SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/29/24 TIME: 1:30 P.M. DEPT: E CASE NO: CV061492

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: C. GRANT

PLAINTIFF: JAMES M. TACHERRA vs. DEFENDANT: ERNEST J. TACHERRA	

NATURE OF PROCEEDINGS: MOTION FOR LEAVE – TO INTERVENE

RULING

The Tacherra Ranch Tenants' Association ("TRTA") and 21 proposed individual plaintiffs' (together with TRTA, "Movants") motion for leave to intervene is denied. (Code Civ. Proc., § 387, subd. (d).) Movants may file their Proposed Complaint against receiver Lawrence A. Baskin ("Baskin") and the other defendants named therein in a separate action. (*De Forrest v. Coffey* (1908) 154 Cal. 444, 450.)

BACKGROUND

This case, originally brought on April 7, 2006, is a dispute between brothers over certain real properties in Bolinas, including (but not limited to) 160 Mesa Road, also known as Tacherra Ranch (the "Ranch"). (Movants' Request for Judicial Notice[1] ("RJN") Ex. A, ¶ 1.) Plaintiff James M. Tacherra ("Plaintiff") sued his brother, Ernest J. Tacherra ("Defendant"), alleging that they had orally agreed that each was entitled to an undivided one-half interest in the properties. (*Id.*, ¶ 2.) Plaintiff accused his brother of mismanaging the properties' finances for his own exclusive benefit. (*Id.*, ¶ 12; see also RJN, Ex. B, ¶ 4-5.) He requested a partition of the land by sale. (*Id.*, ¶ 3.) He additionally stated a claim for an accounting, alleging that Defendant collected rents from tenants on the brothers' properties and had borrowed against the properties, but had refused to give Plaintiff his share of the rents or the proceeds from the loans. (*Id.*, ¶ 9.) The Complaint requested that a receiver be appointed to take possession of the properties, receive rents, and sell or refinance certain of the properties to prevent foreclosure. (*Id.*, ¶ 12.) Plaintiff additionally included a cause of action to quiet title and a request for declaratory relief. (*Id.*, ¶ 16-18, 21.) Finally, he pleaded a claim for conversion, alleging that Defendant had received income and loan proceeds from the properties but had not given Plaintiff his share. (*Id.*, ¶ 24.)

[1] The Court takes judicial notice of RJN Exhibits A-D. (Evid. Code, § 452, subd. (d).) RJN Exhibits B and D are declarations filed in this case. The court neither assumes nor judicially notices the truth of the statements in these declarations. (See *Arce v. Kaiser Foundation Health Plan, Inc.* (2019) 181 Cal.App.4th 471, 482 ["While we may take judicial notice of court records and official acts of state agencies . . . the truth of matters asserted in such documents is not subject to judicial notice."]; *North Beverly Park Homeowners Assn. v. Bisno* (2007) 147 Cal.App.4th 762, 778.)

Baskin was appointed as receiver on July 11, 2006 to "sell Tacherra Ranch properties to pay existing debts and obligations related to the properties." (Baskin Dec., ¶ 2.) The case was tried before the Honorable Judge Faye D'Opal (Ret.) in 2011. (Pacheco Dec., Ex. B, p. 20.) On August 31, 2011, the court issued an interlocutory judgment finding that Defendant was obligated to pay approximately $415,000 to the partnership, Plaintiff was entitled to 65% equity in the Ranch, and Defendant was entitled to 35% equity in the same. (Baskin Dec., ¶ 7; Pacheco Dec., Ex. B, p. 22.) Plaintiff was additionally given a right of first option to buy the Ranch from Defendant. (Baskin Dec., ¶ 7.) Defendant Ernest Tacherra filed a notice of appeal on November 7, 2011. (Pacheco Dec., Ex. B, p. 22.) The appeal was denied and the trial court's ruling affirmed. (Baskin Dec., ¶ 7.) "The only remaining issues in this matter are for the final accounting and payment to the parties of their beneficial shares." (*Id.*, ¶ 4.)

TRTA is an association of current and former tenants of Tacherra Ranch. (Pacheco Dec., ¶ 4.) TRTA, acting on behalf of its members, and 21 proposed individual plaintiffs seek leave to intervene in the instant case by filing a Proposed Complaint against Plaintiff, Defendant, Baskin, Susan Tacherra, and unidentified Does. (*Id.*, Ex. A [Proposed Complaint], p. 2.) The Proposed Complaint alleges that Plaintiff, Defendant, and Susan Tacherra own Tacherra Ranch and Plaintiff participates in its management. (*Ibid.*) It further alleges that Baskin is a court-appointed receiver who has exercised authority over Tacherra Ranch at all times relevant to the Proposed Complaint. (*Ibid.*; see also Pacheco Dec., Ex. B., p. 1. [noting appointment of Baskin on June 30, 2006].)

According to the Proposed Complaint, the twenty-plus "makeshift dwellings" at Tacherra Ranch have been "unpermitted, in violation of state and local housing codes, unsafe, and uninhabitable" for decades. (Proposed Complaint, p. 2.) "While these Defendants have known for many years that the significant defects at Tacherra Ranch create serious health and safety hazards for their tenants and their children, they have taken no steps to correct those defects. Tenants have made various complaints regarding the conditions of their homes and pleaded for repairs. At various times during the last four years, the Community Development Agency of the County of Marin has cited Defendants for code violations at Tacherra Ranch, but Defendants have repeatedly failed and refused to correct the violations." (*Ibid*.) The various issues with housing at Tacherra Ranch allegedly include (but are not limited to) the absence of a sewer system or an approved water source, vermin, leaking roofs and ceilings, broken windows, nonfunctional plumbing and bathing facilities, a lack of heat, inadequate fire safety accommodations, a lack of running water, mold, and an insufficient amount of natural light. (*Id.*, ¶ 46.) The Proposed Complaint asserts causes of action for breach of the implied warranty of habitability; violation of Civil Code, sections 1941, 1941.1 (fitness of dwelling for human occupancy), and 1942.4 (collection of rent for dwelling unfit for human occupancy); fraud; breach of contract; negligence; breach of the covenant of good faith and fair dealing; breach of the covenant of quiet enjoyment; nuisance; intentional infliction of emotional distress; negligent infliction of emotional distress; and unfair business practices.

LEGAL STANDARD

"An intervention takes place when a nonparty, deemed an intervenor, becomes a party to an action or proceeding between other persons by . . . [j]oining a plaintiff in claiming what is sought by the complaint[,] . . . [u]niting with a defendant in resisting the claims of a plaintiff[,] . . . or [d]emanding anything adverse to both a plaintiff and a defendant." (Code Civ. Proc., § 387,

subd. (b).) A party desiring to intervene must petition the court for leave to do so by way of noticed motion and carries the burden of showing that intervention is proper. (Code Civ. Proc., § 387, subd. (c); *People v. Brophy* (1942) 49 Cal.App.2d 15, 34.)

There are two types of intervention. Pursuant to Code of Civil Procedure, section 387's ("Section 387") mandatory intervention provision, "[t]he court shall, upon timely application, permit a nonparty to intervene" if either (1) "[a] provision of law confers an unconditional right to intervene[,]" or (2) "[t]he person seeking intervention claims an interest relating to the property or transaction that is the subject of the action and that person is so situated that the disposition of the action may impair or impede that person's ability to protect that interest, unless that person's interest is adequately represented by one or more of the existing parties." (Code Civ. Proc., § 387, subd. (d)(1).) Pursuant to Section 387's permissive intervention provision, "[t]he court may, upon timely application, permit a nonparty to intervene in the action or proceeding if the person has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both." (Code Civ. Proc., § 387, subd. (d)(2).) Intervention will generally be allowed under the permissive provision where the proper procedures have been followed, the proposed intervenor has a direct and immediate interest in the action, the intervention will not enlarge the issues in the litigation, and the reasons for the intervention outweigh any opposition by the present parties to the action. (*Siena Court Homeowners Assn. v. Green Valley Corp.* (2008) 164 Cal.App.4th 1416, 1428; accord *Lindelli v. Town of San Anselmo* (2006) 139 Cal.App.4th 1499, 1504.)

"[I]ntervention is possible, if otherwise appropriate, at any time, even after judgment." (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 437.)

DISCUSSION

Mandatory Intervention

There is very little case law interpreting Section 387's mandatory intervention provision. California courts have observed that the statutory language is identical to that of Federal Rules of Civil Procedure (28 U.S.C.), rule 24(a) (governing intervention as a matter of right in federal courts) and suggested that courts turn to decisions interpreting that provision, reasoning that the Legislature must have intended that the two have the same meaning. (See, e.g., *Hodge v. Kirkpatrick Development, Inc.* (2005) 130 Cal.App.4th 540, 556; *Edwards v. Heartland Payment Systems, Inc.* (2018) 29 Cal.App.5th 725, 732; *Siena Court*, *supra*, 164 Cal.App.4th 1416, 1423.)

Interpreting that rule, the United States Supreme Court has stated that the "interest relating to the property or transaction that is the subject of the action" sufficient to trigger intervention as of right must be a "significantly protectable interest." (*Siena Court*, *supra*, 164 Cal.App.4th 1416, 1424 [*quoting Donaldson v. United States* (1971) 400 U.S. 517, 531 [91 S.Ct. 534, 542] (superseded by statute on other grounds as stated in *Tiffany Fine Arts, Inc. v. U.S.* (1985) 469 U.S. 310, 316 [105 S.Ct. 725, 728])].) Interpreting the "significantly protectable interest" standard, the Ninth Circuit stated that the rule requires, "at an irreducible minimum[,]" that "the asserted interest be 'protectable under some law' and that there exist 'a relationship between the legally protected interest and the claims at issue' . . . If these two core elements are not satisfied, a putative intervenor lacks any 'interest' under Rule 24(a)(2), full stop." (*California Department of Toxic Substances Control v. Jim Dobbas, Inc.* (9th Cir. 2022) 54 F.4th 1078, 1088 ("*Toxic Substances*"); accord *Arakaki v. Cayetano* (9th Cir. 2003) 324 F.3d 1078, 1084.) "An applicant

generally satisfies the 'relationship' requirement only if the resolution of the plaintiff's claims actually will affect the applicant." (*Donnelly v. Glickman* (9th Cir. 1998) 159 F.3d 405, 410.)

Movants argue that they have an "interest relating to the property or transaction that is the subject of the action" because they reside (or resided) at the Ranch and are affected by the living conditions there, and the Ranch was one of the properties in dispute between Plaintiff and Defendant. This interest is insufficient. To trigger mandatory intervention, Movants needed to tie their interest to the claims at issue in this case and show that the interest would be affected by the resolution of those claims. (*Toxic Substances, supra*, 54 F.4th 1078, 1088; *Donnelly, supra*, 159 F.3d 405, 410.) Movants have not presented any evidence that they have ever had any interest in the Ranch such that their rights would be directly affected by the adjudication of Plaintiff's and Defendant's respective rights to own and profit from the property.

Accordingly, mandatory intervention is unavailable.

Permissive Intervention

"To support permissive intervention, it is well settled that the proposed intervener's interest in the litigation must be direct rather than consequential, and it must be an interest that is capable of determination in the action. The requirement of a direct and immediate interest means that the interest must be of such a direct and immediate nature that the moving party 'will either gain or lose by the direct legal operation and effect of the judgment.'" (*City and County of San Francisco v. State of California* (2005) 128 Cal.App.4th 1030, 1037 [quoting *Jersey Maid Milk Products Co. v. Brock* (1939) 13 Cal.2d 661, 663]; accord *Horn v. Volcano Water Co.* (1859) 13 Cal. 62, 69; *Petition of Applegate* (1958) 164 Cal.App.2d 9, 11.) While "it is not necessary that [the proposed intervenor's] interest in the action be such that he will inevitably be affected by the judgment[,]" there must at least be "a substantial probability that his interests will be so affected." (*Timberidge Enterprises, Inc. v. City of Santa Rosa* (1978) 86 Cal.App.3d 873, 881.) Permissive intervention is unavailable to Movants for the same reason mandatory intervention is. There is no evidence that Movants will gain or lose as a result of the adjudication of the issues in Plaintiff's complaint, not just because that adjudication has long since occurred, but because of the nature of the claims that were at issue in this case. While Movants suggest that their "pecuniary interest in this case as creditors" is a sufficient "interest" to justify intervention (Reply, p. 4), the case law makes clear that creditor status is not enough, even for permissive intervention. (*Isaacs v. Jones* (1898) 121 Cal. 257, 261 ["[I]t may be said that a creditor of the plaintiff in an action for damages may have an interest in his recovering judgment against the defendant, since thereby he may be able to recover his own debt, but such interest will not give him the right to intervene in the action."]; accord *Olson v. Hopkins* (1969) 269 Cal.App.2d 638, 641-42.)

Even if Movants had a qualifying interest, the Court would be disinclined to permit intervention given the degree to which it would enlarge the issues in this litigation. (See *Siena Court, supra*, 164 Cal.App.4th 1416, 1428.) Judgment has long since been entered in this case and has been affirmed by the Court of Appeal. (Baskin Dec., ¶ 7; Pacheco Dec., Ex. B, p. 22.) "The only remaining issues in this matter are for the final accounting and payment to the parties of their beneficial shares." (Baskin Dec., ¶ 4.) "All issues between Plaintiff James Tacherra and Defendant Ernest Tacherra regarding the management of their partnership were resolved at trial. There is nothing left to litigate and the matter is essentially done but for the finalization of the

partnership accounting[.]" (*Id.*, ¶ 8.) Movants' intervention would mean drawing out a case that is on the cusp of being resolved after nearly twenty years and inserting into that case a host of new housing-related issues with no relation to the underlying business dispute between brothers.

Accordingly, the motion for leave to intervene is denied.

Separate Action

"A receiver is a court-appointed official who can be sued only by permission of the court appointing him." (*Ostrowski v. Miller* (1964) 226 Cal.App.2d 79, 84; see also *McCarthy v. Poulsen* (1985) 173 Cal.App.3d 1212, 1219.) Movants request that in the event this motion is denied, the Court grant permission for Movants to sue Baskin in a separate action.

"When the court cannot afford the same relief in intervention as a claimant would be entitled to in an independent action [against a receiver], . . . the court will undoubtedly grant leave to bring [such independent action], and it would be an abuse of discretion not to do so." (*De Forrest, supra,* 154 Cal. 444, 450; see also *Ostrowski, supra,* 226 Cal.App.2d 79, 84 [court "may not properly refuse leave to sue [a receiver] when it cannot afford in intervention the same relief as the applicant is entitled to in an independent action"].) "To prevent a party from filing a separate suit against a receiver as well as from intervening in the receivership action is to deprive him of access to the courts to pursue his claim. Denial of access to the courts implicates due process." (*Jun v. Myers* (2001) 88 Cal.App.4th 117, 125.) A trial court may not consider the merits of the claims when determining whether a plaintiff will be permitted to sue a receiver. (*Ibid.*)

Because Movants' Proposed Complaint pertains to actions allegedly taken by Baskin as receiver and intervention is unavailable, Movants may file the Proposed Complaint against Baskin (and the other defendants named therein) in a separate action. Neither any party to this case nor Baskin opposes Movants bringing their claims in a separate lawsuit. (Plaintiff's Opposition, p. 1; Defendant's Joinder in Plaintiff's Opposition, p. 1; Receiver's Opposition, p. 11.)

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for January, 2024 is as follows:
https://www.zoomgov.com/j/1605153328?pwd=eUU1OE9BTG5tWHgrOFNKMmVvd2tFQT09
Meeting ID: 160 515 3328
Passcode: 360075

If you are unable to join by video, you may join by telephone by calling* 1-669-254-5252 *and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: marin.courts.ca.gov