UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

John Doe v. United States of America

64 U.S.L.W. 2078 (9th Cir. 1995) · No. Nos. 93-56367, 94-55552 · Decided June 29, 1995

SUMMARY

The Ninth Circuit consolidated appeals involving John Doe’s Federal Tort Claims Act and contract claims against the United States arising from the FBI’s disclosure of his identity as an informant. The court held that the district court improperly dismissed the tort claims with prejudice without allowing amendment or discovery into jurisdictional facts. It also held that, for bankruptcy setoff purposes, the United States generally constitutes a single governmental unit and remanded for further proceedings.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Noonan, Circuit Judge; Ferguson, Circuit Judge; Beezer, Circuit Judge
JURISDICTION	Federal
DECIDED	June 29, 1995
DOCKET	Nos. 93-56367, 94-55552
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Consolidated appeals from two district-court judgments dismissing Doe's Federal Tort Claims Act claims with prejudice and dismissing a bankruptcy adversary proceeding on res judicata grounds.
STANDARD OF REVIEW	The court reviewed the dismissal of the FTCA claims and the res judicata ruling; the opinion applied abuse-of-discretion principles to dismissal with prejudice without leave to amend and reviewed the legal issues concerning res judicata and bankruptcy sovereign-immunity waiver.
PRECEDENTIAL VALUE	published and precedential Ninth Circuit opinion
PARTIES	John Doe v. United States of America

TOPICS

bankruptcy · nondischargeable debts · res judicata · appellate procedure · civil procedure

PRACTICE AREAS

Federal Tort Claims Act | bankruptcy | sovereign immunity | civil procedure | appellate procedure

QUESTIONS PRESENTED

1. Whether the district court improperly dismissed Doe's FTCA claims with prejudice without granting leave to amend or allowing discovery concerning the location of the alleged tort.
2. Whether res judicata barred Doe from asserting his tort claims as a setoff against the IRS's bankruptcy claims.
3. Whether, under 11 U.S.C. § 106(b), the United States and its agencies are treated as a single governmental unit for purposes of offsetting a judgment against the IRS's allowed tax claims.
4. Whether the related contract claim should be returned to the Court of Federal Claims while the FTCA and bankruptcy setoff claims remained pending.

HOLDINGS

1. When a complaint is dismissed for failure to state a claim, the district court must grant leave to amend unless it determines that the pleading could not possibly be cured by alleging additional facts. Because the district court made no such determination and gave no justification for dismissing the FTCA claims with prejudice, dismissal without leave to amend was improper.
2. Because the FTCA case was improperly dismissed and was not res judicata, the district court could not dismiss the bankruptcy setoff proceeding on res judicata grounds; the possibility of a setoff remained open.
3. For purposes of sovereign-immunity waiver and setoff under 11 U.S.C. § 106, all agencies of the United States, except agencies acting in a distinctive private capacity, are treated as a single governmental unit.

KEY QUOTATIONS

> *"Because the district court did not determine, nor can we conclude, that the allegation of other facts could not possibly cure the deficiencies in [Doe's] complaint, the district court abused its discretion in dismissing [the complaint] with prejudice."* (58 F.3d at 497)

> *"Faced with these authorities and this reasoning, we now hold that as a matter of law, for purposes of waiver of sovereign immunity and setoff under 11 U.S.C. Sec. 106, all agencies of the United States, except those acting in some distinctive private capacity, are a single governmental unit."* (58 F.3d at 498)

FACTUAL BACKGROUND

John Doe assisted the FBI in undercover money-laundering investigations involving members of the Medellin Cartel. He alleged that the FBI promised to protect his identity but disclosed that he was an informant to two cartel members whom agents were attempting to recruit as informants, placing Doe and his family at serious risk. Doe asserted FTCA tort claims and related contract-based claims, while the IRS separately pursued more than $750,000 in tax claims against him in bankruptcy.

PROCEDURAL HISTORY

Doe sued the United States in the Central District of California under the Federal Tort Claims Act and asserted related contract and fiduciary-duty claims arising from the FBI's disclosure of his identity as an informant. The district court transferred the contract claim to the Court of Federal Claims and dismissed the FTCA claims with prejudice without giving reasons. After Doe filed for bankruptcy and the IRS filed tax claims, Doe asserted the same claims in a bankruptcy setoff proceeding; the matter was withdrawn to the district court, which dismissed it on res judicata grounds. The Ninth Circuit consolidated the appeals, reversed, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must permit Doe to amend the FTCA complaint to allege where the tort occurred and allow discovery into relevant jurisdictional facts. The bankruptcy setoff proceeding must remain open because res judicata does not bar it. The contract claim should not be returned to the Court of Federal Claims while the tort and setoff claims remain pending in the district court.

CASES CITED

- Schreiber Distributing Co. v. Serv-Well Furniture Co., 806 F.2d 1393 (9th Cir. 1986)
- Indian Towing Co. v. United States, 350 U.S. 61 (1955)
- Cook, Perkiss & Liehe, Inc. v. Northern California Collection Service, Inc., 911 F.2d 242 (9th Cir. 1990)
- Bonanno v. Thomas, 309 F.2d 320 (9th Cir. 1962)
- Luther v. United States, 225 F.2d 495 (10th Cir. 1954)
- Small Business Administration v. McClellan, 364 U.S. 446 (1960)
- Frigard v. United States, 862 F.2d 201 (9th Cir. 1988)
- Berkovitz v. United States, 486 U.S. 531 (1988)
- United States v. Gaubert, 499 U.S. 315 (1991)
- Kennewick Irrigation District v. United States, 880 F.2d 1018 (9th Cir. 1989)
- St. Clair v. City of Chico, 880 F.2d 199 (9th Cir. 1989)
- Berardinelli v. Castle & Cooke Inc., 587 F.2d 37 (9th Cir. 1978)
- Garcia v. United States, 826 F.2d 806 (9th Cir. 1987)
- Georgia Casualty and Surety Co. v. United States, 823 F.2d 260 (8th Cir. 1987)
- Horta v. Sullivan, 4 F.3d 2 (1st Cir. 1993)
- Ostera v. United States, 769 F.2d 716 (11th Cir. 1985)
- Dalehite v. United States, 346 U.S. 15 (1953)
- Flynn v. United States, 902 F.2d 1524 (10th Cir. 1990)
- Woodbridge Plaza v. Bank of Irvine, 815 F.2d 538 (9th Cir. 1987)
- Caban v. United States, 728 F.2d 68 (2d Cir. 1984)
- Gasho v. United States, 39 F.3d 1420 (9th Cir. 1994)

- McMahon v. United States, 342 U.S. 25 (1951)

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