Neldon P. Johnson
2730 West 4000 South
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Pro Se Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

NELDON PAUL JOHNSON,

Plaintiff,

vs.

INTERNAL REVENUE SERVICE, US DEPARTMENT OF JUSTICE, agencies of the United States, and DAVID NUFFER, an individual,

Defendants.

VERIFIED COMPLAINT FOR INJUNCTION

Case: 4:18-cv-00062
Assigned To : Benson, Dee
Assign. Date : 09/20/2018
Description: Johnson v. IRS et al

Plaintiff, Neldon P. Johnson, Pro Se Plaintiff, complains upon penalty of perjury of Defendants as follows:

JURISDICTION AND VENUE

1. Plaintiff, Neldon P. Johnson (APlaintiff@), is an individual residing in Utah County whose constitutional rights have been abridged by the Defendants acting in concert with one another to deprive him of his rights and to injure him.

2. Defendant, Internal Revenue Service (AIRS@), is an agency of the United States government, acting unlawfully and with the intent to injure Plaintiff and to deprive him of property and of his constitutional rights.

3. Defendant, United States Department of Justice ("DOJ"), is an agency of the United States government, acting unlawfully and with the intent to injure Plaintiff and to deprive him of property and of his constitutional rights.

4. This Court has jurisdiction in this matter in accordance with 28 U.S.C. §§ 1340 and 1345.

5. Venue is properly laid with this Court pursuant to 28 U.S.C. § 1391 in that the cause of action arose in Utah and the Defendants have caused tortious injury in Utah.

GENERAL ALLEGATIONS

6. Plaintiff incorporates by reference the allegations contained in the prior paragraphs 1 through 5 as though set forth herein.

7. Plaintiff was sued by the DOJ on behalf of the IRS for alleged tax violations involving the sale of patented Fresnel lenses to the public.

8. The patented Fresnel lenses took years of research and development, costing millions of dollars of investment, to solve numerous design and manufacturing challenges.

9. The resulting patented Fresnel lens was designed to be placed in an 18 foot wide array, which would cost in excess of a half-million dollars to produce using traditional manufacturing methods.

10. The patented lenses concentrate solar heat and achieves temperatures in excess of 1,500º Fahrenheit.

11. To house the Fresnel lenses in an array, to align that array with the sun, and to track the movement of the sun with the array took additional years of research and development to solve environmental issues such as the wind and seasonal locations of the sun.

12. The Fresnel lenses were sold to the public using sales documents prepared by attorneys which were designed to allow purchasers to potentially qualify for tax benefits.

13. The Defendants have acted in concert with one another to wrongly impair the rights of the Plaintiff and to abridge the Plaintiff's rights to Due Process and Equal Protection, as more fully set forth below.

14. The government has consistently identified and acknowledged Fresnel lenses as solar equipment, and in the case brought against Plaintiff the government admitted the product sold was a Fresnel lens.

15. Other taxpayers have received tax benefits from purchases of Fresnel lenses because they are solar equipment.

16. The Fresnel lenses sold by Plaintiff's company RaPower3 are legal and can be sold legally.

17. The government claims the only defect with Plaintiff's marketing efforts was to include mention of possible tax benefits, and not the sale of lenses itself.

18. The government failed to provide any proof at any time, including during trial of the case against Plaintiff, that showed there was any purchaser who based his

decision to purchase the patented Fresnel lens offered by Plaintiff's company RaPower3 on potential tax benefits.

19. Although testimony was to the contrary, the Defendants conspired to produce a significant risk of tens-of-millions of dollars in judgment against Plaintiff based on the complete absence of proof that any purchase was based on tax benefits and therefore objectionable.

20. Defendants have reached the Orwellian decision that the absence of any proof is proof that all the purchases are based on promised tax benefits because, since all the witnesses testified to the contrary, they are not credible.

21. Defendants were and are motivated by personal animus against the Plaintiff and have conspired to deprive the Plaintiff of his rights for no reason other than this bias against him.

22. Plaintiff has spent thousands of dollars in costs and attorney fees in defending the claims brought against him by Defendants DOJ and IRS.

23. The court of equity in this case has repeatedly tried to resolve legal issues where legal remedies are available. Therefore, the court of equity loses jurisdiction where legal remedies are available. Without jurisdiction the court procedures are void.

24. The court of equity brought by the government is completely without jurisdiction where legal issues are at issue. Thus the court has denied Plaintiff the right to a trial by jury on those issues. Because those issues are material to the government's

case the court loses jurisdiction and therefore the courts power to adjudicate the case do not exist. Thus the court is left without jurisdiction and therefore all proceedings are void.

25. The court of equity loses jurisdiction when remedy is one of law. The court has repeatedly threatened to grant the government the right to disgorge the defendant's property through a court of equity. In recent Supreme Court's decision *Kokesh v SEC* the court ruled that disgorgement is a penalty. Since by law a court of equity is not authorized to issue fines or penalties this procedure is outside this court's jurisdiction.

26. Therefore, I am asking this court to enjoin the court proceedings from taking any action which is not allowed or does not have jurisdiction to act and would attack a constitutional right.

27. This court of equity is trying to act where a legal remedy is available. In the ongoing case where a solar energy property is claimed by the defendant but is being denied by the court a legal property right is at stake. The U.S congress has enacted a law allowing tax credits to be allowed pursuant to the statute. This right is given to property that meet certain requirements for using solar to create process heat or to make electricity. Whether or not a property qualifies is a legal question, therefore it must be resolved in a court of law. This also allows for a jury to decide that issue. That court case Judge Nuffer denied defendants right to a jury trial thus violating the constitution right to trial by jury. It also follows that a material statement would have to be one that involves the property right allowed by congress in the solar energy statute. In order for that statement to be fraudulent or misleading the statement would have to refer to a

property right given by the statute and that statement would have to be untrue about having that property right.

28. Therefore, the court loses jurisdiction over this issue. Without being able to resolve this issue their case fails. I ask the court to be enjoined from using that preceding in making a finding of fact as it violates a constitutional protected right.

29. Therefore I ask this court to void those procedures and enjoining them from further violations of my constitutional rights.

30. In the courts proceedings it has been proposed by Judge Nuffer that the government may use joint and severable liability to further harm the defendants. This threat has been made repeatedly and has made the court to act in appointing receiver ship. A new Supreme Court ruling has concluded that the courts can only disgorge what the defendants have actually received. Therefore, joint and severable liability is now unconstitutional.

31. I ask the court to enjoin the Nuffer court from allowing that action to be taken because it would violate the constitution.

32. During the course of the Nuffer court the courts conclusion was that it was legal to sell the solar Fresnel lens but it was illegal to sale those lens with reference to their being able to receive a tax credit. However again the issue is a legal issue and not an equitable issue. Therefore where a legal remedy is available it is mandatory to use the legal remedy in deciding this issue. Here again the Nuffer court loses jurisdiction to decide this issue in this case. This would allow for a jury trial on that issue.

33. Therefor we ask the court to void those proceedings for lack of jurisdiction because of constitutional violations or potential violations.

FIRST CAUSE OF ACTION
(Denial of Due Process-Expert Discovery)

34. Plaintiff incorporates by reference the allegations contained in the prior paragraphs 1 through 22 as though set forth herein.

35. The Defendants IRS and DOJ did not disclose any calculation of an amount claimed as damages during the discovery period of the case against Plaintiff.

36. These Defendants wrongly deprived Plaintiff of any opportunity to learn of the claimed damages until final pretrial disclosure of exhibits in which for the first time an unexplained summary exhibit containing a matrix of numbers was produced.

37. When Plaintiff complained that this was prejudicial to his right to a fair trial and notice, the Defendant Nuffer allowed only a two-hour deposition in the hectic final pretrial time of preparation as a remedy for the surprise witness and exhibit.

38. The brief time allowed was inadequate to allow for full understanding of the government's case, and did disclose material issues with the proposed proof.

39. The exhibits were not understood by the witnesses who would offer them at trial.

40. The witnesses were not experts.

41. The exhibits used terms such as "harm to the Treasury" which the witnesses did not understand and could not define or explain.

42. The tax returns upon which an exhibit was based were not analyzed to establish that the solar energy credits on the returns were related to RaPower3 lenses and not other purchases of solar equipment such as rooftop photovoltaic panels.

43. The tax returns upon which an exhibit was based were not analyzed to establish that the depreciation claimed on the returns were related to RaPower3 lenses instead of other qualifying equipment or property such as computers or office equipment.

44. Despite the absence of any competent proof, and the failure to disclose the information and provide expert discovery before the trial, Plaintiff was denied Due Process of law.

45. Plaintiff was entitled to rely on the Federal Rules of Civil Procedure, as any other litigant is entitled, and when Defendants acted in concert to deprive Plaintiff of his right to know beforehand the proof he would be required to meet at trial, his right to Due Process was abridged.

46. As a result of Defendants' actions, Plaintiff has been damaged in an amount to be proven at trial.

SECOND CAUSE OF ACTION
(Denial of Due Process-Right to Jury)

47. Plaintiff incorporates by reference the allegations contained in the prior paragraphs 1 through 35 as though set forth herein.

48. The Plaintiff was entitled as a matter of law to have his case heard by a jury.

49. The Plaintiff demanded and was given a jury trial right at the beginning of the case.

50. Defendants conspired to remove the right to a jury trial, and did in fact deny Plaintiff a trial by jury.

51. Defendants ignored Plaintiff's Due Process right and conspired to render an unjust and illegal outcome by this conspiracy.

52. As a result, Plaintiff's Constitutional Right to Due Process has been abridged.

53. Plaintiff has spent thousands of dollars in costs and attorney fees in his futile effort to obtain Due Process of law.

THIRD CAUSE OF ACTION
(Denial of Due Process-Insufficient Evidence)

54. Plaintiff incorporates by reference the allegations contained in the prior paragraphs 1 through 42 as though set forth herein.

55. Plaintiff was entitled to have the claims brought against him proven by competent evidence.

56. The sales involving Plaintiff's company RaPower3 of Fresnel lenses are legal under the law.

57. The Defendants IRS and DOJ failed to prove that all the purchases upon which damages were claimed by them were based on tax benefits.

58. Defendant Nuffer decided the absence of proof is proof that the motivation was solely tax based, and now threatens to award tens-of-millions of dollars in damages based on the absence of proof.

59. Plaintiff's right to Due Process requires that the Defendants prove a case against him before awarding damages against him, which did not happen in the case Defendants brought.

60. Plaintiff has spent thousands of dollars in costs and attorney fees in the attempt to vindicate his right to Due Process.

FOURTH CAUSE OF ACTION
(Denial of Equal Protection-Alteration of the Statute)

61. Plaintiff incorporates by reference the allegations contained in the prior paragraphs 1 through 60 as though set forth herein.

62. The relevant statutory language requires solar energy equipment to provide "solar process heat" to qualify for a tax credit.

63. The patented Fresnel lenses involved in the dispute between the IRS and Plaintiff do produce solar process heat.

64. All the Defendants conspired to wrongly change the statute and/or ignore the statute and to instead illegally require electricity to be produced.

65. Plaintiff was entitled to rely on the statute and the Defendants have conspired to abridge Plaintiff's right to Equal Protection by imposing upon him a burden that does not exist in the relevant statute adopted by Congress.

66. Defendants are without any jurisdiction or authority to invent a cause of action, impose their newly imagined requirement for qualification for tax credits, and insist

that Plaintiff alone meet this demand upon risk of forfeiting tens-of-millions of dollars in damages.

67. Plaintiff has spent thousands of dollars in costs and attorney fees in the attempt to vindicate his right to Equal Protection under the law.

FIFTH CAUSE OF ACTION
(Denial of Equal Protection-Absence of Proof is "Proof")

68. Plaintiff incorporates by reference the allegations contained in the prior paragraphs 1 through 67 as though set forth herein.

69. Plaintiff was entitled to have the claims brought against him proven by competent evidence.

70. The sales involving Plaintiff's company RaPower3 of Fresnel lenses are legal under the law.

71. The Defendants IRS and DOJ failed to prove that any and certainly not all the purchases upon which damages were claimed by them were based on tax benefits.

72. Defendant Nuffer decided the absence of proof is proof that the motivation was solely tax based, and now threatens to award tens-of-millions of dollars in damages based on the absence of proof.

73. Plaintiff's right to Equal Protection under the law requires that the Defendants prove a case against him before awarding damages against him, which did not happen in the case Defendants brought.

74. Plaintiff has spent thousands of dollars in costs and attorney fees in the attempt to vindicate his right to Equal Protection under the law.

SIXTH CAUSE OF ACTION
(Denial of Equal Protection-Fresnel Lenses Qualify)

75. Plaintiff incorporates by reference the allegations contained in the prior paragraphs 1 through 74 as though set forth herein.

76. The patented Fresnel lenses took years of research and development, costing millions of dollars of investment, to solve numerous design and manufacturing challenges.

77. The resulting patented Fresnel lens was designed to be placed in an 18 foot wide array, which would cost in excess of a half-million dollars to produce using traditional manufacturing methods.

78. The patented lenses concentrate solar heat and achieves temperatures in excess of 1,500º Fahrenheit.

79. To house the Fresnel lenses in an array, to align that array with the sun, and to track the movement of the sun with the array took additional years of research and development to solve environmental issues such as the wind and seasonal locations of the sun.

80. The Fresnel lenses were sold to the public using sales documents prepared by attorneys which were designed to allow purchasers to potentially qualify for tax benefits.

81. The Defendants have acted in concert with one another to wrongly impair the rights of the Plaintiff and to abridge the Plaintiff's rights to Due Process and Equal Protection, as more fully set forth in this Complaint.

82. The government has consistently identified and acknowledged Fresnel lenses sold by other entities as solar equipment, and in the case brought against Plaintiff the government admitted the product sold was a Fresnel lens.

83. Other taxpayers have received tax benefits from purchases of Fresnel lenses because they are solar equipment.

84. The Fresnel lenses sold by Plaintiff's company RaPower3 are legal and can be sold legally.

85. The government claims the only defect with Plaintiff's marketing efforts was to include mention of possible tax benefits, and not the sale of lenses itself.

86. The government failed to provide any proof at any time, including during trial of the case against Plaintiff, that showed there was any purchaser who based his decision to purchase the patented Fresnel lens offered by Plaintiff's company RaPower3 on potential tax benefits.

87. Although testimony was to the contrary, the Defendants conspired to produce a significant risk of tens-of-millions of dollars in judgment against Plaintiff based on the complete absence of proof that any purchase was based on tax benefits and therefore objectionable.

88. Defendants were and are motivated by personal animus against the Plaintiff and have conspired to deprive the Plaintiff of his rights for no reason other than this bias against him.

89. Plaintiff has spent thousands of dollars in costs and attorney fees in the attempt to vindicate his right to Equal Protection under the law.

Ex Post Facto:

90. Plaintiff incorporates by reference the allegations contained in the prior paragraphs 1 through 89 as though set forth herein.

91. By reinterpreting, changing and enforcing Section 48 to require electricity to be a condition of qualifying for a tax credit after the fact, Defendants have conspired to adopt an ex post facto law.

92. Defendants have abridged the rights of Plaintiff and denied him his rights under the constitution to be protected from ex post facto penalties.

93. Plaintiff has incurred losses and been forced to spend thousands of dollars in costs and attorney fees in the attempt to vindicate his constitutional rights.

Interference with Contract

94. Plaintiff incorporates by reference the allegations contained in the prior paragraphs 1 through 93 as though set forth herein.

95. Defendants' actions have wrongly interfered with Plaintiff's contract rights and injured Plaintiff in the amount of not less than $3 million dollars, the exact amount to be proven at trial.

96. Plaintiff and other parties contracted for the lease payment which could be paid in kind.

97. Plaintiff and other parties acknowledged payment in kind as a lease payment and Defendant Nuffer with the encouragement of the other Defendants have discarded these private contractual agreements.

98. As a result Defendants have interfered with Plaintiff's contract rights and damaged Plaintiff in an amount to be proven at trial.

Prayer for Relief

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For an injunction prohibiting Defendants from proceeding further against Plaintiff until a decision has been made about his Constitutional rights to Due Process and Equal Protection under the law.

2. For damages in an amount proven at trial.

3. For all costs and losses incurred as a result of the actions of the Defendants.

4. For an award of attorney fees.

5. For such other and further relief as the Court may deem just and equitable in the premises.

The foregoing is true and correct to the best of my knowledge, information and belief and I attest to its accuracy under penalty of perjury.

DATED this 20 day of September, 2018.

NELDON JOHNSON, Pro Se

Neldon P. Johnson, Pro Se