

In the United States Court of Federal Claims

No. 06-747 C
(Filed: February 23, 2007)

JERRY P. McNEIL, *
 *
 Plaintiff, *
 *
 v. *
 *
 THE UNITED STATES, *
 *
 Defendant. *

RULING ON PLAINTIFF’S MOTION FOR PEREMPTORY WRIT OF MANDAMUS

Before the court is plaintiff’s Motion for Peremptory Writ of Mandamus¹ (“motion” or “Mot.”) filed on January 18, 2007. Pursuant to Rule 7.2 of the Rules of the United States Court of Federal Claims, defendant was provided an opportunity to respond to plaintiff’s motion. Defendant did not respond. Thus, the court is prepared to enter its ruling.

I. BACKGROUND

Plaintiff, acting *pro se*, filed his complaint on November 2, 2006. In essence, plaintiff alleges that the Office of Personnel Management (“OPM”) has executed improperly an Internal Revenue Service tax lien on his federal retirement annuity. Before defendant responded to plaintiff’s complaint, plaintiff filed the instant motion. With this motion, plaintiff requests that the court “issue a writ of mandamus to the OPM requiring that agency to summarily, and immediately return” all of the money withheld from his annuity payments. Mot. ¶ 40. Plaintiff also requests a permanent injunction to prevent the OPM from further withholding money from his annuity payments. *Id.* ¶ 41. In its January 18, 2007 order, the court informed plaintiff that, as an article I court, it could not issue writs of mandamus pursuant to 28 U.S.C. § 1361 (2000). However, the court did not discuss the All Writs Act, 28 U.S.C. § 1651, in its order. Thus, the court will now expand upon its discussion of § 1361 and analyze plaintiff’s motion with respect to § 1651.

¹ This is the title of the motion on the cover sheet. On the first page of the motion, plaintiff refers to the motion as: “Motion for Peremptory Writ of Mandamus to Compel the Performance of a Duty Owed to Petitioner and Motion for Summary Award of Damages Based Upon Incontrovertible Facts.”

II. DISCUSSION

As mentioned above, there are two federal statutes that a party may invoke to obtain a writ of mandamus: 28 U.S.C. § 1361 and 28 U.S.C. § 1651. The court will discuss each statute in turn.

A. The Court of Federal Claims Does Not Possess Jurisdiction to Issue Writs of Mandamus Pursuant to 28 U.S.C. § 1361

Section 1361, titled “Action to compel an officer of the United States to perform his duty,” provides: “The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.” The statute clearly grants the power of mandamus only to federal district courts. The United States Court of Federal Claims (“Court of Federal Claims”), while a federal court, is not a federal district court.

With the exception of the United States Supreme Court (“Supreme Court”), which was created by the United States Constitution, all federal courts “are established by Congress and possess only the jurisdiction granted to them by the Congress.” In re United States, 877 F.2d 1568, 1571 (Fed. Cir. 1989). Congress established this federal court, the Court of Federal Claims, “under article I of the Constitution of the United States.” 28 U.S.C. § 171(a). In contrast, Congress establishes federal district courts under article III of the Constitution.² See Int’l Longshoremen’s & Warehousemen’s Union v. Juneau Spruce Corp., 342 U.S. 237, 238 (1952) (“The words ‘district court of the United States’ commonly describe constitutional courts created under Article III of the Constitution . . .”). Because it is an article I court, the Court of Federal Claims is not a federal district court. See Ledford v. United States, 297 F.3d 1378, 1382 (Fed. Cir. 2002) (per curiam); Alford v. United States, 3 Cl. Ct. 229, 230 (1983); see also 28 U.S.C. § 451 (defining “district court” as those courts described in chapter 5 of Title 28 of the United States Code). Accordingly, because the power to issue writs of mandamus pursuant to § 1361 is limited to federal district courts, the Court of Federal Claims lacks the jurisdiction to issue a writ of mandamus pursuant that statute.

² Article III of the Constitution contains specific requirements for the judges appointed under its provisions. Article III dictates that judges exercising judicial power under article III “shall enjoy life tenure, subject only to removal by impeachment,” and shall receive “a fixed and irreducible compensation for their services.” N. Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 59 (1982). In contrast, judges of the Court of Federal Claims are appointed to a fixed term of fifteen years, 28 U.S.C. § 172(a), and may be removed from the court for “incompetency, misconduct, neglect of duty, engaging in the practice of law, or physical or mental disability.” Id. § 176. While there is no statute that provides the judges of the Court of Federal Claims with “a fixed and irreducible compensation,” Congress has provided that the compensation of the judges of the Court of Federal Claims should mirror that received by the judges of the federal district courts. Id. § 172(b).

B. Plaintiff Has Not Established That a Writ of Mandamus, Issued Pursuant to the All Writs Act, 28 U.S.C. § 1651, Is Appropriate in This Case

Section 1651(a) provides: “The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” Unlike § 1361, this statute does not restrict the issuance of writs to federal district courts established pursuant to article III of the Constitution. See Cox v. West, 149 F.3d 1360, 1363 (Fed. Cir. 1998). However, plaintiff has not established that a writ of mandamus is appropriate in this case.

The writ of mandamus “has traditionally been used in the federal courts only to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.” Kerr v. U.S. Dist. Court, 426 U.S. 394, 402 (1976) (citations and quotations omitted). Indeed, “[t]he remedy of mandamus is a drastic one, to be invoked only in extraordinary situations.” Id. For a court to issue a writ of mandamus, a party must not have any “other adequate means to attain the relief” it desires, and must prove that its right to the writ is “clear and indisputable.” Id. at 403 (citation omitted); see also Cox, 149 F.3d at 1365 n.2 (“The writ is not normally granted when there is an adequate alternative remedy.”).

In this case, plaintiff seeks the same relief in his motion as he does in his complaint.³ It is well-settled that “the writ of mandamus may not be employed to secure the adjudication of a disputed right for which an ordinary suit affords a remedy equally adequate, and complete.” United States ex rel. Girard Trust Co. v. Helvering, 301 U.S. 540, 544 (1937). Plaintiff’s complaint, “an ordinary suit,” provides plaintiff with an adequate alternative remedy to obtain the

³ Paragraph 70 of plaintiff’s complaint, captioned “Remedy Sought and Prayer for Relief,” states:

This Federal Court of Claims has a clear statutory and common law duty to provide Petitioner Claimant McNeil with swift and certain justice for unlawful invasion of vested right. McNeil prays the court to command the OPM to refund all arrearages (vested sums due McNeil but converted to another), to refund the cost of bringing this action, and prays for both declaratory and injunctive relief to prevent the recurrence of this contumacious act in defiance of the Contract Clause, and federal statutes implementing Constitutional commands.

Compl. ¶ 70 (emphasis added). Similarly, plaintiff’s motion requests the issuance of “a writ of mandamus to the OPM requiring that agency to summarily, and immediately return all it has wrongly converted to the use of another” and “a permanent injunction, designed to positively prevent recurrence of lawless invasion of binding federal contracts by the OPM.” Mot. ¶¶ 40-41 (emphasis added).

relief he seeks in his motion. Accordingly, the court will not issue a writ of mandamus. Instead, the court will evaluate the relief requested by plaintiff by proceeding with litigation in this case.

C. The Court Cannot Award the Requested Injunctive Relief

In addition to requesting that this court issue a writ of mandamus to direct the OPM to refund the money withheld from his annuity payments, plaintiff requests that the court issue an injunction preventing the OPM from taking similar action in the future. Mot. ¶¶ 40-41. While the Court of Federal Claims does possess jurisdiction to issue injunctions in limited circumstances, those circumstances are not presented by this case.

The Court of Federal Claims “was created by Congress as a forum where private parties could sue the government for money claims, other than those sounding in tort, where the claims would otherwise be barred by sovereign immunity.” Kanemoto v. Reno, 41 F.3d 641, 644 (Fed. Cir. 1994). The statute from which the court derives most of its jurisdiction is the Tucker Act, 28 U.S.C. § 1491.⁴ However, the Tucker Act, except in limited circumstances, does not allow for the award of equitable relief.⁵ Kanemoto, 41 F.3d at 644-45 (“The remedies available in [the Court of Federal Claims] extend only to those affording monetary relief; the court cannot entertain claims for injunctive relief or specific performance, except in narrowly defined, statutorily provided circumstances . . .”). Plaintiff has not pointed to any statute that specifically permits the Court of Federal Claims to enjoin the OPM’s actions in this case.⁶ See Ledford, 297 F.3d at 1381. Thus, the court must deny plaintiff’s request for injunctive relief.

⁴ The Tucker Act is merely a jurisdictional statute and “does not create any substantive right enforceable against the United States for money damages.” United States v. Testan, 424 U.S. 392, 398 (1976). Instead, the substantive right must appear in another source of law, such as a “money-mandating constitutional provision, statute or regulation that has been violated, or an express or implied contract with the United States.” Loveladies Harbor, Inc. v. United States, 27 F.3d 1545, 1554 (Fed. Cir. 1994).

⁵ The major exception to the Tucker Act’s proscription against the award of equitable relief by the Court of Federal Claims is in the area of bid protests. Those cases concern disputes brought “by an interested party objecting to a solicitation by a Federal agency for bids or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a procurement or a proposed procurement.” 28 U.S.C. §§ 1491(b)(1)-(2).

⁶ Instead, plaintiff cites Noble v. Union River Logging Railroad Co., 147 U.S. 165, 172 (1893), as the legal basis for his request for injunctive relief. Mot. ¶ 31. The passage quoted by plaintiff merely compares the writ of mandamus to injunctive relief. It describes the two judicial powers, but does not assign them to the Court of Federal Claims. Only Congress, by way of duly-enacted statutes, can grant the Court of Federal Claims the power to award injunctive relief.

III. CONCLUSION

For the reasons set forth above, plaintiff's Motion for Peremptory Writ of Mandamus is **DENIED.**

IT IS SO ORDERED.

MARGARET M. SWEENEY
Judge