

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

EDWARD B. BLOCK, : CIVIL ACTION
Plaintiff :
 :
v. :
 :
THE UNITED STATES OF AMERICA, :
Defendant : NO. 05-2972

MEMORANDUM AND ORDER

McLaughlin, J.

August 15, 2006

The plaintiff's claims stem from some proposals he submitted to the Federal Aviation Administration (the "FAA") and other governmental agencies concerning aircraft wiring. In 2002, the plaintiff brought claims in this Court against the Boeing Corporation and the administrators of the FAA and the National Aeronautics and Space Administration ("NASA"). On April 25, 2003 the Court dismissed the contract claim and Fifth Amendment takings clause claim against the governmental actors because the Tucker Act grants exclusive jurisdiction over those claims to the Court of Federal Claims. The Court noted that the FAA and NASA believed the plaintiff was also raising tort claims and had argued that the Federal Tort Claims Act (the "FTCA") did not waive the government's sovereign immunity. However, the plaintiff stated in his opposition brief that he was not making a tort claim and thus the Court did not reach the issue of whether jurisdiction existed over those claims. Block v. Blakely, No.

02-8053, slip op. at 1-3, n.3 (E.D. Pa. Apr. 25, 2003). The Court later granted Boeing's motion for summary judgment and dismissed the claims against it on August 24, 2004. Block v. Blakely, No. 02-8053, 2004 U.S. Dist. LEXIS 16920 at *8-9 (E.D. Pa. Aug. 24, 2004).

Following the dismissal of the contract and takings clause claims against the administrators of the FAA and NASA, the plaintiff filed a complaint in the United States Court of Federal Claims against the government. The Court of Federal Claims granted the government's summary judgment motion and dismissed the contract and Fifth Amendment claims. The Court of Federal Claims concluded that the plaintiff had also raised a conversion claim and a misappropriation of trade secrets claim. With respect to those claims, the Court of Federal Claims concluded that they sound in tort and that it did not have jurisdiction over them under the Tucker Act. Accordingly, the Court of Federal Claims transferred the conversion and misappropriation of trade secrets claims back to this Court.¹ Block v. United States, 66 Fed. Cl. 68 (Fed. Cl. 2005).

¹ The Court notes that the plaintiff never amended his complaint when it was transferred from the Court of Federal Claims to this Court. Thus, the plaintiff's complaint only alleges jurisdiction under the Tucker Act and not the FTCA. Because the Court concludes that it lacks jurisdiction even if the plaintiff had asserted jurisdiction under the FTCA, the Court need not reach the government's argument that the plaintiff's failure to allege jurisdiction under the FTCA requires dismissal.

After the case was transferred back to this Court and following the completion of discovery, the government filed a motion to dismiss for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). Because the plaintiff has not demonstrated that he has properly presented his claims to the appropriate federal agency, the Court will grant the government's motion to dismiss.²

The parties agree that to invoke the Court's jurisdiction under the Federal Tort Claims Act, the plaintiff must have presented his claim to the proper federal agency prior to filing suit. See Livera v. First Nat'l State Bank of N.J., 879 F.2d 1186, 1194 (3d Cir. 1989). The government argues that the plaintiff never submitted an administrative tort claim to the FAA because the FAA has no record of such a claim. The plaintiff asserts that he has made several "administrative or quasi administrative claims" including a bid protest with the FAA Office of Dispute Resolution for Acquisition alleging misappropriation of the his materials.

Even accepting the plaintiff's argument that he contacted the FAA about some aspects of his conversion and misappropriation of trade secrets claims, the Court concludes that the plaintiff has not met his burden of demonstrating that

² Accordingly, the Court need not address other arguments that were raised by the government as to why the Court lacks subject matter jurisdiction over the plaintiff's claims.

he has satisfied the jurisdictional prerequisites to filing suit under the FTCA.

Specifically, the United States Court of Appeals for the Third Circuit has held that to properly submit an administrative claim to an agency under the FTCA, a plaintiff must make a claim for money damages in a sum certain. Id. at 1195 (citing 28 C.F.R. § 14.2). The plaintiff, as the party invoking the Court's jurisdiction, bears the burden of establishing that this case is properly before the Court. Samuel-Bassett v. Kia Motors Am., Inc., 357 F.3d 392, 396 (3d Cir. 2004); Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d § 3522 n.5.

Here, it is unclear from the current record precisely which claims or other correspondence the plaintiff has submitted to federal agencies. Because the plaintiff has not provided the Court with any documentation showing that a tort claim and corresponding demand for damages in sum certain was ever submitted to the FAA or another agency, the Court is not persuaded that all the prerequisites to the plaintiff invoking jurisdiction under the FTCA have been met.

Thus, the Court will dismiss the plaintiff's complaint for a lack of subject matter jurisdiction on the grounds that the plaintiff has not shown that he properly submitted his conversion and misappropriation of trade secrets claims to an appropriate

federal agency. If the plaintiff is able to demonstrate that his tort claims have been properly presented to an appropriate federal agency, he may, in accordance with Rule 7.1(g) of the Local Rules of Civil Procedure of this Court, move for reconsideration of this Order. If such a motion is granted, the Court will consider the merits of the other issues raised by the government in its motion to dismiss.

An appropriate Order follows.

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

EDWARD B. BLOCK,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	
	:	
THE UNITED STATES OF AMERICA,	:	
Defendant	:	NO. 05-2972

ORDER

AND NOW, this 15th day of August, 2006, upon review of the defendant's Motion to Dismiss (Docket No. 11) and the plaintiff's response in opposition, IT IS HEREBY ORDERED that for the reasons stated in a Memorandum of this date, the defendant's motion to dismiss is GRANTED. The plaintiff's complaint is DISMISSED with prejudice. The Clerk of Court shall mark this case closed for statistical purposes.

BY THE COURT:

/s/ Mary A. McLaughlin
Mary A. McLaughlin, J.