

In the United States Court of Federal Claims

NOT FOR PUBLICATION

No. 09-862C

(Filed: April 22, 2010)

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ERNEST JOSEPH DAVIS,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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ORDER

Pending before the court is a motion by the defendant (“government”) to dismiss the complaint filed by the plaintiff, Ernest Joseph Davis (“Mr. Davis”) for lack of subject matter jurisdiction, pursuant to Rule 12(b)(1) of the Rules of the Court of Federal Claims (“RCFC”). For the following reasons, the government’s motion is **GRANTED**.

INTRODUCTION

In the complaint, Mr. Davis asserts that he is “a[n] individual Sovereign by birth and right and descendant of the Washitaw Nation of Muurs, known by its indigenous name Empire Washitaw de Dugdyahmoundyah.” Compl. ¶ 1. He asserts that he is a non-resident alien, both a citizen and non-citizen of the United States, “a Member of the

Michigan Republic,” “a ‘natural born descendant of the Washitaw Nation,’” and declares “[sui] juris’ STATUS in connection with both my property and name,” stating that he is “NOT subject to the statutory, colorable law jurisdiction of the Federal United States in the corporate monopoly of the federal State, local and Municipal governments.” Compl. ¶¶ 3, 4, 7, 12, 13 (sic throughout).

The plaintiff’s complaint presents seven claims for relief:

CLAIM I: . . . Agents and employees of the State of Michigan and United States federal government . . . conspired . . . in a fraudulent and dec[ei]tful manner when they created a sole corporate fiction, an artificial statutory person (strawman) and commercial transmitting utility known as ERNEST DAVIS . . . for their sole prupose and commercial benefit without Plaintiff’s Father nor Mother’s knowledge consent, nor permission depriving Plaintiff of his God given right as an individual Sovereign by birth and right and thus, issuing a certificate of Manufacture’s origin (Live Birth Number 121-67088499) of the strawman and entering said commercial document into commerce as collateral for paying off debt via Bankruptcy action . . . making Plaintiff a permanent slave indebted to both government parties as chattel property thereof. Creating a contract with a new born Sovereign unable to contract by Law then claiming said as abandoned property after no claim to the property created in secret was claimed. Nor did said provide disclosure of their actions in good faith.

CLAIM II: . . . Agents and employees of the State of Michigan and United States federal government . . . conspired . . . in a fraudulent and deceitful manner when they set in motion a common plan and scheme to deprive Plaintiff of his individual Sovereign right when they mislead and forced Plaintiff’s Mother to file and enter Plaintiff into their federal government social security plan and/or le[d] claimant to believe said enrollment was mandatory by Law rather than a voluntary action, making Plaintiff a permanent slave indebted to both government parties which is responsible for paying off the National Debt of the federal government via levy, liens, fines, fees, tax, etc.[], without Plaintiff or his Father, nor Mother’s knowledge, consent, nor permission. Nor did said provide disclosure of their actions in good faith.

CLAIM III: . . . Agents and employees of the State of Michigan . . . conspired . . . in a fraudulent and deceitful manner by force is presently exercising unlawful color of law jurisdiction on Plaintiff and his property as a Sovereign individual Without a valid contract or agreement, nor is Plaintiff a party to nor a signato[r]y of the State of Michigan constitution, laws, statutes, administrative code, rules, or regulations, but is by force under physical suppression and in fear, under threat or coercion forced to be and act as the legal fiction or as the (strawman–ERNEST DAVIS) in order to be a slave to said for their sole purpose and commercial benefit over Plaintiff’s objections to the contrary And that, any and all contracts assumed to have been made between the strawman/legal fiction (ERNEST DAVIS), agents/employees of the State of Michigan and the United States federal corporate government are in fact unlawful, void and unenforceable by operation of law where said contracts were in fact obtained by means of fraud, deceit, misrepresentation of the facts, as to who the Real Property of Interest is, and by trickery, coercion and force.

CLAIM IV: . . . Agents and employees of the State of Michigan. . . conspired . . . in a fraudulent and deceitful to deprive Plaintiff of his birth right to be Sovereign when they set in motion a plan and common scheme with the intent to harass, harm, threaten physically restrain, slander of Credit, initiation of bogus and fraudulent charges in order to forcefully contract with Plaintiff, unlawful confi[]scation of private property without just compensation, deprivation of Secured Party rights, unlawful confi[]scation of Secured Party Identity card and thereafter forcing Plaintiff to accept and carry their fraudulent identification card or face Persecution, but do not confi[]scate other Secured Parties ID Cards, after Constructive Notice was issued upon said that Plaintiff reclaimed his Sovereignty by right and discharge all known public/private liabilities and termination of all contracts for fraud created by said agents and employees. And thus, after Notice said agents and employees refuse to turn over to Plaintiff all commercial documents, instruments, bonds, accounts, fraudulently created securities unlawfully held in their posses[s]ion belonging to Plaintiff p[u]rsuant to Security/Hold-Harmless & Indemnity Agreement No EJD-072986 and right as Sovereign individual.

CLAIM V: . . Agents and employees of the State of Michigan and United States federal government . . . conspired . . . in a fraudulent and deceitful manner in total disregard of the truth, and by force under color of law is unlawfully in possession of private and exempt property belonging to Plaintiff and refuse to turn over said to the rightful owner. In fact, Plaintiff by right has

taken commercial control of the commercial transmitting utility known as ERNEST DAVIS and ALL property of the said Debtor. Plaintiff (Secured Party Creditor) holds the Superior Claim, security interest and lien on ALL of the property of the Debtor; holds the DROID-DROIT (double right) to ALL of the property thereof. Furthermore, Plaintiff (Secured Party Creditor) is EXEMPT FROM LEVY (Fines, Fees, taxes, etc.[]) in all forums pursuant to HJR-192, Public Law 95-147, 9 Stat. 1227, UCC 1-104 & 10-104, via 31 U.S.C. § 5118; 22 U.S.C. § 2281, U.S.C. Const. Art. IV Cl. 1 ([1791] Public Notice of UNIDROID applicability “Without Prejudice”).

CLAIM VI: . . . Agents and employees of the State of Michigan. . . conspired . . . in a fraudulent and deceitful manner created commercial instruments, accounts and documents; bid bonds payment bonds, performance bonds, judgements, commercial paper, letters of credit, etc.[] and sold said to public and private parties (investors) and agents/employees of the United States for their commercial benefit without Plaintiff’s knowledge, consent, nor permission, thereafter. Said parties (investors) initiating false and fraudulent claims against Plaintiff’s property under the chapter XI of the federal Banking Act. Nor did said provide disclosure of their actions.

CLAIM VII: . . . Jennifer M Granholm, and past governors, Chief Executive Officers agents and employees of the State of Michigan . . . conspired . . . in a fraudulent and deceitful manner in violation of their Oath and Affirmation of office of their State and agents/employees/agency of the United States/Sub-division when they committed intentional wrongful and unlawful actions or allowed such action by their agents/employees to take Place as described above in claims I-VII, especially after notice of said wrong doing was given, via violation of their “contract” to uphold and enforce their constitution and the constitution for the United States of America and its laws; Breach of Duty (contract).

Compl. ¶¶ 18-24 (sic throughout).

These claims may be summarized as follows: (1) A claim against the United States and the State of Michigan related to the issuance of a birth certificate for the plaintiff, depriving him of his rights as an “individual Sovereign.” Compl. ¶ 18. (2) A claim against the United States and the State of Michigan for giving the plaintiff a Social

Security number without permission, deceiving his parents into believing enrollment was mandatory, and therefore making the plaintiff a “slave” of the government. Compl. ¶ 19.

(3) A claim against the State of Michigan for exercising jurisdiction over the plaintiff and declaration that all contracts between the plaintiff and government are void. Compl. ¶ 20.

(4) A series of tort and takings claims against the State of Michigan. Compl. ¶ 21. (5) A tort or takings claim against the United States and the State of Michigan related to the “posses[s]ion of private and exempt property belonging to Plaintiff.” Compl. ¶ 22. (6) A series of tort claims against the State of Michigan. Compl. ¶ 23. (7) A claim against various Michigan officials. Compl. ¶ 24.

As relief, the plaintiff seeks \$25,000,000 for each of his seven claims,¹ Compl. ¶ 33, plus the following injunctive relief: (1) the return of all documents bearing the plaintiff’s name, Compl. ¶ 34; (2) a restraining order requiring the defendants to “refrain from violating Plaintiff’s rights as a member of The Republic, Sovereign citizens, and immediately terminate ALL contracts in their posses[s]ion, not specifically authorized by Plaintiff in (red-ink) between Plaintiff’s Debtor and defendants’s agents/employees” Compl. ¶ 35; (3) an order declaring all contracts between the plaintiff and the defendants unenforceable, Compl. ¶ 36; and (4) an “Order of Ejection of Plaintiff from the unlawful authority and jurisdiction of defendants immediately,” Compl. ¶ 37.

¹The plaintiff states that this is a grand total of \$185,000,000. Compl. ¶ 37.

The government has moved to dismiss the plaintiff's complaint pursuant to RCFC 12(b)(1) on the ground that this court is without jurisdiction to entertain any of the plaintiff's claims.

STANDARD OF REVIEW

The plaintiff bears the burden of establishing subject matter jurisdiction, Alder Terrace, Inc. v. United States, 161 F.3d 1372, 1377 (Fed. Cir. 1998) (citing McNutt v. Gen. Motors, 298 U.S. 178, 189 (1936)), and must do so by a preponderance of the evidence, Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 748 (Fed. Cir. 1988). Because jurisdiction is a threshold matter, a case can proceed no further if a court lacks jurisdiction to hear it. See Arbaugh v. Y&H Corp., 546 U.S. 500, 514 (2006) (“[W]hen a federal court concludes that it lacks subject-matter jurisdiction, the court must dismiss the complaint in its entirety.” (citation omitted)); Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94 (1998). See generally John R. Sand & Gravel v. United States, 552 U.S. 130 (2008). It is well-settled that when the court considers a motion to dismiss for lack of subject matter jurisdiction, it may look beyond the pleadings and “inquire into jurisdictional facts” to determine whether jurisdiction exists. Rocovich v. United States, 933 F.2d 991, 993 (Fed. Cir. 1991). While pro se plaintiffs are held to a lower standard of pleading than those represented by counsel, all those seeking to invoke the court's subject matter jurisdiction ultimately retain the burden of establishing that the jurisdictional requirements are met. Keener v. United States, 551 F.3d 1358, 1361 (Fed.

Cir. 2009). Subject matter jurisdiction may not be waived or forfeited; when a court concludes that it lacks jurisdiction, the complaint must be dismissed. See John R. Sand & Gravel Co. v. United States, 457 F.3d 1345, 1354 (Fed. Cir. 2006), aff'd, 552 U.S. 130 (2008).

DISCUSSION

A. The Court Does Not Have Jurisdiction Over Defendants Other Than the United States.

It is well established that the Court of Federal Claims does not have jurisdiction over claims where the defendant is any entity other than the United States. United States v. Sherwood, 312 U.S. 584, 588 (1941) (“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 [C]ourt[of Federal Claims].”)); see also Moore v. Pub. Defenders Office, 76 Fed. Cl. 617, 620 (2007) (“When a plaintiff’s complaint names private parties, or local, county or state agencies, rather than federal agencies, this court has no jurisdiction to hear those allegations.”); 28 U.S.C. § 1491 (2006) (the court of Federal Claims, with limitations, “shall have jurisdiction to render judgment upon any claim against the United States”(emphasis added)).

For this reason, the court does not have jurisdiction over Claims III, IV, VI, and VII, which are against either the State of Michigan or Michigan officials, nor over Claims I, II, and V to the extent that they are claims against the State of Michigan rather than the United States. Accordingly, these claims are outside this court’s jurisdiction and should

be dismissed pursuant to RCFC 12(b)(1). The court next turns to the plaintiff's claims against the United States, Claims I, II, and V.

B. The Court Does Not Have Jurisdiction Over Any of the Plaintiff's Claims Against the United States.

While the Court of Federal Claims does have jurisdiction over certain claims against the United States, that jurisdiction is not without limitations. Under the Tucker Act, the Court of Federal Claims has jurisdiction to hear claims that are “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) (2006). The Tucker Act does not by itself create a right to money damages against the United States. Rather, the substantive right to money damages against the United States must extend from the constitutional provision, statute, contract, or regulation giving rise to the claim. United States v. White Mountain Apache Tribe, 537 U.S. 465, 472 (2003). See also James v. Caldera, 159 F.3d 573, 580 (Fed. Cir. 1998) (“What this means is that a Tucker Act plaintiff must assert a claim under a separate money-mandating constitutional provision, statute, or regulation, the violation of which supports a claim for damages against the United States.”) (internal citations omitted).

Claim I of the plaintiff's complaint is a claim against the United States related to fraud and deception in the issuance of a birth certificate for the plaintiff, depriving him of his rights as an “individual Sovereign.” Compl. ¶ 18. Claim II is a claim against the

United States related to fraud and deception in the plaintiff's having been assigned a Social Security number without permission, making the plaintiff a "slave" of the government. Compl. ¶ 19. To the extent these claims are about "fraud" and "deception," they appear to be claims sounded in tort, over which this court lacks jurisdiction. See 28 U.S.C. § 1491(a)(1) (expressly excluding from the court's jurisdiction claims "sounding in tort"); Keene Corp. v. United States, 508 U.S. 200, 214 (1993) (noting that "tort cases are outside the jurisdiction of the Court of Federal Claims"); Trafny v. United States, 503 F.3d 1339 (Fed. Cir. 2007) (affirming the Court of Federal Claims' finding that it lacked jurisdiction over tort claims); Jentoft v. United States, 450 F.3d 1342, 1349-50 (Fed. Cir. 2006). Accordingly to the extent the plaintiff's claims for damages based in tort, they are dismissed for lack of jurisdiction. To the extent Claims I and II are otherwise based on the violation of law, the plaintiff has identified no money-mandating constitutional provision, statute, contract, or regulation giving rise to the claims that might provide this court with jurisdiction.

Claim V relates to fraud and deception in the government's "posses[s]ion of private and exempt property belonging to Plaintiff." Compl. ¶ 22. Like Claims I and II, this claim also appears to sound in tort and is for that reason outside this court's jurisdiction. To the extent the plaintiff is claiming that the government has taken property without just compensation in violation of the Fifth Amendment, U.S. Const. amend. V, the plaintiff has not identified "the specific property interest alleged to have been taken by

the United States,” as is required by RCFC 9(i).²

Accordingly, while the court has read the plaintiff’s complaint in the most liberal light as is proper for plaintiffs proceeding pro se, the court finds that the plaintiff has not met his burden of showing by a preponderance of the evidence that this court has subject matter jurisdiction over any of his claims. The plaintiff’s complaint must be dismissed for lack of subject matter jurisdiction.³

²The government notes that this claim may be based on the plaintiff’s assertion that he is exempt from taxation. While the basis for the plaintiff’s takings claim, if in fact the plaintiff is asserting a takings claim, is opaque, to the extent that the plaintiff has attempted to assert a takings claim based on the collection of taxes, this is not a cognizable claim. See U.S. Shoe Corp. v. United States, 296 F.3d 1378, 1383 (Fed. Cir. 2002) (holding that taxation is neither a per se nor regulatory taking).

³The plaintiff has filed several motions in this matter, including a motion for court-appointed counsel, a motion for a temporary restraining order, and a motion for an order requiring the production of various documents with his name. Because this Court finds that it lacks jurisdiction over the plaintiff’s claims, all other outstanding motions are denied as moot.

The court also notes that appointment of counsel would not have been appropriate even if the court had jurisdiction. See Larisey v. United States, 861 F.2d 1267, 1270-71 (Fed. Cir. 1988) (recognizing that “a right to appointed counsel exists only when the indigent may lose his/her personal freedom if the action is lost” and that, “[b]eyond this narrow framework, the Supreme Court has not recognized a constitutional right to appointed counsel in civil matters”). In addition, this court lacks jurisdiction over claims for declaratory or injunctive relief outside the bid protest context unless such equitable relief that is “incidental to and collateral to a claim for money damages.” Bobula v. U.S. Dep’t of Justice, 970 F.2d 854, 858-59 (Fed. Cir. 1992). Where the court has no jurisdiction over a “concurrent colorable claim for monetary recovery,” the court has no jurisdiction over a claim for injunctive relief. Simanonok v. Simanonok, 918 F.2d 947, 952 (Fed. Cir. 1990) (citing Richardson v. Morris, 409 U.S. 464, 465-66 (1973) (per curiam)); see also Brown v. United States, 105 F.3d 621, 624 (Fed. Cir. 1997) (“[A]ppellant’s demands, which are for declaratory or injunctive relief, are . . . outside the jurisdiction of the Court of Federal Claims. The Tucker Act does not provide independent jurisdiction over such claims for equitable relief.” (citing United States v. King, 395 U.S. 1, 2-3 (1969))); 28 U.S.C. § 1491(a).

CONCLUSION

For the foregoing reasons, the government's motion to dismiss the plaintiff's complaint for lack of subject matter jurisdiction pursuant to RCFC 12(b)(1) is

GRANTED. The clerk is directed to order judgment accordingly. Each party is to bear its own costs.

IT IS SO ORDERED.

s/Nancy B. Firestone
NANCY B. FIRESTONE
Judge