

In the United States Court of Federal Claims

No. 10-218T

(Filed: January 31, 2012)

DAVID LEE SMITH,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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UNPUBLISHED

Motion for Relief from Judgment;
RCFC 60(b); 28 U.S.C. § 455(a)

ORDER

On November 14, 2011, this Court issued a decision dismissing the complaint of pro se Plaintiff David Lee Smith for lack of subject matter jurisdiction. *Smith v. United States*, -- Fed. Cl. --, No. 10-218T, 2011 WL 5600158 (Fed. Cl. Nov. 14, 2011) (“Merits Decision”). Mr. Smith had filed suit in this Court to challenge federal income tax deficiencies assessed against him and his wife for the tax years 1992-1996 and 2001-2005. *Id.* at *1. Before filing in this Court, however, Mr. Smith had filed petitions with the Tax Court disputing assessments for the very same tax years. *Id.* at *2. This Court held, *inter alia*, that under I.R.C. § 6512(a), Mr. Smith’s petitions in Tax Court barred him from seeking any recovery for the same tax years in this Court. Merits Decision, at *6-*8.

On November 23, 2011, Mr. Smith filed a “Motion for Relief under RCFC 60(b).” In his motion, Mr. Smith makes a passing request for relief from judgment under Rule of the Court of Federal Claims (“RCFC”) 60(b)(4), (5), and (6). He also summarily requests that this Judge recuse himself under 28 U.S.C. § 455(a). The rest of his motion impermissibly attempts to reargue this Court’s decision on the merits. As explained below, Mr. Smith has not identified any basis for this Court to revisit its decision or for recusal, and therefore, Plaintiff’s Motion for Relief is denied.

Rule 60(b)(4) permits a party to obtain relief from judgment if it is “void.” Mr. Smith summarily asserts that this Court’s judgment was “null and void,” presumably with reference to Rule 60(b)(4). In the context of Rule 60(b)(4), “void” means a judgment “so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final.” *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367, 1377 (2010).¹ Such a situation will

¹ Because the relevant portions of RCFC 60(b) and Rule 60(b) of the Federal Rules of Civil Procedure are identical, the Court looks to authorities interpreting FRCP 60(b) to interpret RCFC 60(b).

occur “only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard.” *Id.* The record shows that Mr. Smith was given adequate opportunity to be heard before this Court. Mr. Smith was unable to come forward with evidence supportive of jurisdiction, and he was unable to explain how discovery would produce such evidence. Merits Decision, at *5-*6. In his Motion for Relief, Mr. Smith does not point to any “fundamental infirmity” in this Court’s decision. Instead, he has re-argued the merits of his case. A judgment is not void simply because it arguably is erroneous, nor is a Rule 60(b)(4) motion a substitute for a timely appeal. *United Student Aid Funds*, 130 S. Ct. at 1377. Therefore, the Court finds that Plaintiff is not entitled to relief under RCFC 60(b)(4).

Rule 60(b)(5) permits a party to obtain relief from a judgment or order if, among other things, “applying [the judgment or order] prospectively is no longer equitable.” The Rule “provides a means by which a party can ask a court to modify or vacate a judgment or order if a significant change either in factual conditions or in law renders continued enforcement detrimental to the public interest.” *Horne v. Flores*, 129 S. Ct. 2579, 2593 (2009) (quotations omitted). Mr. Smith does not allege any change in facts, change in law, or public interest supporting relief. His motion attempts “to challenge the legal conclusions on which [this Court’s] prior judgment or order rests,” which is not a proper ground for relief under Rule 60(b)(5). *Horne*, 129 S. Ct. at 2593. Therefore, the Court finds that Plaintiff is not entitled to relief under RCFC 60(b)(5).

Rule 60(b)(6) is a catchall provision that gives the Court discretion to grant relief from a judgment for “any other reason that justifies relief.” In general, the provision is available only when “extraordinary circumstances” are present. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 (1988) (quoting *Ackermann v. United States*, 340 U.S. 193 (1950)); see *Information Sys. and Networks Corp. v. United States*, 994 F.2d 792, 795-96 (Fed. Cir. 1993). Mr. Smith has not brought to this Court’s attention any extraordinary circumstances justifying relief. That a party merely is dissatisfied by a judgment against him is by no means extraordinary. Therefore, the Court finds that Plaintiff is not entitled to relief under RCFC 60(b)(6).

In the final sentence in his motion, Mr. Smith requests that, in the alternative, this Judge recuse himself from this case under 28 U.S.C. § 455(a) because his “impartiality might reasonably be questioned under all the facts and circumstances.” Pl.’s Mot. for Relief at 6. Mr. Smith does not, however, identify any facts and circumstances supportive of recusal.

Section 455(a) provides that a judge “shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” The standard is an objective one, *Liteky v. United States*, 510 U.S. 540, 548 (1994), to be “made from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances,” *Microsoft Corp. v. United States*, 530 U.S. 1301, 1302 (2000) (Rehnquist, C.J., statement on recusal). The Court is aware of no facts or circumstances indicating the appearance of bias or prejudice. Further, the

Compare RCFC 60(b) with Fed. R. Civ. P. 60(b); *Webster v. United States*, 93 Fed. Cl. 676, 679 n.1 (2010) (similarly relying on cases interpreting FRCP 60(b)).

Court observes that Mr. Smith's failure to identify any facts and circumstances supportive of recusal is indicative of the lack thereof. An adverse "judicial ruling[] alone almost never constitute[s] a valid basis for a bias or partiality motion." *Liteky*, 510 U.S. at 555. Therefore, the Court concludes that a reasonable observer considering all the facts and circumstances would not question this Judge's impartiality. Accordingly, Plaintiff's motion for recusal is denied.

For the reasons set forth above, Plaintiff's Motion for Relief under RCFC 60(b) is **DENIED** and his alternative request for recusal also is **DENIED**.

s/ Edward J. Damich _____
EDWARD J. DAMICH
Judge