

Def.'s Mot. to Dismiss Ex. 4 (Aff. of Judith A. Ayers (Feb. 13, 2012)) ("Ayers Aff."), ¶ 5. Mr. Bafford made a series of payments on this loan without objection. Am. Compl. Ex. A, at 1. In due course, however, he was deemed to be unauthorized to make payments as a result of an error in Midland Mortgage Co.'s computer system. *Id.* at 2. Despite contacting the company a number of times in an effort to resolve the problem, Mr. Bafford was unable to become re-authorized and consequently did not make payments for 23 months. *Id.* at 2; Ayers Aff. ¶ 6. MidFirst Bank foreclosed on the house and sold it in November 2009. Ayers Aff. ¶ 6.

The second event precipitating Mr. Bafford's present lawsuit was entry of a judgment in 2007 by the United States District Court for the Middle District of Florida. *See Bafford v. Township Apartments Assocs., Ltd.*, No. 8:06-CV-657-T-27TGW, 2007 WL 4247763 (M.D. Fla. Nov. 30, 2007), *aff'd*, No. 08-13072-F (11th Cir. Aug. 27, 2008), *cert. denied*, 555 U.S. 877 (2008). In the *Township Apartments Associates* case, Mr. Bafford had sued the owner of certain apartment complexes for refusing to sell him buildings because of his race. *Id.* at *1. The court granted the defendant's motion for summary judgment and taxed costs in the amount of \$1,885.00 against Mr. Bafford for deposition expenses incurred by the defendant. *Id.* at *12; Order of April 23, 2012, *Township Apartments Assocs.*, 2007 WL 4247763 (attached as Ex. 1 to Def.'s Mot. to Dismiss). Among other things, the district court barred Mr. Bafford from submitting further filings related to that case due to his repetitious motions and "abusive litigation tactics." *Township Apartments Assocs.*, 2007 WL 4247763 at *12. Mr. Bafford's complaint collaterally attacks this judgment on the grounds that the district court lacked jurisdiction to enter judgment and award costs. Am. Compl. ¶ 3.¹

STANDARD FOR DECISION

A "court must satisfy itself that it has jurisdiction to hear and decide a case before proceeding to the merits." *Hardie v. United States*, 367 F.3d 1288, 1290 (Fed. Cir. 2004) (internal quotation marks omitted) (quoting *PIN/NIP, Inc. v. Platte Chem. Co.*, 304 F.3d 1235, 1241 (Fed. Cir. 2002)). In addressing a motion to dismiss for lack of subject matter jurisdiction, the court will "normally consider the facts alleged in the complaint to be true and correct." *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 747 (Fed. Cir. 1988) (citing *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *abrogated on other grounds by Harlow v. Fitzgerald*, 457 U.S. 800 (1982)). The burden of establishing the court's jurisdiction rests with the party seeking to invoke it, *McNutt v. General Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936), and this burden is not satisfied until proven by a preponderance of the evidence. *Reynolds*, 846 F.2d at 748.

Mr. Bafford has appeared *pro se*, and the submissions of such litigants are traditionally held to "less stringent standards than formal pleadings drafted by lawyers." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (quoting *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam)). "This latitude, however, does not relieve a *pro se* plaintiff from meeting jurisdictional requirements." *Bernard v. United States*, 59 Fed. Cl. 497, 499, *aff'd*, 98 Fed. Appx. 860 (Fed. Cir. 2004) (per curiam); *see also Henke v. United States*, 60 F.3d 795, 799 (Fed. Cir. 1995).

¹Many operative facts of this second claim were previously presented to a judge of this court via a complaint filed on January 14, 2009. *See Bafford v. United States*, No. 09-30, 2009 WL 2391785 (Fed. Cl. Aug. 3, 2009) (granting the government's motion to dismiss).

Thus a *pro se* plaintiff, like any other, must establish the court's jurisdiction to hear his or her claims. *See Taylor v. United States*, 303 F.3d 1357, 1359 (Fed. Cir. 2002).

The Tucker Act grants this court “jurisdiction to render judgment upon any claim 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). The Tucker Act waives sovereign immunity and enables a plaintiff to sue the United States for money damages, *United States v. Mitchell*, 463 U.S. 206, 212 (1983), but it does not itself create a substantive right to monetary relief from this court, *United States v. Testan*, 424 U.S. 392, 398 (1976); *see also Martinez v. United States*, 333 F.3d 1295, 1302-03 (Fed. Cir. 2003) (en banc). “A substantive right must be found in some other source of law.” *Mitchell*, 463 U.S. at 216. The law of contracts is one example of a money-mandating source of law. *See Holmes v. United States*, 657 F.3d 1303, 1314 (Fed. Cir. 2011).

ANALYSIS

A. The Disputed Foreclosure

Mr. Bafford first asks this court to award him \$130,000 for an alleged breach of a mortgage agreement. As a general matter, apart from a few well-recognized exceptions such as those for third-party beneficiaries and subrogated insurers on performance and payment bonds, the “government consents to be sued only by those with whom it has privity of contract.” *Flexfab, L.L.C. v. United States*, 424 F.3d 1254, 1263 (Fed. Cir. 2005) (quoting *Erickson Air Crane Co. of Wash. v. United States*, 731 F.2d 810, 813 (Fed. Cir. 1984)). In all events, for the purposes of establishing jurisdiction for a suit on a contract, a plaintiff's complaint must contain “a non-frivolous allegation of a contract with the government.” *Engage Learning, Inc. v. Salazar*, 660 F.3d 1346, 1353 (Fed. Cir. 2011) (emphasis omitted) (citing *Lewis v. United States*, 70 F.3d 597, 602, 604 (Fed. Cir. 1995); *Gould, Inc. v. United States*, 67 F.3d 925, 929-30 (Fed. Cir. 1995)).

Here, Mr. Bafford's amended complaint fails to state a non-frivolous allegation of a contract with the government. The only contract alleged by Mr. Bafford is between himself and a private entity. In his amended complaint, plaintiff avers that “the [mortgage] agreement was made with Mid[F]irst Bank.” Am. Compl. ¶ 1. Similarly, he offers as an exhibit a letter he sent to MidFirst Bank asking it to reconsider its decision to foreclose on the house. Am. Compl. Ex. A. The fact that HUD was the insurer of the loan does not make HUD a party to the mortgage agreement. The pleadings accordingly show that the loan agreement was between private parties, and “this [c]ourt does not have subject matter jurisdiction to entertain controversies between private parties.” *Hufford v. United States*, 85 Fed. Cl. 607, 608 (2009) (citing *National City Bank of Evansville v. United States*, 163 F. Supp. 846, 852 (Ct. Cl. 1958)); *see also United States v. Sherwood*, 312 U.S. 584, 588 (1941).

Apparently cognizant of this jurisdictional defect, Mr. Bafford attempts to salvage his amended complaint by claiming that “MidFirst Bank was acting under direct control and observance of HUD under 24 C[.]F[.]R[.] § 203.355.” Am. Compl. ¶ 1. This regulation prescribes procedures for how banks should handle foreclosures on mortgages insured by the

agency. *See* 24 C.F.R. § 203.355; *see also Lee v. Pierce*, 698 F. Supp. 332, 335 (D.D.C. 1988). It does not make MidFirst Bank — or any other private lending institution — an agent of HUD.

Apart from the reference to the Code of Federal Regulations, Mr. Bafford has made no attempt to allege that a contract, express or implied, existed between himself and the United States. As a result, Mr. Bafford’s amended complaint does not state a jurisdictionally sufficient allegation of a contract with HUD or any other agency of the federal government. *See Engage Learning*, 660 F.3d at 1353; *Cebe Farms, Ind. v. United States*, __ Fed. Cl. __, __, 2012 WL 286874, at *8 (Jan. 31, 2012) (“[T]o invoke Tucker Act jurisdiction based upon an express or implied-in-fact contract, a plaintiff must allege all of the requisite elements of a contract with the United States.” (citing *Harbert/Lummus Agrifuels Projects v. United States*, 142 F.3d 1429, 1434 (Fed. Cir. 1998))); *Auto Club Ins. Ass’n v. United States*, __ Fed. Cl. __, __, 2012 WL 184150, at *5 (Jan. 24, 2012) (“[A] plaintiff must articulate facts sufficient to support a valid claim for breach in order to surmount the government’s motion to dismiss.” (citing *Bussie v. United States*, 443 Fed. Appx. 542, 543 (Fed. Cir. 2011) (per curiam))). In short, Mr. Bafford’s purported contract with HUD is “patently insubstantial” and does not suffice as a ground for this court to exercise subject matter jurisdiction over his case. *See Township of Saddle Brook v. United States*, __ Fed. Cl. __, __, 2012 WL 886821, at *7 (Mar. 16, 2012) (dismissing a case for lack of jurisdiction where the “complaint provides nothing more than bald assertions that the [agency] made an agreement with plaintiff”). Consequently, the court cannot hear his claim for breach of contract.

B. The District Court’s Judgment

Mr. Bafford also asks this court to overturn the judgment entered in 2007 by the United States District Court for the Middle District of Florida on the grounds that the district court lacked jurisdiction to award costs. In so doing, Mr. Bafford misapprehends the role of this court. The Court of Federal Claims is not an appellate body and has no juridical power to review a district court’s decision. *Vereda, Ltda. v. United States*, 271 F.3d 1367, 1375 (Fed. Cir. 2001) (“The Court of Federal Claims does not have jurisdiction to review the decisions of district courts.” (internal quotation marks omitted) (quoting *Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994))). For the pertinent judgment, that responsibility rested with the United States Court of Appeals for the Eleventh Circuit, which duly exercised its appellate review and found plaintiff’s claim to be “baseless.” *Bafford v. Township Apartments Assocs., Ltd.*, No. 08-13072-F (11th Cir. Aug. 27, 2008) (attached as Ex. 2 to Def.’s Mot. to Dismiss). Notwithstanding Mr. Bafford’s continued disagreement with the district court’s decision, the judgment of the district court has become final, and this court may not disturb that judgment or the district court’s rulings. *See Bowman v. United States*, 35 Fed. Cl. 397, 401-02 (1996) (“No jurisdiction exists enabling the United States Court of Federal Claims to overturn . . . district court determinations.”). Thus this claim must fail for lack of jurisdiction as well.

C. Allegations of Tort

Lastly, Mr. Bafford seeks \$75,000 in damages for “emotional distress and humiliation” stemming from the foreclosure of the house and the unrelated adverse judgment in district court. Am. Compl. at 2. The Tucker Act confines this court’s jurisdiction to “cases not sounding in tort.” 28 U.S.C. § 1491(a)(1). Allegations of emotional distress and humiliation are examples of

torts. *See, e.g., Betz v. United States*, 40 Fed. Cl. 286, 292 (1998) (“[A] suit for alleged emotional distress . . . and humiliation clearly sounds in tort and is outside of the court’s jurisdiction.” (citing *Curry v. United States*, 609 F.2d 980, 983 (Ct. Cl. 1979))). Accordingly, the court also lacks jurisdiction over these claims.

CONCLUSION

For the reasons stated, the government’s motion to dismiss is GRANTED, and the case shall be dismissed without prejudice for lack of subject matter jurisdiction. The Clerk shall enter judgment accordingly.² No costs.

It is so ORDERED.

Charles F. Lettow
Judge

²Mr. Bafford additionally has filed motions for leave to file a second amended complaint, for the court to address counts I and II of his complaint on the merits, and for the court to strike the government’s reply in support of its motion to dismiss his amended complaint. Those motions are DENIED; further amendment of Mr. Bafford’s amended complaint would be futile, and a motion to strike is inappropriate respecting a reply brief because such a brief is not a pleading within the meaning of Rule 12(d) of the Rules of the United States Court of Federal Claims.