

In the United States Court of Federal Claims

No. 11-906C

(Filed: June 13, 2012)

(Not for Publication)

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JOSHUA BARRETT SHAPIRO,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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MEMORANDUM OPINION AND ORDER GRANTING  
DEFENDANT’S MOTION FOR SUMMARY DISMISSAL

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**WILLIAMS, Judge.**

Plaintiff pro se Joshua Barrett Shapiro brings this claim pursuant to the Takings Clause of the Fifth Amendment of the United States Constitution, alleging that the United States Postal Service violated his property rights when it confiscated his mail. In his Complaint, Plaintiff seeks compensation for his withheld mail, injunctive relief,<sup>1</sup> and a declaratory judgment that the United States Postal Service’s action was arbitrary, capricious, and contrary to law. Pl.’s Compl. ¶ 1.

Defendant filed a Motion for Summary Dismissal of Pro Se Complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Rules of the United States Court of Federal Claims (“RCFC”). Because Plaintiff’s Complaint fails to state a claim upon which relief may be granted and this Court does not have jurisdiction over his claim, the Court grants Defendant’s Motion for Summary Dismissal.<sup>2</sup>

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<sup>1</sup> Plaintiff’s Complaint does not specify what type of injunctive relief he seeks. He requests “an appropriate injunction.” Pl.’s Compl. ¶ 1.

<sup>2</sup> On April 11, 2012, Plaintiff filed a Motion for Leave to File a First Amended Complaint, appending his proposed Amended Complaint. Because Plaintiff’s proposed Amended Complaint does not contain any new actionable factual allegations or legal theories,

### Background<sup>3</sup>

Plaintiff Joshua Barrett Shapiro entered into a residential lease agreement on September 11, 2011, in Virginia Beach, Virginia. Pl.'s Compl. ¶ 7. The property owner's brother signed this lease as the landlord. Plaintiff's lease states: "Lessee will be given 1 key(s) to the premises and 0 mailbox key(s)." Pl.'s Compl. Exhibit A ¶ 12. On September 15, 2011, Plaintiff went to the Witchduck Station Post Office and requested that the lock on the cluster mailbox for the residence be replaced and that he be issued a new key for the mailbox. Pl.'s Compl. ¶¶ 8, 9. Plaintiff claims that he spoke with a Postal Service employee who agreed to have the mailbox lock replaced and issue a new key by September 23, 2011. Id. ¶ 9. When he returned to the post office on September 23, the same employee told him that the lock had not been replaced, and he did not know when Plaintiff would be able to access his mail. Id. ¶ 10. Plaintiff spoke with an onsite supervisor, but he was unable to resolve the matter. Id. ¶ 11.

On September 28, 2011, Plaintiff filed a complaint with the Richmond, Virginia Consumer Affairs Office of the Postal Service. Id. ¶ 12. In October 2011, the post office installed a new lock on the cluster box and issued Plaintiff a key. Id. ¶ 13. On November 8, 2011, Plaintiff noticed that the box was missing the new lock, and a postal delivery driver told him that his mail was being withheld by the local post office. Id. ¶ 14. Two supervisors at the post office told Plaintiff that only an individual with power of attorney could have the mailbox lock changed, and Plaintiff's lease agreement was insufficient to authorize a lock replacement. Id. ¶ 15. Additionally, one of the postal supervisors told Plaintiff that a postal inspector was investigating the matter. Id.

Plaintiff contacted Consumer Affairs, Headquarters for Consumer Affairs, and the United States Postal Service National Tort Center in an attempt to resolve the issue. Id. ¶¶ 18, 20, 23. On December 3, 2011, Plaintiff saw that a new lock was placed on his mailbox. However, Plaintiff's key did not open the new lock, and he alleged that the Postal Service refused to give him "mail that rightfully belongs to him." Id. ¶ 24.

Plaintiff filed a complaint in this Court on December 27, 2011, alleging that this withholding of his mail constitutes a physical taking in violation of the Takings Clause of the Fifth Amendment of the United States Constitution. Id. ¶ 29. As relief, Plaintiff seeks the following: (i) \$50,000 in damages; (ii) injunctive relief; (iii) a declaratory judgment that Defendant violated the Fifth Amendment when the Post Office confiscated and withheld his mail; and (iv) costs and such other relief as the court deems just and proper. Id. ¶¶ 58-59.

Defendant filed a motion for summary dismissal pursuant to RCFC 12(b)(6), contending that Plaintiff failed to state a claim upon which relief can be granted. Specifically, Defendant

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the Court denies leave to amend, and bases this order on Plaintiff's initial Complaint of December 27, 2011. See Evans v. United States, 249 Fed. Appx. 201, 203 (Fed. Cir. 2007); Cultor Corp. v. A.E. Staley Mfg. Co., 224 F.3d 1328, 1333 (Fed. Cir. 2000) ("Futility of the proposed amendment is an adequate reason to deny leave to amend.")

<sup>3</sup> This background is derived from the Complaint, its exhibit, and the parties' motion papers.

argues that Plaintiff does not allege that his property was seized for a public use, that any regulatory imposition constrained the use of his property, or that the withholding was an authorized legal action. Additionally, Defendant contends that this Court lacks jurisdiction to consider Plaintiff's claim and must dismiss this case pursuant to RCFC 12(b)(1) because Plaintiff's claim sounds in tort. Furthermore, Defendant maintains that there has been no waiver of sovereign immunity pursuant to the Federal Tort Claims Act for this type of tort claim.

Plaintiff filed a response on March 16, 2012. He maintains that Defendant is liable under the Takings Clause of the Fifth Amendment because the Government violated his property rights when it confiscated and withheld his mail for a public use without providing any compensation. Pl.'s Mem. in Opp'n to Mot. to Dismiss ("Pl.'s Mem.") at 3, 7, 9. However, Plaintiff does not articulate what such "public use" was. Id.

### **Discussion**

The Court holds a pro se plaintiff's pleadings to a less stringent standard than litigants represented by counsel. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, pro se plaintiffs must still satisfy the Court's jurisdictional requirements. Minehan v. United States, 75 Fed. Cl. 249, 253 (2007). The Federal Circuit has cautioned that it "does not expect a pro se litigant to be made to jump through a confusing array of procedural hoops." Mendoza v. Merit Sys. Prot. Bd., 966 F.2d 650, 653 (Fed. Cir. 1992). The Federal Circuit has emphasized that relaxing procedural standards is not the same as excusing noncompliance. Id.

The United States Court of Federal Claims is a court of limited jurisdiction. 28 U.S.C. § 1491(a)(1); Brown v. United States, 105 F.3d 621, 623 (Fed. Cir. 1997). The Tucker Act confers jurisdiction on this Court "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. § 1491(a)(1). Plaintiff bears the burden of establishing subject-matter jurisdiction by a preponderance of the evidence before the Court may proceed to the merits of the action. Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 748 (Fed.Cir.1988); BearingPoint, Inc. v. United States, 77 Fed. Cl. 189, 193 (2007). When determining jurisdiction, the Court must accept as true all undisputed allegations of fact made by the non-movant and draw all reasonable inferences from those facts in the non-movant's favor. Henke v. United States, 60 F.3d 795, 797 (Fed.Cir.1995). If subject-matter jurisdiction cannot be established, the Court must dismiss the complaint. Stuart v. United States, 100 Fed. Cl. 74, 76 (2011).

Defendant moves the Court to dismiss the complaint under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Pursuant to Rule 8(a)(2), a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief . . . ." RCFC 8(a)(2); Gay v. United States, 93 Fed. Cl. 681, 685 n. 3 (2010); see generally Ashcroft v. Iqbal, 556 U.S. 662, 677-78 (2009) (construing Rule 8 of the Federal Rules of Civil Procedure, which is identical to RCFC 8). Rule 8 does not require "'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Iqbal, 556 U.S. at 678 (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)).

To survive a motion to dismiss under Rule 12(b)(6), the complaint must contain facts sufficient to “state a claim to relief that is plausible on its face.” Twombly, 550 U.S. at 570. To determine whether a complaint states a plausible claim for relief, a court must engage in a context-specific analysis and “draw on its judicial experience and common sense.” Iqbal, 556 U.S. at 679. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. at 678 (citing Twombly, 550 U.S. at 556). However, the plausibility standard requires more than a “sheer possibility” that the defendant has violated the law. Iqbal, 556 U.S. at 678. “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Id. (citing Twombly, 550 U.S. at 555). The complaint must plausibly suggest that the plaintiff has a right to relief “above the speculative level,” Twombly, 550 U.S. at 555, and cross “the line from conceivable to plausible.” Id. at 570.

### **The Court Lacks Subject-Matter Jurisdiction Over Plaintiff’s Claims**

Pursuant to the Tucker Act, the Court cannot consider claims sounding in tort or for civil misconduct by agents of the United States. Brown, 105 F.3d at 624; Trafny v. United States, 503 F.3d 1339, 1340 (Fed. Cir. 2007); Gimbernat v. United States, 84 Fed. Cl. 350, 355 (2008) (“The Federal Torts Claims Act grants United States district courts exclusive jurisdiction to hear tort claims against the United States.”) Furthermore, the Federal Tort Claims Act provides the sole remedy for tort claims against the Postal Service. Dolan v. United States Postal Serv., 546 U.S. 481, 484 (2006). Regardless of how the claim is pled, the Court does not have jurisdiction when the substance of the claim lies in tort. Cottrell v. United States, 42 Fed. Cl. 144, 149 (1998) (“Even where the claim is framed under non-tort law, the court lacks jurisdiction if the essence of the claim lies in tort.”) (citing Brown, 105 F.3d at 623).

Plaintiff’s complaint centers on his inability to access his mail. A claim based upon a failure to deliver the mail sounds in tort. Webber v. United States, 231 Ct. Cl. 1009 (1982); Lucas v. United States, 228 Ct. Cl. 860, 862 (1981). Plaintiff attempts to distinguish his claim from Webber and Lucas by arguing that the post office has confiscated and withheld his mail -- and not merely failed to deliver it. Pl.’s Mem. at 3. Assuming arguendo that this is a case of confiscation rather than failure to deliver, Plaintiff’s claim would still be based in tort -- the intentional tort of conversion -- defined as “depriving a rightful owner of his personal property, or control of that property.” Husband v. United States, 90 Fed. Cl. 29, 40 (2009) (quoting Restatement (Second) of Torts, § 222A(1) (1965)) (internal quotation omitted).

Plaintiff has pled a tort and not a taking. When allowed, torts against the Government must be brought under the Federal Tort Claims Act. Because the Court cannot adjudicate claims arising under the Federal Tort Claims Act, it must dismiss Plaintiff’s complaint for lack of subject-matter jurisdiction. Gimbernat, 84 Fed. Cl. at 355.

### **Plaintiff Has Failed to Allege a Compensable Taking**

The Takings Clause of the Fifth Amendment provides that private property shall not be taken for public use without just compensation. U.S. Const. amend. V. A compensable taking of property occurs when society imposes a burden on an individual’s property which, in fairness

and justice, society itself should bear. Armstrong v. United States, 364 U.S. 40, 49 (1960). A taking may occur both by physical occupation or invasion and by Government regulation of private property. Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 415 (1922). The Government may appropriate private property or restrict its use for public benefit so long as the property owner receives just compensation. See Forest Properties, Inc. v. United States, 177 F.3d 1360, 1364 (Fed. Cir. 1999) (The actual occupation of land by the government constitutes a physical taking, and a regulatory taking occurs when the government prevents the landowner from using the property in a way that is otherwise allowed.)

Plaintiff has failed to establish the elements of either a physical or a regulatory taking. Plaintiff's complaint is missing an essential element -- that his property was taken for a public use. See Atlas Corp. v. United States, 895 F.2d 745, 756 (Fed.Cir.1990) ("The Fifth Amendment requires compensation for losses due to government action only where there has been a 'taking' of 'property' for public use.") Plaintiff failed to identify any public use for which his mail was allegedly taken. Rather, Plaintiff generally recited that "[b]y confiscating the Plaintiff's mail from him, defendant has taken Plaintiff's private property for public use without just compensation. . . ." Pl.'s Mem. at 9. This global invocation of the Takings Clause does not constitute the requisite allegation of a public use. See Acadia Tech., Inc. v. United States, 458 F.3d 1327, 1332 (Fed. Cir. 2006) (affirming the dismissal of a takings claim because the government's seizure or holding of property does not constitute a taking for public use for which compensation must be paid). As stated on the face of the Constitution, the requirement that private property be taken for a public use is an essential element of a Fifth Amendment taking claim, and the alleged public use must be identified. Because Plaintiff has failed to allege the elements of a takings claim, the Court must dismiss the action.

### Conclusion

Defendant's Motion for Summary Dismissal is **GRANTED**.

  
**MARY ELLEN COSTER WILLIAMS**  
Judge