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Seventh Circuit Affirms Dismissal of FCA Complaint on Particularity Grounds

In *United States ex rel. Hanna v. City of Chicago*, 834 F.3d 775 (7th Cir. 2016), the Seventh Circuit affirmed the District Court's dismissal of relator's False Claims Act ("FCA") complaint for failing to meet Rule 9(b)'s heightened pleading requirement. In his complaint the relator alleged that the City of Chicago ("Chicago") falsely certified its compliance with certain unspecified civil rights obligations that relator claimed were a precondition to the City's receiving billions of dollars in federal financing for affordable housing developments in the City. The Seventh Circuit affirmed the District Court's finding that because relator had failed to stipulate which specific statutes and/or regulations had allegedly been violated and had further failed to assert the time, place, or method by which the misrepresentation by the defendant occurred, the complaint was correctly dismissed.

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Background

Albert Hanna, a real estate developer and resident of Chicago, claimed that Chicago, in order to receive funding from the federal government through affordable housing programs operated by the U.S. Department of Housing and Urban Development ("HUD"), falsely certified compliance with a variety of civil rights requirements meant to ensure that HUD programs would not perpetuate racially-based housing segregation. Hanna alleged that Chicago permitted an aldermanic privilege (essentially, a right afforded to each of Chicago's 50 Alderman to veto any affordable housing in their ward) to persist and employed systematic down-zoning of advantaged neighborhoods to perpetuate the development of affordable housing only in economically disadvantaged and racial minority-majority neighborhoods while nevertheless certifying its compliance with civil rights statutes and regulations. Hanna sued Chicago under the False Claims Act, and Chicago moved to dismiss the complaint.

The District Court dismissed Hanna's complaint on the grounds that the complaint did not plead the alleged fraud with sufficient specificity, but granted Hanna leave to amend. Hanna subsequently filed an amended complaint; Chicago again moved to dismiss, and the motion was granted with prejudice by the District Court. Hanna appealed.

The Seventh Circuit's Holding

The Seventh Circuit reviewed the District Court's decision *de novo* and ruled that Hanna's complaint was properly dismissed for failing to meet the heightened pleading requirements of Federal Rule of Procedure 9(b). After noting that, under Rule 9(b), a relator is limited to allegations in his pleading and cannot rely on additional allegations "offered for the first time in a brief, the court concluded, as the District Court had, that the complaint lacked specificity with regard to "which statutory and regulatory provisions" the defendant allegedly violated, "and how and when" the City allegedly submitted its false certifications to the federal government. The court further criticized relator's pleading, noting that the certifications were in the public record, suggesting that the case might also be barred on public disclosure grounds.

Implications of the Court's Decision

This decision is good illustration of the application of Rule 9(b)'s heightened pleading requirement to an alleged False Claims Act complaint. It suggests a continued adherence by the Seventh Circuit to a strict pleading requirement in these cases.

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