

**Congregation of H.O.P.E.-L.I.F.E. Noah's Ark
Church, Inc. v Ramirez**

2012 NY Slip Op 31865(U)

July 12, 2012

Sup Ct, New York County

Docket Number: 114662/09

Judge: Saliann Scarpulla

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: SCARPULLA
Justice

PART 19

CONGREGATION OF H.O.P.E. - L.I.F.E.
NOAH'S ARK CHURCH, INC.
- v -
REVEREND RICHARD RAMIREZ,
ET AL.

INDEX NO. 114662/09
MOTION DATE _____
MOTION SEQ. NO. 07
MOTION CAL. NO. _____

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is determined in
accordance with the accompanying decision/order.

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

FILED

JUL 17 2012

NEW YORK COUNTY CLERK'S OFFICE

Dated: 7/12/12

Saliann Scarpulla
SALIANN SCARPULLA J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE
 SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 19

-----X
CONGREGATION OF H.O.P.E.-L.I.F.E. NOAH'S
ARK CHURCH, INC.,

Plaintiff,

Index No.: 114662/09

- against-

REVEREND RICHARD RAMIREZ AND ROBERT
M. MANNERS,

DECISION AND ORDER

Defendants.

-----X
For Plaintiff:
Chadbourne & Parke LLP
30 Rockefeller Plaza
New York, NY 10112

For Defendant Richard Ramirez:
Wisselman, Harounian & Associates, P.C.
1010 Northern Blvd., Suite 300
Great Neck, NY 11021

For Intervenor-Proposed Defendant:
Law Office of Matthew S. Porges, Esq.
155 Water Street
Brooklyn, NY 11201

FILED

BR 17 2019

Papers considered in review of this motion to intervene:

- Notice of Motion 1
- Aff in Opp 2
- Replies 3, 4

NEW YORK
COUNTY CLERK'S OFFICE

ION. SALIANN SCARPULLA, J.:

In this action challenging the election of a pastor, H.O.P.E.-L.I.F.E. Noah's Ark Church, Inc. ("H.O.P.E.") moves to intervene in the action pursuant to CPLR §1012.

Congregation of H.O.P.E.-L.I.F.E. Noah's Ark Church, Inc. ("Congregation") commenced this action alleging that H.O.P.E.-L.I.F.E. Noah's Ark Church pastor Richard Ramirez ("Ramirez") and assistant pastor Robert Manners ("Manners") (1) orchestrated the appointment of Ramirez as pastor to control the church and the real estate owned by the church; (2) disenfranchised the existing members of the congregation; and (3) created

by-laws to eradicate any future challenge to Ramirez's position as pastor. Congregation sought a judgment declaring the by-laws null and void, and alleged causes of action for fraud and negligent misrepresentation.

H.O.P.E. now moves to intervene in this action, arguing that plaintiff Congregation does not represent the church. Rather, the subject church operates under the name "H.O.P.E.-L.I.F.E. Noah's Ark Church, Inc." and H.O.P.E. has no knowledge of who or what constitutes Congregation and why it commenced this action purporting to represent the Church. H.O.P.E. further argues that it is a necessary party to this action because it owns the church building and therefore, possesses a property interest in the action.

In opposition, Congregation first explains that it is not suing as a non-existent corporate entity purporting to represent the church, but rather as a group of the members of the church who were wronged by Manners and Ramirez's conduct. Congregation further argues that the motion to intervene is untimely, as H.O.P.E. has been aware of this action since its inception and its attempt to intervene now is merely a tactic to delay the trial.

It further contends that the CPLR §1012 requirements to intervene have not been met in that (1) there is no relevant statute which confers an absolute right to intervene; (2) H.O.P.E.'s interests are fully represented by the named defendants, Manners and Ramirez; and (3) while H.O.P.E. claims that it possesses a property interest in this action,

whether or not it actually does possess an interest in the property at issue in this action and thus, can not serve as a basis for intervention.

In reply, H.O.P.E. maintains that intervention is timely in that it was only given actual notice of this action on February 11, 2012 when Congregation provided a copy of the complaint to a H.O.P.E. trustee. H.O.P.E. further contends that Congregation has not demonstrated that it would suffer any prejudice if H.O.P.E. intervenes in the action. Finally, it argues that it would be bound by any judgment in this action as the goal of the action is to obtain a judgment affecting H.O.P.E.'s property and by-laws.

Discussion

Pursuant to CPLR §1012, a person shall be permitted to intervene in an action when (1) a statute of the state confers an absolute right to intervene; or (2) the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment; or (3) the action involves the disposition or distribution of, or the title or a claim for damages for injury to, property and the person may be affected adversely by the judgment.

First, contrary to Congregation's contention, H.O.P.E.'s motion is not untimely. "In examining the timeliness of the motion, courts do not engage in mere mechanical measurements of time, but consider whether the delay in seeking intervention would cause a delay in resolution of the action or otherwise prejudice a party." *Yuppie Puppy Pet Prods., Inc. v Street Smart Realty, LLC*, 77 A.D.3d 197, 201 (1st Dept. 2010).

H.O.P.E. alleges that it first received official notice of this action in February 2012 when, after oral argument before this court, Congregation served a copy of the complaint upon a H.O.P.E. trustee. Further, Congregation has not demonstrated that it would suffer any prejudice resulting from H.O.P.E.’s intervention at this time. *See Yuppie Puppy Pet Prods., Inc. v Street Smart Realty, LLC*, 77 A.D.3d 197 (1st Dept. 2010); *Poblocki v. Todoro*, 55 A.D.3d 1346 (4th Dept. 2008).

Further, “the potentially binding nature of the judgment on the proposed intervenor is the most heavily weighted factor in determining whether to permit intervention.” *Yuppie Puppy Pet Prods., Inc. v Street Smart Realty, LLC*, 77 A.D.3d 197, 202 (1st Dept. 2010). Here, Congregation is seeking a judgment declaring the church by-laws invalid and thus, H.O.P.E. possesses a real and substantial interest in the outcome of this action. *See generally Agostino v. Soufer*, 284 A.D.2d 147 (1st Dept. 2001). As such, H.O.P.E. is permitted to intervene as defendant in this action.

In accordance with the foregoing, it is hereby

ORDERED that the motion of H.O.P.E.-L.I.F.E. Noah’s Ark Church, Inc. to intervene as a party is granted and that said party is permitted to intervene as a party defendant; and it is further

ORDERED that the summons and complaint in the above-entitled action be amended by adding H.O.P.E.-L.I.F.E. Noah’s Ark Church, Inc. as a party and listing said party as the last named defendant in the caption; and it is further

ORDERED that H.O.P.E.-L.I.F.E. Noah's Ark Church, Inc. serve its answer upon the attorneys for the plaintiff and the defendants within 20 days from service of a copy of this order with notice of entry; and it is further

ORDERED that H.O.P.E.-L.I.F.E. Noah's Ark Church, Inc. shall serve a copy of this order with notice of entry upon the Clerk of the Trial Support Office (Room 158), who is directed to amend its records to reflect such change in the caption herein; and it is further

ORDERED that the parties shall appear for a status conference on September 12, 2012 at 2:15 p.m. at 80 Centre Street, Room 279 to schedule any remaining discovery and to set a trial date.

This constitutes the decision and order of the court.

Dated: New York, New York
July 12, 2012

FILED

JUL 12 2012

NEW YORK
ENTER: COUNTY CLERK

Saliann Scarpulla
Saliann Scarpulla, J.S.C.