

January 5, 2017

## D.C. Circuit Requires Serious Evaluation of Defendant's Motion for Attorneys' Fees in FCA Case

The D.C. Circuit has issued an opinion addressing two recurring issues in False Claims Act litigation. First, the court strongly affirmed the well-established principle that the FCA is not a remedy for breach of contract. Extrinsic evidence of the government's interpretation of the contract is highly relevant to an FCA action because the state of mind of the parties is a key question in a fraud case. Second, the court held that when a prevailing FCA defendant seeks attorney fees under the FCA's fee-shifting provision sanctioning frivolous suits, the district court cannot summarily deny such motions on the grounds that they raise issues that are collateral to the underlying litigation. In *United States ex rel. Burke v. Record Press, Inc.*, 816 F.3d 878 (D.C. Cir. 2016), the court affirmed an entry of judgment in favor of the defendant but vacated the district court's denial of the defendant's motion for fees, concluding that the district court did not adequately explain its reasoning for the denial.

**Attorneys**  
[Kirsten Mayer](#)  
[John P. Bueker](#)  
[Michael B. Homer](#)

### Background

Relator Brian Burke filed a *qui tam* complaint in February 2008 against defendant Record Press, Inc., a company that prints appellate briefs for the government under a contract with the United States Government Printing Office ("GPO"). In an unrelated and unsuccessful lawsuit that Burke had previously brought against the government, Burke was served with a bill of costs for the government's appellate briefing, which had been printed by Record Press. Deciding that the costs for the briefing were "outrageous," Burke filed the instant *qui tam* action alleging that Record Press was overcharging the GPO for its printing services at ten times the rate provided for by its contract with the GPO.

During a bench trial, both the President of Record Press and a GPO Branch Chief testified that the rate at which Record Press billed the GPO was consistent with what was required by the contract. The government, having declined to intervene, presented at trial that there was no fraud. Burke presented no evidence to the contrary.

On June 12, 2013, the district court entered judgment for Record Press, concluding that Burke had failed to offer any evidence that Record Press had knowingly submitted false claims to the government. However, the district court denied Record Press' subsequent motion for attorneys' fees under the FCA's fee-shifting provision, 31 U.S.C. § 3730(d)(4), and under 28 U.S.C. § 1926, which allows for the imposition of sanctions against an attorney who brings a vexatious lawsuit. Burke appealed the entry of judgment against him, and Record Press cross-appealed the denial of its motion for attorneys' fees.

### The D.C. Circuit's Decision

A unanimous panel of the D.C. Circuit easily affirmed the district court's entry of judgment in favor of Record Press, finding Burke's arguments on appeal to be meritless. The Court rejected Burke's argument that it had been improper for the District Court to allow extrinsic evidence of the parties' interpretation of the contract to be considered in granting judgment to the defendant. Burke argued that this violated basic principles of contract interpretation. In affirming the District Court's judgment, the panel emphasized that the FCA is not a remedy for breach of contract, and thus the limitations Burke urged were inapplicable. The evidence – of how the parties to the contract interpreted the contested provision – was highly relevant to whether the defendant had committed any fraud.

In addition, the panel vacated the district court's denial of Record Press' motion for attorneys' fees and remanded the case for further proceedings on that motion. The panel explained that Federal Rule of Civil Procedure 54(d) requires a district court to "find the facts and state its conclusions of law as provided in Rule 52(a)" when deciding a motion for attorneys' fees. The district court had denied Record Press' motion solely on the ground that it regarded the issue as "wholly collateral to the *qui tam* action." The panel concluded that this reasoning failed to satisfy Rule 54(d) given that the FCA's fee-shifting provision explicitly provides for a defendant's recovery of attorneys' fees if the relator's claim is frivolous. *See* 31 U.S.C. § 3730(d)(4). Accordingly, the panel vacated the denial and remanded with instructions to the district court to make the required findings of fact and conclusions of law under Rule 52(a).

The panel similarly remanded with respect to Record Press' motion for sanctions under 28 U.S.C. § 1926. After noting that this statute, unlike the FCA's fee-shifting provision, is not constrained by the fact-finding requirements of Rule 54(d), the panel nevertheless concluded that remand was appropriate given that the district court offered no reasons for its decision to deny sanctions.

### Implications

Although an extreme example on its facts, the D.C. Circuit's decision could prove useful to defendants who are forced to defend frivolous FCA suits. The decision makes clear that where a relator has filed a frivolous *qui tam* complaint, the district court must seriously evaluate a defendant's motion for attorneys' fees, and must provide a full explanation of its reasoning resolving that motion.

If you have any questions or would like to discuss the foregoing or any related matter, please contact the Ropes & Gray attorney with whom you regularly work, or an attorney in our [False Claims Act](#) practice.