

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PASHA AUTO WAREHOUSING, INC. : CIVIL ACTION
v. :
PHILADELPHIA REGIONAL PORT AUTHORITY : No. 96-6779

Memorandum

Shapiro, Norma L., J.

August 1, 2003

Holt Cargo Systems, Inc. ("Holt") moved to intervene in this action, and assert a "Response, New Matter and Counterclaim on behalf of the Philadelphia Regional Port Authority." The court denied the motion, but gave Holt leave to intervene on its own behalf as to the actual issues in litigation. Holt then reasserted its "Response, New Matter and Counterclaim on behalf of the Philadelphia Regional Port Authority." The Court denied the motion, but granted Holt the opportunity to be heard amicus curiae on the claims before the court. (Order of December 10, 1997). Holt appealed; this memorandum is in support of the order being appealed, in accordance with Local Appellate Rule 3.1 Notice to Trial Judge; Opinion in Support of Order.

Facts

Defendant Philadelphia Regional Port Authority ("PRPA"), a public entity of the Commonwealth of Pennsylvania, was formed to promote port development in southeastern Pennsylvania. PRPA owns marine terminals and other facilities in

the Philadelphia region of the Port District, including property known as Pier 96 South.

Plaintiff Pasha Auto Warehousing, Inc. ("Pasha") entered into a construction and sublease ("Pasha lease") with PRPA for Pier 96 South. A condition precedent to the Pasha lease was that the PRPA would construct certain buildings and facilities in and around Pier 96 South. In order to convey a current possessory right to Pier 96 South, Pasha and PRPA also entered into an "Interim Lease Agreement," ("interim lease"), to govern Pasha's use of the premises until fulfillment of the condition precedent. The Pasha lease provided that Pasha would have a right to renew its lease under certain conditions, and to request expansion of the scope of permitted activities on the Pier 96 South property.

PRPA entered into a subsequent lease agreement ("Packer Avenue lease") with Holt, a Delaware corporation in the business of stevedoring, warehousing and providing terminal services. The Packer Avenue lease encompasses a large parcel of property, including Pier 96 South. The lease between Holt and PRPA states that the "PRPA shall grant to Holt . . . [the] right . . . to develop Pier 96 South at such time that Pasha . . . either has consented to such grant or no longer has any rights with respect to Pier 96 South." (Holt's Amended Lease with PRPA, Section 24.2(b)(i)). Holt alleges that the PRPA failed to disclose the existence of Pasha's interim lease. All parties involved agree that the Holt lease does not create a possessory right in Pier 96

South until the expiration of the Pasha lease; there is a dispute regarding when the interim lease and the Pasha lease expire.

Procedural History

The Related Conspiracy Action. On December 28, 1994, Holt and two related corporations filed a complaint alleging a conspiracy to deprive Holt of its Packer Avenue lease, and drive Holt out of business. Holt et al. v. Delaware River Port Authority et al., Case No. 94-CV-7778 (E.D. Pa.). There was a dispute in that related action ("the conspiracy action") about whether the claims were subject to the mandatory jurisdiction of the Federal Maritime Commission ("FMC"). The FMC, an independent U.S. regulatory agency, has primary responsibility for enforcing the Shipping Act of 1984 ("The 1984 Act"). The 1984 Act provides a comprehensive scheme for regulation of common carriers and marine terminal operators. Pending FMC determination of whether it had exclusive jurisdiction, this court severed all but two constitutional claims,. Holt then voluntarily dismissed all severed claims, and asserted them in an FMC action.

The defendants in the conspiracy action filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6). The court found that, taking all allegations in the complaint as true, Holt could prove no set of facts establishing a procedural due process violation or a basis for injunctive relief for alleged violations of the terms of the New Jersey-Pennsylvania Amended Interstate Compact to manage the Delaware River Port region. Holt's equal protection and substantive due process claims were not dismissed

and are listed for trial in March. Holt filed a motion to certify for appeal this court's decision to grant the defendants' motion to dismiss in part.

The Declaratory Judgment Action. Pasha filed a complaint on October 2, 1996 to clarify its rights to Pier 96 South. Its complaint sought a declaratory judgment that: 1) any provisions in any Holt lease in conflict with the Pasha lease or the Interim lease are void; 2) PRPA could not delegate to Holt its discretion over alterations or extensions of the Pasha lease or Interim lease; 3) Pasha has certain rights to Pier 96 South; 4) any PRPA delegation to Holt of its power to expand Pasha's permitted activities is void; and 5) any veto PRPA granted to Holt over the extension of Pasha's lease is void.

Two of the three Holt defendants moved to dismiss pursuant to Fed. R. Civ. P. 12(b)(1), or pursuant to the doctrine of "primary jurisdiction." Holt argued that the action was subject to the mandatory jurisdiction of the FMC, or, in the alternative, that it was subject to FMC's primary jurisdiction. Pasha argued that it was not a common carrier or a marine terminal, and therefore not subject to the FMC's exclusive jurisdiction, and the primary jurisdiction doctrine was not applicable.

FMC was invited to appear amicus curiae. In its brief, the FMC admitted that "[a]n action merely for breach or enforcement of a maritime contract, including a marine terminal lease, will not ordinarily engage the Commission's jurisdiction."

(FMC Brief, p. 12). The FMC argued that, to the extent that Pasha's complaint alleges Holt's Packer Avenue lease is void and should be set aside, it "raise[d] issues within the agency's primary jurisdiction." (FMC Brief, p. 13).

The court determined that some of the claims in this action might be subject to the FMC's jurisdiction, either mandatory or primary, but that interpretation of Pasha's lease with PRPA was severable from the validity of the Holt Packer Avenue lease. The court retained jurisdiction over the declaratory judgment action involving Pasha's contractual rights with PRPA. The decision to decide some claims, but leave others for the FMC was consistent with FMC holdings in River Parishes Co., Inc. v. Ormet Primary Aluminum Corp., 27 S.R.R. 621 (F.M.C. 1996), vacated on other grounds, F.M.C. 1996, and Philips-Parr, Inc. v. Empresa Lineas Maritimas Argentinas, S.A., 25 F.M.C. 673 (1983).

The court's order specifically stated that "[t]he court will adjudicate Pasha's lease interests in Pier 96 South (Count III), and the obligation of PRPA thereunder with regard to lease renewal and expansion of Pasha's permitted activities under the lease (Count IV). Because of its interest in the outcome, Holt may move to intervene in Pasha's action against PRPA." The court granted Holt's motion to dismiss as to all other issues.

Holt moved to intervene, and assert its "Response, New Matter and Counterclaim on behalf of The Philadelphia Regional Port Authority." In the "Response, New Matter, and Counterclaim"

Holt sought to assert defenses and a counterclaim on behalf of PRPA, which allegedly would not assert them "because of collusion between PRPA and Pasha." (Holt's Motion to Intervene, ¶ 63). Its motion was based, in part, on a concern that this court might "declar[e] provisions of the Holt lease to be void." (Holt's Memorandum of Law in Support of Motion to Intervene, p. 7). This argument evidences a misunderstanding because the court will not interpret any provisions of the Holt lease. The court explicitly stated it would limit its decision to interpretation of the Pasha lease interest in Pier 96 South and the obligations of Pasha and the PRPA thereunder.

Holt's previous 12(b)(1) motion had been filed only on behalf of two of the three related Holt defendants. As a result, the claims against the third Holt defendant had not been dismissed. Holt alleged that this occurred because of "a computer error." Pasha moved to strike Holt's motion to intervene, because Holt was already a party to the action. After a conference call, the court granted Pasha's motion to strike, and dismissed the third Holt defendant, consistent with the court's earlier order. In that conference call, the court informed Holt that had it not stricken Holt's motion to intervene, the court would have denied Holt's attempt to assert claims other than with regard to the Pasha lease. The court also reaffirmed that the the terms of the Holt leases would not be adjudicated, because the decision would be limited to the lease obligations between Pasha and the PRPA.

In the subsequent order, the court stated that "[b]ecause of its interest in the outcome, its lease with PRPA, and its resulting privity of contract with PRPA, Holt Cargo Systems, Inc. may move to intervene to be heard only on the interpretation of Pasha's lease with Philadelphia Regional Port Authority ("PRPA") with respect Pier 96 South (Count III), and the obligation of PRPA to Pasha with regard to lease renewal and expansion of Pasha's permitted activities under the lease (Count IV)." (emphasis added). This language mirrored the language of the earlier order limiting the claims to be heard.

In direct contravention of the court's limitation of its jurisdiction, the court's statements in the conference call, and the court's explicit language in the subsequent order, Holt moved to intervene and assert essentially the same "Response, Mew Matter, and Counterclaims."¹ Holt attempted to add a defense that "Holt's rights do not conflict with Pasha's rights;" a defense that "the Holt lease complies with Pennsylvania law;" and a counterclaim based on an alleged conspiracy between PRPA and Pasha. Because Holt had signed a subsequent lease with PRPA for the same property, the court decided that it would allow Holt to be heard, but not accord it full party status. Holt has been allowed to "participate amicus curiae, and [to] be heard only on

¹ Holt, in its Second Motion to Intervene, actually tried to assert more claims than it had in the previous motion. Holt added a claim that the suit should be dismissed for lack of a justiciable case or controversy under Article III, because the parties do not have an honest and actual antagonistic assertion of rights. (Holt's Memorandum of Law in Support of Second Motion to Intervene, p. 8).

the interpretation of Pasha's lease with Philadelphia Regional Port Authority ("PRPA") with respect to Pier 96 South (Count III), and the obligation of PRPA to Pasha with regard to lease renewal and expansion of Pasha's permitted activities under the lease (Count IV)." Again, this language tracked the court's earlier order limiting its jurisdiction to avoid conflict with the FMC's exclusive or primary jurisdiction.

It is this decision Holt is appealing. Holt sought twice, in contravention of the court's explicit instructions, to add claims for an alleged conspiracy by Pasha and the PRPA to deprive Holt of its interest in the Pier 96 South property. The claims it submits on behalf of PRPA for its own benefit reassert severed claims pending before the FMC. Holt would also insert in this action claims asserted in the related conspiracy action soon to be tried. These claims are related to the dismissed claims for violation of the interstate compact in the conspiracy action, which Holt sought to have certified for interlocutory review.²

Discussion

Intervention of right

Under Fed. R. Civ. P. 24(a)(2), a party may intervene as of right if: 1) the application for intervention is timely; 2) the applicant has a sufficient interest in the litigation; 3) the interest may be affected or impaired, as a practical matter, by

² Since this court's order of December 10, 1997, certification under Rule 54(b) was decided; Order dated December 23, 1997.

the disposition of the action; and 4) the interest is not adequately represented by an existing party in the litigation. Harris v. Pernsley, 820 F.2d 592, 596 (1987). "Although these requirements are intertwined, each must be met [for a party] to intervene as of right." Id.

There is no doubt that the application was timely. The district court invited Holt to move to intervene when it dismissed all claims against Holt on October 28, and again invited such a motion on November 19, 1997. Holt moved to intervene on November 6, and November 24, 1997, approximately a week after each court order.

Holt does not have a sufficiently protectable interest in the issues the court will actually try to intervene as of right. Defining the precise nature of what the interest must be is difficult, it must be "significantly protectable." Donaldson v. United States, 400 U.S. 517 (1970). This "significantly protectable" interest "must be a legal interest as distinguished from the interests of a general and indefinite character. The applicant must demonstrate that there is a tangible threat to a legally cognizable interest to have the right to intervene." Harris, 820 F.2d at 601. Mere economic interest in the outcome of the litigation is insufficient to support a motion to intervene. See United States v. Alcan Aluminum, 25 F.3d 1174, 1185 (3d Cir. 1994). "[T]he mere fact that a lawsuit may impede a third party's ability to recover in a separate suit ordinarily does not give the third party the right to intervene." Mountain

Top Condominium Ass'n v. Dave Stabbert Master Builder, Inc., 72 F.3d 361, 366 (3d Cir. 1995).

Whatever Holt's interest, it is not directly impaired by the disposition of this action. The court has dismissed all claims except the interpretation of Pasha's lease interest in Pier 96 South. PRPA signed a lease with Holt effective on expiration of the Pasha lease. It is axiomatic that PRPA could not convey to Holt a property interest it no longer had. Holt certainly has an interest in the outcome of the dispute between Pasha and PRPA, but its own interest is not directly affected. Holt may hope the court limits Pasha's lease, but hope is insufficient to warrant intervention as of right. Holt's lease, by its own admission, is secondary to whatever interests Pasha has in Pier 96 South. If PRPA misrepresented Pasha's contract to Holt, Holt's remedy is against PRPA for conveying rights PRPA no longer retained.

In its motion to intervene and its second motion to intervene, Holt cites the same five cases for the proposition that "[n]umerous courts have recognized the right of persons to intervene in proceedings concerning disputes over possession of real estate." (Holt's Motion to Intervene, p. 7-8; Holt's Second Motion to Intervene, p. 12-13). None of these cases are applicable. In Sanquine, Ltd. v. U.S. Department of Interior, the court was determining the effect of a consent decree barring a certain government decision. If the consent decree were not entered, the government decision "would provide a direct economic

benefit to [the proposed intervenors], since they could re-lease [certain areas of] their lands when the . . . terms of their leases expire." Sanquine, Ltd. v. U.S. Department of Interior, 736 F.2d 1416, 1420 (10th Cir. 1984). In this way, the court was directly deciding what the proposed intervenors rights were, and the decision had a current and immediate impact on their rights. Holt's rights are not immediately impacted by a decision by this court on the interpretation of the Pasha leases. Holt is not benefitted economically by any decision, because the court is only looking at the rights and obligations of Pasha and PRPA under their contracts.

In Atlantis Dev. Corp. v. U.S., two different parties each claimed a current immediate property right in some coral reefs off the Florida coast. The government, suing only one of them, sought injunctive relief on the basis that the lands were "subject to the jurisdiction, power, and disposition of the United States." Atlantis Dev. Corp. v. U.S., 379 F.2d 818, 821 (5th Cir. 1967). The Court of Appeals held that the proposed intervenors interest was sufficient to warrant intervention because each party was claiming ownership. Holt's interest in Pier 96 South only arises through a lease explicitly effective only on expiration of the Pasha leases. This sort of secondary interest is not the same as Atlantis's current ownership claim.

In Mille Lacs Band of Chippewa Indians v. Minnesota, 989 F.2d 994 (8th Cir. 1993), the court was determining the effect of a treaty on an Indian tribe's hunting, fishing, and

gaming rights in a certain area, including whether the tribe had rights over private property in the area. The private property owners sought to intervene because the suit might impact the tribe's rights over property currently in their possession. Holt's interest in Pier 96 South will not be decided by this court, because the court has limited its jurisdiction to interpretation of "Pasha's lease interests in Pier 96 South, and the obligation of PRPA thereunder with regard to lease renewal and expansion of Pasha's permitted activities under the lease." The court is not determining Holt's rights, but Pasha's rights against PRPA.

Pacific Mut. Life Ins. Co. v. American Nat. Bank & Trust Co. of Chicago, allowed limited partners to intervene in an action to protect partnership assets when the general partner might have been breaching his fiduciary duty. The general partner was "nearly judgment proof" and "could not be made to pay for the harm he has allegedly caused." Pacific Mut. Life Ins. Co. v. American Nat. Bank & Trust Co. of Chicago, 110 F.R.D. 272, 274 and 275 (N.D. Ill. 1986). In this action, Holt and PRPA are not in a fiduciary relationship, and PRPA owes no fiduciary duties to Holt. Nor is there any allegation that PRPA is judgment-proof, or that Holt will be unable to collect in a subsequent action by Holt against PRPA.

In St. Paul Fire & Marine Ins. Co. v. Summit-Warren Indust. Co., the court allowed a party to intervene to determine whether an insurance company was liable for any claims against

the insured based on toxic contamination of a parcel of property. The insured was a dissolved corporation, which had been impleaded by the proposed intervenor in a related action. While acknowledging the contingent nature of the intervenor's claim, the court found that the dissolved corporation was required to purchase the insurance as a condition of the lease. "If the insurer prevails in the instant action, . . . the proposed intervenor . . . may be left with a hollow judgment against a defunct corporation." St. Paul Fire & Marine Ins. Co. v. Summit-Warren Indust. Co., 143 F.R.D. 129, 134 (N.D. Ohio). This holding, like the decision in Pacific Mutual, was based on a conclusion that the party in the suit would be unable to satisfy any judgment the intervenor subsequently obtains. That is not the case here.

The St. Paul court found that "[p]ermitting the [intervenors] to intervene will create little or no interference with or complication of the litigation." Id. (quoting New Hampshire Ins. Co. v. Greaves, 110 F.R.D. 549, 552 (D.R.I. 1986)). Allowing Holt to intervene and assert its "Response, New Matter, and Counterclaim on Behalf of PRPA" will significantly complicate this litigation by asserting issues unrelated to the simple interpretation of the lease: whether "[t]he existence of the Interim Pasha Lease was concealed from Holt," (Response, New Matter, and Counterclaim, ¶ 7); whether Pasha and PRPA have a "mutual interest[] in harming and/or destroying Holt," (id. at ¶ 41); what are the extent of Holt's "rights to develop additional

parcels, including Pier 96 South," (id. at ¶ 62); and whether "Holt's rights [in Pier 96 South] . . . conflict with Pasha's," (id. at ¶ 63). Adding these issues not only complicates the litigation, but also raises the possibility of encroaching on the FMC's exclusive or primary jurisdiction.

Holt has alleged but not established that PRPA does not adequately protect the interests of PRPA and Holt in Pier 96 South. Having leased the same property to two different parties, PRPA has a significant interest in not having those leases in conflict, because to the extent the leases are in conflict, PRPA may be liable to Holt for damages.

Inadequacy of representation is or may be shown by proof of collusion between the representative and an opposing party. Standin v. Union Elec. Co., 309 F.2d 912, 919 (8th Cir. 1962) (Blackmun, J). "However, 'representation is adequate when the objective of the applicant for intervention is identical to that of one of the parties.'" Coalition of Arizona/New Mexico Counties for Stable Economic Growth v. U.S. Department of Interior, 100 F.3d 837 (10th Cir. 1996) (quoting City of Stilwell v. Ozarks Rural Elec. Coop., 79 F.3d 1038, 1042 (10th Cir. 1996)). When the proposed intervenor and a party to the suit both seek the same goal, the proposed intervenor must make "a concrete showing of circumstances in the particular case that make the representation inadequate." 7C C. Wright & A. Miller, Federal Practice and Procedure, § 1909 at 340 (1986). Holt and PRPA both seek to have the court find Pasha's interest is

limited: Holt because its subsequent lease of Pier 96 South may be triggered, and PRPA because it may be liable to Holt if it leased Holt rights it no longer retained. After PRPA leased Pier 96 South to Pasha, it willingly entered into a lease with Holt. Holt's sweeping allegation that PRPA and Pasha are conspiring against it, the subject of the related conspiracy action, is insufficient to counter specific reasons for PRPA to protect the interest of Holt as well as PRPA.

Permissive Intervention

Fed. R. Civ. P. 24(b) provides that "anyone may be permitted to intervene in an action . . . when an applicant's claim or defense and the main action have a question of law or fact in common." Fed. R. Civ. P. 24(b) (1991). There can be no doubt that Holt's possible claim against the PRPA has a question of law or fact in common with this action. The court may find that Pasha's interests include certain rights. The PRPA may have subsequently conveyed some of those rights to Holt. A decision on Pasha's rights under its lease may have a preclusive effect on whether Holt can act on the rights under the Holt lease or claim damages.

For this reason, the court gave Holt leave to intervene on the issue the court will adjudicate herein, specifically "the interpretation of Pasha's lease with Philadelphia Regional Port Authority ("PRPA") with respect Pier 96 South (Count III), and the obligation of PRPA to Pasha with regard to lease renewal and

expansion of Pasha's permitted activities under the lease (Count IV)."

In contravention of the court's orders, Holt twice refused to limit its complaint in intervention to the issues before the court, and attempted to raise the issues in its related action against PRPA. The court then decided that allowing Holt to intervene and had full party status would "unduly delay or prejudice the adjudication of the rights of the original parties." Fed. R. Civ. P. 24(b) (1991). The court found that Holt's determination to raise other issues, to complicate the action, and to delay the resolution of the issues before the court mandated denial of intervention. The court is still interested in Holt's views on the claims being adjudicated, and has granted Holt leave to participate amicus curiae. The court is determined not to allow Holt to derail the proceedings; for that reason it granted Holt the right to be heard, but not full party status. "[W]here, as here, the interests of the applicant in every manner match those of an existing party and the party's representation is deemed adequate," this court finds it is unnecessary to accord Holt full party status because the "resulting delay would be 'undue.'" Hoots v. Commonwealth, 672 F.2d 1133, 1136 (3d Cir. 1981).

Conclusion

Almost thirty years ago, the Court of Appeals for the District of Columbia noted that intervention involves an "accommodation between two potentially conflicting goals: to

achieve judicial economies of scale by resolving related issues in a single lawsuit, and to prevent the single lawsuit from becoming fruitlessly complex or unending." Smuck v. Hobson, 408 F.2d 175, 179 (D.C. Cir. 1969). This court attempted to strike this balance by allowing Holt two separate opportunities to intervene to be heard on the issues on which the action will proceed. Each time, Holt would not comply with the court's explicit orders.

Even though Holt lacks a sufficiently protectable interest, the district court found it entirely appropriate to permit Holt to be heard on the interpretation of Pasha's lease with respect to Pier 96 South, however its status may be legally characterized. Indeed, permitting persons to appear in court, either as friends of the court or as intervenors for a limited purpose, may be advisable where third parties can contribute to the court's understanding of the consequences of the action before the court. Harris, 820 F.2d at 603.

Holt attempts to assert defenses and a counterclaim PRPA has allegedly failed to assert because of a conspiracy between PRPA and Pasha. These claims are not before the court in this action. "[I]ntervention will not be permitted to breathe life into a 'nonexistent' lawsuit." Fuller v. Volk, 351 F.2d 323, 328 (3d Cir. 1965). Rather than allowing the suit to become fruitlessly complex or unending, the court decided that it would be more appropriate to proceed with the parties already before the court, and allow Holt to participate amicus curiae. Holt's

refusal to conform its actions to the court's orders should not delay the adjudication of the rights and obligations of the parties to the lease, both of whom are already before the court. For the reasons stated above, Holt's motion to intervene was denied, but Holt was permitted to participate amicus curiae on the issues to be adjudicated.

Norma L. Shapiro, J.