

In the United States Court of Federal Claims

No. 11-209C

(Filed: July 6, 2011)

(NOT TO BE PUBLISHED)

EDWARD ALLAN BUCK,)
)
)
Plaintiff,)
)
v.)
)
UNITED STATES,)
)
Defendant.)

Edward Allan Buck, *pro se*, Salt Lake City, UT.

Joseph D. Keller, Trial Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, D.C., for defendant. With him on the brief were Tony West, Assistant Attorney General, Civil Division, Jeanne E. Davidson, Director, and Reginald T. Blades, Jr., Assistant Director, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, D.C.

OPINION AND ORDER

LETTOW, Judge.

Plaintiff, Edward Buck, requests monetary relief for alleged civil rights violations. Pending before the court is the government’s motion to dismiss for lack of subject matter jurisdiction, filed pursuant to Rule 12(b)(1) of the Rules of the Court of Federal Claims. The motion has been fully briefed by the parties and is ready for disposition.

BACKGROUND

The case has its genesis in several lawsuits filed by Mr. Buck over the past eight years in the United States District Court for the District of Utah.¹ Specifically, Mr. Buck names as defendant the United States, operating through six federal district judges and six current and former United States Attorneys and Assistant United States Attorneys for the District of Utah. Compl. ¶¶ 5-6. According to Mr. Buck, these individuals violated rights afforded to him under the Fourth Amendment and the Due Process Clause of the Fifth Amendment through an abuse of process and other tortious misconduct. Compl. ¶¶ 2, 24-26. In support of his claims, Mr. Buck presents allegations relating to the government's purported violation of numerous federal statutes, regulations and guidelines, including federal employee standards of conduct, Compl. ¶ 3, Title 18 of the United States Code, and other federal criminal statutes, Compl. ¶¶ 24-29, the Sherman Act, Compl. ¶ 33, and patent laws, Compl. ¶ 33. Mr. Buck seeks actual and punitive damages of 80 million dollars. Compl. ¶ 55.²

Mr. Buck reportedly developed a bit-less horse bridle, having entered into a business relationship with another man in Utah. *See Buck v. Myers*, No. 2:05-CV-00876-DB, 2010 WL 2869462, at *1 (D. Utah July 20, 2010) (magistrate judge's report), *adopted*, 2010 WL 3119394 (D. Utah Aug. 6, 2010). An acrimonious breach in the business relationship ultimately resulted in criminal charges being brought against Mr. Buck, who then sued in federal court for redress of alleged civil rights violations. *Id.* That federal suit was stayed on grounds of comity, *see Buck v. Myers*, 244 Fed. Appx. 193, 198-99 (10th Cir. 2007), and Mr. Buck was convicted of a misdemeanor in state court. *Buck v. Myers*, 2010 WL 2869462, at *2. He thereafter pursued his federal civil rights claim, but the federal trial court held that the finality of his conviction barred him from pursuing that claim. *Id.*, at *2.

Mr. Buck filed suit in this court on April 4, 2011. The government responded by moving to dismiss Mr. Buck's claim for lack of subject matter jurisdiction.

ANALYSIS

Subject Matter Jurisdiction

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 quotations omitted). In addressing a motion to dismiss for lack of subject matter jurisdiction, the court will "normally consider the facts alleged in the complaint as true and

¹*See Buck v. United States Patent Office*, No. 2:03-CV-00783-TS (D. Utah, filed Sept. 22, 2003); *Buck v. Meyers*, No. 2:05-CV-00876-DB (D. Utah, filed Oct. 25, 2005); *Buck v. Gonzales*, No. 2:06-CV-00321-PGC (D. Utah, filed Apr. 17, 2006); *Buck v. Drake*, No. 1:07-CV-00172-DB (D. Utah, filed Dec. 21, 2007); *Buck v. State of Utah Judicial Conduct Comm'n*, No. 2:08-CV-00581-TC (D. Utah, filed Aug. 5, 2008).

²Mr. Buck initially sought both monetary damages and injunctive relief, Compl. ¶ 55, but withdrew his request for equitable relief in his response to the government's motion to dismiss, *see Pl.'s Resp. to Def.'s Mot. to Dismiss* ("Pl.'s Resp.") at 6.

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)). The burden of establishing the court’s jurisdiction resides 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 748.³

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 does not itself create a substantive right to monetary relief from this court; rather, it is a jurisdictional statute. See *United States v. Testan*, 424 U.S. 392, 398 (1976); *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.” *United States v. Mitchell*, 463 U.S. 206, 216 (1983). Thus, the Tucker Act essentially acts to waive the government’s sovereign immunity with respect to claims deriving from some money-mandating source of law. *Id.* Accordingly, to establish that this court has subject matter jurisdiction under the Tucker Act, the plaintiff must first point to an independent, substantive source of law that may be interpreted as mandating payment from the United States for the injury suffered, and upon successfully doing so, the plaintiff must then present “a nonfrivolous assertion that [he or she] is within the class of plaintiffs entitled to recover under the money-mandating source.” *Jan’s Helicopter Serv., Inc. v. Federal Aviation Admin.*, 525 F.3d 1299, 1307 (Fed. Cir. 2008).

A. Judicial Immunity

Much of Mr. Buck’s complaint addresses actions of six federal judges in the United States District Court for the District of Utah whom he claims abridged his rights through decisions and rulings denying him his requested relief. Compl. ¶¶ 3-6. The Supreme Court has recognized that absolute immunity is available for “officials whose special functions or constitutional status requires complete protection from suit.” *Van Sickle v. Holloway*, 791 F.2d 1431, 1434 (10th Cir. 1986) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 807 (1982)). Judges operating within their subject matter jurisdiction fall within the category of officials entitled to such immunity. *Id.* at 1434-35 (explaining that because “the loser in one forum will frequently seek another, charging the participants in the first suit with unconstitutional animus,” “absolute immunity is necessary so that judges can perform their functions without harassment or intimidation”) (quoting *Butz v. Economou*, 438 U.S. 478, 512 (1978) (citing *Pierson v. Ray*, 386 U.S. 547, 554 (1967))); see also *Stump v. Sparkman*, 435 U.S. 349, 356 (1978) (noting that judicial immunity is a “long-established principle.”); *Randall v. Brigham*, 74 U.S. (7 Wall.) 523,

³Complaints filed by *pro se* complainants 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)). A *pro se* litigant “must nonetheless ‘affirmatively and distinctly’ plead” and prove that the court before which a claim is made has jurisdiction to hear that claim. *Zhao v. United States*, 91 Fed. Cl. 95, 98 (2010) (quoting *North v. Larney*, 266 U.S. 511, 515 (1925)); see also *Henke v. United States*, 60 F.3d 795, 799 (Fed. Cir. 1995).

535 (1869) (commenting that “judicial officers . . . are not liable to a civil action for any judicial act done within their jurisdiction”). Thus, unless a judge acts in “clear absence of all jurisdiction,” or his act was not “judicial” in nature, he or she is absolutely immune even when “the action he took was in error, was done maliciously, or was in excess of his authority.” *Stump*, 435 U.S. at 356-57 (applying the holding in *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 351-52 (1872)). Given this immunity, Mr. Buck’s allegations cannot and do not state a claim against the six federal district judges that is cognizable in any court, including this court.

B. Civil Rights and Tort Actions

Mr. Buck contends that this court has subject matter jurisdiction to adjudicate claims for (1) civil rights violations under 42 U.S.C. §§ 1983, 1985, or 1986; (2) *Bivens* actions for alleged tortious misconduct and civil rights violations by federal officials; (3) violations of the Fourth Amendment and the Due Process Clause of the Fifth Amendment; and (4) abuse of process under 28 U.S.C. §§ 2679 and 2680(h). Compl. caption, ¶ 2; Pl.’s Resp. ¶¶ 1, 7. The government responds that this court does not have jurisdiction over these claims, arguing that the only money-mandating claims that Mr. Buck has advanced are predicated on allegations of tortious misconduct and civil rights violations over which the federal district courts maintain exclusive jurisdiction. Def.’s Mot. to Dismiss at 4-6.

To the extent that plaintiff’s claims are based upon the Fourth and Fifth Amendments, *see* Compl. ¶ 2, (claiming that the court has jurisdiction for such claims under 28 U.S.C. § 1331), this court lacks jurisdiction. *Crocker v. United States*, 125 F.3d 1475, 1476 (Fed. Cir. 1997) (noting that the Court of Federal Claims “does not have jurisdiction to hear due process . . . claims under the Fifth Amendment”); *Brown v. United States*, 105 F.3d 621, 624 (Fed. Cir. 1997) (indicating that a “*Bivens* action[] [is] also outside the jurisdiction of the Court of Federal Claims”); *Collins v. United States*, 67 F.3d 284, 288 (Fed. Cir. 1995) (commenting that “the due process clause does not obligate the government to pay money damages”). Neither the Fourth Amendment nor the Due Process Clause of the Fifth Amendment mandates monetary payment for violations. *See James v. Caldera*, 159 F.3d 573, 581 (Fed. Cir. 1998). Similarly, this court lacks jurisdiction to consider civil rights claims brought pursuant to 42 U.S.C. §§ 1983, 1985, or 1986 because jurisdiction over such claims resides exclusively in the district courts. *See Del Rio v. United States*, 87 Fed. Cl. 536, 540 (2009); *Marlin v. United States*, 63 Fed. Cl. 475, 476 (2005). Thus, these claims are beyond the jurisdiction of this court.

Additionally, the court does not have jurisdiction to adjudicate Mr. Buck’s claim for “abuse of process” brought under 28 U.S.C. §§ 2679 and 2680(h) because the Court of Federal Claims “lacks jurisdiction over tort actions against the United States.” *Brown*, 105 F.3d at 623 (applying 28 U.S.C. § 1491(a) and citing *Keene Corp v. United States*, 508 U.S. 200, 214 (1993)).⁴ Mr. Buck seems to argue that 28 U.S.C. § 2680(h) creates an abuse-of-process exception to the federal district courts’ exclusive jurisdiction over certain tortious conduct by the

⁴As the government indicates, Mr. Buck asserts his claim of abuse of process for the first time in his response to the government’s motion to dismiss. *See* Def.’s Reply to Pl.’s Resp. to Def.’s Mot. to Dismiss at 1. Although the plaintiff did not expressly mention abuse of process in his original complaint, this appears to have been the crux of the plaintiff’s claim.

government. Pl.'s Resp. ¶ 1. He also claims that the government is precluded from invoking its sovereign immunity under 28 U.S.C. § 2679. Pl.'s Resp. ¶ 7. He is mistaken. This court does not have jurisdiction over tort actions. *See* 28 U.S.C. § 1491(a)(1). Sections 2679 and 2680(h) are both part of the Federal Tort Claims Act, a statute that creates a waiver of governmental sovereign immunity and grants exclusive subject matter jurisdiction to federal district courts over claims arising from certain tortious conduct by government employees. *See* 28 U.S.C. §§ 1346(b)(1) and 2671; *see also Bramwell v. United States Bureau of Prisons*, 348 F.3d 804, 806 (9th Cir. 2003). These sections do not confer jurisdiction on this court. Thus, even if Mr. Buck's interpretation of government immunity were correct, which it is not,⁵ his claim for abuse of process, which sounds in tort, is beyond the jurisdiction of this court.

CONCLUSION

This court does not have subject matter jurisdiction over Mr. Buck's claims. The government's motion to dismiss consequently is GRANTED.⁶ The clerk shall enter judgment in accord with this decision.

No costs.

It is so ORDERED.

Charles F. Lettow
Judge

⁵Section 2680(h) actually constitutes an exception to "the FTCA's broad waiver of sovereign immunity." *Bramwell*, 348 F.3d at 806 (explaining that "the FTCA's broad waiver of sovereign immunity is subject to thirteen specific exceptions" listed in 28 U.S.C. §§ 2680(a)-(n)).

⁶Mr. Buck's motion for leave to proceed *in forma pauperis* is GRANTED.