

In the United States Court of Federal Claims

No. 10-678C

(Filed July 19, 2011)

FILED

JUL 19 2011

U.S. COURT OF
FEDERAL CLAIMS

**SAMUEL EDWARDS, also known as
ISHMAEL EL-BEY, Pro Se,**

Plaintiff,

v.

THE UNITED STATES,

Defendant.

*
*
*
*
*
*
*
*
*
*
*
*

Samuel Edwards, also known as Ishmael El-Bey, Pro Se, Detroit, Michigan.

Melissa M. Devine, Department of Justice, Washington, D.C., with whom was Assistant Attorney General Tony West, for Defendant. Jeanne E. Davidson, Director, and Deborah A. Bynum, Assistant Director.

OPINION AND ORDER

Futey, Judge.

This *pro se* case comes before the Court on the motion of defendant, the United States, for summary dismissal of the complaint of plaintiff, Samuel Edwards (also known as Ishmael El Bey). Plaintiff has alleged violations of numerous civil and criminal statutes, a treaty, and the Fifth Amendment to the United States' Constitution; he asks for \$10,000,000,000 in damages. The government moves to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) of the Rules of the United States Court of Federal Claims ("RCFC") and also moves to dismiss for failure to state a claim, under RCFC 12(b)(6).¹

¹ Plaintiff has argued that there must be "a complaint and an answer to complaint" and made various procedural objections to defendant's motion. Pl.'s Answer

I. Background

On May 2, 2008, plaintiff filed a voluntary petition for Chapter 7 bankruptcy in the United States Bankruptcy Court for the Eastern District of Michigan.² After he had filed that petition, a commercial bank foreclosed on his home, and the 36th District Court of Michigan issued an order evicting him from that property on May 20, 2008. Plaintiff appealed the eviction, but the state court dismissed that appeal. Plaintiff also filed a “Petition for Administrative Closing Due to Bankruptcy Stay,” which the court denied because plaintiff had filed numerous petitions for bankruptcy within the last year. *See* 11 U.S.C. § 362(c)(4)(A) (2006). The property was sold at a sheriff’s sale.

On October 6, 2010, plaintiff filed this case in the United States Court of Federal Claims. The complaint names as defendants “the Sheriff’s Department of Wayne County, 36th District Court, Third Circuit Court, the U.S. District Court, the 36th District Court’s Bailiff’s Department, the City of Detroit, and the State of Michigan” as well as the “United States (a Federal Corporation)” and an individual, Fred Coleman. Pl.’s Compl. 1–2. Defendant filed a Motion For Summary Dismissal Of Pro Se Complaint on December 6, 2010. Although plaintiff did not initially respond to this motion, the Court eventually received on April 5, 2011 from plaintiff an Answer To Defendant’s Motion For Summary Dismissal Of Pro Se Complaint, and the Court allowed this to be filed. Defendant filed on April 27, 2011 a Reply In Support Of Its Motion To Dismiss.

II. Discussion

Defendant has moved to dismiss most of plaintiff’s claims under RCFC 12(b)(1). In addition, defendant has moved to dismiss plaintiff’s takings claim under RCFC 12(b)(6).

A. *Standard of Review*

Plaintiff is representing himself *pro se* in this matter. Courts provide *pro*

Def.’s Mot. Summ. Dismissal 1. Under RCFC 12(b), however, defendant is allowed—and required—to file motions under RCFC 12(b)(1) and RCFC 12(b)(6) before filing its answer.

² Attached to the complaint are a number of papers that discuss plaintiff’s allegations regarding his bankruptcy and eviction proceedings, as well as a variety of legal precedents. The Court will construe all papers enclosed as part of the complaint. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (holding *pro se* complaints to “less stringent standards than formal pleadings drafted by lawyers”) (quoting *Haines v. Kerner*, 404 U.S. 519, 520 (1972)).

se plaintiffs more latitude in their pleadings and will not hold them to the rigid standards and formalities imposed upon parties represented by counsel. See *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). This latitude, however, does not exempt a plaintiff from meeting jurisdictional requirements. See *Bernard v. United States*, 59 Fed. Cl. 497, 499 (2004). Plaintiff must still “comply with relevant rules of procedural and substantive law.” *Faretta v. California*, 422 U.S. 806, 835 n.46 (1975).

1. Motion to Dismiss for Lack of Subject Matter Jurisdiction, RCFC 12(b)(1)

Defendant has argued that many of plaintiff’s claims are outside the jurisdiction of this Court. The Court of Federal Claims is a court of specific jurisdiction, with its “jurisdictional reach” set by the Tucker Act. *Rick’s Mushroom Serv. v. United States*, 521 F.3d 1338, 1346 (Fed. Cir. 2008). Under the Tucker Act, the court has subject matter jurisdiction for claims “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 (2006). The Tucker Act itself does not create any substantive rights against the government, but merely allows the court to exercise jurisdiction over the government when a substantive right to recovery exists elsewhere in the law. See *United States v. Testan*, 424 U.S. 392, 398 (1976). Plaintiffs, therefore, to establish subject matter jurisdiction must identify some law that entitles them to money damages. See *United States v. Mitchell*, 463 U.S. 206, 216 (1983).

When a defendant moves to dismiss for lack of subject matter jurisdiction under RCFC 12(b)(1), the Court must accept as true the complaint’s undisputed factual allegations and construe the facts in the light most favorable to plaintiff. *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 747 (Fed. Cir. 1988). A plaintiff bears the burden of establishing, by a preponderance of the evidence, facts sufficient to invoke the court’s jurisdiction. See *McNutt v. Gen. Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936); *Taylor v. United States*, 303 F.3d 1357, 1359 (Fed. Cir. 2002).

2. Motion to Dismiss for Failure to State a Claim, RCFC 12(b)(6)

Defendant has also moved to dismiss “for failure to state a claim upon which relief can be granted” under RCFC 12(b)(6). When considering such a motion, a court must accept “all well-pleaded factual allegations as true and draw[] all reasonable inferences in the claimant’s favor.” *Lindsay v. United States*, 295 F.3d 1252, 1257 (Fed. Cir. 2002). A plaintiff must show “enough facts to state a claim to relief that is plausible on its face” in order to survive a motion to dismiss. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible on its face “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009); see also *Totes-Isotoner Corp. v. United States*, 594 F.3d 1346, 1354–55 (Fed. Cir. 2010) (citing the plausibility standard).

B. *Subject Matter Jurisdiction Over Plaintiff’s Claims is Lacking*

Plaintiff has alleged violations of numerous federal statutes and other laws. These statutes include various civil rights statutes, numerous federal criminal statutes, an international treaty, and the Fifth Amendment to the United States Constitution. These claims are lodged not just against the United States, but also against numerous other defendants.

1. The Court Lacks Jurisdiction Over Defendants Other than the United States

This Court does not have jurisdiction to hear claims against parties other than the United States. As noted above, plaintiff’s complaint names numerous defendants, including “the Sheriff’s Department of Wayne County, 36th District Court, Third Circuit Court, the U.S. District Court, the 36th District Court’s Bailiff’s Department, the City of Detroit, and the State of Michigan,” as well as the “United States (a Federal Corporation)” and an individual, Fred Coleman. Pl.’s Compl. 1–2. As the Supreme Court has noted, however, if “the relief sought is against others than the United States the suit as to them must be ignored as beyond the jurisdiction of the court.” *United States v. Sherwood*, 312 U.S. 584, 588 (1941). This Court therefore may not exercise jurisdiction over disputes between “private parties,” such as the claim against Fred Coleman, or against “local, county, or state agencies.” *Moore v. Durango Jail*, 77 Fed. Cl. 92, 95 (2007).

2. The Court Lacks Jurisdiction Over Civil Rights Claims

Plaintiff has alleged a number of civil rights violations. Although it is not clear from plaintiff’s complaint whether these charges are brought against the

United States, rather than the other named defendants, the Court will construe them as having been brought against the United States.

The statutes plaintiff has referenced include 42 U.S.C. §§ 1982, 1983, 1985, and 1994 (2006). Suits under these statutes for violations of civil rights may only be heard by district courts, and this court thus lacks jurisdiction to consider them. *See* 28 U.S.C. § 1343 (2006) (granting original jurisdiction to district courts to hear civil rights claims); *see, e.g., Marlin v. United States*, 63 Fed. Cl. 475, 476 (2005) (“[T]he Court does not have jurisdiction to consider civil rights claims brought pursuant to 42 U.S.C. § 1981, 1983, or 1985 because jurisdiction over claims arising under the Civil Rights Act resides exclusively in the district courts.”).

3. The Court Lacks Jurisdiction Over Criminal Claims

Plaintiff has also alleged violations of a number of criminal statutes. As with his civil rights claims, the Court will construe these as having been brought against the United States. This court “is a court of specific civil jurisdiction” and cannot “adjudicate any claims whatsoever under the federal criminal code.” *Joshua v. United States*, 17 F.3d 378, 379 (Fed. Cir. 1994). Plaintiff has referenced 18 U.S.C. §§ 241, 242, 1581, 1961, 1964, 2112, 2113, 2331, 2333, 2381, and 2384 (2006). These are all, however, criminal statutes, and the Court has no jurisdiction to consider alleged violations of criminal statutes.

4. The Court Lacks Jurisdiction Over Claims Based Upon Treaties

In his response, plaintiff claims that a treaty between the United States and Morocco was violated. *See* Treaty of Peace and Friendship, U.S.-Morocco, Jan. 25, 1787, 8 Stat. 100. This Court “shall not have jurisdiction of any claim against the United States growing out of or dependent upon any treaty entered into with foreign nations,” except if specifically authorized by Congress. 28 U.S.C. § 1502 (2006); *see also Republic of New Morocco v. United States*, No. 10-864C, 2011 WL 1632655, at *4 (Fed. Cl. Apr. 29, 2011) (“[T]he Treaty of Peace and Friendship Between the United States of America, and His Imperial Majesty the Emperor of Morocco cannot serve as a basis for the court to exercise jurisdiction over the complaint.”). The Court thus cannot hear plaintiff’s claims based upon the treaty.

C. *Plaintiff has Failed to State a Takings Claim*

Plaintiff argues that “the Sheriff’s Sale is in violation of the 5th Amendment of the Constitution of the United States of America.” Pl.’s Compl. 3. The Court does have jurisdiction over takings claims brought under the Fifth Amendment. *See McGuire v. United States*, 97 Fed. Cl. 425, 432 (2011).

Defendant, however, has argued that plaintiff has failed to allege facts showing that the United States has taken plaintiff's property. As noted above, a plaintiff must "plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft*, 129 S. Ct. at 1949.

In this case, plaintiff has not raised any facts to support a taking by the United States. Even construed liberally in favor of plaintiff, the claims mentioned in the filings stem from a foreclosure by a commercial bank, a state court eviction order, and a county sheriff's sale. No actions of the federal government have been alleged to contribute to the foreclosure, eviction or sale. Since plaintiff has not pled anything that allows the Court "to draw the reasonable inference that the defendant is liable" for the foreclosure, eviction, and sale, defendant's motion to dismiss for failure to state a claim must be granted. *Id.*

III. Conclusion

For the above-mentioned reasons, defendant's Motion For Summary Dismissal Of Pro Se Complaint is GRANTED. The Clerk is directed to act accordingly.

No costs.

IT IS SO ORDERED.


BOHDAN A. FUTEY
Judge