

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

-----X
MICHAEL KORDONSKY, individually and on
behalf of Dial Car Inc., and JEFFREY GOLDBERG,
individually and on behalf of Dial Car Inc.,

Plaintiffs, Decision and order

- against -

Index No. 524563/2023

ALEX BRUDOLEY, MARK LEVSHITS,
DEMETRIOS SARDELIS, ANASTASIOS
KOSTARELOS, MARK BARISHMAN, DAVID
UKILIS, LEV BEYEDER, AVENUE X REALTY
NY LLC, WEBSTER BANK NATIONAL
ASSOCIATION,

Defendants, March 26, 2024

and DIAL CAR INC.,

Nominal Defendant,

-----X
PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #1

Thirty two individual pro se plaintiffs move seeking to
intervene in this derivative action. The defendants have opposed
the motion. Papers were submitted by the parties and arguments
held. After reviewing all the arguments this court now makes the
following determination.

The plaintiff, on behalf of the corporation Dial Car Inc.,
commenced this derivative action alleging the board of directors
of the corporation have engaged in illegitimate activities for
their own benefit at the expense of the corporation. As noted,
thirty-two shareholders seek to intervene and join the lawsuit as
derivative plaintiffs in addition to Kordonsky. They maintain
they have the right, as shareholders, to join in this action. As
noted the motion is opposed.

Conclusions of Law

It is well settled that pursuant to CPLR §1012(a)(2) a party may intervene as a matter of right "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" (id). The Court of Appeals has explained the right of intervention as available only where the judgment will bind the potential intervenor "by its res judicate effect" (Vantage Petroleum v. Board of Assessment Review of the Town of Babylon, 61 NY2d 695, 472 NYS2d 603 [1984]). That definition was further refined to cases where the potential intervenor is in "privity" with the parties to the lawsuit (Green v. Sante Fe Industries Inc., 70 NY2d 244, 519 NYS2d 793 [1987]).

A derivative action is one where the real party in interest is the corporation. It is brought by an individual shareholder to protect the interests of the corporation "somewhat as a 'next friend' might do for an individual, because it is disabled from protecting itself" (see, Koster v. (American) Lumberman's Mutual Casualty Company, 330 US 518, 67 Sct. 828 [1947]). Thus, there may not be any basis for additional shareholders to seek intervention when the interests of the corporation are adequately protected by the derivative action already filed, unless the intervenors can demonstrate inadequate representation by the current plaintiffs (see, In re Ambac Financial Group Inc., v.

Derivative Litigation, 257 F.R.D. 390 [S.D.N.Y. 2009]).


Furthermore, admittedly, the proposed intervenors are all pro se individuals seeking to join this derivative action. Any derivative action that is pursued on behalf of a corporation must be pursued with counsel since a corporation can appear without counsel (Park v. Song, 61 Misc3d 1047, 85 NYS3d 855 [Supreme Court New York County 2018]).

Therefore, based on the foregoing, the motion seeking intervention is denied.

So ordered.

ENTER:

DATED: March 26, 2024
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC