Bills of Sale. The relief sought here at bar by plaintiff is specific performance[3] of the settlement agreement, and damages for breach thereof.

II. The Applicability of 28 U.S.C. § 1500.

On December 18, 2003, plaintiff filed an action in this court (the complaint was subsequently amended). Plaintiff also filed on that same day a similar, related action in the United States District Court for the District of Arizona. Both actions arise out of the same set of operative facts, and the relief requested in the case before this court is, in essence, identical to the relief prayed for in the complaint before the United States District Court for the District of Arizona.[4]

Per 28 U.S.C. § 1500, this court is without jurisdiction to entertain:

> any claim for or in respect to which the plaintiff or his assignee has pending in any other court any suit or process against the United States or any person who, at the time when the cause of action alleged in such suit, or process arose, was, in respect thereto, acting or professing to act, directly or indirectly under the authority of the United States.

28 U.S.C. § 1500.

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[3]Worded as "enforcement of the Settlement Agreement," the relief requested and sought is clearly specific performance of the contract, i.e., the transfer of the airplanes. (1st Am. Compl. p. 35.)

[4]The case filed in this court seeks "enforcement of the Settlement Agreement" (i.e., specific performance) and damages for breach of contract. The contract damages noted in the complaint are seemingly based upon the settlement agreement as well as the original contract. Similarly, the case filed in the United States District Court for the District of Arizona seeks "an order requiring the government to release to Lan-Dale the five T-39Ds..." (i.e., specific performance of the settlement agreement), "return of all funds extorted from Lan-Dale by AMARC (i.e., money damages for breach of the settlement agreement), and "reimbursement of loss of profits arising out of Lan-Dale's inability to pursue its legitimate business interests absent possession of its property" (seemingly, i.e., money damages for breach of the settlement agreement). Both complaints seek attorney fees; the Arizona case also seeks injunctive relief. As the case filed before this court makes no such demand, the injunctive demand is not relevant to the § 1500 analysis.

The rationale behind § 1500 is to prevent duplicative (and simultaneous) litigation against the United States and its officers. See, Matson Navigation Co. v. United States, 284 U.S. 352 (1932). To promote judicial economy and to prevent plaintiffs from forcing the United States to defend itself in multiple fora regarding the same issue, a potential plaintiff "must carefully assess his claims before filing and choose the forum best suited to the merits of the claims and the applicable statutes of limitations." UNR Indus., Inc. v. United States, 962 F.2d 1013, 1021 (Fed. Cir. 1992). Further, identity of claims for § 1500 purposes is construed rather broadly, such that a core of operative facts in common—even when different legal theories underlie the two actions—triggers § 1500, and thus, deprives this court of jurisdiction. Keene v. United States, 508 U.S. 200, 212 (1993) (citing British Am. Tobacco Co. v. United States, 89 Ct. Cl. 438 (1939)). The test for identity of claims is *not* complete merely upon a finding of identity of operative facts; for identity of claims to apply such that § 1500 is triggered, the two actions must *also* share identity of requested relief. Loveladies Harbor, Inc. v. United States, 27 F.3d 1545 (Fed. Cir. 1994) (takings claim for monetary damages arising from the denial of a permit allowed to proceed, even though the validity of the denial of the permit was pending before another federal court).

As noted, *supra*, the relief requested in the instant case is virtually identical to the relief requested in the case pending in the District Court in Arizona. These differences are, in essence, limited to different wording, as compared in footnote 5 *supra*. The primary difference in the relief requested here as opposed to the relief sought in the district court is that here, the plaintiff asserts an entitlement to $8,000,000.00 in damages,[5] while in the district court, the two demands for monetary relief are unaccompanied by a demand for a sum certain. We determine that the mere omission of a precise amount sought as monetary relief is a superficial aspect of the relief sought, and we determine that this "distinction" is too subtle to defeat an identity of relief analysis per § 1500. Consequently, both identity tests are met. Thus, due to plaintiff's improvident attempt to cover all of its bases several times over,[6] we hold that 28 U.S.C. § 1500 operates, on this record, to defeat our jurisdiction.

III. Defendant's Motion for Dismissal for Failure to State a Claim and Motion to Strike

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[5]Plaintiff seems to base a portion of this figure on the 1992 contract. As noted above, the only contract that provides plaintiff with viable grounds for any action is the 2000 settlement agreement, as that agreement contains a comprehensive release of claims arising from the 1992 agreement.

[6]Plaintiff has noted on a facsimile cover sheet that it sent to chambers along with a copy of the Arizona filings that a dismissal of the Arizona action is pending. That fact does not assist our analysis. Subsequent dismissal of the other action (by voluntary dismissal or otherwise) cannot revive jurisdiction where there was none at the time of filing the action in this court. Keene, 508 U.S. at 207.

As we find ourselves without jurisdiction to hear this action per 28 U.S.C. § 1500, we do not reach these issues.

IV. Conclusion

The Clerk of the Court shall hereby dismiss this matter, without prejudice, pursuant to 28 U.S.C. § 1500, and enter judgment accordingly.

IT IS SO ORDERED.

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Reginald W. Gibson, Senior Judge