

In the United States Court of Federal Claims

Case No.08-299C
FOR PUBLICATION
Filed: August 6, 2008

KEITH RUSSELL JUDD,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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Motion to Dismiss; RCFC 12(b);
Subject Matter Jurisdiction; *Pro se*
Plaintiff; Pretrial Diversion
Agreement.

Keith R. Judd, pro se, Beaumont, Texas.

Sean B. McNamara, Commercial Litigation Branch, Civil Division, Department of Justice with whom were *Gregory G. Katsas*, Acting Assistant Attorney General, *Jeanne E. Davidson*, Director, *Bryant G. Snee*, Deputy Director, for Defendant.

OPINION and ORDER

SMITH, Senior Judge:

This case involves a claim by Plaintiff arising from a pretrial diversion agreement to release him from prison and other damages therefrom. Before the Court is Defendant’s Motion to Dismiss pursuant to RCFC 12(b)(1).

Plaintiff, Keith Russell Judd¹, is suing the United States for an alleged breach of a pretrial diversion agreement made with the United States Attorney’s Office. Compl. 1. Plaintiff alleges that the government took his luggage, money from a jail account, Social Security benefits, and breached an implied contract and covenant of good faith and fair dealing, entitling him to tort damages. *Id.* at 1-2. Plaintiff seeks \$34,262,158,366.21 in damages, release from prison, and “any other relief appropriate and just.” *Id.* at 2.

This Court holds the pleadings of *pro se* plaintiffs to “less stringent standards than formal

¹ Plaintiff was barred from filing *in forma pauperis* by this Court in *Judd v. United States*, 05-726 (Fed. Cl. Dec. 9, 2005). Plaintiff has paid the necessary filing fee for this action.

pleadings drafted by lawyers.” *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Therefore, as Plaintiff is proceeding *pro se*, the pleadings are construed liberally. Accordingly, the Court must examine the pleadings to see if Plaintiff has a cause of action, even if not clearly articulated. *Sumner v. United States*, 71 Fed. Cl. 627, 628 (2006)(citing *Ruderer v. United States*, 188 Ct. Cl. 456, 468 (1969)). However, “there is no duty on the part of the trial court to create a claim which appellant has not spelled out in his pleading.” *Scogin v. United States*, 33 Fed. Cl. 285, 293 (1995)(internal quotation and punctuation marks omitted). Moreover, “a complaint that is confusing makes it difficult for the defendant to file a responsive pleading and makes it difficult for the trial court to conduct orderly litigation.” *Id.*

This Court’s subject matter jurisdiction is strictly construed. *Leonardo v. United States*, 55 Fed. Cl. 344, 346 (2003). In a RCFC 12(b)(1) motion, the non-moving party bears the burden of establishing jurisdiction by a preponderance of the evidence. *Id.* If the Court finds jurisdiction lacking as a matter of law, dismissal is required. *Thoen v. United States*, 765 F.2d 1110, 1116 (Fed. Cir. 1985).

To establish jurisdiction over a suit involving a contract with the United States, a plaintiff must show that the United States was not acting in its capacity as a sovereign, but rather it has clearly subjected itself to damages in the case of breach. *Sanders v. United States*, 252 F.3d 1329, 1335-36 (Fed. Cir. 2001); *see also Kania v. United States*, 227 Ct. Cl. 458 (1981). A waiver of sovereign immunity “cannot be implied and must be unequivocally expressed.” *United States v. King*, 395 U.S. 1, 4 (1969).

Since the administration of the criminal justice system is an activity “that lies at the heart of sovereign action,” a breach of contract arising out of the criminal justice system does not usually give rise to an action under the Tucker Act for damages. *Sadeghi v. United States*, 46 Fed. Cl. 660, 662 (2000)(citing *Drakes v. United States*, 28 Fed. Cl. 190, 193 (1993)). When presented with a matter involving a criminal plea agreement, to show a waiver, Plaintiff must prove “(1) the person who made the contract on behalf of the government, in this case, the AUSA, had authority to bind the government to pay monetary damages; and (2) the contract’s language provides for the payment of monetary damages in case of a breach by the government.” *Houston v. United States*, 60 Fed. Cl. 504, 511 (2004)(citing *Kania v. United States*, 650 F.2d at 268). Even liberally construed, Plaintiff has clearly failed to prove this requirement. He has offered no evidence to show the AUSA had the necessary authority to bind the government to pay damages. In addition, the pretrial diversion agreement itself says nothing about damages in the case of breach. *See* D. Mot. App. 7-9. Therefore, Plaintiff has failed to prove a waiver of sovereign immunity by the government.

In light of the foregoing reasons, the Court hereby **GRANTS** Defendant’s Motion to Dismiss. All outstanding motions by Plaintiff are therefore **DENIED**. Defendant’s request to bar Plaintiff from future filings in this Court is **DENIED**. However, the Clerk will continue to reject any future filings unless the requisite fees are paid. The Clerk is hereby directed to **DISMISS** Plaintiff’s complaint.

It is so ORDERED.

LOREN A. SMITH
SENIOR JUDGE