UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

ELENA RUTH SASSOWER and DORIS L. SASSOWER,

Plaintiffs,

-against-

KATHERINE M. FIELD, CURT HAEDKE, LILLY HOBBY, WILLIAM IOLONARDI, JOANNE IOLONARDI, BONNIE LEE MEGAN, ROBERT RIFKIN, Individually, and as Members of the Board of Directors of 16 LAKE STREET OWNERS, INC., HALE APARTMENTS, DeSISTO MANAGEMENT, INC., 16 LAKE STREET OWNERS, INC., and ROGER ESPOSITO, Individually, and as an officer of 16 LAKE STREET OWNERS, INC.,

Defendants.

88 Civ. 5775 (GLG)

MEMORANDUM DECISION

- x

State Farm Fire and Casualty Company ("State Farm") moves to intervene in this action and for a direction that sanctions and fees payable by the plaintiffs be paid into court, subject to distribution by further order of the court. The principal opposition to this application comes from the plaintiffs, who have nothing to say about this dispute.[1] Despite the absence of any

[1] Plaintiffs' opposition is based upon the reverse argument that they made earlier. Their original argument was that the defendants should not be allowed to seek attorneys' fees because they were not a real party in interest since the fees had to be, in fact, paid by their insurer, State Farm. They now argue that since some of the defendants or their attorneys wish to retain all or a portion of the fees awarded against the plaintiffs that there has been a fraud practiced upon the court. The argument is frivolous.

Ex P-1

meaningful opposition to the motion to intervene, the motion is, nevertheless, denied. The application is, in one sense, too late, and in another sense, too early. The action was for alleged housing discrimination. It was tried, decided, appealed, and affirmed a considerable time ago. Indeed, even the awarding of fees against the plaintiffs has been finally decided by virtue of the decision of the Second Circuit dated August 13, 1992.[2] Consequently, there is no action as to which State Farm can intervene.

The entire purpose of this intervention is to resolve a dispute between the insurance company, their insureds (the defendants), and the defendants' attorneys. As to that aspect, the application is premature. There is no indication that any fees have been collected from the plaintiffs and, in light of the plaintiffs' past history, it is a reasonable conclusion that nothing will be received in the near future and that there may be extensive proceedings and perhaps additional attorneys' time expended before anything is. In order to intervene, a party must have "an interest relating to the property or transaction which is the subject of the action." Rule 24(a)(2), Fed. R. Civ. P. State Farm had no interest in the plaintiffs' claims long since litigated. While they may have an interest in funds once

---

[2] The decision did call for a reduction in the amount of the fees to be paid by one of the plaintiffs, a matter which awaits the issuance of a mandate by the Second Circuit, but that has little to do with the issues involved herein.

collected, such funds do nor presently exist. Consequently, intervention is denied.

Turning to the request concerning payment of the fees to the Court Clerk, that application is not opposed by the attorney for the defendants, who originally created the problem. We do gather that one of the defendants, who is an attorney but was represented by counsel retained by State Farm, will claim an interest in a portion of those fees. We noted in our original decision that although the insured party must make the application for the fees "the monies may ultimately revert to the insurance carrier as reimbursement for the fees paid." Opinion dated August 12, 1991 at 3-4. We have not been confronted with the question as to whether the defendants or their attorneys may claim any part of such fees. Indeed, we are not presently confronted with the issue because nothing has been collected. However, since a potential issue could arise, we direct all parties involved and their attorneys to remit any payments made or received to the Clerk of the Court, subject to further proceedings between the parties claiming entitlement to such funds.

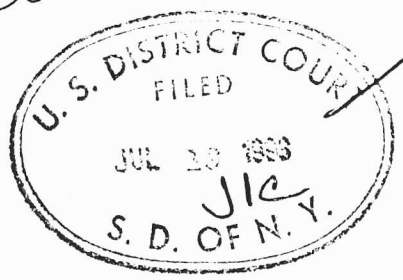
SO ORDERED.

Dated: White Plains, N.Y.
September 29, 1992

Gerard L. Goettel

GERARD L. GOETTEL
U.S.D.J.

Doc #329



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELENA RUTH SASSOWER and DORIS L. SASSOWER,

Plaintiffs,

-against-

KATHERINE M. FIELD, CURT HAEDKE, LILLY HOBBY, WILLIAM IOLONARDI, JOANNE IOLONARDI, BONNIE LEE MEGAN, ROBERT RIFKIN, Individually, and as Members of the Board of Directors of 16 LAKE STREET OWNERS, INC., HALE APARTMENTS, DeSISTO MANAGEMENT, INC., 16 LAKE STREET OWNERS, INC., and ROGER ESPOSITO, Individually, and as an officer of 16 LAKE STREET OWNERS, INC.,

Defendants.

88 Civ. 5775 (GLG)

MEMORANDUM DECISION

All of the various defendants move to withdraw certain funds on deposit with the court. The State Farm Fire and Casualty Company ("State Farm") moves to intervene and for payment of the same monies to it.

The motion to intervene is granted to the extent that it is necessary in order to oppose the defendants' motions. However, an issue is presented which no one has addressed.

State Farm first moved to intervene after this case was over and the appeal was decided. There was no action in which it could intervene in that point of time, nor were the funds in question in the possession of the court at that time. An issue may exist as to whether this court has jurisdiction to decide this dispute, or whether a plenary action between the moving parties is

Ex P-2

necessary. The moving parties are directed to submit memoranda of law on this subject by August 6, 1993.

SO ORDERED.

Dated: White Plains, N.Y.
July 16, 1993

GERARD L. GOETTEL
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELENA RUTH SASSOWER and DORIS L. SASSOWER,

Plaintiffs,

-against-

KATHERINE M. FIELD, CURT HAEDKE, LILLY HOBBY, WILLIAM IOLONARDI, JOANNE IOLONARDI, BONNIE LEE MEGAN, ROBERT RIFKIN, Individually, and as Members of the Board of Directors of 16 LAKE STREET OWNERS, INC., HALE APARTMENTS, DeSISTO MANAGEMENT, INC., 16 LAKE STREET OWNERS, INC., and ROGER ESPOSITO, Individually, and as an officer of 16 LAKE STREET OWNERS, INC.,

Defendants.

88 Civ. 5775 (GLG)

MEMORANDUM DECISION

Pursuant to this court's memorandum decision dated July 16, 1993, the parties to the pending motion have now briefed the issue of whether this court has jurisdiction to decide this dispute, or whether a plenary action between the parties is necessary.

This action was commenced in August 1988. It was tried before a jury and a judgment entered on March 22, 1990. Thereafter, the court imposed monetary sanctions against the plaintiffs. The plaintiffs appealed the judgment and the sanctions, both of which were affirmed a year or more ago. Both the plaintiffs and their supersedeas bonding company opposed payment of the sanctions. Ultimately, the bonding company paid the funds in the amount of

Ex P-3

$92,000, plus interest for a total of $102,370, into court. The present dispute concerns those funds, less some $17,000 paid out to a party not involved in this dispute.

While the fund involved in this dispute arises from the above action, the dispute concerns totally different issues and somewhat different parties. It is quite clear that State Farm Fire and Casualty Company could not have intervened in the original action as of right and it would have been premature to allow a discretionary intervention while the action was still pending, since there were no disputed funds. Indeed, the casualty company, which paid for counsel for most of the defendants, does not, and did not, claim a right to intervene in the original action. They wish, however, to "intervene" to claim the remaining funds presently on deposit in court. They argue that a surety's liability may be enforced without the necessity of an independent action. That is unquestionably true, but the surety here was the plaintiffs' surety and it has ultimately, albeit reluctantly, paid the proceeds into court. The casualty company further argues that the court has the power to direct the disposition of the funds pursuant to the All Writs Act, 28 U.S.C. § 1651. That, too, is undeniably true and, indeed, we have directed a disposition of a portion of the funds as to which there is no other claimant. However, the ability to issue writs necessary and appropriate in the aid of jurisdiction does not mean that we have the independent power to decide a new dispute between different parties concerning different issues.

The question of who has the right to the attorneys' fees in the current situation appears to be a unique one. No one has cited a case in point. The issue involved is not a federal claim and it did not originate in the nucleus of facts which were litigated in the jury trial. Indeed, the claim did not exist until after the federal claims in this action had been dismissed.

It would seem that there are factual issues between the movants which require both discovery and trial. An initial issue would be the relative rights of the casualty company and its insureds under the policy which caused the casualty company to pay the costs of legal representation. An additional issue might well be the contract, written or oral, between the casualty company and the attorneys whom it retained to represent many of the various defendants. Another possible area of conflict would be the industry practices with respect to situations such as this.

While we do not believe that the Judicial Improvements Act of 1990, 28 U.S.C. § 1367, comprehends entertaining jurisdiction of such claims, if it does we would decline to exercise our discretion in determining the dispute which involves a totally new issue which has not been litigated before this court.

Under the circumstances, the court finds that it has no jurisdiction, much less present ability, to decide the conflicting claims to the fund. A separate civil action, presumably in state court (unless there is another basis for federal jurisdiction), will have to be commenced. The funds will be held in the court's

depository unless the parties agree to some other disposition, or a transfer is ordered by another court.

SO ORDERED.

Dated: White Plains, N.Y.
August 17, 1993

GERARD L. GOETTEL
U.S.D.J.