

COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE

ABIGAIL M. LEGROW  
MASTER IN CHANCERY

NEW CASTLE COUNTY COURTHOUSE  
500 NORTH KING STREET, SUITE 11400  
WILMINGTON, DE 19801-3734

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Submitted: November 6, 2012

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Re: *IMO Estate of Catherine J. Eaton, Deceased*  
C.A. No. 7817-ML

Dear Counsel:

Frank B. Cooper and John J. Bisch (the “Applicants”) have filed a Motion to Intervene (the “Motion”) in this action, which involves a petition by Thomas Washburn (the “Executor”) to sell real estate to pay debts of the decedent, Catherine Eaton (the

“Decedent”). The Respondent, who is a beneficiary of the estate, opposes the Motion. For the reasons set forth below, the Motion is denied.

## **BACKGROUND**

The estate’s primary asset is property located in Rehoboth Beach, Delaware (the “Property”). The Property is encumbered by a mortgage in the principal amount of \$600,000. The Decedent’s will made a number of minor specific bequests and left the residue of the estate to her two children, William F. Eaton (“William”) and David R. Eaton (“David”),<sup>1</sup> in equal shares. The will, however, recount that before her death Decedent advanced \$592,661 to David, and directs the Executor to distribute that same amount to William before the residue of the estate is divided between William and David. The inventory the Executor filed with the Register of Wills valued the Property at \$1,000,000. Two appraisals valued the property at \$1,000,000 and \$1,100,000.

The Executor entered into a listing agreement for the property on April 6, 2012. On August 22, 2012, the Applicants and the Executor signed a contract permitting the Applicants to purchase the Property for \$1,300,000, subject to approval by the Court. A closing date was set for September 28, 2012. Although William consented to the sale of the Property, David refused to consent to a sale at that price. The Executor therefore filed this action seeking a court order to sell the Property to pay the debts of the estate. The Executor moved to expedite the proceedings in light of the impending closing date. The Court granted the motion, but not the Executor’s proposed schedule. Instead, the parties

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<sup>1</sup> Because some of the interested parties share the same last name, their first names have been used for purposes of this report. No disrespect is intended.

were instructed to agree to a scheduling order that would allow for a hearing in this action in early December. The parties complied with that instruction, and a hearing on the merits is scheduled for December 5, 2012.

### **ANALYSIS**

The Applicants now seek to intervene in this action pursuant to Court of Chancery Rule 24(a)(2). The Applicants assert that the disposition of this action may impair their “interest” in the property, which they claim arises from the agreement of sale signed by the Executor. According to the Motion and supporting materials, the Applicants sold a home they previously owned in order to purchase the Property, and have been forced to rent a residence due to the postponement of the closing date. The Applicants also claim they have incurred expenses associated with the proposed sale and the financing required to complete the proposed sale. The Applicants argue that, unless they are represented by counsel, their interests in this action will not be represented adequately.

Court of Chancery Rule 24 provides, in pertinent part:

(a) *Intervention of right.* Upon timely application anyone shall be permitted to intervene in an action: ... (2) when the applicant 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.

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(c) *Procedure.* A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the

claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene.

David opposes the Motion for a number of reasons. First, he contends that the Applicants have not satisfied the requirements of Rule 24(a)(2) because they do not have any currently enforceable interest in the Property. Second, he contends that the Applicants have not satisfied the requirements of Rule 24(c) because they have not filed a proposed pleading setting forth the claim or defense for which intervention is sought. Finally, David argues that intervention in this limited statutory proceeding is improper, and that the Motion is untimely.

The Motion plainly is deficient under Rule 24(c), because it is not accompanied by a pleading setting forth the claim or defense Applicants seek to advance.<sup>2</sup> It is difficult to envision what type of claim the Applicants could advance in the limited scope of this proceeding, and even more difficult to determine whether they satisfy the requirements of Rule 24(a)(2) without such a pleading. The Motion is therefore denied without prejudice, and with leave to refile if and when the Applicants can satisfy the requirements of the Rule. This is my report in this matter, and exceptions should be taken in accordance with Rule 144.

Sincerely,  
*/s/ Abigail M. LeGrow*  
Master in Chancery

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<sup>2</sup> See *Schiff v. RKO Pictures Corp.*, 136 A.2d 193, 194 (Del. Ch. 1954) (a motion to intervene will not be granted unless and until a pleading is served and filed as required by Rule 24(c)). Although David specifically argued in his opposition that the Motion did not satisfy Rule 24(c), the Applicants did not respond to that argument.