

IN THE SUPERIOR COURT THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

ENID HENDRICKS,

Plaintiff,

v.

DENZIL CLYNE,

Defendant.

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) CASE NO. ST-16-CV-147
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) Cite as 19 V.I. Super. U 23
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MEMORANDUM OPINION

¶1. This matter comes before the Court on the February 12, 2019, Motion to Intervene of the Estate of Cassilda Battiste filed by counsel for Defendant in an apparent effort to make an end run around the Court's October 27, 2016, Memorandum Opinion and Order denying Defendant's Motion to Join the Estate of Cassilda Battiste and Plaintiff's November 21, 2018, Motion to Enter Judgment in Accord with Binding Mediation Settlement Agreement. The Motion will be denied. Also before the Court is Plaintiff's February 12, 2019, Motion to Strike Notice of Appearance, asking the Court to strike the Notice of Appearance filed by counsel for Defendant on behalf of the Estate. Plaintiff's Motion will be granted.

STANDARD

¶2. Rule 24(a)(2) of the Virgin Islands Rules of Civil Procedure requires the Court to permit intervention by one who, by timely motion, "claims an interest relating to the...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.”¹ And, Rule 24(b)(1)(B) authorizes the Court to permit the 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. 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.²

ANALYSIS

¶3. If the motion to intervene is not timely, the Court need not address the other factors of an intervention analysis.³ 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. As a rule of thumb, the later in the case that intervention is attempted, the more compelling the reason must be for intervention.⁴ “If the litigation has reached its final stage, generally with the entry of a final order, the courts deny

¹ *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).

² *Rosa v. V.I. Water and Power Authority*, 32 V.I. 89 (T.Ct. 1995).

³ *Id.*; *Associated Builders and Contractors, Inc., v. Herman*, 166 F.3d 1248, 1257 (D.C.Cir. 1999).

⁴ *Anthony v. Indep. Ins. Advisors, Inc.*, 56 V.I. 516 (V.I. 2012) (relying, in part, on *Harris v. Pernsley*, 820 F.2d 592, 597 (3d Cir. 1987)).

intervention as untimely except in extraordinary circumstances.”⁵ Examining these factors, the Court determines that the Motion to Intervene is not timely.

¶4. 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 Significantly, not only was this case settled in mediation on August 21, 2018, but the parties and their counsel entered into a written Mediation Settlement Agreement that both the mediator and this Court have found to be clear and unambiguous, and which the Court has enforced. On February 8, 2019, four days before Defendant’s counsel filed the Motion to Intervene, the Court executed a Memorandum Opinion and Order, entered by the Clerk on February 12, 2019, that enforced the Mediation Settlement Agreement and denied Defendant’s Motion to Rescind and/or Interpret Mediation Settlement Agreement and for Declaratory Relief, through which Defendant had sought to have the Court rescind or reform the Agreement. The Court recognized that the dispute had been settled at the mediation, dismissed Defendant’s counterclaims with prejudice, and entered judgment in favor of Plaintiff and against Defendant in accordance with the Agreement. Thus, not only was the Motion to Intervene filed at a late stage in the case, it was in fact filed after the case had been concluded. While the Court posits that this fact alone should prevent intervention, at a minimum this factor weighs heavily against a finding that the request for intervention was timely.

¶5. Turning to the prejudicial impact of delay on existing parties, the Court finds that permitting intervention would severely prejudice the Plaintiff, in whose favor judgment has been entered enforcing the Agreement. Plaintiff successfully defended Defendant’s attempt to join the

⁵ *Anthony*, 56 V.I. at 528 (quoting *In re Fine Paper Antitrust Litig.*, 695 F.2d 494, 500 (3d Cir. 1982)).

⁶ *Smith*, *supra*.

⁷ *Mountaintop*, *supra*.

Estate of Cassilda Battiste over two years ago, conducted discovery, engaged in good faith mediation, and successfully persuaded the Court to enforce the Mediation Settlement Agreement. Were the Court to permit a new party to enter this case after that judgment has been entered, it would require discovery to be reopened, cause additional motion practice, and unreasonably delay the resolution of this dispute, all at substantial expense to the parties. This is particularly true given that the parties already agreed upon a straightforward resolution of their claims in mediation. This factor also weights strongly against a finding that intervention was timely sought.

¶6. Nor is there substantial prejudice to the would-be intervenor if intervention is denied. The Estate has entered into a real estate sales contract with Defendant, closing upon which would resolve a decades-old misunderstanding of Plaintiff, Defendant, and the Estate concerning the ownership of the properties at issue and would dispose of virtually all of the potential complaints of Defendant and the Estate to the Agreement. Moreover, as part of the intervention effort, counsel for the Estate has requested that the Probate Division expedite approval of the sale.⁸ In fact, the Agreement contemplated a specific closing date for that sale, although that date has passed while Defendant attempted to overturn the Agreement.

¶7. And, in denying the Motion to Join the Estate, the Court has already determined that the Estate is not an indispensable party to this action. The conclusion that Defendant adequately represented the interests of the Estate is supported by the fact that the Estate now seeks to intervene through, and would purport to be represented by, the same attorney as Defendant. The Court sees

⁸ The Court is extremely troubled to learn from Plaintiff, in her Motion to Strike Notice of Appearance, that the Estate has apparently appended to its motion for appointment of an Administrator a redline version of the Mediation Settlement Agreement that reflects changes to which Plaintiff has not agreed and that Defendant desires to include. If true, this appears to the Court to be not only a gross misrepresentation of the terms of the Settlement Agreement, but also a blatant attempt to mislead the Probate Division into thinking that the changes reflected in the redline version have been agreed upon by the parties. The Court will leave it to the Probate Division to determine whether this conduct is sanctionable.

little, if any, prejudice to the Estate if intervention is denied, especially if that sale takes place in a reasonable period of time. As Plaintiff points out in her Motion to Strike, nothing in the judgment enforcing the Agreement is contrary to the rights of the Estate. Moreover, the Motion to Intervene comes two years and four months after the Court denied the Motion to Join, and the Estate has not shown any compelling reason why the request to intervene was not made shortly after the Court denied the Motion to Join. This factor also weighs against a finding of timeliness.

¶8. Finally, the Court concludes that no other factors exist that affect fairness in this case, certainly none that rise to the level of “extraordinary” circumstances that would justify intervention at this late stage. Thus, the Court determines that the Motion to Intervene is untimely and that neither the standard for intervention of right or that for permissive intervention is satisfied.

¶9. Regarding the Motion to Strike, Plaintiff points out that the appearance was entered at a time when the Estate was not a party to this action and requests that the Court consider that no Administrator for the Estate has been appointed and that the Estate is represented by different counsel in the Probate Division. The Court agrees, and concludes that the Motion to Strike should be granted.

¶10. An Order consistent with this Opinion shall issue.

Dated: February 20, 2019.

ATTEST: Estrella H. George
Clerk of the Court ____/____/____

by: 
Lori Boynes-Tyson
Court Clerk Supervisor 2/21/19


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