

# In the United States Court of Federal Claims

No. 07-123C  
(Filed: August 1, 2007)  
(Unpublished)

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BRIAN GREER, \*  
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 Plaintiff, \*  
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 v. \*  
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 THE UNITED STATES, \*  
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 Defendant. \*  
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*Brian Greer, Walnut Creek, California, pro se.*

*A. Bondurant Eley, with whom were Peter D. Keisler, Assistant Attorney General, Jeanne E. Davidson, Director, Martin F. Hockey, Jr., Assistant Director, United States Department of Justice, Commercial Litigation Branch, Civil Division, Washington, D.C., for Defendant.*

## OPINION AND ORDER ON DEFENDANT'S MOTION TO DISMISS

WHEELER, Judge.

Plaintiff Brian Greer filed a wide-ranging complaint on February 23, 2007 essentially alleging that the National Labor Relations Board (“NLRB”) and the Equal Employment Opportunity Commission (“EEOC”) caused injury to him in 2006 by disclosing various labor grievances he asserted against his former employer, Safeway, Inc. Mr. Greer contends that, despite many interviews with other prospective employers, he was unsuccessful in obtaining other employment after leaving Safeway. Mr. Greer lays the blame for this predicament on the NLRB and EEOC, who he says revealed his labor grievances against Safeway to those performing background investigations for other prospective employers. Upon learning of his grievances against Safeway, Mr. Greer alleges that other employers decided not to hire him. Mr. Greer seeks approximately \$6,000,000 in compensatory and punitive damages from the Government.

As the basis for subject matter jurisdiction in this Court, Mr. Greer claims that he had contracts with the NLRB and the EEOC resulting from statements on agency web sites that

they would guard against any retaliation by prospective employers. Mr. Greer states that he understood from the web sites that prospective employers could not refuse to hire him because of grievances he filed against Safeway. Mr. Greer contends that the assurances on the agency web sites constituted an “offer” which he “accepted” by filing his labor grievances against Safeway. Mr. Greer regards as “consideration” his agreement to provide detailed evidence of employer violations which, if corrected, would benefit other employees and the public. Mr. Greer relies upon the Tucker Act, 28 U.S.C. § 1491(a)(1), which gives this Court jurisdiction of any claim founded upon “any express or implied contract with the United States.”

Defendant has moved to dismiss Mr. Greer’s complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted, pursuant to Rules 12(b)(1) and (b)(6) respectively. Mr. Greer, in addition to opposing Defendant’s motion to dismiss, has filed motions for injunctive relief and for summary judgment. Mr. Greer’s complaint contains various allegations relating to lack of due process, promissory estoppel, equitable relief, laches, and bias, among others. He has invoked the Fifth and Fourteenth Amendments, as well as Article I, Section 9 of the Constitution regarding bills of attainder, as alternate grounds for relief. After full consideration of the parties’ positions, the Court concludes that it lacks subject matter jurisdiction of this action. The Court does not need to address other issues that do not bear upon jurisdiction.

### Jurisdiction

The Court of Federal Claims “has jurisdiction only where and to the extent that the government has waived its sovereign immunity, and any waiver of sovereign immunity cannot be implied but must be unequivocally expressed.” Ledford v. United States, 297 F.3d 1378, 1381 (Fed. Cir. 2002). Congress, through the Tucker Act, authorized this Court to hear specific 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(a)(1); see also United States v. Mitchell, 463 U.S. 206, 212 (1983).

The Court’s jurisdiction over claims asserting breach of an implied contract is further limited to include contracts implied in fact but not contracts implied in law. Hercules, Inc. v. United States, 516 U.S. 417, 423 (1996) (explaining that the Court of Federal Claims’ purview “extends only to contracts . . . implied in fact, not to claims on contracts implied in law”); see also Trauma Service Group v. United States, 104 F.3d 1321, 1325 (Fed. Cir. 1997). The burden is on the nonmoving party to show “that either an express or implied in fact contract underlies its claim.” Id.

A contract implied in fact is one where the parties manifested their intent to be bound, even if they did not expressly articulate their agreement in a written document. Hercules, 516 U.S. at 423-24. When the United States is a party, a court may find an implied in fact

contract only if there is: (1) mutual intent to contract; (2) consideration; (3) an unambiguous offer and acceptance; and (4) evidence that “[t]he government representative ‘whose conduct is relied upon [had] actual authority to bind the government in contract.’” Anderson v. United States, 73 Fed. Cl. 199, 201 (2006) (citing City of El Centro v. United States, 922 F.2d 816, 820 (Fed. Cir. 1990), cert. denied 501 U.S. 1230 (1991)).

Contracts implied in law, conversely, are not contracts in the true sense because they lack the element of mutual agreement or assent. They are a “legal fiction” that “creat[es] a contract that otherwise would not exist,” to impose a legal duty as a matter of equity. Sinclair v. United States, 56 Fed. Cl. 270, 281 (2003) (quoting Pacific Gas Elec. Co. v. United States, 3 Cl. Ct. 329, 340 (1983), aff’d, 738 F.2d 452 (Fed. Cir. 1984) (unpublished)). Contracts implied in law are enforced through the doctrine of promissory estoppel, which imputes a duty to a party if the other party reasonably relied to his detriment upon the first party’s representations. Hercules, 516 U.S. at 424. The most common example of a contract implied in law is the obligation to repay money obtained through duress or fraud. Id.

#### Defendant’s Motion to Dismiss

Defendant seeks dismissal of Plaintiff’s complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief may be granted, pursuant to Rules 12(b)(1) and (b)(6). In ruling on a motion to dismiss for lack of subject matter jurisdiction, the Court accepts as true the undisputed allegations in the complaint, and draws all inferences in favor of the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746 (Fed.Cir.1988). Where Plaintiff appears pro se, his pleadings are construed “liberally,” and held to “less stringent standards than formal pleadings drafted by lawyers.” McSheffrey v. United States, 58 Fed.Cl. 21, 25 (2003) (quoting Haines v. Kerner, 404 U.S. 519, 520 (1972)). This liberal standard does not, however, relieve Plaintiff of his burden to establish jurisdiction by a preponderance of the evidence. Tindle v. United States, 56 Fed.Cl. 337, 341 (2003).

Here, Defendant argues that, in seeking to enforce imputed promises the agencies made on their web sites, Mr. Greer is asking the Court to act beyond its jurisdiction to enforce an implied in law contract between himself and the government agencies. The Court agrees with Defendant’s position. Based upon Mr. Greer’s own discussion of the facts and the documents he attached to his complaint, it is clear that the agencies in question advised Mr. Greer that they were obligated under federal statute to provide a copy of his labor grievances to Safeway and to make his grievances available to the public. There is no evidence to suggest that the agencies agreed to assume responsibility for how Safeway or the public made use of this information. If the Court were to find that Defendant took on a contractual obligation to Mr. Greer when he filed his grievances, it would have to be based on an implied in law contract which the Court lacks jurisdiction to consider. See Hercules, 516 U.S. at 423.

As noted above, a binding contract with the United States requires action by a government representative having actual authority to bind the United States. Anderson, 73 Fed. Cl. at 201. A contract is not created through “acceptance” of agency representations on a web site, because no government representative with actual authority has agreed to be bound. If a “contract” could be created in this fashion, there would be no limit to claims on the public fisc. Although Mr. Greer claims that he “exchanged written documents of contract with the defendant,” Opposition at 7, such documents are nothing more than the labor grievances against Safeway that he sent to the agencies.

Mr. Greer’s Fifth Amendment Due Process and Fourteenth Amendment claims, his request for relief under the Article I § 9 prohibition against bills of attainder, and his requests for related equitable and injunctive relief also fail because the Court lacks jurisdiction to hear these claims. The Court of Federal Claims may only consider a due process claim when it is ancillary to a cause of action for money damages over which this Court has jurisdiction. See Montego Bay Imports, Ltd. v. United States, 10 Cl. Ct. 806, 809 (1986). As Mr. Greer’s implied in law contract claim falls outside of the Court’s jurisdiction, there is not a surviving claim for money damages to which the due process claim may attach. Even if the Fourteenth Amendment were applicable, it acts only as a restraint upon the states, not the Federal Government. See United States. Const. Amend. XIV § 1 (“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . nor deprive any person of life, liberty, or property, without due process of law[.]” (emphasis added)). Similarly, the Tucker Act does not allow for the award of equitable or injunctive relief, except in limited circumstances not applicable here. 28 U.S.C. § 1491(b)(2); Kanemoto v. Reno, 41 F.3d 641, 644-45 (1994) (“The remedies available in [the Court of Federal Claims] extend only to those affording monetary relief; the court cannot entertain claims for injunctive relief or specific performance, except in narrowly defined, statutorily provided circumstances[.]”).

### Conclusion

Based upon the foregoing, Defendant's motion to dismiss for lack of subject matter jurisdiction is GRANTED. Plaintiff’s motions for injunctive relief and for summary judgment are DENIED. Plaintiff’s Complaint shall be DISMISSED without prejudice.

IT IS SO ORDERED.

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THOMAS C. WHEELER  
Judge