In the United States Court of Federal Claims

HOLLISTER GARDNER and CRAIG GARDNER, Plaintiffs, v. THE UNITED STATES, Defendant.	*	No. 04-1673C (Filed: June 13, 2005) (Unpublished.)

OPINION

This action is before the Court on defendant's motion to dismiss plaintiff's claim for lack of jurisdiction, pursuant to R. CT. FED. CL. 12(b)(1). *Pro se* plaintiffs, Hollister and Craig Gardner, allege that they were entitled to notice and a hearing when defendant, the United States, acting through the Farm Service Agency ("FSA") of the United States Department of Agriculture ("USDA"), garnished payments due to plaintiffs under the USDA's Conservation Reserve Program ("CRP"). Plaintiffs claim that by denying them notice and a meaningful hearing before garnishing plaintiffs' payments, defendant violated FSA regulations as well as the Due Process clause of the United States Constitution. Additionally, plaintiffs claim that defendant violated FSA regulations and the Due Process clause when it terminated its CRP contract with plaintiffs without notice and a hearing. Defendant contends that this Court lacks subject matter jurisdiction to entertain plaintiffs' claims for two reasons: 1) plaintiffs failed to exhaust their administrative remedies; and 2) 7 U.S.C. § 6991 et seq. vests the Federal district courts with exclusive jurisdiction to entertain plaintiffs' claims. Additionally, defendant contends that plaintiffs' claims are barred by collateral estoppel, by the law of the case doctrine, and by the applicable six-year statute of limitations. Oral argument in this case is not deemed necessary. After careful consideration of the briefs, the Court grants defendant's motion to dismiss.

FACTS

In the 1990s, plaintiffs and their sister formed a partnership called Gardner Farms and entered into contracts to farm land in Swisher County, Texas, belonging to their parents. In 1998, plaintiffs entered into a 10-year CRP contract with FSA where, in exchange for periodic payments, plaintiffs agreed to certain use-restrictions on portions of the land they leased from their parents. On September 9, 1998, the Swisher County FSA Office determined that plaintiffs had created Gardner Farms to assist their father, Gary Gardner, to avoid repaying an FSA mortgage, and that their father remained involved in the partnership. Based upon these determinations, the County Office began to garnish payments due to plaintiffs under the CRP contract against their father's debt.

The Gardners learned of the garnishment in October, 1998. By November 4, 1998, FSA had garnished a total of $14,451. The Gardners responded by filing appeals with the Swisher County Committee and USDA's National Appeals Division ("NAD") in November 1998. The NAD informed plaintiffs that their appeal was premature and that the NAD was unable to accept an appeal prior to a decision by the County Committee. The County Committee held a hearing on December 22, 1998 and upheld the garnishment on January 5, 1999. In its final decision, the Committee informed plaintiffs of their right to appeal to either the NAD or the Texas State FSA Committee.

Rather than pursuing an appeal, plaintiffs filed separate actions against the Government in state district court in March and April, 2002, alleging federal and state-law based tort and breach of contract claims. The cases were removed to the Federal District Court for the Northern District of Texas. Also in April, 2002, defendant foreclosed on the property, selling it to Saddlehorn Investments, Inc. Plaintiff, however, remained in possession of the CRP property until October, 2002. During its regular scheduled meeting, the Swisher County FSA Committee discovered that two CRP contracts existed for the same land and informed plaintiffs on July 17, 2002 that it would suspend all payments under the CRP contract until the dispute over the property had been resolved. FSA also informed plaintiffs of their right to appeal this decision.

On August 15, 2002, the County Office informed plaintiffs that an informal hearing had been scheduled for September 4, 2002 to consider plaintiffs' entitlement to the withheld CRP payments. Plaintiffs appealed the FSA's July 17, 2002 decision on August 19, 2002. The County FSA Office denied plaintiffs' appeal on September 6, 2002, stating that the Gardners had not furnished any evidence that they were the owners of the disputed property**.** Plaintiffs, however, continued to pursue the matter in state court. On October 10, 2002, they filed suit in the 64th District Court of Swisher County seeking injunctive relief from enforcement of the county court's October 3, 2002 judgment which awarded immediate possession of the CRP property to Saddlehorn. See Gardner v. Steward, No. 07-02-0513-CV, 2004 WL 62713 (Tex. App. Jan. 14, 2004).

On November 19, 2002, the Swisher County Committee informed plaintiffs that Saddlehorn Investment, Inc. had acquired the right of occupancy to the CRP property, and accordingly, it could take no further action on plaintiffs' behalf**.** In December, 2002, plaintiffs responded by insisting that ownership of the CRP property remained in dispute and requested that the State Office entertain their appeal. On December 23, 2002, the County Office asked plaintiffs to clarify their intentions, but plaintiffs never responded to this request. The State Committee's Acting Executive Director sent plaintiffs a final letter on March 14, 2003, informing them that because ownership of the CRP land was an issue in pending litigation, it was suspending plaintiffs' appeal until the issue was resolved. Despite the Director's request that they immediately contact him with any questions, plaintiffs failed to take any further action.

On March 21, 2003, the United States District Court for the Northern District of Texas dismissed plaintiffs' claims after finding that they had failed to exhaust their administrative remedies. In addition, on January 14, 2004, the Texas Court of Appeals issued an unpublished decision refusing to revisit the Swisher County Court's October 3, 2002 ruling that plaintiffs had no right to possess the CRP property. Gardner v. Steward, No. 07-02-0513-CV, 2004 WL 62713.

DISCUSSION

I. Failure to Exhaust Administrative Remedies

Plaintiffs allege that they have been denied or have exhausted all administrative remedies available to them, and can find no remedy except in this court. In response, the government contends that plaintiffs failed to exhaust their administrative remedies by litigating their claims directly in Federal District court before exhausting the NAD appeals process. The government contends that although representatives of both the local County Committee and NAD informed plaintiffs of their need to exhaust their administrative remedies, plaintiffs failed to do so. Accordingly, defendant argues that plaintiffs' complaint should be dismissed. Plaintiffs respond by asserting that a federal court has discretion to forgive a failure to exhaust administrative remedies.

Congress created a comprehensive administrative scheme for review of adverse FSA decisions. A challenging party may file an appeal with, or reconsideration by, the local FSA County Committee. 7 C.F.R. § 780.7(a) & (b). Parties may also appeal adverse FSA decisions to NAD, an independent division within USDA. See 7 U.S.C. § 6992(a); see also 7 C.F.R. § 780.7(e). Under 7 U.S.C. § 6912(e), Congress expressly required exhaustion of these non-judicial means prior to instituting any suit in Federal court against the government. On numerous occasions, this Court has refused to entertain claims by plaintiffs who have failed to exhaust the NAD appeals process. See Ace Property & Cas. Ins. Co. v. United States, 60 Fed. Cl. 175, 184 (2004); Farmers & Merchants Bank of Eatonton, GA v. United States, 43 Fed. Cl. 38, 44 (1999). As defendant points out, "... it is well-established that, even for claims that sound in breach of contract over which this Court otherwise would possess jurisdiction, 'the plain language of

[7 U.S.C. § 6912(e)] demonstrates a clear legislative intent to require all parties dissatisfied with FSA decisions to exhaust the NAD appeals process, before filing suit in any court.'" Def's Mtn. to Dismiss at 14 (quoting Farmers & Merchants Bank of Eatonton, Ga. v. United States, 43 Fed. Cl. 38, 40 (1999)).

Because 7 U.S.C. § 6912(e) requires all parties dissatisfied with an FSA decision to pursue a mandatory administrative appeal to the NAD and because plaintiffs failed to pursue this course of action, this Court lacks subject matter jurisdiction over plaintiffs' complaint.

II. The United States District Courts Have Exclusive Jurisdiction Over Farm Service Agency Decisions

Defendant contends that even if plaintiffs had preserved their claims by exhausting their administrative remedies, the proper venue for this suit would have been a Federal district court, not the Court of Federal Claims. Defendant asserts that the 1994 Reorganization Act conferred exclusive jurisdiction to review FSA actions on the Federal district courts. See 7 U.S.C. §§ 6901-7002. Plaintiffs fail to directly respond to this argument.

7 U.S.C. § 6999 states that "[a] final determination of the Division shall be reviewable and enforceable by any United States district court of competent jurisdiction ..." See Farmers & Merchants Bank, 43 Fed. Cl. at 43. Accordingly, this Court lacks subject matter jurisdiction over plaintiffs' complaint. Federal district court is the proper venue for plaintiffs' complaint.

CONCLUSION

For the foregoing reasons, defendant's motion to dismiss for lack of subject matter jurisdiction is GRANTED. Since the Court is dismissing plaintiffs' complaint on two grounds, the Court need not consider the other grounds advanced by defendant for dismissal. The Clerk will dismiss the complaint and enter judgment for defendant. No costs.

LAWRENCE S. MARGOLIS
Senior Judge, U.S. Court of Federal Claims