

**Simonian v. The University and Community College System of Nevada,
122 Nev. Adv. Op. 16 (Feb. 23, 2006)¹**

ADMINISTRATIVE LAW – FALSE CLAIMS ACTIONS & SANCTIONS

Summary

An appeal challenging an order that UCCSN is a state entity not subject to liability under False Claims Act (FCA) and an award of attorney fees as sanctions for bringing a claim not well-grounded in fact or law.

Disposition/Outcome

Affirmed in part and reversed in part. The court affirmed the order that UCCSN is a state entity not subject to liability under False Claims Act. The court reversed the award of attorney fees as sanctions because the action was not well-grounded in fact or law.

Factual & Procedural History

The appellant Lane Simonian was a part-time instructor for Truckee Meadows Community College for several years. As a result of concerns that surfaced during his employment, Simonian instituted proceedings against respondent University and Community College System of Nevada (UCCSN) on four occasions. All three of Simonian’s previous claims were either withdrawn or dismissed and the fourth claim is at issue here.

In 2001, Simonian instituted a false claims action against UCCSN. Simonian claimed that UCCSN had presented to the Nevada State Legislature claims for \$16 million in unpaid salaries for part-time instructors. The district court granted UCCSN’s ensuing motion to dismiss, treating it as a motion for summary judgment, and granted UCCSN’s request for attorney fees and sanctions under NRCPP 11(c)² and NRS 357.180(2).³ The district court determined that Simonian had failed to state an FCA claim because a legislative budget request does not fall within the FCA’s definition of “claim” and because UCCSN is not a “person” for purposes of FCA liability. Furthermore, the district court noted that Simonian had previously brought actions against UCCSN on the issue of part-time instructor salaries and awarded attorney fees as a sanction against Simonian for presenting a claim not well-grounded in fact or in existing law. Simonian appealed both the summary judgment and sanction orders.

¹ By Bryan Lindsey

² NEV. R. CIV. P. 11 (amended 2004).

³ NEV. REV. STAT. § 357.180(2) (2003).

Discussion

State Entities are not “Persons” Subject to FCA Liability

NRS Chapter 357 governs submission of false claims to state or local government.⁴ Although Nevada’s FCA does not define the term person, a long-standing principle of statutory construction instructs that the term “person” does not include the sovereign.⁵ Thus, unless a statute expressly indicates otherwise, it is presumed that the statute does not confer “person” status on a state entity. Here, the court held determined that the FCA contains no express language specifying that the term “person” includes state entities. Therefore, the court presumed that the Legislature did not intend to subject the State to FCA liability.

Furthermore, the Nevada Supreme Court determined that UCCSN is a state entity. Looking to the common law, UCCSN is a state entity because: (1) it is subject to the approval and control of the state government; (2) at least in some limited fashion, it is treated as a state entity within the Nevada Revised Statutes; and (3) through its Board, it is in possession of some sovereign powers.⁶ Since UCCSN was a state entity and thus not a person subject to FCA liability, the court affirmed the district court’s order that UCCSN was entitled to judgment as a matter of law on Simonian’s FCA claim.

Sanctions

NRCPC 11 sanctions, including attorneys fees, could be imposed on a litigant for filing a pleading that was not “well-grounded in fact and . . . warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.”⁷ Under NRS 357.180(2), the court may award a prevailing defendant reasonable expenses and attorney fees “if it finds that the action was clearly frivolous or vexatious or brought solely for harassment.”⁸

Here, the court determined that Simonian’s action was not a frivolous action subject to sanctions because the FCA does not expressly state that a plaintiff may not sue the State and no prior Nevada decisional law so interpreted the FCA. Furthermore, the court determined that Simonian did not bring the action to harass UCCSN because the district court made no findings of harassment. Finally, the court determined that there was insufficient evidence to prove that Simonian’s claims were not well-grounded in fact or law. The court noted that the district court never reached the merits of Simonian’s action and none of his prior claims against UCCSN established that the false claims action was premised on unfounded grounds. Thus, the court concluded that the district court improperly awarded UCCSN attorney fees as sanctions against Simonian.

⁴ NEV. REV. STAT. §§ 357.010–357.250.

⁵ Vermont Agency of Natural Res. v. United States ex rel. Stevens, 529 U.S. 765, 780, 120 S.Ct. 1858, 146 L.Ed.2d 836 (2000).

⁶ See Northern Nevada Ass’n of Injured Workers v. SIIS, 107 Nev. 108, 112-13, 807 P.2d 728, 731 (1991).

⁷ NEV. R. CIV. P. 11.

⁸ NEV. REV. STAT. § 357.180(2).

Conclusion

The district court properly granted summary judgment for UCCSN. A plaintiff may not bring a false claims action against a state entity and UCCSN is a state entity and not a person subject to FCA liability. The district court improperly awarded UCCSN attorney fees as sanctions against Simonian because the district court never reached the merits of Simonian's action and the record contains insufficient information to support the allegation that Simonian's false claims action was not well-grounded in fact or law.