SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DISTRICT OF COLUMBIA, *ex rel.*	:	
CHRISTOPHER DEUBERT,	:	
	:	
Plaintiff-Relator,	:	**Case No. 2021 CA 3200 B**
	:	**Judge Todd E. Edelman**
v.	:	
	:	
JASON LEVIEN,	:	
	:	
Defendant.	:	

ORDER

This matter comes before the Court on the District of Columbia's Notice of Intervention and Motion to Unseal and Dismiss the Action, filed May 23, 2023, and Defendant Jason Levien's Joinder to the District of Columbia's Motion to Unseal and Dismiss the Action, filed June 14, 2023. For the reasons stated *infra*, the District's Motion and Defendant's Joinder are granted, and this case is dismissed with prejudice.

I. Background

Qui tam Plaintiff-Relator Christopher Deubert ("Plaintiff-Relator") brought this case on behalf of the District of Columbia (the "District") pursuant to the District of Columbia False Claims Act ("DC FCA"), D.C. Code §§ 2-381.01-.10, against Defendant Jason Levien. Compl. ¶ 1. Plaintiff-Relator alleges that starting in 2019, Defendant resided in the District of Columbia ("D.C."), but falsely reported that he resided in Florida to avoid paying D.C. income taxes. Compl. ¶¶ 1, 3. As a result, Plaintiff-Relator contends, Defendant did not pay income taxes in D.C. in 2019 or 2020 and thereby deprived the District of tax revenue. *Id.* ¶¶ 52-53.

Plaintiff-Relator's Complaint was accepted as filed under seal on September 10, 2021. The District received extensions of its time to intervene in the case on March 3, 2022, September 7, 2022, October 14, 2022, and April 11, 2023. The Court granted the District's Motion to Partially Lift the Seal so that it could share the Complaint with Defendant in connection with settlement negotiations on September 7, 2022. On May 23, 2023, the District filed the present Notice of Intervention and Motion to Unseal and Dismiss the Action (the "District's Motion") by which it intervened and moved to dismiss the action, stating "the District has found that the claims in Relator's complaint are not meritorious[.]" District's Mot. at 5-6. Plaintiff-Relator filed his Opposition on May 30, 2023. In the Opposition, he consented to having the matter unsealed and requested that it be made public as soon as possible. Pl.-Rel.'s Opp'n to District's Mot. at 1 n.1. Accordingly, the Court granted the Motion to Unseal the case on June 2, 2023. On June 6, 2023, the District filed a Reply in support of its Motion. Defendant filed his Joinder to the District of Columbia's Motion to Unseal and Dismiss the Action ("Defendant's Joinder") on June 14, 2023, to which Plaintiff-Relator filed an Opposition on June 16, 2023; Defendant filed a Reply in support of his Joinder on June 23, 2023.

The District filed a Notice of Subsequent Authority on June 22, 2023 to inform the Court of the Supreme Court's recent decision in *United States ex rel. Polansky v. Executive Health Resources, Inc.*, 143 S. Ct. 1720 (June 16, 2023), a case which dealt with the timing of government motions to dismiss *qui tam* actions over a relator's objection under the federal False Claims Act, 31 U.S.C. §§ 3729-3733, and which defined the standard that trial courts must use in evaluating such motions. In light of *Polansky,* Plaintiff-Relator filed a Supplemental Memorandum on July 11, 2023; the District filed a Supplemental Brief on July 24, 2023; and Defendant filed a Supplemental Brief on July 28, 2023.

Pursuant to D.C. Code § 2-381.03(d)(2)(A), the Court held a Motions Hearing on the District's Motion and Defendant's Joinder on August 25, 2023. On September 8, 2023, Defendant filed a Post-Hearing Brief and Plaintiff-Relator filed a Post-Hearing Letter to the Court along with a Motion to Amend Complaint. Defendant filed a Motion for Leave to File Sur-Reply to Plaintiff[-Relator]'s Post-Hearing Letter Brief and a proposed Sur-Reply on September 12, 2023. Defendant's Motion for Leave requests the opportunity to "address [Plaintiff-Relator's] unfounded contentions and gross legal inaccuracies." Def.'s Mot. for Leave at 1. In response, Plaintiff-Relator filed a Notice of Withdrawal of his Motion to Amend Complaint and the accompanying Letter on September 14, 2023, to which Defendant filed a Response on September 20, 2023. On September 22, 2023, Plaintiff-Relator filed a Reply to Defendant's Response.

II. Legal Standard

The District and Defendant seek dismissal of this action pursuant to D.C. Code § 2- 381.03(d)(2)(A)[1] pursuant to which "[t]he District may dismiss the action notwithstanding the objections of the qui tam plaintiff if the qui tam plaintiff has been notified by the District of the filing of the motion to dismiss and the court has provided the qui tam plaintiff with an

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[1] The District of Columbia's False Claims Act, D.C. Code §§ 2-381.01-.10, is modeled after the federal False Claims Act and D.C. courts may look to federal cases interpreting the federal statute as guidance. *See Phone Recovery Servs., LLC v. Verizon Wash., DC, Inc.*, 191 A.3d 309, 315 (D.C. 2018) ("The [District of Columbia] False Claims Act [is] modeled after federal legislation. . . . Since the federal statute's enactment, Congress has amended the Act on various occasions. . . and the D.C. Council has followed suit."); *Grayson v. AT&T Corp.*, 980 A.2d 1137, 1147 (D.C. 2009) ("Like the federal version, the purpose of the FCA is to 'deter and punish false claims by authorizing individuals with direct and independent knowledge of those claims to file suit on behalf of the District as a qui tam plaintiff.'" (emphasis omitted) (quoting COUNCIL OF THE DISTRICT OF COLUMBIA, COMMITTEE ON GOVERNMENT OPERATIONS, Report on Bill 12-363, The "Procurement Reform Amendment Act of 1997," October 28, 1997 at 1)). At the August 25, 2023 Motions Hearing, all parties agreed that the standard established in *Polansky* for evaluating motions to dismiss under the federal FCA should also govern such motions under the District's FCA. Mots. Hr'g Tr. at 7:5-22.

opportunity for a hearing on the motion." "In assessing a motion to dismiss an FCA action over a relator's objection, [] courts should apply the rule generally governing voluntary dismissal of suits in ordinary civil litigation—Rule 41(a)."[2] *Polansky*, 143 S. Ct. at 1725.

D.C. Superior Court Rule of Civil Procedure 41(a)(1) creates two avenues by which a plaintiff can dismiss a case. First, Rule 41(a)(1)(A)(i) states "the plaintiff may dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment[.]" In addition, Rule 41(a)(2) further provides that "[e]xcept as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." With respect to *qui tam* actions, motions to dismiss filed under D.C. Code § 2-381.03(d)(2)(A) "satisfy Rule 41 in all but the most exceptional cases." *Polansky*, 143 S. Ct. at 1734. Though a court must consider the relator's interests, including their resources committed to the action, "the Government's views are entitled to substantial deference" given that *qui tam* suits are brought on behalf of and in the name of the government and allege injury to the government. *See id.* Despite a relator's assessment of their case against the defendant, "[i]f the Government offers a reasonable argument for why the burdens of continued litigation outweigh its benefits, the court should grant the motion." *Id.* In the end, "a [] court should think several times over before denying a motion to dismiss." *Id.*[3]

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[2] "Super. Ct. R. Civ. P. 41 is substantially identical to the corresponding federal rule, Fed. R. Civ. P. 41 and, thus, we 'construe the local rule in light of federal cases interpreting the federal rule.'" *Thoubboron v. Ford Motor Co.*, 809 A.2d 1204, 1210 n.6 (D.C. 2002) (quoting *Clay v. Faison*, 583 A.2d 1388, 1391 n.5 (D.C. 1990)); *see Segreti v. Deiuliis*, 263 A.3d 441, 444 (D.C. 2021) ("Because Super. Ct. Civ. R. 41 is 'substantially identical' to the corresponding federal rule, we look to interpretations of the federal rule for guidance." (citing *Thoubboron*, 809 A.2d at 1210 n.6)).

[3] Plaintiff-Relator contends that the Court should extend less deference to the Office of the Attorney General in District of Columbia *qui tam* cases than courts grant to the Department of Justice in federal cases, *see* Pl.-Rel.'s Opp'n to District's Mot. at 13, but offers no support – in statute, case law, or logic – for this position.

III. Analysis

The District's Motion and Defendant's Joinder ask the Court to dismiss this action pursuant to D.C. Code § 2-381.03(d)(2). District's Mot. at 2; Def.'s Joinder at 1. The District argues that, despite Plaintiff-Relator's objection, the Court should dismiss the case (i) under Rule 41(a)(1)(A)(i), given that the District filed its Motion prior to the filing of an answer or a motion for summary judgment, Mots. Hr'g Tr. at 14:14-18, and/or (ii) under Rule 41(a)(2), as its investigation into Plaintiff-Relator's allegations against Defendant showed that Plaintiff-Relator's claims lack merit, supporting a "reasonable argument," *Polansky,* 143 S. Ct. at 1734, as to why the case should be dismissed. District's Mot. at 4-6; Mots. Hr'g Tr. at 32:8-33:2. Defendant joins the District's Motion and notes that the District conducted an investigation that included an audit by the District of Columbia Office of Tax and Revenue and subsequently concluded that Defendant owed no taxes. Def.'s Joinder at 3. As such, Defendant argues, dismissal of the action with prejudice is warranted. *Id.* at 1, 6. Plaintiff offers a variety of arguments against dismissal under both prongs of Rule 41(a). Pl.-Rel.'s Opp'n to District's Mot. at 12-18; Mots. Hr'g Tr. at 9:5-13, 11:10-17, 13:11-20, 18:15-22, 45:2-18, 45:22-46:9.

A. Rule 41(a)(1)(A)(i)

By filing the present motion prior to any answer or motion for summary judgment from Defendant, the District is entitled to dismiss this case based on the plain language of Rule 41(a)(1)(A)(i). Despite the time and energy put into briefing and arguing these Motions, the straightforward procedure for dismissal by a plaintiff created by Rule 41(a)(1)(A)(i) yields a relatively simple answer to the question pending before the Court: because the District filed its

Motion prior to the filing of an answer or a motion for summary judgment, the Court must dismiss this case.

Plaintiff-Relator raises several arguments as to why Rule 41(a)(1) does not permit a dismissal here. He contends that, pursuant to D.C. Code § 2-381.03(d)(2)(A) (and, for that matter, Rule 41(a)(1)(A)(i)), the District was required to file a "notice" of dismissal as opposed to a motion to dismiss, and that the District's Motion thus does not comply with the requirements of the statute. Mots. Hr'g Tr. at 11:1-16, 13:11-20.[4] However, to promote the resolution of cases on their merits, courts in this jurisdiction look to the substance of a pleading or motion rather than to its form or title. *See Nuyen v. Luna*, 884 A.2d 650, 654 (D.C. 2005) ("The nature of a motion does not turn on its caption or label, but rather its substance."); *Wallace v. Warehouse Employees Union # 730*, 482 A.2d 801, 804 (D.C. 1984) ("The nature of a motion is determined by the relief sought, not by its label or caption." (citing *Coleman v. Lee Washington Hauling Co.*, 388 A.2d 44, 46 (D.C. 1978); *Graves v. Nationwide Mutual Ins. Co.*, 151 A.2d 258, 261 (D.C. 1959); *Roumel v. Stradley*, 119 A.2d 111, 112 (D.C. 1955)). Consistent with this case law, the Court will not exalt form over substance here: the District filed a Notice of Intervention and Motion to Unseal and Dismiss the Action, which unambiguously served the purpose of notifying Plaintiff-Relator of the District's intention to both intervene and dismiss the case. *See* District's Mot. at 2. The fact that the "notice" provided to Plaintiff-Relator also contained the basis of the District's decision to dismiss the case does not negate the fact that Plaintiff received

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[4] Plaintiff-Relator also argues that the District's Motion to Unseal and Dismiss the Action should be construed as a motion for summary judgment, making Rule 41(a)(1)(A)(i) inapplicable. Mots. Hr'g Tr. at 12:3-11, 13:11-20. The District's Motion bears no resemblance to a motion for summary judgment: it is not maintaining the absence of a genuine dispute as to material facts in the manner of a summary judgment movant. *See* Super. Ct. Civ. R. 56(a). In addition, this argument ignores the fact that the District is the *plaintiff* in this case, not the *opposing party* that would be filing the answer or motion for summary judgment described in Rule 41(a)(1)(A)(i).

the type of notice required by both D.C. Code § 2-381.03(d)(2)(A) and Rule 41(a)(1)(A)(i).[5] *See also, Brutus Trading, LLC v. Std. Chtd. Bank,* 2023 U.S. App. LEXIS 21868, at *5-7 (2d Cir. Aug. 21, 2023) (upholding dismissal of the case pursuant to Rule 41(a)(1)(A)(i) because the plaintiff was notified of the government's filing of the motion to dismiss and the plaintiff was heard via its written submissions); *United States ex rel. CIMZNHCA, LLC v. UCB, Inc.,* 970 F.3d 835, 849-50 (7th Cir. 2020) (finding that the government's motion to dismiss, filed before any answer or motion for summary judgment, was "the end of the case" despite that "the paper was labeled a 'motion' rather than a 'notice.'" (citing *Smith v. Potter*, 513 F.3d 781, 782-83 (7th Cir. 2008))).

Similarly, Plaintiff-Relator maintains that D.C. Code § 2-381.03(d)(2)(A)'s requirement of "an opportunity for a hearing on the motion" precludes dismissal of the case via notice under Rule 41(a)(1)(A)(i). Mots. Hr'g Tr. at 9:5-13, 11:10-16. Plaintiff-Relator's position runs headlong into *Polansky,* in which the Supreme Court held that a trial court "should assess a (2)(A) motion to dismiss using Rule 41's standards." *Polansky,* 143 S. Ct. at 1733.[6] Indeed, the Supreme Court specifically contemplated the relationship between Rule 41(a)(1)(A)(i)'s dismissal via notice procedure and the hearing requirement contained in the federal False Claims Act. *Id.* at 1734 n.4. *Polansky* held that the trial judge plays "no adjudicatory role" as to the government's request for a dismissal under Rule 41 at such a hearing and can consider only the relator's constitutional arguments as to due process or equal protection violations. *Id.* The hearing conducted by the Court in this case – at which Plaintiff-Relator raised no constitutional

[5] The District also notes that because its Motion was filed prior to the Supreme Court's decision in *Polansky*, it was unclear at the time of filing that Rule 41(a) established the appropriate standard and whether simply filing a notice of dismissal would have been sufficient. Mots. Hr'g Tr. at 15:24-16:19.

[6] The language in the District of Columbia's False Claims Act, D.C. Code § 2-381.03(d)(2)(A), mirrors that same section in the portion of the federal False Claims Act, 31 U.S.C. § 3730(c)(2)(A), referenced in *Polansky*.

issue – comported with the requirements of the statute and does not prevent the District from dismissing the case pursuant to Rule 41(a)(1)(A)(i).

In the end, Plaintiff-Relator's arguments reduce to a position that Rule 41(a)(1)(A)(i) simply does not apply to *qui tam* actions. Mots. Hr'g Tr. at 12:12-16. But, as noted *supra,* the Supreme Court explicitly held to the contrary in *Polansky,* establishing Rule 41 as the means by which to decide motions like the one brought by the District and even describing what can be considered at hearings on such motions under this sub-section of the Rule. The District notified all parties and the Court of its dismissal of this case before the opposing party had served an answer or motion for summary judgment; accordingly, this case must be dismissed.

B. Rule 41(a)(2)

Even if Rule 41(a)(1)(A)(i) did not dictate dismissal, the Court finds that Superior Court Rule of Civil Procedure 41(a)(2) would also require dismissal "at the [District's] request . . . by court order, on terms that the court considers proper." Pursuant to D.C. Code § 2-381.03(d)(1), upon its intervention in the case, the District has "the primary responsibility for prosecuting [*qui tam*] action[s]." *See also Polansky*, 143 S. Ct. at 1734. This responsibility includes the ability, as the Plaintiff, to request dismissal of the case, and in filing the present Motion, the District has done so.

As noted *supra,* the Court must show "substantial deference," *Polansky*, 143 S. Ct. at 1734, to the government's determination that the case should be dismissed, and must grant the motion "[i]f the Government offers a reasonable argument for why the burdens of continued litigation outweigh its benefits," *id.* Here, going beyond the requirement that it merely proffer a "reasonable argument" in favor of its determination to dismiss the case, the District has provided

a compelling basis for its decision. The District has represented that its Office of Tax and Revenue ("OTR") conducted a "months-long audit" of Defendant, District's Mot. at 5; District's Reply at 1; that it interviewed Plaintiff-Relator and reviewed the evidence he provided, District's Reply at 1; that it issued civil investigative demands to Defendant and the relevant corporation, and obtained documents in response, District's Reply at 2; and that it conducted its investigation in consultation with OTR and the District's Office of the Chief Financial Officer, District's Reply at 2 n.1. This investigation led to the conclusion that this action entirely lacks merit, i.e. that Plaintiff-Relator's allegations do not meet the DC FCA's monetary threshold for tax cases, *see* District's Mot. at 3, 5; District's Reply at 1-2; and that Defendant in fact owes no taxes to the District, District's Reply at 3; Mots. Hr'g Tr. at 37:5-39:17; Def.'s Post-Hr'g Br. at 5.[7] Given the District's conclusion that this action is wholly meritless, its assertion that even the relatively small costs of Plaintiff-Relator proceeding with this action – for example, the costs associated with staff continuing to monitor a lawsuit purportedly brought in its interests, or with responding to discovery requests, *see* Mots. Hr'g Tr. at 34:24-35:13 – outweigh its potential benefits strikes the Court as eminently reasonable. While Plaintiff-Relator promises that he will agree not to seek discovery from the District,[8] *id.* at 24:9-10, there is simply no way that this lawsuit would

[7] While Plaintiff-Relator vigorously argues that the District's investigation was "lackadaisical and inadequate," Pl.-Rel.'s Opp'n to District's Mot. at 9, at no point does he provide the Court with *any* evidence or information supporting his claims that the investigation should have reached a different conclusion or that Defendant owes additional taxes, much less taxes in the amount that would meet the FCA threshold. Indeed, Defendant aptly characterizes Plaintiff-Relator's representations on these points as nothing more than "vague innuendo and allegations." Def.'s Reply at 2. In any event, even if Plaintiff-Relator had presented a "credible assessment" as to the merits of the *qui tam* action, the Court would still be required to dismiss the case given the District's identity as the party-in-interest and its reasonable argument as to the merits of proceeding with the case. *Polansky,* 143 S. Ct. at 1734.

[8] Plaintiff-Relator cannot, of course, guarantee that Defendant would not seek documents or other types of discovery from the District, and the undersigned would expect that Defendant would do so.

cause the District to incur *no* costs – costs that outweigh the benefits from proceeding with what the District has reasonably determined to be a pointless lawsuit.

Because Rule 41(a)(2) contemplates dismissal "on terms the court considers proper," the Court must also consider Plaintiff-Relator's interests. *Polansky,* 143 S. Ct. at 1734. Plaintiff-Relator contends that dismissal would prejudice him because (i) he would be denied the recovery that *qui tam* plaintiffs are entitled to for exposing fraud that has been committed against the government, (ii) he has expended time, energy, and resources in litigating this matter, and (iii) in light of a dismissal, he would be forced to file a new *qui tam* action against Defendant to allege additional years of tax violations in D.C., and the statute of limitations for some of those tax years has now expired.[9] Pl.-Rel.'s Supp. Brief at 7-9. None of these arguments tip the balance against the District's request for dismissal. Plaintiff-Relator has no particular right to a *qui tam* recovery where the government has proffered a reasonable basis for dismissal of the action. Similarly, the time, money, and personal risk associated with Plaintiff-Relator's efforts do not distinguish him from any other unsuccessful relator in a *qui tam* suit and thus do not justify maintaining this action. As the undersigned noted at the hearing, a relator has no right to pursue a spurious *qui tam* lawsuit as some sort of reward for their efforts. Mots. Hr'g Tr. at 44:5-45:1. And Plaintiff-Relator's argument that dismissal would prejudice his ability to amend his lawsuit to include additional years of Defendant's alleged tax liability – an argument advanced at the motions hearing and formalized in Plaintiff-Relator's post-hearing Motion to Amend Complaint – now appears moot, as Plaintiff-Relator has acknowledged the futility of such an amendment and withdrawn the Motion to Amend. Pl.-Rel.'s Withdrawal at 1.

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[9] Plaintiff-Relator also argues that Defendant's June 10, 2023 Motion for Sanctions against him was prejudicial, Pl.-Rel.'s Supp. Brief at 9; the Court, however, separately denied that Motion on August 10, 2023.

Here, "the [District has given] good grounds for thinking that this suit would not do what all *qui tam* actions are supposed to do: vindicate the Government's interests." *Polansky*, 143 S. Ct. at 1735. Where Plaintiff-Relator has not presented any "extraordinary circumstance" counseling against dismissal, *id.* at 1735, this case, like *Polansky,* "is not a close call," *id.* at 1734, and must be dismissed under Rule 41(a)(2).[10]

IV. Conclusion

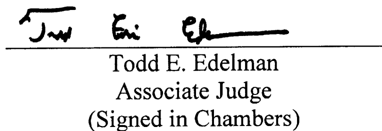
For the foregoing reasons, it is this 12th day of October, 2023, hereby

ORDERED that the District's Motion and Defendant's Joinder are GRANTED; and it is

FURTHER ORDERED that this case is DISMISSED WITH PREJUDICE; and it is

FURTHER ORDERED that Plaintiff-Relator's Motion to Amend Complaint is DENIED AS MOOT; and it is

FURTHER ORDERED that Defendant's Motion for Leave to File Sur-Reply is DENIED AS MOOT.



Todd E. Edelman
Associate Judge
(Signed in Chambers)

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[10] In his response to Plaintiff-Relator's Withdrawal, Defendant moved the Court to impose sanctions on Plaintiff-Relator based on the frivolous nature of Plaintiff-Relator's September 8, 2023 Motion to Amend and his related letter to the Court. Def.'s Resp. to Pl.-Rel.'s Withdrawal at 1. Defendant premises this request on D.C. Code § 2-381.03(f)(5) and on the Court's inherent authority to sanction parties for bad faith litigation tactics, *see, e.g., Synanon Found., Inc. v. Bernstein,* 517 A.2d 28, 38 (D.C. 1986). Def.'s Resp. to Pl.-Rel.'s Withdrawal at 1, 1 n.2. The Court has doubts as to whether D.C. Code § 2-381.03(f)(5) – which contemplates situations in which "the District does not proceed with the action and the *qui tam* plaintiff conducts the action" – even applies here, where the lawsuit has not yet proceeded to the point at which the *qui tam* action has moved forward. Regardless, while the Motion to Amend appears to have been entirely without merit, Plaintiff-Relator quickly withdrew it, and the Court discerns no basis to sanction him for bad faith tactics or based on a characterization of the claim as "frivolous, vexatious, or brought solely for purposes of harassment." D.C. Code § 2-381.03(f)(5).

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