

Appendix

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Appendix A: Decision of CA CD District Court

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

JOHN S. BARTH, Plaintiff,

v.

PLAYSTER CORPORATION, et al., Defendants.

Case No. CV 17-0274 FMO (JCx) ORDER OF DISMISSAL

Plaintiff filed his complaint on January 12, 2017. By order dated April 4, 2017, plaintiff was ordered to show cause, on or before April 12, 2017, why this action should not be dismissed for plaintiff's failure to complete service of the summons and complaint as required by Rule 4(m) of the Federal Rules of Civil Procedure. (See Dkt. 24, Court's Order of April 4, 2017). Plaintiff was admonished that "[f]ailure to file a timely response to th[e] Order to Show Cause may result in the action being dismissed for lack of prosecution and for failure to comply with the orders of the court, pursuant to Local Rule 41." (Id.). As of the date of this Order plaintiff has not responded to the Order to Show Cause nor filed proofs of service of summons and complaint on any defendant.

Rule 4(m) of the Federal Rules of Civil Procedure provides that a court, on its own initiative, "must dismiss the action without prejudice" if service is not effected "within 90 days after the complaint is filed[.]" In addition, a district court may dismiss an action for failure to prosecute or to comply with court orders. Fed. R. Civ. P. 41(b); *Link v. Wabash Railroad Co.*, 370 U.S. 626, 629-30, 82 S.Ct. 1386 (1962) (authority to dismiss for failure to prosecute necessary to avoid undue delay in disposing of cases and congestion in court calendars); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir.), cert. denied, 506 U.S. 915, 113 S.Ct. 321 (1992) (district court may dismiss action for failure to comply with any court order). Dismissal, however,

is a severe penalty and should be imposed only after consideration of the relevant factors in favor of and against this extreme remedy. *Thompson v. Housing Authority of Los Angeles*, 782 F.2d 829, 831 (9th Cir.), cert. denied, 479 U.S. 829, 107 S.Ct. 112 (1986). These factors include: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions. *Id.*; *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986).

Pursuant to Rules 4(m) and 41(b) and the Court's inherent power to achieve the orderly and expeditious disposition of cases, *Link*, 370 U.S. at 629-30, 82 S.Ct. at 1388, and in light of the factors outlined in *Henderson*, *supra*, dismissal of this action without prejudice for failure to effect service within the specified time and comply with the Court's Order to Show Cause issued on April 4, 2017, is appropriate.

Based on the foregoing, IT IS ORDERED that judgment be entered dismissing this action, without prejudice, for failure to effect service and comply with the orders of this Court.

Dated this 27th day of April, 2017.

/s/

Fernando M. Olguin
United States District Judge

Appendix B: Decision of Court of Federal Claims

One the most clearly unconstitutional decisions ever to issue from the federal judiciary.

U.S. COURT OF FEDERAL CLAIMS

No. 17-1037 L

JOHN S. BARTH, Plaintiff

v.

UNITED STATES, Defendant

Motion to Dismiss; Lack of Subject Matter Jurisdiction; RCFC 12(b)(1); RCFC 12(b)(6); RCFC 12(h)(3).

John S. Barth, Springvale, ME, pro se.

Aaron E. Woodward, Trial Attorney, with whom were Chad A. Readler, Acting Assistant Attorney General, Robert E. Kirschman, Jr., Director, L. Misha Preheim, Assistant Director, Commercial Litigation Branch, Civil Division, US DOJ, Washington, DC, for defendant.

OPINION

CAMPBELL-SMITH, Judge.

Before the court is defendant's motion to dismiss plaintiff's amended complaint, in which he alleges various constitutional and copyright violations. See Am. Compl., ECF No. 10. Defendant moves to dismiss the first count of plaintiff's complaint for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6) of the Rules of the United States Court of Federal Claims (RCFC), and contends that the court lacks jurisdiction to consider the second and third counts of plaintiff's amended complaint, pursuant to RCFC 12(b)(1). See Def.'s Mot. to Dismiss, ECF No. 11. For the following reasons, defendant's motion to dismiss is GRANTED and plaintiff's complaint is dismissed for lack of subject matter jurisdiction.

I. Background

Plaintiff filed a voluminous complaint in this case, primarily comprised of allegations that various individuals and organizations violated his copyrights. See ECF No. 10 at 17-21 (summarizing the second and third counts of the complaint). Plaintiff names the government as a defendant only in the first count of the complaint, stating as follows:

The defendant United States is sued only in its liability for compensation of damages due to incidental taking of private property without just compensation, and denial of property without due process or equal protection of law. The United States became involved by the actions of a district judge who refused to seal the case despite multiple clearly essential motions, or to request federal discovery assistance, or to disqualify himself to permit a judge with knowledge of internet racketeering to handle the case, and published the unredacted documents on the court and Pacer websites, thereby notifying the defendants and allowing them to destroy evidence and move assets out of the country and beyond recovery by the Plaintiff and others.

The said violations were done with full knowledge of the injury done, without permission of the Plaintiff, and have caused injury to the Plaintiff in the loss of his efforts of four years and his income from the sale of intellectual property, and costs of prosecution, for which Plaintiff demands full compensation.

Id. at 16 (emphasis in original). These allegations stem from the decisions issued by the judge presiding over a case that plaintiff filed in the United States District Court for the Central District of California. See Appx. B to Compl., ECF No. 1-9 at 1-43¹ (compiling selected documents in *Barth v. Playster Corp.*, Case No. 2:17-cv-0274).

II Legal Standards

Pursuant to the Tucker Act, the court has the limited jurisdiction to consider "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

¹ When filing his original complaint, plaintiff omitted several pages, see ECF No. 1, and the court ordered him to file an amended complaint to correct the error, see ECF No. 9. Plaintiff complied with the court's order and filed an amended complaint, see ECF No. 10, but omitted the exhibits he attached to the original complaint, which are referenced throughout the amended pleading. In order to preserve the resources of both the parties and the court, the court will refer to the exhibits as originally filed.

sounding in tort." 28 U.S.C. § 1331(a)(1) (2012). To invoke the court's jurisdiction, plaintiffs must show that their claims are based upon the Constitution, a statute, or a regulation that "can fairly be interpreted as mandating compensation by the Federal Government for the damages sustained." *United States v. Mitchell*, 463 U.S. 206, 216-17 (1983) (quoting *United States v. Testan*, 424 U.S. 392, 400 (1976)).

Plaintiffs bear the burden of establishing this court's subject matter jurisdiction by a preponderance of the evidence. See *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988). In reviewing plaintiffs' allegations in support of jurisdiction, the court must presume all undisputed facts are true and construe all reasonable inferences in plaintiffs' favor. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), abrogated on other grounds by *Harlow v. Fitzgerald*, 457 U.S. 800, 814-15 (1982); *Reynolds*, 846 F.2d at 747 (citations omitted). If, however, a motion to dismiss "challenges the truth of the jurisdictional facts alleged in the complaint, the . . . court may consider relevant evidence in order to resolve the factual dispute." *Id.* at 747. If the court determines that it lacks subject matter jurisdiction, it must dismiss the complaint. See RCFC 12(h)(3).

III. Analysis

A. Count I

In the first count of the complaint, plaintiff claims that the United States is liable for damages he suffered as a result of a taking without just compensation, and the denial of both due process and equal protection. See ECF No. 10 at 16. Plaintiff's claims for relief are premised on allegations that a judge on the United States District Court for the Central District of California violated these various constitutional rights. Specifically, he asserts that the judge

refused to seal the case despite multiple clearly essential motions, or request federal discovery assistance, or to disqualify himself to permit a judge with knowledge of internet racketeering to handle the case, and published the unredacted documents on the court and Pacer websites, thereby notifying the

defendants and allowing them to destroy evidence and move assets out of the country and beyond recovery by the Plaintiff and others.

Id. See also *id.* at 32-37 (detailed allegations of the claims contained in this summary paragraph). Plaintiff also complains that the judge improperly dismissed the case for lack of prosecution. See *id.* at 3-4.

Defendant moves the court to dismiss this count of the complaint for failure to state a claim, pursuant to RCFC 12(bX6). See ECF No. 11 at 1, 6-10. In the court's view, however, dismissal pursuant to RCFC 12(bx1) and RCFC 12(h)(3) is more appropriate.

"Binding precedent establishes that the Court of Federal Claims has no jurisdiction to review the merits of a decision rendered by a federal district court." *Shinnecock Indian Nation v. United States*, 782 F.3d 1345, 1352 (Fed. Cir. 2015) (citations omitted).

This court "has no jurisdiction to review the decisions of district courts and cannot entertain a taking[s]claim that requires the court to scrutinize the actions of another tribunal." *Id.* (quoting *Innovair Aviation Ltd. v. United States*, 632 F.3d 1336, 1353 (Fed. Cir. 2011)). The allegations in plaintiff's complaint fall squarely within this prohibition. The actions of which plaintiff complains relate entirely to decisions made by the district court judge in the course of the litigation before him. Because evaluating plaintiffs claims would require the court to review the decisions made by the District Court judge, this court is without jurisdiction to consider them.

Despite the fact that defendant moved for dismissal of the first count on the basis of RCFC 12(bX6), the court is compelled to dismiss the count for lack of jurisdiction. Pursuant to RCFC 12(hX3), "[i]f the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action." Because the court lacks the authority to review decisions made by the judge in the United States District Court for the Central District of California, the first count of plaintiffs complaint is dismissed.

B. Counts II and III

In the second and third counts of his complaint, plaintiff levels extensive allegations against various individuals and organizations that are not the United States. See ECF No. 10 at 1 7-2 I . Defendant moves the court to dismiss these counts for lack of subject matter jurisdiction, pursuant to RCFC 12(bXI).

The court is plainly without jurisdiction to consider claims against private individuals and organizations. See 8 U.S.C. § 1a91(a)(1). "The United States is the only proper defendant in this Court." *Johnson v. United States*, No. 17-353, 2017 WL 7596910, at *4 (Fed. Cl. Aug. 11, 2017) (citing *United States v. Sherwood*, 312 U.S. 584, 588 (1941); *Stephenson v. United States*, 58 Fed. Cl. 186, 190 (2003); *Steward v. United States*, 130 Fed. Cl. 172, 178 (2017) (It is . . . well-established that this court does not have jurisdiction to hear any claims against defendants other than the United States").

"Claims for relief sought against any other party, including officers of the United States government and any other individual, 'must be ignored as beyond the jurisdiction of the court.'" *Matthews v. United States*, 72 Fed. Cl. 274, 279 (2006)

(quoting Sherwood, 312 U.S. at 588). In light of this well-established law, the court finds it lacks subject matter jurisdiction to consider the second and third counts of plaintiff's complaint.

IV. Conclusion

For the foregoing reasons, the court lacks jurisdiction to consider any of the claims in plaintiffs complaint. Defendant's motion to dismiss, ECF No. 11, is GRANTED, pursuant to RCFC 12(b) and RCFC 12(h3). The clerk's office is directed to ENTER final judgment DISMISSING plaintiffs complaint without prejudice.

IT IS SO ORDERED.

PATRICIA E. CAMPBELL-SMITH
Judge

Appendix C: Decision of Federal Circuit Court

One the most clearly unconstitutional decisions to issue from the federal judiciary, containing little but false statements of fact and law. Note the heading "nonprecedential" meaning "we don't do this to anyone of our political tribe," an admission of criminal collusion to deny Equal Protection.

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

JOHN S. BARTH,

Plaintiff-Appellant

v.

UNITED STATES,

Defendant-Appellee

2018-1776

Appeal from the United States Court of Federal
Claims in No. 1:17-cv-01037-PEC, Judge Patricia E.
Campbell-Smith.

Decided: September 11, 2018

John S. Barth, Springvale, ME, pro se.
Jessica Cole, Commercial Litigation Branch, Civil

Division, United States Department of Justice, Washington, DC, for defendant-appellee. Also represented by Robert Edward Kirschman, Jr., Loren Misha Preheim, Chad A. Readler.

Before Newman, Linn, and Dyk, *Circuit Judges*.

PER CURIAM

John Barth (“Barth”) appeals from the dismissal of his amended complaint by the Court of Federal Claims (“Claims Court”) for lack of subject matter jurisdiction. Because the Claims Court did not err in reaching its decision, we affirm. We write for the parties and therefore omit the factual and procedural background from this opinion.

I

Count I of Barth’s amended complaint is directed to the United States and alleges that a district judge in a prior suit involving Barth “refused to seal the case, or to request federal discovery assistance, or to disqualify himself to permit a judge with knowledge of internet racketeering to handle the case, and published the unredacted documents on the court and Pacer websites, thereby notifying the defendants [in that case] and allowing them to destroy evidence and move assets out of the country and beyond recovery.” Amended Complaint at 11. Barth sued the United States to recover “damages due to incidental taking of private property without just compensation, and denial of property without due process or equal protection of law.” *Id.*

The Claims Court dismissed that count by correctly recognizing that it has no jurisdiction “to review the merits of a decision rendered by a federal district court,” *Shinnecock Indian Nation v. United States*, 782 F.3d 1345, 1352 (Fed. Cir. 2015) or “to entertain a taking[s] claim that requires the court to scrutinize the actions of another tribunal,” *Innovair Aviation Ltd., v. United States*, 632 F.3d 1336, 1344 (Fed. Cir. 2011) (quoting *Vereda Ltda. v. United States*, 271 F.3d 1367, 1375 (Fed. Cir. 2001)). In challenging the dismissal of Count I on appeal, Barth argues that the Claims Court was wrong. He contends that the jurisdiction of the Claims Court is “broader than that of other federal courts” and that “[n]o reason whatsoever was produced [in the Claims court’s opinion], not even a poor argument, for denying jurisdiction on *any* of the grounds asserted.” We disagree. The Claims Court’s opinion was well-reasoned and is fully supported by the cases cited and relied upon. Barth’s attempts to distinguish his case from *Innovair* based on differences in the facts underlying the cases cited therein have no merit. His reliance on *Boise Cascade Corp. v. United States*, 296 F.3d 1339 (Fed. Cir. 2002), which did not address judicial actions similar to those alleged in Count I, also has no merit. Barth also contends that Count I should not have been dismissed because Article III of the United States Constitution gives courts in the United States, such as the Claims Court, extensive authority. But Barth fails to appreciate that the Claims

Court is a court established under Article I and not Article III and that its jurisdiction is statutorily limited under the Tucker Act. *See 28 U.S.C. § 1491.*

II

Counts II and III assert claims against various individuals and organizations based on alleged violations of the Copyright Act and the Racketeering Influenced and Corrupt Organization Act "and corresponding treaties and statutes of foreign powers." Amended Complaint at 13.

Barth contends that the jurisdiction of the Claims Court extends to individuals and organizations in addition to the United States and that a claim under the Tucker Act does not require money damages. Barth is wrong on both points. Jurisdiction of the Claims Court is established by the Tucker Act, which contains no provision extending jurisdiction of that court to any individual or organization other than the United States—or to any claims other than for liquidated or unliquidated damages. 28 U.S.C. § 1491(a)(1) ("The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claims *against the United States . . . for liquidated or unliquidated damages.*") (emphases added); *United States v. Sherwood*, 312 U.S. 584, 588 (1941) ("[J]urisdiction [of the Claims Court] is confined to the rendition of money judgments in suits brought for that relief against the United States.").

III

The court has carefully considered Barth's other arguments and concludes they have no merit.¹

IV

For the foregoing reasons, the judgment of the Claims court is affirmed.

Appendix D: Decision of Mass. District Court

Jurisdictional quibbling, ignoring that of the CFC.

Judge Richard G. Stearns: ELECTRONIC ORDER entered. ORDER DISMISSING CASE.

John Barth, Jr., a resident of Maine, filed this case in the Massachusetts federal district court asserting violations of the copyright laws by an army of internet entities which he alleges illegally "marketed" or "assisted... in the theft of his book" The National Memorial. Barth also names the "United States" as a defendant claiming that his private property was taken in violation of the Fifth

Amendment to the United States Constitution by the actions of [a United States] District Judge [for the Central District of California] who refused, to seal [Barth's] case... or to disqualify himself to permit a judge with knowledge of internet racketeering to handle the case, and published the unredacted document on the court and Pacer websites thereby notifying the defendants and allowing them to destroy evidence and move assets out of the country and beyond recovery by [Barth]." Compl. at 9. Barth makes no other claims involving the United States.

Pursuant to 28 U.S.C. § 1391, which "govern[s] the venue of all civil actions brought in district courts of the United States[.]" a civil action may be brought in "(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action." <Id. § 1391(b). No defendant resides in Massachusetts, and no act of which the plaintiff complains transpired here.

Consequently, this action is properly in Massachusetts only if there is no other judicial district in which it could have been brought. While many of the defendants are foreign entities, there are several corporate defendants, and some individual defendants, located within the United States, although the Complaint identifies none who are residents or have a place of business in Massachusetts.

The Complaint also names the United States as a party. Section 1391(e)(1) states that "[a] civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which (A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (C) the plaintiff resides if no real property is involved in the action." 28 U.S.C. § 1391(e)(1). Again, venue is improper in Massachusetts in that the "government" appears in the Complaint only in the person of a judge in the Central District of California. As the governmental action transpired there, and plaintiff in this non-res action resides in Maine, section 1391(e)(1) provides no relief.

Because the defense of improper venue is "obvious from the face of the complaint and no further factual record is required to be developed," this action will be dismissed, without prejudice, to be refiled in an appropriate district. *Trujillo v. Williams*, 465 F.3d 1210, 1217 (10th Cir. 2006); see also *Cox v. Rushie*, No. CA 13-11308-PBS, 2013 WL 3197655, at *4 (D. Mass. June 18, 2013). As the court finds

that it lacks jurisdiction for want of venue, the court will not comment on the doctrine of judicial immunity on which the governments motion to dismiss is based.

The Clerk will close the case and return Barths filing fee. (Zierk, Marsha)
(Entered: 11/30/2018)

Appendix E: Mass. District Fails to Reconsider

Asserting numerous errors of fact and law

Judge Richard G. Stearns: ELECTRONIC ORDER entered GRANTING in part and DENYING in part 16 Motion for Reconsideration.

(1) Plaintiff now states that despite the literal wording of his Complaint, his intention is to name only the United States as a defendant. (2) The only wrongful acts attributed to the United States are those arising from the acts of the California District Judge accused of aiding and abetting tortious interference with plaintiffs intellectual property. (3) The accused Judge, as plaintiff now acknowledges, enjoys absolute immunity as his alleged wrongful acts were undertaken in his official capacity. (4) The law does not recognize a theory of derivative liability under which the acts of an immune official can be attributed to the United States except in those instances specified in the Westfall Act. (5) Any waiver of sovereign immunity is narrowly construed. (6) There is no plausible basis upon which the United States could be held to have waived its sovereignty under the Westfall Act with a respect to a claim of tortious interference with intellectual property. (7) The Tucker Act is irrelevant as plaintiff has alleged no plausible contract, express or implied, with the United States or the accused judge. (8) Because the Complaint as narrowed by plaintiff in the motion to reconsider is utterly devoid of merit, reassignment to another judge would be futile. (9) For the same reason, the Complaint is hereby DISMISSED. (10) The court withdraws its instruction to the Clerk to refund to plaintiff the filing fee. (Zierk, Marsha) (Entered: 12/06/2018)

Appendix F: Decision of First Circuit Court

Asserting errors of law but contradicting the COFC

**United States Court of Appeals
For the First Circuit
No. 18-2243
JOHN BARTH, Plaintiff, Appellant,**

v.

UNITED STATES, Defendant, Appellee.

Before Howard, Chief Judge,
Torruella and Barron, Circuit Judges.

JUDGMENT

Entered: August 7, 2019

Plaintiff-appellant John S. Barth appeals from the district court's dismissal of his complaint pursuant to Fed.R.Civ.P. 12(b)(1) for lack of subject matter jurisdiction. Defendant-appellee moves for summary disposition on the ground that no substantial questions are presented by this appeal. See 1st Cir. R. 27.0(c). Appellant moves for summary reversal. We summarily affirm the dismissal of the complaint on the ground of sovereign immunity.

"It is beyond cavil that, as the sovereign, the United States is immune from suit without its consent." *Muirhead v. Mecham*, 427 F.3d 14, 17 (1st Cir.2005). Barth's claims against the United States seek damages for alleged violation of his federal constitutional rights stemming from actions of the federal judge who presided over his copyright infringement case, *Barth v. Playster Corp., et al.*, No. 17-cv-00274 (C.D. Cal. 2017). Barth's reliance upon the Tucker Act as the source of the district court's jurisdiction is misplaced. The Court of Federal Claims, where Barth initially filed suit, "has exclusive jurisdiction for constitutional claims against the United States exceeding \$10,000." *Id.* at 177.1

¹ "The Little Tucker Act gives district courts 'original jurisdiction, concurrent with the United States Court of Federal Claims,' for, *inter alia*, constitutional claims 'not exceeding \$10,000 in

Barth's complaint (which, he has explained, names only the United States as a defendant) sought damages in excess of \$4 million. The fact that the Court of Federal Claims dismissed Barth's claims against the United States for lack of jurisdiction on other grounds, See *Barth v. United States*, 137 Fed.Cl. 65 (2018), aff'd, 737 Fed.Appx. 540 (Fed. Cir. 2018), does not entitle Barth to bring these claims in a federal district court. See *United States v. Tohono O'Odham Nation*, 563 U.S. 307, 317 (2011).

We note as well that "the Tucker Act does not create any substantive right enforceable against the United States for money damages, but merely confers jurisdiction when such a right is conferred elsewhere." *Adair v. United States*, 497 F.3d 1244, 1250 (Fed. Cir. 2007). Barth's claims against the United States are founded on the acts and omissions of a federal district judge acting within his judicial capacity. "Few doctrines [are] more solidly established ... than the immunity of judges from liability for acts committed within their judicial jurisdiction." *Pierson v. Ray*, 386 U.S. 547, 553–54 (1967).

Appellee's motion for summary affirmance is granted. Appellant's motion for summary reversal is denied. See 1st Cir. R. 27.0(c).

By the Court: Maria R. Hamilton, Clerk