In the United States Court of Federal Claims

No. 09-431C

(Filed: January 14, 2010)

(NOT TO BE PUBLISHED)

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	)
ALFONSO F. MARSHALL,	)
	)
Plaintiff,	)
	)
v.	)
	)
UNITED STATES,	)
	)
Defendant.	)
	)
* * * * * * * * * * * * * * * * * *	

Alfonso F. Marshall, *pro se*, Monroe, GA.

Elizabeth A. Speck, Trial Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, D.C., for defendant. With her on the brief were Tony West, Assistant Attorney General, Civil Division, Jeanne E. Davidson, Director, and Bryant G. Snee, Deputy Director, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, D.C.

OPINION AND ORDER

LETTOW, Judge.

Alfonso F. Marshall, plaintiff, seeks land and monetary compensation on behalf of his ancestors, former slaves in the State of Georgia. Compl. at 7-8. Mr. Marshall's claim rests on the government's failure properly to execute Special Field Order No. 15, issued by General William Tecumseh Sherman from the field on January 16, 1865, which Order promised former slaves 40 acres and a mule on tillable lands on the islands and coasts of Georgia. Compl. at 5-6.[1]

[1]By way of historical background, General Sherman's order was issued during the later stages of the Civil War and, specifically, during General Sherman's march through Georgia. *See*

The United States has moved to dismiss the complaint pursuant to Rule 12(b)(1) of the Rules of the Court of Federal Claims ("RCFC") on the ground that this court lacks subject matter jurisdiction over Mr. Marshall's claims. Def.'s Mot. to Dismiss 1. Alternatively, the government contends that the statute of limitations has long since expired on any claim Mr. Marshall's ancestors might have had. *Id*. at 8.

BACKGROUND

Mr. Marshall seeks relief on behalf of his great, great, great, grandparents, Mary Polly Hunter and Reverend Green Hunter, on the grounds that they did not receive the 40 acres of land and a mule promised to former slaves by Special Field Order No. 15. Compl. at 7-8 ("I stand before this [c]ourt as Personal Representative for Ms. Mary Polly Hunter, and Rev[erend] Green Hunter . . . with my request for just and valid redress for past injuries."). For purposes of this opinion and order, the court assumes that Mr. Marshall is the lawful heir of persons to whom Special Field Order No. 15 applied.

Mr. Marshall requests that relief be granted in the form of (i) five acres of land located in Monroe, Georgia, which was owned subject to liens held by Bank of America Corporation at the

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William Tecumseh Sherman, *Memoirs of General W.T. Sherman* 730-32 (Charles Royster ed., Library Classics of the United States 1990) (1875) (text of Special Field Orders, No. 15); *see also* Noah Andre Trudeau, *Southern Storm: Sherman's March to the Sea* 521 (2008). Starting from Chattanooga, General Sherman entered Georgia in May 1864, and hard fighting ensued around Marietta as Sherman headed for Atlanta. *See* Sherman, *supra*, at Chs. XVI - XVIII (detailing Sherman's Atlanta campaign from Nashville and Chattanooga to Kenesaw Mountain and on to Atlanta); James Lee McDonough & James Pickett Jones, *War So Terrible: Sherman and Atlanta* (1987) (providing an extensive history of the Atlanta campaign). That city was eventually captured in September 1864, *see* Sherman, *supra*, at Ch. XIX; Charles Royster, *The Destructive War: William Tecumseh Sherman, Stonewall Jackson, and the Americans* 325-27 (1991), and General Sherman then began his "march to the sea" which ended with the capture of Savannah on December 21, 1864. Trudeau, *supra*, at 494-503; Burke Davis, *Sherman's March* Chs. 10-11 (1980) (describing the capture of Savannah). From Savannah, General Sherman marched north in the Spring of 1865 through the Carolinas. *See* Sherman, *supra*, at Ch. XXIII (detailing the campaign in the Carolinas). General Sherman's Special Field Order No. 15 confiscated as federal property a strip of coastline stretching from Charleston, South Carolina to the St. John's River in Florida, including Georgia's Sea Islands and the mainland thirty miles in from the coast. *See id*. at 730. General Sherman's order was never enacted into law, and in June 1865, President Johnson pardoned Confederate land owners and returned to them their confiscated lands, thus effectively nullifying the order. *See* Eric Foner, *A Short History of Reconstruction, 1863-1877*, 32, 65, 71-72, 78 (1990).

time the complaint was filed, but which has since been subject to a foreclosure sale,[2] and (ii) $3,900,000 "[f]or distribution . . . [to] [c]laimant and other descendants [of Ms. Hunter and Rev. Hunter] that are verified by [c]laimant." Compl. at 8; *see also* Pl.'s Mot. at 2. With regard to the Monroe property, Mr. Marshall also seeks injunctive relief, requesting in his complaint that the court enjoin Bank of America from "adjudicat[ing] and/or pursu[ing] foreclosure of said property until a formal decision is handed down." Compl. at 8. He has subsequently moved for an injunction that would prevent Bank of America from proceeding with the planned foreclosure sale, based on the Troubled Assets Relief Program, Pub. L. No. 110-343, 122 Stat. 3765 (2008) ("TARP"). Pl.'s Mot. at 2.

JURISDICTION

"Jurisdiction must be established as a threshold matter before the court may proceed with the merits of this or any other action." *OTI Am., Inc. v. United States*, 68 Fed. Cl. 108, 113 (2005) (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 88-89 (1998)). As plaintiff, Mr. Marshall bears the burden of establishing that this court has jurisdiction to hear his claims. *See McNutt v. General Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936).

In determining whether subject matter jurisdiction exists over a particular claim, the court "must accept as true the facts alleged in the complaint and draw all reasonable inferences in favor of the plaintiff." *Goel v. United States*, 62 Fed. Cl. 804, 806 (2004) (citing *Henke v. United States*, 60 F.3d 795, 797 (Fed. Cir. 1995)). However, the court is "'not bound to accept as true a legal conclusion couched as a factual allegation,'" *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)), nor is it required to give credence to implausible allegations. *See Ashcroft v. Iqbal*, __ U.S. __, __, 129 S.Ct. 1937, 1949 (2009) (stating that "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged"). Although pleadings filed by *pro se* claimants such as Mr. Marshall are held to a less stringent standard of pleading than that applied to formal pleadings prepared by counsel, *see Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S. 519, 520 (1972), *pro se* claimants must nonetheless "affirmatively and distinctly" plead that the court has subject matter jurisdiction. *Norton v. Larney*, 266 U.S. 511, 515 (1925). If the court finds that it is without subject matter jurisdiction to decide a case on its merits, the court is required to either dismiss the action as a matter of law, *see*, *e.g.*, *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514-15 (1868); *Thoen v. United States*, 765 F.2d 1110, 1116 (Fed. Cir. 1985), or to transfer it to another federal court that would have jurisdiction. *See*, *e.g.*, *Gray v. United States*, 69 Fed. Cl. 95, 102-03 (2005).

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[2]The pleadings and moving papers do not specify whether the property has in fact been sold. Mr. Marshall received a Notice of Foreclosure Sale dated July 22, 2009, informing him that a foreclosure sale was scheduled for August 4, 2009. *See* Pl.'s Mot. at 2. However, Mr. Marshall avers that "[t]he property . . . has *not* been sold and [he] still has possession of said property." Pl.'s Mot. to Object (Addendum) ("Pl.'s Opp'n") at 1-2.

The Tucker Act grants this court "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). The Tucker Act waives sovereign immunity; but it does not by itself confer a right to recovery. *United States v. Testan*, 424 U.S. 392, 398 (1976) (stating that the Tucker Act confers jurisdiction where a substantive right already exists). To establish such a right, the plaintiff must identify a substantive claim founded in some other source of law that "can fairly be interpreted as mandating compensation by the Federal Government for the damages sustained." *United States v. Mitchell*, 463 U.S. 206, 216-17 (1983) (citing *Testan*, 424 U.S. at 400); *see also United States v. White Mountain Apache Tribe*, 537 U.S. 465, 473 (2003) ("[A] fair inference will do.").

Mr. Marshall bases his claim for compensation in substantial part on Special Field Order No. 15. *See, e.g.*, Compl. at 8 ("In consideration of [l]and *not* secured for my grandparents after their release from [c]aptivity[,] I do hereby invoke Special Field Order[] No. 15. or any other method to secure real property."). Special Field Order No. 15, however, was never enacted into law, *see supra*, at 1-2 n.1, nor is there any source of statutory law that "can fairly be interpreted as mandating compensation by the Federal Government" for the injuries alleged in Mr. Marshall's complaint. *Mitchell*, 463 U.S. at 216; *see also Obadele v. United States*, 52 Fed. Cl. 432, 442 (2002) (noting that there is no statute entitling descendants of slaves to compensation from the federal government). Therefore, to the extent Mr. Marshall relies on General Sherman's Special Field Order No. 15 in support of his claim for compensation, the court lacks subject matter jurisdiction over that claim.[3]

Mr. Marshall avers that the court has subject matter jurisdiction to issue an injunction preventing Bank of America Corporation from proceeding with the planned foreclosure sale under TARP. *See* Pl.'s Opp'n at 2 (stating that "subject matter jurisdiction does exist due to the extenuating circumstances surrounding the 'Troubled Assets Relief Program' (TARP)"). In broad terms, TARP is a program whereby the federal government "purchase[s] and insure[s] certain types of troubled assets for the purpose of providing stability to and preventing disruption in the economy and financial system and protecting taxpayers." TARP, 122 Stat. at 3765. TARP is not a money-mandating statute, nor does TARP confer jurisdiction on this court to enjoin the planned foreclosure sale.

Mr. Marshall also refers to several constitutional provisions in his complaint: *viz*., Article I, Section 9, Clause 1; Article IV, Section 1, Clause 3; Article V; and Article VI, Section 1. *See* Compl. at 1, 4, 7. Because none of the constitutional or statutory provisions cited by Mr. Marshall in his complaint or in other filings with the court are money-mandating, to the

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[3]Because the events associated with Special Field Order No. 15 occurred over 140 years ago, the statute of limitations generally applicable to claims in this court, 28 U.S.C. § 2501, also would jurisdictionally bar reliance on the Special Field Order as a basis for a current claim. *See John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 133-39 (2007).

extent Mr. Marshall relies on them to support his claims, the court lacks subject matter jurisdiction in this case on those grounds as well.

Finally, Mr. Marshall avers that the court has subject matter jurisdiction over his claim for relief because "Article I, Section 9[,] [Clause 1] was a 'Contract,'" Pl.'s Sur-Reply at 2, thus satisfying the Tucker Act's requirement of "any express or implied contract with the United States." 28 U.S.C. § 1491(a)(1). Article I, Section 9, Clause 1 does not constitute a contract between the federal government and Mr. Marshall or his ancestors; rather Article I, Section 9, Clause 1 prohibits Congress from passing a law that would end the importation of slaves prior to the year 1808.[4]

CONCLUSION

For the reasons stated, the government's motion to dismiss is GRANTED, and this case shall be dismissed without prejudice for lack of subject matter jurisdiction. The Clerk shall enter judgment accordingly. No costs.

It is so ORDERED.

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Charles F. Lettow
Judge

[4]Article I, Section 9, Clause 1 provides

> The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

U.S. Const. art. I, § 9, cl. 1.