

**Oversea Chinese Mission v Well-Come Holdings,
Inc.**

2015 NY Slip Op 32907(U)

June 22, 2015

Supreme Court, New York County

Docket Number: 113480/04

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: DEBRA A. JAMES
Justice

PART 59

OVERSEA CHINESE MISSION,
Plaintiff,

Index No.: 113480/04
Motion Date: 06/16/15
Motion Seq. No.: 17

- v -

WELL-COME HOLDINGS, INC., FLINTLOCK
CONSTRUCTION SERVICES LLC, and DIAMOND
POINT EXCAVATION CORP,

Defendants.

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PAPERS NUMBERS

The following papers, numbered 1 to 3 were read on this motion to intervene.

Notices of Motions-Affidavits -Exhibits FILED
Answering Affidavits - Exhibits _____
Replying Affidavits - Exhibits _____
JUN 24 2015

1
2, 3

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NEW YORK

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that the motion of non-party Guide One Insurance Company to intervene in this action shall be granted.

By Order dated January 7, 2015, this court stated:

At the collateral source hearing, the parties submitted a stipulation of facts that resolved the issue of such hearing, to wit: the amount of insurance proceeds that Oversea Chinese Mission (plaintiff church) received from its insurance carrier non-party Guide One Insurance, on the property damage claim.

This court so-orders such stipulation.

Thus, defendants received complete information about the payments

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

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

made by proposed intervenor, Guide One, to its insured, plaintiff here, with respect to Guide One's subrogation claim herein in reaching the referenced accord for the purposes of the collateral source hearing.

The use by defendants of the very discovery that they obtained in connection with the collateral source hearing both as a shield against double recovery and a sword to avoid payment of the lion's share of the damages that the jury found were incurred by plaintiff arising from defendants' tortious excavation activity and as a basis for their claim that they are prejudiced by Guide One's current motion to intervene is untenable.

As to timing, it has been held that "intervention can occur at any time, including for the purpose of perfecting an appeal." Tennessee Gas Pipeline Co v Town of Chatham Bd of Assessors, 239 AD2d 831 (3d Dept 1997); see also McHale v Anthony, 41 AD3d 265 (1st Dept 2007).

Concerning the defendants' objection that the proposed intervenor failed to append a copy of the amended complaint setting forth the subrogation cause of action pursuant to CPLR 1014, the proposed intervenor shall forthwith serve this order with notice of entry, with a copy of its proposed amended pleading, as well as a copy of the proposed amended complaint clearly showing the changes or additions to be made to the pleading pursuant to CPLR 3025(b) on the defendants. See Ryder v

Travelers Ins Co, 37 AD2d 797 (4th Dept 1971).

Accordingly, it is

ORDERED that the motion of non-party Guide One Insurance Company to intervene as plaintiff pursuant to CPLR 1012 is GRANTED, and Guide One Insurance Company be permitted to intervene in the above-entitled action as a party plaintiff; and it is further

ORDERED that the summons and complaint in the above-entitled action be amended by adding Guide One Insurance Company thereto as a party plaintiff and listing Guide One Insurance Company as the last plaintiff in the caption; and it is further

ORDERED that Guide One Insurance Company shall forthwith serve this order with notice of entry, together with a copy of its proposed amended pleading, as well as a copy of the proposed amended complaint clearly showing the changes or additions to be made to the pleading pursuant to CPLR 3025(b) upon the defendants; and it is further

ORDERED that defendants Well-come Holdings, Inc. and Flintlock Construction Services, LLC shall serve their answers upon the attorneys for all parties, or move with respect to the complaint in the above-entitled action, within 20 days from service of a copy of this order with notice of entry; and it is further

ORDERED that the attorney for the intervenor shall serve a

copy of this order with notice of entry, and proof of service,
upon the County Clerk (Room 141B) and upon the Clerk of the Trial
Support Office (Room 158), who are directed to amend their
records to reflect such change in the caption.

This is the decision and order of the court.

Dated: June 22, 2015

ENTER:

~~Debra A. James~~
DEBRA A. JAMES J.S.C.

FILED

JUN 24 2015

COUNTY CLERK'S OFFICE
NEW YORK