

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

MARTA CHAIKOVSKA and
CREEK VENTURES, LLC

Plaintiffs

vs.

Index No. 1816/02

ERNST & YOUNG

Defendant

MARTA CHAIKOVSKA

Plaintiff

vs.

Index No. 6722/00

THE CHASE MANHATTAN BANK

Defendant

THE CHASE MANHATTAN BANK

Plaintiff

vs.

Index No. 6816/00

WORLD AUTO PARTS, INC., et al

Defendant

MEMORANDUM DECISION

BEFORE:

HON. JOHN M. CURRAN, J.S.C.

APPEARANCES:

Terrance P. Flynn, United States Attorney
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CURRAN, J.

The United States of America has moved for permission to intervene in these related actions “for the sole purpose of securing the release of the civil deposition transcripts of Marta Chaikovska for the limited use of cross-examining Marta Chaikovska, a defense witness, in the criminal trial of United States v. Frank Peters and Mark Hoffman.” Upon this application, the United States seeks to have this Court alter its prior Order which precluded the preparation of transcripts from Ms. Chaikovska’s deposition. That order was issued as a fair accommodation to all parties in fulfillment of Justice Fahey’s previous Order staying the depositions of certain witnesses anticipated to be prosecution witnesses in the aforementioned criminal trial. Subsequent to Justice Fahey’s Order, this Court narrowed the list of the prosecution witnesses subject to the stay. The essential theory of this Court has been to continue the progress of discovery in these longstanding civil actions without any delay caused by the Federal criminal action or, as previously ordered by Justice Fahey, without any negative impact upon that Federal Court criminal action.

The United States does not qualify for intervention as of right under any of the subsections in CPLR § 1012 (*see e.g. Vantage Petroleum v Board of Assessment Review of the Town of Babylon*, 61 NY2d 695, 698 [1983]). Unlike the United States' earlier application for intervention which sought to protect witnesses and ensure compliance with Federal Rules of Criminal Procedure rule 16(2) and 18 U.S.C. § 3500, there is no issue on this motion of a compelling public interest (*see e.g. Matter of Kopf*, 169 AD2d 428, 429 [1st Dept 1991]). Moreover, authorizing the release of the transcript now might allow the United States to circumvent the more restrictive federal criminal procedure rules (Fed. Rules Crim. Proc. rule 16[b][2]), the exact result the United States sought to avoid on its earlier application (*see e.g. The LaRouche Campaign v The Federal Bureau of Investigation*, 106 F.R.D. 500 [US Dist. Ct, MA 1985]).

The prerequisites listed for intervention by permission under CPLR § 1013 also have not been met and, in any event, the CPLR does not recognize limited intervention (*Matter of Greater N.Y. Health Care Facilities Assn. v DeBuono*, 91 NY2d 716, 720 [1998]; *Matter of Rent Stabilization Assn. of New York City v New York Div. of Hous. and Community Renewal*, 252 AD2d 111, 116 [3d Dept 1988]). The limited nature of the relief sought is underscored by the United States' fatal failure to comply with CPLR §1014 (*Rozewicz v Ciminelli*, 116 AD2d 990 [4th Dept 1986]). As this Court understands the rules of procedure and the controlling decisions interpreting them, the Court is unable to afford the United States intervention for the limited purpose sought on this motion.

This denial does not deprive the United States of any right to which it is presently entitled or to which it might ever become entitled. Under the Federal Rules of

Criminal Procedure, the United States would be entitled to Ms. Chaikovska's deposition transcript only *if* she testifies at the criminal trial and only *if* that transcript contains testimony related to her trial testimony and the transcript was deemed to be in the possession of defense counsel in the Federal Criminal Court action (who does not represent any party in this action) (Fed. Rules Crim. Proc. rule 26.2). The United States has not established any basis upon which to claim that it has a right to discovery in this State Court civil action or that it is otherwise entitled to receive a copy of the transcript by Order of this Court.

For all of these reasons, the application is in all respects denied.

DATED: July 13, 2007

HON. JOHN M. CURRAN, J.S.C.