

In the United States Court of Federal Claims

No. 08-631 C
(Filed: May 26, 2009)

PETER KALOS AND VERON KALOS, *
*
Plaintiffs, *
*
v. *
*
THE UNITED STATES, *
*
Defendant. *

ORDER

On May 7, 2009, plaintiffs in the above-captioned case filed a Motion to Alter or Amend Judgment and Opportunity to Be Heard on Judicial Notice pursuant to Rule 59(e) of the Rules of the United States Court of Federal Claims (“RCFC”) and Rule 201(e) of the Federal Rules of Evidence, objecting to several aspects of the court’s April 27, 2009 Opinion and Order dismissing their amended complaint. Because the court finds that plaintiffs’ contentions lack merit, it denies their motion.¹

A motion to alter or amend judgment under RCFC 59(e) “seeks a revision which disturbs or revises legal rights and obligations that were settled by the previous judgment.” Maxus Energy Corp. & Subsidiaries v. United States, 31 F.3d 1135, 1139 (Fed. Cir. 1994). There are four recognized grounds for granting an RCFC 59(e) motion: (1) “[t]o take account of an intervening change in controlling law”; (2) [t]o take account of newly discovered evidence”; (3) “[t]o correct clear legal error”; and (4) “[t]o prevent manifest injustice.” 12 James Wm. Moore et al., Moore’s Federal Practice § 59.30[5][a][i] (3d ed. 2008). Although plaintiffs do not expressly indicate which of the four grounds they are invoking, the court construes plaintiffs’ motion as asserting “clear legal error.” The court finds no such error, and makes the following general points:

(1) Plaintiffs contend that it was improper for the court to take judicial notice of certain facts contained within the public record, and request an opportunity to be heard on the matter. See Fed. R. Evid. 201(e) (“A party is entitled upon a timely request to an opportunity to be heard as to the propriety of taking judicial notice

¹ In such circumstances, the court need not obtain a response to the motion from defendant. See RCFC 59(b)(3).

and the tenor of the matter noticed.”). Plaintiffs’ motion constitutes its opportunity to be heard. However, plaintiffs have not persuaded the court that its taking of judicial notice was improper. First, as the court explained in its decision, it took judicial notice of real property transaction records, business locator records, and two case dockets “for the purpose of fully understanding plaintiffs’ allegations concerning the entities and real property mentioned in their amended complaint.” Kalos v. United States, No. 08-631C, 2009 WL 1164560, at *1 n.2 (Fed. Cl. Apr. 27, 2009). Such reference to public records is appropriate when considering a motion to dismiss. See, e.g., Anspach ex rel. Anspach v. City of Phila., Dep’t of Pub. Health, 503 F.3d 256, 273 n.11 (3d Cir. 2007) (“Courts ruling on Rule 12(b)(6) motions may take judicial notice of public records.”); Mangiafico v. Blumenthal, 471 F.3d 391 (2d Cir. 2006) (“[D]ocket sheets are public records of which the court could take judicial notice.”); Wyser-Pratte Mgmt. Co. v. Telxon Corp., 413 F.3d 553, 560 (6th Cir. 2005) (“In addition to the allegations in the complaint, the court may also consider other materials that are integral to the complaint, are public records, or are otherwise appropriate for the taking of judicial notice.”); Stahl v. U.S. Dep’t of Agric., 327 F.3d 697, 700 (8th Cir. 2003) (“The district court may take judicial notice of public records and may thus consider them on a motion to dismiss.”); Jefferson v. Lead Indus. Ass’n, Inc., 106 F.3d 1245, 1250 n.14 (5th Cir. 1997) (“The Court may take judicial notice of the contents of public records on a Rule 12(b)(6) motion.”). Moreover, the court did not rely upon the facts from the public records in rendering its decision. See Kalos, 2009 WL 1164560, at *6 & n.16 (finding, in disregard of the contents of the public records, that plaintiffs alleged a valid property interest).

(2) Plaintiffs contend that the court made “clearly erroneous and insufficient findings of facts and evidence” However, the court did not make any findings of fact in its decision, and is in fact prohibited from doing so when considering a motion to dismiss pursuant to RCFC 12(b)(6).² See, e.g., Roth v. Jennings, 489 F.3d 499, 509 (2d Cir. 2007) (“[A] ruling on a motion for dismissal pursuant to Rule 12(b)(6) is not an occasion for the court to make findings of fact.”); United States v. LSL Biotechs., 379 F.3d 672, 700 (9th Cir. 2004) (“Moreover, the court may not make fact findings of a controverted matter when ruling on a Rule 12(b)(6) motion.”). Rather, because a motion to dismiss tests the sufficiency of a complaint, Conley v. Gibson, 355 U.S. 41, 45-46 (1957); see

² The court may make jurisdictional fact findings when ruling on a motion to dismiss pursuant to RCFC 12(b)(1). However, the only jurisdictional ruling rendered by the court was that plaintiffs failed to cite “any constitutional, statutory, or regulatory power that would provide a basis for their illegal exaction claim.” Kalos, 2009 WL 1164560, at *8. The jurisdictional issue was whether, regardless of the facts alleged, the statutes and regulations cited by plaintiffs could provide a basis for their illegal exaction claim. The court was not required to find any facts to reach this conclusion.

also Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (noting that “[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, . . . [the f]actual allegations must be enough to raise a right of relief above the speculative level”), and not the accuracy of the pleaded facts, the court merely recited plaintiffs’ factual allegations, and assumed they were true, Henke v. United States, 60 F.3d 795, 797 (Fed. Cir. 1995). The court was very clear on this point. See Kalos, 2009 WL 1164560, at *4 n.12 (assuming that plaintiffs alleged “that the money was illegally exacted from them”), *6 (assuming that plaintiffs “alleged that the Federal Bureau of Prisons acted legitimately”), *7 (assuming “that plaintiffs possessed valid property rights in the Great Falls and Manassas properties at the time of the purported taking”). To reiterate: for the purposes of defendant’s motion to dismiss, the court assumed plaintiffs’ allegations were true.

(3) The court relied only upon plaintiffs’ allegations—as set forth in their amended complaint—in rendering its decision. The factual “errors” asserted by plaintiffs do not alter those allegations. Thus, consideration of those “errors” would not lead the court to reach a result different than that contained within its April 27, 2009 Opinion and Order.

Accordingly, plaintiffs’ RCFC 59(e) motion is **DENIED**.

IT IS SO ORDERED.

MARGARET M. SWEENEY
Judge