

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

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|--|---|--------------------------------------|
| RALPH L. FULLER, |) | |
| |) | |
| Plaintiff, |) | Civil Action No.: 7:04cv00275 |
| |) | |
| v. |) | <u>MEMORANDUM OPINION</u> |
| |) | |
| SAM CAMUS, d/b/a/ Premier Trends, |) | By: Samuel G. Wilson |
| and |) | United States District Judge |
| UNITED STATES OF AMERICA |) | |
| |) | |
| Defendants. |) | |

Ralph Fuller originally filed this claim in the Roanoke City Circuit Court, claiming breach of contract and/or the tort of misrepresentation against the United States of America and Sam Camus and seeking \$50,300. The defendants removed the case to this court, and both defendants have moved for summary judgment. The court dismisses Fuller’s claims against the United States because he has failed to present his claim to the appropriate federal agency for review and possible disposition or, in the alternative, dismisses the claim against the United States due to lack of subject matter jurisdiction, and the court declines to exercise supplemental jurisdiction over the remaining state law claim. The court, therefore, remands the remaining claims against defendant Sam Camus to the Roanoke City Circuit Court.

I.

On August 29, 2003, Ralph Fuller purchased fifteen sets of cultured black pearls from Sam Camus of Premier Trends through an Internet auction site for \$4,000. He claims that he arrived at the Internet advertisement for the pearls via an Internet link on the U.S. Marshals Service website, and that

Camus held himself out as an authorized seller of seized goods for the U.S. Marshals Service. Fuller claims that someone with the Marshals Service confirmed their relationship with Camus upon inquiry. The Marshals Service denies having ever had a relationship of any sort with Camus, and they deny having ever given Fuller false confirmation that such a relationship exists. Fuller received the “pearls” but was not satisfied with their quality, contending they were plastic and made in China. Fuller claims that Camus misled him as to the quality and value of the pearls and that someone from U.S. Marshals Service in Roanoke informed him that he would handle the matter. When the Marshals Service allegedly failed to follow up, Fuller filed the current lawsuit.

II.

A.

Fuller’s pleadings do not explicitly designate whether he is proceeding under a theory of contract, tort, or both. Under either theory, though, the court must dismiss Fuller’s claim against the United States. If fuller is proceeding in tort, then his failure to first present his claim to the appropriate federal agency prior to filing suit bars his claim.¹ See 28 U.S.C. § 2675. On the other hand, if the court reads Fuller’s claim as a contract claim, then the court still must dismiss for lack of jurisdiction because this court may only hear contract claims against the United States if the amount in controversy is less than \$10,000.² Thus, regardless of whether Fuller is proceeding under a tort or a contract

¹Additionally, the United States has not waived its sovereign immunity with regard to claims of deceit and misrepresentation. See 28 U.S.C. § 2680(h).

²Contract claims against the United States exceeding \$10,000 must be filed with the United States Court of Federal Claims under the Tucker Act. 28 U.S.C. § 1491; 28 U.S.C. § 1346. (“The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of . . . [a]ny other civil action or claim against the United States, *not exceeding \$10,000 in amount* ,

theory, the court dismisses all claims against the United States.

B.

Only a tort and/or contract claim against Camus remains. This claim has no independent basis for federal subject matter jurisdiction, and, having disposed of all claims that do have an independent basis for subject matter jurisdiction, this court declines to exercise supplemental jurisdiction over it. See 28 U.S.C. § 1367 (“The district courts may decline to exercise supplemental jurisdiction over a claim . . . if . . . the district court has dismissed all claims over which it has original jurisdiction”); Hinson v. Norwest Financial South Carolina, Inc., 239 F.3d 611, (4th Cir. 2001) (“[F]ederal courts . . . have an inherent power to remand removed State claims when the federal claims drop out of the case. [T]his power is ‘deriv[ed] from the doctrine of pendent jurisdiction.’”) (quoting Carnegie-Mellon University v. Cohill, 484 U.S. 343, 355 n.11 (1988)). Therefore, the court remands the remaining claim to the Roanoke City Circuit Court.

III.

Fuller’s claims against the United States are hereby dismissed, and the court declines to exercise supplemental jurisdiction over Fuller’s remaining pendent state-law tort or contract claim against Camus and remands that claim to state court.

founded . . . upon . . . any express or implied contract with the United States”) (emphasis added).

Even if Fuller were seeking an amount allowing for federal district court review, the court would still grant summary judgment to the United States because, even taking each of Fuller’s allegations as true, no reasonable fact finder could conclude that a contract existed between Fuller and the United States or an agent thereof. The existence of a contract is a prerequisite for Tucker Act relief. See 28 U.S.C. §§ 1346, 1491; Hatzlachh Supply Co, Inc. v. U.S., 444 U.S. 460, 465 n.5 (1980).

ENTER: This ____ day of October, 2004.

UNITED STATES DISTRICT JUDGE

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| RALPH L. FULLER, |) | |
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| Plaintiff, |) | Civil Action No.: 7:04cv00275 |
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| v. |) | <u>FINAL ORDER</u> |
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| SAM CAMUS, d/b/a/ Premier Trends, |) | By: Samuel G. Wilson |
| and |) | United States District Judge |
| UNITED STATES OF AMERICA |) | |
| |) | |
| Defendants. |) | |

In accordance with the memorandum opinion entered on this day, it is hereby **ADJUDGED** and **ORDERED** that Ralph Fuller’s claims against the United States are **DISMISSED**. His remaining claim or claims against Sam Camus are hereby **REMANDED** to the Roanoke City Circuit Court.

ENTER: This ____ day of October, 2004.

UNITED STATES DISTRICT JUDGE