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NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

DAVID LEE SMITH, individually and in his capacity as Legal Representative of The Estate of Mary Julia Hook,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2022-1968

Appeal from the United States Court of Federal Claims in No. 1:22-cv-00052-AOB, Judge Armando O. Bonilla.

ON MOTION

PER CURIAM.

O R D E R

David Lee Smith moves for leave to proceed *in forma pauperis*. After consideration of the complaint, the judgment of the United States Court of Federal Claims, and Mr. Smith's opening brief, we dismiss the appeal.

Appendix A

In 2019, the United States District Court for the District of Colorado entered an order of foreclosure and judicial sale of Mr. Smith's home. After unsuccessfully exhausting his appeals in that matter, Mr. Smith filed this suit on his own behalf and as the representative of his deceased wife's estate at the Court of Federal Claims asserting an unlawful judicial taking of property in violation of the Takings Clause of the Fifth Amendment. The complaint alleged that the district court failed to comply with all necessary procedures, including failing to set off amounts owed, failing to determine the proper amount of federal taxes owed, and failing to distribute tax exemptions. The Court of Federal Claims granted Mr. Smith's motion for leave to proceed *in forma pauperis* and dismissed for lack of jurisdiction, certifying under 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith. Mr. Smith now appeals, seeking in his brief for this court to "declare the judgments and orders of . . . the District of Colorado and . . . the Tenth Circuit void . . . because of the jurisdictional defects and due process violations in those courts." ECF No. 5-1 at 3.

Given Mr. Smith's motion and the § 1915(a)(3) certification, it is appropriate to assess whether Mr. Smith's appeal complies with 28 U.S.C. § 1915(e)(2)(B)(i), which provides "the court shall dismiss . . . if the court determines that . . . the action or appeal . . . is frivolous." It is well settled that the Court of Federal Claims "cannot 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, 1342 (Fed. Cir. 2011) (citation omitted, alteration in the original); *Petro-Hunt, L.L.C. v. United States*, 862 F.3d 1370, 1385 (Fed. Cir. 2017); *Shinnecock Indian Nation v. United States*, 782 F.3d 1345, 1353 (Fed. Cir. 2015). Mr. Smith has raised no cogent, non-frivolous argument on appeal for why the Court of Federal Claims would have jurisdiction over his complaint that, at bottom, challenges the district court's

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rulings in his foreclosure case through collateral proceedings. We therefore dismiss this appeal as frivolous.

Accordingly,

IT IS ORDERED THAT:

(1) The motion for leave to proceed *in forma pauperis* is denied.

(2) The appeal is dismissed.

(3) Each side shall bear its own costs.

FOR THE COURT

August 31, 2022
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

In the United States Court of Federal Claims

No. 22-52C
(Filed: June 6, 2022)

DAVID LEE SMITH, individually and
in his capacity as Legal Representative of
THE ESTATE OF MARY JULIA HOOK,

Plaintiff,

v.

UNITED STATES,

Defendant.

ORDER

On January 14, 2022, plaintiff pro se David Lee Smith, on behalf of himself and his late spouse, Mary Julia Hook, filed this action in this Court alleging an "unlawful judicial taking" of the couple's "home and personal property" without just compensation in violation of the Fifth Amendment to the United States Constitution. See ECF No. 1 ¶¶ 2, 14 (wherefore clause). Specifically, Mr. Smith asserts that the judicial foreclosure proceedings conducted in the United States District Court for the District of Colorado were legally and procedurally flawed. See id. ¶¶ 3-13. Mr. Smith seeks to recover approximately \$1.5 million—an amount equal to the forfeiture sale proceeds—plus interest. See id. ¶¶ 3, 7-8, 14 (wherefore clause).

The United States moves to dismiss Mr. Smith's complaint for lack of subject matter jurisdiction or, in the alternative, for failure to state a claim upon which relief can be granted pursuant to Rules 12(b)(1) and 12(b)(6), respectively, of the Rules of the United States Court of Federal Claims (RCFC). See ECF No. 13. The Court concludes that it lacks jurisdiction to address Mr. Smith's takings claim and that the jurisdictional defects are incurable. Accordingly, the government's dispositive motion is granted under RCFC 12(b)(1).

The judicial forfeiture proceedings at issue in this case were exhaustively litigated in the United States District Court for the District of Colorado. See LNV Corp. v. Hook, No. 14-955, 2019 WL 1505871, at *1 (D. Colo. Apr. 5, 2019). Mr. Smith (and Ms. Hook) thereafter exhausted their appeals to the United States Court of Appeals for the Tenth Circuit and the United States Supreme Court. See LNV Corp. v. Hook (Hook I), 807 F. App'x 893, 894

1 In his Complaint, Mr. Smith represents that he is an attorney, as was Ms. Hook, although he not a member of this Court's bar. See ECF No. 1 at ¶ 1.

Appendix B

(10th Cir.) (appeal dismissed as frivolous; motion to proceed *in forma pauperis* denied), *reh'g denied* (June 30, 2020), *cert. denied sub nom. Hook v. United States*, ___ U.S. ___, 141 S. Ct. 939 (2020); *LNV Corp. v. Hook (Hook II)*, 844 F. App'x 94, 94 (10th Cir.) (appeal dismissed as frivolous), *cert. denied sub nom. Smith v. United States*, ___ U.S. ___, 142 S. Ct. 628 (2021).

It is well established that “the Court of Federal Claims lacks jurisdiction to review the merits of a decision rendered by a federal district court.” *Petro-Hunt, L.L.C. v. United States*, 862 F.3d 1370, 1384-85 (Fed. Cir. 2017) (affirming dismissal of “judicial takings claim”) (citing *Shinnecock Indian Nation v. United States*, 782 F.3d 1345, 1352 (Fed. Cir. 2015) (“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.”)). The proper forum to challenge federal district court decisions and orders is “through the usual appeal process.” *See Campbell v. United States*, 932 F.3d 1331, 1341 (Fed. Cir. 2019). As noted in the preceding paragraph, Mr. Smith (and Ms. Hook) already availed themselves of that path (twice); that the appeals to the Tenth Circuit and Supreme Court were not successful does not bestow upon this Court jurisdiction to hear a collateral challenge. *See id.* Put simply, Mr. Smith has had more than his day in court.

Additionally, to plead a viable Fifth Amendment takings claim in this Court, the “claimant must concede the validity of the government action which is the basis of the taking claim to bring suit under the Tucker Act, 28 U.S.C. § 1491.” *See Tabb Lakes, Ltd. v. United States*, 10 F.3d 796, 802-03 (Fed. Cir. 1993) (citations omitted). Here, Mr. Smith’s entire claim is based upon his contentions that the federal district court “lacked statutory jurisdiction or authority” to act and “failed or refused to follow” the law and required procedures. *See* ECF No. 1 ¶¶ 5, 7-12. To cure this jurisdictional defect would require Mr. Smith to concede the lawfulness of the challenged action, vitiating the fundamental basis for his purported claim (i.e., “*unlawful judicial taking*”).

For the reasons set forth above,

- (1) **Defendant’s Motion to Dismiss** plaintiff’s complaint (ECF No. 13) is **GRANTED**;
- (2) The Clerk’s Office is directed to **ENTER** Final Judgment **DISMISSING** plaintiff’s Complaint; and
- (3) The Court **CERTIFIES**, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith because, as alleged, plaintiff’s claims are clearly outside the jurisdiction of this Court and incurable.

IT IS SO ORDERED.

s/Armando O. Bonilla
Armando O. Bonilla
Judge

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

**DAVID LEE SMITH, INDIVIDUALLY AND IN HIS
CAPACITY AS LEGAL REPRESENTATIVE OF THE
ESTATE OF MARY JULIA HOOK,**
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2022-1968

Appeal from the United States Court of Federal Claims
in No. 1:22-cv-00052-AOB, Judge Armando O. Bonilla.

**ON PETITION FOR PANEL REHEARING AND
REHEARING EN BANC**

Before MOORE, *Chief Judge*, NEWMAN, LOURIE, DYK,
PROST, REYNA, TARANTO, CHEN, HUGHES, STOLL,
CUNNINGHAM, and STARK, *Circuit Judges*.

PER CURIAM.

ORDER

Appendix C

David Lee Smith filed a combined petition for panel rehearing and rehearing en banc. The petition was referred to the panel that issued the order, and thereafter the petition for rehearing en banc was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

FOR THE COURT

October 6, 2022

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

**Additional material
from this filing is
available in the
Clerk's Office.**