In the United States Court of Federal Claims

NOT FOR PUBLICATION
No. 05-649C
(Filed August 24, 2006)

* *

FRANK BOLDUC,

Plaintiff,

v.

THE UNITED STATES,

Defendant,

* *

ORDER

The Court has received and reviewed plaintiff's motion for reconsideration of the Court's July 25, 2006 Order dismissing plaintiff's case for failure to state a claim upon which relief can be granted. When a party moves for reconsideration, the burden on the moving party is high. "The movant must show either that: an intervening change in the controlling law has occurred, evidence not previously available has become available, or that the motion is necessary to prevent manifest injustice." *Bishop v. United States*, 26 Cl. Ct. 281, 286 (1992). A motion for reconsideration under RCFC 59(a) is not a vehicle to provide unhappy litigants with an additional opportunity to persuade the Court to accept its arguments. *See Citizens Federal Bank, FSB v. United States*, 53 Fed. Cl. 793, 794 (2002).

Mister[1] Bolduc's motion asks the Court "to take a very hard examination" of the issue of when his claim accrued, "in light of the new cases cited and new arguments made." Pl.'s Mot. to Reconsider at 1. But the cases cited concerning this issue are not new, but pre-dated plaintiff's briefing in opposition to the government's motion to dismiss. Mister Bolduc finds it "difficult to

[1] The Court does not believe it is proper to begin sentences with abbreviations or acronyms, and for this reason tries to remember (albeit with less than perfect success) to spell out words such as "Mister" and "Captain" when they begin a sentence. *See*, *e.g.*, *Mann v. United States*, 68 Fed. Cl. 666, 668-70 (2005) (spelling out "Mister" four times); *Brooks v. United States*, 65 Fed. Cl. 135, 138-39, 144, 149 (2005) (spelling out "Captain" seven times); *cf. Beta Analytics Int'l, Inc. v. United States*, 67 Fed. Cl. 384 (2005) (starting sentences with "Beta" but otherwise referring to plaintiff as "BAI"). In the July 25, 2006 opinion, "Mister" was accordingly twice spelled out in full. Inexplicably, Mr. Bolduc "is uncomfortable" with this word unless it is in the abbreviated form. Pl.'s Mot. to Reconsider at 1 n.1.

fathom" that the Court "could overlook" the opinion in *Dethlefs v. United States*, 60 Fed. Cl. 810 (2001), Pl.'s Mot. to Reconsider at 2, which plaintiff himself had never previously cited. He also faults the Court for "ignor[ing] several other key cases," *id.* at 4, and then identifies nine cases -- seven of which had been heretofore ignored by plaintiff himself. *See id.* at 4-5. Of the two cases that plaintiff had previously cited, one of these cases *was* discussed in the July 25, 2006 opinion, *see* Opinion and Order at 9 (discussing *Brown v. United States*, 42 Fed. Cl. 139 (1998)), and the other -- *Colon v. United States*, 35 Fed. Cl. 515 (1996), concerning the effect (or lack thereof) of optional administrative proceedings on the accrual of a claim -- has no relevance to this matter.

Regarding the issue of when his claim accrued, plaintiff merely reiterates the same arguments made in his opposition to the government's motion to dismiss and has not demonstrated any reason for the Court to reconsider its ruling, other than his disappointment with the outcome. In any event, the additional authorities cited by plaintiff do not persuade the Court to reconsider its ruling in this matter. If plaintiff believes the Court is incorrect in its conclusion, this is a matter for Mr. Bolduc to raise on appeal with the Federal Circuit.

The plaintiff also takes issue with the Court's decision that the statute of limitations period governing this matter was not tolled by operation of 28 U.S.C. section 1500. But here, again, plaintiff cites no intervening change in controlling law, but relies on cases that pre-date his briefing on the subject.[2] Mister Bolduc reiterates his argument concerning constructive transfer, even though it is clear that the case he brought in the Massachusetts district court did not include a claim under 28 U.S.C. sections 1495 and 2513. As the Court has already explained, *see* Opinion and Order at 13 n.13, since Mr. Bolduc was represented in that matter by counsel, the amended complaint in that case will not be construed leniently to include causes of action that were not specifically raised. Accordingly, plaintiff's motion for reconsideration is **DENIED**.

IT IS SO ORDERED.

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VICTOR J. WOLSKI
Judge

[2] Moreover, plaintiff appears to misunderstand the operation of section 1500, *see* Pl.'s Mot. to Reconsider at 7 n.3, which does not remove our Court's jurisdiction, once properly invoked, when the same claim is *subsequently* pending in another court, *see Hardwick Bros. Co. II v. United States*, 72 F.3d 883, 884, 886 (Fed. Cir. 1995), and does not prevent *other* courts from considering claims that are already pending here. *See* 28 U.S.C. § 1500. Thus, it would not have been "ridiculous" or "illogical," Pl.'s Mot. to Reconsider at 7 n.3, for Mr. Bolduc to have timely filed his case here during any of the periods in which the district court action was not technically pending, as he would not have had to "terminate the ability to appeal" or "drop" his district court case as a result.