SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 17

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REGINA ALSTON, SANDRA VAUGHN-COOKE, and FAIR HOUSING JUSTICE CENTER,

Plaintiffs,

SOPHIA JOHNSON, ALAIRE CHAPPELL, CHRISTINE MCCALL and, NATALIE SAMMY EVE on behalf of themselves and all others similarly situated,

INDEX NO. 452674/2015

Proposed Plaintiff Intervenors,

- against -

STARRETT CITY, INC. and GRENADIER REALTY CORP.,

Defendants.

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MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR INTERVENTION

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PRELIMINARY STATEMENT

Proposed Plaintiff-Intervenors Sophia Johnson, Alaire Chappell, Christine McCall and Natalie Sammy Eve (collectively "Intervenors"), respectfully submit this Memorandum of Law, Proposed Amended Class Complaint, the accompanying affidavits and exhibits attached thereto, in support of their motion to intervene, to certify a class of LINC voucher holders seeking rental housing with Defendant and for leave to amend the complaint to reflect Intervenors as Plaintiffs.

The Commissioner of the New York City Human Resources Administration ("HRA") created the LINC Program in a joint effort with the Commissioner of the New York City Department of Homeless Services ("DHS") in order to implement Mayor Bill de Blasio's priority of moving families from shelters into stable housing. There are five versions of the LINC Program designed to meet the varied needs of families and single adults. Each of the Intervenors received a LINC voucher from the City of New York. Defendant, however, has refused to accept their vouchers. This refusal to accept the vouchers is in direct violation of City law that bans discrimination by landlords against tenants based on their lawful source of income,

As a result, Intervenors have been forced to remain in shelter or other substandard housing accommodations at taxpayer expense. They seek to intervene in the instant action and have their claims, which share common questions of law with the claims asserted by Plaintiffs, determined by this Court. Their claims are best decided in a single action with the identical claims of the current Plaintiffs. Because the Intervenors are in the same stead as Plaintiffs, they have a real and substantial interest which warrants intervention.

In addition, Intervenors move for leave of this Court to file a class complaint. A copy of the Proposed Amended Complaint is annexed to the within motion. The requested amendments seek to add the Intervenors as Plaintiffs in this action and to certify a class of LINC voucher holders that Defendant refuses to accept as tenants because they want to use LINC vouchers to help pay the monthly rent. The proposed amendments do not substantively modify the complaint with respect to the current parties. The request for leave to amend the complaint is proper and should be granted in light of the fact that the requested amendments will not prejudice or surprise the current Defendants.

STATEMENT OF THE CASE

A. Procedural History

This proceeding was commenced on August 25, 2015 on behalf of Plaintiffs Regina Alston, Sandra Vaughn-Cooke and the Fair Housing Justice Center by service of a service of a summons and complaint simultaneous with service of a motion seeking a preliminary injunction and temporary restraining order on behalf of Plaintiff Sandra Vaughn-Cooke. Defendants opposed this motion on December 16, 2015. On June 30, 2016, this Court issued an order and decision granting Plaintiffs' motion for preliminary injunction and ordering Defendants to process Plaintiff Sandra Vaughn-Cooke's application for rental notwithstanding "the basis of her source of income, including her intention to use a New York City government housing subsidy to pay for the apartment." The order also denied Defendant's motion to dismiss the complaint. Defendant filed Notice of Appeal on August 11, 2016 and later sought a stay of the June 30, 2016 decision with the Appellate Division, First Department. On August 24, 2016, the

Appellate Division, First Department issued an order scheduling oral argument October 14, 2016 and, in the interim, ordered Defendant to execute the LINC subsidy program related documents, subject to the outcome of the underlying litigation. On September 22, 2016, the parties agreed to adopt the Court's August 24 order as the determination of Defendant motion for a stay. Ms. Vaughn-Cooke has since rented an apartment at Spring Creek Towers with her LINC voucher.

B. Statutory and Regulatory Framework

Section 8-107(5)(a)(1) of the New York City Administrative Code prohibits any owner or managing agent or other person "having the right to sell rent or lease or approve the sale, rental or lease of a housing accommodation" from discriminating against anyone seeking to rent or purchase real estate based on the individual's lawful source of income.

Section 8-107(5)(a)(3) of the New York City Administrative Code prohibits any owner or managing agent or other person "having the right to sell rent or lease or approve the sale, rental or lease of a housing accommodation" from declaring or causing to be declared, either directly or indirectly discriminatory statements against anyone seeking to rent or purchase real estate based on the individual's lawful source of income.

The Plaintiffs and Intervenors are protected from the kind of discrimination this legislation targets.

C. Factual Background

All of the Plaintiffs and Intervenors in this matter are similarly situated. Each individual is indigent and depends mainly on public assistance and/or Social Security benefits for income. Each Plaintiff or Intervenor is or was homeless at one point and was

issued a LINC voucher to help them pay rent for an apartment in the private rental market. Each Plaintiff or Intervenor submitted an application for rental with Defendants and indicated they would use a LINC voucher to pay a portion of the rent. Defendants denied Plaintiffs and Intervenors a public benefit to which they are entitled. The specific factual background for each Plaintiff and Intervenor is set forth in the accompanying affidavits.

ARGUMENT

I. INTERVENORS SHOULD BE GRANTED PERMISSION TO INTERVENE PURSUANT TO CPLR 1013

Section 1013 of the New York Civil Practice Law and Rules ("CPLR"), authorizes the Court to allow intervention where "the person's claim or defense and the main action have a common question of law or fact." N.Y. C.P.L.R. §1013. See, Village of Spring Valley v. Village of Spring Valley Housing Authority, 33 A.D.2d 1037, 308 N.Y.S.2d 736 (2nd Dep't 1970). Leave to intervene should be liberally allowed. Jiggetts v. Dowling, 21 A.D.3d 178, 185, 799 N.Y.S.2d 460 (1st Dep't 2005); Teleprompter Manhattan CATV Corp. v. State Bd. of Equalization & Assessment, 34 A.D.2d 1033, 311 N.Y.S.2d 46 (3rd Dep't 1970); Bay State Heating & Air Conditioning Co. v. American Ins. Co., 78 A.D.2d 147, 149, 434 N.Y.S.2d 66 (4th Dep't 1980). Here, intervention should be granted to dispose of common questions of law and to eliminate the possibility of inconsistent results.

A. Intervenors' Claims Share Common Questions Of Law With The Claims Currently Pending Before This Court

A comparison of the Proposed Class Complaint with the original Complaint demonstrates that the same questions of law underlie both the Intervenors' claims and the claims of the existing Plaintiffs. The existing Plaintiffs and the Intervenors seek identical relief based on the same statutory authority, to wit, the antidiscrimination provisions of Section 8-101 of the Administrative Code of the City of New York. Since the filing of the original complaint, Defendant has openly adopted a policy of refusing LINC vouchers. There is no longer any factual dispute. Thus, the claims of Plaintiffs and Intervenors both require the Court to determine whether Local Law 10 of 2008 mandates Defendant must accept their LINC voucher.

Granting intervention therefore "will reduce multiplicity of lawsuits by disposing of common questions of fact and law in one action ... and will avoid different results in the determination of essentially the same issues." Bay State Heating, 78 A.D.2d at 149. See also, Lamboy v. Gross, 129 Misc.2d 564, 576, 493 N.Y.S.2d 709 (Sup. Ct. N.Y. Co. 1985) (interests of judicial economy are served by intervention of parties with common legal issues).

B. Intervenors Have A Real And Substantial Interest In The Outcome Of This Action Because It Will Directly Impact Their Ability To Utilize Their LINC Vouchers

Although "the only requirement for obtaining an order permitting intervention via [Section 1013] is the existence of a common question of law or fact," courts are "more likely" to grant intervention when the intervenor has a "direct and substantial interest in the outcome of the proceeding." Pier v. Bd of Assessment Review of Town of Niskayuna, 209 A.D.2d 788, 789, 617 N.Y.S.2d 1004 (3rd Dep't 1994).

Thus, "[w]here the gravamen of an action for a declaratory judgment is the alleged invalidity of a governmental enactment, it is appropriate, as was done here, to permit intervention of persons for whose benefit the enactment was made." Kaplen v. Town of Haverstraw, 105 A.D.2d 690, 481 N.Y.S.2d 384 (2nd Dep't 1984). Accord, Amsterdam Video Inc. v. City of New York, N.Y.L.J. August 20, 1996, p.22 c.2 (Sup. Ct. N.Y. Co) (community groups allowed intervention in challenge to law regulating adult video shops); Seawall Associates v. City of New York, 134 Misc.2d 187, 191 510 N.Y.S.2d 435 (Sup. Ct. N.Y. Co. 1986) (Coalition for Homeless allowed intervention in landlord challenge to anti-warehousing statute). Here, the Defendants can defeat Plaintiffs' claims only by challenging the validity of the amendments to the City Human Rights Law, on which the Intervenors depend for their claims against the Defendants.

Recipients of government benefits have also been held to have a real and substantial interest in lawsuits that may affect their entitlement to such benefits. In Empire State Ass'n of Adult Homes, Inc. v. Perales,139 A.D.2d 41, 530 N.Y.S.2d 682 (3rd Dep't 1988), for example, the court held that a resident of an adult home had a "real and substantial interest" in the outcome of a declaratory judgment action brought by adult home operators seeking access to residents' personal allowance accounts. Similarly, in Saljen Realty Corp. v. Human Resources Admin. Crisis Intervention Services, 111 Misc.2d 791, 445 N.Y.S.2d 382 (Civ.Ct. N.Y.City 1981), mod. on other grounds, 115 Misc.2d 553 (App. Term 1st Dep't 1982), hotel tenants were allowed to intervene in an eviction case brought by their landlord against a service provider in their building. And in Pastore v. Sabol, 106 Misc.2d 983 (Sup. Ct. Queens Co. 1994), rev'd in part, on other grounds, 230 A.D.2d 835 (2nd Dep't 1996), Medicaid applicants, whose petitions stated claims and factual allegations similar to those of the plaintiff, were permitted to intervene

because they had a "real and substantial interest" in the outcome of litigation seeking issuance of temporary medical assistance during the pendency of Medicaid applications.

In addition, the courts have recognized that tenants have a real and substantial interest in actions which affect the amount of rent they are legally required to pay. For example, in Rent Stabilization Association of New York City v. DHCR, 252 A.D.2d 111, 681 N.Y.S.2d 679 (3rd Dep't 1998), the Appellate Division reversed the decision of the Supreme Court and permitted rent-controlled tenants to intervene in an action brought by owners of rent-controlled buildings to challenge the DHCR's method of calculating base rent increases. Id. at 116. The Appellate Division reasoned that the intervenors had a "direct and substantial" interest in the outcome of the litigation and the petitioners had not demonstrated prejudice or undue delay. Id.

Because the disposition of this matter would directly impact Intervenors' ability to utilize their LINC vouchers and leave shelter or substandard housing and to meet their monthly rental obligations in the private rental market, Intervenors have a real and substantial interest in the outcome of this litigation. Defendants' refusal to accept their LINC vouchers deprives the Intervenors of a public benefit to which they are otherwise entitled. Unless Defendant is compelled to accept their LINC vouchers, the Intervenors will continue to unnecessarily languish in shelter at government expense on a daily basis. Since the outcome of the instant matter directly affects both the Intervenors' ability to utilize a public benefit and the amount of rent they will be obligated to pay, Intervenors have a real and substantial interest in the outcome of the instant action. Thus, the Intervenors' motion to intervene should be granted.

C. Intervenors' Motion To Intervene Is Timely And Will Not Unduly Delay The Determination Of The Action Or Prejudice The Rights of Any Party

In determining whether a motion to intervene is timely, the court must consider whether the proposed intervention would "unduly delay the determination of the action or prejudice the substantial rights of any party." C.P.L.R. §1013; St. Joseph's Hosp. Health Ctr. v. Department of Health of N.Y., 224 A.D.2d 1008, 1009, 637 N.Y.S.2d 821 (4th Dep't 1996). Absent a showing of prejudice to an existing party, intervention should be granted as a matter of law. Ginsberg v. Lomenzo, 23 N.Y.2d 94, 96-97 (1968); Norstar Apts., Inc. v. Town of Clay, 112 A.D.2d 750, 751, 492 N.Y.S.2d 248 (4th Dep't 1985) (motion should not be considered untimely unless there is prejudice to an existing party). Compare, Kripke v. Benedictine Memorial Hospital, 255 A.D.2d 725, 680 N.Y.S.2d 687 (3rd Dep't 1998) (intervention denied where movant waited two years after learning of complaint, discovery was complete and Note of Issue filed); Operaji v. Weston, 293 A.D.2d 592, 740 N.Y.S.2d 238 (2nd Dep't 2002) (intervention denied based on 20 month delay); Moon v. Moon, 6 A.D.3d 796, 776 N.Y.S.2d 324 (3rd Dep't 2004) (intervention motion timely despite 5 month delay.). There has been no delay in seeking the relief requested. Attorneys for the Plaintiffs and Intervenors recently learned that Defendants are advising applications for housing that use LINC vouchers that they will not process their applications and now seek the within relief. In the recent weeks, several have come to our attention.

II. LEAVE TO AMEND THE COMPLAINT SHOULD BE GRANTED PURSUANT TO CPLR 3025(b)

Leave to amend a complaint "shall be freely given upon such terms as may be just . . . ." N.Y. C.P.L.R. § 3025(b); Marks v. Macchiarola, 221 A.D.2d 217, 218, 634 N.Y.S.2d 56 (1st Dep't 1995) ("leave to amend 'shall be freely given . . . at any time'") (citation omitted); Dittmar Explosives, Inc. v. A. E. Ottaviano, Inc., 20 N.Y.2d 498, 502 (1967) ("the CPLR states that leave to amend should be granted 'freely' even if the amendment substantially alters the theory of recovery") (citation omitted). Section 3025(b) codifies New York's policy of liberality in permitting parties to amend their pleadings. See Leutloff v. Leutloff, 47 Misc.2d 458, 459, 262 N.Y.S.2d 736 (Sup. Ct. N.Y. Co. 1965) ("this section is to be liberally construed to permit pleadings to be amended") (citation omitted); Tucker v. Tucker, 55 N.Y.2d 378, 385 (1982) ("the statutory provision authorizing amendment of pleadings reflects a liberal attitude in its direction that leave to amend 'shall be freely given'") (citation omitted).

In order to overcome this strong presumption in favor of granting leave to amend, the non-moving party must demonstrate prejudice or surprise by the amendment. See, Valdes v. Marbrose Realty, Inc., 289 A.D.2d 28, 29, 734 N.Y.S.2d 24 (1st Dep't 2001) ("leave to amend is freely given absent prejudice or surprise resulting from the delay.") Indeed, it is an abuse of discretion to deny an application for leave to amend in the absence of a showing that the proposed amendment would directly prejudice the non-movant. Id.; see McCaskey, Davies & Assocs., Inc. v. New York City Health & Hosps. Corp., 59 N.Y.2d 755, 757 (1983) ("there being nothing in the papers indicative of prejudice to or surprise of plaintiff, it was an abuse of discretion as a matter of law for Trial Term to deny defendant's motion to amend its answer"); Whalen v. Kawasaki

Motors Corp., 92 N.Y.2d 288, 293 (1998) ("under the CPLR's liberal pleadings practice, a party may amend its pleadings . . . at any time, even after trial, provided that the late amendment does not prejudice the other party").

In assessing whether prejudice exists, courts consider whether the adverse party, among other things, has been hindered in the preparation of the case, or has been prevented from taking some measure in support of his or her position which could have been avoided had the original pleading contained the material which the proposed amendment seeks to add. See Whalen, 92 N.Y.2d at 293 ("prejudice may be found where a party has incurred some change in position or hindrance in the preparation of its case which could have been avoided had the original pleading contained the proposed amendment"); Valdes, 289 A.D.2d at 29 ("prejudice arises when a party incurs a change in position or is hindered in the preparation of its case or has been prevented from taking some measure in support of its position, and these problems might have been avoided had the original pleading contained the proposed amendment") (citing Whalen, 92 N.Y.2d at 293).

Here, Intervenors seek to amend the existing complaint by adding the Intervenors as Plaintiffs. Intervenors Sophia Johnson, Alaire Chappell, Christine McCall and Natalie Sammy Eve seek to interpose a claim against Defendant under the Human Rights Law that obligates Defendant to accept their LINC voucher. Defendants will not suffer any surprise as Intervenors' claims are identical to Plaintiffs and involve the same subsidy program, LINC.

CONCLUSION

For the foregoing reasons, the motion of Intervenors to intervene in this action, to certify Plaintiffs as a class, and for leave to amend the complaint, should be granted in its entirety.

Dated: January 4, 2017
New York, New York

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