

[United States ex rel. Raggio v. Jacintoport Int'l, LLC](#)

United States District Court for the District of Columbia

March 12, 2015, Decided; March 12, 2015, Filed

Civil Action No. 10-01908 (BJR)

Reporter

2015 U.S. Dist. LEXIS 116432

UNITED STATES OF AMERICA, ex rel. JOHN RAGGIO, Plaintiff, v. JACINTOPOINT INTERNATIONAL, LLC. Defendant.

Prior History: [United States ex rel. Raggio v. Jacintoport Int'l LLC, 2013 U.S. Dist. LEXIS 80091 \(D.D.C., June 7, 2013\)](#)

Core Terms

false claim, violations, disclosure, stevedoring, subpoena, voluntary disclosure, damages, investigating, cooperated, summary judgment, services, charges, rates, days, overcharges, Partial, argues, food, cap

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Judges: Barbara Jacobs Rothstein, United States District Judge.

Opinion by: Barbara Jacobs Rothstein

Opinion

ORDER GRANTING DEFENDANT JACINTOPOINT'S MOTION FOR PARTIAL SUMMARY ADJUDICATION REGARDING REDUCED DAMAGES UNDER SECTION 3729(a)(2) OF THE FALSE CLAIMS ACT

I. INTRODUCTION

In this action, the United States seeks to recover from Defendant Jacintoport International, LLC ("Jacintoport") treble damages and civil penalties pursuant to the False Claims Act, [31 U.S.C. §§ 3729-33](#) ("FCA"). The United States charges that beginning in 2008 and continuing at least through September 30, 2009, Jacintoport knowingly caused false claims for payment to be submitted [*2] to the United States Agency for International Development ("USAID") that contained overcharges for stevedoring services provided in conjunction with a contract between Jacintoport and USAID. Dkt. No. 15 at ¶ 1. Jacintoport moves this Court for partial summary adjudication that it is eligible for reduced damages pursuant to [section 3729\(a\)\(2\)](#) of the FCA. Having reviewed the parties' submissions, applicable case law, and the record of the case, the Court GRANTS Jacintoport's motion for partial summary judgment. The reasons for the Court's decision are set forth below.

II. BACKGROUND

The following facts, unless otherwise noted, are not in dispute. The United States distributes humanitarian food aid to foreign countries that are battling famine or other food crises principally under the auspices of the Food for Peace ("FFP") program. Dkt. No. 80, Ex. 1 at ¶ 1; Dkt. No. 15 at ¶ 12. The United States Agency for International Development ("USAID") is primarily responsible for administering the FFP program. Dkt. No. 80, Ex. 1 at ¶ 1. In April 2007, Jacintoport and

USAID entered into Contract No. TRN-C-00-07-00044-00 (hereinafter, "the 2007 Contract"). Dkt. No. 73, Ex. 3 at ¶ 1. Under the terms of the 2007 Contract, Jacintoport [*3] received, stored, and maintained food aid designated for the FFP program, and upon instructions from USAID, re-delivered the food aid to ocean carriers for overseas transport. Dkt. No. 74, Ex. 4 at ¶ 1. Schedule B of the Contract set forth the rates that Jacintoport could charge the ocean carriers for its stevedoring services. See Order Denying Motion for Partial Summary Judgment Regarding Stevedoring Rates.

From May 1, 2007 through December 2007, Jacintoport invoiced the ocean carriers for its stevedoring services consistent with the rate cap set forth in Schedule B of the Contract. Dkt. No. 80, Ex. 1 at ¶ 24. However, the United States alleges, beginning in 2008 and continuing through at least September 30, 2009, Jacintoport charged in excess of the rates set forth in Schedule B. Jacintoport claims that it raised the stevedoring rates because it was unaware of the rate cap contained in Schedule B. Dkt. No. 71, Ex. at ¶ 4.

Jacintoport further claims that it did not become aware of the rate cap in Schedule B until March 1, 2010, when its Vice President of HB Gulf Services, David Labbe, received a phone call from Relator John Raggio. *Id.* at ¶ 5. Mr. Labbe claims that Mr. Raggio informed [*4] him of the rate cap in Schedule B and threatened to report the stevedoring overcharges to the government if Jacintoport did not dismiss a lawsuit it had brought against Mr. Raggio's company. *Id.*

On March 10, 2010, Jacintoport sent, via certified mail and hand delivery, a letter to Maureen A. Shauket, USAID's then Senior Procurement Executive, Director of the Office of Acquisition and Assistance Bureau for Management. Dkt. No. 73, Ex. 3 at ¶ 6. John Abood, the contracting officer for USAID under the 2007 Contract, was copied on the letter. *Id.* The letter is entitled "Voluntary Disclosure" and states in its entirety:

It has come to our attention that certain issues under the above referenced contract may warrant reconciliation with the U.S. Agency for International Development ("USAID"). Specifically, we have undertaken a preliminary review of certain stevedoring charges under the contract, and it may be that an adjustment of certain charges could be due. We plan on completing a thorough review of the contract and our stevedoring services

thereunder within the next thirty (30) to sixty (60) days, and hope to report to USAID within ninety (90) days on our findings.

At this point we have [*5] merely identified issues for further examination, and have yet to complete our review. Nonetheless, should you have any questions about the contents of this letter, we would be happy to meet with you or a designee at your convenience. As always, we continue to value our longstanding relationship with USAID and we look forward to resolving this potential issue of contract administration with your office.

Dkt. No. 71-2, Ex. C.

USAID did not respond to the March 10, 2010 letter. Dkt. No. 73, Ex. 3 at ¶ 10. However, on March 29, 2011, USAID Office of Inspector General ("USAID OIG") issued a subpoena to Jacintoport. *Id.* The government claims that the subpoena was issued in response to a referral from the Department of Justice and not the March 10, 2010 letter from Jacintoport. *Id.* Jacintoport alleges that it fully cooperated with the government's subpoena, as well as a second subpoena that was issued five months later, ultimately producing approximately 90,000 documents responsive to the subpoenas. *Id.* at ¶ 11. The government disagrees, charging that Jacintoport stalled and submitted incomplete document productions. *Id.* Thereafter, this lawsuit was filed.

III. STANDARD OF REVIEW

Summary judgment [*6] is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. See *Fed. R. Civ. P. 56(c)*; [Anderson v. Liberty Lobby, Inc.](#), 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). The Court also may adjudicate a "part of a claim or defense." *Fed. R. Civ. P. 56(a)*; see also Advisory Comm. Notes, 2010 Amendments, *Sub. (a)*. After the moving party "point[s] out" the absence of evidence supporting the opposing party's case, [Celotex Corp. v. Catrett](#), 477 U.S. 317, 325, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986), the opposing party must demonstrate that there is a genuine issue of material fact. See [Anderson](#), 477 U.S. at 248. The evidence provided by the non-movant cannot be "merely colorable or not significantly probative" to survive summary judgment. [Bragdon v. Abbott](#), 524 U.S. 624, 653, 118 S. Ct. 2196, 141 L. Ed. 2d 540 (1998). An argument that "a jury might speculate in the plaintiff's favor is insufficient to defeat summary

judgment." [Haynes v. Williams, 392 F.3d 478, 485, 364 U.S. App. D.C. 108 \(D.C. Cir. 2004\)](#). At bottom, if "a rational trier of fact" cannot "find for the non-moving party, there is no 'genuine issue for trial,'" and summary judgment should be granted. [Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Co., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 \(1986\)](#).

IV. DISCUSSION

The False Claims Act presumptively provides for treble damages upon a finding of a violation. [31 U.S.C. § 3729\(a\)\(1\)](#). However, the Act provides for a more lenient penalty—a doubling of damages—where three criteria are met. First, the violator must have "furnished officials of the United States responsible for investigating false claims violations with all information known to such person ... within [*7] 30 days after the date on which the [violator] first obtained the information." [31 U.S.C. § 3729\(a\)\(2\)](#). Second, the violator must have "fully cooperated with any Government investigation of such violation." *Id.* Third, at the time the violator provided the information, he "did not have actual knowledge of the existence of an investigation into such violation." *Id.*

Jacintoport argues that it has satisfied each of the three criteria: (1) on March 10, 2010—nine days after it first discovered that there might be a "billing discrepancy"—it sent a voluntary disclosure letter to a USAID senior procurement official and the USAID contracting officer under the 2007 Contract; (2) it fully cooperated with the two subpoenas issued by USAID OIG, producing approximately 90,000 responsive documents; and (3) it made the disclosure before it was aware of the existence of an investigation into the alleged violation. Therefore, in Jacintoport's view, it is eligible for reduced damages under [section 3729\(a\)\(2\)](#).

The government, on the other hand, claims that Jacintoport is not entitled to reduced damages because it did not satisfy the first two criteria of [section 3729\(a\)\(2\)](#).¹ First, the government argues that the undisputed facts show that Jacintoport did not make [*8] a disclosure of its misconduct to "officials of the United States responsible for investigating false claims violations" as required by [section 3729\(a\)\(2\)](#). In addition, the government asserts, the March 10, 2010 letter "was so devoid of any substance that it amounted to no disclosure at all, despite the fact that Jacintoport had

specific knowledge about the nature of the [alleged] FCA violations." Dkt. No. 73 at 5. Second, the government claims that, at a minimum, a genuine dispute of material fact exists over whether Jacintoport "fully cooperated" with the government's investigation, as required by [section 3729\(a\)\(2\)](#). *Id.* at 13-14.

A. Jacintoport Satisfied the First Criteria under [Section 3729\(a\)\(2\)](#)

This Court finds that Jacintoport satisfied the first criteria under [section 3729\(a\)\(2\)](#). Jacintoport asserts that it sent the March 10, 2010 voluntary disclosure letter within nine days of first discovering that it may have overbilled for its stevedoring services. The government does not dispute the timeliness of the letter; rather, it disputes that the letter was sent [*9] to the appropriate authority as required by [section 3729\(a\)\(2\)](#). The government argues that [section 3729\(a\)\(2\)](#) explicitly requires that the disclosure be sent to "officials of the United States responsible for investigating false claims violations." "The very next section of the Act explains that the Attorney General is the official of the United States responsible for investigating false claims act violations." Dkt. No. 73 at 5. Thus, the government argues, "a plain reading of [\[section 3729\(a\)\(2\)\]](#) requires that, in order to qualify for the reduced damages provision, a disclosure must be made to the Attorney General." *Id.*

This Court disagrees that the "plain reading" of [section 3729\(a\)\(2\)](#) mandates that the disclosure must be made to the Attorney General. While the FCA states that "[t]he Attorney General diligently shall investigate" FCA violations, [section 3729\(a\)\(2\)](#) provides that the voluntary disclosure must be furnished to "officials of the United States responsible for investigating false claims violations." [§ 3729\(a\)\(2\)](#) (emphasis added). By stating that more than one official can receive the voluntary disclosure, Congress expressly provided that other officials besides the Attorney General can receive the disclosure.

There is no published authority that "purports to determine which particular [*10] government 'officials' must be notified in order to satisfy" the first criteria of [section 3729\(a\)\(2\)](#). [Maxwell v. Kerr-McGee Oil & Gas Corp., 2010 U.S. Dist. LEXIS 97018, 2010 WL 3730894, *2 \(September 16, 2010 D. Colo.\)](#); see also, The False

¹ The government does not dispute that Jacintoport mailed the March 10, 2010 letter before it had actual knowledge of the existence of an investigation into the alleged violation, the third requirement of [section 3729\(a\)\(2\)](#).

Claims Act: Fraud Against the Government, Claire M. Syliva, section 6:22 (April 2014). The only published decision within this Circuit to touch on this criteria, [United States ex rel. Ervin and Associates, Inc. v. Hamilton Securities Group, Inc., 370 F. Supp. 2d 18 \(D.D.C. 2005\)](#), seems to contemplate that a voluntary disclosure can be sent to officials within the relevant government agency (*i.e.*, not the Attorney General). *Id.* at 49 (noting that voluntary disclosure to officials at the United States Department of Housing and Urban Development was not timely).

The one case that the government relies on in support of its contention that the notice must be provided to the Attorney General is *Maxwell*, an unpublished, out-of-Circuit case. In *Maxwell*, the district court noted that there "is relatively little published authority applying [§ 3729\(a\)\(2\)](#), and no authority addressing the details of its interpretation or operation." [2010 U.S. Dist. LEXIS 97018, 2010 WL 3730894, *1](#). In *Maxwell*, as here, the parties disputed whether the voluntary disclosure had been provided to the correct "officials" to satisfy [section 3729\(a\)\(2\)](#). The government argued that the disclosure had to be provided to United States Department of Justice; defendant argued that it was sufficient to provide the disclosure [*11] to the relevant officials within the agency with which defendant had conducted business. The district court concluded that the voluntary disclosure must be provided to the Attorney General, noting that the Act provided "some guidance" for this conclusion. [2010 U.S. Dist. LEXIS 97018, \[WL\] at *2](#).

The *Maxwell* court reached its decision, in part, based on concern that:

If the violator could take advantage of [\[section 3729\(a\)\(2\)\]](#) simply by showing that it supplied all of the relevant information about the false claim to the agency upon which the claim was made, [\[section 3729\(a\)\(2\)\]](#) would be available in a large number of cases...where paperwork filed with the agency could, if scrutinized sufficiently, have revealed the existence of the false claim. Whether the false claim is a \$700 toilet seat buried within a mountain of requisitions and purchase orders filed with the Defense Department, or...a royalty miscalculated under a complex formula..., the Defendant's construction of [§ 3729\(a\)\(2\)](#) would deem many violators to nevertheless fall within the safe harbor without undertaking any affirmative efforts to reveal to the Government the existence of their false claim beyond simply presenting that claim.

[2010 U.S. Dist. LEXIS 97018, \[WL\] at *2](#). The potential for such abuse does not exist in this case. Here, Jacintoport is [*12] not simply relying on invoices it submitted to ocean carriers that reflect rates in excess of the Schedule B cap to claim that it voluntarily disclosed its actions to USAID. Rather, Jacintoport sent a letter entitled "Voluntary Disclosure" to a Senior Procurement Executive at USAID and the USAID officer in charge of the 2007 Contract. The letter unequivocally placed USAID on notice "that certain issues under the [2007 Contract] may warrant reconciliation with [USAID]. Specifically, ... certain stevedoring charges under the contract, and it may be that an adjustment of certain charges could be due." Dkt. No. 71-2, Ex. C. This Court finds, that under the circumstances of this case, notifying a senior official and well as the contracting officer at USAID is sufficient to satisfy the first criteria of [section 3729\(a\)\(2\)](#).

Nor is this Court persuaded by the government's argument that the March 10, 2010 letter "was so devoid of any substance that it amounted to no disclosure at all." Dkt. No. 73 at 5. The government insists that Jacintoport was required to use the word "overcharges" in its disclosure in order to properly place USAID on notice that there may be a problem. The government takes the disclosure [*13] requirement in [section 3729\(a\)\(2\)](#) too far. Jacintoport was not required to concede that "overcharges" were made immediately upon discovery of a possible billing discrepancy. The March 10, 2010 letter was sufficient to place USAID on notice that there was an issue with the stevedoring rates and that USAID may want to investigate further. That is all that is required by [section 3729\(a\)\(2\)](#). Accordingly, this Court concludes that Jacintoport satisfied the first criteria of [section 3729\(a\)\(2\)](#).

B. Jacintoport Satisfied the Second Criteria under [Section 3729\(a\)\(2\)](#)

Next, the government argues that Jacintoport did not satisfy the second criteria of [section 3729\(a\)\(2\)](#) because it failed to fully cooperate in the government's investigation of the overcharges claim. The government does not argue that Jacintoport provided false testimony, destroyed evidence, or failed to produce witnesses. Rather, it asserts that Jacintoport failed to fully respond to two subpoenas in a timely manner. The government's argument is borderline frivolous. By its own admission, Jacintoport responded to the first subpoena by the return date. See Dkt. No. 73 at 14. USAID reviewed the documents and notified Jacintoport that it felt there

were some deficiencies in Jacintoport's production. Jacintoport supplemented [*14] its production within seventeen days of being notified by the government. *Id.*

The government also complains that it took Jacintoport seven months to respond to its second subpoena. First, the Court notes that Jacintoport actually responded to the subpoena within three months of its return date, and second, Jacintoport sought and the government granted, the three month extension of time. Lastly, Jacintoport ultimately produced approximately 90,000 documents to the government. The government does not contend that the production is incomplete or unresponsive. In short, the government has confused the normal back-and-forth and give-and-take in responding to a document subpoena with a lack of cooperation. The undisputed facts demonstrate that Jacintoport fully cooperated with the government's investigation. As such, this Court concludes that Jacintoport satisfied the second criteria of [section](#)

[3729\(a\)\(2\)](#). Because the government concedes that Jacintoport satisfied the third criteria of [section 3729\(a\)\(2\)](#), this Court concludes that Jacintoport is entitled to reduced damages under the FCA.

V. CONCLUSION

For the foregoing reasons, the Court HEREBY GRANTS Jacintoport's Motion for Partial Adjudication that It Is Eligible for Reduced [*15] Damages under the False Claims Act (Dkt. No. 71).

Dated this 12th day of March, 2015.

/s/ Barbara Jacobs Rothstein

Barbara Jacobs Rothstein

U.S. District Court Judge