

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

MOHAMMAD HAMED By His
Authorized Agent WALEED HAMED,

Plaintiff,

v.

FATHI YUSUF and UNITED
CORPORATION

Defendants,

YUSUF YUSUF, ZAYED YUSUF AND
ZEYAD YUSUF (f/k/a SYAID YUSUF)

Intervenors.

Case No.:2012-CV- 370

ACTION FOR DAMAGES
AND INJUNCTIVE AND
DECLARATORY RELIEF

JURY TRIAL DEMANDED

PLAINTIFF'S RESEPNSE TO MOTION TO INTERVENE

Comes now the plaintiff, by counsel, and hereby responds to the motion to intervene filed by various proposed interveners.¹ For the reason set forth herein, it is respectfully submitted that the motion can be summarily denied.

As noted by the Third Circuit in *McClune v. Shamah*, 593 F.2d 482 (C.A. 3rd 1979), the standard for addressing such motions is clear, stating as follows:

To satisfy the criteria Rule 24(a)(2) sets out for intervention of right Cedar Bayou must show that it "claims an interest relating to the property or transaction which is the subject of the action" and that it "is so situated that the disposition of the action may as a practical matter impair or impede (its) ability to protect that interest." **However, even if it succeeds in satisfying these two criteria, intervention of right will be denied if "the applicant's interest is adequately represented by existing parties."** *Id.* at pp. 485-86. (Emphasis added)

¹ The caption listed three interveners, but the motion listed four persons.

In *McClune*, the Third Circuit affirmed a District Court's finding denying intervention for a limited partner where its interest was adequately protected by the partnership named as a party.

In this case, the proposed interveners allege that they are all shareholders of United Corporation and describe themselves as the "Majority Shareholders," allegedly owning over 50% of the outstanding stock in the corporation. See page 1 of the Interveners' Motion to Intervene.²

As noted in *Pharmaceutical Research and Mfrs. of America v. Commissioner, Dept. of Human Services*, 201 F.R.D. 12 (M.E. 2001):

First, where the applicant for intervention is a shareholder seeking to assert an interest in his corporation's lawsuit, his ability to rebut the presumption that the corporation will adequately represent its shareholders' interests is more circumscribed. **In that situation the presumption can ordinarily be rebutted only if the shareholder shows the sort of corporate disloyalty or carelessness that would support a derivative action.** *Id.* at pp. 14-15 (footnote omitted).

Footnote 4 following this quote then lists a multitude of citations to both court decisions and other legal authorities which support this rule of law. See generally, *B. Fernandez & Hnos., Inc. v. Kellogg USA, Inc.*, 440 F.3d 541, 546 (C.A. 1st 2006)(where interveners' interest is the same as the named party, rebuttable presumption of adequate representation applies).

As the Court in *Pharmaceutical Research* then noted further as follows:

The rule is a salutary one: if a shareholder, dis-satisfied with the dealings entered into between his corporation and a third party, automatically possessed a personal right of action against the third party, then corporations would be paralyzed. They could rarely act except by unanimous consent. Business affairs would slow to a crawl, **and the courts, confronted with a bewildering myriad of shareholders claims, would be busy as a colony of centipedes with athlete's foot.** *Id.* at 15.

² The proposed interveners are also the wife and children of defendant Fathi Yusuf

This rule is directly on point here. The proposed interveners have failed to show any alleged “corporate disloyalty and carelessness.” Instead, they simply aver that the pending criminal case against United Corporation might impair its decision making process in the case, without supporting any facts to support this assertion.

Equally important, if these shareholders perceived any such “disloyalty or carelessness” taking place that concerns them, they can simply remove the corporate officers representing United Corporation in these proceedings **since they allegedly own more than 50% of the outstanding stock of United Corporation.** Thus, these shareholders are amply protected against any such wrongdoing.

More importantly, for the purposes of this motion, the proposed intervener shareholders, who claim to own the majority of the stock in United, have not demonstrated that their interests will not be adequately represented by the corporation (United) in this litigation. As such, they have no right to intervene under Rule 24(a)(2).

Finally, regarding permissive intervention pursuant to Rule 24(b), as *7C Wright, Miller & Kane*, Federal Practice and Procedure §1913 points out:

The court also will consider whether the applicant would benefit by intervention; if not, intervention may be denied. *Id.* at p. 486 (footnote omitted).

As already noted, the proposed interveners are already adequately protected by United Corporation, so their joinder will not benefit them. On the other hand, if they are joined in this litigation, it will be expanded unnecessarily, further complicating an already complex matter. As such. It is respectfully submitted that permissive intervention should be denied as well.

As such, it is respectfully submitted that the intervener's Rule 24 motion should be denied.

Dated: January 31, 2013



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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of January, 2013, I served a copy of the foregoing Motion by hand on:

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