

The present case is not the first complaint to be filed by plaintiff in the Court of Federal Claims seeking to recover damages for defendant's alleged breach of the Cleghorn contract. On May 13, 2003, plaintiff, proceeding pro se, filed a complaint against defendant alleging wrongful default of five contracts, including the Cleghorn contract. See Curtis v. United States, Case No. 03-1247C (Hewitt, J.). In that case, Judge Hewitt determined that the proper party in interest to the Cleghorn contract was the Oregon corporate entity Curtis, Ltd., and not Robert Curtis the individual. See Curtis v. United States, 63 Fed. Cl. 172, 179-80 (2004), aff'd, 154 Fed. Appx. 217 (Fed. Cir. 2005). Judge Hewitt explained that although Curtis, Ltd. was dissolved in July of 2001, under Oregon law "Mr. Curtis retains a shareholder derivative claim from the corporate dissolution," and because a "shareholder derivative claim is viewed under [RCFC] Rule 83.1 as a corporate claim ... whether this case is brought by Mr. Curtis or the corporation, [RCFC] Rules 17(a) and 83.1(c)(8) require that a corporation be represented by counsel, and Mr. Curtis may not proceed individually without counsel." Curtis, 63 Fed. Cl. at 173-74. Judge Hewitt ordered that either "Mr. Curtis as a shareholder of Curtis, Ltd. or Curtis, Ltd. shall appear before the court represented by counsel" by March 3, 2005, or else the case would be dismissed. Id. at 181. The plaintiff did not comply with this order and on April 14, 2005, Judge Hewitt dismissed the complaint pursuant to RCFC Rule 41(b) for "failure ... to prosecute or to comply with these rules or any order of court."

Plaintiff appealed the dismissal to the United States Court of Appeals for the Federal Circuit, which affirmed the order on November 14, 2005. Curtis v. United States, 154 Fed. Appx. 217 (Fed. Cir. 2005). In doing so, the Federal Circuit held that:

The real party in interest is Curtis, Ltd., which existed at the time the contracts at issue were entered into, and not Curtis in his individual capacity. Therefore, representation by counsel in the Court of Federal Claims was required. See RCFC 83.1(c)(8). Curtis could not substitute himself as a successor-in-interest as to claims of Curtis, Ltd. against the United States because the Assignment of Claims Act invalidates such transfers. 31 U.S.C. § 3727. Furthermore, Curtis' claim is derivative in nature and therefore must be brought in the name of the corporation.

Id. The Federal Circuit then affirmed Judge Hewitt's dismissal of the complaint pursuant to RCFC 41(b) for failure to comply with the court's order requiring plaintiff to be represented by counsel. Id. Plaintiff, proceeding pro se, now seeks to recover damages in connection with one of the five breach of contract claims previously before Judge Hewitt. As explained below, plaintiff's complaint must be dismissed for lack of privity of contract.

claims in his brief. Regardless, this court does not have jurisdiction over claims sounding in tort or claims directed at individual federal employees or private parties. See 28 U.S.C. § 1491(a)(1).

As Judge Hewitt previously ruled, and the Federal Circuit affirmed, the proper party in interest to the Cleghorn contract is the corporate entity Curtis, Ltd., and not Robert Curtis the individual. In his brief before this court, plaintiff asserts that he entered into the Cleghorn contract in his individual capacity and is therefore the proper party in interest to prosecute the complaint. Plaintiff, however, is barred from making this assertion by the principle of collateral estoppel or issue preclusion. Under that doctrine “a judgment on the merits in a first suit precludes relitigation in a second suit of issues actually litigated and determined in the first suit.” Masco Corp. v. United States, 303 F.3d 1316, 1329 (Fed. Cir. 2002). The question of which party had privity of contract with defendant in the Cleghorn contract was directly at issue in the complaint before Judge Hewitt and the appeal before the Federal Circuit. Thus, the doctrine of collateral estoppel applies to bar relitigation of that issue in this case.

The proper party in interest to the Cleghorn contract is the corporate entity Curtis, Ltd. and not Robert Curtis the individual. Pursuant to the Rules of the Court of Federal Claims a “corporation may only be represented by counsel.” RCFC 83.1(c)(8). Plaintiff cannot proceed pro se in this case. The Clerk shall dismiss the complaint.

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