

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

LEO E. STRINE, JR.
CHANCELLOR

New Castle County Courthouse
500 N. King Street, Suite 11400
Wilmington, Delaware 19801-3734

Date Submitted: May 14, 2012

Date Decided: May 23, 2012

Mr. La Mar Gunn
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RE: *State of Delaware v. MERSCORP, Inc.*, C.A. No. 6987-CS

Dear Mr. Gunn and Counsel:

On October 27, 2011, the State of Delaware brought this action against defendants MERSCORP, Inc. and Mortgage Electronic Registration Systems, Inc. (collectively, “MERS”), alleging that MERS engaged and continues to engage in deceptive trade practices in violation of 6 *Del. C.* § 2532. This letter opinion addresses Mr. La Mar Gunn’s motion to intervene in the State’s litigation against MERS (the “Motion”).

Mr. Gunn seeks to intervene in the State’s action as a matter of right under Court of Chancery Rule 24(a). In the alternative, he contends that permissive intervention should be granted under Court of Chancery Rule 24(b). Both the State and MERS oppose the Motion.

Rule 24(a) requires the court to allow intervention “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.”¹ The threshold question, therefore, is whether Mr. Gunn has alleged an “interest” at risk in the State’s litigation.²

Mr. Gunn’s purported interest in the State’s litigation appears to be based on two claims: (1) he has identified and possesses “more than 1,000 counterfeit documents” allegedly “used to procure illegal foreclosures” in Delaware, and (2) a subsidiary of Credit Suisse (which is not a party to this litigation) allegedly filed a counterfeit assignment of mortgage against his own property.³ Neither of these claims amount to an interest in the State’s action. Identifying documents that could be relevant to a lawsuit is not an interest that provides a basis for intervention, and the adjudication of the State’s deceptive trade practices claims against MERS will not affect Mr. Gunn’s ability to seek redress against Credit Suisse, MERS, or any MERS member. Mr. Gunn has therefore failed to establish an entitlement to intervention under Rule 24(a).

I also see no basis to grant permissive intervention. Under Rule 24(b), permissive intervention is available at the court’s discretion “when an applicant’s claim or defense

¹ Ct. Ch. R. 24(a).

² See *In re RJR Nabisco, Inc. S’holders Litig.*, 576 A.2d 654, 660 (Del. Ch. 1990).

³ Gunn Mot. at 5.

and the main action have a question of law or fact in common. In exercising its discretion the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.”⁴

Mr. Gunn does not present any question of law or fact in common with the State’s action. He does not advance any claims against MERS itself, and his legal concerns – namely that MERS and additional defendants that should be added to the case have engaged in fraud and racketeering – are not related to the State’s deceptive trade practice claims.⁵

Even if Mr. Gunn’s claims do present a question of law or fact in common with the State’s case, granting the Motion is inappropriate, because it will “unduly delay or prejudice the adjudication” of the State’s case against MERS.⁶ Mr. Gunn “believes that there are additional parties that must be added”⁷ to the case, and has made clear that he will seek to add fraud and racketeering claims to the State’s action.⁸ Thus, granting the Motion could give rise to complicated issues of fact and law that would not otherwise be implicated by the State’s claims against MERS.

⁴ Ct. Ch. R. 24(b).

⁵ See, e.g. *Weir v. Howard Hughes Med. Inst.*, 404 A.2d 140, 146 (Del. Ch. 1979) (denying permissive intervention where the would-be intervenor’s “concern [was] not directly related to the basic issue next to be decided in [the] litigation.”).

⁶ Ct. Ch. R. 24(b).

⁷ Gunn Mot. at 4.

⁸ E.g., *id.* (“It is imperative that the instant action be amended to include both past and present victims of the Racketeer Influenced and Corrupt Organization (‘RICO’)....”).

State of Delaware v. MERSCORP, Inc.
Civil Action No. 6987-CS
May 23, 2012
Page 4 of 4

For the foregoing reasons, the Motion is DENIED. IT IS SO ORDERED.

Very truly yours,

/s/ Leo E. Strine, Jr.

Chancellor

LESJr/eb