In the United States Court of Federal Claims

NOT FOR PUBLICATION
No. 06-414T
(Filed January 9, 2007)

* *

ANDREW D. TEMPELMAN and PRISCILLA TEMPELMAN, *

Plaintiffs, *

v. *

THE UNITED STATES, *

Defendant. *

* *

MEMORANDUM OPINION AND ORDER

The matter before the Court is defendant's motion to dismiss this case. Mister and Mrs. Tempelman, acting *pro se*, brought this action seeking a refund of income taxes for the years 1983, 1984, 1985 and 1990 and damages under the Internal Revenue Code of 1986 and the Racketeering Influenced and Corrupt Organizations Act of 1970 ("RICO") based upon an allegedly unlawful collection of taxes. The government moved for this Court's dismissal of the complaint, pursuant to Rule 12(b)(1) of the Rules of the United States Court of Federal Claims ("RCFC"), on the ground that the Court lacks jurisdiction over the subject matter of plaintiffs' claim. Alternatively, the government moved for a dismissal of the complaint with prejudice on the ground of the doctrine of *res judicata*. For the reasons stated below, the court **GRANTS** defendant's motion to dismiss.

I. BACKGROUND

This case continues litigation between the government and the Tempelmans regarding the latter's tax liabilities for 1983 through 1985 and 1990. On June 29, 1990, the Internal Revenue Service ("IRS") mailed to the Tempelmans, pursuant to § 6212 of the Internal Revenue Code, a notice of deficiency in the amount of approximately $145,000 in taxes, interest and penalties concerning tax years 1983, 1984 and 1985. Def.'s Ex. 1, App. B at B12-B24. The Tempelmans sought a redetermination of these deficiencies in the U.S. Tax Court, which entered a decision on November 27, 1991, pursuant to a stipulated agreement. Def.'s Ex. 2, App. B at B86-B88.

Belatedly contending that the government coerced them into signing the stipulation, the Templemans appealed the Tax Court's decision to the U.S. Court of Appeals for the First Circuit, which dismissed the appeal as untimely on September 1, 1992. *See Tempelman v.*

United States, No. 92-2280, 1993 WL 190882, at *1 (1st Cir. June 3, 1993) (unpublished opinion). They then filed suit in the U.S. District Court for the District of New Hampshire, attempting to enjoin the collection of the back taxes and interest owed for 1984 and 1985. The district court dismissed the lawsuit as barred by the Anti-Injunction Act, 26 U.S.C. § 7421(a), and the First Circuit affirmed, finding the coercion argument "far-fetched." *Id.* at *2-3.

After the Tempelmans filed their tax return for 1990, the government on September 26, 1994 assessed them an additional $4,236 in taxes owed for that tax year. *See* Def.'s Ex. 6, App. B at B110. Thereafter, the government sued to reduce each of its tax assessments to judgment and to foreclose the associated tax liens on the Tempelmans' real property, a restaurant and inn in Milford, New Hampshire. Back again before the U.S. District Court for the District of New Hampshire, the Tempelmans argued once more that the stipulation regarding tax years 1983-85 was the product of coercion. *See United States v. Tempelman*, 111 F. Supp. 2d 85, 94 (D.N.H. 2000). On the government's motion for summary judgment, the district court rejected this argument as unsupported by any evidence. *Id*. The court also upheld the tax assessment for 1990. *Id.* at 94-95. The district court allowed enforcement of the tax liens on the Tempelmans' property, notwithstanding the Tempelmans' attempted "transfer" of the property to their religious fellowship, because the government had timely recorded notice of the pertinent tax liens. *Id.* at 92-93. The First Circuit affirmed the district court's ruling, holding that the Tax Court ruling concerning tax years 1983-85 was a binding final judgment that, under the doctrine of *res judicata*, could not be overturned by another court; and that the Templemans had failed to rebut the presumption that the assessment of 1990 taxes was valid. *United States v. Tempelman*, 12 Fed. Appx. 18 (1st Cir. 2001).

After the sale of the Tempelmans' property at public auction, the district court confirmed the sale, authorized the disbursement of the proceeds, and denied the plaintiffs' request for equitable redemption. *See United States v. Tempelman*, 48 Fed. Appx. 798 (1st Cir. 2002). The First Circuit affirmed. *Id*.

In July 2003, the Tempelmans filed an informal "administrative claim for refund" for tax years 1983 through 1985 and 1990 with the IRS. Compl. § VII. ¶¶ s.-t; *see* Def.'s Ex. 7, App. B. at B210-B239. The IRS denied the claim on January 12, 2004. Def.'s Ex. 8, App. B at B280. On May 22, 2006, the Tempelmans filed in this Court a "Complaint for Refund of Taxes Unlawfully Collected."[1] In Count I, entitled "Refund Due for Tax Years at Issue," the Templemans allege misconduct underlying the judicial sale of their property, including violations of the terms of the district court's order and applicable statutory law. Compl. § VII, ¶¶ a-q. They contend that they owed no taxes for years 1983-85, as the government failed to allow them all their deductions and business expenses; they raise again their coercion argument concerning the stipulation filed with the Tax Court; and they argue that the entire proceeds from

[1] Plaintiffs initially submitted a complaint received on January 19, 2006 and were given case no. 06-57T. Because an original, signed copy was not among those received in the Clerk's office, the complaint was returned to plaintiffs and that case was closed without prejudice.

the foreclosure sale should be considered as having been used to pay their back taxes, so that they may now bring a refund action in this court. *See id.* ¶ r.[2] Finally, the Tempelmans argued that their tax bill for the 1990 tax year was not *res judicata*, should not have figured into the judicial sale of their property, and was improperly calculated by the government. *See id.* ¶ w.

Count II of the complaint seeks damages under Section 7433 of the Internal Revenue Code and RICO because of the "unlawful collection of taxes" and "conspiracy . . . to collect an unlawful debt." Compl., § VIII. The Tempelmans allege that they have overpaid their taxes for the relevant years "as a matter of law," *id*., § IX, and claim damages "in the amount of approximately $2,938,600 incurred by them in the loss of their property." *Id.* § X. This Court has determined that oral argument in this case is unnecessary.

II. DISCUSSION

A. Applicable Legal Standards

Under RCFC 12(b)(1), a complaint must be dismissed when the Court lacks jurisdiction over the complaint's subject matter. In considering a motion to dismiss for want of subject matter jurisdiction, the Court will normally accept as true all factual allegations made by the pleader and draw all reasonable inferences in a light most favorable to that party. *See Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974); *Pixton v. B&B Plastics, Inc.*, 291 F.3d 1324, 1326 (Fed. Cir. 2002). If the facts reveal any reasonable basis upon which the non-movant may prevail, dismissal is inappropriate. *See Aerolineas Argentinas v. United States*, 77 F.3d 1564, 1572 (Fed. Cir. 1996). A plaintiff has the burden of establishing the Court's jurisdiction over his claim. *See Reynolds v. Army & Air Force Exchange Service*, 846 F.2d 746, 747-48 (Fed Cir 1988).

Pro se litigants are normally allowed great leeway in presenting their claims. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972). Although a court must afford leniency to the plaintiff who acts in a *pro se* capacity, *see, e.g., Castro v. United States*, 540 U.S. 375, 381-82 (2003); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Haines*, 404 U.S. at 520-21, such a party is not exempt from the requirement that he plead facts sufficient to state a claim within the Court's jurisdiction.

A court must also dismiss a complaint that seeks to relitigate a matter that another court of competent jurisdiction has already decided. Under the doctrine of *res judicata*, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that the same parties or privies raised or could have raised in that action. See, e.g., *Allen v. McCurry*, 449 U.S. 90, 94 (1980); *Int'l Air Response v. United States*, 302 F.3d 1363, 1368 (Fed. Cir. 2002).

[2] This in the first of two paragraphs in section VII identified as "r" in the complaint.

B. Jurisdiction

The Tucker Act confers subject matter jurisdiction upon this Court over "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) (2000). The jurisdiction encompasses claims seeking a refund from a prior payment made to the Government. *United States v. Testan*, 424 U.S. 392, 400, *reh'g denied*, 425 U.S. 957 (1976)). Consequently, together with United States district courts, the Court has jurisdiction over tax refund suits. 28 U.S.C. §§ 1346(a)(1), 1491(a)(1).

The Supreme Court has limited federal district courts' tax refund jurisdiction to suits where the taxpayer has fully paid all outstanding taxes for the year at issue prior to commencing the lawsuit. *Flora v. United States*, 357 U.S. 63, 69-75 (1958), *aff'd on reh'g*, 362 U.S. 145 (1960). The Court of Claims, predecessor to this Court, adopted the *Flora* doctrine for tax refund suits brought under the Tucker Act. *Tonasket v. United States*, 218 Ct. Cl. 709, 712 (1978).

The Internal Revenue Code further limits jurisdiction over tax refund suits to instances where the taxpayer has first filed a refund claim with the IRS for tax overpayment. The taxpayer must file such a claim within three years of filing the pertinent return or within two years of paying the tax, whichever period expires later. 26 U.S.C. § 6511(a). The Code further provides that "[n]o suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected," unless a refund claim was first "duly filed" with the IRS. 26 U.S.C. § 7422(a). Thus, the timely filing of a refund claim is a prerequisite to the invocation of our Court's jurisdiction. *Cf. United States v. Dalm*, 494 U.S. 596, 608-09 (1990) (holding that failure to timely file a refund claim for gift taxes prevented taxpayer from filing lawsuit seeking refund).

For taxpayers wishing to dispute a tax deficiency prior to payment, the United States Tax Court provides a forum. But when a taxpayer chooses that forum and files a petition with the Tax Court, then "no credit or refund of income tax for the same taxable year . . . to which such petition relates, in respect of which the Secretary has determined the deficiency shall be allowed or made and no suit by the taxpayer for the recovery of any part of the tax shall be instituted in any court," 26 U.S.C. § 6512(a); *see Estate of Akin v. United States*, 31 Fed. Cl. 89, 97-98 (1994).[3]

[3] The statute provides a few exceptions to this rule -- such as when more taxes are collected than the Tax Court had determined was owed by the taxpayer -- which are not relevant to the case at hand. *See* 26 U.S.C. § 6512(a)(1)-(6).

C. The Plaintiffs' Complaint Must Be Dismissed for Lack of Jurisdiction

Plaintiffs seek income tax refunds for the years 1983 through 1985 and 1990. The Court lacks jurisdiction over these claims, for a number of reasons. First, Section 6512 of the Internal Revenue Code bars the Tempelman's claims for refunds relating to tax years 1983 through 1985 because the plaintiffs had filed a timely petition with the Tax Court for redetermination of the deficiencies assessed for those years -- namely the September 6, 1990 challenge to the IRS notice of deficiency dated June 29, 1990. *See* Def.'s Ex. 1, App. B at B1-B11.

Second, even assuming that all payments went to satisfy taxes first before being applied to penalties and interest, the Tempelmans have not paid in full the taxes assessed against them for the years 1985 and 1990, and thus do not satisfy the full payment rule required by *Flora* and *Tonasket*. *See* Def.'s Ex. 5, App. B at B104-B108 (showing $15,107 in taxes assessed for 1985, and only $2,948.18 in payments of any kind); Def.'s Ex. 6 at B109-B114 (showing $9,741.26 in taxes assessed for 1990, and only $7,881.01 in total payments). Thus, claims for income tax refunds relating to those tax years are beyond the Court's jurisdiction.

Moreover, the Tempelmans filed their refund claim with the IRS in July 2003, more than three years after filing their 1985 and 1990 returns and more than two years after paying any 1985 or 1990 taxes. *See* Def.'s Ex. 5, App. B at B104 (showing 1985 return filed on Aug. 15, 1986), B106 (showing last payment for 1985 taxes made Apr. 25, 1997); Def.'s Ex. 6 at B109 (showing 1990 return filed on Mar. 3, 1993), B112 (showing last payment for 1990 taxes made Apr. 25, 1997). Thus, under section 7422(a), a suit to recover any of the taxes paid for those tax years cannot be maintained in this or any court, since the plaintiffs have not filed a refund claim with the Internal Revenue Service within the time required by section 6511(a). *See* 26 U.S.C. §§ 7422(a); 6511(a); *see also Dalm*, 494 U.S. at 602, 608-09.

Finally, to the extent the Tempelmans seek a declaratory judgment and damages under either section 7433 of the Internal Revenue Code or under RICO, these claims are beyond our Court's jurisdiction. Congress has not only given the district courts exclusive jurisdiction over these specific matters, *see* 26 U.S.C. § 7433(a); 18 U.S.C. § 1964(a), but it has also kept from our Court's jurisdiction such matters that sound in tort. *See* 28 U.S.C. § 1491(a)(1).[4]

[4] The plaintiffs attempt to re-characterize their claim as one for just compensation under the Takings Clause. *See* Pls.' Obj. at 10. The Tempelmans, however, overlook the independent power of the Congress "To lay and collect Taxes," U.S. Const. art. I, § 8, cl. 1, which includes income taxes. *See id.* amend. XVI. Property may be seized to satisfy tax debts. *See, e.g.*, *United States v. Rodgers*, 461 U.S. 677, 696-97 (1983). Thus, any theory that the judicial sale of their property resulted in an uncompensated taking depends on questions concerning the scope of their tax liability, questions that are beyond our jurisdiction for the reasons explained. And to the extent that the takings argument rests on the government's use of the sale proceeds, this matter is *res judicata*, for the reason stated below.

D. *Res Judicata* Would Bar Plaintiffs' Complaint Even If this Court Had Jurisdiction

The Tempelmans' contention that they were coerced into agreeing to the stipulation concerning tax years 1983 through 1985 has already been decided against them in a district court, *see United States v. Tempelman*, 111 F. Supp. 2d at 94, and this decision was affirmed by the First Circuit -- which, in the process, held that the prior tax court decision was "binding on res judicata grounds." *See United States v. Tempelman*, 12 Fed. Appx. at 20. In those same proceedings, the validity of the 1990 assessments was also challenged and upheld. *See United States v. Templeman*, 111 F. Supp. 2d at 94-95; *United States v. Tempelman*, 12 Fed. Appx. at 20-21. And the plaintiffs' contentions that the proceeds from their properties' forced sale should have been applied to their tax liabilities, without any disbursements for costs relating to the sale or for local taxes; that the procedures used in the sale were improper; and that they were entitled to"equitable redemption" were all reviewed and rejected by the First Circuit when it upheld the district court's orders regarding these matters. *United States v. Tempelman*, 48 Fed. Appx. at 799.

Thus, even if this Court had jurisdiction over the Templemans' claims, the Court could not exercise this jurisdiction because the matters have already been litigated by the parties to final judgments in other courts. *See, e.g.*, *Int'l Air Response*, 302 F.3d at 1368. Dismissal would also be required on this basis.[5]

III. CONCLUSION

Because the Court lacks subject matter jurisdiction over the plaintiffs' claims, the government's motion to dismiss is hereby **GRANTED**. The Clerk is **DIRECTED** to close the file.

IT IS SO ORDERED.

VICTOR J. WOLSKI
Judge

[5] Dismissal due to the doctrine of *res judicata* appears to more properly be considered a dismissal under RCFC 12(b)(6), for failure to state a claim upon which relief can be granted, rather than under RCFC 12(b)(1). *See Arizona v. California*, 530 U.S. 392, 413 (2000) (holding that a preclusion defense has been forfeited due to the parties' failure to raise it earlier).