

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SEAN COX, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 04-1388 JJF
 :
 DOUGLAS SHIFLET, Postmaster, :
 :
 Defendant. :

Sean Cox, Newark, Delaware.
Pro Se Plaintiff.

Colm F. Connolly, Esquire, United States Attorney, and Douglas E. McCann, Esquire, Assistant United States Attorney, UNITED STATES ATTORNEY'S OFFICE, DISTRICT OF DELAWARE, Wilmington, Delaware.
Attorneys for Defendant.

MEMORANDUM OPINION

November 23, 2004
Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is the Motion To Dismiss For Lack Of Subject Matter Jurisdiction And For Failure To State A Claim Upon Which Relief Can Be Granted (D.I. 4) filed by the Government. For the reasons discussed, the motion will be granted.

BACKGROUND

On October 7, 2004, pro se Plaintiff Sean Cox filed a complaint against Douglas Shiflet, the Postmaster for Wilmington, Delaware. In his Complaint (D.I. 1, App. A), Mr. Cox alleges that a package he mailed in 1998 was never delivered to its intended recipient. Mr. Cox claims damages of \$959.39.

On October 26, 2004, the Government removed the action to this Court and substituted itself for Mr. Shiflet pursuant to 28 U.S.C. § 2679. The Government subsequently filed the instant Motion seeking to dismiss Mr. Cox's Complaint for lack of subject matter jurisdiction. By its motion, the Government contends that, to the extent the Complaint alleges a tort, the case should be dismissed under Federal Rules of Civil Procedure 12(b)(1) and 12(h)(3) because Congress has not waived sovereign immunity for Mr. Cox's claim. The Government further contends that, to the extent the Complaint purports to bring a claim for breach of contract, it fails to state a claim upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6).

Mr. Cox has not filed a brief answering the Government's motion.

DISCUSSION

I. Legal Standard

The Government moves the Court to dismiss Mr. Cox's claim pursuant to Federal Rules 12(b)(1) and 12(b)(6).

A motion to dismiss under Rule 12(b)(1) challenges the jurisdiction of the court to address the merits of the plaintiff's complaint. The motion should be granted where the asserted claim is "insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy." Coxson v. Comm. of Pennsylvania, 935 F.Supp. 624, 626 (W.D. Pa. 1996) (citations omitted). Additionally, a motion to dismiss under 12(b)(1) may present either a facial or factual challenge to subject matter jurisdiction. See Mortensen v. First Fed. Sav. and Loan, 549 F.2d 884, 891 (3d Cir. 1977). The instant case presents a facial challenge because the Government does not dispute the existence of the jurisdictional facts alleged in the Complaint. Therefore, the Court must accept the facts alleged in the Complaint as true, and draw all reasonable inferences in favor of Mr. Cox. See Zinermon v. Burch, 494 U.S. 113, 118 (1990); Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990).

The purpose of a motion to dismiss pursuant to Rule 12(b)(6)

is to test the legal sufficiency of a complaint. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Strum v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). In reviewing a motion to dismiss for failure to state a claim, "all allegations in the complaint and all reasonable inferences that can be drawn therefrom must be accepted as true and viewed in the light most favorable to the non-moving party." Strum, 835 F.2d at 1011; see also Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). A court may dismiss a complaint for failure to state a claim only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Jordan, 20 F.3d at 1261.

II. Jurisdiction Of The Court

The Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671 to 2680, provides that a suit against the United States shall be the exclusive remedy for persons with claims for damages resulting from the negligent acts or omission of federal employees taken within the scope of their office or employment. 28 U.S.C. § 2679(b)(1).

In actions against the Government, sovereign immunity is a bar to suit unless the Government waives immunity. United States v. Bein, 214 F.3d 408, 412 (3d Cir. 2000) (citing United States v. Mitchell, 463 U.S. 206, 212 (1983)). The FTCA waives the

Government's sovereign immunity when government employees act negligently within the scope of their official duties. 28 U.S.C. § 1346(b). However, there is an exception to the FTCA which provides that this waiver shall not apply to "[a]ny claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matters." 28 U.S.C. § 2680(b). The legislative history of § 2680(b) makes clear that Congress intended to protect the Government from lawsuits that might be generated by "the unavoidable mishaps incident to the ordinary accepted operations of delivering millions of packages and letters each year." Dolan v. U.S. Postal Serv., 377 F.3d 285, 288 (3d. Cir 2004) (citing Suchomajcz v. United States, 465 F.Supp. 474, 476 (E.D. Pa. 1979)).

The Court finds that the FTCA is the sole remedy for Mr. Cox's claim. In the Court's view, Mr. Cox's Complaint asserts a negligence claim against an employee of the United States Postal Service acting within the scope of his official duties as Postmaster. The Court further finds that Mr. Cox's claim falls within the exception to the FTCA set forth in § 2680(b). Thus, the Court finds that the Government has not waived its sovereign immunity for this cause of action.

For these reasons, the Court concludes that it lacks subject matter jurisdiction to hear this matter and must dismiss the action pursuant to Rule 12(b)(1).

CONCLUSION

Accordingly, the Motion To Dismiss For Lack Of Subject Matter Jurisdiction And For Failure To State A Claim Upon Which Relief Can Be Granted (D.I. 4) filed by the Government will be granted.

An appropriate Order will be entered.

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 v. : Civil Action No. 04-1388 JJF
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 DOUGLAS SHIFLET, Postmaster, :
 :
 Defendant. :

ORDER

At Wilmington this 23rd day of November 2004, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that the Motion To Dismiss For Lack Of Subject Matter Jurisdiction And For Failure To State A Claim Upon Which Relief Can Be Granted (D.I. 4) filed by the Government is

GRANTED.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE