

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

K. KAY SHEARIN, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 02-266-KAJ  
 )  
 THE UNITED STATES OF AMERICA )  
 )  
 Defendant. )

**MEMORANDUM ORDER**

Before the court is plaintiff K. Kay Shearin's Motion for Partial Summary Judgment (Docket Item ["D.I."] 19; the "Motion"). For the reasons that follow, Ms. Shearin's Motion is denied without prejudice.

Ms. Shearin filed this suit in 2002, seeking "credit for money wrongfully collected under the Internal Revenue laws." (D.I. 3 at ¶ 1.) Shortly thereafter she filed a Chapter 7 bankruptcy which, she asserts, resulted in a discharge of the tax debt which she disputes but which the I.R.S. apparently had already collected. (See D.I. 14.)

On January 15, 2003, I requested the parties to confer and jointly schedule a telephone conference with me to discuss and recommend dates to be adopted in a scheduling order. (D.I. 13.) In a letter to the court on January 16, 2003, Ms. Shearin responded to that request by asserting that the United States (the "Government") is enjoined from "continuing this action to collect" unpaid taxes from her due to her Chapter 7 discharge in bankruptcy. (D.I. 14.) Ms. Shearin further argued that I should take judicial notice of her discharge in bankruptcy, enter partial summary judgment on her behalf indicating she does not owe any money to the Internal Revenue Service ("IRS"), and order the IRS to produce an accounting of her tax records. (*Id.*) After that,

Ms. Shearin argued, “we’ll know whether there’s anything left to litigate in this case or not.” (*Id.*) In response, the Government noted that Ms. Shearin’s bankruptcy has no bearing on this litigation since the Government did not file a counterclaim in this action and, thus, is not asserting a claim for unpaid taxes. (D.I. 16.) Its counsel also stated, “[t]his case ... has serious jurisdictional issues. The United States anticipates filing a dispositive motion on jurisdictional ground within forty-five (45) days.” (*Id.*)

There has been no activity in the case since February 10, 2003. Ms. Shearin has, it appears, failed to comply with the basic requirement to cooperate in setting a scheduling order. (See D.I. 21.) The United States also failed to file the dispositive motion it had said was forthcoming. On December 10, 2003, I required Ms. Shearin to show cause why this action should not be dismissed for failure to prosecute. (D.I. 17.) In response, Ms. Shearin filed this Motion<sup>1</sup> (D.I. 19). She argues that the “facts are undisputed because the [Government] admitted them in the answer[.]” (*Id.*) She further argues that she is “entitled to judgment, as a matter of tax law [and bankruptcy law], that the defendant is liable to [her] for violating various federal laws.” (*Id.*)

Ms. Shearin’s assertion that she is entitled to partial summary judgment is without merit. Federal Rule of Civil Procedure 56(c) states that summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories,

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<sup>1</sup> Ms. Shearin also filed a response (D.I. 18) to this court’s Order (D.I. 17) to “show cause why [this] action should not be dismissed for failure to prosecute.” Ms. Shearin asserts, among other things, that “[she has] not done anything [she] was supposed not to and [has] not failed to do anything [she] was supposed to.” (D.I. 18.) That is not accurate. For over a year, since January 15, 2003, the parties have had the responsibility to confer and set up a conference so that the basic, first step of entering a scheduling order could be accomplished. (D.I. 13.) Instead of following through with that responsibility, Ms. Shearin responded by asking for immediate partial summary judgment (D.I. 14), and by refusing to confer with counsel for the United States regarding scheduling. (D.I. 21 at Ex. A.)

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). Here, there are factual disputes. Contrary to Ms. Shearin’s assertion, the Government did not and does not admit that the Social Security Administration (“SSA”) ruled that Ms. Shearin could not report self-employment income or that she was exempt from self-employment taxes. (See D.I. 22 at 1.) The Government also disputes that Ms. Shearin filed a “timely” application for a refund or credit, and further disputes that the IRS refused to stop trying to collect from Ms. Shearin a payment that the Social Security Administration had ruled was inappropriate. (See *Id.*)

Moreover, even if there were no factual disputes, Ms. Shearin would still not be entitled to a judgment as a matter of law. She asserts that the Government is liable to her for “violating various federal laws.” (D.I. 19.) However, she does not specify which laws, either in “tax law” or “bankruptcy law,” have been violated. (*Id.*) It may be that, at some point, this case will properly be subject to summary disposition, either for the plaintiff or the Government, but the plaintiff has not demonstrated that she is entitled to partial summary judgment now. Therefore, the Motion must be denied.

Accordingly, it is hereby ORDERED that the plaintiff’s Motion for Partial Summary Judgment (D.I. 19) is DENIED.

IT IS FURTHER ORDERED that, within thirty days of this Order, plaintiff shall confer with defendant and the parties shall schedule a telephone conference to discuss dates the parties recommend be adopted in a scheduling order. A further failure by the

plaintiff to cooperate in the filing of a scheduling order shall result in dismissal of this action.

Kent A. Jordan  
UNITED STATES DISTRICT JUDGE

February 3, 2004  
Wilmington, Delaware