Nigro v Lloyd Corp.
2013 NY Slip Op 33751(U)
June 28, 2013
Supreme Court, Westchester County
Docket Number: 62399/2012
Judge: Linda S. Jamieson
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To commence the statutory time period for appeals as of right (CPLR § 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Disp ____ Dec __x__ Seq. Nos.__1-2____ Type __intervene____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON

--------------------------------------X

AUGUSTINE NIGRO,

Plaintiff,

-against-

Index No. 62399/12

DECISION AND ORDER

LLOYD CORPORATION, LLOYD HOME CENTER INC. And MICHAEL PORTER,

Defendants.

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The following papers numbered 1 to 5 were read on these motions:

Paper	Number
Order to Show Cause, Affidavits and Exhibits	1
Affirmation of Compliance and Exhibit	2
Memorandum of Law	3
Notice of Cross-Motion, Affirmation and Exhibit	4
Reply Affidavit and Exhibit	5

There are two motions before the Court in this action involving a Yonkers firefighter, Augustine Nigro, who was injured in the line of duty on March 27, 2012. Mr. Nigro sued defendants for his injuries. The Preliminary Conference in this action was held on January 30, 2013. Now the City of Yonkers (the "City") moves to intervene in the action, and to enjoin the parties from settling, compromising or distributing the proceeds of any

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settlement or verdict "in which the intervening plaintiff City has an interest, pursuant to General Municipal Law § 207-a." In return, plaintiff seeks an order "extinguishing any claimed lien" asserted by the City as against any monies recovered by plaintiff, "as the City has no lien or right of reimbursement against plaintiff. . . ."

The statute in question is General Municipal Law Section 207-a, which applies specifically to "Payment of salary, medical and hospital expenses of firemen with injuries or illness incurred in performance of duties." The relevant subsection, section seven, states that ". . . a cause of action shall accrue to the municipality . . . for reimbursement in such sum or sums actually paid as a salary or wages and/or for medical or hospital treatment, as against any third party against whom the fireman shall have a cause of action for the injuries sustained." The statute itself thus makes clear that the City, as the municipality, has a cause of action for reimbursement against "any third party against whom the fireman shall have a cause of action for the injuries sustained." That means that the City has a cause of action against defendants herein.

The City, in fact, concedes that it has no claims against plaintiff, and that it "may not have a statutory 'lien' . . . ." As the City realizes that it has no claims against plaintiff, the cross-motion is moot. Additionally, the City raises a valid point - since the City was not yet a party at the time of the

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cross-motion, the cross-motion itself is premature. In any event, as stated, it appears to be moot.

Turning to the motion to intervene, CPLR § 1013 provides that "Upon timely motion, any person may be permitted to intervene in any action when a statute of the state confers a right to intervene in the discretion of the court, or when the person's claim or defense and the main action have a common question of law or fact. In exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party." Here, there are not just "common question[s] of law or fact," but **identical** questions of law and fact. Plaintiff and the City are exactly aligned in interest in making sure that defendants are held liable, in a substantial sum, for the accident in question.

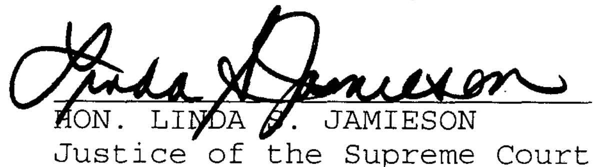
If the City were not allowed to intervene, it would necessitate a second action, against the same defendants, for the same accident. Plaintiff actually concedes that "the City may have the right to recover sums paid to" plaintiff from defendants. The same discovery would be necessary, and the same parties would testify at trial. Two actions would be inefficient and against judicial efficiency. Instead, intervention in this action will not cause any delay; there have only been two conferences held in this action, and a third is scheduled for August 15, 2013. Moreover, the City states that it "would not

require additional discovery beyond what plaintiff has requested," so delay is unlikely. Accordingly, the motion to intervene is granted. The City may file an order amending the caption (because the parties cannot amend it merely by adding the City to the caption on their papers).

As for the preliminary injunction, the City points out that plaintiff entirely ignores this request for relief in his opposition papers. As the City further points out, it would require this relief regardless of whether the motion to intervene were successful or not. Since the City is admittedly entitled to reimbursement from defendants of the payments it has made to plaintiff, it needs to be able to participate in any settlement or verdict. Accordingly, the preliminary injunction is granted, and the parties may not settle, compromise or distribute the proceeds of any settlement or verdict without the participation of the City or the permission of the Court.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
June 28 2013



HON. LINDA S. JAMIESON
Justice of the Supreme Court

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