

# In the United States Court of Federal Claims

No. 09-379C

(Filed: August 24, 2009)

(Unpublished)

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DANIEL COBBLE, \*  
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Plaintiff, \*  
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v. \*  
\*  
THE UNITED STATES, \*  
\*  
Defendant. \*  
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*Daniel Cobble*, appearing *pro se*, Louisville, Kentucky, Plaintiff.

*Devin A. Wolak*, with whom were *Tony West*, Assistant Attorney General, *Jeanne E. Davidson*, Director, and *Reginald T. Blades, Jr.*, Assistant Director, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, D.C., for Defendant.

## OPINION AND ORDER

WHEELER, Judge.

Plaintiff, Daniel Cobble, was prosecuted and convicted under 18 U.S.C. §§ 1361 and 1363 (2006) for pouring tar on the steps of the Federal Courthouse in Louisville, Kentucky. Thereafter, Mr. Cobble sent various notices to representatives of the United States alleging tort and breach of contract claims for mistreatment during his legal proceedings and incarceration. Among these were a series of Uniform Commercial Code (“UCC”) notices relating to Mr. Cobble’s claim for some \$552 million in damages. Mr. Cobble filed a

complaint and amended complaint in the United States District Court for the Western District of Kentucky. The Kentucky Court construed Mr. Cobble's amended complaint as alleging breach of contract and wrongful conviction claims. Although observing that the breach of contract claim may be without merit, the Kentucky Court held that it lacked jurisdiction, and transferred this claim to our Court pursuant to 28 U.S.C. § 1631 (2006). The Kentucky Court dismissed the wrongful conviction claim.

Mr. Cobble objects to having his case heard in this Court, and has asked that his "perfected tort claim" be transferred to the United States Supreme Court. Defendant opposes Mr. Cobble's transfer request, and has moved to dismiss the action pursuant to Rules 12(b)(1) and 12(b)(6) of the Court of Federal Claims ("RCFC"). For the reasons stated below, Defendant's motion to dismiss is GRANTED, and Plaintiff's motion to transfer is DENIED.

### Background

On May 14, 2007, Mr. Cobble sent a "Notice of Tort Claim" to Ms. Phyllis J. Pyles, Director of the Torts Branch, Civil Division, United States Department of Justice. Def.'s Mot. to Dismiss, Def.'s App. 35-46, July 17, 2009. Mr. Cobble sent copies of this notice to 24 judicial or law enforcement personnel. Id. at 45-46. Mr. Cobble alleged that he was wrongfully convicted for tarring the steps of the Gene Snyder Federal Courthouse in Louisville, Kentucky. See id. at 36-43. On December 18, 2007, Mr. Cobble, in care of a notary public, sent Ms. Pyles a document entitled "Notice of Dishonor." Am. Compl. Cobble v. United States, No. 08-123-ART, Att. 2, Feb. 28, 2009. This document, referencing the UCC, claimed to be a judgment against Ms. Pyles:

The Dishonor, officially determined by me, constitutes an administrative and commercial notarial protest judgment against Phyllis Pyles, and is complete upon ministerial ratification by any other judge.

Id. (emphasis omitted). This document was one of many that Mr. Cobble transmitted to representatives of the United States. See Def.'s App. 6-19.

On February 26, 2008, Mr. Cobble filed a complaint in the Western District of Kentucky against the United States and the Department of Treasury. Id. at 30. Mr. Cobble amended his complaint two days later, seeking "ratification of an 'administrative commercial Notarial Protest Judgment' against [the Government] . . . ." Am. Compl. ¶ 1 (emphasis omitted). Mr. Cobble alleges that the Government acquiesced in the tort claim he presented

to the Department of Justice, entitling him to \$552 million in damages or the forfeiture of bonds in the same amount. Id. ¶¶ 3-9.

Mr. Cobble asserts two counts in his amended complaint. Id. ¶¶ 10-11. In Count I, Mr. Cobble contends that the Government has not paid him \$552 million for his May 14, 2007 tort claim and “remains in default and in breach-of-contract pursuant to . . . the Notice of Dishonor.” Id. ¶ 10. In Count II, Mr. Cobble contends that his “conviction is improper, untruthful; and by law, that conviction must be overturned . . .” Id. ¶ 11. Mr. Cobble seeks the following relief: (1) “REMITTANCE of \$552,000,000.00[;]” (2) “[i]f remittance is not given, then forfeiture of Treasury Bills totaling \$552,000,000.00 from the U.S. Dept. of the Treasury[;]” and (3) that his “conviction be vacated and respective case 03:06-cr-631-R be absolved and stricken from the record.” Id. at Relief Sought. The United States filed a motion to dismiss this action on June 10, 2008. Def.’s App. 33.

On August 5, 2008, the Western District of Kentucky dismissed Count II and transferred Count I to this Court. Cobble v. United States, No. 08-123-ART, 2008 WL 3080152, at \*5 (W.D. Ky. Aug. 5, 2008). The district court characterized Mr. Cobble’s complaint as asserting a claim for breach of contract, and a request that the court overturn his conviction. Id. at \*2. The court explained that, in Count I, Mr. Cobble presents “a contract claim relating to the United States’s failure to respond to the UCC documents.” Id. The court made this determination based upon “allegations in the Amended Complaint and in other pleadings stating that this action only seeks ratification of a judgment.” Id. (citing Am. Compl. ¶ 1). The court transferred the contract claim to this Court and noted, “[w]hile Mr. Cobble’s breach-of-contract claim may lack merit, [the Western District of Kentucky] does not have jurisdiction to proceed to the merits – only the Court of Federal Claims does.” Id. at \*3. The court then dismissed Count I. Id. at \*4.

On June 10, 2009, the district court transferred the record to this Court. On June 16, 2009, Mr. Cobble submitted a letter to the Clerk’s office, which this Court docketed as a “motion to transfer the case back to district court.” Mr. Cobble explained that he is asserting a “perfected tort claim[;]” and noted this Court does not have jurisdiction to hear tort claims. Letter from Daniel Cobble to Acting Clerk (June 16, 2009) (emphasis omitted) (herein “June 16, 2009 Letter”). Mr. Cobble requested the Clerk to transfer the case to the United States Supreme Court. Id. (“[P]lease return my case /perfected claim to Chief Justice Roberts for prompt ratification.”). Mr. Cobble sent a second letter to the Clerk, which this Court received on July 17, 2009. In this letter, Mr. Cobble protested the Court’s docketing of his June 16, 2009 Letter as a motion. Letter from Daniel Cobble to Acting Clerk (July 17, 2009) (herein “July 17, 2009 Letter”). Mr. Cobble “demand[ed] that [the Clerk] return [his] perfected tort claim for ratification (case 3:08cv-123) to Chief Justice John G. Roberts of the

U.S. Supreme Court.” Id. Mr. Cobble again noted that this Court does not have jurisdiction over his tort claim. Id. On July 17, 2009, Defendant filed an opposition to Plaintiff’s request for transfer, and a motion to dismiss pursuant to RCFC 12(b)(1) and (b)(6). Mr. Cobble did not file a response to Defendant’s motion to dismiss.

## Discussion

### A. Standard of Review

#### 1. Subject Matter Jurisdiction

“Subject matter jurisdiction must be established before the Court may proceed to the merits of any action.” BearingPoint, Inc. v. United States, 77 Fed. Cl. 189, 193 (2007) (citing Steel Co. v. Citizens for a Better Env’t, 523 U.S. 83, 88-89 (1998)). “The party asserting the Court’s jurisdiction bears the burden of proof on jurisdictional issues.” Id. (citation omitted).

The Court, under RCFC 12(b)(1), will dismiss a complaint if it lacks jurisdiction over the subject matter. When considering a Rule 12(b)(1) motion, the Court accepts as true the undisputed allegations in the complaint, and draws all reasonable inferences in favor of the plaintiff. Hamlet v. United States, 873 F.2d 1414, 1416 (Fed. Cir. 1989), abrogated on other grounds by, Harlow v. Fitzgerald, 457 U.S. 800 (1982), (citing Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)). This court will dismiss for lack of subject matter jurisdiction only where it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief. Id. (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

While *pro se* litigants are afforded considerable leeway in presenting their pleadings to a court, see Haines v. Kerner, 404 U.S. 519, 520 (1972), they are not exempt from meeting this Court’s jurisdictional requirements, see Henke v. United States, 60 F.3d 795, 799 (Fed. Cir. 1995). See also Tindle v. United States, 56 Fed. Cl. 337, 341 (2003) (“The fact that plaintiff is proceeding *pro se*, however, does not change the ultimate standard or plaintiff’s burden of proof on subject matter jurisdiction.”).

#### 2. Failure to State a Claim Upon Which Relief Can Be Granted

The Court will dismiss a complaint under RCFC 12(b)(6) “when the facts asserted by the claimant do not entitle him to a legal remedy[.]” Lindsay v. United States, 295 F.3d 1252, 1257 (Fed. Cir. 2002). When considering a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief may be granted, the Court “must accept as true all the factual allegations in the complaint . . . and [the Court] must indulge all reasonable inferences

in favor of the non-movant . . . .” Sommers Oil Co. v. United States, 241 F.3d 1375, 1378 (Fed. Cir. 2001) (citations omitted); see also Huntleigh USA Corp. v. United States, 63 Fed. Cl. 440, 443 (2005). While detailed factual allegations in the complaint are unnecessary, “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do . . . .” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citation omitted).

#### B. Plaintiff’s Claim

To date, Mr. Cobble has not filed an amended transfer complaint in this Court, as required by RCFC 3.1(a)(4). Instead, Mr. Cobble contests this Court’s ability to hear his “perfected tort claim.” See June 16, 2009 Letter; July 17, 2009 Letter. Without a transfer complaint, this Court will review Mr. Cobble’s amended complaint before the district court and his two letters submitted to the Clerk’s Office to determine whether he has presented a claim over which the Court has jurisdiction.

Turning to Mr. Cobble’s amended complaint in the district court, the Western District of Kentucky transferred only Count I to this Court. Mr. Cobble contends in Count I that the Government has not paid him \$552 million for his May 14, 2007 tort claim and remains in default and in breach of contract:

Debtor United States has not remitted payment of said \$552,000,000.00 to the Secured Party, for its 5/14/07 Conditional Acceptance of Value. So, Debtor remains in default and in breach-of-contract pursuant to the Dec. 18, ‘08 administrative Notarial Protest Judgment, the Notice of Dishonor.

Am. Compl. ¶ 10 (emphasis omitted). Earlier in the amended complaint, Mr. Cobble explains that the Government acquiesced in the tort claim he presented to the Department of Justice, entitling him to \$552 million in damages or the forfeiture of bonds in the same amount. Id. ¶¶ 3-9.

This Court concurs with the district court that Mr. Cobble does not allege a tort claim. While the underlying facts may suggest a tort, the amended complaint seeks damages from the Government for its failure to remit \$552 million pursuant to a “protest judgment.” Id. ¶ 10. This allegation does not amount to a tort. The Court also agrees with the district court that it is not proper to add a tort claim to Mr. Cobble’s case. While *pro se* litigants are afforded considerable leeway in presenting their pleadings to the Court, see Haines, 404 U.S.

at 520, there is no duty for a court to create any claims that are not spelled out in a plaintiff's pleading, Scogin v. United States, 33 Fed. Cl. 285, 293 (1995).<sup>1</sup>

Mr. Cobble's amended complaint, when given its most reasonable interpretation, alleges a breach of contract. As the district court explained, Mr. Cobble most likely is asserting "a contract claim relating to the United States's failure to respond to the UCC documents." Cobble, 2008 WL 3080152 at \*2. In other words, construing the amended complaint liberally, Mr. Cobble is alleging that he formed a contract with the United States, entitling him to damages of \$552 million. To the extent that Mr. Cobble alleges a breach of contract claim, this Court has jurisdiction to hear it. See 28 U.S.C. § 1491(a)(1). However, as explained below, Mr. Cobble has failed to state a breach of contract claim upon which relief may be granted, making dismissal appropriate under Rule 12(b)(6).

C. Plaintiff Has Not Alleged a Contract Claim Upon Which Relief May Be Granted.

To establish a breach of contract claim, plaintiff must first demonstrate that a valid contract existed. "To prove the existence of a contract with the government, a plaintiff must prove four basic elements: (1) mutuality of intent to contract; (2) offer and acceptance; (3) consideration; and (4) a government representative having actual authority to bind the United States." Hometown Fin., Inc. v. United States, 409 F.3d 1360, 1364 (Fed. Cir. 2005). Failure to allege any one of these elements warrants dismissal for failure to state a claim upon which relief may be granted. See Goel v. United States, 62 Fed. Cl. 804, 808 (2004) (dismissing a breach of contract claim for failure to state a claim upon which relief can be granted because the plaintiff did not allege that there was an unambiguous offer and acceptance, or that the plaintiff interacted with any authorized government officials).

Here, Mr. Cobble has not alleged facts sufficient to establish that a contract existed between himself and the United States. Mr. Cobble, in his amended complaint, fails to allege any mutual intent to contract, any offer and acceptance, any consideration, or any agreement by an authorized representative of the United States. The attachments to the amended complaint do not provide any support to Mr. Cobble. None of the attachments, which appear to be a series of unilaterally-signed, UCC-based documents, constitutes a contract with the United States, providing Mr. Cobble with any rights against Defendant. Accordingly, to the extent that Mr. Cobble alleges a breach of contract, he has failed to state a claim upon which relief could be granted and this Court must dismiss Count I. See Goel, 62 Fed. Cl. at 808.

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<sup>1</sup> Furthermore, even if Mr. Cobble did allege a tort, he is correct that this Court cannot hear such a claim. The Tucker Act expressly limits this Court's jurisdiction to "cases not sounding in tort." 28 U.S.C. § 1491(a)(1) (2006); see also Rick's Mushroom Serv., Inc. v. United States, 521 F.3d 1338, 1343 (Fed. Cir. 2008).

D. This Court Cannot Transfer Plaintiff's Case.

Mr. Cobble requests this Court to transfer his case directly to Chief Justice John G. Roberts of the Supreme Court. In order to transfer a case to another court, this Court must first find that it lacks jurisdiction, the transfer is in the interest of justice, and the transferee court is a forum in which the plaintiff could have brought the action at the time a claim was filed. See Rodriguez v. United States, 862 F.2d 1558, 1559-60 (Fed. Cir.1988) (citation omitted); 28 U.S.C. § 1631. Mr. Cobble's Count I does not meet any of these criteria. As such, transfer of this case is inappropriate.

First, this Court does not find that it lacks jurisdiction over Count I of Mr. Cobble's amended complaint. As explained above, while Count I is not by any means a model of clarity, Mr. Cobble asserts the United States is in default and breach of contract for failure to remit payment pursuant to UCC documents. Although this Court finds Mr. Cobble's breach of contract claim to be without merit, the Court nonetheless has jurisdiction to hear such a claim pursuant to the Tucker Act. See 28 U.S.C. § 1491(a)(1). Second, this Court does not find that it is in the interest of justice to transfer Mr. Cobble's Count I to another court. As this Court interprets Mr. Cobble's Count I to be a breach of contract claim, the case was properly before the Court upon transfer. Having jurisdiction and finding the claim is without merit, this Court cannot say that it is in the interests of justice to transfer the count to another court. Third, Mr. Cobble could not have brought Count I in the Supreme Court at the time he filed his amended complaint. A plaintiff can bring few actions directly to the Supreme Court due to its limited original jurisdiction:

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

U.S. Const. Art. III, § 2, cl. 2; 28 U.S.C. § 1251 (2006). Mr. Cobble's Count I does not fall within this enumerated list of cases and could not have been brought in the Supreme Court at the time he filed. Transfer to the Supreme Court thus is not appropriate.

Given that Mr. Cobble is a *pro se* litigant, the Court will interpret leniently his request to transfer, and will treat it alternatively as a request to re-transfer Count I to the Western District of Kentucky. There is no "per se rule against return of a transferred case by the transferee court." Rodriguez, 862 F.2d at 1560. The "decision on jurisdiction of a coordinate court establishe[s] law of the case," which a court should not disturb absent

exceptional circumstances. Id. (citing Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 816 (1988)). Such exceptional circumstances may exist when the transferee court finds that the “transfer decision was ‘clearly erroneous and would work a manifest injustice.’” Id. (citation omitted).

Such exceptional circumstances are not present in this case. As explained above, this Court concurs with the district court that Mr. Cobble did not plead a tort claim. Furthermore, the district court was correct in determining it had no jurisdiction of the breach of contract claim in Count I. Thus, given this Court’s concurrence with the district court’s findings, the exceptional circumstances required to re-transfer Count I to the district court do not exist.

#### Conclusion

Based upon the forgoing, Defendant’s motion to dismiss for failure to state a claim under Rule 12(b)(6) is GRANTED, and Plaintiff’s request to transfer his claim is DENIED. The Clerk is directed to DISMISS Plaintiff’s case with prejudice.

IT IS SO ORDERED.

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THOMAS C. WHEELER  
Judge