

IN THE SUPERIOR COURT THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

LESLIE A. MEYERS,

Plaintiff,

v.

ALFRED R. GEORGE, JR., and ALL PERSONS CLAIMING AN
INTEREST IN PARCEL NO. 14-A ESTATE JOHN'S FOLLY,
ST. JOHN, U.S. VIRGIN ISLANDS, INCLUDING BUT NOT
LIMITED TO ALL HEIRS OF C. BENJAMIN,

Defendants.

CASE NO. ST-12-CV-394

MEMORANDUM OPINION

Pending before the Court is the *pro se* Notice of Motion to Intervene by Eleanor Sullivan filed on May 11, 2015. By Order entered October 26, 2016, the Court held the Notice in abeyance and directed Ms. Sullivan to supplement the Notice as described in the Memorandum Opinion entered the same date by November 26, 2016, failing which the Court would decide the motion in the absence of additional information. No supplementation has been received from Ms. Sullivan, and Monica George-Fields has now filed Notice of her voluntary dismissal of George-Fields' Counterclaims, the only other pending claims in this case.

STANDARD

Rule 24(a)(2) of the Virgin Islands Rules of Civil Procedure¹ requires the Court to permit intervention by one who, by timely motion, "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest."² And, Rule 24(b)(1)(B) authorizes the Court to permit the

¹ The Virgin Islands Rules of Civil Procedure became effective on March 31, 2017, and apply to all civil cases pending
² *Mountain Top Condominium Association v. David Stabbert Master Builder, Inc.*, 33 V.I. 311 (3d Cir. 1995); *United States v. Smith*, 48 V.I. 544 (D.V.I. 2006).

intervention of anyone who, on timely motion, "has a claim or defense that shares with the main action a common question of law or fact." The purpose of the rule governing intervention is to enable one not named as a party who has a direct, substantial, and legally protectable interest in the subject matter of litigation to protect himself from an action that might be detrimental to him.³

If the motion to intervene is not timely, the Court need not address the other factors of an intervention analysis.^{4 5} Generally, Courts weigh four factors in determining the timeliness of a motion to intervene: (1) the length of delay in seeking intervention, (2) the prejudicial impact of such delay on existing parties, (3) prejudice to the would-be intervenor if intervention is denied, and (4) other factors affecting fairness in an individual case. Examining these factors, the Court determines that the Notice of Motion to Intervene is untimely.

DISCUSSION

In determining whether a motion to intervene is timely, courts look first to the stage of the case at which the motion is made.⁶ The mere passage of time does not render an application to intervene untimely; the critical inquiry is whether the proceedings of substance on the merits have occurred.⁷ Sullivan filed her Notice of Motion almost three years after this action was initiated, and has not explained the reason for this delay, although specifically directed to do so by the Court. During that time the Court has entered default judgment for Plaintiff, vacated the entry of that default judgment, and subsequently dismissed Plaintiff's Complaint with prejudice. Sullivan's request is not timely.

³ *Osmond Kean, Inc., v. Grosvenor*, 22 V.I. 71 (T.Ct. 1986).

⁴ *Rosa v. V.I. Water and Power Authority*, 32 V.I. 89 (T.Ct. 1995); *Associated Builders and Contractors, Inc., v. Herman*, 166 F.3d 1248, 1257 (D.C.Cir. 1999).

⁵ The Third Circuit modifies the timeliness requirement when the purpose of the intervention application is only to modify an existing order. See *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 780, n. 9 (3d Cir. 1994).

⁶ *Smith, supra*.

⁷ *Mountaintop, supra*.

Significantly, now that George-Fields has dismissed her counterclaims, the Court has dismissed all claims that could conceivably affect Sullivan's alleged interest in the subject Property. Were the Court to now permit Sullivan to intervene, the other parties would be substantially prejudiced should they be required to further litigate this action after all claims have been dismissed.

Even if the timeliness requirement has been met, the right to intervene under Rule 24(a)(2) exists only when the Court determines that the would-be intervenor has established three elements: (1) a sufficient interest in the subject matter of the pending litigation, (2) a substantial risk that the disposition of the litigation will impair the interest, and (3) the existing parties do not adequately protect that interest.⁸

To intervene as of right, the applicant must establish an interest that is directly noncontingent, substantial, and legally protectable.⁹ Some courts hold that the first factor may be satisfied by a showing that the proposed intervenor has an economic interest in the subject matter of the litigation.¹⁰ However, other courts have held that a purely economic interest is not alone sufficient to mandate intervention.¹¹ The Third Circuit has adopted the view that, in general, a mere economic interest in the outcome of the litigation is insufficient to support a motion to intervene.¹² While Sullivan apparently seeks to intervene for the limited purpose of protecting some undefined interest regarding the subject Property, because Sullivan has failed to supplement

⁸ *Rosa, supra*.

⁹ *Brown v. Motor Vessel "Numero Uno"*, 20 V.I. 368 (D.V.I. 1983).

¹⁰ See *In re Estate of Ferdinand E. Marcos Human Rights Litigation*, 536 F.3d 980, 987 (9th Cir. 2008); *Fund for Animals, Inc., v. Norton*, 322 F.3d 728, 733 (D.C.Cir. 2003), *Utahns for Better Transp. v. U.S Dept. of Transp.*, 295 F.3d 1111 (10th Cir. 2002).

¹¹ See *Medical Liability Mut. Ins. Co. v. Alan Curtis, LLC*, 485 F.3d 1006, 1008 (8th Cir. 2007); *Mt. Hawley Ins. Co. v. Sandy Lake Properties, Inc.*, 425 F.3d 1308, 1311 (11th Cir. 2005).

¹² *Mountaintop, supra*.

the record as requested, Sullivan has failed to demonstrate that she clearly has an interest in the subject matter of this litigation.

When the potential intervenor establishes that her ability to protect a substantial interest relating to the subject matter of the action may be impaired by the disposition of the case, there is at least a slight presumption in favor of intervention.¹³ Typically, the burden on a potential intervenor to establish inadequate representation is minimal, unless the intervenor and the existing party share identical objectives.¹⁴ From the limited information before the Court, it appears that Sullivan's interest in defeating the adverse possession claim of Plaintiff, which has now been dismissed with prejudice, has been adequately protected by Ms. George-Fields¹⁵. Because all claims against the subject Property have been dismissed, the Court concludes that there is no substantial risk that the litigation will impair Sullivan's interest as a practical matter in the absence of intervention.

Rule 24(b) applies a substantially more relaxed standard for permissive intervention, since the proposed intervenor need not demonstrate the sort of interest required for intervention as of right.¹⁶ Rule 24(b) intervention is "wholly discretionary"¹⁷ The Court further finds that, while the protection of Sullivan's interest in this litigation shares a common question of law and fact with the claims presented in the underlying action, because the other claims have been dismissed, the common question alone is insufficient to permit intervention under Rule 24(b)(1)(B).

CONCLUSION

As the Court indicated in the October 26, 2016, Memorandum Opinion, Ms. Sullivan's Notice of Motion fails to make any factual allegations or submit any evidence demonstrating that

¹³ *Holmes v. Government*, 10 V.I. 280, 282 (D.V.I. 1973).

¹⁴ *See B. Fernandez & Hnos., Inc., v. Kellogg USA, Inc.*, 440 F.3d 541, 546 (1st Cir. 2006).

¹⁵ *See General Star Indemnity Co. v. V.I. Port Authority*, 46 V.I. 351 (D.V.I. 2004), in which the would-be intervenor's sole interest was identical to that of the insured.

¹⁶ *E.E.O.C. v. National Children's Center, Inc.*, 146 F.3d 1042, 1045 (D.C. Cir. 1998) (collecting decisions).

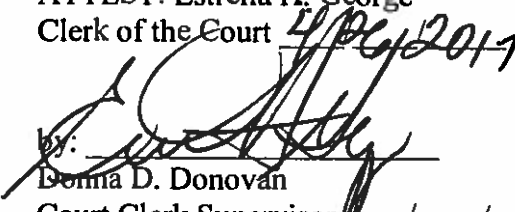
¹⁷ *Rosa, supra*; *Shea v. Angulo*, 19 F.3d 343, 346 (7th Cir. 12994).

Sullivan has an ownership interest in the subject Property, nor has she provided any justification for her delay in filing the motion to intervene. In the absence of this information, the Court cannot find that Sullivan has demonstrated a sufficient interest in the Property so as to permit her to intervene. And, because the Plaintiff's Complaint has been dismissed with prejudice and Monica-George Fields has submitted a notice of voluntary dismissal of her counterclaims, which the Court has approved today, whatever interest Sullivan possesses will not be "affected or impaired, as a practical matter, by the disposition of this action."¹⁸ As a result, the Court is compelled to conclude that intervention is not appropriate, as Sullivan's claim has been adequately protected by the other litigants and there is currently before the Court no dispute from which Sullivan's interest requires protection.

As a result, the Court will deny Sullivan's Notice of Motion to Intervene and dismiss this case with prejudice. An Order to that effect shall issue.

Dated: April 24, 2017.

ATTEST: Estrella H. George
Clerk of the Court

By: 

Donna D. Donovan

Court Clerk Supervisor


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

CERTIFIED A TRUE COPY

DATE: 4-26-17
ESTRELLA H. GEORGE
Clerk of the Court

By: 
Camell A. Clarke
Court Clerk II

¹⁸ See *Anthony v. Indep. Ins. Advisors, Inc.*, 56 V.I. 516, 526 (V.I. 2012).