

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

DONALD F. PARSONS, JR.
VICE CHANCELLOR

New Castle County Courthouse
500 N. King Street, Suite 11400
Wilmington, Delaware 19801-3734

Date Submitted: February 13, 2014

Date Decided: April 7, 2014

P. Clarkson Collins, Jr., Esq.
Peter B. Ladig, Esq.
Brett M. McCartney, Esq.
Morris James LLP
500 Delaware Avenue, Suite 1500
Wilmington, DE 19801

Collins J. Seitz, Jr., Esq.
Garrett B. Moritz, Esq.
Anthony A. Rickey, Esq.
Seitz Ross Aronstam & Moritz LLP
100 S. West Street, Suite 400
Wilmington, DE 19801

Jody C. Barillare, Esq.
Morgan Lewis & Bockius LLP
The Nemours Building
1007 North Orange Street, Suite 501
Wilmington, DE 19801

Sean Michael Brennecke, Esq.
Klehr Harrison Harvey Branzburg LLP
919 North Market Street, Suite 1000
Wilmington, DE 19801

RE: *In re Interstate General Media Holdings, LLC*
C.A. No. 9221-VCP

Dear Counsel:

On February 4, 2014, the Newspaper Guild of Greater Philadelphia, Local 38010, AFL-CIO, CLC (the “Guild”) moved to intervene in this case pursuant to Court of Chancery Rule 24. On February 21, the petitioner in this matter, General American Holdings, Inc. (“General American”), filed its opposition to that motion. One of General American’s stated grounds for opposing the Guild’s motion was the Guild’s failure to include a pleading setting forth the proposed claim or defense for which intervention is

sought, as mandated by Rule 24(c). In response, on March 5, 2014, the day after submitting its reply brief in support of its motion, the Guild moved for leave to file an amended petition to intervene, which included the pleading required by Rule 24(c). No party opposed that aspect of the Guild's request to intervene. Thus, there are two motions before me on the question of intervention: the Guild's motion for leave to file an amended petition to intervene and the Guild's motion to intervene. For the following reasons, I grant both of the Guild's motions.

I. BACKGROUND

The Guild is a labor union representing approximately 550 employees working for Interstate General Media Holding, LLC's ("Interstate") principal holdings, which are The Philadelphia Inquirer (the "Inquirer"), Daily News, and Philly.com (collectively, the "Publications"). The employees represented by the Guild include reporters, editors, and photographers, as well as advertising, sales, circulation, finance, and online employees. The Guild is the largest of the unions representing Interstate's employees, and it has had collective bargaining agreements in place with owners of one or more of the Publications since 1939.

The Guild asserts that, since 2005, no fewer than five different ownership groups have taken control of, and then sold, the Publications. During that time period, the Guild claims that its members have been forced to endure multiple pay cuts and layoffs in exchange for promises by the Publications' owners that largely have been unfulfilled.

The Guild asserts that the present owners of the Publications have followed this particular pattern of their predecessors.

The present group of owners purchased the Publications in April 2012, in a private auction held after the Publications' previous owner filed for bankruptcy. According to the Guild, the current ownership group was the only group permitted to bid on the Publications at that auction, despite the Group's lack of prior experience operating a newspaper.

On gaining control of the Publications, Interstate asked the Guild to negotiate a new collective bargaining agreement and to agree voluntarily to millions of dollars in concessions, including a wage reduction and buyouts. Interstate's stated purpose for seeking these cuts was that it was losing money and needed union concessions to become profitable again. According to the Guild, Interstate threatened to liquidate the company's assets if the Guild did not agree to the cuts. To prevent a liquidation, the Guild agreed to substantial concessions, including pay cuts for its members of 2.5 percent for 2013, which were to continue through 2014, as well as ten unpaid furlough days. These concessions benefitted the current ownership group and saved it over \$6 million. In exchange, Interstate agreed, among other things, to provide Guild members with a right to share in the company's profits beginning in 2014. Recent events, however, make it unlikely that the Guild will realize any benefit from its concessions.

Since Interstate's acquisition of the Publications in April 2012, Interstate's managers have become embroiled in internal disputes, resulting in the filing of multiple lawsuits by members of the LLC's ownership group since October 2013, both against one another and against Interstate itself. These lawsuits have forced Interstate to incur substantial expenses and have resulted in a near paralysis of its operations, leading General American to file the Verified Petition for Judicial Dissolution of Interstate by which it commenced this action.

The Guild asserts that this action puts at risk the survival of the Publications, as well as the jobs of the approximately 550 Guild members who work for Interstate. Thus, the Guild seeks to intervene to encourage an appropriate dissolution of Interstate that will promote the long-term viability and stability of the Publications and thereby protect the interests of the Guild and its members. Specifically, because of the poor results of the last private auction in which the Publications were sold, and of the instability in the ownership of the Publications over the past decade, the Guild seeks to intervene to pursue its request that Interstate's assets be sold in a public auction, and that, regardless of the form of the auction, the Guild be permitted to participate in the bidding process as a potential purchaser.

General American opposes the Guild's motion to intervene on the grounds that the Guild lacks a legally cognizable interest in how Interstate is dissolved and that the Guild's petition for intervention fails to satisfy the technical requirements of Rule 24(c).

I address first the Guild’s unopposed motion for leave to file an amended petition to intervene, and then turn to the merits of, and General American’s opposition to, the Guild’s motion to intervene.

II. ANALYSIS

A. Motion to Amend

The Guild’s motion for leave to file an amended petition to intervene technically is governed first by Rule 15(a), which provides that “[a] party may amend the party’s pleading . . . by leave of [the] Court . . . and leave shall be freely given when justice so requires.” Although “[a] motion for leave to amend a complaint is always addressed to the discretion of the trial court,”¹ the standard for granting leave to amend pleadings under Rule 15(a) is “very permissive.”²

Even if General American had opposed the Guild’s motion for leave to amend, I find that there is no reason in this case to depart from this Court’s general practice of “freely” granting such leave under Rule 15(a). For all intents and purposes, the only difference between the Guild’s original and amended petitions is the inclusion of a verified pleading that satisfies the requirements of Rule 24(c). The Guild sought to add

¹ *Bokat v. Getty Oil Co.*, 262 A.2d 246, 251 (Del. 1970).

² *Lillis v. AT&T Corp.*, 896 A.2d 871, 877 (Del. Ch. 2005). *See also Fox v. Christina Square Assoc.*, 1995 WL 405744, at *2 (Del. Ch. June 19, 1995) (“A party should be granted leave freely to amend its complaint, unless there is evidence of bad faith, undue delay, dilatory motive, undue prejudice or futility of amendment.”).

the pleading promptly after General American noted that the Guild's petition failed to conform with the technical requirements of Rule 24. Moreover, the relief sought in the petition—that either a public auction be ordered or that the Guild be allowed to participate in any private auction—is the same relief that the Guild sought in its original motion, filed on February 4, 2013. Based on these circumstances, and the absence of a showing of material prejudice to General American or any of the other parties in this action,³ the Guild's motion for leave to file an amended petition to intervene, and thereby eliminate General American's technical objection to intervention, is granted.

B. Motion to Intervene

1. Legal standard

In certain situations, a nonparty may intervene in a pending case before this Court, either as of right or as permitted by the Court in its discretion. Rule 24(a) governs intervention as of right and states that:

[u]pon timely application anyone shall be permitted to intervene in an action: (1) [w]hen a statute confers an unconditional right to intervene; or (2) when the applicant

³ I also note that there is no evidence that the Guild has proceeded in this case with bad faith, undue delay, or dilatory motive. The omission of the required pleading with its original petition appears to have resulted from an oversight by the Guild's counsel rather than any nefarious purpose, and the Guild attempted to rectify the deficiency in its motion to intervene promptly when that deficiency was brought to its attention. As the Guild consistently has supported an expedited resolution of this matter, and because granting the Guild's motion to amend (or its motion to intervene) will not alter the schedule for this case, there are no meaningful factors that weigh against granting the Guild leave to amend.

claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.⁴

A potential intervenor "need only claim, rather than prove, an interest in the subject of the litigation; the validity of that claimed interest is assessed by reference to the allegations accompanying the motion to intervene, and such allegations are accepted as true."⁵

Even if a person does not have a right to intervene, he still may be permitted to intervene under the less exacting standard of Rule 24(b). That rule allows intervention: "(1) [w]hen a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common."⁶ "In exercising its discretion [under Rule 24(b),] the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."⁷

⁴ Ct. Ch. R. 24(a).

⁵ *Harris v. RHH P'rs, LP*, 2009 WL 891810, at *3 (Del. Ch. Apr. 3, 2009).

⁶ See Ct. Ch. R. 24(b); *United Rentals, Inc. v. RAM Hldgs., Inc.*, 2007 WL 4327770, at *1 (Del. Ch. Nov. 29, 2007).

⁷ Ct. Ch. R. 24(b).

If a person desires to intervene, he must serve a motion so indicating upon all of the parties, stating the grounds therefore, as well as a pleading setting forth the claim or defense for which intervention is sought.⁸ “Necessarily, however, under either variety of intervention the applicant must, as a threshold matter, present a potentially valid claim.”⁹

2. The Guild may intervene pursuant to Rule 24(b)

The Guild has moved to intervene both as a matter of right under Rule 24(a) and as a permissive intervenor under Rule 24(b). Because I conclude that the Guild may intervene pursuant to Rule 24(b), I do not reach the issue of whether the Guild also may intervene as a matter of right pursuant to Rule 24(a).

Although this case technically is a dissolution proceeding brought under 6 *Del. C.* § 18-802, the source of contention between the parties is not whether it is “reasonably practicable to carry on the business in conformity with a limited liability company agreement.” Indeed, the parties and the Guild agree that Interstate should be dissolved. Their disagreement relates to whether Interstate’s assets should be sold via public auction or a private auction between the parties. Thus, the questions of law and fact that will be dispositive in this case primarily revolve around: (1) which auction style, public or private, is most consistent with the terms of Interstate’s LLC Agreement; and (2)

⁸ Ct. Ch. R. 24(c).

⁹ *United Rentals, Inc.*, 2007 WL 4327770, at *1.

assuming it is a private auction, which entities should be allowed to participate in that auction.

In its amended petition for leave to intervene, the Guild includes a pleading in which it seeks a declaratory judgment that Interstate should be sold in a public auction, or, alternatively, that the Guild is entitled to participate as a bidder should this Court order that Interstate be dissolved through a private auction. On its face, the Guild's claim presents questions of law and fact in common with the "main action." For that reason alone, General American's reliance on *Follieri Group, LLC v. Follieri/Yucaipa Investments, LLC*¹⁰ is misplaced. In *Follieri*, the court denied a "mere putative creditor[']s]" attempt to intervene in the dissolution of an LLC because the claim on which the LLC was indebted to the creditor "ha[d] nothing to do with" the question presented in the dissolution action, namely, "whether or not it [wa]s reasonably practicable to carry on the business of the LLC in conformity with its limited liability company agreement."¹¹ In this case, the status of the Guild exceeds that of a "mere putative creditor," and I cannot say that the Guild's claim "has nothing to do with" the key issue in this case which is how, and not whether, Interstate should be dissolved.¹²

¹⁰ 2007 WL 2459226 (Del. Ch. Aug. 23, 2007).

¹¹ *Id.* at *1.

¹² At a minimum, the operative collective bargaining agreement between Interstate and the Guild includes provisions for the Guild's members to participate in Interstate's profits, beginning in 2014, pursuant to "Side Letter 2" of that

General American's citation to this Court's decision in *Omnicare, Inc. v. NCS Healthcare, Inc.*¹³ for the proposition that potential bidders for a company or its assets have no independent standing to maintain a claim relating to the manner in which a sale is conducted, similarly is unavailing. In *Omnicare*, the court dismissed a bidder's claims for breach of fiduciary duty on the grounds that the bidder lacked standing to bring suit when it "did not own any shares [of the target] at the time of the alleged breach of fiduciary duty by the target board."¹⁴ While General American focuses on *Omnicare*'s unremarkable holding that those who are not owed fiduciary duties do not have standing to bring breach of fiduciary duty claims, it ignores entirely the portion of the *Omnicare* decision in which the court found that the bidder did have standing to bring its declaratory judgment claim relating to the effect of a certain voting agreement.¹⁵ Thus, the holding in *Omnicare* is not as broad as General American asserts that it is. At this

agreement. This fact, combined with the longstanding relationship between the Guild and the Publications and the Guild's more recent business dealings with Interstate and the other parties to this action, persuades me that the Guild has a unique interest in this case. Moreover, there are common questions of law and fact between the Guild's claim for declaratory relief and the main claims between the parties. Therefore, I conclude that the Guild should have an opportunity to be heard on its issues in the context of this dispute over how Interstate should be dissolved.

¹³ 809 A.2d 1163 (Del. Ch. 2002).

¹⁴ *Id.* at 1171.

¹⁵ *Id.* at 1173-74.

uncture, I am satisfied that, by virtue of its longstanding relationship with Interstate and its contractual interest (through its collective bargaining agreement with Interstate) in its dissolution, the Guild, like the bidder in *Omnicare* “will eventually be entitled to an answer” to the questions of whether Interstate should be dissolved in a public auction or a private auction, and if this Court orders a private auction, whether it is entitled to participate in it. Consequently, the *Omnicare* decision does not mandate, as General American suggests, that the Court deny the Guild’s motion to intervene.

Finally, General American’s assertion that the Guild’s motion to intervene failed to comply with the terms of Rule 24(c) has been mooted by my decision to allow the Guild to submit an amended petition for leave to intervene that includes the requisite pleading. Because the Guild’s motion will comply with all of the requirements of Rule 24 when the amended petition is filed, the Guild’s motion is granted.¹⁶

¹⁶ General American also has raised the argument that the Guild should not be allowed to intervene because the Guild’s purpose in intervening is to obtain financial information about Interstate for use in future labor negotiations. Although General American’s argument conceivably has some merit, the Guild has agreed that if it is allowed to participate in this action or any private auction that all confidential due diligence materials can be provided to the Guild’s attorneys and financial advisors on an “attorneys eyes only” basis. Therefore, it would be improper to preclude the Guild from intervening on the basis of protecting General American’s (or any other party’s) rights in labor negotiations with the Guild, when those rights readily can be preserved through less drastic measures that the Guild already has expressed a willingness to accept, such as, designating sensitive financial information as “attorneys eyes only.”

III. CONCLUSION

For the foregoing reasons, the Guild's motions for leave to amend its petition to intervene and its motion to intervene are granted. The Guild promptly shall file, without modification, its amended petition for leave to intervene, which was attached as "Exhibit A" to its motion for leave to file an amended petition for leave to intervene. The parties shall move, answer, or otherwise plead in response to the Guild's pleading within three days after it is filed and served on them.

IT IS SO ORDERED.

Sincerely,

/s/ Donald F. Parsons, Jr.

Donald F. Parsons, Jr.
Vice Chancellor

DFP/ptp