



RECEIVED SEP 16 2013

ERIK G. MOSKOWITZ

214 N. Main Street
P.O. Box 1415
Concord, NH 03302-1415

September 13, 2013
Main: (603) 228-1181
Direct: (603) 545-3663
Fax: (603) 224-7588
moskowitz@gcglaw.com

VIA FEDERAL EXPRESS

James I. Peale, Clerk
Cheshire County Superior Court
12 Court Street
Keene, NH 03431

**Re: City of Keene v. James Cleaveland, et al.
Docket No.: 213-2013-CV-00098**

Dear Clerk Peale:

Enclosed for filing is City of Keene's Objection to Matthew Phillip's Motion to Intervene regarding the above-captioned case.

Thank you for your attention to this matter.

Very truly yours,

Erik G. Moskowitz

EGM:lbl
Enclosure

cc: Jon Meyer, Esquire
Peter Eyre, *Pro Se*
Matthew Phillips, *Pro Se*
Thomas Mullins, Esquire

STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

SUPERIOR COURT

CITY OF KEENE

v.

JAMES CLEAVELAND
GARRET EAN
KATE AGER
IAN BERNARD A/K/A IAN FREEMAN
GRAHAM COLSON
PETE EYRE

Docket No. 213-2013-CV-00098

**CITY OF KEENE'S OBJECTION TO MATTHEW PHILLIPS'S
MOTION TO INTERVENE**

NOW COMES, the City of Keene ("Petitioner"), by its co-counsel, Gallagher, Callahan and Gartrell, P.C., and submits this Objection to Matthew Phillips's Motion to Intervene, and says as follows:

1. On September 9, 2013, the court clerk emailed undersigned counsel a copy of Matthew Phillips's Motion to Intervene filed on September 3, 2013. This Motion was not provided to counsel for the City in violation of Super. Ct. R. 21. The City objects to the relief sought.

2. Mr. Phillips seeks to intervene and be added as a respondent to this matter. Super. Ct. R. 139 permits "any person shown to be interested" to "become a party to any proceeding in equity on his petition briefly setting forth his relation to the cause." Nevertheless, a prospective intervenor "must have a *right* involved in the trial." *Snyder v. N.H. Savings Bank*, 134 N.H. 32, 35 (1991) (emphasis in original). "A person who seeks to intervene in a case must have an interest in the subject matter of the litigation." *Clipper Affiliates, Inc. v. Checovich*, 138 N.H.

271, 277 (1994) (citing *Carlton v. Patterson*, 29 N.H. 580, 587 (1854)). “Further, that *interest* must be direct and apparent; such as would suffer, if not indeed be sacrificed, were the court to deny the privilege.” *Clipper Affiliates*, 138 N.H. at 277 (citing *Pike v. Pike*, 24 N.H. 384, 394 (1852) (emphasis in original) (internal quotes omitted)). The decision to permit a party to intervene rests in the trial court’s discretion. *Lamarche v. McCarthy*, 158 N.H. 197, 200 (2008).

3. Mr. Phillips does not have any rights involved in this case and does not have any direct or apparent interest in the subject matter of this suit as it affects him. The City seeks injunctive relief against the named Respondents for their actions in interfering with the PEOs’ contractual relationships with the City. If granted, the City’s injunctive relief will enjoin these named Respondents. Mr. Phillips is not a named Respondent, nor are his rights or actions the subject of this ongoing suit. Mr. Phillips does not have any interest which would be sacrificed were the Court to deny his intervention.

4. It is axiomatic that a plaintiff has the right to choose her defendants. While a third-party’s desire to become a named defendant may be appropriate in some circumstance where that third-party’s rights might be affected by a court decision; here, where the City seeks specific relief against specific individuals, Mr. Phillips’s motion to intervene is not appropriate.

WHEREFORE, the City of Keene respectfully requests that this Court:

- A. Deny Matthew Phillips’s Motion to Intervene; and
- B. Grant such other and further relief as is just and equitable.


Respectfully submitted,

CITY OF KEENE

By Its Attorneys,

GALLAGHER, CALLAHAN & GARTRELL, P.C.
214 N. Main St., P.O. Box 1415
Concord, NH 03302-1415
(603) 228-1181

Dated: September 13, 2013


By: 

Charles P. Bauer, Esquire (#208)
Erik G. Moskowitz, Esq. (#18961)

CERTIFICATE OF SERVICE

I hereby certify that I have this date forwarded a copy of the foregoing to Peter Eyre, *Pro Se*, Jon Meyer, Esquire, Counsel for Ian Bernard f/k/a Ian Freeman, Garret Ean, James Cleaveland, Kate Ager, and Graham Colson, and Matthew Phillips, *Pro Se*.

Dated: September 13, 2013

By: 

Erik G. Moskowitz, Esq. (#18961)