

**Matter of Restaurant Action Allcance NYC v City of
New York**

2015 NY Slip Op 31158(U)

July 7, 2015

Supreme Court, New York County

Docket Number: 100734/15

Judge: Margaret A. Chan

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This opinion is uncorrected and not selected for official publication.

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7/7/15
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. MARGARET A. CHAN
Justice

PART 52

Restaurant Action Alliance NYC et al

INDEX NO. 100734/15

-v-

MOTION DATE _____

The City of New York et al

MOTION SEQ. NO. 002

The following papers, numbered 1 to _____, were read on this motion to/for intervene

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1

Answering Affidavits — Exhibits _____ | No(s). 2-3

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

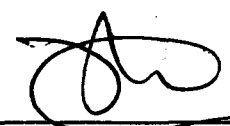
**MOTION DETERMINED PURSUANT TO
ANNEXED DECISION AND ORDER**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

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Dated: 7/7/15


_____, J.S.C.

HON. MARGARET A. CHAN

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: PART 52

Index #: 100734/15

In the Matter of the Application of
RESTAURANT ACTION ALLICANCE NYC,
CECILIO ALBAYERO, JOSE CASTILLO,
MAXMILIANO GONZALES, ANDRES JAVIER-
MORALES, ARISMENDY JEREZ, TONY JUELA,
RUPERTO MOROCHO, ASTRID PORTILLO,
LUCIANO RAMOS, SERGIO SANCHEZ,
ESMERALDA VALENCIA, PLASTICS RECYCLING
INC., DART CONTAINER CORPORATION,
PACTIV LLC, GENPAK LLC, COMMODORE
PLASTICS LLC, and
REYNOLDS CONSUMER PRODUCTS LLC,

DECISION and ORDER

Petitioners,

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules,

-against-

THE CITY OF NEW YORK; KATHRYN GARCIA,
in her official capacity as Commissioner of the
New York Department of Sanitation; the
NEW YORK CITY DEPARTMENT OF
SANITATION, a charter-mandated agency;
and BILL DE BLASIO, in his official capacity
as Mayor of the City of New York,

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Respondents.

Margaret A. Chan, J.:

In this Article 78 proceeding, petitioners seek to overturn respondents' determination to ban the use of expanded polystyrene for food service items. An environmental organization known as Natural Resources Defense Council, Inc. (NRDC) moves for leave to intervene in this proceeding.

Pursuant to CPLR § 1013, the court has discretion to permit a non-party to intervene when a state statute confers a right or when the non-party's claim or defense has common questions of law or fact. NRDC has substantial interest in this proceeding as its mission is to conserve and protect the environment. NRDC also claims an involvement in the enactment of Local Law 142 through which

respondents issued the ban. NRDC argued that because it helped governmental agencies pass Local Law 142, it is an interested party. It further opined that given its in-depth knowledge about recycling and Local Law 142, its intervention is warranted so to continue its help to government agencies and this court in this matter.

The court notes NRDC's focused commitment to environmental issues and the liberal reading of CPLR § 1013. However, NRDC's substantial interest in environmental issues does not confer it party status as it has neither a claim nor a defense in the question at issue in this Article 78 proceeding – whether respondents' determination under Local Law 142 was arbitrary or capricious. NRDC's wish to continue assisting governmental agencies in this proceeding is not hampered in anyway without intervening as there are other means for it to render its assistance, such as submitting an *amicus curiae* brief. While NRDC also wishes to assist the court, this court must pass on NRDC's thoughtfulness.

A factor to consider in determining whether to grant intervention is the delay it would cause. As this is a time sensitive issue where the original parties may be prejudiced, denying leave for NRDC to intervene is appropriate here (*see Ocelot Capital Management, LLC v Hershkovitz*, 90 AD3d 464, 465 [1st Dept 2011]).

Accordingly, NRDC's motion to intervene is denied.

This constitutes the decision and order of the court.

Dated: July 7, 2015



Margaret A. Chan, *J.S.C.*

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