

In the United States Court of Federal Claims

Nos. 07-227C & 07-287C

(Filed: September 19, 2007)
(Unpublished)

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*
WILLIAM M. RISBY, *
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Plaintiff, *
* Pro Se Plaintiff; Motion to
v. * Dismiss for Lack of Subject
* Matter Jurisdiction and for
THE UNITED STATES, * Failure to State a Claim; Further
* Filings Prohibited Without Leave
Defendant. * of Court.
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***** *

William M. Risby, Seagoville, Texas, pro se.

Maame A.F. Ewusi-Mensah, with whom were Peter D. Keisler, Assistant Attorney General, Jeanne E. Davidson, Director, Martin F. Hockey, Jr., Assistant Director, United States Department of Justice, Commercial Litigation Branch, Civil Division, Washington, D.C., for Defendant.

OPINION AND ORDER ON DEFENDANT'S MOTIONS TO DISMISS

WHEELER, Judge.

Pending before the Court are two actions filed by Plaintiff William M. Risby on April 6, 2007, and May 7, 2007, respectively. Also pending are Mr. Risby's motions to proceed *in forma pauperis* in each action. Mr. Risby is an inmate at the Federal Correctional Institution in Seagoville, Texas. He was convicted and sentenced for multiple counts of mail fraud, conspiracy to commit mail fraud, conspiracy to defraud the United States, aiding and abetting money laundering, embezzlement from a program receiving federal funds, and aiding and abetting kickbacks accepted in connection with a program receiving federal funds.

While the claims Mr. Risby makes here are difficult to discern, he seeks in each action an order from this Court requiring correction of his prison records, his release from federal custody, and in the second action, money damages for false imprisonment.

In his April 6, 2007 Complaint (No. 07-227C), Mr. Risby asserts that he must be released from prison because government officials committed various civil and criminal violations against him. These include making false statements in violation of 18 U.S.C. § 1001; committing perjury under 18 U.S.C. § 1621; and intimidating jurors or other court officers under 18 U.S.C. § 1503. Mr. Risby also claims that he must be released because he filed paperwork with the Arkansas Secretary of State allegedly placing a commercial lien on the warden of Seagoville Federal Correctional Institution. Mr. Risby states that the warden's failure to respond to or otherwise satisfy the lien constitutes a "felony of Pound Breach" and voids the criminal judgments against him. Mr. Risby's references to Sellers v. Bureau of Prisons, 959 F.2d 307 (D.C. Cir. 1992) suggest that he is making a claim for unspecified Privacy Act violations committed by unidentified Government officers. See Sellers, 959 F.2d 307 (D.C. Cir. 1992) (finding that under the Privacy Act, agency may be liable for willful failure to maintain accurate records); see also 5 U.S.C. § 552a(g) (providing for civil remedies for Privacy Act violations).

In his May 7, 2007 Complaint (No. 07-287C), Mr. Risby claims that the United States lacked jurisdiction to try, convict and incarcerate him, citing the United States Constitution, the Immigration and Nationality Act, 8 U.S.C. § 1101, the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602-11, the Uniform Commercial Code, his statement asserting "personal sovereignty," and his "declaration of independence." Mr. Risby submitted the latter two documents to the Court as attachments to his May 7, 2007 Complaint. Further, according to Mr. Risby, the United States lost standing to bring charges in the federal courts "due to the 1933 bankruptcy" presumably declared by the United States. Finally, Mr. Risby apparently contends that he is not the same person that the Government convicted of criminal conduct by styling his name in capital letters as "WILLIAM MORRIS RISBY" instead of the former "William M. Risby." For all of these reasons, Mr. Risby claims that his conviction and continued incarceration are invalid or illegal, constituting involuntary servitude for which he asserts damages of \$1,000,000 per day.

On June 1, 2007, and July 5, 2007, Defendant filed motions to dismiss Mr. Risby's actions for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of this Court, and for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6). Defendant asserts that the Court lacks jurisdiction to consider Mr. Risby's criminal and Privacy Act claims, to issue declaratory judgments in the circumstances of this case, or to review Mr. Risby's claims for release from prison. Defendant argues that even if the Court had jurisdiction over these claims, Mr. Risby has failed to provide sufficient factual

allegations to properly state a claim for relief. On June 12, 2007 and July 25, 2007, Mr. Risby filed in each action a Petition for Judgment By Default under Rules 55(a), 56(a), and 56(e), and a Petition to Strike Defendant's Motion To Dismiss.

After full consideration of the parties' positions, and for the reasons explained below, the Court grants Mr. Risby's petitions to proceed *in forma pauperis*, and also grants both of Defendant's motions to dismiss. Mr. Risby's motions for default judgment and to strike Defendant's Motions to Dismiss are denied.

The Court further notes that Mr. Risby filed an earlier complaint in this Court on March 9, 2007, alleging false imprisonment and various torts committed against him by individuals and the United States. The Court dismissed that Complaint *sua sponte* for lack of subject matter jurisdiction in a Memorandum Opinion and Order issued on April 6, 2007. Risby v. United States, Fed. Cl. No. 07-153C (April 6, 2007) (C. Miller, J.). In sum, Mr. Risby filed three Complaints in this Court in as many months, each resting on frivolous arguments with no foundation in law or logic. To prevent further abuse of judicial resources and to protect the public fisc, the Clerk of the Court shall not accept future filings from Mr. Risby except by leave of Court.

Jurisdiction

Pursuant to the Tucker Act, the Court of Federal Claims has 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.

28 U.S.C. § 1491(a)(1). The Tucker Act, however, "does not create any substantive right[s] enforceable against the United States for money damages[;] . . . the Act merely confers jurisdiction upon it whenever the substantive right exists." United States v. Testan, 424 U.S. 392, 398 (1976) (citation omitted). A plaintiff coming before this Court, therefore, must also identify a separate provision of law conferring a substantive right for money damages against the United States. See, e.g., Todd v. United States, 386 F.3d 1091, 1094 (Fed. Cir. 2004).

Pursuant to Rule 8(a)(1), a plaintiff need only state in the complaint "a short and plain statement of the grounds upon which the court's jurisdiction depends." However, "[d]etermination of jurisdiction starts with the complaint, which must be well-pleaded in that it must state the necessary elements of the plaintiff's claim, independent of any defense that

may be interposed." Holley v. United States, 124 F.3d 1462, 1465 (Fed. Cir. 1997) (citations omitted). "[C]onclusory allegations unsupported by any factual assertions will not withstand a motion to dismiss." Briscoe v. LaHue, 663 F.2d 713, 723 (7th Cir. 1981); see also Bradley v. Chiron Corp., 136 F.3d 1317, 1322 (Fed. Cir. 1998) ("Conclusory allegations of law and unwarranted inferences of fact do not suffice to support a claim.").

Pro se litigants like Mr. Risby are afforded considerable leeway in presenting their pleadings to the Court. See Haines v. Kerner, 404 U.S. 519, 520-21 (1972) (explaining that *pro se* plaintiffs' pleadings are held to "less stringent standards than formal pleadings drafted by lawyers"); see also Forshey v. Principi, 284 F.3d 1335, 1357-58 n.21 (Fed. Cir. 2002) (discussing the less stringent standards that courts of appeals apply to *pro se* parties). This broad latitude extended to *pro se* litigants does not, however, exempt them from meeting this Court's jurisdictional requirements. Henke v. United States, 60 F.3d 795, 799 (Fed. Cir. 1995) (noting that the fact a litigant "acted *pro se* in the drafting of his complaint may explain its ambiguities, but it does not excuse its failures").

Standard for Decision

In ruling on motions to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), the Court accepts as true the undisputed allegations in the complaint, and draws all inferences in favor of the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). The plaintiff bears the burden of establishing jurisdiction by a preponderance of the evidence. Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 748 (Fed. Cir. 1988). The Court must treat a motion to dismiss for lack of subject matter jurisdiction as a dispositive question, to be addressed before any others. Patton v. United States, 64 Fed. Cl. 768, 773 (2005) (citing Moran v. Kingdom of Saudi Arabia, 27 F.3d 169, 172 (5th Cir. 1994)).

In reviewing a motion to dismiss for failure to state a claim, this court "must assume all well-pled factual allegations are true and indulge in all reasonable inferences in favor of the nonmovant." United Pac. Ins. Co. v. United States, 464 F.3d 1325, 1327-28 (Fed. Cir.2006) (citations omitted); see also Holland v. United States, 59 Fed. Cl. 735, 738 (2004). "Dismissal for failure to state a claim under Rule 12(b)(6) . . . is proper only when a plaintiff 'can prove no set of facts in support of his claim which would entitle him to relief.'" Adams v. United States, 391 F.3d 1212, 1218 (Fed. Cir. 2004) (quoting Leider v. United States, 301 F.3d 1290, 1295 (Fed. Cir. 2002)); see also Conley v. Gibson, 355 U.S. 41, 45-46 (1957) ("[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.").

Motions to Dismiss

1. Lack of Subject Matter Jurisdiction

The gravamen of Mr. Risby's Complaints appears to be that he is entitled to immediate release from prison. He rests this claim on the assertion of unspecified civil and criminal infractions that unidentified officials allegedly committed against him, the unanswered lien against the Arkansas warden, the United States' lack of standing to bring charges in federal court because it allegedly declared bankruptcy in 1933, and his declarations of personal sovereignty. This Court lacks jurisdiction to consider any of these claims because Mr. Risby in effect is seeking a writ of habeas corpus and asserting a claim under 28 U.S.C. § 1495 for damages for false imprisonment.

As for Mr. Risby's demand for release from prison, the Court of Federal Claims lacks jurisdiction to grant habeas corpus relief, the means by which a convicted prisoner may challenge a conviction and sentence. See 28 U.S.C. § 2241 (specifically granting such authority to district courts, the United States Courts of Appeals and the Supreme Court) and 28 U.S.C. § 2255 (providing remedies on motions attacking sentences). The jurisdictional grant in section 2241 is quite specific, providing that "[w]rits of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions." 28 U.S.C. § 2241(a). The Court of Federal Claims is not a district court and has never had jurisdiction to grant writs of habeas corpus. See Ledford v. United States, 297 F.3d 1378, 1380-81 (2002) ("[T]he habeas statute does not list the Court of Federal Claims among those courts empowered to grant a writ of habeas corpus").

Other statutes similarly deny the Court of Federal Claims jurisdiction to review the decisions of district courts in cases where the district court possess jurisdiction. See Joshua v. United States, 17 F.3d 378, 380 (Fed. Cir. 1994) (explaining that "the Court of Federal Claims does not have jurisdiction to review the decisions of district courts . . . relating to proceedings before those courts."). The Court also lacks jurisdiction to consider criminal cases. See 18 U.S.C. § 3231 (providing the United States district courts with original jurisdiction of all offenses against the laws of the United States); Joshua, 17 F.3d at 379 (noting that this Court has "no jurisdiction to adjudicate any claims whatsoever under the federal criminal code"); McCullough v. United States, 76 Fed. Cl. 1, 4 (2006) (finding that the Court lacked jurisdiction to consider plaintiff's criminal claims). Allegations of Privacy Act violations also are beyond this Court's jurisdiction. See Doe v. United States, 74 Fed. Cl. 794, 798 (2006) (explaining that 5 U.S.C. § 552a does not give the Court of Federal Claims jurisdiction over Privacy Act violations).

Mr. Risby's claim for money damages also is beyond this Court's jurisdiction. Under 28 U.S.C. § 1495, the Court of Federal Claims possesses jurisdiction "to render judgment upon any claim for damages by any person unjustly convicted of an offense against the United States and imprisoned." However, this grant of jurisdiction is strictly construed and must be read in conjunction with 28 U.S.C. § 2513. Salman v. United States, 69 Fed. Cl. 36, 39 (2005). Section 2513 provides in pertinent part:

(a) Any person suing under Section 1495 of this title must allege and prove that:

(1) His conviction has been reversed or set aside on the ground that he is not guilty of the offense of which he was convicted, or on new trial or rehearing he was found not guilty of such offense, as appears from the record or certificate of the court setting aside or reversing such conviction, or that he has been pardoned upon the stated ground of innocence and unjust conviction and

(2) He did not commit any of the acts charged or his acts, deeds, or omissions in connection with such charge constituted no offense against the United States, or any State, Territory or the District of Columbia, and he did not by misconduct or neglect cause or bring about his own prosecution.

(b) Proof of the requisite facts shall be by a certificate of the court or pardon wherein such facts are alleged to appear, and other evidence thereof shall not be received.

28 U.S.C. § 2513(a-b). Thus, for the Court of Federal Claims to possess jurisdiction under section 1495, a plaintiff must allege that his conviction has been reversed or set aside by one of the means listed in section 2513. Salman, 69 Fed. Cl. at 39. In the present case, Mr. Risby has not shown that his conviction has been set aside or that he has been pardoned. The Court therefore cannot consider his claim for money damages.

2. Failure to State a Cognizable Claim

In addition to falling well outside this Court's jurisdiction, Mr. Risby's Complaints also fail to state a claim upon which relief may be granted. As noted above, *pro se* plaintiffs are held to a less stringent standard than complaints drafted by attorneys. See Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007). The Court, however, is not required to "accept inferences drawn by plaintiffs if such inferences are unsupported by the facts set out in the complaint. Nor must the court accept legal conclusions cast in the form of factual

allegations.” Kowal v. MCI Communications Corp., 16 F.3d 1271, 1276 (citing Papasan v. Allain, 478 U.S. 265, 286 (1986)). “Factual allegations must be enough to raise a right to relief above the speculative level” Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1965 (2007).

Mr. Risby’s claims do not even approach meeting these threshold requirements. His first Complaint consists of a single paragraph citing a number of statutes without any allegations of fact. He simply attached correspondence between himself and various officials in the Northern District of Texas prison system. His second Complaint contains much the same information, with the addition of Mr. Risby’s assertion of sovereignty and his “declaration of independence.” Scouring these filings, the Court is unable to discern any plausible claim for relief that this Court may grant. His claim consequently is “so insubstantial, implausible, foreclosed by prior decisions of [the court of appeals], or otherwise completely devoid of merit as not to involve a federal controversy.” Moden v. United States, 404 F.3d 1335, 1341 (Fed. Cir. 2005).

Our Court admonished Mr. Risby in its April 6, 2007 decision that he should stop filing frivolous claims in federal courts. The Court stated:

The court also reminds plaintiff that litigation is serious business. “This and other federal courts are funded by the taxpayers of this country to adjudicate genuine disputes, not to function as playgrounds for would-be lawyers or provide an emotional release for frustrated litigants.” Constant v. United States, 929 F.2d 654, 659 (Fed. Cir. 1991). Further, “[w]here as here, a party’s argument flies in the teeth of the plain meaning of the statute and raises arguments with utterly no foundation in law or logic . . . the judicial process is abused and the funds approved by Congress via the taxpayers to the Justice Department are wasted.” Abbs v. Principi, 237 F.3d 1342, 1351 (Fed. Cir. 2001).

Risby v. United States, Fed. Cl. No. 07-153C (April 6, 2007) Order at 4 (C. Miller, J.). Mr. Risby’s later filings in this Court, commencing two additional frivolous actions, can only be seen as flaunting his disregard for the Court’s admonition. It is for this reason that Mr. Risby may not file further pleadings here without first obtaining leave of Court.

Conclusion

Based upon the foregoing, the Court enters the following Order:

1. For good cause shown, Plaintiff's motions to proceed *in forma pauperis* are GRANTED.
2. Defendant's motions to dismiss for lack of subject matter jurisdiction and for failure to state a proper claim are GRANTED.
3. Plaintiff's motions for default judgment and to strike Defendant's motion to dismiss are DENIED.
4. In light of Plaintiff's repeated filing of frivolous complaints and other baseless pleadings, the Clerk of the Court shall not accept any future complaints or pleadings from Plaintiff without his first obtaining leave of Court. Defendant shall not be obligated to respond to pleadings filed by Plaintiff absent further order of the Court. See Sterner v. United States, 2 Cl. Ct. 253, 254-55 (1983).
5. No costs are awarded to either party.

IT IS SO ORDERED.

THOMAS C. WHEELER
Judge