

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-24546-CIV-HOEVELER

MARJAN MAZZA,

Plaintiff,

v.

MIAMI-DADE COUNTY, and  
MIAMI-DADE TRANSIT DEPARTMENT,

Defendants.

---

ORDER DENYING MOTION TO DISMISS

THIS CAUSE comes before the Court on the Defendants' Motion to Dismiss. The Court has reviewed the briefs and pertinent portions of the file, and finds that dismissal is not warranted. The Court also notes that the United States, pursuant to 31 U.S.C. § 3730(e)(4)(A), has filed notice of its opposition to dismissal on the basis of the public disclosure bar (which was one of the grounds on which the Defendants sought dismissal, as noted below).

BACKGROUND

Plaintiff is a former employee of Miami-Dade Transportation Department who claims that she was harassed and then discharged in retaliation for reporting the misuse of federal funds. Plaintiff alleges that the Defendants jeopardized hundreds of millions of dollars of federal grants by disregarding regulations controlling those grants and making false reports, which had resulted in the suspension of some federal

funding to Defendants.

On December 20, 2010, Plaintiff filed a *qui tam* complaint, which was immediately placed under seal, against Miami-Dade County and Miami-Dade Transit Department alleging violations of the False Claims Act, 31 U.S.C. § 3729, *et seq.* (FCA).<sup>1</sup> On May 21, 2012, the United States filed a notice stating that it would not intervene in the case, but reserving its right to intervene at a later date,<sup>2</sup> and the *qui tam* complaint was unsealed. An Amended Complaint was filed on December 17, 2012, alleging violations of the FCA, as to false records and statements made by Defendants, and retaliatory steps taken against Plaintiff Mazza in violation of the anti-retaliation provisions of the FCA, 31 U.S.C. § 3730(h).

Defendants filed a motion to dismiss on January 31, 2013, arguing that the Plaintiff failed to allege fraud with sufficient particularity, and that Plaintiff had not alleged a proper claim under the FCA. Defendants also argue that the Defendant Miami-Dade Transit Department is a department of the County and is not subject to suit.

The United States has advised the Court, pursuant to 31 U.S.C. § 3730(e)(4)(A), that the government opposes dismissal of this case on the basis of the public disclosure

---

<sup>1</sup>On March 25, 2011, while this *qui tam* case remained under seal, Plaintiff filed a new case alleging a violation of the anti-retaliation provision of the FCA (31 U.S.C. § 3730(h)), making the same allegations as contained in the instant case. The later-filed case, Case No. 11cv21032 has been dismissed as duplicative.

<sup>2</sup>The notice also stated the requirements of 31 U.S.C. § 3730(b)(1), which provides that the Relator may maintain the action in the name of the United States but that this action may not be dismissed unless the Attorney General gives written consent to the dismissal, with reasons for the consent.

bar. ECF No. 70.

### ANALYSIS

As this case is before the Court on a motion to dismiss, the Court takes all factual allegations and inferences contained in the complaint and accepts them as true and construes them in whatever light is most favorable to the Plaintiff; however, the same approach does not apply to legal conclusions. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). When ruling on a motion to dismiss, courts must determine whether a plaintiff's allegations are "enough to raise a right to relief above the speculative level." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).

It is undisputed that actions brought pursuant to the FCA must satisfy the pleading standards of Fed. R. Civ. P. 8(a)(2) (requiring a short and plain statement showing that the pleader is entitled to relief) and also of Fed. R. Civ. P. 9(b) (requiring a party to state with particularity the circumstances constituting fraud or mistake). Rule 9(b) is satisfied when a FCA complainant alleges "facts as to time, place, and substance of the defendant's alleged fraud,' specifically 'the details of the defendants' allegedly fraudulent acts, when they occurred, and who engaged in them.'" Hopper v. Solvay Pharm., Inc., 588 F.3d 1318, 1324 (11th Cir. 2009) (quotations omitted). The Eleventh Circuit has explained that a relator must "identify the particular document and statement alleged to be false, who made or used it, when the statement was made, how the statement was false, and what the defendants obtained as a result." United States ex rel. Matheny v. Medco Health

Solutions, Inc., 671 F.3d 1217 (11<sup>th</sup> Cir. 2012).

According to the allegations in the complaint,<sup>3</sup> Plaintiff began working for Defendants in June 2009. First Amended Complaint, ECF No. 46, ¶¶ 10, 14. The United States Department of Transportation (USDOT) had conducted an “improper payment audit” of Miami-Dade County in 2009 and as a result the County returned \$845,930 to the federal government because four contracts from 2007 had omitted mandatory language as to the purchase of American-manufactured products, and requirements to pay proper wages to transit laborers. Id., ¶¶ 123 - 125. Plaintiff claims that instead of this small amount of admittedly improper contracts there were as many as 95% of the contracts which had this flaw. Id., ¶ 130. A subsequent audit was conducted by the USDOT in 2010, as to contracts issued in 2008, and found additional contracts missing the mandatory language. Id., ¶ 131. Plaintiff alleges that she and others were told to retroactively generate time-sheets for expenses on contracts dating back to 2003, and to prepare “revised” numbers for prior years as to preventative maintenance grants reimbursement. Id., ¶¶ 132 - 137.

Plaintiff claims that she refused to make false statements and was discharged on November 23, 2010. According to Plaintiff, on December 7, 2010, County officials appeared before the Miami-Dade County Commissioners and falsely stated that the suspension of federal funds had resulted from accounting

---

<sup>3</sup>Plaintiff also has submitted a declaration, upon which the Court does not rely. Although the Court may consider when ruling on a motion to dismiss certain documents outside the pleadings, the Court does not reach that question here and specifically is not relying on any aspect of Plaintiff's declaration.

errors and that “those responsible had been removed.” *Id.*, ¶ 147.

Defendants argue that the Plaintiff has not met the pleading standards of Rule 9(b), but this Court disagrees. Plaintiff has sufficiently stated her claims such that the Defendants are able to respond. And, as to Defendants’ argument that the public disclosure bar justifies dismissal because Plaintiff was not an “original source,” the Court also disagrees with Defendants. Moreover, as the United States has opposed dismissal on this basis, the Court’s directive is clear - the Defendants’ motion to dismiss on this ground must be denied. Finally, as to Defendant’s argument that the Miami-Dade Transit Department is not subject to suit, the Court denies the motion to dismiss, but does so without prejudice for the County to raise this argument again after demonstrating that the Transit Department is, indeed, a “department” not subject to suit.

Based on the above, it is

ORDERED AND ADJUDGED that the Defendants’ Motion to Dismiss is DENIED. Defendants shall respond to the complaint within twenty (20) days of this Order.

DONE AND ORDERED in Miami, Florida this 12<sup>th</sup> day of August 2013.



\_\_\_\_\_  
WILLIAM M. HOEVELER  
SENIOR UNITED STATES DISTRICT JUDGE

copies to: counsel of record