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Supreme Court, Appellate Division, Third Department, New York.
In the Matter of RENT STABILIZATION ASSOCIATION OF NEW YORK CITY et al., Appellants-Respondents,
v.
NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL et al., Respondents,
and
Metropolitan Council on Housing et al., Proposed Intervenors-Appellants.

Dec. 17, 1998.

Owners of rent-controlled units in New York City, and industry trade organizations representing property owners, brought combined declaratory judgment and Article 78 against State Division of Housing and Community Renewal (DHCR) in Albany County, in which they challenged validity of City regulation governing calculation of maximum base rent. The Supreme Court, Albany County, Torraca, J., granted City's motion to intervene for sole purpose of filing motion to dismiss, and thereafter granted motion to dismiss, denied DHCR's motion to consolidate matter with separate Article 78 proceeding filed by city in New York County, and denied tenants' motion to intervene. Appeals were taken, and the Supreme Court, Appellate Division, Carpinello, J., held that: (1) city was necessary party and was entitled to intervene; but (2) city could not intervene for limited purpose of filing motion to dismiss; (3) matters had clear identity of issues and should have been consolidated; (4) special circumstances made venue for consolidated action proper in New York County, even though it was county where second action had been commenced; and (5) tenants were entitled to intervene.

Reversed in part, and affirmed as modified.

See also, 230 A.D.2d 66, 656 N.Y.S.2d 777.

West Headnotes

[1] Declaratory Judgment 296
118Ak296 Most Cited Cases

[1] Mandamus 151(2)
250k151(2) Most Cited Cases
City was necessary party, and should have been joined, to combined Article 78 and declaratory judgment proceeding in which owners of rent-controlled apartment units sought declaration that city council regulation governing calculation of base rent for rent-controlled apartments was invalid, and sought to compel Division of Housing and Community Renewal (DHCR) to calculate rents as provided in prior court orders, since gravamen of proceeding was attack on validity of city regulation. McKinney's CPLR 1001(a), 7801 et seq.

[2] Action 57(3)
13k57(3) Most Cited Cases
Clear identity of issues existed between combined Article 78 and declaratory judgment proceeding, in which owners of rent-controlled apartments raised challenge to city council regulation governing calculation of base rents for such apartments, and separate declaratory judgment action in which city sought judgment that regulation was lawful, so that consolidation of actions was warranted. McKinney's CPLR 7801 et seq.

[3] Venue 16.5
401k16.5 Most Cited Cases
As a general rule, upon consolidation of two actions commenced in different counties, venue is placed in county having jurisdiction over action first commenced, absent special circumstances.

[4] Venue 16.5

401k16.5 Most Cited Cases
Special circumstances existed to justify placement of venue in New York County for matter in which combined declaratory judgment and Article 78 proceeding against State Division of Housing and Community Renewal (DHCR), which had been filed in Albany County by owners of rent-controlled apartments in New York City, was consolidated with declaratory judgment action which had later been filed by city in New York County, on basis that both proceedings involved validity of city council regulation governing rent calculations; because owners' claims would rise or fall on resolution of regulation's validity, they should have commenced declaratory judgment action in New York County, and included City as party. McKinney's CPLR 7801 et seq.

[5] Declaratory Judgment 306
118Ak306 Most Cited Cases

[5] Mandamus 153
250k153 Most Cited Cases
City could not intervene for sole purpose of filing motion to dismiss in combined declaratory judgment and Article 78 proceeding brought by owners of rent controlled apartments in city against State Division of Housing and Community Renewal (DHCR), in which owners challenged validity of city council regulation governing rent calculations; while city was interested party, it could not limit its intervention, as successful intervenor becomes party for all purposes. McKinney's CPLR 7801 et seq.

[6] Parties 38
287k38 Most Cited Cases
Civil Practice Law and Rules (CPLR) does not recognize "limited" intervention; rather, a successful intervenor becomes a party for all purposes.

[7] Appearance 9(2)
31k9(2) Most Cited Cases
Only "limited appearance" recognized under Civil Procedure Law and Rules (CPLR) is in action where sole basis of jurisdiction is attachment of defendant's property. McKinney's CPLR 320(c), par. 1, 3211(a), par. 9.

[8] Declaratory Judgment 306
118Ak306 Most Cited Cases

[8] Mandamus 153
250k153 Most Cited Cases
Tenants of rent-controlled apartments were entitled to intervene in combined declaratory judgment and Article 78 proceeding, in which owners of apartments challenged validity of city council regulation governing calculation of rents, as tenants had direct and substantial interest in outcome of litigation and no showing was made that their intervention would substantially prejudice owners or cause delay. McKinney's CPLR 1013, 7802.
****680 *113** Borah, Goldstein, Altschuler & Schwartz P.C. (Jeffrey R. Metz of counsel), New York City, for appellants-respondents.

Dennis C. Vacco, Attorney-General (Lisa Le Cours of counsel), Albany, for New York State Division of Housing and Community Renewal, respondent.

Michael D. Hess, Corporation Counsel (Dona B. Morris of counsel), New York City, for City of New York, respondent.

Himmelstein, McConnell, Gribben & Donoghue (William J. Gribben of counsel), New York City, proposed intervenors-appellants.

Before CREW, J.P., and WHITE, PETERS, CARPINELLO and GRAFFEO, JJ.

CARPINELLO, Justice.

***111** Appeal from a judgment of the Supreme Court (Torraca, J.), entered April 1, 1998 in Albany County, which, in a combined proceeding pursuant to CPLR article 78 and action for declaratory judgment, granted a motion by respondent City of New York to, *inter alia*, dismiss the petition for failure to state a cause of action.

****681 *113** In *Matter of Community Hous. Improvement Program v. New York State Div. of Hous. & Community Renewal*, 230 A.D.2d 66, 656 N.Y.S.2d 777, this court ordered respondent State Division of Housing and Community Renewal

(hereinafter respondent), the State agency charged with administering the rent control laws, to comply with the "plain and unqualified" language of Administrative Code of City of New York § 26-405(a)(3) in calculating the capital value component of the maximum base rent for rent-controlled apartments in New York City. Specifically, this court determined that respondent must calculate the maximum base rent by computing capital value pursuant to RPTL article 12-A, as opposed to RPTL article 12 as it had been doing since 1986 (*see, id.*, at 68, 656 N.Y.S.2d 777).

Following this court's decision, the City Council of the City of New York passed Local Laws, 1997, No. 3 of the City of New York (Local Law No. 73) which amended Administrative Code § 26-405(a)(3) by directing that capital value shall be equalized assessed valuation based upon the appropriate tax class ratio to be established pursuant to RPTL article 12. Local Law No. 73 further directed that the change was effective for purposes of calculating the 1996-1997 maximum base rent. Simply stated, Local Law No. 73 vitiated this court's prior holding.

In response to Local Law No. 73, respondent, which had previously issued "1996-97 Amended MBR Order[s] of Eligibility" as a result of our decision, issued "orders of suspension". These orders suspended the amended orders until further notice "to avoid uncertainty, confusion and hardship among tenants and owners regarding the application of [Local Law No. 73]". Petitioners, owners of rent-controlled units in New York ***114** City and industry trade organizations representing property owners throughout New York City who sought maximum base rent increases for the 1996-1997 cycle, commenced this combined CPLR article 78 proceeding and declaratory judgment action against respondent. Alleging that respondent "has determined that Local Law [No. 73] may not or does not violate the Urstadt Law", [FN1] petitioners claim that they are entitled to a declaration "that *because Local Law [No. 73] is in violation of the Urstadt Law*, any action taken by [respondent] to enforce or to give credence to [it], by reason of suspension order notices or otherwise, is invalid and of no force and effect" (emphasis supplied). They also seek a declaration that respondent is obligated to compute the maximum base rent increases as reflected in its amended orders. With respect to their requested CPLR article 78 relief, petitioners allege that respondent "[f]ailed to perform the duty enjoined upon it by law to administer and timely process the [a]mended MBR orders" and seek to vacate and annul any action taken by respondent to suspend their entitlement to the maximum base rent increases. Additionally, petitioners charge that respondent acted in excess of its jurisdiction in issuing the orders of suspension.

> FN1. The "Urstadt Law", enacted in 1971 (L.1971, ch. 372, § 1, amending Local Emergency Housing Rent Control Act § 5 [L.1992, ch. 21, § 1]), limits the City's power to impose stricter controls on housing accommodations then subject to rent control, assuring that such housing would not be "subjected to more stringent or restrictive provisions of regulation and control than those presently in effect" (McKinney's Uncons.Laws of N.Y. § 8605).

In its answer, respondent recognized that "this proceeding contains a challenge to Local Law 73" and requested, among other relief, that the City be joined as a necessary party. Additionally, the City moved to intervene "for the sole purpose of filing a motion to dismiss" alleging, *inter alia*, that the petition failed to state a cause of action. Alternatively, the City requested an order joining it as a necessary party, converting the proceeding to a declaratory judgment action, directing petitioners to serve a complaint, transferring venue to New York County and providing it with 20 days within which to answer. Thereafter, respondent cross-moved to consolidate this proceeding with a declaratory judgment action commenced against it by the City in New York County. In that action, *filed the same day* that the City sought to intervene in this case, the City seeks a judgment declaring that Local Law No. 73 is lawful and requests a permanent injunction compelling respondent to compute maximum base rent in accordance therewith. ***115** Inexplicably, petitioners were not named as parties in the New York County action. In ****682** its consolidation

motion, respondent requested that venue be set in Albany County.

Petitioners opposed the City's motion to intervene and respondent's cross motion to consolidate. The City, in response to the cross motion, opposed only that portion requesting venue in Albany County. Finally, numerous membership groups of New York City tenants (hereinafter tenant intervenors), which include rent-controlled tenants, sought, among other relief, to intervene in this matter. Supreme Court granted the City's motion to intervene for the sole purpose of filing a motion to dismiss the proceeding, dismissed the petition finding that it failed to state a cause of action, denied respondent's request to add the City as a necessary party and the cross motion to consolidate, and denied the tenant intervenors' motion to intervene. Petitioners and the tenant intervenors appeal.

[1] We start our analysis by noting that, despite petitioners' contentions to the contrary, the gravamen of the instant combined action/proceeding is an attack on the validity of Local Law No. 73. That being the case, the City is clearly a necessary party--indeed, the preeminent party--in defending its own statute (*see,* CPLR 1001[a]). The necessity of the City as a party is best exemplified by respondent's observation that, caught in the middle of this procedural havoc, it *agrees* that the petition states a cause of action against it and that Local Law No. 73 may indeed violate the Urstadt Law. Given the City's voluntary participation in this matter as evidenced by its motion to intervene on the ground that it is an interested party, joinder was a proper remedy and should have been granted by Supreme Court (*see, Matter of Town of Preble v. Zagata,* 250 A.D.2d 912, 913, 672 N.Y.S.2d 510, 511-512).

[2][3][4] We next find that Supreme Court should also have granted respondent's motion to consolidate this action with the separate action commenced by the City in New York County as there is a clear identity of issues between the two controversies; namely, the validity of Local Law No. 73 (*see,* CPLR 602; *Government Empls. Ins. Co. v. Uniroyal Goodrich Tire Co.,* 242 A.D.2d 765, 766, 661 N.Y.S.2d 847). As a general rule, upon consolidation of two actions commenced in different counties, venue is placed in the county having jurisdiction over the action first commenced absent "special circumstances" (*see, id.*). We find that special circumstances do exist warranting venue to be set in New York County. While the petition challenges actions taken by respondent following the enactment of Local Law No. 73, it is clear ***116** that petitioners are really seeking to invalidate Local Law No. 73 and that their claims against respondent rise and fall on the resolution of this threshold issue. It is equally clear that petitioners should have commenced a declaratory judgment action against the City in New York County in the first instance (*see,* CPLR 504[3]) and included respondent as a party to that action. [FN2]

> FN2. Not without fault, however, is the City which moved to intervene solely for the purpose of dismissing--a practice unrecognized in the CPLR and not condoned by this court--and simultaneously commenced its own action against respondent alone, fully aware of petitioners' claims, without naming petitioners as parties.

[5][6][7] Having determined that the City should have been joined as a necessary party, we need not detain ourselves to any great extent with the somewhat related issue of whether it should have been permitted to intervene as an "interested" party (CPLR 7802[d]). Clearly, the City is an interested party. Supreme Court erred, however, in permitting the City to intervene for the sole purpose of filing a motion to dismiss and in dismissing the petition. The CPLR does not recognize "limited" intervention; rather, "a *successful* intervenor becomes a party for all purposes" (*Matter of Greater New York Health Care Facilities Assn. v. De Buono,* 91 N.Y.2d 716, 720, 674 N.Y.S.2d 634, 697 N.E.2d 589 [emphasis in original]). [FN3] Whereas the City could have moved to intervene and *simultaneously* make a preanswer motion to dismiss pursuant to CPLR 3211 and ****683** CPLR 7804(f), it could not "limit" its intervention. Moreover, as conceded by respondent, the petition

does state a valid cause of action against it.

FN3. The only "limited appearance" recognized under the CPLR is in an action where the sole basis of jurisdiction is the attachment of a defendant's property (*see,* CPLR 320[c][1]; 3211[a][9]).

[8] Finally, Supreme Court also should have granted the motion to intervene by the tenant intervenors (*see,* CPLR 1013, 7802[d]) as they have a "direct and substantial interest" in the outcome of this litigation (*Matter of Pier v. Board of Assessment Review of Town of Niskayuna,* 209 A.D.2d 788, 789, 617 N.Y.S.2d 1004; *see, e.g., County of Westchester v. Department of Health of State of N.Y.,* 229 A.D.2d 460, 461, 645 N.Y.S.2d 534; *Matter of White v. Incorporated Vil. of Plandome Manor,* 190 A.D.2d 854, 854-855, 593 N.Y.S.2d 881, *lv. denied* 83 N.Y.2d 752, 611 N.Y.S.2d 134, 633 N.E.2d 489; *Matter of Stockdale v. Hughes,* 189 A.D.2d 1065, 1067, 592 N.Y.S.2d 897; *Matter of Tenants' Union of W. Side v. Beame,* 47 A.D.2d 731, 365 N.Y.S.2d 24) and petitioners have not demonstrated that their intervention would substantially prejudice them or cause delay (*see,* CPLR 1013; *Matter of Pier v. Board of Assessment Review of Town of Niskayuna, supra*).

***117** ORDERED that the judgment is modified, on the law, without costs, by reversing so much thereof as dismissed petition, denied the motion of respondent State Division of Housing and Community Renewal to join the City of New York as a necessary party and to consolidate this proceeding with another proceeding commenced by the City of New York in New York County, and denied leave to intervene by the tenant intervenors; motion for intervention and consolidation granted, and venue transferred to New York County; and, as so modified, affirmed.

CREW, J.P., and WHITE, PETERS and GRAFFEO , JJ., concur.

252 A.D.2d 111, 681 N.Y.S.2d 679, 1998 N.Y. Slip Op. 11259

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