

In the United States Court of Federal Claims

No. 09-194C

(Filed: September 9, 2009)

(NOT TO BE PUBLISHED)

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)
RITA MORRIS McKEEMAN,)
)
Plaintiff,)
)
v.)
)
UNITED STATES,)
)
Defendant.)
*****)

Rita Morris McKeeman, *pro se*.

Michael D. Snyder, Trial Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, D.C., for defendant. With him on the brief was Tony West, Assistant Attorney General, Civil Division, and 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

In a complaint filed March 30, 2009, Rita Morris McKeeman seeks payment for alleged prior employment with the State of Georgia. Compl. at 1. The United States has moved to dismiss the complaint pursuant to Rule 12(b)(1) of the Rules of the Court of Federal Claims on the ground that this court lacks subject matter jurisdiction over Ms. McKeeman's claims. Def.'s Mot. To Dismiss 1. For the reasons stated below, the government's motion is granted.

BACKGROUND

Ms. McKeeman filed a complaint in this court on March 30, 2009.¹ The complaint, although somewhat ambiguous, appears to seek relief on three grounds. First, Ms. McKeeman seeks payment for alleged employment as an “investigator reporter.” Compl. at 1. She asserts that from 1993 to 2009, she “was metromedia for [the] House of Representative[s] and Senate News under Governor Zell Miller[,] State of Georgia[,] now under Governor Perdue.” *Id.* Second, she seeks fourteen million dollars for “awards” that are two thousand dollars apiece. *Id.* This second claim also appears to arise from her alleged employment as an investigative reporter. *See id.* Third, Ms. McKeeman states that she “would like to have [her] ranch because [she] was [a] victim of identity the[ft].” *Id.* at 2.

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 (2005) (citing *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 88-89 (1998)). As plaintiff, Ms. McKeeman bears the burden of establishing that this court has jurisdiction to hear her claims. *See McNutt v. General Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936).

In determining whether subject matter jurisdiction exists over a particular claim, the court “must accept as true the facts alleged in the complaint and draw all reasonable inferences in favor of the plaintiff.” *Goel v. United States*, 62 Fed. Cl. 804, 806 (2004) (citing *Henke v. United States*, 60 F.3d 795, 797 (Fed. Cir. 1995)). However, the court is “not bound to accept as true a legal conclusion couched as a factual allegation,” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)), nor is it required to give credence to implausible allegations. *See Ashcroft v. Iqbal*, ___ U.S. ___, ___, 129 S.Ct. 1937, 1949 (2009) (stating that “[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged”). Although *pro se* claimants such as Ms. McKeeman are held to a less stringent standard of pleading than that applied to formal pleadings prepared by counsel, *see Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S. 519, 520 (1972), they must nonetheless “affirmatively and distinctly” plead that the court has subject matter jurisdiction. *Norton v. Larney*, 266 U.S. 511, 515 (1925). If the court finds that it is without subject matter jurisdiction to decide a case on its merits, the court is required to either dismiss the action as a matter of law, *see Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1868); *Thoen v. United States*, 765 F.2d 1110, 1116 (Fed. Cir. 1985), or to transfer it to another federal court that would have jurisdiction, *see Travelers Indem. Co. v. United States*, 72 Fed. Cl. 56, 59-60 (2006) (citing *Gray v. United States*, 69 Fed. Cl. 95, 102-03 (2005)).

¹By an order issued on April 2, 2009, the court granted Ms. McKeeman’s application for leave to proceed *in forma pauperis*.

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; but it does not by itself confer a right to recovery. *United States v. Testan*, 424 U.S. 392, 398 (1976) (stating that the Tucker Act confers jurisdiction where a substantive right already exists). To establish such a right, the plaintiff must identify a substantive claim founded in some other source of law that “can fairly be interpreted as mandating compensation by the Federal Government for the damages sustained.” *United States v. Mitchell*, 463 U.S. 206, 216-17 (1983) (citing *Testan*, 424 U.S. at 400).

Ms. McKeeman’s first two claims are not claims against the United States. Rather, those claims seem to arise from alleged employment with either the Governor of Georgia or the Georgia Senate and House of Representatives. *See* Compl. at 1. In that respect, it is not apparent from whom Ms. McKeeman seeks relief. Compl. at 1-2 (stating “I want . . . 2 million dollars” and “I want as well my awards [and] . . . 14 million dollar[s]” and “I would like to have my ranch” but not specifying from whom). The most plausible reading of the complaint is that Ms. McKeeman seeks money damages from the State of Georgia, the Georgia governor’s office, or the Georgia legislature. These requests for relief do not constitute claims against the United States or any of its agents, as required by the Tucker Act. *See* 28 U.S.C. § 1491(a) (granting jurisdiction for claims “against the United States”); *United States v. Sherwood*, 312 U.S. 584, 588 (1941) (holding that relief sought against any party other than the United States is beyond the jurisdiction of the court); *Del Rio v. United States*, 87 Fed. Cl. 536, 539 (2009) (same). Consequently, the court does not have jurisdiction over these claims.

Ms. McKeeman’s third and final claim is for a ranch, based upon an allegation that “[she] was [the] victim of identity the[ft].” Compl. at 2. This claim also is not a claim against the United States, nor is it based on a money-mandating source of law. Further, “[i]dentity theft is . . . a tort.” *Aldridge v. United States*, 67 Fed. Cl. 113, 120 (2005) (citing *American States Ins. Co. v. Capital Assocs. of Jackson County, Inc.*, 392 F.3d 939, 941-42 (7th Cir. 2004); Restatement of Torts § 652 A(1) (1977) (“One who invades the right to privacy of another is subject to liability for the resulting harm to the interests of the other.”)). The court does not have jurisdiction “over tort actions against the United States.” *Brown v. United States*, 105 F.3d 621, 623 (Fed. Cir. 1997) (citing 28 U.S.C. § 1491(a); *Keene Corp. v. United States*, 508 U.S. 200, 214, (1993)). Consequently, the court also lacks subject matter jurisdiction to address this claim.

CONCLUSION

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

It is so **ORDERED**.

Charles F. Lettow
Judge