

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT**

Town of Warwick v. Black Bear Campgrounds

2019 NY Slip Op 00491 (App. Div. 2019) · No. 2017-02302 · Decided January 23, 2019

SUMMARY

The Appellate Division, Second Department affirmed the denial of Giora Neeman and Giora Neeman, LLC's motion to intervene in the Town of Warwick's action seeking to enjoin operation of a campground allegedly violating the zoning law. The court held that the motion to intervene under CPLR 1012 and 1013 was untimely. The court deemed the parties' remaining contentions academic.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Alan D. Scheinkman, P.J.; Mark C. Dillon, J.; Jeffrey A. Cohen, J.; Linda Christopher, J.
JURISDICTION	New York
DECIDED	January 23, 2019
DOCKET	2017-02302
DISPOSITION	affirmed
PROCEDURAL POSTURE	Proposed intervenors appealed from an order denying their motion under CPLR 1012 and 1013 for leave to intervene as plaintiffs in an action for injunctive relief.
STANDARD OF REVIEW	The Appellate Division reviewed the Supreme Court's determination that the motion to intervene was untimely under CPLR 1012 and 1013.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Giora Neeman, Giora Neeman, LLC v. Town of Warwick, Town of Warwick Building and Zoning Inspector, Black Bear Campgrounds, Other defendants and plaintiffs identified in the caption

TOPICS

intervention

civil procedure

injunctions

municipal law

appellate procedure

PRACTICE AREAS

Civil procedure

Municipal law

Zoning and land use

Appellate procedure

Injunctive relief

QUESTIONS PRESENTED

1. Whether the proposed intervenors' motion for leave to intervene under CPLR 1012 or 1013 was timely.
2. Whether the Supreme Court properly denied intervention based on untimeliness.

HOLDINGS

1. A motion for intervention under either CPLR 1012 or CPLR 1013 must be timely, and the proposed intervenors' motion was properly denied as untimely under the circumstances.

KEY QUOTATIONS

*“Intervention pursuant to either CPLR 1012 or 1013 requires a timely motion” ([*1])*

FACTUAL BACKGROUND

The defendants owned and operated a campground in the Town of Warwick. The Town commenced an action in 2008 seeking to permanently enjoin operation of the campground unless the defendants complied with the zoning law. The proposed intervenors owned unimproved property adjacent to the campground, knew the action remained pending, and nevertheless commenced a separate action in 2013 asserting, among other claims, a common-law cause of action to enjoin continuation of the zoning violation. They moved to intervene in November 2016 after learning that the Town and defendants had entered into an agreement.

PROCEDURAL HISTORY

The Town of Warwick and its Building and Zoning Inspector commenced an action in 2008 to enjoin the campground owners from operating the campground unless they complied with the zoning law. The proposed intervenors, who owned adjacent property, later commenced a separate action concerning the alleged zoning violation. After learning in 2016 that the Town and defendants had entered into an agreement, they moved to intervene in the original action. The Supreme Court, Orange County, denied the motion as untimely, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Town of Warwick v. Black Bear Campgrounds, 95 A.D.3d 1002
- Castle Peak 2012-1 Loan Trust v. Sattar, 140 A.D.3d 1107, 1108
- U.S. Bank N.A. v. Bisono, 98 A.D.3d 608, 609
- Matter of Rutherford Chems., LLC v. Assessor of Town of Woodbury, 115 A.D.3d 960, 961
- Matter of Arcelormittal Lackawanna LLC v. City of Lackawanna, 66 A.D.3d 1365, 1365-1366

- Rectory Realty Assoc. v. Town of Southampton, 151 A.D.2d 737, 737-738

OPINION

PER CURIAM.

Town of Warwick v Black Bear Campgrounds (2019 NY Slip Op 00491) Town of Warwick v Black Bear Campgrounds 2019 NY Slip Op 00491 Decided on January 23, 2019 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on January 23, 2019 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department ALAN D. SCHEINKMAN, P.J. MARK C. DILLON JEFFREY A. COHEN LINDA CHRISTOPHER, JJ. 2017-02302 (Index No. 9165/08) [*1]Town of Warwick, et al., plaintiffs-respondents, vBlack Bear Campgrounds, et al., defendants- respondents; Giora Neeman, et al., proposed intervenors-appellants.

Catania, Mahon, Milligram & Rider, PLLC, Newburgh, NY (Joseph G. McKay of counsel), for proposed intervenors-appellants. The Kleister Law Group, Washingtonville, NY (Christopher B. Kleister of counsel), for defendants-respondents. DECISION & ORDER In an action for injunctive relief, the proposed intervenors, Giora Neeman and Giora Neeman, LLC, appeal from an order of the Supreme Court, Orange County (Elaine Slobod, J.), dated January 25, 2017.

The order denied the proposed intervenors' motion pursuant to CPLR 1012 and 1013 for leave to intervene in the action as plaintiffs. ORDERED that the order is affirmed, with costs. The defendants are the owners and operators of a campground located in the Town of Warwick.

In 2008, the Town of Warwick and the Town of Warwick Building and Zoning Inspector (hereinafter together the Town) commenced this action pursuant to Town Law § 268(2) to permanently enjoin the defendants from operating the campground unless they complied with the zoning law.

On a prior appeal, this Court affirmed so much of an order dated July 12, 2010, as granted those branches of a motion of the defendants, among others, which were to vacate a stipulation of settlement and a judgment purportedly entered upon the stipulation (see Town of Warwick v Black Bear Campgrounds, 95 AD3d 1002).

The proposed intervenors, Giora Neeman and Giora Neeman, LLC, own a parcel of unimproved property adjacent to the rear of the campground. Although they were aware that this action was still pending, the proposed intervenors commenced a separate action against the defendants and others in 2013, asserting, inter alia, a common-law cause of action to enjoin the continuance of a zoning code violation.

In November 2016, shortly after learning that the Town and the defendants had entered into an agreement, the proposed intervenors moved pursuant to CPLR 1012 and 1013 for leave to intervene in this action as plaintiffs.

The Supreme Court denied the motion as untimely, and the proposed intervenors appeal. Intervention pursuant to either CPLR 1012 or 1013 requires a timely motion (see CPLR 1012, 1013; *Castle Peak 2012-1 Loan Trust v Sattar*, 140 AD3d 1107, 1108; *U.S. Bank N.A. v Bisono*, 98 AD3d 608, 609).

Under the circumstances presented here, we agree with the Supreme [*2]Court's determination to deny, as untimely, the proposed intervenors' motion for leave to intervene (see *Matter of Rutherford Chems., LLC v Assessor of Town of Woodbury*, 115 AD3d 960, 961; *Matter of Arcelormittal Lackawanna LLC v City of Lackawanna*, 66 AD3d 1365, 1365-1366; *Rectory Realty Assoc. v Town of Southampton*, 151 AD2d 737, 737-738).

The parties' remaining contentions have been rendered academic in light of our determination. SCHEINKMAN, P.J., DILLON, COHEN and CHRISTOPHER, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court