

In the United States Court of Federal Claims

RICHARD HAKA,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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No. 11-229C

(Filed: March 20, 2012)

OPINION

MARGOLIS, *Senior Judge*.

This matter comes before the Court on defendant United States’ motion to dismiss for lack of subject-matter jurisdiction, filed June 7, 2011. The Court finds that it lacks subject-matter jurisdiction because plaintiff seeks equitable relief, does not identify any money-mandating source, and alleges claims sounding in tort. Thus, the Court grants defendant’s motion.

I. BACKGROUND

Plaintiff Richard Haka is *pro se*. His April 8, 2011 Complaint alleges that plaintiff stopped receiving his food stamps because F.B.I. agent Timothy Walker adjusted or threatened to adjust plaintiff’s food stamp money to claim plaintiff as an informant against his will. (Compl. at 1.) It alleges that plaintiff gave his food stamp card to the United States Attorney’s Office for the Western District of North Carolina in Charlotte as evidence of F.B.I. fraud, and that the Attorney’s Office gave the card to Agent Walker, who “continues to use it as his own despite criminal convictions for homosexually stalking [plaintiff], civil rights offenses against [plaintiff], welfare fraud and possession of stolen property.” *Id.* The Complaint alleges that this constitutes identity theft and that plaintiff has “forever been denied further food stamps because of it.” *Id.* The Complaint is titled “Motion for Injunction” and requests that the Court issue an injunction prohibiting further use of plaintiff’s food stamp cards issued in his name by the Mecklenburg County Department of Social Services. *Id.* On January 19, 2012, plaintiff filed a separate “All Writs Act (28 U.S.C. 1651) Motion for Injunction” requesting that the Court enjoin the C.I.A.’s interference with plaintiff’s contractual relations with a sperm bank where plaintiff donated. Defendant moves to dismiss under RCFC 12(b)(1), arguing that the Court lacks subject-matter jurisdiction because the Complaint seeks only equitable relief, fails to identify a money-

mandating source, and asserts claims sounding in tort. Defendant argues that plaintiff's January 19, 2012 motion is wholly unrelated to the subject matter of the Complaint and is an improperly filed second complaint. (Def.'s mot. to stay further briefing, at 2-3 (February 2, 2012).)

II. STANDARD FOR DISMISSAL UNDER RCFC 12(b)(1)

RCFC 12(b)(1) allows a party to move to dismiss a claim for lack of subject-matter jurisdiction. In determining whether there is subject-matter jurisdiction, the Court must take the allegations in the complaint as true and decide on the face of the pleadings. *Folden v. United States*, 379 F.3d 1344, 1354 (Fed. Cir. 2004). While the Court holds *pro se* litigants to less stringent standards, this does not relieve them from the burden of meeting jurisdictional requirements. *Minehan v. United States*, 75 Fed. Cl. 249, 253 (2007).

III. ANALYSIS

28 U.S.C. § 1491(a)¹ grants the Court jurisdiction over claims not sounding in tort that are founded on a contract with the United States or on a Constitutional provision, federal statute, or federal regulation that requires the United States to pay money damages for a violation. *See Brown v. United States*, 105 F.3d 621, 623 (Fed. Cir. 1997). Section 1491(a) does not create any substantive rights against the United States for money damages, it merely confers jurisdiction on the Court where a right already exists. *Ferreiro v. United States*, 501 F.3d 1349, 1351 (Fed. Cir. 2007). To establish jurisdiction, a plaintiff must identify a separate money-mandating source. *Id.* at 1351-1352. The Court may only grant equitable relief in limited circumstances – where it is incident and collateral to a judgment for monetary damages or, stated another way, where it is “tied and subordinate” to a money judgment. § 1491(a)(2); *National Air Traffic Controllers Association v. United States*, 160 F.3d 714, 716 (Fed. Cir. 1998); *James v. Caldera*, 159 F.3d 573, 580-581 (Fed. Cir. 1998).

Here, plaintiff seeks equitable relief, does not identify a money-mandating source, and alleges claims sounding in tort. *See Aldridge v. United States*, 67 Fed. Cl. 113, 120 (2005) (identity theft is a tort; thus, the Court lacked jurisdiction). Further, plaintiff's January 19, 2012 motion alleges entirely new facts that are wholly unrelated to his claims in the Complaint. Thus,

¹ 28 U.S.C. § 1491(a) provides:

(1) The United States Court of Federal Claims shall have 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. . . .

(2) To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States. In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just. . . .

it is either an improperly filed new action or an improperly filed motion to amend the original Complaint. *See* RCFC 7, 15; *O'Dell v. Doyckak*, No. 6:06-cv-677-Orl-19DAB, 2009 U.S. Dist. LEXIS 37431, at *2-3 (M.D. Fla. May 4, 2009). Regardless, the claims in the motion fail to invoke the Court's subject-matter jurisdiction for the same reasons that the claims in the original Complaint fail to do so. The Court therefore lacks subject-matter jurisdiction and must dismiss plaintiff's suit.

IV. CONCLUSION

The Court grants defendant's Motion to Dismiss, and the Clerk shall dismiss the Complaint. The parties shall bear their own costs.

LAWRENCE S. MARGOLIS
Senior Judge, U.S. Court of Federal Claims