

## Qui Tam Case Update

### Florida Appellate Court Answers the Question “Who’s the Boss?” in Permitting Attorney General to Unilaterally Dismiss a Qui Tam Action Despite Previous Decision to Decline Intervention

By: Eric S. Adams and Mark P. Rankin

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On February 23, 2016, a Florida appellate court issued an [opinion](#) in a *qui tam*<sup>1</sup> matter on a case of first impression and answered the following question:

Does the Attorney General possess the requisite legal authority to dismiss a pending *qui tam* action notwithstanding her previous decision to decline to intervene in the action?

In September 2009, Zoltan Barati filed a *qui tam* action against Morotola under the [Florida False Claims Act](#). The Florida False Claims Act authorizes a private person or the State to initiate a civil action against a person or company who knowingly presents a false claim to the State for payment. The private citizen who brings the action, also known as the “relator,” sues both individually and on behalf of the State.

In *Barati*, after the State was served with a copy of the *qui tam* complaint, it conducted an investigation and declined to intervene. Barati nevertheless moved forward and prosecuted the case for more than three years. On July 18, 2013, the State filed a notice of voluntary dismissal of the *qui tam* action. The dismissal was over the objection of Barati and based on the authority of [section 68.084\(2\)\(a\), Florida Statutes](#), which provides:

The [State] may voluntarily dismiss the action notwithstanding the objections of the person initiating the action.

The appellate court upheld the decision of the lower court and held that the State possesses the “unfettered right” to unilaterally dismiss a *qui tam* action, regardless of the government’s prior decision not to intervene in the litigation.

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<sup>1</sup> “*Qui tam*” comes from the Latin phrase: “*qui tam pro domino rege quam pro se ipso in hac parte sequitur*” which translates as “who as well for the king as for himself sues in this matter.” *Black’s Law Dictionary* 1250 (6th ed. 1990).

In support of this decision, the appellate court expressed its rationale:

Based upon the plain language of Florida's False Claims Act, the Florida Legislature intended to vest almost complete authority in the Attorney General to conduct and control *qui tam* litigation;

To permit a relator to challenge the Attorney General's decision to dismiss a *qui tam* action would place the Florida False Claims Act in constitutional jeopardy; and,

Article IV, section four of the Florida Constitution grants unilateral authority to the Attorney General to dismiss a *qui tam* action.

The appellate court also found additional support for its decision in relevant case law interpreting the Federal False Claims Act.

The *Barati* [opinion](#) is an important development because it establishes significant power within the Attorney General in addition to the State's power to not intervene in a *qui tam* proceeding. From a *qui tam* defendant's point of view, the Attorney General's right to unilaterally dismiss may serve as leverage against a relator where the State has not intervened.

[Zoltan Barati v. State of Florida, Motorola, Inc. and Morphotrak, Inc., Case No. 1D15-213 \(Fla 1<sup>st</sup> DCA February 23, 2016\)](#) (NOTE: This opinion has not been released for publication in the permanent law reports. Until released, it is subject to revision or withdrawal).

## About Shutts & Bowen

Shutts & Bowen attorneys have extensive hands-on experience and expertise in matters arising under the False Claims Act (FCA) and similar statutes in a number of industries, with particular focus on health care and government contracts. Our trial-ready litigators include former federal government counsel and regulatory lawyers with expertise in defending FCA cases and investigations, including *qui tam* claims, brought against companies, directors and officers. We have handled civil and criminal false claims investigations and cases at the federal and state levels. At Shutts, we form an effective team of lawyers with substantive expertise in our clients' industries and FCA experience to develop a customized strategic and tactical approach to each case.

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