UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

United States ex rel. Alcohol Foundation, Inc. v. Kalmanovitz Charitable Foundation, Inc.

186 F. Supp. 2d 458 (S.D.N.Y. 2002) · No. 00 Civ. 6267(VM) · Decided February 26, 2002

SUMMARY

The United States District Court for the Southern District of New York dismissed a False Claims Act qui tam action concerning alleged fraud by alcoholic beverage manufacturers and related entities. The court held that the relator lacked subject matter jurisdiction because the allegations were based on publicly disclosed information and the relator was not an original source. The court also denied the Government's request to keep the record under seal, ordered the case unsealed, and closed the case.

CASE DETAILS

COURT	United States District Court for the Southern District of New York
WRITING FOR THE COURT	Victor Marrero
JURISDICTION	New York
DECIDED	February 26, 2002
DOCKET	00 Civ. 6267(VM)
DISPOSITION	dismissed
PROCEDURAL POSTURE	A qui tam relator filed an action under the False Claims Act. The United States declined to intervene and suggested that the court lacked subject matter jurisdiction. Before the defendants were served, the district court considered the jurisdictional issue sua sponte and dismissed the complaint.
STANDARD OF REVIEW	The court independently reviewed subject matter jurisdiction sua sponte because lack of subject matter jurisdiction is nonwaivable and may be raised at any time.
PRECEDENTIAL VALUE	Published federal district court decision; persuasive authority within the district and circuit, subject to controlling Second Circuit and Supreme Court precedent.

TOPICS

subject matter jurisdiction · civil procedure · statutory interpretation · pleadings · motions to dismiss

PRACTICE AREAS

False Claims Act · federal civil procedure · qui tam litigation · sealing and public access to judicial records

QUESTIONS PRESENTED

1. Whether the False Claims Act's public-disclosure bar deprived the district court of subject matter jurisdiction because the relator's allegations were based on information previously disclosed to the public.
2. Whether Alcohol Foundation qualified as an original source by independently compiling and analyzing information obtained from published materials.
3. Whether the complaint sufficiently alleged a false or fraudulent claim under the False Claims Act.
4. Whether the record should remain permanently under seal at the government's request.

HOLDINGS

1. The court lacked subject matter jurisdiction because the information underlying Alcohol Foundation's allegations had been publicly disclosed and Alcohol Foundation did not qualify as an original source under 31 U.S.C. § 3730(e)(4).
2. Scientific and scholarly periodicals may constitute public disclosure through the 'news media' for purposes of 31 U.S.C. § 3730(e)(4)(a).
3. The complaint did not adequately identify false or fraudulent claims presented to the government and sought an impermissibly expansive conception of False Claims Act liability.
4. The government's request to keep the case permanently under seal was denied, and the court ordered the case unsealed.

KEY QUOTATIONS

> *"To be an original source, the individual must have had "direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the government before filing an action under this section which is based on the information.""* (462)

> *"Thus, this Court concludes that it lacks subject matter jurisdiction in this matter and the case must be dismissed."* (464)

> *"Judicial records presumptively are to be made available to the public."* (465)

FACTUAL BACKGROUND

Alcohol Foundation based its qui tam theory on published scientific, scholarly, and governmental materials concerning alcohol consumption, alcohol-related disease, industry marketing, and federal expenditures for treatment. It contended that compiling those materials into a purportedly unique mosaic transformed it into an original source of allegations that alcohol manufacturers and distributors had defrauded the federal government.

The complaint did not identify particular false or fraudulent claims submitted by the defendants to the government, instead asserting a generalized theory that government payment of alcohol-related medical costs constituted fraud.

PROCEDURAL HISTORY

Alcohol Foundation filed its complaint under seal on August 22, 2000. The United States declined intervention on February 28, 2001, suggested dismissal for lack of subject matter jurisdiction, and requested that the case remain under seal. After allowing Alcohol Foundation to update its submissions, the court concluded that the relator was not an original source under the False Claims Act, dismissed the action, denied the request to keep the case sealed, ordered the case unsealed, and closed the case.

DISPOSITION

dismissed

CASES CITED

- Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 583 (1999)
- Lyndonville Savings Bank & Trust Co. v. Lussier, 211 F.3d 697, 700 (2d Cir. 2000)
- Creaciones Con Idea, S.A. de C.V. v. MashreqBank, S.A. de C.V., 75 F. Supp. 2d 279, 280-81 (S.D.N.Y. 1999)
- Kreindler v. United Technologies Corp., 985 F.2d 1148, 1157-59 (2d Cir. 1993)
- United States ex rel. Stinson, Lyons, Gerlin & Bustamante, P.A. v. Prudential Insurance Co., 944 F.2d 1149, 1155-56 (3d Cir. 1991)
- United States ex rel. Precision Co. v. Koch Industries, 971 F.2d 548, 552-53 (10th Cir. 1992)
- United States ex rel. DeCarlo v. Kiewit/AFC Enterprises, Inc., 937 F. Supp. 1039, 1048 (S.D.N.Y. 1996)
- United States ex rel. Dhawan & Gowie v. New York Medical College, 252 F.3d 118, 121 (2d Cir. 2001)
- United States ex rel. Dick v. Long Island Lighting Co., 912 F.2d 13 (2d Cir. 1990)
- Gold v. Morrison-Knudsen, 68 F.3d 1475 (2d Cir. 1995)
- United States ex rel. Pentagen Technologies International, Ltd. v. CACI International Inc., No. 94 Civ. 2925 (S.D.N.Y. Jan. 4, 1996)
- A-1 Ambulance Service, Inc. v. State of California, 202 F.3d 1238, 1244 (9th Cir. 2000)
- United States ex rel. Mikes v. Straus, 84 F. Supp. 2d 427, 432 (S.D.N.Y. 1999)
- United States v. Amodeo, 71 F.3d 1044, 1047-51 (2d Cir. 1995)
- Greater Miami Baseball Club Limited Partnership v. Selig, 955 F. Supp. 37, 39 (S.D.N.Y. 1997)
- DiRussa v. Dean Witter Reynolds, Inc., 121 F.3d 818, 826 (2d Cir. 1997)