

22-7490

SUPREME COURT OF THE UNITED STATES.

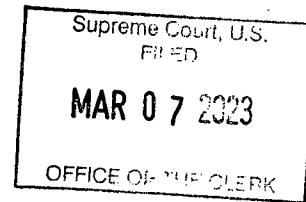
WENDELL W. PHILLIPS,

Petitioner,

v.

THE UNITED STATES,

Respondent,



On Petition for a Writ of Certiorari to
The United States Court of Appeals
For the Federal Circuit

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I. Question Presented

Whether, the United States Court of Appeals for the Federal Circuit, has jurisdiction to rule on a petition for a writ of mandamus, against a lower court, based on a **Supreme Court Rule 10(a)(c) a single set of circumstances**, that are couched in the form of a **compulsory counter claim**, fashioned as a **12(b)(1) Motion to Dismiss** Plaintiffs complaint, that evolves around **cognizable claims; that are** federally secured protected `substantive private rights, such as **just compensation** and **illegal exaction**, can be perceived as an injury caused creating a manifest injustice, through the overriding and bypassing **LEGISLATIVE ENACTMENTS, that are inextricably intertwined with the (gravamen) (merits) to complaint**, is identified as a **Rule 54(b)** partial judgment in the form of an abuse of discretion?

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IV. Petition for Writ of Certiorari

The Petitioner in this current case at bar is acting as a Private Attorney General Wendell W. Phillips and respectfully petitions the United States Supreme Court to review this writ of certiorari coming from the United States Court of Appeals For the Federal Circuit on a writ of mandamus to correct a manifest injustice where federally secured protected substantive rights are severely damaged from ignoring just compensation while enforcing an illegal exaction.

V. Opinions Below

The decision made by the United States Court of Federal Claims see **ORDER Ex. (O3)** asserting that “On July 23, 2022, plaintiff filed a motion for relief from judgment, pursuant to Rule 60(b) (6) of the Rules of the United States Court of Federal Claims (‘RCFC’) ... To be timely, “[a] motion under RCFC 60(b) must be made in reasonable time’... (holding that a motion brought pursuant to RCFC 60(b)(6)... was filed more than eight months after the Court’s dismissal was not brought within reasonable time.” According to **Kennedy v. Secy of Health Servs., 99 Fed.Cl.535, 548(Fed. Cir2021)** RCFC Rule 60(b)(6) pertains to “[**exceptional or extra ordinary circumstances exist**]” when, absent of relief a “grave miscarriage of justice” would result, and a party’s “substantive rights”... would be harmed.” Id at 548. Therefore the denial of just compensation and illegal exaction creates an injury.

The decision made on September 14, 2022, by the United States Court of Appeals for the Federal Circuit denied Petitioners writ of mandamus because it failed to recognized a series of incredulous events from bogus Grand Jury investigations to illegal subpoena falsely accusing Mr. Phillips of threatening to kill a Federal District Court Judge in Michigan Federal District Court, while Plaintiff is litigating Daktronics Inc, the FBI is stealing Plaintiff’s property to illegally engage in contracts with Clear Channel Outdoor Advertising and, Daktronics Inc. **See Ex (N). See Ex (M) p.3,4 and 5 notice the date 04/28/2005, within two weeks after releasing my property Daktronics Inc and Clear Channel are contracting on May 12, 2005. See Ex(B2). In 2007 the FBI joins in by contracting with Clear Channel and Daktronics Inc. See Ex(B3). See Ex(C4) inducement to digital billboards. See Ex(D) Marketing Plans. In 2008 the Department of Justice assists the FBI in clearing a regulatory hurdle in Feburary 14, 2008. See Ex(F).**

VI. Jurisdiction

This current case at bar meets the time deadline from an **ORDER** by the United States Court of Appeals for the Federal Circuit dated December 8, 2022 where 90 days lands on March 8, 2023. See Ex (O2). The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction on unadjudicated unenforceable counterclaims precludes finality. In other words an unenforceable counter claim there was no final decision within the meaning of **28 U.S.C. § 1295(a) (1) “in any civil action which a party has asserted a compulsory counterclaim arising under any patents.”** Here we can see why Judge Griggsby by passed legislative enactments , and therefore the **12(b)(1) motion has no finality.**

VII: United States Constitution, Amendment

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” And Grand jury Investigations under the Fourth Amendment. “The Fifth Amendment protection against the taking of property by the government without compensation.” The Seventh Amendment Right To A Jury Trial. 1

VIII. Statement of the Case

“If an action at law evokes an equitable counterclaim, the trial judge would order the legal issues to be separately tried after the disposition of equity issues. In this procedure however, resjudicata and collateral estoppel would operate so as to curtail the litigants right to a jury finding on factual issues common to both claims. .However, priority of scheduling was considered to be a part of discretion”. Federal statutes prohibiting courts from sustaining suits in equity if remedy was complete at law served to guard the right of trial by jury and were liberally construed”. This is a 7th Amendment violation within itself, is to be considered as the first wave of an abuse of discretion by Judge Griggsby. See **Bell Atlantic Corp. v. Twombly , 127 S. ct. 1955, 1974 (2007) (overruling Conley v. Gibson , 355 U.S. 41(1967).** “and setting new standard for failure to state a claim upon which relief may be granted). The Court must view the complaint most favorably to’ the non- moving party and “may dismiss only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.”

The second wave of abuse of discretion pertain to “**Just Compensation**” that involves ongoing violations that cannot be time barred by statute of limitations. The government “must pay compensation for a judicial taking per the taking clause in 5th Amendment, and as applied to the steps, per the Fourteenth Amendment as conferred in **Stop the Beach Renourishment Inc; v. Fla Dept of Evn’t Protection, 560 U.S. 702, 715, S.Ct. 2592, 2602 (2010).** In sum the Taking Clause bars [government] from taking private property without paying for it, no matter what branch is instrument of taking ...If a legislature or a court declares that what was once an established right of private property no longer exists, has taken that property no less than if the [government] had physically appropriated or destroyed its value by regulation.”

In **Eastport Steamship Corp. v. United States 372 F.2d 1002 Ct. Cl. (1967).** the court held that “the Tucker Act must demonstrate that the statutory source of substantive law can fairly be interpreted as money mandating compensation by the Federal Government for the damage sustained”. Note that an illegal exaction “ the Federal Circuit has long taken to characterize an “ illegal exaction” as a violation of Due Process Clause of the Fifth Amendment because the government had no legal authority to exact the funds or property.” See **Norman v. United States, 429 F.3d 1081 (Fed.Cir. 2005).**

Note that the Tucker Act protected jurisdiction over money –mandating claims see **Roth 378 F.3d at 1384** “ A money mandating claim seeks money from the government based on a statute that “ can fairly be interpreted as mandating compensation by the Federal government for damage sustained” **Mitchell , 463 at 217 (quoting Testan, 424 U.S. at 400).**”

Note that the **Continual Violation Claims Doctrine** allows Plaintiff to include its allegations of some events that occurred outside the statute of limitations if the Plaintiff “has a series of distinct events – each of which give rise to a separate cause of action, a single continuing event “**Ariadine Fin Services PTY. LTD. v. United States 113 F.d 874, 879 (Fed. Cir 1998), according to Wagstaff v. United States, 99, 112 (2012) (quoting Tamerlane, LTD v. United States, 550 F.3d 1135, 1145 (Fed Cir 2008))** asserting “the continuing claims doctrine operates to save later arising claims even if the statute of limitations has lapsed for earlier ... For the doctrine to apply to save an otherwise untimely claim , the claim must be “inherently susceptible to being broken down into a series of independent and distinct events or wrongs , each having its own associated damages”.

XI. REASON FOR GRANTING THE WRIT OF CERTIORARI

According to the Petition for Writ of Mandamus RCFC 54(b) on p.6-7 asserts “continual violations abuse of discretion when Judge Griggsby “elects to by-pass jurisdictional challenges” that is considered “Ultra Vires “when the Judge enforced a RCFC 12(b)(1) Motion for a lack of subject-matter jurisdiction, which is a compulsory counterclaim after the U.S Government failed to answer Plaintiff’s complaint..Ultra Vires according to Montez v. Department of Navy 392 F.3d 147 at 140 (2004) (quoting) Williamson v. Tucker 645, F.3d 404 at (1981), held “a court is proceeding ultra vires from the point it elects to bypass jurisdictional challenges.” Therefore Plaintiff’s “Entry for Default Judgment” is enforceable in this current case at bar.

On p.10-11 of Judge Griggsbys **MEMORANDUM OPINION AND ORDER**, points out that Plaintiffs case was dismissed because it was sounding in tort. See **Ex(O1) filed November 13, 2017**. However, according to Taylor v. United States 959 F.3d 1081 (Fed. Cir2020), the Federal Court of Appeals held “that interference with contract claim could theoretically be framed as either a taking or a tort, Tucker Act jurisdiction for a taking was the exclusive venue for this particular claim. The (FTCA) explicitly excludes claim interference with contract rights”.

What holds the 4th and 5th Amendments together is the Tucker Act, while Judge Griggsby intentionally separates the two, to be perceived as a tort. However in Plaintiff’s Money Mandate Complaint, see **Ex (A) Case 1: 17-cv- LKG Document Filed 07/17/17 page 19 of 20 p. 15 of complaint (c) Consequential damages**, points to just compensation from illegal exaction, by confiscating Plaintiff’s property through a bogus FBI Grand Jury Subpoena investigation see **Ex(N).. See Ex(M)**

According to Pratt v. United States, 50 Fed .Cl. 469, 480, (2001), asserting “that a claim for tortious breach of contract has been recognized ‘not [to be] a tort independent of a contract so as to preclude the Tucker Act jurisdiction.” Nor does the fact that consequential damages are alleged make the claim a tort claim; rather, an allegation of consequential damages “presumes that the plaintiff s are proceeding under a contract theory. See e.g Bohac v. Dept of Agric, 239 F.3d 1334, 1339-40 (Fed Cir. 2001) recognizing “ consequential damages as a “ contract law concept”. As long as the claim “[specifically relates] to a contractual obligation” it will survive a motion to dismiss.”Therefore 12(b)(1) motion void.

If we look at the abuse of discretion applied in Judge Griggsby’s MEMO the 12(b)(1) motion to dismiss is void, as it has injured Plaintiff’s federally secured substantive private rights pertaining to just compensation and an illegal exaction created by the FBI. See Disilva v. State of Indiana infra; where the Seventh Circuit recognized Rule 54(b) as a partial judgment made like Judge Griggsby who bypassed the merits of Plaintiffs complaint, where the gravamen of the substantive rights became injured, that now seeks remedy for just compensation. See **Ex(01) MEMORANDUM p.11 ¶ 3(B)**.

“The Petition in this current case at bar is pointing out in pursuant to **28 U.S.C. § 1651**, that a writ of mandamus is in demand “ wherever a public officer or government has done some act which violates the fundamental right of a person, the court would issue a writ of mandamus, restraining the public officer or government from enforcing that order or doing that against the person whose fundamental rights has been violated”.

The federal statute **18 U.S.C. § 242** “ makes it a crime for any person acting under the color of the law, statute, ordinance, regulation or custom, to willfully deprive or cause to be deprived from any person those rights, privileges, or immunities, secured or protected by the Constitution and laws of the U.S.

..Acts under “ color of any law” include acts not only done by federal, state, or local officials within the bounds or limits of their lawful authority; provided that, in order for unlawful acts of any official to be done under “color of any law, “ the unlawful acts must be done while such officials is purporting or pretending to act in the performance of his/her official duties”.

The 3rd wave of abuse of discretion focus on RCFC Rule 54(b) exclusively under the legal scope of “an appeal filing deadline”. According to **Bowles v. Russell 551 U.S. 205, 210 -213** , an appeal filing deadline prescribed by statute is considered “ jurisdictional, meaning that late filing of the appeal notice necessitates dismissal of appeal”. See Reed **Elsevier, Inc . v. Muchnick 559 U.S. 154, 161(2010)**, making a distinguishing contrast pertaining to a time limit that are prescribed by common law court rules, that are not classified as jurisdictional, but rather a mandatory claim processing rule that may be waived or forfeited.

In **Hamer v. Neighborhood housing Services of Chicago 138 S.Ct. 13 (2017)**, Justice Ginsburg made a clear and distinguishing contrast on non-jurisdictional Federal Rule of Appellate Procedure, while citing **Bowles v. Russell supra**; in her opinion that “held an appeal filing deadline prescribed by statute is “jurisdictional” in that missing the deadline requires dismissal of the appeal...applying the principle that only Congress may determine a lower federal court’s subject matter, the Court noted that in contrast to congressional legislation, court made rules (including the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure) cannot be jurisdictional. The Court vacated the decision on the Seventh Circuit and remanded for further proceedings”.

In this current case at bar the Petitioner/Plaintiff contends that Judge Griggsby abused her discretion when failing to exercise the “**Intertwined With The Merits Exception to Rule 12(b)(1)**”, resulting from the usurpation of congressional legislative enactments (statutes) that establish subject-matter jurisdiction where the merits to a claim are inextricably intertwined.

According to **Andy Mcbeath v. Interim Citizens Decency et.al 374 F.2d 359 (5th Circuit 1967)**, that of which is cited on p. 4,5, of In Re Wendell W. Phillips Petition For Writ of Mandamus Rule 54(b), making reference to p.6 of writ of mandamus on ¶1-2 citing congressional legislative enactments such as Executive Order Continual Violation of Count – IV 15 U.S.C. § 1-15 of the Sherman Anti Trust Act; and Continuing Violation of the 1964 Title VII Civil Rights Employment Act 42 U.S.C. § 2000(e) (Executive Order 8802), were also gutted out from the Constitutional templates. See Cheney infra, in the separation of power. See Plaintiff’s Money Mandate case1:17 -cv- 00968-LKG Document 1 filed 07/17/17 page 5 of 20 p.14 discussing Continual Violations, See p.15 citing **(c) Consequential Damages** asserting “as a result of being denied to litigate, the conspiring parties with the assistance from the State of Michigan and support from the FBI. The damages incurred from Plaintiff’s Business, patent, drawings, scketches, business plans, marketing plans, trade secrets”.

On November 13, 2017 Judge Griggsby abused her discretion when she enforced a 12(b)(1) Motion to Dismiss for a lack of subject-matter jurisdiction when she bypassed jurisdictional challenges, that were inextricably intertwined to congressional legislative enactments, where she totally and willfully disregarded the “**[Intertwined With The Merits Exception Rule to 12(b)(1)]**”. As a result Judge Griggsby changed the narrative of a late compulsory counterclaim in the form of a responsive pleading shaped and fashioned as a 12(b)(1) motion to dismiss; bypassing legislative intent pursuant to-

28 U.S.C. § 2508 in order to deny **“Plaintiff’s Right To A Jury Trial,”** on the merits that established a cause of action and subject-matter jurisdiction pursuant to 28 U.S.C. § 14 (a)(1)(b)(1) of the Tucker Act, seeking relief in an Article III § II money mandate complaint, while seeking relief in consequential damages. See **Ex(A)** Plaintiff’s Money Mandate Complaint Case 1:17-cv-00968-LKG Document 1 Filed 07/17/17 Page 18 of 20 citing Counts IV and V Continual Violations, and page 19 Consequential damages involving patent. Here it can be construed that a partial judgment when compared with the Seventh Circuit Court of Appeals in **Disilva v. State of Indiana WL 1024210 20-2238 , (7th Cir. 2022)**, was enforced pursuant to Rule 54(b) partial judgment, that created a prejudice in denying Plaintiff a federal jury trial. The Seventh Circuit held that there is no set timeline or deadline, and that any delay in seeking a partial judgment, the court suggests, should instead affect the propriety of that partial judgment. The Seventh Circuit made it clear that a Rule 54(b) partial judgment can be reviewed for as an abuse of discretion.

Notice that Judge Griggsby’s **MEMORANDUM OPINION AND ORDER**, on November 13, 2017 cites on p. 11 **(B) THE COURT DENIES PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT**, asserting “plaintiff has moved for default judgment pursuant to RCFC 55(b)... As the government correctly notes in its response and opposition to plaintiff’s motion for default judgment, jurisdiction to hear a claim is a threshold question that must be resolved before proceeding with the merits of plaintiff’s claims”. See **Ex(O1)**

Its important to note that Rule 42(b) is under the purview of Rule 13 (a) being identified as separate trials for the purpose of claims and counter claims. According to Rule 13(c) Relief sought in a Counter Claim “A counterclaim need not diminish or defeat the right to recovery sought by the opposing party. It may request relief that exceeds in amount or differs in kind from relief sought by the opposing party”.

In addition in pursuant to Rule 13(h) Separate Judgments. “If the court orders separate trials under RCFC 42(b), it may enter judgment on a RCFC 54(b) when it has jurisdiction to do so, even if the opposing party’s claims have been dismissed or otherwise resolved.”

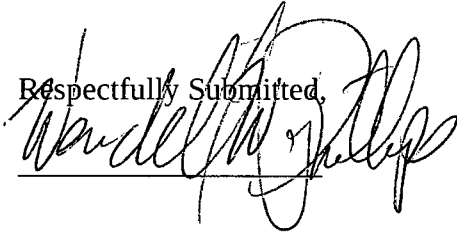
CONCLUSION

Therefore when Judge Griggsby enforced a 12(b)(1) motion to dismiss, it bypassed congressional legislative enactments that are inextricably intertwined that establishes a cause of action and subject-matter jurisdiction. And it is for that reason the judgment made is recognized as ultra vires, indicating that the judgment is void and precludes finality. Also, RCFC Rule 54(b) shall be recognized as an abuse of discretion because in the event of the bypassing the “Intertwined With The Merits Exception Rule 12(b)(1) was not exercised to prevent Plaintiff’s federally secured substantive rights from becoming injured, that resulted into not only promoting a prejudice to a Right to a Jury Trial, but also creating a manifest injustice.

Plaintiff’s RCFC 55(b) Default Judgment in this current case at bar should be enforced upon remand, according to Justice Ginsburg Opinion in **Hamer v. Neighborhood Housing supra; citing Bowles v. Rusell supra;** where the Supreme Court “held an appeal filing deadline prescribed by statutes is “jurisdictional” in that missing the deadline requires dismissal of the appeal...applying the principles that only Congress may determine a lower federal court’s subject-matter jurisdiction, the Court noted that in contrast to congressional legislation, court made rules (including the Federal Rules of Civil Procedure, and Federal Rules of Appellate Procedure) cannot be jurisdictional.”

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be "Wendell M. J. [unclear]", written over a horizontal line.

Date May 5, 2023