

# In the United States Court of Federal Claims

NOT FOR PUBLICATION

No. 01-2013L

(Filed March 27, 2009)

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**BUFFY WALLER,**

Plaintiff,

v.

**THE UNITED STATES,**

Defendant.

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## ORDER

On February 3, 2009, the defendant filed a Motion to Dismiss under Rule 12(b)(1) of the Rules of the United States Court of Federal Claims, for lack of subject matter jurisdiction. Attached as an exhibit to the motion was a copy of a title report showing that plaintiff Buffy Waller was not an owner of the subject property at the time of the alleged taking, nor at any time prior to the filing of the complaint in *Whitley v. United States*, 04-1331, the case in which her claim was originally brought. Indeed, it appears from this document that Ms. Waller has never owned an interest in the property.

Because Ms. Waller is currently litigating her claim pro se, the Court, by Order of February 12, 2009, informed her that she is allowed file a response or objection to the motion to dismiss, but that the response or objection would need to be filed no later than March 6, 2009. Concurrently, Chambers left a detailed voice message for the plaintiff, intending to alert her to the arrival of the order in the mail and informing her of its import. Both the order and the voice message emphasized that her failure to respond would result in a dismissal of her claim.

The government submitted evidence outside the pleadings, which it is permitted to do, *see Land v. Dollar*, 330 U.S. 731, 735 & n.4 (1947); *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 774 (Fed. Cir. 1988); *Forest Glen Props., LLC v. United States*, 79 Fed. Cl. 669, 676-78 (2007), demonstrating that Ms. Waller lacked the requisite ownership interest to seek compensation for the alleged taking. *See Lacey v. United States*, 219 Ct. Cl. 551, 560 (1979); *Bailey v. United States*, 78 Fed. Cl. 239, 269 & n.54 (2007). The plaintiff, however, has not

submitted any opposition to the government's motion to dismiss. In consequence, Ms. Waller has failed to carry her burden of demonstrating jurisdiction, *see Thomson v. Gaskill*, 315 U.S. 442, 446 (1942); *Contreras v. United States*, 64 Fed. Cl. 583, 586 (2005), as the government has shown she lacks standing to prosecute a claim relating to the subject property. Accordingly, the motion to dismiss Ms. Waller's claim for lack of subject matter jurisdiction is **GRANTED**. The Clerk is directed to close the case.

**IT IS SO ORDERED.**

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**VICTOR J. WOLSKI**

Judge