

In the United States Court of Federal Claims

No. 10-556C
(Filed: February 8, 2011)
(Not for Publication)

RHETT WEBSTER PEASE, *

Plaintiff, *

v. *

THE UNITED STATES, *

Defendant. *

ORDER GRANTING DEFENDANT’S MOTION FOR SUMMARY DISMISSAL

WILLIAMS, Judge.

This matter comes before the Court on Defendant’s motion to summarily dismiss Plaintiff pro se’s complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Rules of the United States Court of Federal Claims (“RCFC”). Plaintiff asks the Court, inter alia, to review a decision issued by a bankruptcy court. Because the Court lacks subject matter jurisdiction to review the decision, the Court dismisses the complaint.

Background¹

On August 16, 2010, Plaintiff pro se, Rhett Webster Pease, filed the instant action, which arises from a bankruptcy case in the United States Bankruptcy Court in the Western District of Texas.

Plaintiff alleges wrongdoing on the part of an unidentified trustee (“Trustee”), a judge (“Judge”), and counsel for the bank in the proceeding (“Counsel”). Compl. at 1. He asserts that the Trustee failed to consider his account receivables and “valid plan for bankruptcy” and refused to investigate his claims. Id. He also claims that a “Creditor’s Hearing” was never held. Id.

¹ This background is derived from the complaint and the attachments thereto as well as the motion papers, and it should not be construed as findings of fact.

The crux of Plaintiff's complaint appears to be the Judge's setting aside of a default judgment. Plaintiff avers that the Judge and Counsel conspired to set aside the judgment. Plaintiff also complains of purported deficiencies in the proceedings. Specifically, he states that the Judge held an expedited hearing in the absence of "any verified motion" but failed to notify him about the hearing. Id. He alleges that although the Judge "dismissed the bankruptcy, he did not dismiss the adversarial suit that was filed against [the bank] based upon an account receivable." Id. Plaintiff further asserts that the Judge dismissed the action for failure to provide a "certification of counseling," but the Judge "cannot support his behavior." Id. Plaintiff avers that the Judge has made him "look like a fool, in violation of the Federal Rules of Civil Procedure as an act of retaliation" and has sent U.S. Marshals to his home for two days "because of his paranoid behavior." Id.

Although Plaintiff purports to have "suffered severe damages" as a result of "the delay in the collection of the debt," he does not explicitly seek monetary relief. Id. Rather, he asks the Court to order the Judge to "show cause why a writ of execution should take place on the underlying obligation or in the alternative, the United States should stand by it's [sic] obligations." Id. He further requests "all relief available under the law." Id.

On October 14, 2010, Defendant moved for summary dismissal of Plaintiff's complaint, and Plaintiff responded to the motion on November 16, 2010. In his response, Plaintiff attempts to recast his original claims and add new allegations. Expanding on his assertion that the Judge conspired to set aside the judgment in his favor, Plaintiff claims that the Judge "intended that no appeal be allowed[,] . . . dismissed the adversarial suit while it was allegedly on appeal[,] . . . allowed the use of force to divest myself and my family from my home and my right to make a living, and allowed all of the bankruptcy estate to be seized by the bank who had no claim whatsoever." Pl.'s Objection at 2. Plaintiff avers that the seizure resulted in: (i) the death of his eldest son; (ii) the placement of his youngest son in foster care "as retaliation for the judgment"; and (iii) the filing of criminal trespass charges against Plaintiff "for seeing who was stealing my propane, electric and water." Id. Plaintiff never explains how the seizure provoked these events.

Plaintiff also alleges a denial of due process arising from the Judge's purported violation of his duty to "uphold the judgment until such time as someone filed documents into the case and record that would support the taking of said judgment." Id. at 3. Plaintiff further asserts that the Judge "seized the money mandate without due process and has breached his contract with me." Id. Plaintiff appears to characterize the judgment in his favor as a binding contract, which the Judge breached when he set aside the judgment. Plaintiff asserts that the instant action is not an appeal but asks the Court to "uphold the money judgment . . . and [award] . . . all other relief within the jurisdiction of this court." Id. at 4-5.

Discussion

Plaintiff bears the burden of establishing subject matter jurisdiction by a preponderance of the evidence before the Court proceeds to the merits of the action. Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 748 (Fed. Cir. 1988); Naskar v. United States, 82 Fed. Cl. 319, 320 (2008); Fullard v. United States, 78 Fed. Cl. 294, 299 (2007). When determining jurisdiction, the Court must accept as true all undisputed allegations of fact made by the non-moving party and draw all reasonable inferences from those facts in the non-moving party's

favor. Henke v. United States, 60 F.3d 795, 797 (Fed. Cir. 1995); Hamlet v. United States, 873 F.2d 1414, 1416 (Fed. Cir. 1989); Naskar, 82 Fed. Cl. at 320. “If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” RCFC 12(h)(3); see also Tindle v. United States, 56 Fed. Cl. 337, 341 (2003).

“[C]omplaints drafted by pro se litigants are held to ‘less stringent standards than formal pleadings drafted by lawyers.’” Naskar, 82 Fed. Cl. at 320 (quoting Haines v. Kerner, 404 U.S. 519, 520 (1972)); Tindle, 56 Fed. Cl. at 341. Nevertheless, a plaintiff’s pro se status does not excuse him from meeting this Court’s jurisdictional requirements. Tindle, 56 Fed. Cl. at 341. Pro se litigants still bear the burden of establishing the Court’s subject matter jurisdiction. Id. “[T]he court has no duty to create a claim where a pro se plaintiff’s complaint is so vague or confusing that one cannot be determined.” Fullard, 78 Fed. Cl. at 299.

The United States Court of Federal Claims is a “court of limited jurisdiction.” Id. The Tucker Act states that this 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.

28 U.S.C. § 1491(a)(1). The Tucker Act confers this jurisdiction upon the Court over cases in which a plaintiff identifies a separate Constitutional provision, statute, or regulation, which if violated, provides for a claim for money damages against the United States. See id.; Jan’s Helicopter Serv., Inc. v. Fed. Aviation Admin., 525 F.3d 1299, 1306 (Fed. Cir. 2008); Ferreiro v. United States, 501 F.3d 1349, 1351 (Fed. Cir. 2007). The Tucker Act provides a waiver of sovereign immunity enabling a plaintiff to sue the United States for money damages. United States v. Mitchell, 463 U.S. 206, 212 (1983); Ferreiro, 501 F.3d at 1351; Reid v. United States, 95 Fed. Cl. 243, 247 (2010). However, the Tucker Act, standing alone, does not create a substantive right enforceable against the United States for monetary relief. Ferreiro, 501 F.3d at 1351. Rather, a plaintiff must establish an independent right to money damages based upon a money-mandating source within a contract, regulation, statute, or Constitutional provision. Id.; see also Jan’s Helicopter, 525 F.3d at 1306. Plaintiff misconstrues the vacated default judgment as fulfilling this requirement. Pl.’s Objection at 3.

The Court also lacks subject matter jurisdiction because the allegations arise from conduct by nonfederal agents and entities and constitute tort, criminal, and/or civil rights claims. In addition, the Court cannot review the decisions of a bankruptcy court, and Plaintiff requests equitable relief that the Court is not authorized to provide.

To set forth a claim cognizable by this Court, the complaint must allege that the federal government, or its agent, has violated a federal statute, regulation, or the Constitution. This is because “[t]he only proper defendant for any matter before this court is the United States, not its officers, nor any other individual.” Stephenson v. United States, 58 Fed. Cl. 186, 190 (2003) (emphasis in original). The United States is not liable for the actions of nonfederal parties who are not agents of the United States. Vlahakis v. United States, 215 Ct. Cl. 1018, 1018 (1978); Fullard, 78 Fed. Cl. at 300-01; Stephenson, 58 Fed. Cl. at 190. To the extent the complaint

alleges wrongdoing on the part of the Trustee and Counsel, the Court must dismiss the complaint because Plaintiff's allegations arise from alleged wrongdoing committed by individuals, not the federal government.² Plaintiff has not alleged any facts that would attribute the conduct of these officials to the United States or bring their conduct within this Court's jurisdiction. Accordingly, this Court lacks jurisdiction over the action. Stephenson, 58 Fed. Cl. at 190.

The Tucker Act expressly limits the jurisdiction of this Court to "cases not sounding in tort." 28 U.S.C. § 1491(a)(1). To the extent Plaintiff alleges that the Judge and other individuals acted dishonestly or breached their oaths of office, such allegations sound in tort, and the Court cannot hear them. Id.; Nalette v. United States, 72 Fed. Cl. 198, 202 (2006) (holding that the Court lacked jurisdiction over claims alleging that officials breached their oaths of office because such claims sound in tort). Likewise, to the extent Plaintiff's allegations can be characterized as claims of intentional or negligent infliction of emotional distress, the Court lacks jurisdiction over the claims because they are torts. 28 U.S.C. § 1491(a)(1). Nor does the Court have "jurisdiction to adjudicate any claims whatsoever under the federal criminal code" or civil rights claims not based on money-mandating statutes. Joshua v. United States, 17 F.3d 378, 379-80 (Fed. Cir. 1994) (internal quotation omitted); Hernandez v. United States, 93 Fed. Cl. 193, 198 (2010); Searles v. United States, 88 Fed. Cl. 801, 804-05 (2009); Sanders v. United States, 34 Fed. Cl. 75, 80 (1995), (finding that this Court lacked jurisdiction over a pro se plaintiff's allegations of civil and "basic human rights" violations because this Court cannot entertain "general civil rights claims" that are not based on money-mandating sources), aff'd, 104 F.3d 376 (Fed. Cir. 1996).

The crux of Plaintiff's complaint is that the Judge set aside a default judgment. To the extent Plaintiff asks this Court to review the decisions of the bankruptcy court and address the various deficiencies that allegedly occurred during the proceedings in Plaintiff's case, this Court does not have jurisdiction to do so. 28 U.S.C. § 1491; Joshua, 17 F.3d at 380. Nor does the Court possess jurisdiction over appeals from the bankruptcy court. See 28 U.S.C. § 1491; 1-5 Collier on Bankruptcy 5.02 (2010); Hufford v. United States, 87 Fed. Cl. 696, 703 (2009). Furthermore, Plaintiff's characterization of his claim as one for breach of contract and his conclusory assertion that the instant action is not an appeal do not change the fact that he asks the Court to review the Judge's decision to set aside the default judgment. Pl.'s Objection at 4-5.

In addition, Plaintiff fails to sufficiently allege the existence of an enforceable contract. He repeatedly refers to the "Abstract of Judgment," but issuance of judgment in favor of a party does not create a binding contract between the Judge and the party. Nor does it preclude the Judge from subsequently reconsidering and setting aside the decision.

With regard to the Plaintiff's alleged denial of due process, this Court lacks jurisdiction over claims that derive from the Due Process Clause of the Fifth Amendment because it does not mandate the "payment of money damages." Searles, 88 Fed. Cl. at 805-06. Furthermore, the Court lacks the power to grant the relief requested because it may not grant equitable relief, except in narrow circumstances inapplicable here. See 28 U.S.C. § 1491; Bowen v. Massachusetts, 487 U.S. 879, 905 (1988).

² The complaint contains no caption.

Conclusion

Defendant's motion to dismiss is **GRANTED**, and the Clerk is directed to dismiss this action.

**MARY ELLEN COSTER WILLIAMS
JUDGE**