

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska)
corporation,)

Plaintiff,)

vs.)

716 WEST FOURTH AVENUE LLC and)
LEGISLATIVE AFFAIRS AGENCY,)
Defendants.)

Case No.: 3AN-15-05969 CI



**716'S MOTION FOR RULING OF LAW PRECLUDING ABI'S CLAIMS FOR
QUI TAM AND PUNITIVE DAMAGES**

Defendant 716 West Fourth Avenue, LLC ("716"), by and through counsel Ashburn & Mason, P.C., hereby moves this Court to enter an order precluding Plaintiff Alaska Building, Inc.'s ("ABI") from pursuing its claims for *qui tam* damages and punitive damages. As a matter of law, these types of damages are not available under the facts alleged in the Second Amended Complaint.

I. DAMAGES SOUGHT IN THE SECOND AMENDED COMPLAINT

On August 25, 2015, ABI filed its Second Amended Complaint against 716 and the Legislative Affairs Agency ("Agency"). The Second Amended Complaint alleges that the lease renewal ("LIO Lease") entered into between 716 and the Agency in September 2013 was in violation of AS 36.30. Based on this allegation, the Second Amended Complaint seeks a variety of remedies: declaratory judgment that the LIO Lease is invalid, "A Judgment in favor of Alaska Building, Inc., in the amount of 10%

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of the savings to the Legislative Affairs Agency as a result of the invalidation of the LIO Project Lease[,]” punitive damages against 716, as well as costs and attorney’s fees.¹

II. DISCUSSION

A. ABI Should Be Precluded from Bringing an Unauthorized *Qui Tam* Claim.

ABI’s claim for “10% of the savings” to the Agency that would result from invalidation of the LIO Lease lacks any basis in law.² The Second Amended Complaint identifies no legal principle that entitles ABI to recover damages from 716 in the absence of any injury to ABI.³ Rather, the claim for 10% represents ABI’s attempt to bring a *qui tam* action, which is not allowed absent express statutory provision.

Black’s Law Dictionary defines a *qui tam* action as follows:

qui tam action (kee-tam or kwi tam) [Latin *qui tam pro domino rege quam pro se ipso in hac parte sequitur* “who as well for the king as for himself sues in this matter”] (18c) An action brought under a statute that allows a private person to sue for a penalty, part of which the government or some specified public institution will receive.⁴

¹ Second Amended Complaint at 3.

² For this reason, the Court previously found the 10% claim inadequate to confer standing. August 21, 2015 Order at 3 n.15 (noting that while “this rather novel claim” was not before the Court at that time, it did “not find enough credence in the claim to grant interest-injury standing.”).

³ Any direct injury allegedly suffered by ABI as a result of the LIO Project will be fully addressed in the context of ABI’s pending lawsuit on that subject in 3AN-15-9785 CI.

⁴ *Qui Tam Action*, Black’s Law Dictionary (10th ed. 2014).

This is exactly the type of action ABI seeks to bring here: ABI seeks to recover 10% for itself, with the remainder to the State.⁵ *Qui tam* actions are not permissible unless specifically authorized by statute.⁶ As the Alaska Legislature has not enacted any statute authorizing *qui tam* recovery under the circumstances alleged in the Second Amended Complaint, and as there is no basis in the common law for ABI's attempt to recover monetary damages in the absence of any injury, ABI's claim for 10% of the alleged savings to the Agency should be dismissed.

B. ABI Should Be Precluded from Seeking Punitive Damages.

The Second Amended Complaint asserts a vague claim for punitive damages against 716. As a matter of law, punitive damages are generally unavailable in the absence of a compensatory damages award.⁷ As ABI has asserted no cognizable claim for compensatory damages or other quantifiable injury, other than the unauthorized *qui tam* action discussed above, its punitive damages claim merits dismissal.

⁵ Cf. ABI's Opp. to 716's Mot. to Dismiss at 2 n.3 ("[T]he State will receive 90% of the savings if [ABI] is successful.").

⁶ *Qui Tam Action*, Black's Law Dictionary, *supra* n.3 ("An action brought under a statute . . .") (emphasis added); *Vermont Agency of Natural Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 768 (2000) ("[T]he False Claims Act (FCA) is the most frequently used of a handful of extant laws creating a form of civil action known as qui tam.") (emphasis added); cf. *Madden v. Croan*, No. S-10134, 2002 WL 31492593, at *5 (Alaska Nov. 6, 2002) (unreported) ("As a result of alleged misconduct by the superior court judge, the guardian ad litem, and Susan and her attorney, Roger claims the right to over \$18 million in punitive damages. He also claims several more million dollars as the result of a "quitam action/whistle blowers 10% reward." These claims are completely unsupported.").

⁷ *Deland v. Old Republic Life Ins. Co.*, 758 F.2d 1331, 1339 n.4 (9th Cir. 1985) ("There can be no punitive damages where compensatory damages have not been awarded."); *DeNardo v. GCI Commc'n Corp.*, 983 P.2d 1288, 1292 (Alaska 1999) ("A punitive damages claim cannot stand alone; because we reject DeNardo's underlying claim, we also necessarily affirm summary judgment on his punitive damages claim.").

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Even if ABI had asserted a claim for monetary damage in this action, punitive damages would still be unavailable because the Second Amended Complaint fails to allege any conduct by 716 that could support a punitive damage award. “Punitive damages are imposed to punish malicious wrongdoers and to deter future malicious wrongs.”⁸ For that reason, AS 09.17.020(b) clearly limits the circumstances under which punitive damages may be awarded:

(b) The fact finder may make an award of punitive damages only if the plaintiff proves by clear and convincing evidence that the defendant's conduct

- (1) was outrageous, including acts done with malice or bad motives;
- or
- (2) evidenced reckless indifference to the interest of another person.

The Second Amended Complaint alleges no conduct by 716 that could plausibly meet either of these standards. Indeed, the Second Amended Complaint contains only a single allegation relating to conduct by 716: it alleges that 716 entered into the LIO Lease. It does not allege any facts suggesting that 716's entrance into the LIO Lease was outrageous or done with any improper motive; nor does it allege any facts suggesting this action was recklessly indifferent to the interest of any other person.

In the context of this case, the legislative council was entitled to extend the real property lease at issue under AS 36.30.083(a). Their approval was in compliance with their own procurement procedures under AS 36.30.020. 716 had nothing to do with establishing procurement guidelines, and ABI has not alleged any such involvement by

⁸ *Alaska Hous. Fin. Corp. v. Salvucci*, 950 P.2d 1116, 1123 (Alaska 1997) (citation omitted).

716. Thus, it defies logic to assert that 716's conduct in merely agreeing to the lease extension could satisfy the strict statutory standard for punitive damages. Certainly, the Second Amended Complaint alleges nothing to justify this novel award.

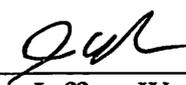
As there is no plausible basis in the Second Amended Complaint for a punitive damage award against 716, ABI should be precluded from seeking punitive damages in this action.

III. CONCLUSION

For the foregoing reasons, 716 respectfully requests that the Court enter an order precluding ABI from seeking (1) 10% of the purported savings to the Agency and (2) punitive damages.

ASHBURN & MASON, P.C.
Attorneys for 716 West Fourth Avenue, LLC

DATED: 10-6-15

By: 

Jeffrey W. Robinson
Alaska Bar No. 0805038

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served electronically messenger
 facsimile U.S. Mail on the 6th day of October 2015, on:

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Heidi Wyckoff

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**PROPOSED ORDER GRANTING 716'S MOTION FOR RULING OF LAW
PRECLUDING ABI'S CLAIMS FOR QUI TAM AND PUNITIVE DAMAGES**

Having considered Defendant 716 West Fourth Avenue, LLC's ("716") Motion for Ruling of Law Precluding ABI's Claims for *Qui Tam* and Punitive Damages, and any opposition thereto, the Court hereby GRANTS the Motion. Plaintiff Alaska Building, Inc.'s ("ABI") claims for 10% of the purported savings to the Legislative Affairs Agency and punitive damages (asserted on page 3 of ABI's Second Amended Complaint, at paragraphs B and C) are DISMISSED.

DATED: _____

HON. PATRICK J. McKAY
Superior Court Judge

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