

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

JOSHUA J. ANGEL,)	
)	
Plaintiff,)	
)	
v.)	No. 23-800C
)	(Senior Judge Margaret M. Sweeney)
)	
THE UNITED STATES,)	
)	
Defendant.)	

DEFENDANT’S RESPONSE IN OPPOSITION TO
PLAINTIFF’S MOTION FOR LEAVE TO AMEND THE COMPLAINT

Pursuant to Rule 7(b) of the Rules of the United States Court of Federal Claims (RCFC), defendant, the United States, respectfully responds to the motion for leave to amend the complaint filed by plaintiff, Joshua J. Angel, on January 29, 2024 (ECF No. 23 (Pl. Mot.)).

ARGUMENT

On October 13, 2023, the United States filed a motion to dismiss this case, which represents Mr. Angel’s fourth attempt in Federal courts to reassert claims that have been repeatedly rejected by this and other courts. Def. Mot. to Dismiss, ECF No. 15. Rather than file a response to our motion, Mr. Angel filed a motion for leave to pursue jurisdictional and other discovery before responding. ECF No. 16. On January 23, 2024, the Court denied Mr. Angel’s motion, finding that the discovery Mr. Angel sought was irrelevant to the resolution of our motion to dismiss. Opinion and Order, ECF No. 22, at 13. The Court ordered Mr. Angel to file his response to the motion to dismiss by February 20, 2024. *Id.*

Instead, on January 29, 2024—more than three months after the United States filed its motion to dismiss—Mr. Angel filed a motion for leave to amend the complaint in this case, requesting that the Court temporarily suspend the schedule for briefing on the motion to dismiss. Pl. Mot. at 1. Much like his attempts to seek discovery, however, the amendments that

Mr. Angel proposes to the complaint are irrelevant to the grounds for dismissal that the United States has raised in its motion to dismiss. The Court, therefore, should deny Mr. Angel leave to amend his complaint because amendment is futile.

I. Standard Of Review

Under RCFC 15(a)(1), a “party may amend its pleadings once as a matter of course,” in two instances. First, when an amendment is filed “within . . . 21 days after service of the pleading.” RCFC 15(a)(1)(A). Second, a party seeking to amend a pleading “to which a responsive pleading is required” may do so within “21 days after service of a responsive pleading or 21 days after service of a motion under RCFC 12(b), (e), or (f), whichever is earlier,” RCFC 15(a)(1)(B). “In all other cases, a party may amend its pleading only with . . . the court’s leave.” RCFC 15(a)(2).

Although Rule 15(a) of the Federal Rules of Civil Procedure—and its Court of Federal Claims analogue—“declares that leave to amend ‘shall be freely given when justice so requires,’” that mandate is not absolute. *Foman v. Davis*, 371 U.S. 178, 182 (1962) (quoting Fed. R. Civ. P. 15(a)). The Supreme Court has explained that leave to amend should be denied when amendment would be futile. *Id.* “A motion to amend may be deemed futile if a claim added by the amendment would not withstand a motion to dismiss.” *Shoshone Indian Tribe of the Wind River Reservation v. United States*, 71 Fed. Cl. 172, 176 (2006); *Marchena v. United States*, 128 Fed. Cl. 326, 330 (2016), *aff’d*, 702 F. App’x 988 (Fed. Cir. 2017) (same). The party seeking leave “must proffer sufficient facts supporting the amended pleading that the claim could survive a dispositive pretrial motion.” *Kemin Foods, L.C. v. Pigmentos Vegetales Del Centro S.A. de C.V.*, 464 F.3d 1339, 1355 (Fed. Cir. 2006).

II. Plaintiff's Proposed Amended Complaint Is Futile

Mr. Angel's proposed amended complaint does not rectify the numerous fatal deficiencies in the existing complaint. Mr. Angel proposes limited amendments to his complaint, including the deletion of a footnote, alteration of a heading, and expansion of a single paragraph. Pl. Mot. at 2-3. Mr. Angel states that his complaint "conflated claims of illegal exaction with illegal extraction," and that the purpose of these amendments is to "de-conflate" the claims, and to clarify that he intended to assert both a claim for illegal exaction and a claim for "illegal extraction." *Id.* at 2.

The Court, however, has in a prior case recognized that the illegal exaction claim that Mr. Angel brings in this case is foreclosed by binding precedent. *Angel v. United States*, 165 Fed. Cl. 453, 470 (2023) (citing *Fairholme Funds, Inc. v. United States*, 26 F.4th 1274 (Fed. Cir. 2022), *cert. denied*, 143 S. Ct. 563 (2023), and *cert. denied sub nom. Owl Creek Asia I, L.P. v. United States*, 143 S. Ct. 563 (2023), and *cert. denied sub nom. Cacciapalle v. United States*, 143 S. Ct. 563 (2023), and *cert. denied sub nom. Barrett v. United States*, 143 S. Ct. 562 (2023)). As we explained in our motion to dismiss, Mr. Angel's illegal exaction claim in this case likewise fails. Def. Mot. to Dismiss, ECF No. 15, at 25. The proposed amendments—which at most would clarify that Mr. Angel indeed seeks to again assert an illegal exaction claim that both this Court and the Federal Circuit have conclusively rejected—would do nothing to alter the fact that Mr. Angel's illegal exaction claim is foreclosed by binding precedent and must be dismissed. Accordingly, the proposed amendment is futile and should be denied.

In addition to clarifying that he did indeed intend to assert an untenable claim for illegal exaction, Mr. Angel proposes to make clear that he intended Count II of his complaint to also assert a claim for "illegal extraction." Pl. Mot. at 2-3. In examining Mr. Angel's complaint in a

prior case, the Court noted that Mr. Angel's use of the term "illegal extraction" was unclear, and the legal theory behind such a claim difficult to discern. *Angel*, 165 Fed. Cl. at 461-62. The Court found that it was "not clear whether Mr. Angel [was] using the term 'extraction' as a synonym for exaction, or to illustrate some other concept." *Id.* at 462. Despite the confusion caused by Mr. Angel's prior pleading, his pleadings in this case—both the existing complaint and the proposed amended complaint—do little, if anything, to clarify the legal theory underlying Mr. Angel's "illegal extraction" claim.

Mr. Angel instead injects further confusion into the matter by reference to litigation in the United States District Court for the Eastern District of New York of unexplained relevance to these proceedings. Pl. Mot. at 4-5. This topic appears to be the motivation behind Mr. Angel's proposal to delete footnote 6 of the complaint, which appears to refer to the same factual allegations but stated that these allegations were not included within the claims pleaded in the complaint. Compl., ECF No. 1, at 8. To the extent that any tangential relevance can be discerned from these allegations, it appears that, at most, they could relate to the quantum of relief in the event that the Court were to find an illegal exaction. But as we explained in our motion to dismiss—and as both this Court and the Federal Circuit have previously concluded under essentially identical facts—Mr. Angel cannot state a claim for illegal exaction. The amount of any theoretical recovery on such a claim, therefore, is entirely irrelevant.

Further, the proposed amendments are futile because, even if the Court were to permit them, the complaint could not survive a motion to dismiss, including the motion to dismiss we have already filed. The extremely narrow revisions that Mr. Angel offers cannot turn back the clock on the statute of limitations that bars most of Mr. Angel's claims, nor impact the Court's analysis of preclusion issues that bar those same claims. *See* Def. Mot. to Dismiss, ECF No. 15,

at 17-23. The proposed amendments also would not cure the jurisdictional deficiencies of several other counts in the complaint; as we explained in our motion, any breach of fiduciary duty claim pleaded in the complaint does not fall within this Court's jurisdiction, nor does the Court possess jurisdiction to entertain claims based on bankruptcy law. *See id.* at 23-24; 25-27. Nor would the proposed amendments alter the fact that any illegal exaction claim that Mr. Angel asserts has already been conclusively rejected in binding precedent, as we explain above. *See id.* at 25. Finally, the amendments that Mr. Angel offers have no relevance to his contract allegations, which, as explained in our motion to dismiss, fail to state any claim upon which this Court could grant relief. *See id.* at 27-33. Because Mr. Angel has failed to demonstrate that any claim in his complaint would, if amended as he proposes, survive a motion to dismiss, amendment is futile and leave to amend should be denied.

Because Mr. Angel fails to demonstrate that, were the Court to permit the amendments to the complaint that he proposes, the amended complaint could survive a motion to dismiss, the proposed amendment is futile and leave to amend should be denied. Indeed, the proposed amendments have no discernible bearing on any of the fatal deficiencies in the complaint identified in our motion to dismiss. On the contrary, amendment would only inject confusion into the record of this case. Instead, briefing on the United States' motion to dismiss should proceed.

CONCLUSION

For these reasons, the United States respectfully requests that the Court deny Mr. Angel's motion for leave to amend the complaint.

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

PATRICIA M. McCARTHY
Director

OF COUNSEL:

FRANKLIN E. WHITE, JR.
Assistant Director

RETA E. BEZAK
Senior Trial Counsel

MARIANA T. ACEVEDO
Trial Attorney

s/ Elizabeth M. Hosford
ELIZABETH M. HOSFORD
Assistant Director

s/ Anthony F. Schiavetti
ANTHONY F. SCHIAVETTI
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
U.S. Department of Justice
P.O. Box 480, Ben Franklin Station
Washington, DC 20044
Tel: (202) 305-7572
anthony.f.schiavetti@usdoj.gov

February 12, 2024

Attorneys for Defendant