

UNITED STATES OF AMERICA) Criminal No: CR-H-94-58
)
 v.)
) [filed 4/26/94]
 GLAZIER FOODS CO.,)
)
 Defendant.)

The United States of America, through its undersigned attorneys, submits its Response in Opposition to Defendant Glazier Foods Company's Motion to Dismiss Count Two Based on Collateral Estoppel. Defendant admits that its vice president, John J. Johnson, made the alleged false statement that forms the basis of Count Two of the indictment against Glazier Foods. Motion at 1. However, defendant argues that this charge should be dismissed against it, because Johnson was acquitted on this same count at his trial. United States v. John J. Johnson, No. CR-H-92-152 (S.D. Tex.).

In effect, the defendant argues that the Court apply the civil doctrine of nonmutual collateral estoppel, which would bar the government from prosecuting Johnson's corporate employer for his alleged false statement because Johnson himself was acquitted of that charge. However, The Fifth Circuit has ruled that the doctrine of nonmutual collateral estoppel does not apply in a

criminal case. United States v. Montes, 976 F.2d 235, 239 (5th Cir. 1992), cert. denied, 113 S.Ct. 1831 (1993), citing Standefer v. United States, 447 U.S. 10, 100 S.Ct. 1999 (1980). The Bailin case cited by the defendant does not conflict with this principle, because Bailin does not involve nonmutual collateral estoppel; rather, it involves reprosecution of the same defendant. Double jeopardy and ensuing collateral estoppel issues have no application here, of course, because a different defendant is being tried.

The issue of Glazier Foods' responsibility for the alleged false statement of its vice president, has never been litigated. Therefore, the doctrine of collateral estoppel is inapplicable, and the motion should be denied.

Respectfully submitted,

"/s/"

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Government's Response in Opposition to Defendant Glazier Foods Company's Motion to Dismiss Count Two Based on Collateral Estoppel and proposed Order was sent via Certified Mail-Return Receipt Requested, this 25th day of April, 1994, to:

Joel M. Androphy, Esq.
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"/s/"
JANE E. PHILLIPS
Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA)	Criminal No. H-94-58
)	
v.)	
)	
GLAZIER FOODS CO.,)	
)	
Defendant.)	
)	

O R D E R

HAVING DULY CONSIDERED the Defendant's Motion to Dismiss
Count Two Based on Collateral Estoppel and the government's
response,

IT IS HEREBY ORDERED that the Motion is DENIED.

DONE AND ENTERED THIS ____ day of _____, 1994.

UNITED STATES DISTRICT JUDGE