

In the United States Court of Federal Claims

No. 10-65C

(Filed: June 21, 2010)

(Not for Publication)

ANTHONY MOORE,

Plaintiff,

v.

THE UNITED STATES POSTAL
SERVICE EMPLOYEES, et al.,

Defendants.

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ORDER OF DISMISSAL

WILLIAMS, Judge.

Plaintiff pro se Anthony Moore alleges that United States Postal Service (“USPS”) employees and officials in Brunswick, North Dakota have prevented his mail from reaching its intended destination, and seeks \$11,000 in damages.

Defendants moved for dismissal on the grounds that this Court lacks jurisdiction over Plaintiff’s claims and the named Defendants. Because Plaintiff’s claims fall outside this Court’s jurisdiction, Defendants’ motion is **GRANTED**, and Plaintiff’s complaint is **DISMISSED**.

Background¹

In a short, handwritten complaint, Plaintiff, who is incarcerated at the North Dakota State Prison in Bismarck, North Dakota, alleges that his mail “has been prevented from reaching the

¹ The following background is derived from Plaintiff’s complaint, and should not be construed as findings of fact.

addresses on eight separate occasions” from August of 2009 to January of 2010.² Plaintiff claims he is entitled to \$11,000 in damages pursuant to 18 U.S.C. §§ 1701, 1702, and 1703.³

On March 30, 2010, Defendant filed a motion to dismiss pursuant to Rule 12(b)(1) of the Rules of this Court. On April 6, 2010, Plaintiff filed a Statement of Facts and a motion for summary judgment -- referencing another two complaints, and alleging a total of 20 separate instances of interference with his mail. According to Plaintiff, the instant complaint is the second of three complaints: an undated “first complaint,” the instant complaint filed on February 1, 2010, and a third complaint allegedly filed on February 26, 2010.⁴ Only the instant complaint is currently before this Court.

Discussion

Subject matter jurisdiction must be established before the Court proceeds to the merits of the action. See Hardie v. United States, 367 F.3d 1288, 1290 (Fed. Cir. 2004); 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)). “If the court finds that it lacks jurisdiction over the subject matter, it must dismiss the claim.” Naskar v. United States, 82 Fed. Cl. 319, 320 (2008) (internal quotation omitted). Plaintiff bears the burden of establishing the Court’s jurisdiction. Id. (citing Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 748 (Fed. Cir. 1988)). When considering a motion to dismiss for lack of subject matter jurisdiction, the Court will accept the complaint’s undisputed allegations as true and construe the complaint in a manner favorable to the plaintiff. United Pac. Ins. Co. v. United States, 464 F.3d 1325, 1327-28 (Fed. Cir. 2006). Complaints drafted by pro se litigants are held to “less stringent standards than formal pleadings drafted by lawyers.” Naskar, 82 Fed. Cl. at 320 (quoting Haines v. Kerner, 404 U.S. 519, 520 (1972)). However, this latitude does not allow a pro se plaintiff to subvert the Court’s jurisdictional requirements. See Henke v. United States, 60 F.3d 795, 799 (Fed. Cir. 1995). Pro se plaintiffs still bear the burden of establishing the Court’s subject matter jurisdiction. Tindle v. United States, 56 Fed. Cl. 337, 341 (2003).

The Tucker Act, 28 U.S.C. § 1491, confers jurisdiction on the United States Court of Federal Claims over cases in which a plaintiff has a claim against the United States for money damages. The Tucker Act states that this Court “shall have 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.

² Plaintiff references Exhibits A-H, which consist of eight envelopes addressed to various recipients, that are marked as undeliverable as addressed and returned to sender.

³ 18 U.S.C. §§ 1701, 1702, and 1703 are criminal statutes that prescribe fines and imprisonment for the obstruction, delay, and destruction of mail.

⁴ On April 28, 2008, Plaintiff filed a similar complaint with the Court, asking for \$11,000 in compensation, and Judge Allegra dismissed that complaint on May 28, 2008. Moore v. United States, No. 08-319C (Fed. Cl. May 28, 2008), aff'd, No. 2008-5083 (Fed. Cir. Aug. 5, 2008). There is no record of the February 26, 2010 complaint, or any other complaints, filed by Plaintiff in this Court.

§ 1491(a)(1). The plaintiff must demonstrate that the source of substantive law he relies upon for his claim mandates compensation by the Federal Government for damages. United States v. Mitchell, 463 U.S. 206, 216-17 (1983). However, the Tucker Act, by itself, “does not create any substantive right enforceable against the United States for money damages.” United States v. Testan, 424 U.S. 392, 398 (1976). Accordingly, a plaintiff must identify a separate Constitutional provision, statute, or regulation which if violated, provides for a claim for money damages against the United States. Fisher v. United States, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (“[A] plaintiff must identify a separate source of substantive law that creates the right to money damages,” i.e., a source which is “money mandating.”); James v. Caldera, 159 F.3d 573, 580 (Fed. Cir. 1998). A statute provides for monetary damages against the United States if it is “reasonably amenable to the reading that it mandates a right of recovery in damages.” United States v. White Mountain Apache Tribe, 537 U.S. 465, 473 (2003).

In this instance, Plaintiff fails to demonstrate that this Court has jurisdiction over his claim. Plaintiff named the “Employees and Office in Bismarck, North Dakota, acting in their individual and official capacities” of the USPS as Defendants in this case. This Court, however, has jurisdiction over suits against the United States, but not against individual officials. Brown v. United States, 105 F.3d 621, 624 (Fed. Cir. 1997) (citing 28 U.S.C. § 1491(a)).

Even assuming arguendo that Plaintiff named the United States as Defendant, no reasonable interpretation of Plaintiff’s claims would give this Court jurisdiction. A claim based on failure to deliver mail may sound in tort, but not in contract. Webber v. United States, 231 Ct. Cl. 1009 (1982) (citing Threatt v. United States, 77 Ct. Cl. 645, 646 (1933) (Claims based upon failure to deliver mail “aris[e] in tort and not upon a contract.”)); Lucas v. United States, 228 Ct. Cl. 860, 862 (1981) (“[P]laintiff’s claims based upon the delay in transmitting the letter sound in tort.”). As explicitly stated in the Tucker Act, however, this Court has no jurisdiction over tort claims. 28 U.S.C. § 1491. Plaintiff cites three criminal statutes that prescribe fines and imprisonment for the obstruction, delay, and destruction of mail, 18 U.S.C. §§ 1701-1703. However, this court has no criminal jurisdiction. Campbell v. United States, 229 Ct. Cl. 706, 707 (1981).

Accordingly, this Court has no jurisdiction over Plaintiff’s claim.

Transfer to Another Jurisdiction in Not Appropriate

Although not requested by Plaintiff, this Court considers whether it would be in the interest of justice to transfer his claim to another jurisdiction. Texas Peanut Farmers v. United States, 409 F.3d 1370, 1374 (Fed. Cir. 2005); Naskar, 82 Fed. Cl. at 321. Section 1631 of Title 28 of the United States Code provides that:

Whenever a civil action is filed in a court . . . and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action . . . to any other such court in which the action or appeal could have been brought at the time it was filed or noticed.

28 U.S.C. § 1631.

This Court may transfer a case only if (1) this Court lacks subject matter jurisdiction, (2) the plaintiff could have brought the case in the transferee court at the time the case was filed, and (3) the transfer is in the interest of justice. Naskar, 82 Fed. Cl. at 321 (citing Sanders v. United States, 34 Fed. Cl. 75, 81-82 (1995)).

Pursuant to 28 U.S.C. § 1346(b)(1), “the district courts . . . shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages . . . caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment.” 28 U.S.C. § 1346(b)(1).

The Federal Tort Claims Act (“FTCA”) acts as a waiver of the federal government’s sovereign immunity, but its provisions “shall not apply to . . . [a]ny claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.” 28 U.S.C. § 2680(b); see also Dolan v. United States Postal Serv., 546 U.S. 481, 484 (2006); Naskar, 82 Fed. Cl. at 321.

Because Plaintiff alleges that post office officials prevented his mail from reaching its intended recipients, his claim falls squarely within the postal exception to the FTCA. 28 U.S.C. § 2680(b); Dolan, 546 U.S. at 486-87; Naskar, 82 Fed. Cl. at 321. As such, the Plaintiff could not have brought his claim in a district court.

Conclusion

For the foregoing reasons, Defendants’ motion to dismiss is **GRANTED**, and Plaintiff’s complaint is **DISMISSED** with prejudice.

s/Mary Ellen Coster Williams

MARY ELLEN COSTER WILLIAMS

Judge