

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

EDWARD B. BLOCK,
Plaintiff

CIVIL ACTION

v.

MARION BLAKELY, SEAN O'KEEFE,
and BOEING CORP.,
Defendants

NO. 02-8053

MEMORANDUM AND ORDER

McLaughlin, J.

April 25, 2003

The plaintiff, Edward Block, has filed suit against Marion Blakely, Sean O'Keefe, and Boeing Corporation claiming that the defendants breached an implied contract and took his intellectual property in violation of the Takings Clause of the Fifth Amendment. Ms. Blakely is the Administrator of the Federal Aeronautics Administration ("FAA"). Mr. O'Keefe is the Administrator of the National Aeronautic and Space Administration ("NASA").¹

¹ Although Ms. Blakely and Mr. O'Keefe are the named defendants, all of the plaintiff's allegations about the government are directed at the actions of the FAA and NASA. Ms. Blakely and Mr. O'Keefe, therefore, have been sued only in their official capacities. An official capacity suit is treated as a suit against the agency of which the named defendant is a member. See Kentucky v. Graham, 473 U.S. 159, 165-66 (1985). The result is that plaintiff's suit is treated as if it was brought against the FAA and NASA.

Pending before the Court is a motion to dismiss filed by the United States on behalf of the FAA and NASA under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) alleging that the Court lacks subject matter jurisdiction and the plaintiff fails to state a claim. The Court will grant the motion because the Court does not have subject matter jurisdiction over the plaintiff's claims against the FAA and NASA.

The facts of this case, in the light most favorable to the plaintiff, are as follows.² The plaintiff is an expert in wiring maintenance practices and safety. He has been involved in efforts to identify aircraft wiring problems and wiring maintenance practices. He developed a course and a manual for identifying defective wiring. Compl. at ¶¶ 7-8, 11.

In 1998, NASA agreed to sponsor the plaintiff's research. NASA did not contribute to the plaintiff's work. Compl. at ¶ 12.

² In analyzing a motion to dismiss for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1), the Court must "treat the allegations of the complaint as true and afford the plaintiff(s) the favorable inferences to be drawn from the complaint." NE Hub Partners, L.P. v. CNG Transmission Corp., 239 F.3d 333, 341 (3d Cir. 2001) (citations omitted).

The plaintiff presented a proposal based on the course and manual to the FAA for industry wide implementation. The FAA rejected the plaintiff's proposal. Compl. at ¶¶ 11, 14.

The FAA and NASA used the information and ideas contained in the plaintiff's proposal without obtaining the plaintiff's consent and without compensating the plaintiff. Neither the FAA, nor NASA, had authorization to use the information or ideas contained in the proposal without first obtaining the plaintiff's consent. Compl. at ¶¶ 14-17.

The plaintiff seeks damages of \$4,000,000 from each defendant on his breach of contract and unconstitutional takings claims.³ Compl. at ¶¶ 19.

Absent a waiver, sovereign immunity shields the federal government and its agencies, such as the FAA and NASA, from suit. See Fed. Deposit Ins. Corp. v. Meyer, 510 U.S. 471, 475 (1994). The limitations and conditions upon which Congress waives the immunity are to be strictly construed and exceptions to the limitations and conditions are not to be implied. ~~Lehman v.~~

³ The FAA and NASA, believing that the plaintiff was making a tort claim, argue that the Federal Tort Claims Act ("FTCA") does not waive the government's sovereign immunity in this situation. In his opposition to the motion to dismiss, the plaintiff unequivocally states that he "is not making a claim on any tort theory." Pl. Opp'n, at 3. The Court, therefore, expresses no opinion on the FTCA argument put forth by the FAA and NASA.

Nakshian, 453 U.S. 156, 161 (1981). The question of whether the government enjoys sovereign immunity is one of subject matter jurisdiction. United States v. Bein, 214 F.3d 408, 412 (3d Cir. 2000).

The plaintiff argues that this Court has jurisdiction for two reasons. First, the plaintiff claims that the Tucker Act, 28 U.S.C. § 1491, waives sovereign immunity for his breach of contract claim. Second, the plaintiff argues that he can sue directly under the Fifth Amendment for his takings claim.

The Tucker Act waives sovereign immunity in limited situations. Under the Tucker Act, a district court shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of "any . . . claim against the United States, not exceeding \$10,000 in amount, founded either upon the Constitution, . . . or upon any express or implied contract with the United States." 28 U.S.C. § 1346(a)(2); see 28 U.S.C. § 1491(a)(1). For claims within the Tucker Act for more than \$10,000, the United States Court of Federal Claims has exclusive jurisdiction. United States v. Woods, 986 F.2d 669, 680 n.23 (3d Cir. 1985); Hahn v. United States, 757 F.2d 581, 585-86 (3d Cir. 1985).

Both of the plaintiff's claims against the FAA and NASA are within the Tucker Act. A claim against the federal

government under the Takings Clause is "founded upon the Constitution." The plaintiff's breach of contract claim is founded upon an "express or implied contract." See Preseault v. ICC, 494 U.S. 1, 11-12 (1990).

To the extent that the Tucker Act waives sovereign immunity, it does not confer jurisdiction on this Court. Under the Tucker Act, this Court could only have jurisdiction over the plaintiff's claims if the claims were for less than \$10,000. Because the claims are for \$4,000,000, the United States Court of Federal Claims has exclusive jurisdiction over the plaintiff's claims against the FAA and NASA. See Woods, 986 F.2d at 680 n.23; Hahn, 757 F.2d at 585-86.

The plaintiff's argument that this Court has jurisdiction over his claims against the FAA and NASA because he is suing directly under the Takings Clause of the Fifth Amendment is also unavailing. To bring any action against the FAA and NASA, there must first be a waiver of sovereign immunity. The Tucker Act provides the waiver for a takings claim against the federal government because the claim is "founded upon the Constitution." See Preseault, 494 U.S. at 11-12. Because the plaintiff seeks damages in excess of \$10,000 for the alleged taking, the Tucker Act vests exclusive jurisdiction in the United States Court of Federal Claims.

Dismissal of the plaintiff's claims against the FAA and NASA is appropriate because Congress has not waived sovereign immunity in such a way that would give this Court subject matter jurisdiction over the plaintiff's claims.

An appropriate order follows.

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

EDWARD B. BLOCK,
Plaintiff

CIVIL ACTION

v.

MARION BLAKELY, SEAN O'KEEFE,
and BOEING CORP.,
Defendants

NO. 02-8053

ORDER

AND NOW, this 25th day of April, 2003, upon
consideration of the United States Motion to Dismiss (Docket No.
16), and the plaintiffs' opposition thereto, IT IS HEREBY ORDERED
that the motion is GRANTED for the reasons set forth in a
memorandum *of* today's date. The plaintiff's claims against
defendants Marion Blakely and Sean O'Keefe are dismissed.

BY THE COURT:


MARY A. MCLAUGHLIN J.