

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
No. 06-90C

(Filed: June 13, 2006)

WARREN D. JOHNSON, JR., *pro se*,
and PORTOSEL, S.P.,

Plaintiffs,

v.

UNITED STATES,

Defendant.

ORDER

On January 26, 2006, Mr. Johnson and PORTOSEL, S.P., filed a complaint with the court seeking \$60 billion in damages for Mr. Johnson's allegedly illegal criminal prosecution and conviction in the Southern District of Florida.¹ Mr. Johnson's contentions of wrongful acts by the government and its agents against Mr. Johnson during the course of his criminal trial include the failure to obtain a "true bill of indictment" against Mr. Johnson, the withholding of evidence from the grand jury, and the "illegal taking and theft of property, papers, and time" from

¹In the caption of his "Notice of Claims," Mr. Johnson also named "the Johnson Family" as plaintiffs and he indicated in the Notice that he was doing so under a power of attorney. Compl. 1, 3. The family members were not identified. That attempted inclusion of additional unnamed plaintiffs is unavailing. As a *pro se* plaintiff, Mr. Johnson may act only on his own behalf. He has no ability to represent individuals who are not members of his immediate family. See Rule 83.1(c)(8) of the Rules of the Court of Federal Claims ("RCFC") ("An individual may represent oneself or a member of one's immediate family as a party before the court. Any other party, however, must be represented by an attorney who is admitted to practice in this court."). For similar reasons, Mr. Johnson may not represent "PORTOSEL, S.P." See *id.* ("A corporation may only be represented by counsel."); *Advanced Systems Tech., Inc. v. United States*, 69 Fed. Cl. 355, 358 (2006). Accordingly, the court will treat the complaint as if it were filed only by Mr. Johnson.

Mr. Johnson also filed an application to proceed *in forma pauperis*. That motion was previously granted in part, to enable the court to consider its jurisdiction to hear Mr. Johnson's claims. See Order of Feb. 24, 2006.

Mr. Johnson. Compl. 1-2. The government responded on May 18, 2006, by filing a motion to dismiss the complaint pursuant to RCFC 12(b) for lack of subject matter jurisdiction. For the reasons stated below, defendant's motion to dismiss is granted.

JURISDICTION

Mr. Johnson bears the burden of proving that the court has jurisdiction to consider his claims. *See McNutt v. General Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936). In determining whether jurisdiction exists, federal courts must accept as true the facts alleged in the complaint and draw all reasonable inferences in favor of the plaintiff. *See Henke v. United States*, 60 F.3d 795, 797 (Fed. Cir. 1995). As noted, Mr. Johnson has appeared *pro se* in this action. Although pleadings prepared *pro se* are held to less rigorous standards than pleadings prepared by counsel, *pro se* plaintiffs still must meet the court's jurisdictional requirements. *See Henke*, 60 F.3d at 799. Mr. Johnson's complaint can be construed to allege tort claims and takings claims. The court will analyze each of his potential claims in turn.

The Tucker Act grants the Court of Federal Claims "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). Mr. Johnson alleges wrongful conduct by the government and its agents in the course of discharging their official duties; these are claims sounding in tort. *See McCauley v. United States*, 38 Fed. Cl. 250, 265 (1997), *aff'd*, 152 F.3d 948 (Fed. Cir. 1998) (table). The plain language of the Tucker Act specifies that the court lacks jurisdiction to hear tort claims against the government. *Brown v. United States*, 105 F.3d 621, 623 (Fed. Cir. 1997). Accordingly, the court lacks jurisdiction over the allegations of wrongful acts committed by the government and its agents against Mr. Johnson. Additionally, the Federal Torts Claims Act, 28 U.S.C. § 1346(b)(1), grants federal district courts exclusive jurisdiction over tort claims against the government. *See Wood v. United States*, 961 F.2d 195, 197 (Fed. Cir. 1992). Thus, any claim against the government based on allegedly tortious conduct must be brought in a district court and cannot be heard in this court.

Mr. Johnson's contention of an illegal taking of his personal property also is unavailing even though the court has jurisdiction under the Tucker Act to hear claims based upon the Takings Clause of the Fifth Amendment. *See* 28 U.S.C. § 1491(a)(1). Conclusory allegations of law without any factual support, even those made by a *pro se* plaintiff, cannot withstand a motion to dismiss. *See Bradley v. Chiron Corp.*, 136 F.3d 1317, 1322 (Fed. Cir. 1998). In the instant case, Mr. Johnson has failed to plead sufficient facts showing an actionable taking of his property by the government. Mr. Johnson asserts that the government illegally took Mr. Johnson's personal property either during the course of his criminal prosecution and conviction or as a penalty associated with his conviction. The law distinguishes between a taking for public use under the government's power of eminent domain, which is civil in nature, and the forfeiture of property under the government's police power, which is criminal in nature. *See Maracalin v.*

United States, 52 Fed. Cl. 736, 742 (2002) (citing *Crocker v. United States*, 37 Fed. Cl. 191, 194, *aff'd*, 125 F.3d 1475 (Fed. Cir. 1997)). The court does not have jurisdiction to review a criminal forfeiture. *Maracalin*, 52 Fed. Cl. at 742. Thus, to the extent that Mr. Johnson contests forfeiture of his property as a criminal penalty, this court does not have jurisdiction to hear the claim. Furthermore, to seek compensation under the Takings Clause in this court, a party must concede that the government's taking was lawful. *See Crocker*, 125 F.3d at 1476 (Fed. Cir. 1997). Mr. Johnson makes no such concession. This court has jurisdiction to award monetary damages for an uncompensated taking, but not to evaluate the propriety of the government's actions in effecting the taking. *Id.*; *see also Florida Rock Indus. v. United States*, 791 F.2d 893, 899 (Fed. Cir. 1986) (citing *Armijo v. United States*, 663 F.2d 90, 93 (Ct. Cl. 1981)). Because Mr. Johnson's argument rests on the alleged illegality of the government's actions, his taking claim falls outside the scope of this court's jurisdiction.

In short, after reviewing Mr. Johnson's claims in the light most favorable to him, the court determines that it lacks jurisdiction over the case and grants the government's motion to dismiss in accord with RCFC 12(b).

JOINDER UNDER RULE 20(a)

Pending before the court are "Judicial Notices of RCFC 20(a) Claims" by a number of individuals seeking to be identified as plaintiffs in this case. The court construes these notices as motions for permissive joinder under RCFC 20(a).² Rule 20(a) provides that "[a]ll persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the

²On March 29, 2006, the court granted leave for notices, treated as motions for joinder as plaintiffs, to be filed by the clerk on behalf of the following persons: Warren D. Johnson, Sr.; Jeffrey A. Johnson, custodian for Christian Johnson; Clancy J. Johnson-Dent; Jeffrey Alan Johnson; Chase Warren Johnson; Paul R. Johnson, custodian for Chelsy Johnson; Joyce Lucille Johnson; and Paul Richard Johnson. Thereafter, on April 19, 2006, the Court granted leave for notices, treated as motions for joinder, to be filed by the clerk on behalf of: Lacey Leigh Johnson; Clay Paul Johnson; Julianne E. Kenward; Scott Ball; James Caldwell; Julianne E. Kenward, as custodian for Christopher W. Kenward; Vickie F. Robinson; Stephen P. Kilpatrick, Sr.; Michael Ball; Donna DaPolito; Patricia A. Wellspeak; Sharon Lynn Pratt; and Lloyd O. Minear.

Similar notices have since been submitted to the clerk by the following persons: Guy Thibodeau; Warren D. Johnson, Jr., as Trustee of a Portosel Trust for Kelly and Adam Brown; Warren D. Johnson, Jr., as Trustee of a Portosel Trust for Harvard Fund Limited; Warren D. Johnson, Jr., as Trustee of a Portosel Trust for Mark Edward Johnson; Warren D. Johnson, Jr., as Trustee of a Portosel Trust for Ashleigh Taylor Brown; Warren D. Johnson, Jr., as Trustee of a Portosel Trust for Merchants Trust Limited; Warren D. Johnson, Jr., as Trustee of a Portosel Trust for Dianne Johnson; Warren D. Johnson, Jr., Trustee of a Portosel Trust; Robert Masiello; William Schwartz; Richard Grund; Roy D. Harriger; Jerry P. Linkous; Doug Uridel; Harold W. Suhr; and Gisele Anderson.

alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action.” RCFC 20(a). Permissive party joinder under Rule 20(a) is governed by two criteria. First, a right to relief must be asserted by, or against, each plaintiff or defendant, relating to or arising out of the same transaction or occurrence. *Franconia Assocs. v. United States*, 61 Fed. Cl. 335, 336 (2004). Second, there must be some question of law or fact common to all the parties in the action. *Id.* Both elements of the test must be satisfied to join plaintiffs in one case under Rule 20(a). *Id.* at 336-37.

In the instant case, the individuals seeking joinder under Rule 20(a) have failed to satisfy either factor of the test. First, none of the “Judicial Notices of RCFC 20(a) Claims” show how Mr. Johnson’s alleged illegal prosecution and conviction gives rise to any third party right to relief. Second, from the filings, there is no indication that any common question of law or fact exists. The Rule 20(a) filings suggest common ownership or interests in several entities but do not explain how common ownership or interest in these entities relate to Mr. Johnson’s complaint. Most importantly, because Mr. Johnson has failed to establish that this court has subject matter jurisdiction over his claims, individuals seeking joinder under Rule 20(a) cannot rely on his filings to show any right to relief arising out of the same transaction or any common question of law or fact. For these reasons, all of the motions for joinder under Rule 20(a) are denied.

CONCLUSION

This court lacks subject matter jurisdiction over the claims put forward by Mr. Johnson. Accordingly, the government’s motion to dismiss is GRANTED. The clerk shall enter judgment accordingly.³ No costs.

It is so ORDERED.

Charles F. Lettow
Judge

³In addition, Mr. Johnson’s “Motion to Certify Case No. 06-90C as a Rule 23 Class Action and Appoint Class Counsel” is DENIED.

The clerk is directed to file the “Judicial Notices of RCFC 20(a) Claims” submitted by sixteen individuals, as identified *supra*, at 3 n.2 (second ¶). Each of the Judicial Notices has been treated as a motion for permissive joinder as a plaintiff pursuant to RCFC 20(a).

The numerous motions for permissive joinder as plaintiffs are DENIED.

