

In the United States Court of Federal Claims

NOT FOR PUBLICATION
No. 06-236C
(Filed October 19, 2006)

*
RANDY LEE HAMMITT, *
*
Plaintiff, *
*
v. *
*
THE UNITED STATES, *
*
Defendant. *
*

MEMORANDUM OPINION AND ORDER

The Court has reviewed defendant's motion to dismiss this case for lack of jurisdiction. Plaintiff's opposition to the motion was due to be filed by August 10, 2006, but no such filing has been received. Nevertheless, because of plaintiff's *pro se* status, the Court will look beyond his non-opposition to the motion and consider the complaint on its merits. After reviewing the complaint, it is clear that the Court lacks jurisdiction over its subject matter. Defendant's motion to dismiss is hereby **GRANTED**.

I. BACKGROUND

Plaintiff filed his complaint on March 27, 2006, alleging that the United States breached an express or implied contract with him. Compl. at 1. But in actuality, plaintiff seeks money damages for alleged violations of the United States Constitution. *Id.* Specifically, plaintiff alleges that a federal bankruptcy judge, a federal district court judge, two assistant United States Attorneys, and United States marshals -- who were acting to enforce a civil contempt order that later resulted in plaintiff's incarceration -- are responsible for violating his rights under the Fourth and Fifth Amendments to the Constitution. *Id.* at 3, 9-12, 21-22.¹ Plaintiff asserts the right to be free from what he describes as an unlawful search and seizure as well as the right to due process. *See id.* Under plaintiff's theory, the jurisdiction of our Court is based on the

¹ Plaintiff also alleges that the North Carolina Constitution was violated, thereby violating the Ninth and Tenth Amendments to the United States Constitution. Compl. at 3.

doctrine of respondeat superior and 28 U.S.C. § § 1346(a)(2), 1491(a)(1). *Id.* at 6-7. Plaintiff demands four million dollars in damages. *Id.* at 22.

Defendant moved to dismiss the complaint pursuant to Rule 12(b)(1) of the Rules of the Court of Federal Claims (“RCFC”). Def.’s Mot. at 6.

II. DISCUSSION

A. Standard of Review for a Motion to Dismiss for Lack of Jurisdiction

Under RCFC 12(b)(1), a complaint must be dismissed when it is shown that the Court lacks jurisdiction over the complaint’s subject matter. When 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) (requiring that on a motion to dismiss for lack of subject matter jurisdiction the Court views “the alleged facts in the complaint as true, and if the facts reveal any reasonable basis upon which the non-movant may prevail, dismissal is inappropriate”); *Aerolineas Argentinas v. United States*, 77 F.3d 1564, 1572 (Fed. Cir. 1996). Plaintiff has the burden of establishing the Court’s jurisdiction over his claim. *Pro se* litigants are normally allowed great leeway in presenting their claims. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972) (per curiam).

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.

B. Plaintiff’s Complaint Must Be Dismissed for Lack of Jurisdiction

Congress, in enacting the Tucker Act, established the jurisdiction of our Court. *See* 28 U.S.C. § 1491. The Court’s jurisdiction extends to “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.” *Id.* § 1491(a)(1).

To establish subject matter jurisdiction in the Court of Federal Claims, plaintiff must point to a statutory or constitutional provision that would afford him money damages. *See United States v. Testan*, 424 U.S. 392, 398 (1976) (explaining that the Tucker Act “is itself only a jurisdictional statute; it does not create any substantive right enforceable against the United States for money damages”). In other words, plaintiff must rely on a money-mandating law. *See Contreras v. United States*, 64 Fed. Cl. 583, 587-88 (2005). The Court bears in mind that “not every claim involving, or invoking, the Constitution necessarily confers jurisdiction on this court.” *Calhoun v. United States*, 32 Fed. Cl. 400, 405 (1994).

The Court lacks jurisdiction over claims under the constitutional provisions identified by plaintiff. *See, e.g., Brown v. United States*, 105 F.3d 621, 623-24 (Fed. Cir. 1997) (holding that the Fourth Amendment is not money-mandating); *Rosano v. United States*, 9 Cl. Ct. 137, 142 (1985) (“[E]xcept for the taking clause of the Fifth Amendment the other amendments do not require the United States to pay money for their alleged violation.”) (citation omitted); *Ogden v. United States*, 61 Fed. Cl. 44, 47 (2004) (holding that the Ninth and Tenth Amendments are not money-mandating).

Even when considering all facts in a light most favorable to plaintiff and affording him the lenity required for a *pro se* litigant, the Court must grant defendant’s motion to dismiss under RCFC 12(b)(1). Only claims under provisions of the United States Constitution that expressly mandate payment of money may be brought to the Court of Federal Claims. The Fourth, Ninth, and Tenth Amendments are not money-mandating. Nor is the due process protection of liberty under the Fifth Amendment.

III. CONCLUSION

Because the Court lacks subject matter jurisdiction over plaintiff’s claim, defendant’s motion to dismiss is hereby **GRANTED**. The Clerk is **DIRECTED** to close the file.

IT IS SO ORDERED.

VICTOR J. WOLSKI
Judge