

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

GLENN A. BAXTER,
Plaintiff

v.

Civil No. 99-190-P-C

FEDERAL COMMUNICATIONS
COMMISSION, *et al.*,
Defendants

GENE CARTER, District Judge

MEMORANDUM OF DECISION AND ORDER

On October 6, 1999, Defendants Federal Communications Commission and United States Department of Justice filed a Motion to Dismiss or in the Alternative Motion for Summary Judgment (the “Motion to Dismiss”) (Docket No. 3) with regard to Plaintiff Glenn A. Baxter’s Complaint (Docket No. 1), which was removed to this Court from Kennebec County, Maine Superior Court on July 16, 1999. Thereafter, on October 18, 1999, Plaintiff filed his Motion for Default Judgment and Opposition to Motion to Dismiss or for Summary Judgment (“Opposition Motion”) (Docket No. 4). For the following reasons, the Court, treating Defendants’ motion as a Motion to Dismiss, will grant the motion for lack of subject matter jurisdiction on two grounds.

First, Plaintiff’s claims against Defendants sound in tort and, therefore, they are governed by the Federal Tort Claims Act (“FTCA”). *See* 28 U.S.C. §§ 1346(b), 2671-80. A lawsuit brought under the FTCA is “unlike a suit against a private person, [because] Congress has

created an administrative procedure that claimants must follow and exhaust.” *Santiago Rosario v. Estado Libre De Puerto Rico*, 52 F. Supp. 2d 301, 304 (D.P.R. 1999). Here, however, Plaintiff’s Complaint does not allege that Plaintiff ever brought his tort claims against Defendants to the appropriate governmental agency in accordance with the requirements of 28 U.S.C. § 2675(a). *Id.* Therefore, as a result of Plaintiff’s failure to exhaust his administrative remedies, the Court lacks subject matter jurisdiction over Plaintiff’s Complaint, and the Motion to Dismiss must be granted. *Id.*

Secondly, Plaintiff’s Complaint alleges three separate claims of libel against Defendants. *See* Complaint. Defendants, however, as the United States government, enjoy sovereign immunity from Plaintiff’s suit unless Congress has specifically abrogated their immunity under the FTCA. *See Molzof v. United States*, 502 U.S. 301, 305, 112 S. Ct. 711, 714, 116 L. Ed. 2d 731 (1992). Pursuant to 28 U.S.C. § 2680(h), Congress has expressly preserved the federal government’s sovereign immunity from suits for defamation. Therefore, the Court, again, lacks subject matter jurisdiction over Plaintiff’s Complaint and Defendant’s Motion to Dismiss must be granted. *See Aversa v. United States*, 99 F.3d 1200, 1209 (1st Cir. 1996); *Dynamic Image Tech., Inc. v. United States*, 18 F. Supp. 2d 146, 149 (D.P.R. 1998).

Finally, Plaintiff has moved for a default against Defendants. *See* Plaintiff’s Opposition Motion. But as indicated above, the Court lacks subject matter jurisdiction over Plaintiff’s Complaint and, for that reason, the Court need not address Plaintiff’s motion.

Accordingly, the Court **ORDERS** that Defendants' Motion to Dismiss be, and it is hereby, **GRANTED**.¹

GENE CARTER
District Judge

Dated at Portland, Maine this 30th day of November, 1999.

¹ The Court's dismissal of Plaintiff's Complaint is with prejudice. More than six years have elapsed from the time that Plaintiff's causes of action accrued, *see* Complaint, and more than two years have elapsed from the time that Plaintiff should have presented his claims to the appropriate agency for review. Thus, pursuant to 28 U.S.C. § 2401(a) and (b), Plaintiff's claims are time barred, and for that reason, dismissal of Plaintiff's claims without prejudice would serve no legitimate purpose.