

Appendix 10

Noll v. United States, 2:03-CV-34-BLW (D. Idaho)

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U.S. COURTS
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Certified to be a true and correct copy of original filed in my office.

Elizabeth A. Smith, Clerk
U.S. Courts, District of Idaho

By Sunny Trumbull
on Jul 21, 2015 8:48 am

Attorneys for the United States of America

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF IDAHO

CLIFFORD LOUIS NOLL,)
)
Plaintiff,)
)
v.)
)
UNITED STATES OF THE DISTRICT OF)
COLUMBIA,)
)
Defendant.)
)
_____)

CIV 03-0034-N-EJL

Civil No. _____

**NOTICE OF REMOVAL TO
U.S. DISTRICT COURT**

(Formerly District Court of the
First Judicial District of the State of
Idaho, in and for the County of
Kootenai, No. CV 03-363)

Pursuant to 28 U.S.C. § 1442 et seq. and Local Rule 81.1, the United States, the proper party-defendant herein, through its undersigned counsel, hereby gives notice of the removal of the above-captioned action to this Court for the reasons which follow:

1. The above-captioned action was commenced against the United States, by the filing of a complaint on January 16, 2003 in the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai. (Copies of all process and pleadings served on the United States Attorney are attached hereto as Exhibit A).

2. The above-captioned action is one which may be removed pursuant to 28 U.S.C. §1442(a)(1) because the United States is a party-defendant and is being sued for collection actions taken by the Internal Revenue Service.

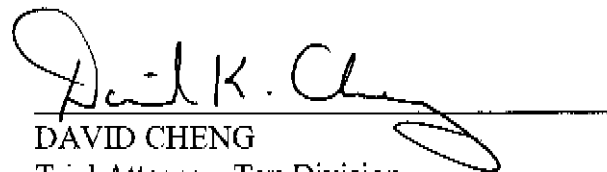
3. This notice is being filed within thirty days after the receipt by United States Attorney's Office of the complaint.

WHEREFORE, the United States prays that the above-captioned action now pending before the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, be removed therefrom to this Court pursuant to 28 U.S.C. §§ 1442(a)(1) and 1446.

Dated this 24th day of January, 2003

Respectfully submitted,

THOMAS E. MOSS
United States Attorney



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NOTICE OF REMOVAL

U. S. COURTS

NOV 04 2003

REC'D CAMERON S. BURKE
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CLERK IDAHO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

CLIFFORD LOUIS NOLL,)
)
Plaintiff,)
)
vs.)
)
UNITED STATES OF THE)
DISTRICT OF COLUMBIA,)
)
Defendant.)

Case No. CV03-034-N-BLW

ORDER



Certified to be a true and correct copy of original filed in my office.
Elizabeth A. Smith, Clerk
U.S. Courts, District of Idaho
By Sunny Trumbull
on Jul 21, 2015 8:49 am

In the Court's previous Order, Plaintiff was informed that the Court lacked subject matter jurisdiction over Plaintiff's claims as set forth in the Complaint. Plaintiff was provided with an opportunity to file an amended complaint. As of this Order's date, Plaintiff has failed to file an amended complaint, curing the deficiencies of which he was previously informed. Plaintiff has two motions currently pending before the Court: (1) Plaintiff's Motion for Evidentiary Hearing (Docket No. 8), and (2) Plaintiff's Motion to Remand to State Court (Docket No. 10). Defendants filed a request for dismissal of Plaintiff's lawsuit due to his failure to file an amended complaint. (Docket No. 9)

ORDER 1

Having reviewed the record in this matter, and otherwise being fully informed, the Court has determined that Plaintiff's Complaint is subject to dismissal based on lack of subject matter jurisdiction in this Court. Accordingly, Plaintiff's pending motions are moot.

I.

DISMISSAL OF COMPLAINT

A. Background

Plaintiff's Complaint is a challenge to the Internal Revenue Service's tax collection efforts on amounts he allegedly owes to the government. Attached to the Complaint are several notices relating to alleged tax deficiencies assessed against Plaintiff. Plaintiff alleges that he has "repeatedly challenged the purported admiralty jurisdiction of U.S. of the District of Columbia over him." Complaint, p. 3. He is requesting relief from the Internal Revenue Services's tax collection efforts.

The Court's previous order informed Plaintiff that the Complaint's allegations failed to provide a basis for subject matter jurisdiction in this Court. Plaintiff was given thirty (30) days within which to file an amended complaint, curing the defects in the Complaint. Plaintiff failed to comply with the Court's Order.

ORDER 2

Plaintiff's motion requesting an evidentiary hearing demands specific information regarding the legal basis for the deficiency notices sent to him. He claims that he has not subjected himself to taxation by the "United States of District of Columbia." He also maintains that he is not required to pay taxes to the United States. Plaintiff was previously informed that these arguments are without merit.

Plaintiff was also informed that the Complaint fails to allege a waiver of sovereign immunity. He was told that his lawsuit against the United States is barred by the sovereign immunity doctrine. Plaintiff did not file an amended complaint, and, therefore, the defect in the Complaint still exists.

B. Discussion

The Court is obligated to raise the issue of subject matter jurisdiction *sua sponte*. See *Solano v. Beilby*, 761 F.2d 1369, 1370 (9th Cir. 1985); *Miller v. Transamerican Press, Inc.*, 709 F.2d 524, 527 n.2 (9th Cir. 1983). Whether subject matter jurisdiction exists is a question of law. *Nike, Inc. v. Comercial Iberica de Exclusivas Deportivas, S.A.*, 20 F.3d 987, 990 (9th Cir. 1994). For the following reasons, the Court lacks subject matter jurisdiction over Plaintiff's claim.

"The United States, as sovereign, is immune from suit save as it consents to

ORDER 3

be sued, and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit." *United States v. Sherwood*, 312 U.S. 584, 586, 61 S. Ct. 767, 769-70 (1941) (citations omitted); *see also Arnsberg v. United States*, 757 F.2d 971, 977-78 (9th Cir. 1985) (no right to money damages against United States without sovereign immunity waiver). "A waiver of sovereign immunity 'cannot be implied but must be unequivocally expressed' by Congress." *Doe v. Attorney General of the United States*, 941 F.2d 780, 788 (9th Cir. 1991) (quoting *United States v. King*, 395 U.S. 1, 4, 89 S. Ct. 1501, 1503 (1969)). Plaintiff bears the burden of showing that the United States has unequivocally waived its sovereign immunity. *See Baker v. United States*, 817 F.2d 560, 562 (9th Cir. 1987), *cert. denied*, 487 U.S. 1204 (1988).

Plaintiff has not alleged a waiver of sovereign immunity in his lawsuit against the United States. Thus, the Court lacks subject matter jurisdiction, and the claims are subject to dismissal. *See Gilbert v. DaGrossa*, 756 F.2d 1455, 1458 (9th Cir. 1985) (dismissing a suit against IRS agents in their official capacities due to lack of subject matter jurisdiction).

Based on the foregoing, Plaintiff is advised that his Complaint is subject to dismissal. Due to the dismissal of the lawsuit, Plaintiff's motions requesting an evidentiary hearing and remand to state court are moot.

ORDER 4

ORDER

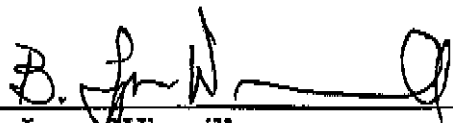
NOW THEREFORE IT IS HEREBY ORDERED that Plaintiff's lawsuit is dismissed for the reasons set forth above.

IT IS FURTHER HEREBY ORDERED that Plaintiff's Motion for Evidentiary Hearing (Docket No. 8) is MOOT.

IT IS FURTHER HEREBY ORDERED that Plaintiff's Motion to Remand to State Court (Docket No. 10) is MOOT.

IT IS FURTHER HEREBY ORDERED that Defendant's Request for Dismissal (Docket No. 9) is GRANTED.

DATED this 4th day of November, 2003.



B. Lynn Winmill
Chief Judge, United States District Court

ORDER 5

United States District Court
for the
District of Idaho
November 5, 2003

* * CLERK'S CERTIFICATE OF MAILING * *

Re: 2:03-cv-00034

I certify that I caused a copy of the attached document to be mailed or faxed to the following named persons:

Clifford Louis Noll
715 N 13th St
Coeur d'Alene, ID 83814

David Cheng, Esq. 1-202-307-0054
US DEPT OF JUSTICE
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PO Box 683-Ben Franklin Station
Washington, DC 20044

 Chief Judge B. Lynn Winmill
 Judge Edward J. Lodge
 Chief Magistrate Judge Larry M. Boyle
 Magistrate Judge Mikel H. Williams

Visiting Judges:
 Judge David O. Carter
 Judge John C. Coughenour
 Judge Thomas S. Zilly

Cameron S. Burke, Clerk

Date: 11-5-03

BY: 
(Deputy Clerk)