

February 18, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-20570
Conference Calendar

United States of America, ex rel, CARL W. DAVIS,

Plaintiffs-Appellees,

versus

FLORENT LUC LITALIEN; ET AL.,

Defendants,

FLORENT LUC LITALIEN,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-00-CV-4540
USDC No. H-01-CV-3142

Before HIGGINBOTHAM, EMILIO M. GARZA, and PRADO, Circuit Judges.

PER CURIAM:*

Carl Davis, Texas inmate No. 634171, filed a qui tam action against Florent Luc Litalien, Texas inmate no. 753225, under the False Claims Act (FCA), 31 U.S.C. §§ 3729 et seq. Davis alleged that Litalien had defrauded the Department of Veterans Affairs (VA) by collecting benefits while incarcerated. The district

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

court granted summary judgment for Davis on the liability issue based on the matters admitted pursuant to FED. R. CIV. P. 36(a). The district court determined liability but did not award damages. Because the district court did not determine damages, it could not issue a final judgment pursuant to FED. R. CIV. P. 54(b). Pemberton v. State Farm Mut. Auto. Ins. Co., 996 F.2d 789, 792 (5th Cir. 1993). Accordingly, this court lacks jurisdiction to consider the appeal.

APPEAL DISMISSED.