

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Case No. 11-61058-Civ-MOORE/TORRES

SCOTT GREGORY BEACH,

Plaintiff,

v.

FEDERAL RESERVE BANK OF ATLANTA,

Defendant.

**DEFENDANT FEDERAL RESERVE BANK OF ATLANTA'S
MOTION TO DISMISS AND INCORPORATED MEMORANDUM OF LAW**

Defendant Federal Reserve Bank of Atlanta ("Reserve Bank"), pursuant to Rules 12(b)(1)¹ and 12(b)(6) of the Federal Rules of Civil Procedure, hereby moves to dismiss the claim of Scott Gregory Beach ("Plaintiff") against Defendant Reserve Bank on the grounds that (1) the Court does not have jurisdiction because Plaintiff lacks standing to bring this action; and (2) the Complaint fails to state a claim upon which relief may be granted. The reasons for Defendant Reserve Bank's Motion to Dismiss are more fully set forth in the incorporated memorandum of law.

¹ Plaintiff's Complaint erroneously relies on 12 U.S.C. § 341 for purposes of establishing Federal Court jurisdiction over Defendant Reserve Bank. The applicable statute is actually 12 U.S.C. § 632, which states "all suits of a civil nature at common law or in equity to which any Federal reserve bank shall be a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such suits." In either event, and as set forth in detail below, Defendant Reserve Bank's challenge to the subject matter jurisdiction of this Court is based solely on Plaintiff's general lack of standing to assert the claims set forth in the Complaint.

STANDARD OF REVIEW

"To survive a motion to dismiss, a complaint must now contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, --- U.S. ---, 129 S. Ct. 1937, 1949 (2009)) (applying Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 557 (2007) to all civil actions). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 129 S. Ct. at 1949. "Nor does a complaint suffice if it tenders naked assertion[s], devoid of 'further factual enhancement.'" Id. at 1949 (quoting Twombly, 550 U.S. at 557). In considering a motion to dismiss, a court should adopt a two-pronged approach: "(1) eliminate any allegations in the complaint that are merely legal conclusions; and (2) where there are well-pleaded factual allegations, 'assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.'" Iqbal, 129 S. Ct. at 1950). Additionally, "courts may infer from the factual allegations in the complaint 'obvious alternative explanations,' which suggest lawful conduct rather than the unlawful conduct the plaintiff would ask the court to infer." Id. at 1951-52).

ARGUMENT

I. THIS COURT DOES NOT HAVE JURISDICTION OVER THIS CASE BECAUSE PLAINTIFF LACKS STANDING TO BRING THIS ACTION.

Standing is "an irreducible minimum" necessary under Article III, sec. 2 of the U.S. Constitution which provides that there must be a "case" or "controversy." Kelly v. Harris, 331 F.3d 817, 819-20 (11th Cir. 2003). Article III sets forth the basic standing requirements for a plaintiff seeking to pursue claims in Federal Court. Under Article III, (i) the plaintiff must have suffered an injury-in-fact which is actual, not hypothetical; (ii) there must be a causal connection between the injury and the conduct complained of; and (iii) it must be likely, not merely speculative, that the injury will be redressed by a favorable decision. Lujan v. Defenders of

Wildlife, 504 U.S. 555, 560 (1992). Assertions about what might happen do not establish an injury that is concrete and particularized. Nat'l Alliance for Mentally Ill, St. Johns Inc. v. Bd. of County Comm'rs of St. Johns County, 376 F.3d 1292, 1294 (11th Cir. 2004). Rather, a plaintiff has the "burden of establishing that [his] claimed injury is personal, particularized, concrete, and otherwise judicially cognizable." Raines v. Byrd, 521 U.S. 811, 819 (1997).

In this case, Plaintiff has not satisfied the required threshold to establish standing to bring this action. In fact, it is highly unclear from the Complaint what offense Plaintiff alleges Defendant Reserve Bank has committed. The Complaint merely sets forth broad, sweeping allegations about the monetary system of the United States and essentially requests broad injunctive and declaratory relief in the form of: (1) enjoining Defendant Reserve Bank from issuing Federal Reserve notes; (2) forcing Defendant Reserve Bank to "wind up its business and completely cease operating"; and (3) declaring Defendant Reserve Bank's "Organization Certificate" null and void.

What is clear, however, is that the broad allegations set forth in Plaintiff's Complaint are completely devoid of any personal, particularized, concrete injury suffered by Plaintiff himself. Plaintiff's own allegations place him in no different position than any other person who uses Federal Reserve notes. Because Plaintiff has not suffered an injury-in-fact which is actual, not hypothetical, there is no causal connection between any injury and the conduct complained of. Accordingly, the so-called injury cannot be redressed by a decision here because, under Lujan v. Defenders of Wildlife, Plaintiff has no standing to assert the allegations in his Complaint.

Notably, in 1997, a plaintiff named Gary A. Goldman filed a similar lawsuit against the United States Department of Treasury, the Federal Reserve Board of Governors, and Defendant Reserve Bank. Goldman v. U.S. Dept. of Treasury, et al., Case No. 1:97-CV-3798-WBH (N.D.

Ga. Nov. 2, 1998). In Goldman, the plaintiff alleged nearly identical violations of 12 U.S.C. § 411 and the U.S. District Court for the Northern District of Georgia dismissed the claims with prejudice on the grounds that the plaintiff lacked standing and, therefore, the Court lacked jurisdiction over his claims. See Order granting motion to dismiss, attached hereto as **Exhibit A** (*affirmed Goldman v. U.S. Dept. of Treasury*, 192 F.3d 131 (11th Cir. 1999)). Plaintiff's claims in the present case do not differ in any material manner from the claims asserted in Goldman and, for the reasons set forth above, should likewise be dismissed with prejudice.

II. THE COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

Plaintiff's Complaint seeks injunctive and declaratory relief, claiming that Defendant Reserve Bank has violated Plaintiff's redemption right under Section 16 of the Federal Reserve Act of 1913 (12 U.S.C. § 411). Plaintiff further appears to allege that Defendant Reserve Bank is "engaged in counterfeiting" by "issuing Federal Reserve Notes that it has no intention of redeeming on demand." See Complaint, Statement of Facts.

Plaintiff's apparent attempt to allege that his "redemption right" under 12 U.S.C. § 411 has somehow been violated, however, is wholly without merit under the law. Section 16 of the Federal Reserve Act states, in relevant part, that "Federal Reserve notes... shall be redeemed in lawful money on demand...at any Federal Reserve bank." 12 U.S.C. § 411. However, Federal Reserve notes have been designated as "legal tender" by Congress under 31 U.S.C. § 5103. Accordingly, such notes are "lawful money" as that term is used in Section 16 of the Federal Reserve Act.

Accordingly, claims challenging the validity of Federal Reserve notes and/or alleging a violation of a party's right to redeem such notes for lawful money have regularly been disposed of by the courts of the United States. See e.g., U.S. v. Anderson, 584 F.2d 369, 374 (10th Cir.

1978) (holding that because congress is authorized to establish a national currency, either in coin or in paper, and to make that currency lawful money for all purposes, and because congress has defined Federal Reserve notes as legal tender, there can therefore be no challenge to the legality of Federal Reserve notes); Wilson v. U.S., 1998 WL 937356, *3 (D.Colo. 1998) (holding that since Congress has declared Federal Reserve notes to be legal tender for all debts, including taxes, there can be no valid challenge to the legality of Federal Reserve notes). See also Milam v. United States, 524 F.2d 629 (9th Cir. 1974) (dismissing plaintiff's claim that a \$50.00 Federal Reserve note should be redeemable for "lawful money" other than Federal Reserve notes pursuant to Section 16 of the Federal Reserve Act).

Although it is unclear from the Complaint in this case what "redemption right" Plaintiff claims has been violated and/or what, if any, "lawful money" Plaintiff purports to be entitled to, the law is clear that Plaintiff is not entitled to any relief based on a challenge to the legality of Federal Reserve notes – and certainly not entitled to enjoin Defendant Reserve Bank from issuing Federal Reserve notes and cease operating altogether.

WHEREFORE, for all the foregoing reasons, Defendant Federal Reserve Bank of Atlanta respectfully requests that this Court enter an order granting this Motion; dismissing Plaintiff's Complaint with prejudice; and such other and further relief this Court deems necessary and proper.

Dated: June 17, 2011

Respectfully submitted,

AKERMAN SENTERFITT

One S.E. Third Avenue

25th Floor

Miami, FL 33131-1714

Tel. 305-374-5600

Fax 305-374-5095

By: s/Michael O. Mena

Michael O. Mena, Esq.

Florida Bar No. 010664

E-mail: michael.mena@akerman.com

*Attorneys for Defendant, Federal Reserve Bank of
Atlanta*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic transmission on all CM/ECF registered users on this 17th day of June, 2011, and by U.S. Mail on:

Scott Gregory Beach (pro se)
2889 NW 91st Avenue
Apartment 104
Coral Springs, Florida 33065-5071.

By: s/Michael O. Mena
Michael O. Mena, Esq.