

**486 Ninth Ave., LLC v M&T Pretzel Inc.**

2025 NY Slip Op 34367(U)

November 17, 2025

Supreme Court, New York County

Docket Number: Index No. 153386/2025

Judge: Leslie A. Stroth

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. LESLIE A. STROTH PART 12M**

*Justice*

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INDEX NO. 153386/2025

486 NINTH AVENUE LLC,

MOTION DATE 06/11/2025

Plaintiff,

MOTION SEQ. NO. 003

- v -

M&T PRETZEL INC., 484 NINTH AVENUE, LLC,

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 32, 33, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49

were read on this motion to/for PARTIES - ADD/SUBSTITUTE/INTERVENE.

This litigation centers around a dispute related to a fence which Plaintiff alleges encroaches upon its property line and which restricts lawfully required egress to Plaintiff's Building.

Non-parties Rainbow Wholesale, Inc. and Nice Enterprise Corp. (Proposed Intervenors) move, in Motion Sequence 003, pursuant to CPLR 1012 and 1013<sup>1</sup> for leave to intervene in the instant action.

CPLR 1012 relates to intervention as of right, provides that "[u]pon timely motion, any person shall be permitted to intervene in any action ... when the representation of the person's

<sup>1</sup> Proposed Intervenors also move pursuant to CPLR 3020, which governs verification of pleadings, and as such is inapplicable to Proposed Intervenors' motion.

interest by the parties is or may be inadequate and the person is or may be bound by the judgment.”

CPLR 1013 relates to permissive intervention, which provides that “[u]pon timely motion, any person may be permitted to intervene in any action 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.”

First, Proposed Intervenors’ motion must be denied pursuant to CPLR 1014, which provides that “[a] motion to intervene shall be accompanied by a proposed pleading setting forth the claim or defense for which intervention is sought.” Such omission is fatal to any motion to intervene. (*see Matter of Zehnder v State*, 266 AD2d 224, 225 [2d Dept 1999]). Proposed Intervenors fail to include any such pleading to the instant motion, and as such on this basis alone the motion must be denied.

The Court also finds that denial is warranted as the Proposed Intervenors have not demonstrated that they will be bound by the judgment of the instant case pursuant to CPLR 1012 or that the substantial rights of any parties will be affected without intervention pursuant to CPLR 1013.

Proposed Intervenors allege that they are interested parties to the litigation pursuant to a sublease agreement allegedly entered between New York One LLC and Proposed Intervenors on July 5, 2023. (NYSCEF Doc No. 41). New York One LLC was former tenant of the premises located at 349 West 37<sup>th</sup> Street at the center of the instant litigation. However, New York One LLC had no authority to enter into such a sublease agreement, as they were no longer the tenant

of record on July 5, 2023. Plaintiff provides a Lease between Plaintiff M & T Pretzel and New York One LLC which ended on January 31, 2021. Therefore, there is no evidence that Proposed Intervenor ever entered into a valid sublease on the premises at issue in the litigation. Proposed Intervenor have therefore failed to make a prima facie showing that they will be bound to the outcome of the instant litigation nor that their rights will be affected.

Moreover, to the extent that Proposed Intervenor seek to intervene as Defendants in the instant action, such is governed by CPLR 1002(b), which provides “Persons against whom there is asserted any right to relief jointly, severally, or in the alternative, arising out of the same transaction, occurrence, or series of transactions or occurrences, may be joined in one action as defendants if any common question of law or fact would arise.” To the extent that this is the relief sought by Proposed Intervenor, such is also denied as the Plaintiffs assert no right to relief as against Proposed Intervenor, nor do Proposed Intervenor allege any facts to suggest their claims arise from the same transaction or occurrence underlying this litigation. The litigation herein relates to a fence which Plaintiff allege was erected by Defendants preventing proper egress from the premises. Proposed intervenors make no showing of any facts related to the fence or egress, and as such to the extent the motion seeks intervention as Defendants, such is also denied.

The court has considered the remaining arguments of the parties and finds such unavailing.

Accordingly; it is hereby

ORDERED that Motion 003 by Proposed Intervenors Rainbow Wholesale, Inc. and Nice Enterprise Corp. is denied in its entirety.

The foregoing constitutes the decision and order of the court.

11/17/2025  
DATE

CHECK ONE:  CASE DISPOSED  DENIED  NON-FINAL DISPOSITION

APPLICATION:  GRANTED  SETTLE ORDER  SUBMIT ORDER  OTHER

CHECK IF APPROPRIATE:  INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE

*[Signature]*  
**HONORABLE JUSTICE A. STROTH**  
J.S.C.