

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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BAPAZ NYC WEST 46 ST GROUP LLC,

Plaintiff,

- v -

ASSA PROPERTIES INC., SALIM ASSA, SOLY ASSA,
WEST 46TH STREET INVESTORS LLC, WEST 46TH
STREET EQUITY LLC, WEST 46TH STREET
MANAGEMENT CORP., NYC 46TH STREET LLC, BEN
SUKY, MEITAL SUKY, ABRAHAM LAVI

Defendant.

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INDEX NO. 652456/2018

MOTION DATE 01/30/2025

MOTION SEQ. NO. 011

**DECISION + ORDER ON
MOTION**

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 011) 302, 303, 304, 305, 306, 307, 308, 309, 310, 312, 313, 314, 315

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

Upon the foregoing documents, NYC 46th Street LLC (**NYC 46**)’s motion (Mtn. Seq. No. 011) to intervene in this action is DENIED.

Reference is made to (i) the Court’s Decision and Order, dated February 15, 2019 (the **Dismissal Order**; NYSCEF Doc. No. 307) and (ii) the Court’s Decision and Order, dated March 12, 2024 (the **Summary Judgment Order**; NYSCEF Doc. No. 308).

CPLR 1012 provides:

(a) Intervention as of right. Upon timely motion, any person shall be permitted to intervene in any action:

...

2. when the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment; or
3. when the action involves the disposition or distribution of, or the title or a claim for damages for injury to, property and the person may be affected adversely by the judgment.

(CPLR 1012 [a] [2-3]).

CPLR 1013 provides:

Upon timely motion, any person may be permitted to intervene in any action when a statute of the state confers a right to intervene in the discretion of the court, or 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.

(CPLR 1013).

“Whether intervention is sought as a matter of right under CPLR 1012(a), or as a matter of discretion under CPLR 1013, is of little practical significance since a timely motion for leave to intervene should be granted, in either event, where the intervenor has a real and substantial interest in the outcome of the proceedings” (*Wells Fargo Bank, Nat. Ass'n v McLean*, 70 AD3d 676, 677 [2d Dept 2010]).

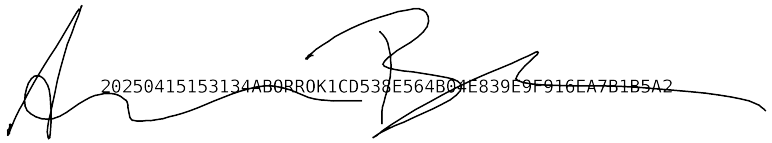
In short, NYC 46 is simply incorrect that the Summary Judgment Order conflicts with the Dismissal Order. In the Dismissal Order, the Court dismissed the fourth cause of action seeking a declaratory judgment that NYC 46 had no ownership interest in West 46th Street Investors LLC (**Investors LLC**). The Summary Judgment Order did not in any way affect NYC 46's interest in Investors LLC. In the Summary Judgment Order, the Court granted the first cause of

action against Investors LLC for breach of contract and the second cause of action for breach of representations. In any event, NYC 46’s membership interests in Investors LLC are academic because the two properties at issue which were subject to an \$11,500,000.00 mortgage were sold for \$7,745,625.00 two years before the judgment was entered. Thus, at this time, NYC 46 has no real and substantial interest in the outcome of this litigation in that those were Investor LLC’s assets (*Wells Fargo*, 70 AD3d at 677). Additionally, the motion is untimely. CPLR 1012 and 1013 require a “timely motion” (CPLR 1012 and 1013). Judgment was entered more than a year ago. NYC 46’s attorney filed a notice of appearance early on in this case and has been apprised of all court proceedings.

The Court has considered the parties’ remaining arguments and finds them unavailing.

Accordingly, it is hereby

ORDERED that NYC 46’s motion (Mtn. Seq. No. 011) to intervene in this action is DENIED.



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4/15/2025
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
 REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: