

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

JANEICE LISA SYLVESTER, et al	*	CIVIL ACTION 05-5527
v.	*	SECTION "K" (4)
LAMBERT BOSSIERE, et al	*	JUDGE DUVAL
* * * * *	*	

**PLAINTIFFS' OPPOSITION TO THE FIRST AMENDED
MOTION TO INTERVENE**

Plaintiffs through counsel respectfully submit their opposition to the First Amended Motion To Intervene filed by the Home Builders Association of Greater New Orleans, Inc., the Apartment Association of Greater New Orleans, Inc., New Orleans Metropolitan Association of Realtors, Inc., Soniat Realty, Inc., Triple Crown Investments, L.L.C., Merrill Investments, L.L.C., Eric France, Superior Property Management, Inc., Latter & Blum Property Management, Inc., and Pemar Properties, L.L.C. doing business as DesignX Properties (collectively "Proposed Intervenors").

Because this litigation was settled nearly two months ago yet the Proposed Intervenors waited until the end of December to file their original motion to intervene, their motions were not timely as required by Fed. R. Civ. P. 24(a) and should thus be denied. The motion should also be denied because, contrary to the Proposed Intervenors' contention, the Order dated November 22 and its modification dated December 8, 2005 did not change the law concerning eviction procedures for certain tenants. Finally, even if the Orders did change the law—which they did not—the motion should be denied because the interests of the Proposed Intervenors were more than adequately represented

by the existing parties during negotiations to settle this lawsuit. See Fed. R. Civ. P. 24(a)(2).

A. The Motion To Intervene Should be Denied Because It was Untimely Filed.

Under Federal Rule of Civil Procedure 24(a), a motion to intervene as a matter of right shall not be granted unless the motion is filed “[u]pon timely application.” Courts generally consider post-judgment or post-decree motions to intervene to be untimely.¹ On November 22, 2005, this Court entered an Order that established a procedure for providing certain tenants in Orleans and Jefferson Parishes with additional notice of eviction proceedings pending against them (“November 22 Order”), which it modified on December 8, 2005. For all intents and purposes, the November 22 Order settled the litigation and immediately following the entry of the Order, on November 23, 2005, the settlement was widely publicized by the local media.² Nevertheless, the Proposed Intervenor waited more than five (5) weeks until filing their original motion to intervene. The motion to intervene and first amended motion to intervene were therefore untimely filed and should be denied out of hand.³

B. The Motion To Intervene Should be Denied Because the November 22 Order Did Not Change the Law Regarding the Eviction Procedures of Certain Tenants.

Federal Rule of Civil Procedure 24(a) provides that a motion to intervene should be granted only where “disposition of the action may as a practical matter impair or impede the [proposed intervenor’s] ability to protect” his or her interest in the property or

¹ U.S. v. U.S. Steel Corp., 548 F.2d. 1232, 1235 (5th Cir. 1977) (quoting McDonald v. E. J. Lavino Co., 430 F.2d 1065, 1072 (5th Cir. 1970)); Jimenez v. GMC, Civil Action No. 02-0365 “K” Division (3), 2003 U.S. Dist. LEXIS 4079, at *5 (E.D. La. Mar. 18, 2003) (denying motion to intervene where permitting intervention would “completely disrupt[] orderly process, which would entail re-opening the case and in all probability setting aside the settlement”).

² See, e.g., Gwen Filosa, “Settlement gives renters respite,” The Times-Picayune (Nov. 23, 2005).

³ See U.S. v. U.S. Steel Corp., 548 F.2d. at 1235; Jimenez v. GMC, 2003 U.S. Dist. LEXIS 4079, at *5.

transaction at issue. In this case, the Proposed Intervenors argue that the November 22 Order's provision that a rule for possession, for certain tenants, shall be set for hearing no less than forty-five (45) days from the date of mailing constitutes a "change in the law" and a ground for granting their motion for intervention under Rule 24(a). The Proposed Intervenors' argument is wholly without merit.

Under the Louisiana Code of Civil Procedure Article 4732(A), judicial officials are granted discretion in the setting of hearing dates in eviction proceedings. In particular, they are permitted to set hearings "not earlier than the third day after service" of the notice of eviction proceedings. Accordingly, the November 22 Order's provision that a rule for possession, for only those tenants whose whereabouts are unknown, shall be set for hearing no less than forty-five (45) days from the date of mailing in no way alters the law and as such, may not serve as a proper basis for a motion to intervene. Under the order, defendants have merely agreed to use their discretion to set hearings in a time frame that protects the interests of both evacuee residents and landlords.

C. The Interests of the Proposed Intervenors were Adequately Represented During Settlement of This Litigation.

The motion to intervene should be denied because the interests of the Proposed Intervenors were more than adequately represented by the existing parties during negotiations to settle this lawsuit.

Federal Rule of Civil Procedure 24(a) provides that a motion to intervene as of right shall not be granted where "the applicant's interest is adequately represented by the existing parties." Here, the Court fully considered the interests of landlords in crafting the November 22 Order and its modification dated December 8. During settlement negotiations, plaintiffs requested that the rule for possession hearings as to certain tenants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been served via facsimile, this 17th day of January 2006 to the following:

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