

In the United States Court of Federal Claims

No. 09-155C

(Filed: May 29, 2009)

(Unpublished)

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SALIMA WALLACE *
*
and *
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RICHARD WALLACE, *
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Plaintiffs, *
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v. *
*
THE UNITED STATES, *
*
*
Defendant. *
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Salima Wallace and Richard Wallace appearing *pro se*, Upper Darby, Pennsylvania, Plaintiffs.

Jane C. Dempsey, with whom were *Michael F. Hertz*, Acting Assistant Attorney General, and *Jeanne E. Davidson*, Director, United States Department of Justice, Commercial Litigation Branch, Civil Division, Washington, D.C., for Defendant.

OPINION AND ORDER ON DEFENDANT'S MOTION FOR SUMMARY DISMISSAL

WHEELER, Judge.

Before the Court is Defendant's motion for summary dismissal for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted, pursuant to Rules 12(b)(1) and 12(b)(6) of the Court of Federal Claims ("RCFC"). *Pro se* Plaintiffs Salima Wallace and her son, Richard Wallace, filed a complaint in this Court on March 12, 2009 asserting numerous claims relating to their September 18, 2008 arrest by the Upper Darby township police for possession of marijuana and drug paraphernalia and for disorderly

conduct. The claims include allegations against the local police of “unlawful[] and illegal[] arrest[],” kidnapping, false charges made “under color of law and color of office,” violation of constitutional rights, and attempted rape of Salima Wallace. Compl. 1, Mar. 12, 2009. The complaint also asserts a claim against the “several state esquires in the COMMONWEALTH OF PENNSYLVANIA Media Court House in the Eastern District Court Case # 08-5594” for “discrimination and deprivation of rights to make and enforce a contract” Id. 1-2. Plaintiffs seek \$700,000 in damages to “enforce [Ms. Wallace’s] contract as stipulated” Id. 3. Defendant moved for summary dismissal on April 13, 2009, and Plaintiff filed a response on April 29, 2009. In the interest of promoting the efficient administration of justice under RCFC Appendix A, Section 1, the Court does not require further briefing on Defendant’s motion. See RCFC App. A, § 1, cl. 2 (“For the purpose of promoting the efficient administration of justice, a judge may modify these procedures as appropriate”)

Under RCFC 12(b)(1), the Court may dismiss a complaint if it lacks jurisdiction over the subject matter. When considering a motion to dismiss for lack of subject matter jurisdiction, the Court accepts as true the undisputed allegations in the complaint and draws all reasonable inferences in favor of the plaintiff. Hamlet v. United States, 873 F.2d 1414, 1416 (Fed. Cir. 1989), abrogated on other grounds by, Harlow v. Fitzgerald, 457 U.S. 800 (1982)) (citing Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)). This Court will dismiss a case for lack of subject matter jurisdiction only where it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief. See Frymire v. United States, 51 Fed. Cl. 450, 454 (2002) (citations omitted).

A complaint should be dismissed under RCFC 12(b)(6) “when the facts asserted by the claimant do not entitle him to a legal remedy.” Lindsay v. United States, 295 F.3d 1252, 1257 (Fed. Cir. 2002). As with a motion under RCFC 12(b)(1), the Court “must accept as true all the factual allegations in the complaint, . . . and . . . indulge all reasonable inferences in favor of the non-movant” Sommers Oil Co. v. United States, 241 F.3d 1375, 1378 (Fed. Cir. 2001) (citations omitted); see also Huntleigh USA Corp. v. United States, 63 Fed. Cl. 440, 443 (2005), reconsideration denied, 65 Fed. Cl. 178 (2005) (citation omitted). While detailed factual allegations in the complaint are not necessary, “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citation omitted).

Pro se litigants are afforded considerable leeway in presenting their pleadings to the Court. Haines v. Kerner, 404 U.S. 519, 520-21 (1972). This broad latitude afforded *pro se* litigants does not, however, exempt them from meeting this Court’s jurisdictional requirements. See Henke v. United States, 60 F.3d 795, 799 (Fed. Cir. 1995). *Pro se*

plaintiffs still have the burden of establishing subject matter jurisdiction by a preponderance of the evidence. See Tindle v. United States, 56 Fed. Cl. 337, 341 (2003). Further, there is no duty for a court to create any claims that are not spelled out in a plaintiff's pleading. Scogin v. United States, 33 Fed. Cl. 285, 293 (1995) (citation omitted).

In the present case, the Court lacks subject matter jurisdiction to decide Plaintiffs' constitutional claims. The Tucker Act grants the Court of Federal Claims 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) (2006). The Tucker Act, however, "does not create any substantive right enforceable against the United States for money damages . . . [t]he Act merely confers jurisdiction upon it whenever the substantive right exists." United States v. Testan, 424 U.S. 392, 398 (1976) (citation omitted). A plaintiff coming before this Court, therefore, must identify a separate provision of law conferring a substantive right for money damages against the United States. See Todd v. United States, 386 F.3d 1091, 1094 (Fed. Cir. 2004) (citation omitted).

While Plaintiffs do not specify which of their constitutional rights were violated in connection with their September 18, 2008 arrest, it appears that they are alleging violations of the Fourth Amendment right against unreasonable searches and seizures, the Fifth Amendment and Fourteenth Amendment Due Process Clauses, and the Fourteenth Amendment Equal Protection Clause. However, the Court of Federal Claims does not have jurisdiction over claims asserted under the Fourth Amendment, the Due Process Clauses, or the Equal Protection Clause because they do not mandate payment by the Government. See, e.g., Crocker v. United States, 125 F.3d 1475, 1476 (Fed. Cir. 1997) (no jurisdiction over Fifth Amendment Due Process claims) (citations omitted); Le Blanc v. United States, 50 F.3d 1025, 1028 (Fed. Cir. 1995) (no jurisdiction over Due Process Clauses or Equal Protection Clause claims) (citations omitted); Stephanatos v. United States, 81 Fed. Cl. 440, 445 (2008) (no jurisdiction over Fourth Amendment, Fourteenth Amendment, or Fifth Amendment Due Processes Clause claims). Therefore, the Court must dismiss Plaintiffs' constitutional claims for lack of subject matter jurisdiction.

To the extent that Plaintiffs' complaint alleges claims sounding in criminal law or tort, this Court does not possess jurisdiction to hear them either. The Tucker Act expressly limits this Court's jurisdiction to "cases not sounding in tort." 28 U.S.C. § 1491(a)(1); see also Rick's Mushroom Serv., Inc. v. United States, 521 F.3d 1338, 1343 (Fed. Cir. 2008). Furthermore, the Court of Federal Claims "has no jurisdiction to adjudicate any claims whatsoever under the federal criminal code." Miller v. United States, 67 Fed. Cl. 195, 199 (2005) (quoting Joshua v. United States, 17 F.3d 378, 379 (Fed. Cir. 1994)).

Finally, Plaintiffs' alleged contract claim fails to state a claim upon which relief can be granted under RCFC 12(b)(6). To establish a breach of contract claim, Plaintiffs must first demonstrate that a valid contract existed. This requires Plaintiffs to prove four basic elements: (1) mutuality of intent to contract, (2) offer and acceptance, (3) consideration, and (4) actual authority of a Government representative to bind the United States. See Hometown Fin., Inc. v. United States, 409 F.3d 1360, 1364 (Fed. Cir. 2005) (citation omitted). In the present case, Plaintiffs do not identify a contractual relationship with the United States; rather, they assert a breach of contract claim against the "several state esquires in the COMMONWEALTH OF PENNSYLVANIA Media Court House in the Eastern District Court Case # 08-5594." Compl. 1-2. Because Plaintiffs have failed to set forth the basic elements of a contract claim, the Court must dismiss that claim pursuant to RCFC 12(b)(6).

Based upon the foregoing, Defendant's motion for summary dismissal is hereby GRANTED. The Clerk shall dismiss Plaintiff's complaint without prejudice.

IT IS SO ORDERED.

THOMAS C. WHEELER
Judge