

In the United States Court of Federal Claims

Nos. 10-569C & 10-730C

(Filed: April 8, 2011)

(NOT TO BE PUBLISHED)

MARTA MARTINEZ,

Plaintiff,

v.

UNITED STATES,

Defendant.

Marta Martinez, *pro se*, El Paso, TX.

Matthew F. Scarlato, Trial Attorney, and Nicholas K. Jabbour, Trial Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, D.C., for defendant. With them on the briefs were Tony West, Assistant Attorney General, Civil Division, Jeanne E. Davidson, Director, Alan J. Lo Re, Assistant Director, and Brian M. Simkin, Assistant Director, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, D.C.

OPINION AND ORDER

Lettow, Judge.

In these closely related actions, plaintiff Marta Martinez alleges claims concerning torts, legal malpractice, and abridgment of civil rights. Pending before the court are the government's motions to dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the Rules of Court of Federal Claims ("RCFC"), along with motions by plaintiff seeking disqualification of one of the government's counsel due to a purported conflict of interest and requesting appointment of counsel to assist her in these proceedings.

BACKGROUND

On August 20, 2010, Ms. Martinez filed her first complaint in this court (docketed as No. 10-569C).¹ She named as defendants the United States, other governmental entities, private

¹Ms. Martinez previously filed cases in state and federal courts concerning similar issues. See, e.g., *Martinez v. Rosales Law Firm, LLP*, No. 10-1506, 2010 WL 3702577 (D.D.C. Sept. 7,

organizations, and individuals. In her complaint, Ms. Martinez asked for monetary damages, prejudgment interest, and attorney's fees. Compl. in No. 10-569C at 11-12. She alleged various injuries relating to her parental rights regarding her child and stemming from her relationship with a private law firm. *Id.* at 16-19, 49-54, 59. She also averred that several governmental agencies wiretapped and harassed her. *Id.* at 41.

On October 18, 2010, Ms. Martinez filed a second complaint also naming numerous governmental entities, organizations, and individuals. She again claimed she has been harassed and wiretapped by several governmental agencies and separately that a private law firm was negligent in its duties to her sister. Compl. in No. 10-730C at 104, 110-111.

The government has filed motions to dismiss both of plaintiff's cases. Ms. Martinez has filed responses to these motions, reiterating and elaborating the basic points in her complaints.

CONSOLIDATION

If actions before the Court of Federal Claims involve a common question of law or fact, the court may consolidate the actions. *See* RCFC 42(a). Ms. Martinez's complaints largely address the same circumstances. Accordingly, the court will consolidate the cases and consider both together.

STANDARDS FOR DECISION

A. *Pro Se* Plaintiffs

A complaint filed by a plaintiff proceeding *pro se* "must be 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)); *see also Hughes v. Rowe*, 449 U.S. 5, 9 (1980). To that end, "[i]n *pro se* cases, courts have traditionally 'strained [their] proper role in adversary proceedings to the limit, searching . . . to see if plaintiff has a cause of action somewhere displayed.'" *Doyle v. United States*, 88 Fed. Cl. 314, 319 (2009) (quoting *Ruderer v. United States*, 412 F.2d 1285, 1292 (Ct. Cl. 1969)). Nonetheless, "[t]here is no duty [on the part] of the trial court . . . to create a claim which [a plaintiff] has not spelled out in his [or her] pleading." *Scogin v. United States*, 33 Fed. Cl. 285, 293 (1995) (quoting *Clark v. National Travelers Life Ins. Co.*, 518 F.2d 1167, 1169 (6th Cir. 1975)) (internal quotations omitted).

B. *Subject Matter Jurisdiction*

"Jurisdiction must be established as a threshold matter before the court may proceed with the merits of this or any other action." *OTI Am., Inc. v. United States*, 68 Fed. Cl. 108, 113

2010); *Martinez v. Leeds*, 218 S.W.3d 845 (Tex. App. 2007); *Martinez v. City of El Paso*, 169 S.W.3d 488 (Tex. App. 2005); *Martinez v. Dominguez*, No. 08-03-00265, 2004 WL 1801789 (Tex. App. Aug. 12, 2004); *Martinez v. Texas Dep't of Protective & Regulatory Servs.*, 116 S.W.3d 266 (Tex. App. 2003).

(2005) (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 88-89 (1998)). As the plaintiff, Ms. Martinez bears the burden of proving by a preponderance of the evidence that the court has subject matter jurisdiction over her claims. *De Maio v. United States*, 93 Fed. Cl. 205, 209 (2010). “[T]he leniency afforded to a *pro se* litigant with respect to mere formalities does not relieve the burden to meet jurisdictional requirements.” *Minehan v. United States*, 75 Fed. Cl. 249, 253 (2007) (citing *Kelley v. Secretary, U.S. Dep’t of Labor*, 812 F.2d 1378, 1380 (Fed. Cir. 1987); *Biddulph v. United States*, 74 Fed. Cl. 765 (2006)).

When considering a motion to dismiss for lack of subject matter jurisdiction, the court “accepts as true the undisputed allegations in the complaint, and draws all reasonable inferences in favor of the plaintiff.” *De Maio*, 93 Fed. Cl. at 209 (citing *Hamlet v. United States*, 873 F.2d 1414, 1415-16 (Fed. Cir. 1989)). When a defendant or the court challenges the court’s jurisdiction, “the plaintiff cannot rely merely on allegations in the complaint, but must instead bring forth relevant, competent proof to establish jurisdiction.” *Hall v. United States*, 91 Fed. Cl. 762, 770 (2010) (quoting *Murphy v. United States*, 69 Fed. Cl. 593, 600 (2006)).

The Tucker Act grants this court jurisdiction over 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). However, “[t]he Tucker Act itself does not create a substantive cause of action; . . . to come within the jurisdictional reach and the waiver of the Tucker Act, a plaintiff must identify a separate source of substantive law that creates the right to money damages.” *Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (*en banc* portion) (citing *United States v. Mitchell*, 463 U.S. 206, 216 (1983)).

C. Failure to State a Claim

Pursuant to RCFC 8(a)(2), a complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” A motion to dismiss for failure to state a claim tests the sufficiency of a plaintiff’s complaint and requires the court to determine whether a plaintiff has met the threshold standard of RCFC 8. While a plaintiff’s *pro se* status may explain ambiguities found in the plaintiff’s complaint, “it does not excuse its failures.” *Henke v. United States*, 60 F.3d 795, 799 (Fed. Cir. 1995).

A complaint will survive a motion to dismiss for failure to state a claim if it “contain[s] sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, ___ U.S. ___, ___, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). When considering such a motion, “the court must accept as true the complaint’s undisputed factual allegations and should construe them in a light most favorable to the plaintiff.” *Cambridge v. United States*, 558 F.3d 1331, 1335 (Fed. Cir. 2009) (citing *Papasan v. Allain*, 478 U.S. 265, 283 (1986); *Gould, Inc. v. United States*, 935 F.2d 1271, 1274 (Fed. Cir. 1991)). Unlike factual allegations, however, legal conclusions and “recitals of the elements of a cause of action” are not entitled to a presumption of truth. *Iqbal*, 129 S. Ct. at 1949 (2009) (citing *Twombly*, 550 U.S. at 555). Once the court excises any conclusory or formulaic components of a plaintiff’s complaint, the court must determine whether the remaining

factual allegations in the complaint “plausibly suggest an entitlement to relief.” *Iqbal*, 129 S. Ct. at 1951; *see also Bussie v. United States*, 96 Fed. Cl. 89, 95 (2011) (describing *Iqbal*’s two-pronged approach to evaluating the sufficiency of a complaint).

ANALYSIS

In No. 10-569C, the government argues that Ms. Martinez has alleged only tort and non-money-mandating claims and that Ms. Martinez has not identified any conduct by the United States that implicates it as a defendant. Def.’s Mot. to Dismiss in No. 10-569C at 6-7.

Ms. Martinez’s first complaint appears to allege torts, legal malpractice, and civil rights violations. *See* Compl. in No. 10-569C at 16-19, 25(b)-(c), 41, 49-54, 59. This court does not have subject matter jurisdiction over these matters. *See Hernandez v. United States*, 93 Fed. Cl. 193, 198 (2010) (explaining that non-money-mandating constitutional claims and tort claims are outside the jurisdiction of this court); *Mendez-Cardenas v. United States*, 88 Fed. Cl. 162, 166 (2009) (holding this court lacks jurisdiction over negligence and medical malpractice claims). Ms. Martinez also avers that various federal governmental agencies are harassing and wiretapping her. Compl. in No. 10-569C at 41; Compl. in No. 10-730C at 104. However, without more specificity and detail, these allegations are so “insubstantial [and] implausible . . . as not to involve a federal controversy.” *Moden v. United States*, 404 F.3d 1335, 1341 (Fed. Cir. 2005) (quoting *Steel Co.*, 523 U.S. at 89); *see also Bussie*, 96 Fed. Cl. at 98 (citing and quoting *Iqbal*, 129 S. Ct. at 1951 (“It is the conclusory nature of [a plaintiff]’s allegations, rather than their . . . fanciful nature, that disentitles them to the presumption of truth.”)).

In her first response to the government’s motions to dismiss in No. 10-569C, Ms. Martinez claims this court has jurisdiction “within the Federal Statute of Long Arm Jurisdiction” and that the court may exercise jurisdiction for “[v]iolation[s] of [the] Due Process and Equal Protection” Clauses of the Fourteenth Amendment. Pl.’s Resp. to Def.’s Mot. to Dismiss in No. 10-569C at 24 (citing *International Shoe Co. v. Washington*, 326 U.S. 310 (1945)). Ms. Martinez’s references to long-arm statutes and *International Shoe* are inapposite. *See Touchcom Inc. v. Bereskin & Parr*, 574 F.3d 1403, 1411-12 (Fed. Cir. 2009) (holding that *International Shoe* and long-arm statutes address circumstances for determining when a court may exercise *personal* jurisdiction over a particular defendant). Moreover, because the Due Process Clause and the Equal Protection Clause are not money-mandating, a case in this court may not rest solely on those constitutional amendments. *See Nwogu v. United States*, 94 Fed. Cl. 637, 649-50 (2010). Accordingly, Ms. Martinez’s complaint in No. 10-569C does not state a cause of action cognizable in this court.

In 10-730C, the government contends that Ms. Martinez’s case must be dismissed because she does not list the United States as a defendant or ask for money damages. Def.’s Mot. to Dismiss in No. 10-730C at 3-4; *see also* Compl. in No. 10-730C at 1-3, 119-21. The government also requests dismissal for failure to meet the pleading requirements of RCFC 8(a)(2). Def.’s Mot. to Dismiss in No. 10-730C at 4.

In this court’s exercise of jurisdiction under the Tucker Act, it can only hear cases against the United States for money damages. *See* 28 U.S.C. § 1491(a)(1). RCFC 8(a)(2) further

requires that a complaint contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” The complaint in No. 10-730C suggests that the government has engaged in wrongful conduct which has caused Ms. Martinez injury, but details are lacking and the government does not have “fair notice” of the claims being asserted against it. *See Twombly*, 550 U.S. at 555. Dismissal is proper under RCFC 12(b)(6) when the pleading standard of RCFC 8(a)(2) has not been met. *See Shell Oil Co. v. United States*, 93 Fed. Cl. 439, 443 (2010). Consequently, Ms. Martinez’s complaint in No. 10-730C also fails to state a cause of action cognizable in this court.

CONCLUSION

Ms. Martinez’s complaints do not establish subject matter jurisdiction in this court. For the reasons stated, the governments’ motions to dismiss are GRANTED. The plaintiff’s motion for government’s counsel to withdraw or be disqualified is DENIED, as is the motion by plaintiff for appointment of counsel.² The clerk shall enter judgment in accord with this decision.

No costs.

It is so ORDERED.

Charles F. Lettow
Judge

²Ms. Martinez’s motion in No. 10-569C for withdrawal of the government’s counsel due to a purported conflict of interest is denied on the ground that Ms. Martinez did not identify any activity or situation which might demonstrate the existence of a conflict. The motion in No. 10-569C for appointment of counsel is denied because Ms. Martinez has not shown the existence of extraordinary circumstances to justify the appointment of counsel in a civil case. *See Washington v. United States*, 93 Fed. Cl. 706 (2010).