

# United States Court of Federal Claims

March 10, 2009

No. 08-734 C

UNPUBLISHED

**GREGORY A. RICE,**

*Plaintiff,*

v.

**THE UNITED STATES,**

*Defendant.*

*Gregory A. Rice, pro se, plaintiff.*

*Scott T. Palmer, Commercial Litigation Branch, United States Department of Justice, for defendant.*

## OPINION AND ORDER

**Block, Judge.**

Plaintiff Gregory A. Rice (“Rice”), proceeding *pro se*, filed the present action in this court on October 15, 2008. In his complaint, plaintiff asserts a variety of claims against the various defendants,<sup>1</sup> including fraud, copyright violation, and “dishonor of [a] U.C.C. security agreement.”

Currently before the court is defendant’s motion, filed on November 5, 2008, to dismiss *pro se* plaintiff’s complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the RULES OF THE UNITED STATES COURT OF FEDERAL CLAIMS (“RCFC”). Defendant also asks this court to deny plaintiff’s “affidavit/motion to amend original complaint” (“motion to amend”), filed on December 1, 2008, and plaintiff’s motion for summary judgment, filed on January 5, 2009. For the reasons stated below, this court grants the motion to dismiss and denies-as-moot plaintiff’s motions to amend the complaint and for summary judgment, because, even with his proposed amendment, plaintiff has failed to allege a claim within this court’s jurisdiction.

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<sup>1</sup> Plaintiff brings suit in this court against a motley collection of defendants. Mindful of the latitude accorded to *pro se* plaintiffs, this court will consider “United States Corporation,” the first of these defendants, to be the United States. This court lacks subject matter jurisdiction to entertain any suits against the remaining defendants, who comprise a variety of Maryland state offices and officials, including “Governor Martin O Malley [sic].” See 28 U.S.C. § 1491(a)(1) (granting this court jurisdiction to hear “any claim *against the United States* founded upon either 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.” (emphases added)).

## I. THE MOTIONS BEFORE THE COURT

In its “Motion for Summary Dismissal,” defendant seeks dismissal of plaintiff’s complaint on the grounds that the complaint fails to “articulate a claim within this Court’s power to decide.” Def.’s Mot. to Dismiss 2. Although no motion by that name exists in this court’s rules, a fair reading of defendant’s arguments leads the court to believe that the thrust of this motion is a dual attack based on motions to dismiss for lack of jurisdiction and for failure to state a claim pursuant to, respectively, Rules 12(b)(1) and 12(b)(6) of the RCFC.

Defendant first points out that plaintiff’s complaint identifies 28 U.S.C. § 1498—which grants the Court of Federal Claims jurisdiction to hear copyright infringement claims against the United States<sup>2</sup>—as the basis for this court’s subject matter jurisdiction. Def.’s Mot. to Dismiss 2 (citing Compl. at 2). However, defendant asserts that because plaintiff lists as the defendants in the caption of his complaint “United States Corporation”—not the United States, any of its agencies, or any entity acting on its behalf—and the State of Maryland, § 1498 does not grant this court jurisdiction to hear plaintiff’s claim. *Id.* Furthermore, defendant maintains that because plaintiff did not allege that he registered his copyright with the United States Copyright Office or had been denied such registration, 17 U.S.C. § 411(a) bars plaintiff from bringing a copyright infringement suit against any party. *Id.* at 2–3. *See* 17 U.S.C. § 411(a).

To the extent that plaintiff’s claims extend beyond copyright infringement, defendant argues that plaintiff has failed to identify a money-mandating statute as needed to establish this court’s subject matter jurisdiction. *Id.* at 3–4; *Jan’s Helicopter Serv. v. FAA*, 525 F.3d 1299, 1306 (Fed. Cir. 2008) (explaining that a money-mandating statute is required to bring a claim within the jurisdictional scope of the Tucker Act because the Tucker Act does not create a substantive cause of action). Echoing its objection to plaintiff’s identification of 28 U.S.C. § 1498 as a jurisdictional basis for his suit, defendant also asks this court to grant its motion to dismiss because plaintiff asserts claims against parties other than the United States or its entities. Def.’s Mot. to Dismiss 3–4; *Core Concepts of Fla., Inc. v. United States*, 327 F.3d 1331, 1339 (Fed. Cir. 2003) (holding that a government-owned corporation is not the United States and thus cannot be sued under the Tucker Act). To that end, defendant highlights that neither the United States nor any of its agents or entities is a party to the “security agreement” accompanying the complaint as Exhibit C, on which plaintiff apparently bases his claims.

After filing his response and sur-reply to the Motion to Dismiss, plaintiff filed an “affidavit/motion to amend original complaint” (“Motion to Amend”), in an attempt to address the jurisdictional flaws that defendant identified in its Motion to Dismiss and reply brief. In the Motion to Amend, plaintiff asks that “the original complaint and the foregoing motion to amend be

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<sup>2</sup> 28 U.S.C § 1498(b) states that “the exclusive action . . . shall be an action by the copyright owner against the United States in the Court of Federal Claims for the recovery of his reasonable and entire compensation as damages for such infringement . . .” *See Blueport Co., LLC v. United States*, 533 F.3d 1374, 1379 (Fed. Cir. 2008) (28 U.S.C § 1498(b) confers a right to sue the United States for copyright infringement).

preponderated [sic] under nature of suit code, 134 for general jurisdiction cases.”<sup>3</sup> *Id.* at 2. Plaintiff also asks this court to “remove all defendants in ref. to this action with the exception of the two defendants named within this motion,” those being “United States (Corporation)” and “STATE Department for state of Maryland Charter Div.” *Id.*

Responding to plaintiff’s “motion to amend,” defendant reiterates that plaintiff merely rehashes his previous arguments and still has not identified any facts that would give this court jurisdiction to hear his claim. Def.’s Resp. to Motion to Amend 2. Simply put, defendant maintains that plaintiff “does not allege any set of facts in which the United States violated a copyright, trademark, some contractual provision, or some money-mandating constitutional provision or statute.” *Id.* Moreover, defendant points out that the security agreement at issue, which plaintiff alleges that the United States violated, was only between parties identified as “GREGORY ALLEN RICE” and “Gregory Allen Rice©,” neither of which is the United States, nor any entity or agent thereof. *Id.* at 2–3. Defendant further contends that plaintiff has not alleged facts detailing how the United States could have breached that agreement, to which it was not a party. *Id.* Thus, defendant asks this court to deny the motion to amend and grant its motion to dismiss because plaintiff does not allege facts under which this court would have jurisdiction. *Id.* at 3.

## II. DISCUSSION

*Pro se* litigants have great leeway in presenting their issues to the court. *See, e.g., Forshey v. Principi*, 284 F.3d 1335, 1357–58 (Fed. Cir. 2002). “An unrepresented litigant should not be punished for his failure to recognize subtle factual or legal deficiencies in his claims.” *Hughes v. Rowe*, 449 U.S. 5, 15 (1980). This broad latitude extended to *pro se* litigants does not, however, exempt them from meeting this court’s pleading requirements. *Henke v. United States*, 60 F.3d 795, 799 (Fed. Cir. 1995) (recognizing that a litigant’s “act[ing] *pro se* in the drafting of his complaint may explain its ambiguities, but it does not excuse its failures”).

One such requirement, which every plaintiff must establish, is that this court has the jurisdiction to hear its claims. *See John R. Sand & Gravel Co. v. United States*, \_\_\_ U.S. \_\_\_, 128 S. Ct. 750 (2008); RCFC 12(b)(1). The Tucker Act, 28 U.S.C. § 1491, both confers jurisdiction on the Court of Federal Claims and waives the sovereign immunity of the United States for claims for money damages against the United States (and only against the United States) not sounding in tort. *See United States v. White Mountain Apache Tribe*, 537 U.S. 465 (2003); *Greenlee County v. United States*, 487 F.3d 871, 876 (Fed. Cir. 2007); *Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (*en banc* in relevant part). The Tucker Act, which, as a waiver of sovereign immunity, must be strictly construed, does not create a substantive cause of action. *See United States v. Mitchell*, 445 U.S. 535, 538 (1980). Instead, to invoke this court’s jurisdiction under the Tucker Act, “a plaintiff must [also] identify a contractual relationship, constitutional provision, statute, or regulation that provides a substantive right to money damages.” *Khan v. United States*, 201 F.3d 1375, 1377 (Fed. Cir. 2000). Thus, “to come within the jurisdictional reach and the waiver [of sovereign immunity] of the Tucker Act, a plaintiff must identify a separate source of substantive law that creates the right to money damages.” *Fisher*, 402 F.3d at 1172; *see also White Mountain*, 537 U.S. at 472.

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<sup>3</sup> Construing this cryptic phrasing most charitably to plaintiff, this court considers this to be a request to amend the complaint to assert jurisdiction under the Tucker Act, 28 U.S.C. § 1491(a)(1).

All of this means that when a claim is brought under the Tucker Act, the Court of Federal Claims must first consider whether the statute or regulation is money-mandating. *See Fisher*, 402 F.3d at 1172. “In doing so, the Court of Federal Claims asks only whether the plaintiff is within the class of plaintiffs entitled to recover under the statute if the elements of a cause of action are established.” *Greenlee County v. United States*, 487 F.3d 871, 876 (Fed. Cir. 2007). If the plaintiff has not identified a money-mandating statute in the complaint, the court must dismiss for lack of subject matter jurisdiction. *Adair v. United States*, 497 F.3d 1244, 1251 (Fed. Cir. 2007); *Fisher*, 402 F.3d at 1172. In contrast, a dismissal on the merits for failure to state a claim is appropriate when the plaintiff has identified a valid money-mandating statute but has failed to plead facts that fit within its scope. *Id.* This is a precept, as will be shown, that applies to this case.

It should be pointed out that other statutes may confer jurisdiction on this court. For example, and pertinent to this case, the Court of Federal Claims has exclusive jurisdiction under 28 U.S.C. § 1498(b), a money-mandating statute, to hear copyright infringement suits against the federal government and its agents and entities:

[W]henever the copyright in any work protected under the copyright laws of the United States shall be infringed by the United States, by a corporation owned or controlled by the United States, or by a contractor, subcontractor, or any person, firm, or corporation acting for the Government and with the authorization or consent of the Government, the exclusive action which may be brought for such infringement shall be an action by the copyright owner against the United States in the Court of Federal Claims for the recovery of his reasonable and entire compensation as damages for such infringement . . . .

28 U.S.C. § 1498(b).

To assess defendant’s combined motions to dismiss, this court must now examine plaintiff’s complaint, both as-filed and as would be amended, to determine whether plaintiff not only identifies a money-mandating statute and establishes jurisdiction, but also whether plaintiff alleges facts that fit that statute so as to state a claim.

#### **A. Does This Court Have Jurisdiction over Plaintiff’s Copyright, Trade Mark, and Trade Name Infringement Claims?**

Plaintiff alleges in the complaint that this court has jurisdiction pursuant to 28 U.S.C. § 1498. This jurisdictional basis, according to plaintiff, is sufficient for the court to hear, among others, his claims for “copyright, trade-mark, and trade-name” infringement. Compl. at 4. Plaintiff’s “Statement of Questions” appears to allege that the Circuit Courts of Washington County and Allegheny County, both in Maryland, along with “Robert bell [sic], who is the chief judge of the Maryland court of appeals [sic]” are “neglecting to honor said copyright laws.”

To be sure, as stated, the Court of Federal Claims has exclusive jurisdiction to hear copyright infringement suits against the federal government and its agents pursuant to 28 U.S.C. § 1498(b). But, § 1498 does not grant this court jurisdiction to hear claims of trademark or trade name infringement. *See* 28 U.S.C. § 1498 (only granting the Court of Federal Claims jurisdiction to hear

claims against the United States for infringement of patents, copyrights, plant patents, design patents, and semiconductor mask designs). Plaintiff has not, therefore, identified a statute that grants this court jurisdiction to hear his claims of trademark and trade name infringement.

Even plaintiff's copyright claim against the United States under § 1498(b), is deficient for two reasons. The first is that it does not state a claim upon which relief can be rendered because plaintiff has simply failed to allege any facts that the United States or its agents infringed plaintiff's valid copyright. *See Boyle v. United States*, 44 Fed. Cl. 60, 62–63 (1999) (dismissing copyright infringement claim where plaintiff did not allege activities of the government constituting direct infringement). The second is more fundamental—a failure to establish jurisdiction. This failure derives from the lack of any allegation that plaintiff either registered the copyright with the United States Copyright Office or that his attempt to register has been denied.

It is beyond cavil that no party can bring a copyright infringement claim without at least trying to register a copyright. 17 U.S.C. § 411(a) (barring copyright infringement suits where the copyright holder has not registered his copyright or been denied a copyright registration); *see Jennette v. United States*, 77 Fed. Cl. 126, 132 (2007) (citing 17 U.S.C. § 411(a) and dismissing copyright infringement suit for lack of subject matter jurisdiction where plaintiff did not allege that it registered for or had been denied a copyright from the Copyright Office).<sup>4</sup> Plaintiff's original complaint is bereft of factual allegations supporting the existence of a valid copyright or a registration or denial of registration from the Copyright Office.

To counter this deficiency, plaintiff contends that the “UCC finance statement” accompanying his complaint as Exhibit A “clearly shows that plaintiffs [sic] Copyright notice was accepted for filing and therefore is legal and binding.” Motion to Amend 3. But this UCC financing

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<sup>4</sup> This court agrees with Judge Sweeney that the copyright registration requirement is jurisdictional in that it is part-in-parcel of the waiver of sovereign immunity against the United States. This is born out by the literal language of 17 U.S.C. § 411(a), which provides in pertinent part:

[N]o action for infringement of the copyright in any United States work shall be instituted until registration of the copyright claim has been made in accordance with this title. In any case, however, where the deposit, application, and fee required for registration have been delivered to the Copyright Office in proper form and registration has been refused, the applicant is entitled to institute an action for infringement if notice thereof, with a copy of the complaint, is served on the Register of Copyrights.

*See Jennette*, 77 Fed. Cl. at 132 (holding that “as a condition to bringing suit, the plain language of the statute requires either the registration of the copyright or the Copyright Office's refusal to register the copyright”); *see also Blueport*, 533 F.3d at 1380–81 (Fed. Cir. 2008) (recognizing that this court lacks jurisdiction over any copyright infringement claim within the scope of the § 1498(b) “provisos” for government employees—where the employee could “order, influence, or induce” the use of copyrighted material by the government, “where the copyrighted material was prepared as a part of the official functions of the employee” and where “Government time, material, or facilities” were used to create the copyrighted material); *Blueport Co., LLP v. United States*, 76 Fed. Cl. 702 (2007) (same).

statement shows nothing of the sort. *See* Ex. A. The UCC finance statement, apparently filed with the Maryland Department of Assessments & Taxation, besides merely identifying the debtor for the purpose of the instrument as “GREGORY ALLEN RICE, ORGANIZATION/TRADE NAME/TRADE MARK,” lists collateral for financing, and reveals plaintiff’s address as the location to where an acknowledgment should be sent. *Id.* Significantly, the statement itself does not contain, establish, or otherwise identify a valid copyright. *See id.* The statement does, however, purport to have attached to it (*see* “box 10 misc.”) a document that plaintiff termed a “Copyright Notice.” Nonetheless, this so-called notice was not attached to any of plaintiff’s exhibits or filings, nor otherwise provided to the court. *Id.* All this is fatal to plaintiff’s cause, because nothing plaintiff proffered constitutes an allegation or evidence of a registration or denial of registration by the Copyright Office, the precondition to bringing a copyright infringement suit. *See Jennette*, 77 Fed. Cl. at 132.

In sum, plaintiff’s allegations of copyright infringement go well beyond the “subtle factual deficiencies” that a court will normally overlook when a *pro se* plaintiff is involved. *Hughes v. Rowe*, 449 U.S. 5, 15 (1980); *see Bradley v. Chiron Corp.*, 136 F.3d 1317, 1322 (Fed. Cir. 1998) (“Unwarranted inferences of fact do not suffice to support a claim”). Because plaintiff has not pled facts that aver even an attempt by the United States or its agents to infringe plaintiff’s alleged copyright, plaintiff has not stated a claim. Furthermore, this court must dismiss plaintiff’s copyright infringement claim for lack of jurisdiction because no allegation has been made that copyright registration has been filed or attempted to be filed. *See Jennette*, 77 Fed. Cl. at 132.

#### **B. Does This Court Have Jurisdiction over Plaintiff’s “Breach of Security Agreement” Claim?**

In the “Jurisdiction and Venue” section of his motion to amend, plaintiff apparently seeks to amend his original complaint so that it may be considered what is termed a “general jurisdiction” case. However, even considering plaintiff’s proposed amendments, this breach of contract claim fails to concretely allege with some degree of cogency how the federal government was a party to a breached contract. Pl.’s Mot. to Am. ¶ 3.

Here, the United States literally is not a party to the proffered “Security Agreement” that plaintiff claims was breached.” *See* Compl. Ex. C. To skirt this fact, plaintiff provides a theory that the United States and the State of Maryland were contracting parties because they (or presumably their authorized agents) drafted, (it is not clear) accepted, or ratified the security agreement between the governmental entities and parties identified as “GREGORY ALLEN RICE” and “Gregory Allen Rice©.” *See* Motion to Amend at 3–6. Plaintiff also appears to allege, as a sort of back-up theory, that the United States is a party to the contract because its forms were somehow used in drafting the agreement. Pl.’s Mot. to Am. ¶ 5(c).

It is black letter law that for a contract with the United States to be binding, the claimant must show that the United States unambiguously signed, accepted or ratified the contract. *Hometown Fin., Inc. v. United States*, 409 F.3d 1360, 1364 (Fed. Cir. 2005); *Harbert/Lummus Agrifuels Projects v. United States*, 142 F.3d 1429, 1434 (Fed. Cir. 1998). This, plaintiff has not alleged, let alone demonstrated, with the requisite specificity to state a claim that the federal government was a party to the security agreement. *Trauma Serv. Group v. United States*, 104 F.3d 1321, 1325 (Fed. Cir. 1997) (holding that offer, acceptance, and consideration, along with a government representative so

authorized, are required to bind the United States). And, of course, merely providing a form that parties may fill out and file in the appropriate jurisdiction does not make the United States a party to every such form agreement. *See Girling Health Sys. v. United States*, 949 F.2d 1145 (Fed. Cir. 1991) (holding that more than an IRS-issued form was needed to bind the United States to a contract).

Accordingly, plaintiff's factual allegations that the United States breached an agreement, an agreement that an authorized agent of the United States did not sign or ratify "simply defy any recognized standards of logic or belief, exceeding the mere 'subtle factual deficiencies' that would normally require judicial forbearance in favor of plaintiff, as a *pro se* litigant." *Harris v. United States*, 2006 WL 5668230 at \*3 (Fed. Cl. 2006) (quoting *Hughes*, 449 U.S. at 15); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) ("Because the plaintiffs here have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed").

### **III. CONCLUSION**

In view of the foregoing, plaintiff has failed to state a claim over which this court has jurisdiction. Defendant's MOTION TO DISMISS the complaint is GRANTED. Plaintiff's MOTION TO AMEND and MOTION FOR SUMMARY JUDGMENT are DENIED-AS-MOOT. The Clerk is directed to take the appropriate action to dismiss this matter. NO COSTS.

**IT IS SO ORDERED.**

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**Lawrence J. Block**  
**Judge**