In the United States Court of Federal Claims

NOT FOR PUBLICATION
Nos. 05-120L & 05-167L
(Filed June 29, 2005)

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*
HAROLD E. McCOY, *
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Plaintiff, *
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v. *
*
THE UNITED STATES, *
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Defendant. *
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MEMORANDUM OPINION AND ORDER

The plaintiff, Harold E. McCoy, is a prisoner of the State of Indiana Department of Corrections. On January 18, 2005, the plaintiff, proceeding *pro se*, filed the instant action against the United States ("defendant"). The case was assigned the number 05-120L. On January 21, the plaintiff filed another complaint, which was assigned the number 05-167L. On February 11, the defendant moved to have the latter case transferred to the undersigned and to have the two cases consolidated. The plaintiff's response to that motion was filed on March 15. In that document, the plaintiff stated that "I consent to a consolidation of the 2 claims because they are similar if not exact replicating claims." Resp. Mot. Consolidate (Mar. 15, 2005) at 1. The 05-167L complaint was transferred to the undersigned on March 17, 2005, so that the two cases could be consolidated. In its March 25, 2005 order, this Court noted that case number 05-167L had been transferred to the undersigned. The Court, in a footnote, also stated that consolidation had been accomplished by the March 17, 2005 order. *See* Order (Mar. 25, 2005) at 1 n.1. The Court had not, however, issued a separate consolidation order. To clear up any confusion on the docket concerning this, and given that the plaintiff consented to the consolidation in his March 15 filing, the Court hereby ORDERS, *nunc pro tunc*, that these two cases be consolidated as of March 17, 2005.

The defendant has moved to dismiss the consolidated case for want of subject matter jurisdiction. Four categories of relief may be extrapolated from the plaintiff's complaint[1]: (1)

[1] References herein to the complaint shall be to that document bearing the 05-167L case number. The complaint filed under number 05-120L will not be referenced directly because its

habeas corpus; (2) tort claims; (3) claims arising under Indian "treaties"; and (4) constitutional claims. As a result of these claims, the plaintiff seeks, among other things, money damages in the amount of $300 million. On March 25, 2005, the defendant moved to dismiss the complaint for want of subject matter jurisdiction under Rule 12(b)(1) of the Rules of the United States Court of Federal Claims ("RCFC") or, in the alternative, for a failure to state a claim on which relief may be granted under RCFC Rule 12(b)(6). The plaintiff filed a response to the defendant's motions. For the following reasons the defendant's motion to dismiss for want of subject matter jurisdiction is GRANTED.

In ruling on a motion to dismiss under RCFC 12(b)(1), the Court is generally "obligated to assume all factual allegations to be true and to draw all reasonable inferences in the plaintiff's favor." *Hecke v. United States*, 60 F.3d 795, 797 (Fed. Cir. 1995) (citing *Scheuer v. Rhodes*, 416 U.S. 232, 236-37 (1974)). The "[p]laintiff bears that burden of showing jurisdiction by a preponderance of the evidence." *Taylor v. United States*, 303 F.3d 1357, 1359 (Fed. Cir. 2002); *see also Thomson v. Gaskill*, 315 U.S. 442, 446 (1942). Although this Court accords a *pro se* plaintiff leniency in presenting his case, the plaintiff's *pro se* status does not render him immune from the requirement that he plead facts upon which a valid claim can rest. *Paalan v. United States*, 57 Fed. Cl. 15, 16 (2003); *see also Hains v. Kerner*, 404 U.S. 519, 520 (1972).

The Court of Federal Claims, like other federal courts, has its jurisdiction determined by Congress. *See Aldinger v. Howard*, 427 U.S. 1, 15 (1976) ("federal courts, as opposed to state trial courts of general jurisdiction, are courts of limited jurisdiction marked out by Congress"). Our Court is a special court that primarily considers claims based on financial transactions with the federal government, be they voluntary or involuntary (contracts, benefits, taxes and takings). This Court's jurisdiction is "marked out" primarily in the Tucker Act, which states in pertinent part:

> The United States Court of Federal Claims 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) (2000). The Tucker Act, however, does not create a substantive cause of action. In order to come within the jurisdictional reach and the waiver of the Tucker Act, a plaintiff must identify a separate source of substantive law that creates the right to money damages. *Mitchell v. United States*, 463 U.S. 206, 216-17 (1983); *United States v. Testan*, 424

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substantive claims are repeated within the 05-167L complaint. The 05-167L complaint is a collection of various complaints previously filed in other courts. It does not have a coherent system of pagination. Therefore, citations will be to the pages in the order they are presented, *i.e.* page two will refer to the second page of the complaint, regardless of any page number actually appearing on that page.

U.S. 392, 398 (1976). As this Court has noted, if a plaintiff is not proceeding under a contract with the United States, he must demonstrate that his cause of action is "based on a law or regulation that either entitles the plaintiff to a payment of money from the government, or places a duty upon the government, the breach of which gives the plaintiff a money damages remedy." *Contreras v. United States*, 64 Fed. Cl. 583, 588 (2005); *see also Mitchell*, 463 U.S. at 216-18.

Although the plaintiff provides a litany of money damages in his complaint, Compl. at 46-47, his claims are not based on a money-mandating statute or regulation. First, with regard to the plaintiff's request for a writ of habeas corpus, *id*. at 9-11, this Court does not have the jurisdiction to entertain habeas petitions. *See Ledford v. United States*, 297 F.3d 1378, 1381 (Fed. Cir. 2002) (noting that "the habeas statute does not list the Court of Federal Claims among those courts empowered to grant a writ of habeas corpus"); 28 U.S.C. § 2241.

Second, the plaintiff alleges several tort claims, such as defamation, false imprisonment, assault and battery. Compl. at 3-4. However, the Tucker Act explicitly precludes this Court from entertaining cases sounding in tort. 28 U.S.C. § 1491(a)(1); *see also New. Am. Shipbuilders v. United States*, 871 F.2d 1077, 1079 (Fed. Cir. 1989). Moreover, many of the plaintiff's tort claims are against state and local officials, Compl. at 32-39, but this Court's jurisdiction extends only to suits against the United States, not against state and local officials. 28 U.S.C. § 1491(a)(1). The plaintiff also makes claims against several federal judges, Compl. at 32, 36, yet this Court lacks jurisdiction over claims against individual federal officers, including judges. *See Florida Rock Indus., Inc. v. United States*, 791 F.2d 893, 898 (Fed. Cir. 1986); *Frank's Livestock & Poultry Farm, Inc. v. United States*, 17 Cl. Ct. 601, 607 (1989).

Third, the plaintiff's claims allege the violation of "National Indian Treaties" and the Indian Civil Rights Act of 1968. Compl. at 1. Aside from the plaintiff's indeterminate reference to "National Indian Treaties," the only specific treaty cited is an alleged treaty ratified in 1838 that, he claims, contains the following provisions:

> The U.S.A. shall defend all Indians [sic] (Native Americans) rights under the U.S. Constitution and this treaty.
>
> In this treaty, you and your family for all generations, shall be protected from state arbitrary confinement and state officials confiscating your property.
>
> In an instance that you or your family members should be imprisoned arbitrarily without legal cause, the U.S.A. will prosecute those involved to the full extent of the laws.

Id. at 6.

Recovery under the alleged treaty may not be pursued in our Court. First off, one questions whether the plaintiff, as an *individual*, has standing to bring an action on the "treaty," as opposed to the tribe itself. But more fundamentally, the provisions the plaintiff cites

(assuming, *arguendo*, their authenticity) do not "entitl[e] the plaintiff to a payment of money from the government, or plac[e] a duty upon the government, the breach of which gives the plaintiff a money damages remedy." *Contreras*, 64 Fed. Cl. at 588; *see also Mitchell*, 463 U.S. at 216-18.[2] As for the Indian Civil Rights Act of 1968, this statute concerns the regulation of Indian tribal governments and does not provide a cause of action against the United States. *See* 25 U.S.C. §§ 1301-1303. Further, it lacks any money-mandating provisions. *Id.* In short, the Indian Civil Rights Act is wholly irrelevant to this matter.

Finally, the plaintiff alleges a myriad of constitutional claims grounded in the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution. Compl. at 48-49. However, "[n]ot every claim invoking the Constitution, a federal statute, or a regulation is cognizable under the Tucker Act." *Mitchell*, 463 U.S. at 216. In order to fall within the jurisdiction of this Court, the Constitutional provision at issue must "independently mandate[] payment of money damages by the United States." *Ogden v. United States*, 61 Fed. Cl. 44, 47 (2004). None of the plaintiff's constitutional claims satisfies this standard. *See United States v. Connolly*, 716 F.2d 882, 886-87 (Fed. Cir. 1983) (First Amendment not money-mandating); *Brown v. United States*, 105 F.3d 621, 623 (Fed. Cir. 1997) (Fourth Amendment not money-mandating); *LeBlanc v. United States*, 50 F.3d 1025, 1028 (Fed.Cir.1995) (Due Process Clauses of Fifth[3] and Fourteenth Amendment and Equal Protection Clause of Fourteenth Amendment not money-mandating); *Milas v. United States*, 42 Fed. Cl. 704, 710 (1999) (Sixth Amendment not money-mandating); *Ogden*, 61 Fed. Cl. at 47 (Eighth Amendment not money-mandating).

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[2] Under *United States v. Navajo Nation*, 537 U.S. 488 (2003), it is clear that even if these provisions of the "treaty" could be considered to create specific duties to be performed by the United States, the failure to perform these duties would not, in this instance, create a right to money damages. *See id*. at 506.

[3] To be precise, the Due Process Clause *is* money-mandating when the theory of recovery is an illegal exaction. *See, e.g.*, *Casa de Cambio Comdiv S.A. de C.V. v. United States*, 291 F.3d 1356, 1363 (Fed. Cir. 2002); *Mallow v. United States*, 161 Ct. Cl. 446, 454 (1963); *cf. Eastport S.S. Corp. v. United States*, 372 F.2d 1002, 1008 (Ct. Cl. 1967) (Due Process Clause does not mandate monetary compensation for wrongful deprivations of liberty). Plaintiff is not, however, alleging any exaction.

For the foregoing reasons, the defendant's motion to dismiss pursuant to RCFC 12(b)(1) is **GRANTED**. Because the defendant's 12(b)(1) motion to dismiss is granted, the Court has no occasion to address the defendant's 12(b)(6) motion. The Clerk is directed to close the case.

IT IS SO ORDERED.

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VICTOR J. WOLSKI
Judge