IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL NO. 2:08cv590

B.C. ENTERPRISES, INC.,
d/b/a/ Aristocrat Towing,

and

EARNEST A. COOPER, JR.,

Defendants.

ORDER

The above-styled case comes before this Court upon the Motion of Defendants B.C. Enterprises, Inc. d/b/a Aristocrat Towing, and Earnest A. Cooper, Jr. ("Defendants") to Substitute Plaintiff Pursuant to Federal Rule of Civil Procedure 17 or, In the Alternative, to Dismiss the Complaint for Lack of Standing. On May 29, 2009, the United States filed a Response. On June 8, 2009, Defendants filed a Reply. The Motion is therefore ripe for review by this Court.

For the reasons stated herein, the Defendants' Motion is **DENIED** because the United States may bring this suit on behalf of a servicemember.

I. FACTUAL AND PROCEDURAL BACKGROUND

The United States filed the instant action on behalf of Navy Lieutenant Yahya Jaboori, who appears to have been an active duty service member of the United States Navy since March

7, 2003. (See Compl. ¶ 7.) Defendants operate an automobile towing and storage business in Norfolk, Virginia. (See Compl. ¶ 4.) On or about March 28, 2007, the United States alleges that Lt. Jaboori traveled to Iraq to begin a 179 day deployment. (Compl. ¶ 8.) At this time, Lt. Jaboori owned black 1991 Acura, which was registered in his name with the Department of Motor Vehicles. (See Compl. ¶ 9; Answer ¶ 9.) In early June 2007, while Lt. Jaboori was on deployment, Defendants towed Lt. Jaboori's car. (See Compl. ¶ 10; Answer ¶ 10.) The car had been parked at Centre Green Condominiums in Virginia Beach, Virginia, where Lt. Jaboori allegedly owned and resided in a condominium. (See Compl. ¶ 9; Answer ¶ 9.) Defendants then sold the car at auction without obtaining a court order. (See Compl. ¶ 11; Answer ¶ 11.)

On December 10, 2008, the United States filed the instant action, alleging that in towing Lt. Jaboori's vehicle, Defendants violated Section 537 of the Servicemembers Civil Relief Act, 50 App. U.S.C. § 537 ("SCRA"). Section 537 states, in relevant part, that:

> A person holding a lien on the property or effects of a servicemember may not, during any period of military service of the servicemember and for 90 days thereafter, foreclose or enforce any lien on such property or effects without a court order granted before foreclosure or enforcement.

50 App. U.S.C. § 537(a)(1).[1] The United States argues that "the conduct of Defendants . . . constitutes the enforcement of a storage lien on the property or effects of a servicemember during a period of military service of that servicemember without a court order" in violation of § 537. (Compl. ¶ 12.) The United States further alleges that "Defendants may have injured other servicemembers" in the same manner as they have harmed Lt. Jaboori's property interests.

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[1] The statute defines a "lien" as "a lien for storage, repair, or cleaning of the property or effects of a servicemember or a lien on such property or effects for any other reason." 50 App. U.S.C. § 537(a)(2).

(Compl. ¶ 14.)

Defendants, however, have a different view of the events that occurred in June 2007. Defendants argue that Lt. Jaboori's vehicle "seemed to be abandoned" and that the Centre Green Condominium Association requested that Defendants tow the car because the vehicle "was not in an assigned parking place and was never registered with the Association and upon inquiry, the Association was unable to determine the owner of the vehicle." (Answer ¶ 9.) Defendants argue that there were no military decals on the vehicle and that it had expired tags. (Answer ¶ 9-10.) Once the vehicle was towed, Defendants did in fact determine that the vehicle was registered to Lt. Jaboori at the address of 5020 Cypress Point Circle, Apt. 204, Virginia Beach, Virginia. Id. This address does appear to be within the Centre Green Condominium complex. See Google Maps, http://maps.google.com (search for 5020 Cypress Point Cir., Virginia Beach, VA 23455) (showing that address is located within the Centre Green Condominium complex). Nonetheless, Defendants argue that "there was no way to identify which unit the vehicle belonged to." (Answer ¶ 10.) Defendants admit to having sold the vehicle at auction on or before July 28, 2007.

On May 15, 2009, Defendants filed the instant Motion before the Court. In their Motion, Defendants argue that the United States is not the real party of interest in this case pursuant to Rule 17(a) because the United States has not alleged injury to itself. (Mot. ¶ 1.) Furthermore, Defendants contend that the SCRA does not confer standing upon the United States or authorize it to bring suit on behalf of servicemembers. (Mot. ¶ 2.) Finally, Defendants argue that the Court should not allow the United States to prosecute this suit because it would cause Defendants to be unfairly prejudiced in several ways, including the fact that "no ruling by this court, or

settlement between the parties, would be *res judicata* for any subsequent suits brought by Jaboori or any of the other unidentified servicemembers." (Mot. ¶ 3.) Defendants move for entry of an order substituting Lt. Jaboori for the United States pursuant to Federal Rule of Civil Procedure 17(a). In the alternative, Defendants would have the Complaint dismissed for lack of standing.

II. ANALYSIS

Defendants argue that the United States lacks standing in this suit because: (1) the United States has not suffered an injury due to Defendants' towing and sale of Lt. Jaboori's vehicle, and (2) the United States does not have any authority, statutory or otherwise, to make a claim on behalf of third parties. (Mem. in Supp. at 2.) It is true that Federal Rule of Civil Procedure 17 states that an action must be brought in the name of the real party in interest. Fed. R. Civ. P. 17(a)(1). Rule 17 also provides, however, that an action for another's use or benefit may be brought in the name of the United States "[w]hen a federal statute so provides." Fed. R. Civ. P. 17(a)(2). Despite the fact that the SCRA does not expressly allow the United States to intervene on behalf of servicemembers, this Court finds that the SCRA impliedly provides for the United States to do so.

As the United States points out in its Response, the SCRA is descended from the Soldiers' and Sailors' Civil Relief Act of 1940 ("SSCRA"), a World War II era statute whose purpose was to suspend enforcement of certain civil liabilities against servicemembers so that they may entirely devote themselves to their military service and the defense needs of the nation. See Section 510 of the SSCRA, Pub. L. No. 108-189, § 100, 54 Stat. 1179 (1940) (amended in 2003 by 50 App. U.S.C. § 502). In 1964, the Fourth Circuit had the occasion to decide whether

the United States had standing to sue under the SSCRA on behalf of a servicemember, despite the lack of an explicit statutory grant of authority to do so. In United States v. Arlington County, 326 F.2d 929 (4th Cir. 1964), the county of Arlington, Virginia leveed a tax upon the personal property of a servicemember while he was assigned to sea duty outside of the commonwealth. Id. at 931. The United States sought a judgment declaring the personal property tax to be in contravention of § 574 of the SSCRA, which provided that "[w]here the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders," he shall not be assessed personal property tax within any tax jurisdiction other than his place of residence or domicile. Section 574 of the SSCRA, Pub. L. No. 87-771, § 514, 76 Stat. 768 (1962) (amended in 2003 by 50 App. U.S.C. § 571).

In considering a motion to dismiss for lack of jurisdiction, the Arlington County court chose to face the additional question of whether the United States had standing to bring the action on behalf of the servicemember. Arlington County, 326 F.2d at 931. Concluding that it did, the court weighed "the special interest of the sovereign United States in the protection and enforcement of its policies and programs with respect to the members of the armed forces" id., and the fact that the federal government has long held the right to bring suit to enforce its policies and programs "even in the absence of immediate pecuniary interest" in other fields of activity, id. at 932. Because the government had a compelling interest in the proper implementation of policies and programs involving the national defense, the court found that the United States had a "non-statutory right" to bring an action to enforce the terms of § 574 of the SSCRA. Id. at 933. Not long after, the Seventh Circuit answered this question in the same manner. See generally United States v. County of Champaign, 525 F.2d 374 (7th Cir. 1975) (finding that, apart from the

presence of other considerations, the United States could bring suits pursuant to § 574 on behalf of personnel in the armed forces).

These same considerations persuade this Court to allow the United States to bring the action at bar. As with the SSCRA, the purpose of the SCRA is to "provide for, strengthen, and expedite the national defense through protection . . . to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation." 50 App. U.S.C. § 502(1). Although the SCRA does not explicitly vest in the United States the authority to sue on behalf of members of the armed forces, the government has a non-statutory right to sue under the SCRA which is supported by its strong interest in the national defense and its need to enforce statutes that protect the interests of those in the armed forces. See Arlington County, 326 F.2d at 933. Furthermore, where Congress has enacted a statute in order to prevent servicemembers from being disrupted during their tours of duty, it would be incongruous to force these same servicemembers to engage in costly litigation to enforce these rights either while they are serving their country or upon returning from service.

The United States has not just the right, but also the duty, to protect the interests of servicemembers engaging in overseas battles. And it would not be difficult to believe that an act which tends to distract a servicemember from his work does, in fact, cause an injury to the United States such that standing to sue would be conferred upon it. See Allen v. Wright, 468 U.S. 737, 750-52 (1984) (discussing the doctrine of standing, which requires that the plaintiff "allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief"). Thus, despite the lack of explicit statutory language granting the United States the right to sue to protect the interests of servicemembers, the Court

finds that the United States must have the "non-statutory right" to maintain a suit under the SCRA to protect the property interest of Lt. Jaboori.

Finally, the Court finds that Defendants will not be unfairly prejudiced by this ruling. Defendants argue that allowing the United States to maintain this action would hinder their ability to engage in discovery, but as the United States correctly indicates, the Court has broad authority over the discovery process and can cure any inequities if need be.[2] (See Resp. at 8.) Defendants also argue that they would be disadvantaged because no judgment of this Court would be *res judicata* to subsequent actions by servicemembers. Thus, Defendants contend that they would be subjected to "multiple suits and potential recoveries for the same alleged acts," presumably due to future plaintiffs' offensive use of issue preclusion against Defendants (Mem. in Supp. at 11.) Unfortunately for Defendants, this Court is without power to alter the requirements of the long-standing doctrine of *res judicata,* and the Supreme Court has found that offensive issue preclusion does not necessarily work an injustice upon a defendant. See generally Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979) (granting trial courts broad discretion to determine when a litigant who was not a party to a prior judgment may use that judgment "offensively" to prevent a defendant from relitigating issues resolved in the earlier proceeding, and feeling no reluctance in applying the doctrine where it would not reward a private plaintiff who could have joined in the previous action, there was an incentive to litigate fully and vigorously in the previous case, the previous judgment was not inconsistent with any previous

[2] The United States claims, and Defendants do not contest, that the United States already has responded to Defendants' interrogatories, document requests, and requests for admissions, and is arranging for Lt. Jaboori's deposition. (See Resp. at 8.) Therefore, the Court finds no reason to believe that the discovery process will be inequitable at this time.

decision, and there were no procedural opportunities available in the second action that were unavailable in the first action). If, after a possible judgment against them, Defendants are in fact subjected to a myriad of suits based on similar factual circumstances, it is a situation of their own making.

III. CONCLUSION

For the aforementioned reasons, the Defendants' Motion is **DENIED** because the United States may bring this suit on behalf of a servicemember.

The Clerk is hereby **ORDERED** to forward a copy of this Order to all counsel of record in this case.

IT IS SO ORDERED.

/s/
Robert G. Doumar
Senior United States District Judge

June 23, 2009
Norfolk, Virginia