

In the United States Court of Federal Claims

No. 04-1454C

(Filed: July 19, 2007)

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*
DAVID P. BAIRD, *
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Plaintiff, *
*
v. *
*
THE UNITED STATES, *
*
Defendant. *
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ORDER ON RECONSIDERATION

On June 26, 2007, *pro se* Plaintiff David P. Baird filed a request for reconsideration of the Court’s Opinion and Order, dated June 11, 2007. Plaintiff argues that the Court’s dismissal of his Fair Credit Reporting Act (“FCRA”) claim under 15 U.S.C. § 1681 was improper, and he requests the Court to allow him to file an amended complaint to include this claim, or to transfer the action to the U.S. District Court for the Eastern District of Louisiana. The Court dismissed Plaintiff’s FCRA claim because there were no allegations relating to this claim in the complaint, and the assertions raised in Plaintiff’s briefs failed to state a claim upon which relief can be granted. (Slip op. at 6).

It is undisputed that Plaintiff did not include any allegations in his September 14, 2004 complaint regarding an FCRA claim. For this reason alone, the FCRA claim must be rejected. Casa de Cambio Comdiv. S.A. de C.V. v. United States, 291 F.3d 1356, 1366 (Fed. Cir. 2002) (holding that claims not raised in plaintiff’s complaint are waived); Car Carriers, Inc. v. Ford Motor Co., 745 F.2d 1101, 1107 (7th Cir. 1984) (“[I]t is axiomatic that [a] complaint may not be amended by the briefs in opposition to a motion to dismiss.”); Southern Comfort Builders, Inc. v. United States, 67 Fed. Cl. 124, 153 (2005) (“Plaintiff’s failure to identify its . . . claims in its complaint in this court, therefore, is fatal, regardless of the possible merits of such claims.”); Crest A Apartments, Ltd. II v. United States, 52 Fed. Cl.

607, 613 (2002) (refusing to consider claim asserted in summary judgment motion but not in complaint).

Our Court has held that, in ruling upon a motion to dismiss a *pro se* plaintiff's complaint, "[t]he court's duty to scour the complaint for 'any possible basis on which the non-movant might prevail' does not mean that the court must adjudicate every possible cause of action that plaintiff might have pleaded." Mients v. United States, 50 Fed. Cl. 665, 671 (2001) (citing W.R. Cooper Gen. Contractor, Inc. v. United States, 843 F.2d 1362, 1364 (Fed. Cir. 1988)). Plaintiff has had ample time and opportunity to raise any viable FCRA claim in a proper manner, but he has failed to do so.

Even if Plaintiff is found through briefing to have implicitly amended his complaint to include an FCRA violation, his allegations fail to state a claim under that Act. The FCRA requires "credit reporting agencies to maintain 'reasonable procedures' designed to 'assure maximum possible accuracy of the information' contained in credit reports." TRW Inc. v. Andrews, 534 U.S. 19, 23 (2001). Plaintiff does not claim that the United States is a credit reporting agency, and of course it is not. 15 U.S.C. § 1681a(f). The FCRA also requires persons furnishing information to a credit reporting agency to reasonably ensure that information is accurate. 15 U.S.C. § 1681s-2(a). However, there is no private right of action for a violation of this duty. 15 U.S.C. § 1681s-2(d); see also Nelson v. Chase Manhattan Mortgage Corp., 282 F.3d 1057, 1060 (9th Cir. 2002) ("It can be inferred from the structure of the statute that Congress did not want furnishers of credit information exposed to suit by any and every consumer dissatisfied with the credit information furnished."). Thus, without any cognizable action under the FCRA, it would be a waste of judicial resources to permit Plaintiff to file an amended complaint in this Court or to transfer the matter to another court.

Accordingly, for the foregoing reasons, Plaintiff's request for reconsideration is DENIED.

IT IS SO ORDERED.

THOMAS C. WHEELER
Judge