2017 IL App (1st) 162280-U
No. 1-16-2280
May 2, 2017

SECOND DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

NORFOLK SOUTHERN RAILWAY COMPANY, Plaintiff-Appellee, v. STEVEN ROGERS, FNA ELM LLC, and UNKNOWN OWNERS, Defendants-Appellees, MARGARET BONNETT, EARL MARVIN DENNIS, WILLIAM GRIFFIN, JP MORGAN CHASE BANK NA, and UNKNOWN OWNERS, Defendants-Appellees, v. ARC LAW GROUP, LLLP, Intervening Party-Appellant.	)	Appeal from the Circuit Court Of Cook County. No. 16 L 050023 16 L 050024 16 L 0500131 The Honorable Kay M. Hanlon, Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Hyman and Justice Mason concurred in the judgment.

ORDER

¶ 1 ***Held***: An attorney hired by a coalition of homeowners failed to show that he had a right to intervene in a case a corporation brought to acquire by eminent domain the properties of two of the homeowners who had joined the coalition.

¶ 2 A coalition of homeowners hired an attorney to help them in negotiations with a railroad, but the coalition fired the attorney after a few weeks. Four years later, the railroad began eminent domain proceedings against two homeowners who had joined the coalition. The attorney filed a motion to intervene in the eminent domain proceedings, claiming fees for representing the coalition. The circuit court denied the motion. In this appeal, we hold that the attorney failed to plead facts showing an interest in the eminent domain proceedings, and he failed to comply with the intervention statute. Accordingly, we affirm the circuit court's decision denying the attorney's motion for leave to intervene.

¶ 3 BACKGROUND

¶ 4 Norfolk Southern Railway Company sought to acquire land near its property in Chicago. In 2011, owners of some of the properties under consideration formed the Englewood Railway Coalition, a non-profit corporation designed to protect the homeowners' interests. In March 2012, Steven Rogers signed a membership agreement authorizing the coalition to negotiate with Norfolk on Rogers's behalf. Margaret Bonnētt signed a similar membership agreement in February 2012.

¶ 5 In June 2012, the coalition signed an agreement hiring ARC Law Group, LLLP, to represent the coalition in negotiations with Norfolk. The agreement provided that Norfolk's payment for properties of the coalition's members would go directly to those members, and

the coalition would "advocate for the railroad to cut a separate check directly to the firm for firm's legal services so as to minimize the possibility of a dispute between [the coalition] and firm over firm receiving its proper compensation under the terms of this agreement." The agreement spelled out a formula for calculating attorney fees for properties sold to the railroad without eminent domain litigation. The coalition terminated the attorney-client relationship with ARC in July 2012, less than a month after it hired ARC.

¶ 6 In January 2016, Norfolk filed a complaint for condemnation of Rogers's property. Norfolk filed a separate complaint for condemnation of Bonnētt's property in February 2016. The circuit court consolidated the cases. The coalition dissolved in April 2016.

¶ 7 In May 2016, ARC filed a motion to intervene in the condemnation case. ARC alleged in its motion that the June 2012 agreement bound the coalition and its successors in interest, and Rogers and Bonnētt qualified as successors in interest to the coalition. ARC alleged no facts regarding Bonnētt apart from her membership in the coalition in support of the conclusion that she succeeded to the coalition's interests. ARC alleged that Rogers, along with other homeowners, established the coalition, and added:

> "Rogers convinced the Coalition members that under his leadership, he could use his status as a businessman, business school professor, and business school graduate to negotiate the homeowners a better deal than they could otherwise negotiate on their own. Accordingly, during the time period that ARC represented the Coalition, it witnessed Defendant Rogers use his aforementioned

> status to exercise exclusive decision making for the Coalition, and, as such was the controlling influence over all of the Coalition's affairs.
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> *** [T]he identities of the Coalition and its principal, Defendant Rogers, are in substance one and the same, and the Coalition is but the alter ego of Defendant Rogers. On information and belief, Defendant Rogers ignored the separate existence of the Coalition in numerous ways, including, but not limited to, running the Coalition's affairs wholly through his personal funds, failing to maintain company records; failing to make/keep the Coalition properly capitalized, and by allowing the Coalition to be involuntarily dissolved by the State of Illinois."

¶ 8 Rogers and Bonnētt jointly responded to the motion to intervene, arguing that their membership in the coalition expired in 2014. In support, they presented a blank membership application, which said, "this Membership Agreement will be in effect for two (2) years following the granting of membership. At the expiration of this Membership Agreement, I may submit a new Membership Agreement if I remain eligible for membership in the Coalition." Both Rogers and Bonnētt stated in affidavits that they never hired ARC to act as their attorneys. In their response to the motion to intervene, they also pointed out that ARC had not met the requirements for intervention, because ARC had not appended to its motion an "initial pleading or motion which he or she proposes to file" if the court allows the motion to intervene. 735 ILCS 5/2-408(e) (West 2014).

¶ 9 ARC filed a reply in which it again relied on its allegations that Rogers and Bonnētt counted as the coalition's successors in interest. ARC added, "this Honorable Court could allow ARC to amend its motion to attach a proposed pleading if necessary." ARC did not append a proposed pleading to its reply, and it did not request or explain the need for extra time to file the statutorily required pleading.

¶ 10 The circuit court entered an order denying the motion to intervene. First, the court found that ARC had not pled facts showing an attorney-client relationship with either Rogers or Bonnētt. The court found that ARC had not pled facts that could support an inference that Rogers or Bonnētt had succeeded to the coalition's interests. Therefore, ARC had not shown a right to attorney fees arising from the eminent domain proceedings, or any other grounds for intervention in the eminent domain proceedings. The court noted that ARC failed to present to the court a proposed initial pleading or motion as required by section 2-408(e) of the Code of Civil Procedure. 735 ILCS 5/2-408(e) (West 2014). The circuit court expressly found no just reason to delay appeal from the order that terminated ARC's attempt to participate in the eminent domain proceedings. ARC filed a timely notice of appeal.

¶ 11 ANALYSIS

¶ 12 ARC argues on appeal that it has a right to intervene because none of the parties will protect its interest in the proceedings. The circuit court has discretion to grant or deny a motion to intervene. *City of Chicago v. John Hancock Mutual Life Insurance Co.*, 127 Ill. App. 3d 140, 143-44 (1984).

¶ 13 We agree with the circuit court that ARC has not pled facts showing that it has any interest in the eminent domain proceedings. ARC admits that it never served as attorney for Rogers or Bonnētt. ARC argues primarily that the contract the coalition signed in 2012 gives ARC an interest in the eminent domain proceedings because Rogers and Bonnētt succeeded to the coalition's interests and therefore to the coalition's liability under the contract.

¶ 14 A party who acquires a business's assets may also take on responsibility for the business's liabilities, if the acquiring party qualifies as the liable business's successor in interest. *M.I.G. Investments, Inc. v. Marsala*, 92 Ill. App. 3d 400, 404 (1981). To count as a successor in interest, "a party must continue to retain the same rights as original owner without change in ownership and there must be change in form only and not in substance." *Spiegel v. Hollywood Towers Condominium Ass'n*, 283 Ill. App. 3d 992, 999 (1996). ARC has alleged no facts from which the court could conclude that Rogers, Bonnētt, or both, retain the coalition's rights, or that the dissolution of the coalition amounts to only a change in form, and not in substance. Thus, ARC has not pled facts that could support a finding that it has any right to payment of fees from either Rogers or Bonnētt. The circuit court correctly denied the motion to intervene because ARC failed to plead facts showing that it had an interest in the proceedings.

¶ 15 ARC's failure to present a proposed initial pleading, as required by section 2-408(e), even after Rogers and Bonnētt pointed out the statutory requirement, provides an independent basis for affirming the dismissal of the motion to intervene. See *Soyland Power Cooperative v. Illinois Power Co.*, 213 Ill. App. 3d 916, 919-20 (1991).

¶ 16 CONCLUSION

¶ 17 Because ARC failed to plead facts supporting the conclusion that ARC had an interest in the eminent domain proceedings, and because ARC failed to comply with the requirements of section 2-408(e), even after Rogers and Bonnēttt pointed out the noncompliance, the circuit court did not abuse its discretion when it denied ARC's motion to intervene.

¶ 18 Affirmed.