

IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
No. 05-922C

(Filed: January 5, 2006)

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PHILLIP ALLEN DYE and	)
REBECCA JANE DYE,	)
	)
Plaintiffs,	)
	)
v.	)
	)
UNITED STATES,	)
	)
Defendant.	)

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ORDER

Plaintiffs, Phillip Allen Dye and Rebecca Jane Dye, filed suit on August 24, 2005, seeking, among other things, damages from the United States for an alleged taking of their property. The government has responded by moving for dismissal of the complaint pursuant to Rule 12(b)(6) of the Rules of the Court of Federal Claims (“RCFC”) on the ground that plaintiffs have failed to state a claim upon which relief can be granted. For the reasons stated below, the government’s motion is granted.

Besides the United States, the Dyes seek to name as defendants twenty-seven persons who serve, variously, as federal and state judges, federal and state tax officials, and officers of a private banking corporation. Compl. ¶¶ 4.B.1-28. These persons are not proper defendants in this court. The complaint must be evaluated only insofar as it states, or fails to state, a claim against the United States.

The Dyes’ allegations principally concern real estate foreclosure actions in courts of the State of Delaware and related bankruptcy and other proceedings in the United States Bankruptcy Court for the District of Delaware, the United States District Court for that district, and the United States Court of Appeals for the Third Circuit.<sup>1</sup> Based upon a review of the filings made by the Dyes, the foreclosure and bankruptcy proceedings stem from their actions in not paying

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<sup>1</sup>An indirectly related case filed by Mr. Dye was ordered dismissed in a recent decision rendered by Judge Allegra of this court. See *Dye v. United States*, No. 05-1015C (Order of November 3, 2005).

taxes and in not acknowledging governmental authority. Mr. Dye was convicted in Delaware state court for income tax evasion and was sentenced to imprisonment for seven years, with the sentence suspended. This conviction was upheld by the Delaware Supreme Court. *Dye v. State*, 813 A.2d 1140, 2002 WL 31854984 (Del. Dec. 18, 2002). In federal district court, the Dyes filed a complaint alleging constitutional and statutory violations arising from levies against their assets by federal and state tax authorities. In essence, the Dyes claimed that they were not obliged to pay federal and state taxes. *Dye v. Internal Revenue Service, et al.*, No. Civ. 99-139-SLR, 2000 WL 1202109 (D. Del. April 3, 2000). Their claims were rejected, *id.*, at \*6, and the dismissal of their complaint was affirmed by the Third Circuit on appeal. *Dye v. Internal Revenue Service, et al.*, 262 F.3d 403 (3d Cir. 2001) (Table).

In the instant case, plaintiffs bear the burden of proving that the court has jurisdiction to consider their claims. See *McNutt v. General Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936). In determining whether jurisdiction exists, federal courts must accept as true the facts alleged in the complaint and draw all reasonable inferences in favor of plaintiffs. See *Henke v. United States*, 60 F.3d 795, 797 (Fed. Cir. 1995).<sup>2</sup>

The chief thrust of the Dyes' takings claims concern forfeiture actions pursued by a lending bank in state courts. Notwithstanding the fact that the foreclosing bank is alleged to be a federally chartered instrumentality, Compl. ¶ 18, the actions of the bank's officers and of the state judicial bodies in the foreclosure actions cannot be attributed to the United States. See *Shewfelt v. United States*, 104 F.3d 1333, 1337-38 (Fed. Cir. 1997). Those allegations thus are insufficient to state a claim cognizable in this court.

Similarly, this court is not a proper forum for attacking the actions of the bankruptcy court and the district court for the District of Delaware. See *Vereda Ltda. v. United States*, 271 F.3d 1367, 1375 (Fed. Cir. 2001). The actions of those courts have previously been subject to review in a proper forum, the United States Court of Appeals for the Third Circuit, and they have been upheld. See *Dye*, 262 F.3d 403.

In the same vein, this court has no power to consider claims that agents of the Internal Revenue Service and of the State of Delaware Division of Revenue employed improper, unconstitutional means to impose liens on and to take the Dyes' property. This court lacks jurisdiction to hear claims premised on tort, see *Brown v. United States*, 105 F.3d 621, 623 (Fed. Cir. 1997), and federal district courts, not this court, possess exclusive jurisdiction over claims that federal revenue agents failed to follow statutory procedures. See *Parsons ex rel. Linmar Prop. Mgmt. Trust v. United States*, 65 Fed. Cl. 638, 640 (2005) (citing *Ledford v. United States*, 297 F.3d 1378, 1382 (Fed. Cir. 2002) (addressing 26 U.S.C. § 7433)). Moreover, plaintiffs cannot invoke this court's adjudicatory authority simply by asserting that "[t]he Internal Revenue

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<sup>2</sup>Plaintiffs have appeared *pro se* in this action. Courts hold complaints filed by persons appearing *pro se* to less rigorous standards than those applied to formal pleadings prepared by counsel. See *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

Service Form 1040 Income Tax Return and the Delaware Division of Revenue Form 200-01 Income Return are contracts within the meaning of 28 U.S.C. § 1491.” Compl. ¶ 101. Such an allegation is patently frivolous. The other claims put forward by plaintiffs similarly are not sufficient to support jurisdiction in this court.

Therefore, the government’s motion to dismiss is GRANTED, and this case shall be dismissed for lack of subject matter jurisdiction. The clerk shall enter judgment accordingly.<sup>3</sup> No costs.

It is so ORDERED.

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Charles F. Lettow  
Judge

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<sup>3</sup>Plaintiffs’ motions for a preliminary injunction and for an automatic stay are DENIED, as is plaintiffs’ motion to strike defendant’s motion to dismiss. Plaintiffs’ application to proceed *in forma pauperis* is GRANTED for the purpose of enabling the motions related to the court’s jurisdiction to proceed.