

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 9 - SUFFOLK COUNTY

P R E S E N T :

Hon. DANIEL MARTIN
Justice of the Supreme Court

MOTION DATE 8-10-12
ADJ. DATE 9-4-12
Mot. Seq. # 001 - MD

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NANCY M. RENZI, BARBARA JENKINS MONDELLI, CARLL A. PALLOKAT, FREDERICK FERRIS, CLIFFORD FERRIS, SUSAN E. LUNDIN, as Executrix of the Estate of LINDA C. FERRIS, CARYLE R. BETHEL, LEONARD A. FERRIS, LORA GRANTMEYER, LORRIE SULLIVAN and CARYLE R. BETHEL, as Guardian of DAVID H. ROBBINS, Plaintiffs,	GOLDSTEIN, RUBINTON, GOLDSTEIN & DI FAZIO, P.C. Attorney for Plaintiffs 18 West Carver Street, Suite 3 Huntington, New York 11743 LAMB & BARNOSKY, LLP Attorney for Defendant Commack UFSD 534 Broadhollow Road, P.O. Box 9034 Melville, New York 11747 STATE OF NEW YORK OFFICE OF THE ATTORNEY GENERAL Attorney for Defendants NYS Office of Parks and Attorney General of the State of New York 120 Broadway, 12th Floor New York, New York 10271 LAW OFFICE OF RICHARD G. HANDLER Attorney for Intervenor Defendants 50 Broadway, P.O. Box 427 Amityville, New York 11701
- against -	
COMMACK UNION FREE SCHOOL DISTRICT, NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION, ATTORNEY GENERAL OF THE STATE OF NEW YORK and LILLIAN BRUU, Defendants.	
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Upon the following papers numbered 1 to 27 read on this motion to intervene; Notice of Motion/ Order to Show Cause and supporting papers 1 - 17; Notice of Cross Motion and supporting papers ; Answering Affidavits and supporting papers 18 - 26; Replying Affidavits and supporting papers 27; Other ; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the motion by James Tampellini, Daniel Fusco, Vito J. Cottone and Arthur J. Reilly Sr. for leave to intervene in this action is denied.

In 1969, real property known as the Marion E. Carll Farm was conveyed to the defendant Commack Union Free School District (hereinafter the District) pursuant to the last will and testament of Marion E. Carll. The property consists of approximately nine acres and is improved with a house, barn and several other buildings. The conveyance was subject to certain conditions, including that the District maintain the buildings as historical museums and utilize the land as a type of farm, school or camp for the benefit of the children of the District. The will also provided that the failure to comply with these conditions would result in title to the property reverting to Carll's heirs.

The plaintiffs are the heirs and distributees of Carll and commenced this action, pursuant to RPAPL Article 15, seeking a judgment declaring that they are the lawful owners of the subject property. The plaintiffs allege that the District has failed to comply with the conditions of the conveyance and therefore title should revert to them. The District served an answer to the complaint asserting three affirmative defenses. By order to show cause, four residents of the District move for leave to intervene contending that the District has failed to adequately defend this action. The intervenors allege that the District failed to assert any counterclaims or additional affirmative defenses, including the statute of limitations.

Upon a timely motion, a person is permitted to intervene in an action as of right when, inter alia, "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" (CPLR 1012[a]; see *Berkoski v Board of Trustees of Inc. Village of Southampton*, 67 AD3d 840 [2d Dept 2009]). Additionally, a court, in its discretion, may permit a person to intervene "when the person's claim or defense and the main action have a common question of law or fact" (CPLR 1013; *Berkoski v Board of Trustees of Inc. Village of Southampton*, *supra*). "However, it has been held under liberal rules of construction that 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 [and that] intervention should be permitted where the intervenor has a real and substantial interest in the outcome of the proceedings" (*Berkoski v Board of Trustees of Inc. Village of Southampton*, *supra* at 843 quoting *Perl v Aspromonte Realty Corp.*, 143 AD2d 824, 825 [2d Dept 1988]; see *Wells Fargo Bank v McLean*, 70 AD3d 676 [2d Dept 2010]; *Matter of Bernstein v Feiner*, 43 AD3d 1161 [2d Dept 2007]).

Here, the intervenors contend that they have a real interest in the action because the property is held by the District on behalf of the taxpayers. However, the intervenors as individual taxpayers did not acquire any property or monetary interest in the subject property (see *Klueg v Allen*, 31 AD2d 984 [3d Dept 1969]). Thus, the intervenors do not have a real and substantial interest in the outcome of this action beyond that of any other resident of the District.

The intervenors also contend that they have a right to prevent the waste or injury to any of the District's property and could maintain an action under section 51 of the General Municipal Law. However, a taxpayer action under that statute lies only where the acts complained of are fraudulent, or a waste of public property in the sense that they represent a use of public property or funds for entirely illegal purposes (see *Godfrey v Spano*, 13 NY3d 358 [2009]; *Mesivta of Forest Hills v City of New York*, 58 NY2d 1014 [1983]). In this case, there is no evidence or allegations of any fraudulent or illegal conduct that would support such an action. The intervenors merely dispute the defenses and legal

strategy employed by the District. While the intervenors undoubtedly have a genuine concern over the outcome of this case, they have not demonstrated a real and substantial interest sufficient to support intervention. To allow intervention in this case would permit any resident or taxpayer to intervene in an action in which the resident disagreed with the legal strategy of a school district or municipality. Accordingly, the motion to intervene is denied.

Dated: DECEMBER 19, 2012 Daniel Martin
J.S.C.

☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION