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STATE OF NEW YORK
SUPREME COURT CHAMBERS
ULSTER COUNTY COURT HOUSE
KINGSTON, N.Y.
12401

VINCENT G. BRADLEY
JUSTICE

March 28, 1996

COPY

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Re: Gordon v. Village of Monticello
Sullivan County Special Term
RJI# 52-10205-93
Return date: 1/8/96

To the parties:

This letter represents the decision of the Court in the above matter. **Pro se** movants John Barbarite and Janet Lynn seek to intervene in the above-referenced proceeding. After reviewing the parties' submissions, the Court concludes that the motion must be denied.

A party under New York State law may move to intervene in a pending action pursuant to either CPLR 1012 (Intervention as of Right) or CPLR 1013 (Intervention by Permission). It is not clear which of the two is the basis of the motion. In any event, the motion must be denied under both statutes.

As to CPLR 1013(a)(2), it provides that the proposed intervenor must show that the representation of his or her interest by the parties "is or may be inadequate and the person will be bound by the judgment." Here, however, representation of the respondents' interests on the issue of attorney's fees has been more than adequate as evidenced by the fact that respondents' attorneys succeeded in persuading the Appellate Division, Third Department to reverse this Court's award of attorney's fees. Moreover, this Court's review of the submissions which respondents have made in opposition to the amount of the fees requested by Ms. Shlevin shows that they are litigating this issue vigorously and effectively.

Second, if intervention is not granted, the proposed intervenors will not be bound by the judgment determining the amount of Ms. Shlevin's fees since they will not be responsible for its payment. Accordingly, intervention is not appropriate under CPLR 1012.

As to CPLR 1013, it provides in relevant part that :

> Upon timely motion any person may be permitted to intervene in any action ...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.

The proposed intervenors are clearly untimely since they have waited until virtually the end of what has already been a protracted proceeding to seek involvement. Furthermore, they cannot excuse their tardiness by claiming lack of knowledge since petitioners have made it known from the start that they would be seeking attorney's fees if victorious.

Finally, case law interpreting CPLR 1013 has held that the Court, in the exercise of its discretion, should deny intervention where it would result in the delay and obfuscation of core issues (**Pier v. Board of Assessment Review of Town of Niskayuna**, 209 AD2d 788 [Third Dept. 1994]). A review of the movants' submissions with their references to state constitutional provisions irrelevant to the issue to be determined here indicates that granting intervention would likely result in delay and obfuscation.

In reaching this conclusion, the Court observes that petitioners are wrong in apparently arguing that the Village is an improper party here and would not be responsible for Ms. Shlevin's fee if it was not a party. Under Public Officers Law Sec. 18, it appears that the Village is at least initially responsible for the fees whether it is a party or not (the issue of whether the individual respondents are entitled to indemnification under Public Officers sec. 18 and which party or parties are ultimately responsible for the fees has not been raised in this proceeding, and in this Court's opinion must be the subject of a new and separate action once the amount of fees have been determined and the Village has paid same).

Accordingly, the motion is denied. Ms. Shlevin shall submit a single order consistent herewith.

Very truly yours,

VINCENT G. BRADLEY
Justice of the Supreme Court

VGB/jeh