

# In the United States Court of Federal Claims

No. 12-056C

(Filed: May 10, 2012)

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JUDITH SCRASE,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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*Pro se* Plaintiff; Fifth Amendment Takings Claim; Rule 12(b)(6) Motion to Dismiss; No Legally Cognizable Property Interest; Failure to State a Claim Upon Which Relief Can Be Granted.

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*Judith Scrase*, appearing *pro se*, Las Vegas, Nevada.

*Sarah M. Bienkowski*, with whom were *Stuart F. Delery*, Acting Assistant Attorney General, *Jeanne E. Davidson*, Director, and *Claudia Burke*, Assistant Director, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, *Karen D. Glasgow*, Of Counsel, Assistant Field Solicitor, United States Department of the Interior, for Defendant.

## OPINION & ORDER

WHEELER, Judge.

On January 27, 2012, Plaintiff Judith Scrase filed a *pro se* complaint in this Court, alleging that she was restricted from selling her trailer on-site at the Lake Mead RV Village within Lake Mead National Recreation Area, Nevada (“Lake Mead NRA”) and that this restriction resulted in a taking of her property in violation of the Fifth Amendment to the United States Constitution. See Compl. ¶ 25. Ms. Scrase’s complaint names the National Park Service (“NPS”), U.S. Department of the Interior, as the Defendant and seeks \$75,000 in damages. See id. ¶¶ 2, 26.

On March 30, 2012, the Government filed a motion to dismiss pursuant to Rule 12(b)(6) of the Court of Federal Claims (“RCFC”) for failure to state a claim upon which relief can be granted (hereinafter “Def.’s Mot.”). Ms. Scrase filed a response to the

Government's motion on April 16, 2012, and the Government filed a reply on May 4, 2012. After carefully reviewing the parties' filings, the Court concludes that Ms. Scrase has failed to identify a property interest sufficient to support her takings claim. Accordingly, her complaint is hereby DISMISSED.

### Background<sup>1</sup>

On July 3, 2003, Ms. Scrase entered into a rental agreement with Lake Mead RV Village, a concessioner authorized by the NPS.<sup>2</sup> See Compl. Att. A. The rental agreement provided for the lease of trailer site 1510 on a month-to-month basis, subject to no-cause termination with 30-days' written notice by either the tenant (Scrase) or the concessioner (Lake Mead RV Village). See id. The agreement stipulated that the tenant shall use the site "solely for [i]ntermittent [r]ecreational purposes," defined as "occupancy of the trailer for no more than 180 days in a calendar year." Id. In line with that stipulation, the agreement stated that it would terminate should the tenant use the trailer for "permanent residential purposes." Id. In addition, the agreement prohibited guests from occupying the premises for more than 30 consecutive days without the concessioner's written consent. Id.

The agreement also required the tenant to obtain approval from Lake Mead RV Village before selling her trailer, if the trailer was to remain on-site at the trailer village. Id. Absent such an approved sale, the agreement required the tenant to remove the trailer and any other personal property from the site within fifteen business days of the agreement's termination. Compl. Att. A. If the tenant failed to do so within the prescribed period, the agreement authorized the concessioner to "arrange for removal" and charge the tenant for the associated costs. Id.

Ms. Scrase's filings indicate that on March 13, 2006, she received notice that her trailer site was in violation of certain NPS operating standards. See Compl. Att. F. Thereafter, on August 16, 2006, Ms. Scrase claims that an eviction notice was posted on the door of her trailer while it was vacant and that Lake Mead RV Village subsequently refused to accept her rent checks. Compl. ¶ 12; see also Compl. Att. D (indicating that Lake Mead RV Village returned a check from Stephen Scrase). In addition, Ms. Scrase alleges that multiple individuals wanted to buy her trailer but that Gary Wirth, General Manager of Lake Mead RV Village, refused to enter into a rental agreement with any potential buyer. See Compl. ¶¶ 13, 16.

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<sup>1</sup> The Court draws the facts as stated in the Background section of this opinion from the parties' filings and the attachments to their filings.

<sup>2</sup> A "concessioner" is a service provider authorized by the NPS through its Commercial Services Program to provide goods and services to park visitors. See the NPS website at: [http://www.concessions.nps.gov/authorized\\_concessions.htm](http://www.concessions.nps.gov/authorized_concessions.htm).

Ms. Scrase claims that she “appealed” the decision to evict her in person to Mr. Wirth and then by letter to William Dickinson, Superintendent of Lake Mead NRA. Id. ¶ 14; see also Compl. Att. F; Def.’s Mot. Att. A. In her November 1, 2006 letter to Mr. Dickinson, Ms. Scrase explains the measures she took to come into compliance with the NPS operating standards and asks for permission to sell her trailer on-site. See Compl. Att. F. Ms. Scrase claims that Mr. Wirth refused to reconsider his decision and that Mr. Dickinson refused to consider evidence that would prove there were no grounds to evict her. Compl. ¶ 14.

In a letter from Mr. Dickinson to Ms. Scrase, dated December 1, 2006, Mr. Dickinson writes that he is denying Ms. Scrase’s appeal to reconsider the concessioner’s decision to terminate her rental agreement on the ground that Ms. Scrase had permitted a guest to stay in her trailer for more than 30 days in violation of her rental agreement with Lake Mead RV Village. See Def.’s Mot. Att. A. Mr. Dickinson also notes in the letter that “[t]here is nothing to preclude you [Ms. Scrase] from removing your trailer from Lake Mead NRA and selling it on the open market.” Id.

On January 16, 2007, Ms. Scrase claims that her eviction was upheld in a “hearing on summary eviction,” Compl. ¶ 15, and that her trailer was subsequently sold pursuant to a lien sale to satisfy unpaid rent, Id. ¶¶ 18-19; Resp. 8; see also Compl. Att. J (including Lien Sale Certificate of Ownership dated December 17, 2007). In her complaint, Ms. Scrase indicates that she has filed at least five lawsuits pertaining to this matter. See Compl. ¶ 20. The day after she lost one of those suits, on September 26, 2008, Ms. Scrase says her trailer was “dismantled” on-site. Id. ¶ 21.

## Discussion

### I. Standard of Review

In reviewing the Government’s motion to dismiss pursuant to RCFC 12(b)(6), the Court accepts as true all well-pleaded allegations in the complaint and draws all reasonable inferences in favor of the plaintiff. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). To survive a motion to dismiss, a plaintiff need show only “enough facts to state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim is plausible on its face “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at 678 (citing Twombly, 550 U.S. at 570).

### II. Analysis

The crux of Ms. Scrase’s complaint is that the Government, ostensibly acting through Lake Mead RV Village, committed an unconstitutional taking by disallowing her to sell her trailer on-site. See Compl. ¶¶ 13, 22, 25-26. Ms. Scrase’s complaint,

however, fails to establish that she had a protectable property interest in the right to sell her trailer on-site.

The Takings Clause of the Fifth Amendment to the United States Constitution prohibits the Government from taking private property for public use without just compensation. U.S. Const. amend. V, § 4. To state a takings claim under the Fifth Amendment, a plaintiff first must “establish that he is the owner of a compensable interest in property.” Payne v. United States, 31 Fed. Cl. 709, 710 (1994) (internal citations omitted). Only then does the inquiry turn to whether the Government action constituted a taking of that property interest in violation of the Fifth Amendment. See Palmyra Pac. Seafoods, L.L.C. v. United States, 561 F.3d 1361, 1369 (Fed. Cir. 2009) (“[T]he fact that the government regulates in response to a particular party’s conduct . . . is not enough even to trigger an inquiry into whether the government’s conduct constitutes a taking unless the government’s action interferes with some recognized property right enjoyed by that party.”).

Here, the complaint indicates that Ms. Scrase owned a trailer and entered into a rental agreement with Lake Mead RV Village, which allowed her to park her trailer on site 1510 so long as she had a valid rental agreement. See Compl. Att. A. The rental agreement provided, however, that either party could terminate it without cause upon 30-days’ notice to the other party. Id. By its terms, therefore, Ms. Scrase had no long-term right to house her trailer on site 1510, not to mention a right to sell her trailer on-site.

In fact, the rental agreement specifically provided that Ms. Scrase needed authorization from the concessioner if she wished to sell her trailer on-site. Paragraph thirteen of the rental agreement, entitled “Sale of Trailer,” states: “Tenant agrees to obtain approval from the Concessioner before selling his/her trailer, if it is to remain on-site at the trailer village.” Id. Moreover, paragraph two states that absent such approval by the concessioner, “upon termination of this Agreement, Tenant shall remove the trailer and personal property from the site within fifteen (15) business days.” Id. As Mr. Dickinson stated in his December 1, 2006 letter to Ms. Scrase, she had every right to sell her trailer off-site on the open market, see Def.’s Mot. Att. A, but the rental agreement did not give her the right to maintain or sell her trailer on-site without the acquiescence of Lake Mead RV Village.

Accordingly, Ms. Scrase has failed to establish that she had a compensable interest in the property allegedly taken by the Government: the “right” to sell her trailer on-site. As such, Ms. Scrase has not met the threshold requirement to state a takings claim under the Fifth Amendment.

Conclusion

For the foregoing reasons, the Court hereby GRANTS the Government's motion and dismisses Ms. Scrase's complaint without prejudice.

IT IS SO ORDERED.

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THOMAS C. WHEELER  
Judge