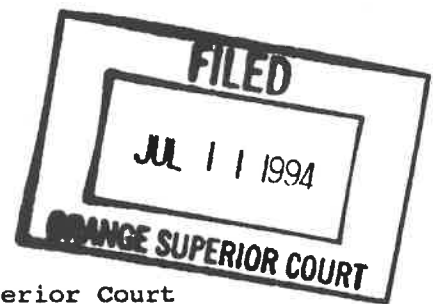


STATE OF VERMONT
ORANGE COUNTY, SS



LaBrie, Inc. d/b/a/
Limehurst Mobile Home Park,
Linda LaBrie, Ernest LaBrie

Orange Superior Court

v.

Herbert W. Ferno and
Harriet Leclair

Docket No. S45-94 OeC

Human Rights Commission

v.

LaBrie Inc., Linda LaBrie,
and Ernest LaBrie

Decision and Order-

Motion to Intervene

This action began in early March of 1994 as an action for eviction, in which LaBrie, Inc., d/b/a/ Limehurst Mobile Home Park, sought to evict tenants Herbert Ferno and Harriet Leclair. Defendants asserted affirmative defenses based upon theories of retaliatory eviction, and also set forth counterclaims against plaintiffs which alleged unfair, illegal, and retaliatory housing practices. Ernest and Linda LaBrie have since been joined as counter-defendants to the defendant's counterclaim.

On April 18, 1994, the Vermont Human Rights Commission, a State entity, moved, under V.R.C.P. 24(b), to intervene as a counterclaim plaintiff in order to assert claims that plaintiffs/ counterclaim defendants LaBrie have retaliated against defendant/ counterclaimants Ferno and Leclair as a result of Ferno and Leclairs' involvement in another action brought directly by the Human Rights Commission against LaBrie, Inc. and Ernest and Linda LaBrie. The Commission asserts that one of the theories asserted in the counterclaims of Ferno and Leclair relies upon a statute which is administered by the Commission. In support of its motion to intervene, the Commission also asserts

that it "has an interest in protecting the integrity of its enforcement actions by bringing actions against parties who intimidate, threaten, or interfere with individuals who cooperate with the Commission." The Commission also asserts that its proposed intervenor claim relies upon the same factual allegations which have already been set forth in the counterclaims of defendants Ferno and Leclair; on this basis, the Commission argues that its addition as a party will not increase the complexity of the case.

Plaintiffs oppose the Commission's attempt to intervene. First, they claim that the Commission has failed to properly follow its own rules governing its own internal operations and procedures.* Second, they make numerous and colorful allegations that the Commission, as an arm of the State, seeks intervention for the sole purposes of harassing and bullying them. Third, they assert that any valid interests which the Commission may have in this proceeding are already adequately represented by defendant/ counterclaimants Ferno and Leclair. Fourth, and finally, plaintiffs assert that intervention by the Commission will render the action needlessly complicated and have the effect of delaying its resolution.

As noted, the Commission seeks intervention under V.R.C.P. 24(b). That Rule provides, in pertinent part:

Upon timely application anyone may be permitted to intervene in an action... (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a... state... agency... the... agency upon timely application may be permitted to intervene in the action. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the rights of the original parties.

*. Plaintiffs have not supplied the court with copies of the rules which they refer to, nor have they made particularly clear why they believe that these rules should prevent intervention by the Commission.

Rule 24(c) requires that a prospective intervenor file a proposed pleading setting forth the basis of the claims on which intervention is sought. The Human Rights Commission has done so. The Commission's claim directly alleges and incorporates by reference a number of the factual allegations contained in the counterclaim filed by defendant/ counterclaimants Ferno and Leclair. Accordingly, there is a unity of factual issues between the counterclaim and the intervenor claim proposed by the Commission.

The relevant portions of V.R.C.P. 24(b) are substantively identical to Federal Rule 24(b). See F.R.C.P. 24(b), contained in 7C Wright & Miller, Federal Practice and Procedure, at p. 226 (1986). Wright and Miller clarify that the Rule contemplates a high degree of flexibility: "The rule requires only that [the intervenor's] claim or defense and the main action have a common question of law or fact." 7C Wright and Miller §1911, at p. 358. "If there is a common question of law or fact, the requirement of the rule has been satisfied and it is then discretionary with the court whether to allow intervention." Id., at 358, 363. Wright and Miller also note that official intervention by a government entity on behalf of the public interest was allowed even before the rule explicitly made provision for it. 7C Wright & Miller §1912, at p. 371. They note that "the whole thrust [of the provision of the rule pertaining to government entities] is in the direction of allowing intervention liberally to governmental agencies and officers seeking to speak for the public interest." Id., at p. 372-74.

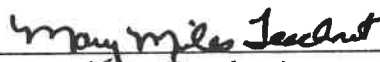
Courts are given discretion to decide whether to grant permissive intervention under Rule 24(b); the exercise of this discretion involves a balancing of interests. 7C Wright & Miller §1913, at p. 375-76. The principal concern is whether the allowance of intervention will prejudice those who are

already parties; however, this concern must be tempered with the realization that additional parties will inevitably cause some degree of delay, and this alone should not defeat intervention. Id., at p. 381-82. Decisions of trial courts regarding intervention will be reversed only upon a showing that the court abused its discretion. 7C Wright & Miller at p. 378.

Here, the Commission's proposed claims involve facts which have already been alleged by defendant/ counterclaimants Ferno and Leclair. The Commission does not seek to allege any independent or different facts, so its participation in the litigation would not create a "side show" which is collateral to the evidence between the existing parties. Additionally, although the facts which are of concern to the Commission are some of the same facts which are alleged by Ferno and Leclair, the Commission is concerned generally with the laws which it is charged with administering, not merely with the impact of those laws in this particular case. Legally, like any private litigants, Ferno and Leclair are presumably, and not improperly, concerned primarily with their own self-interests. The Commission, on the other hand, is charged with broader concerns regarding the relevant laws, concerns which may or may not all be pursued with vigor by private litigants. Additionally, beyond general assertions, plaintiffs LaBrie have not shown that the granting of party status will materially prejudice them or unduly delay the action.

For all of the foregoing reasons, the court determines, in the exercise of its discretion, that it is appropriate to allow the Human Rights Commission to intervene in this matter. The motion to intervene is therefore GRANTED.

Dated this 8th day of July, 1994, at Chelsea, Vermont.



Mary Miles Teachout
Presiding Judge