

In the United States Court of Federal Claims

No. 10-318C

(Filed December 29, 2011)

NOT FOR PUBLICATION

ROBERT LOUIS SALTER, JR.,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

ORDER

Plaintiff Robert Louis Salter, Jr., an inmate at the Federal Correctional Institution in Texarkana, Texas, filed a complaint *pro se* alleging that the United States, acting through the Department of Justice’s Federal Bureau of Prisons (“BOP”), breached its fiduciary duty as trustee of his Prisoners Trust Fund account. Compl. at 1-2. Among other things, plaintiff alleges that he was coerced into authorizing release of his trust fund deposits to be used under the Inmate Financial Responsibility Program (“IFRP”), and that prison officials financially benefit from his participation in the IFRP. *Id.* at 1-4. As the basis of his suit, plaintiff cites the Tucker Act, 28 U.S.C. § 1491; the trust funds statute, 31 U.S.C. § 1321(a)(21); and Department of Justice Circular No. 2244 (which he included as Appendix A to his Complaint). Compl. at i, iv-v, 1, 4, 6. In support of his claim that 31 U.S.C. § 1321(a)(21) and Circular No. 2244 impose fiduciary obligations upon the BOP concerning Prisoner Trust Fund accounts, he also submits a copy of a May 22, 1995 Department of Justice Office of Legal Counsel (“OLC”) memorandum stating that office’s belief “that 31 U.S.C. § 1321 and the rules set forth in Circular No. 2244 pertaining to the Prisoners Trust Fund do impose fiduciary obligations on the BOP with respect to moneys contained in inmates Prisoners Trust Fund accounts.” Compl. at 6-7; App. B to Compl. at 8.

The government has moved to dismiss the complaint for lack of subject matter jurisdiction, under Rule 12(b)(1) of the Rules of the United States Court of Federal Claims (“RCFC”). Def.’s Mot. to Dismiss at 1. Defendant argued that plaintiff has failed to identify a money-mandating provision that supports our court’s jurisdiction, but it completely ignored the statute (31 U.S.C. § 1321(a)(21)) and regulation (Circular No. 2244) that are the basis of plaintiff’s complaint. *See* Def.’s Mot. to Dismiss at 1-5. Plaintiff filed his opposition to the motion, in which he explained that the trust at issue is under 31 U.S.C. § 1321; the duties of the government as trustee are contained in Circular 2244; and that the Department of Justice itself recognized the government’s fiduciary obligations in the OLC memorandum. Pl.’s Obj’ns to

Def.'s Mot. for Dismissal ("Pl.'s Opp'n") at 3-5.¹ The government's reply noted that plaintiff "relies upon case law, Department of Justice ("DOJ") Circular No. 2244, and a DOJ Memorandum of Law dated May 22, 1995." Def.'s Reply to Pl.'s Resp. to Def.'s Mot. to Dismiss ("Def.'s Reply") at 1. Defendant discussed these no further, and ignored once again the trust funds statute, 31 U.S.C. § 1321(a)(21). See Def.'s Reply at 1-4. Unlike plaintiff, who explained why he believed that the control over prisoner funds exercised by the BOP is sufficient to impose money-mandating fiduciary duties under the Supreme Court precedents *United States v. Mitchell*, 445 U.S. 535 (1980), *United States v. Mitchell*, 463 U.S. 206 (1983), and *United States v. White Mountain Apache Tribe*, 537 U.S. 465 (2003), Pl.'s Opp'n at 1-4 --- and contrary to OLC, which applied the *Mitchell* opinions to find such duties, see App. B to Compl. --- the government's papers fail to address the relevant precedents and the statute and regulation identified as the source of the claimed money-mandate.

Plaintiff has identified a statute that classifies Prisoners Trust Fund accounts as trusts, 31 U.S.C. § 1321(a)(21), and requires that the money in these funds must "be disbursed in compliance with the terms of the trust." 31 U.S.C. § 1321(b)(1). Plaintiff has also identified the regulation, Circular No. 2244, which provides the terms of these trusts. Defendant seems to be of the opinion that a trustee of such funds has no obligation to avoid coercing the beneficiary to release funds to it, or to avoid financial conflicts of interest, but has identified no reason for this opinion. While it might be the case that the IFRP regulations, 28 C.F.R. § 545.10 *et seq.*, in some way modify the terms of the trust, and for that or other reasons plaintiff has failed to state a claim upon which relief can be granted under RCFC 12(b)(6), it appears to the Court that 31 U.S.C. § 1321 and Circular No. 2244 impose fiduciary obligations upon the BOP concerning Prisoners Trust Fund accounts, sufficient to support jurisdiction over the matter. The government's motion to dismiss is **DENIED**. The government shall file a response to the complaint on or by **February 27, 2012**.

IT IS SO ORDERED.

s/ Victor J. Wolski

VICTOR J. WOLSKI

Judge

¹ Misunderstanding the practice of accepting factual allegations as true for purposes of a motion to dismiss, plaintiff also filed a motion for summary judgment, arguing the case has been conceded. See Pl.'s Mot. for Summ. J. at 1-2. This motion is, of course, groundless and therefore **DENIED**.