419 F.Supp. 846 (1976)

UNITED STATES of America
v.
Lewis KATES[*].

Civ. A. No. 75-151.

United States District Court, E. D. Pennsylvania.

June 30, 1976.

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852 *852 Since both the criminal and these civil proceedings involve the same conspiracy, the jury's verdict of guilty conclusively establishes all of the factual issues as to the liability of the convicted defendants under the False Claims Act conspiracy count of the complaint, Count I. The prior conviction does not, however, conclusively establish the defendants' liability under the common law conspiracy count. The reason for the distinction is this: To find the convicted defendants guilty of a criminal conspiracy in violation of 18 U.S.C. § 371 the jury necessarily had to find only that they *entered into* the unlawful agreement and that some overt act, not necessarily in itself harmful to the government, was committed in furtherance of the conspiracy.[7] In short, the conviction under Section 371 did not require proof that the conspiracy had ever been effectuated or that the government had suffered any actual damages. The third clause of the False Claims Act provides in relevant part:

> Any person . . . who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim . . . [shall be liable].

31 U.S.C. § 231. There is no requirement in the above language of proof that any false or fraudulent moving claims were actually submitted to or paid by the government. Thus, like Section 371, the False Claims Act proscribes the conspiracy itself, regardless of whether or not it was ever effectuated.[8] See *United States v. Ben Grunstein & Sons Co.*, 127 F.Supp. 907, 912 (D.N.J.1955). Mere establishment of the existence of the conspiracy—here accomplished by the jury's verdict—without proof of damages entitles the United States to recover the $2,000. forfeiture provided for in the Act, *United States v. Rohleder*, 157 F.2d 126, 129 (3d Cir. 1946); *United States v. American Precision Products Corp.*, supra, 115 F.Supp. at 827-28; cf. *Fleming v. United States*, 336 F.2d 475 (10th Cir.) cert. denied 380 U.S. 907, 85 S.Ct. 889, 13 L.Ed.2d 795 (1964); *Toepleman v. United States*, 263 F.2d 697 (4th Cir.), cert. denied sub. nom. *Cato Bros., Inc. v. United States*, 359 U.S. 989, 79 S.Ct. 1119, 3 L.Ed.2d 978 (1959); *United States v. Tieger*, 234 F.2d 589 (3d Cir.), cert. denied, 352 U.S. 941, 77 S.Ct. 262, 1 L.Ed.2d 237 (1956), and would also seem to allow the recovery of double damages, *United States v. Ben*
853 *Grunstein & Sons Co.*, supra, 127 *853 F.Supp. at 912, even if the latter were only nominal in amount, cf. *United States v. Collyer Insulated Wire Co.*, 94 F.Supp. 493 (D.R.I.1950).[9]

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[6] The False Claims Act contains a six year statute of limitations, 31 U.S.C. § 235, and the applicable statute for the common law conspiracy count is the six year statute of limitations contained in 28 U.S.C. § 2415(b) for recovery of money diverted from a grant program. Section 235 provides that the limitation period runs from the commission of the "act" while Section 2415(b) provides that it runs from the date the cause of action "accrues." A potential legal issue in this case might have involved the ascertainment of the meaning of these terms in the conspiracy situation. Fortunately, the Government has taken the position that it will not seek recovery from the defendants *even under the conspiracy counts of the complaint,* for false claims submitted more than six years prior to the filing of the complaint. See Brief for the Government at 21. I therefore have no occasion to consider this issue.

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[8] In *United States v. Guzzone*, 273 F.2d 121 (2d Cir. 1959), the court held that the defendants' plea of guilty to a criminal conspiracy did not conclusively establish their civil liability for nine *substantive* violations of the False Claims Act which corresponded to the nine overt acts charged in the criminal indictment. The court reasoned that the guilty pleas to the conspiracy did not establish the defendants' "guilt for every overt act set forth in the indictment" *Id.* at 123. I thoroughly agree with the *Guzzone* court's reasoning. Here, however, the government has not sought to establish conclusively the civil liability of the convicted defendants for substantive violations of the False Claims Act, but only for conspiracy to violate the Act. Since, as noted in the text, the Act imposes civil liability for the conspiracy itself and since the criminal conviction established the existence of the conspiracy, the government is entitled to summary judgment on count I of the complaint. This distinction between substantive and conspiracy violations under the False Claims Act was recognized by the courts in *United States v. Ben Grunstein & Sons Co.*, supra, 127 F.Supp. at 911-12 and *United States v. American Precision Products Corp.*, supra, 115 F.Supp. at 826. Both cases held that a prior plea of guilty to a criminal conspiracy conclusively established the defendants civil liability to a conspiracy claim under the False Claims Act. *United States v. American Packing Corp.*, 113 F.Supp. 223 (D.N.J.1953), in which the court refused to grant summary judgment for the government under the Act following the defendants' guilty pleas to a criminal conspiracy, is distinguishable in that the civil complaint did not allege a single conspiracy as had the criminal indictment, but rather was drafted so as to allege a separate conspiracy with respect to each substantive violation.