UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Chambers of
Leda Dunn Wettre
United States Magistrate Judge

Martin Luther King Federal Building
& U.S. Courthouse
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November 5, 2020

To: All counsel of record

LETTER ORDER

Re: *City of Newark v. City of New York, et al.*, Civ. A. No. 19-20931 (MCA) (LDW)

Dear Counsel:

Before the Court is a renewed motion to intervene by two proposed classes of tenants (the "Tenants") who moved or seek to move from a New York City homeless shelter to an apartment in Newark using rent subsidies funded by New York City's Special One-Time Assistance ("SOTA") program. (ECF No. 68). The Court previously denied the Tenants' application to intervene without prejudice for failure to comply with Rule 24(c) of the Federal Rules of Civil Procedure. (ECF No. 59). The Tenants remedied this defect by submitting a proposed pleading, (ECF No. 68-3), and their motion is now ripe for disposition.

Briefly, in 2017, New York City created the SOTA program to assist people living in homeless shelters to obtain more permanent housing; eligible participants can receive a one-time grant of up to one full year of rent, paid directly to the landlord, for use in cities across the United States. (Compl. ¶¶ 10-13, ECF No. 1). Newark alleges that New York City's representatives failed to inspect prospective housing prior to approving SOTA grants, and, as a result, a number of SOTA recipients moved into illegal or uninhabitable apartments. (*Id.* ¶¶ 14-16, 22). In response, Newark amended its Municipal Code to impose certain inspection and reporting requirements on any agency or person that provides rental subsidies to tenants seeking housing in Newark, to prevent any person from "knowingly bring[ing], or caus[ing] to be brought, a needy person to the City of Newark for the purpose of making him or her a public charge," and to impose monetary penalties for violations. Newark Municipal Code § 18:6-10.1-10.4 (the "Ordinance"). Through this lawsuit, Newark seeks to enjoin New York City from implementing the SOTA program in Newark, arguing that it violates the dormant Commence Clause and creates a public nuisance. (Compl., ECF No. 1). New York City, in turn, asserted counterclaims arguing that the Ordinance violates New Jersey's Law Against Discrimination and the constitutional right to travel. (Answer, ECF No. 14). Those counterclaims were dismissed without prejudice for lack of standing by Order dated June 19, 2020. (ECF No. 64).

The intervenors represent two putative classes of tenants. The first group is comprised of "SOTA-participant tenants who moved into untenable living situations outside of New York due to defects in the SOTA apartment review process that the Ordinance purports to remedy ('Past/Present

Tenants' or 'Plaintiff Intervenors')." (Intervenors' Proposed Compl. ¶ 3, ECF No. 68-3). Shakira Jones, who received SOTA grants in 2018 and 2019 and allegedly lived in unsafe, uninhabitable apartments in Newark, proposes to represent the Past/Present Tenants. (*Id.* ¶¶ 10, 25-58). The second group is comprised of "SOTA-eligible tenants who wish to move to Newark but cannot because of conflicting terms in SOTA and the Ordinance ('Future Tenants' or "Crossclaimant Intervenors')." (*Id.* ¶ 3). Eugene Samuels, who purportedly is eligible for a SOTA grant and would move to Newark but for the Ordinance, proposes to represent the Future Tenants. (*Id.* ¶¶ 11, 64-74). The Tenants now seek to intervene as of right or with leave of Court pursuant to Rule 24 of the Federal Rules of Civil Procedure to ensure that the SOTA program properly inspects housing in Newark and to enjoin enforcement of the Ordinance so that SOTA recipients who wish to move to Newark may do so. Specifically, Ms. Jones, acting on behalf of herself and other Past/Present Tenants, seeks to challenge New York City's placement of SOTA recipients in unsafe, uninspected apartments as violative of the Dormant Commerce Clause and the Due Process Clause's prohibition of state-created danger. (*Id.*, Counts 3, 4). Mr. Samuels, acting on behalf of himself and other Future Tenants, seeks to challenge the Ordinance pursuant to the New Jersey Law Against Discrimination and various constitutional provisions protecting the right to travel. (*Id.* Counts 1, 2).

Rule 24(b)(1)(B) gives the Court discretion to allow "anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." "Permissive intervention under Rule 24 requires (1) the motion to be timely; (2) an applicant's claim or defense and the main action have a question of law or fact in common; and (3) the intervention may not cause undue delay or prejudice to the original parties' rights." *King v. Christie*, 981 F. Supp. 2d 296, 309 (D.N.J. 2013). The Tenants have satisfied all of these requirements.

First, there is no dispute that the Tenants' motion was timely filed early in this action and prior to the commencement of discovery. Second, Ms. Jones and the Past/Present Tenants' Dormant Commerce Claim and state-created danger claims share questions of law and fact with the substantially similar claims asserted in plaintiff's complaint.[1] Mr. Samuels and the Future Tenants seek to revive New York City's NJLAD and constitutional right to travel counterclaims against the Ordinance, and, given the interrelationship between the SOTA program and legislation apparently aimed at curbing implementation of SOTA in Newark, the Future Tenants' claims overlap significantly with the legal and factual issues in the main action. However, as New York City has not reasserted those counterclaims, it cannot be said that New York City adequately represents the Future Tenants' interests such that their intervention is unnecessary. *See id.* (finding that "overlapping interests" between proposed intervenor and defendant "does not preclude permissive intervention").

[1] Indeed, Newark's only objection to permissive intervention by Ms. Jones is premised on the concern that such intervention will bypass class certification proceedings. *See* Newark's Opp. Br. at 9, ECF No. 73 ("As to Ms. Jones, Newark does not object to any subsequent motion for permissive intervention as an individual to prosecute the claims raised in her portion of her proposed pleading."). It is the Court's understanding that Ms. Jones and Mr. Samuels seek to intervene on behalf of putative classes, and that the issue of intervention must be resolved prior to any motion for class certification. Similarly, New York City's only objection to permissive intervention by Ms. Jones relates to her ability to represent the Past/Present Tenants given that she no longer resides in a SOTA-approved apartment in Newark. This Order should not be read as formal certification of the Past/Present Tenants or Future Tenants classes pursuant to Rule 23. Objections to class certification and the appointment of class representatives are preserved and may be raised at the appropriate time.

Finally, the Court finds that the Tenants' intervention will cause no undue delay or prejudice. Contrary to Newark's objections, as the parties commenced fact discovery less than one month ago, there is ample time for whatever additional discovery the Tenants' participation in this action may require. *See Electric Ins. Co. v. Estate of Marcantonis*, Civ. A. No. 09-5076, 2010 WL 11570280, at *1 (D.N.J. Mar. 1, 2010) (granting motion for permissive intervention shortly after Rule 16 conference when "no significant discovery has taken place"). As the Tenants seek declaratory/injunctive relief and not individual damages, the potential for "individualized discovery and excessive litigation involving landlords and collateral issues" is reduced. (Tenants' Reply Br. at 4, ECF No. 75). Nor does the need for additional briefing or discovery rise to the level of prejudice warranting exclusion of the Tenants from this action. *See King*, 981 F. Supp. 2d at 310. Finally, the Court finds that the Tenants' participation in this action serves the interests of justice and will provide the "helpful, alternative viewpoint" of the people most directly affected by New York City's implementation of the SOTA program and Newark's enforcement of the Ordinance restricting SOTA recipients from its borders. *Id.* (internal quotation omitted).

For the foregoing reasons, the Tenants' motion to intervene is **GRANTED** pursuant to Rule 24(b). The Tenants are directed to file their proposed complaint within 7 days of the date of this Order. The Clerk of Court is directed to terminate the motion at ECF No. 68.

s/ Leda Dunn Wettre
Hon. Leda Dunn Wettre
United States Magistrate Judge