

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

YAA GYAMFOAH

v.

UNITED STATES OF AMERICA, et al.

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CIVIL ACTION  
No. 01-4566

O'Neill, J.

December , 2002

**MEMORANDUM**

Plaintiff Yaa Gyamfoah, a citizen of Ghana, sued the United States of America and EG&G Dynatrend (now known as EG&G Technical Services), seeking damages for watches seized by the U.S. Customs Service, many of which subsequently have disappeared. Presently before me is the government's motion for summary judgment. For the reasons stated below, I will grant the government's motion.

The facts of this case relevant to the present motion are undisputed. Plaintiff operates her own business in Ghana distributing electrical accessories and watches. She arrived at John F. Kennedy Airport in New York on May 7, 1999 carrying two suitcases containing 3,520 "Citizens" brand watches, which she had purchased the previous day in Hong Kong. Plaintiff was spending the weekend in New York before continuing on to Ghana with her watches.

Upon arrival at JFK, plaintiff asked a customs agent if she could leave the suitcases in a secured area for storage while she visited friends. The agent told her that there was no storage area available to her and asked her if she could open the bags for inspection. After seeing the large quantity of watches, the agent suspected that they bore counterfeit trademarks and seized

them pursuant to 19 U.S.C. § 1526(e).<sup>1</sup> The agent told plaintiff that she could return the next day when Customs would have a representative from a watch company determine if they were counterfeit and gave her a receipt<sup>2</sup> for the watches. Plaintiff returned the following day but she was not allowed to enter the Customs area. She was told that a letter would be sent to her by Customs.

On May 28, 1999, Customs sent a letter to plaintiff's address in Ghana, stating that watches worth \$35,200 had been seized and that she could petition for remission of forfeiture. Subsequently, Customs determined that 2,940 of the 3,520 watches were "non-violative" and would be shipped to plaintiff in Ghana. In the interim, the watches had been moved to EG&G, an independent storage contractor.

On November 18, 1999, two Customs officials went to the EG&G warehouse in Edison, New Jersey to segregate the 580 allegedly violative watches from the 3,520 stored there. On November 24, 1999, the same two officials returned to EG&G's warehouse and discovered that 2,582 watches were missing. In addition to suing EG&G for damages, the plaintiff has sued the government for breach of an implied contract pursuant to the "Little Tucker Act," 28 U.S.C. §

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<sup>1</sup> Title 19 U.S.C. § 1526(e) provides in part:

Merchandise bearing counterfeit mark; seizure and forfeiture; disposition of seized goods.

Any such merchandise bearing a counterfeit mark (within the meaning of section 1127 of Title 15) imported into the United States in violation of the provisions of section 1124 of Title 15, shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violations of the customs laws. Upon seizure of such merchandise, the Secretary shall notify the owner of the trademark, and shall, after forfeiture, destroy the merchandise . . . .

<sup>2</sup> Although the receipt issued on May 7, 1999 stated that there were 3,380 watches seized, the count was amended to 3,520 on May 10, 1999.

1346(a)(2). The government contends that it is entitled to summary judgment because no implied contract existed and, therefore, this Court lacks jurisdiction under the Act.<sup>3</sup>

Summary judgment is appropriate if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). The party moving for summary judgment “bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions . . . which it believes demonstrate the absence of a genuine issue of material fact.” Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the moving party has filed a properly supported motion, the burden shifts to the nonmoving party to “set forth specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). The nonmoving party may not rest upon the mere allegations or denials of the party's pleading. See Celotex, 477 U.S. at 324.

To determine whether summary judgment is appropriate, I must determine whether any genuine issue of material fact exists. An issue is “material” only if the dispute over facts “might

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<sup>3</sup> The Court of Appeals for the Third Circuit has explained that this Court’s jurisdiction over the government is based on the Tucker Act:

Jurisdiction over non-tort monetary claims against the United States is exclusively defined by the Tucker Act, as codified at 28 U.S.C. §§ 1346, 1491, because it is only under the terms of the Tucker Act that the United States waives its sovereign immunity to non-tort claims seeking monetary relief. See Hahn v. United States, 757 F.2d 581, 585-86 (3d Cir.1985). Under the Tucker Act, the United States Claims Court and district courts share original jurisdiction over non-tort monetary claims against the United States not exceeding \$10,000. 28 U.S.C. § 1346(a)(2) (sometimes referred to as the “Little Tucker Act”). Original jurisdiction over such claims seeking more than \$10,000 vests exclusively in the Claims Court. 28 U.S.C. § 1491 (the so-called “Big Tucker Act”).

Chabal v. Reagan, 822 F.2d 349, 353 (3d Cir. 1987).

affect the outcome of the suit under the governing law.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). If the record taken as a whole in a light most favorable to the nonmoving party “could not lead a rational trier of fact to find for the nonmoving party, there is no ‘genuine issue for trial.’” Matsushita Elec. Co. v. Zenith Radio, 475 U.S. 574, 587 (1986) (citation omitted).

The government may be sued under the Tucker Act only for breach of contract or other non-tort monetary claims. See 28 U.S.C. § 1346(a)(2).<sup>4</sup> Although plaintiff may sue for breach of an implied contract, such actions are limited to contracts implied in fact as opposed to contracts implied in law, also known as quasi-contracts. See Hatzlachh Supply Co., Inc. v. United States, 444 U.S. 460, 465 n.5 (1980) (“[J]urisdiction with respect to contracts extends only to actual contracts, either express or implied in fact; it does not reach claims on contracts implied in law.”); Alliance Assur. Co. v. United States, 252 F.2d 529, 532 (2d. Cir. 1958), overruled on other grounds by Kosak v. United States, 465 U.S. 848, 854 (1984). The Court of Appeals for the Federal Circuit<sup>5</sup> has recognized that a contract implied in fact is not created by explicit agreement of the parties. Prudential Ins. Co. of America v. United States, 801 F.2d 1295, 1297 (Fed. Cir.

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<sup>4</sup> Title 28 U.S.C. § 1346(a)(2) provides in part:

The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of: . . . . [any] civil action or claim against the United States, not exceeding \$10,000 in amount, founded either upon 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 . . . .

<sup>5</sup> Contracts to which the government is a party are normally governed by federal law, not by the law of the state where they are made or performed. Insurance Co. of North America v. United States, 11 Cl. Ct. 1, 3 (1986), citing United States v. County of Allegheny, 322 U.S. 174, 183 (1944).

1986). Rather, such a contract is inferred as a matter of reason or justice from the acts or conduct of the parties. Id. “However, all of the elements of an express contract must be shown by the facts surrounding the transaction, such as mutuality of intent, offer and acceptance, authority to contract – so that it is reasonable, or even necessary, for the court to assume that the parties intended to be bound.” Id.

In the present case, plaintiff contends that she entered into an implied bailment contract with the government when U.S. Customs seized her watches. The United States Claims Court, however, has recognized that “no implied-in-fact contract of bailment exists between the Government and a property owner concerning goods which the Government lawfully seizes.”<sup>6</sup> Yokum v. United States, 11 Cl. Ct. 148, 149 (1986), citing Shaw v. United States, 8 Cl. Ct. 796, 799 (1985); Hatzlachh v. United States, 7 Cl. Ct. 743, 748-50 (1985). Moreover, plaintiff has failed to articulate any consideration freely exchanged in complying with U.S. Customs’ order that she forfeit her watches for inspection. Presumably, plaintiff was not at liberty to refuse seizure of the watches when ordered by the U.S. Customs Service. Without mutual consideration, there can be no contract. See Prudential Ins. Co. of America, 801 F.2d at 1297.

Plaintiff asserts that her case is analogous to Alliance Assurance, in which the Court of Appeals for the Second Circuit found an implied contract where an importer left its goods with at the New York Custom House after passing inspection because it was the end of the day and the

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<sup>6</sup> In her memorandum opposing summary judgment, plaintiff seems to suggest that the seizure of the watches was unlawful: “Plaintiff asserts that there is simply no factual basis in the record to support U.S. Customs Service’s contention or even suspicion that plaintiff was importing watches unlawfully.” (Pl.’s Mem. at 6.) There is nothing in the record, however, to suggest that plaintiff did not consent to the initial search by the customs agent. Moreover, she does not assert any reason why the agent lacked probable cause to seize such a large quantity of expensive watches being carried into this country by hand.

delivery platform was closed. 252 F.2d at 531. In that case, plaintiff was issued a series of tickets to reclaim the goods. Id. By the next day, the goods had disappeared from storage. Id. The Alliance Assurance Court found that an implied contract existed, reasoning that plaintiff had a choice of either accepting the customs officials' terms of storage or electing not to import the goods into the United States. See id. (“[T]he owner’s trusting him with the goods is a sufficient consideration to oblige him to a careful management.”)

The present case, however, is distinguishable because plaintiff’s watches were seized. Plaintiff was under suspicion of violating federal trademark law and did not have the option of refusing to comply with the seizure. Therefore, there can be no contract, express or implied, in fact.

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**ORDER**

AND NOW, this            day of December, 2002, after consideration of the government's motion for summary judgment, and plaintiff's response thereto, and for the reasons set forth in the accompanying memorandum, it is ORDERED that the government's motion for summary judgment is GRANTED and judgment is entered in favor of the government and against plaintiff.

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THOMAS N. O'NEILL, JR., J.