

199 F.R.D. 601
 United States District Court,
 N.D. Illinois,
 Eastern Division.

FEDERAL TRADE COMMISSION
 and Commonwealth of Virginia,
 ex rel. Mark Earley, Attorney
 General of Virginia, Plaintiffs,
 v.

MED RESORTS INTERNATIONAL, INC.,
 a Virginia corporation, et al., Defendants.

No. 00 C 4893.

|

March 12, 2001.

Federal Trade Commission and the Commonwealth of Virginia brought suit against an assemblage of companies, owned and operated by one individual, that sold or serviced vacation packages, alleging they engaged in unfair or deceptive acts or practices in violation of the Federal Trade Act. Subsequently, the parties entered into a stipulated preliminary injunction with asset freeze and appointment of permanent receiver which stayed all persons from commencing suit against the receivership unless granted leave by the court. Purchasers of vacation packages from defendants moved to intervene, or, in the alternative, relief from the stay so they could file separate actions against the receivership in state court. The District Court, [Ashman](#), United States Magistrate Judge, held that: (1) movants did not satisfy requirements for intervention as of right, and (2) lifting of stay was not warranted.

Motions denied.

West Headnotes (12)

[1] Federal Civil Procedure

 [Grounds and Factors](#)

Failure to satisfy all of the requirements for intervention as of right dictates

denial of the motion. [Fed.Rules Civ.Proc.Rule 24\(a\)\(2\)](#), 28 U.S.C.A.

[Cases that cite this headnote](#)

[2] Federal Civil Procedure

 [Proceedings for intervention](#)

The burden of satisfying the requirements for intervention as of right falls on the movant. [Fed.Rules Civ.Proc.Rule 24\(a\)\(2\)](#), 28 U.S.C.A.

[Cases that cite this headnote](#)

[3] Federal Civil Procedure

 [Proceedings for intervention](#)

Movants' failure to file a pleading to accompany their motion to intervene, as required by rule, warranted dismissal of the motion. [Fed.Rules Civ.Proc.Rule 24\(c\)](#), 28 U.S.C.A.

[4 Cases that cite this headnote](#)

[4] Federal Civil Procedure

 [Particular Intervenors](#)

Consumers who purchased vacation packages from companies sued by the Federal Trade Commission and a state for unfair and deceptive trade practices in violation of the Federal Trade Act had the requisite protectable interests in the litigation to intervene as of right, as resolution of the litigation would directly and significantly affect their property rights to thousands of dollars they paid to defendants. Federal Trade Commission Act, § 1 et seq., 15 U.S.C.A. § 41 et seq.; [Fed.Rules Civ.Proc.Rule 24\(a\)\(2\)](#), 28 U.S.C.A.

[Cases that cite this headnote](#)

[5] Federal Civil Procedure

 [Interest of applicant in general](#)

Impairment of interest exists, satisfying requirement for intervention as of right, where the proposed intervenor's

purported interest could be decreased in value by a decision in the underlying litigation. [Fed.Rules Civ.Proc.Rule 24\(a\)\(2\)](#), 28 U.S.C.A.

1 Cases that cite this headnote

[6] Federal Civil Procedure

🔑 Interest of applicant in general

Impairment of interest exists, satisfying requirement for intervention as of right, when the decision of a legal question in the litigation would, as a practical matter, foreclose the rights of the proposed intervenor in a subsequent proceeding. [Fed.Rules Civ.Proc.Rule 24\(a\)\(2\)](#), 28 U.S.C.A.

1 Cases that cite this headnote

[7] Federal Civil Procedure

🔑 Particular Intervenors

Consumers who purchased vacation packages from companies sued by the Federal Trade Commission (FTC) and a state for unfair and deceptive trade practices in violation of the Federal Trade Act did not demonstrate that disposition of the litigation would impair their ability to protect their interests, as required for intervention as of right; relief obtained by the FTC made it more likely that injured consumers would be compensated, and mere fact that a blanket stay temporarily precluded proposed intervenors from commencing separate actions in state court did not constitute impairment. Federal Trade Commission Act, § 1 et seq., 15 U.S.C.A. § 41 et seq.; [Fed.Rules Civ.Proc.Rule 24\(a\)\(2\)](#), 28 U.S.C.A.

1 Cases that cite this headnote

[8] Federal Civil Procedure

🔑 Inadequacy of representation of applicant's interest

Under rule governing intervention as of right, the movant need only show that the representation of his interest by the parties “may be” inadequate; as such, the required showing is minimal. [Fed.Rules Civ.Proc.Rule 24\(a\)\(2\)](#), 28 U.S.C.A.

1 Cases that cite this headnote

[9] Federal Civil Procedure

🔑 Inadequacy of representation of applicant's interest

Where the interests of the movant and one of the original parties are the same, i.e., where there is no conflict of interest, adequacy of representation is presumed, precluding intervention as of right. [Fed.Rules Civ.Proc.Rule 24\(a\)\(2\)](#), 28 U.S.C.A.

Cases that cite this headnote

[10] Federal Civil Procedure

🔑 Particular Intervenors

Consumers who purchased vacation packages from companies sued by the Federal Trade Commission (FTC) and a state for unfair and deceptive trade practices in violation of the Federal Trade Act did not demonstrate that their interests could not be adequately represented by the FTC and the state, despite claim that plaintiffs were only seeking outcomes favorable to consumers who had not paid their entire vacation contract price, while ignoring the interests of those who had paid the full price, as plaintiffs were insisting on the creation of a redress fund. Federal Trade Commission Act, § 1 et seq., 15 U.S.C.A. § 41 et seq.; [Fed.Rules Civ.Proc.Rule 24\(a\)\(2\)](#), 28 U.S.C.A.

Cases that cite this headnote

[11] Injunction

🔑 Grounds or cause in general

Following factors should be considered in determining whether to lift a blanket stay enjoining commencement of other actions against defendant: whether continuance of the stay would maintain the status quo or cause the moving party to suffer substantial injury; the merit of the moving party's claim; and the time at which the motion for relief was made.

[4 Cases that cite this headnote](#)

[12] Injunction

🔑 Particular cases

Blanket stay precluding anyone from commencing suit against receivership established in consumer protection suit brought against vacation travel businesses by the Federal Trade Commission and state would not be lifted to allow consumers to file their separate actions against the receivership in state court, where continuance of the stay would maintain the status quo, and there was no showing that consumers seeking to lift stay would suffer any injury other than delay in enforcing their rights in state court.

[6 Cases that cite this headnote](#)

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MEMORANDUM OPINION AND ORDER

[ASHMAN](#), United States Magistrate Judge.

James McGrenera and Patricia and Stewart Duckworth move pursuant to [Federal Rule of Civil Procedure 24\(a\)](#)¹ to intervene in the Federal Trade Commission and Commonwealth of Virginia's suit against an assemblage of companies, owned and operated by J. George Claveau, that sell or service vacation packages (collectively, these companies will be referred to as "Med Resorts").² Or, in the alternative, McGrenera and the Duckworths ask this Court to grant them relief from the receivership stay so that they can file separate actions against the receivership in state court. For the reasons that follow, McGrenera's and the Duckworths' motions to intervene and for relief from the stay are denied.³

*604 I. Background

"If you're not happy, we're not happy!" Perhaps that was one of the assurances given when McGrenera first heard from Med Resorts. On that day, McGrenera (and presumably thousands of others) received an unsolicited telephone call from Med Resorts extending an invitation to attend a sales presentation. Med Resorts hoped to provide McGrenera with the means of experiencing great vacations with a premiere vacation club. It would do this, of course, at a discounted price.

For over twenty years, Med Resorts has offered short— and long-term vacation packages to consumers. In exchange for a fee, anywhere from several hundred dollars to over ten thousand dollars depending on the vacation package, Med Resorts would promise to provide consumers with benefits such as discounted airfare, certain travel rebates, and vacations around the world. Large inventory, affiliations with other vacation companies, and contracts with airlines and cruise lines, it was said, made this possible. The business was very profitable.

McGrenera, who already had rights to a timeshare in Hawaii, apparently grew tired of the Aloha State. Tempted by the sales pitch, McGrenera took Med Resorts up on the offer and attended the sales presentation.

After receiving what McGrenera now describes as the “hard sell,” Med Resorts and McGrenera entered into a thirty-year contract. The contract entitled McGrenera to thirty one-week vacations, some complimentary Break–A–Way vacations,⁴ up to five Quick Connections vacations per year,⁵ and many other benefits, including the opportunity to take advantage of various promotional discounts and rebates. All of this for just \$5,995, and the rights to McGrenera's one-week timeshare in Hawaii.

Obviously, the sales presentation was effective. Med Resorts convinced McGrenera of its solid reputation and impeccable service. Indeed, Med Resorts even promised McGrenera that he would be assigned a personal travel consultant to assist him in planning vacations “anywhere, anytime.” Furthermore, in the event McGrenera became dissatisfied, Med Resorts agreed to provide McGrenera with one vacation week free. This was all part of Med Resorts's “Iron–Clad Guarantee.”⁶

Unfortunately, things eventually turned sour. After going through some purported gymnastics to book vacations to Nevada and Wisconsin in 1998 and a cruise in 1999, McGrenera demanded a refund. Apparently all of McGrenera's vacations were alternative choices during off-season times; his first choices either were ignored or could not be fulfilled.

Ultimately, McGrenera ended up expending his own funds to take vacations that he intended on taking through Med Resorts. In McGrenera's eyes, neither additional assurances nor free vacations could rectify the situation. He wanted a full refund.

From what we can tell, the Duckworths allege that they experienced a similar plight.⁷ We surmise that the Duckworths received a similar unsolicited telephone call and attended a similar sales presentation. Like McGrenera, the Duckworths signed a thirty-year contract entitling them to thirty one- *605 week vacations, some complimentary Break–A–Way vacations, access to Quick Connections vacations, and various other benefits. The total price for the Duckworths was \$6,495.

For reasons unknown, the Duckworths also became dissatisfied with Med Resorts and demanded a full refund. The demand was conveyed to Med Resorts in a letter, approximately three months after the contract was signed. The Duckworths based their demand on misrepresentation like McGrenera but in the form of a violation of the Illinois Real Estate Time–Share Act, 765 ILCS 100/1–36, for failing to provide certain disclosures. Because these disclosures were not made, the Duckworths argued that Med Resorts could not hold them to the contract now that a refund demand was made.

Long before McGrenera and the Duckworths began demanding refunds, or even contracted with Med Resorts, the FTC and Virginia joined forces and began planning their own advance on Med Resorts. Essentially, this occurred because of numerous complaints trickling in from consumers resembling that of McGrenera and the Duckworths: misrepresentation, fraud, etc.

The FTC and Virginia's efforts culminated in the filing of a Complaint for Permanent Injunction and Other Equitable Relief in August 2000. The gravamen of the complaint charged Med Resorts with engaging in “unfair or deceptive acts or practices” in violation of section 5(a) of the Federal Trade Act. For relief, the FTC and Virginia sought a collection of equitable remedies including

disgorgement, injunctive relief, an asset freeze, and the appointment of a receiver.

After the imposition of a Temporary Restraining Order and months of negotiations, Med Resorts and the FTC and Virginia entered into a Stipulated Preliminary Injunction with Asset Freeze and Appointment of Permanent Receiver. In addition to continuing the asset freeze and receivership, the agreement stayed all persons, even nonparties, from commencing suit against the receivership unless granted leave by this Court.⁸ In part because of the stay, the receivership has remained intact, allowing negotiations between the parties to continue toward final resolution.

In the meantime, McGrenera and the Duckworths find themselves in the following predicament: the Receiver will not give McGrenera and the Duckworths a refund because of the asset freeze, and McGrenera and the Duckworths cannot sue the Receiver for a refund because of the stay. Thus, the instant motions were filed.

II. Discussion

A. Motions to Intervene

[1] [2] Rule 24(a)(2) provides for intervention as of right where an application to intervene is timely made by a movant that has an interest relating to the subject matter of the underlying litigation, but only if that interest may be potentially impaired by disposition of the underlying action and it cannot be adequately protected by existing parties to the litigation. Fed.R.Civ.P. 24(a)(2); see *Commodity Futures Trading Comm'n v. Heritage Capital Advisory Servs., Ltd.*, 736 F.2d 384, 386 (7th Cir.1984). Failure to satisfy all of these requirements dictates denial of the motion. See *NAACP v. New York*, 413 U.S. 345, 369, 93 S.Ct. 2591, 37 L.Ed.2d 648 (1973); *Wade v. Goldschmidt*, 673 F.2d 182, 185 n. 4 (7th Cir.1982). The burden of satisfying these requirements falls on the movant. See *United States v. Texas Eastern Transmission Corp.*, 923 F.2d 410, 414 (5th Cir.1991).

*606 [3] Procedurally, the requirements for filing a motion to intervene are unambiguous. Rule 24(c)

requires the movant to serve a motion accompanied by a pleading to the parties as provided in Rule 5. Fed.R.Civ.P. 24(c). Some leniency is available under the Rule, but total dereliction of the Rule warrants dismissal of the motion. See *Shevlin v. Schewe*, 809 F.2d 447, 450 (7th Cir.1987).

Here, the Duckworths never filed a pleading, nor did they endeavor to adopt the pleading of McGrenera. For this reason, the Duckworths' motion to intervene is denied. However, to fully address the issues presented, for the remainder of this decision we overlook the Duckworths' procedural oversight and address each of the substantive objections raised to McGrenera's and the Duckworths' motions to intervene.

1. Identification of an Interest

[4] The Receiver first objects to intervention because McGrenera and the Duckworths have not identified "significant, protectable interests" in the underlying litigation. Identifying such an interest, as the parties point out, is required for intervention under Rule 24(a)(2). See *U.S. EEOC v. Ill. Dep't of Employment Sec.*, 6 F.Supp.2d 784, 787 (N.D.Ill.1998) (quoting *Donaldson v. United States*, 400 U.S. 517, 531, 91 S.Ct. 534, 27 L.Ed.2d 580 (1971)).

The Seventh Circuit describes this interest as "something more than a mere 'betting' interest but less than a property right." See *Ins. Co. of Hartford v. Schipporeit, Inc.*, 69 F.3d 1377, 1380–81 (7th Cir.1995). Because the analysis is highly fact-specific, comparison to other cases is of limited value. See *id.* at 1381.

All parties recognize that the core issue in the underlying litigation is whether Med Resorts defrauded certain consumers of millions of dollars. McGrenera and the Duckworths are potentially members of this consumer group. If the FTC and Virginia prove their case, then consumer contracts may be rescinded and money may be set aside to compensate consumers for their injuries. McGrenera and the Duckworths, who have already paid the full amount due under their contracts, would be eligible for these benefits.

Based on this relationship, it cannot be contested that McGrenera and the Duckworths have protectable interests in the subject matter of the underlying litigation. For McGrenera and the Duckworths, the resolution of the underlying litigation will directly and significantly affect their property rights to the thousands of dollars they have paid to Med Resorts. Simply put, the interests advanced here present the clearest case for intervention—McGrenera and the Duckworths have legal claims that could be made the bases of separate suits against Med Resorts in the underlying litigation. *See Solid Waste Agency of N. Cook County v. United States Army Corps of Eng'rs*, 101 F.3d 503, 506 (7th Cir.1996); *see also FTC v. Am. Legal Distribs., Inc.*, 890 F.2d 363, 365–66 (11th Cir.1989); *FTC v. Am. Telnet, Inc.*, 188 F.R.D. 688, 691 (S.D.Fla.1999). Thus, McGrenera's and the Duckworths' motions to intervene survive the first attack.

2. Impairment of Interest

[5] [6] However, the same cannot be said for the second attack. As movants, McGrenera and the Duckworths must show that the disposition of the underlying litigation would impair their ability to protect their interests. Impairment exists where the proposed intervenor's purported interest could be decreased in value by a decision in the underlying litigation. *See, e.g., NL Indus., Inc. v. Sec'y of the Interior*, 777 F.2d 433, 435–36 (9th Cir.1985). Additionally, “[i]mpairment exists when the decision of a legal question ... would, as a practical matter, foreclose the rights of the proposed intervenor in a subsequent proceeding.” *Shea v. Angulo*, 19 F.3d 343, 347 (7th Cir.1994). “The possibility of foreclosure is measured by the standards of stare decisis.” *Am. Nat'l Bank & Trust Co. of Chicago v. City of Chicago*, 865 F.2d 144, 148 (7th Cir.1989).

[7] In this case, McGrenera and the Duckworths have not demonstrated that their ability to protect their interests could be impaired by the disposition of the underlying litigation. First, McGrenera and the Duckworths do not suggest that resolution of *607 the underlying litigation could harm their interests, for example, by decreasing the value of their claims. Second, McGrenera and the

Duckworths do not suggest that legal questions decided in the underlying litigation would have a negative res judicata effect on any subsequent lawsuit brought by them.

After all, the FTC and Virginia commenced the action against Med Resorts to protect consumers like McGrenera and the Duckworths. To protect—not impair—consumers' rights, the FTC and Virginia sought injunctive relief, an asset freeze, and the appointment of a receiver. This relief, which the FTC and Virginia instantly received, increased the likelihood that injured Med Resorts consumers would be compensated for their injuries. How these and other similar actions could result in “impairing” McGrenera's and the Duckworths' interests is left to the imagination.

The mere fact that the blanket stay temporarily precludes McGrenera and the Duckworths from commencing separate actions in state court does not change this result. *But see SEC v. Flight Transp. Corp.*, 699 F.2d 943, 948 (8th Cir.1983) (allowing intervention where a creditor's interests in its collateral could be impaired by the blanket stay). The stay maintains the status quo. It has done precisely that for the last seven months. Rather than decrease the value of McGrenera's and the Duckworths' interests, the stay ensures that the value of those interests will be maintained. Additionally, the stay provides the Receiver with time to marshal the assets of Med Resorts so that consumers can obtain the maximum amount of redress possible, assuming such relief is available. In toto, the stay makes it easier for McGrenera and the Duckworths to protect their interests, rather than impair them.

Furthermore, as the parties opposing intervention point out, if the FTC and Virginia prove their case and the stay is lifted, McGrenera and the Duckworths will be able to file separate actions in state court. If McGrenera and the Duckworths provided evidence to the contrary, perhaps we would have a more difficult determination.

3. Adequate Representation

[8] McGrenera and the Duckworths have also failed to demonstrate that their interests cannot be

adequately represented by the FTC and Virginia. Under [Rule 24\(a\)\(2\)](#), the movant need only show that the representation of his interest “may be” inadequate. See *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n. 10, 92 S.Ct. 630, 30 L.Ed.2d 686 (1972). As such, the required showing is minimal. See *id.*

[9] Nonetheless, this requirement is taken seriously because intervention can impose substantial costs on the parties and judiciary. See *Solid Waste Agency of N. Cook County*, 101 F.3d at 507–08. To avoid some of these costs, certain stumbling blocks must be overcome. For instance, where the interests of the movant and one of the original parties are the same—where there is no conflict of interest—adequacy of representation is presumed. See *id.* at 508. This is particularly true in actions brought by government agencies to protect the rights of would-be intervenors. See, e.g., *Am. Telnet, Inc.*, 188 F.R.D. at 691.

[10] To rebut the presumption of adequate representation in this case, McGrenera and the Duckworths imply that the FTC and Virginia are only pressing outcomes favorable to Med Resorts consumers that have not paid their entire vacation contract price, while ignoring the interests of those who have paid their entire contract price, like McGrenera and the Duckworths. The argument not only highlights one of the most important distinctions advanced by the FTC and Virginia in the underlying litigation so far, but also McGrenera's and the Duckworths' minimal knowledge of those proceedings.

Since the commencement of the underlying litigation, the FTC and Virginia have insisted that Med Resorts compensate consumers in two ways: first, by providing injured consumers with the option of rescinding their contracts; and second, by establishing a redress fund whereby assets could eventually be allocated on a pro rata basis to injured consumers who have paid on their contracts. Both in and out of court, the FTC and Virginia *608 have zealously advanced both of these remedies, which clearly benefit both those who have paid very little of their contract price and those who have paid their entire contract price.

Oddly, McGrenera and the Duckworths never mention the redress fund in their brief (although they do mention the rescission remedy). If they did, it certainly would have been more difficult to explain how the FTC and Virginia may not adequately represent their interests.

Naturally, this would be a different case if McGrenera and the Duckworths presented some evidence of foot-dragging or collusion between the original parties. If that were the case, any presumption of adequate representation would certainly be rebutted, and inadequate representation would likely be found. See *Solid Waste Agency of N. Cook County*, 101 F.3d at 508; see also *Reich v. ABC/York-Estes Corp.*, 64 F.3d 316, 323 (7th Cir.1995). But, as discussed, the FTC and Virginia have energetically, aggressively, and so far successfully conducted the underlying litigation.

B. Motions for Relief from the Stay

[11] We next turn to McGrenera's and the Duckworths' motions for relief from the stay. There appearing to be no cases on point in the Seventh Circuit, all parties point to *SEC v. Wencke*, 622 F.2d 1363 (9th Cir.1980), to assist in resolving this issue.

In *Wencke*, a federal agency filed charges against a business for engaging in fraud and misrepresentation. After conducting a hearing, the district court held that the agency proved a prima facie case of fraud and misrepresentation and therefore granted injunctive relief which, among other things, placed the business in receivership and enjoined all parties from commencing suit except with leave of court. See *id.* at 1366–67.

Soon thereafter, a party filed a petition for relief from the stay so that it could enforce a state court judgment. After the district court denied the petition, an appeal followed. The appeal challenged the district court's power to impose the blanket stay and, in the alternative, its decision not to grant relief from the stay.

[12] First, the Ninth Circuit held that the power to impose a blanket stay is a corollary of the inherent power of a court of equity to impose a receivership

and grant other forms of ancillary relief. *See id.* at 1369–70. Then, the court agreed with the district court that the stay was necessary under the circumstances. *See id.* at 1372–73. Finally, the court determined that the district court did not abuse its discretion by denying the party's petition for relief from the stay. In making this determination, the court considered the following factors: whether continuance of the stay would maintain the status quo or cause the moving party to suffer substantial injury, the merit of the moving party's claim, and the time at which the motion for relief was made. *See id.* at 1373–74; *see also SEC v. Universal Fin.*, 760 F.2d 1034, 1037–38 (9th Cir.1985); *United States v. ESIC Capital, Inc.*, 685 F.Supp. 483, 485 (D.Md.1988). Applying these factors to this case, we find that McGrenera and the Duckworths have not met their burden of proving that the receivership stay should be lifted.

At the outset, the need for a blanket stay in a case like this is obvious. Just seven months ago, the FTC and Virginia produced the findings of their investigation to this Court. Allegations of fraud and misrepresentation in nearly every aspect of Med Resorts's dealings with consumers were profuse. As a result, the Receiver spent many hours exploring transactions and other facets of the business so that consumers would suffer no additional harm. Had the Receiver also been required to conduct litigation—possibly all over the country in state and federal forums—he could not have performed his mandated duties, and any injured Med Resorts consumers would be worse off than they are today.

Now, back to the *Wencke* factors. First, it is clear that continuance of the stay would maintain the status quo. Presently, Med Resorts consumers are enjoying vacations, and Med Resorts is generating positive cash flow. Generally speaking, with the exception of the sales centers, which have all been closed, Med Resorts has remained intact under *609 the receivership. At least for the near future, things should remain that way.

To the contrary, as the FTC and Virginia point out, the status quo could not be maintained if this Court permitted McGrenera and the Duckworths to bring separate actions in state court. Certainly,

others would follow. Not only would the Receiver then have to take his attention away from other tasks, but the assets of the receivership estate would quickly be diminished.

McGrenera and the Duckworths do not even address this important point, nor do they present any evidence showing that they would suffer substantial injury if they were not granted relief from the stay. Presumably the only “injury” that McGrenera and the Duckworths would suffer stems from any delay in enforcing their rights. How McGrenera and the Duckworths determined that they would be better off if this Court started granting exceptions to the stay is difficult to comprehend.

Moving on to the second factor, the *Wencke* court proposed that as the receivership progresses the merits of the moving party's claim may loom larger in the balance. 622 F.2d at 1373–74. In other words, as time passes, the Receiver's administrative and investigative tasks should be completed and distributions to claimants should begin.

But here the stay has been in place for only a short time. McGrenera and the Duckworths do not contend that the Receiver has performed all of his duties or that the Receiver is ready to begin making distributions to injured consumers, assuming distributions are made. In contrast, many tasks still must be performed. Most important, assuming distributions are made, the Receiver has not yet presented this Court with the details of how to allocate assets to injured consumers as compensation (nor could he at this time). Thus, this factor favors maintaining the stay as well.

Finally, the merits of McGrenera's and the Duckworths' claims must be considered. We acknowledge that the Stipulated Preliminary Injunction with Asset Freeze and Appointment of Permanent Receiver, while not determinative of McGrenera's and the Duckworths' claims, makes it more likely that McGrenera and the Duckworths will prevail in future litigation. The FTC and Virginia make this point. Nevertheless, the fact that one of the *Wencke* factors tips in favor of McGrenera and the Duckworths is not

determinative, especially when all of the others undoubtedly call for a continuation of the stay.

III. Conclusion

Although McGrenera and the Duckworths present sympathetic cases, we agree with the FTC, Virginia, and the Receiver that the motions for intervention and for relief from the stay must be denied. Under the circumstances, it is not even a close call.

With respect to the motions to intervene, procedurally the Duckworths' motion is inadequate because a pleading was never submitted. Substantively, McGrenera and the Duckworths have failed to prove that the disposition of the underlying litigation would impair their ability to protect their interests. In addition, McGrenera and the Duckworths have failed to prove that their interests may not be adequately represented by the

FTC and Virginia. Their motions to intervene could be dismissed on either of these substantive grounds.

The motions for relief from the stay also lack sufficient evidentiary support. McGrenera and the Duckworths have failed to present any evidence that the stay would not maintain the status quo, nor have they presented any evidence showing that they would suffer substantial injury if the stay continues. In addition, after considering the facts, we are convinced that McGrenera's and the Duckworths' requests to modify the stay at this point in the receivership are premature.

Thus, for the reasons stated, McGrenera's and the Duckworths' motions for intervention and for relief from the stay are denied.

All Citations

199 F.R.D. 601, 2001-1 Trade Cases P 73,303, 49 Fed.R.Serv.3d 971

Footnotes

- 1 Although McGrenera and the Duckworths stated in open court that their motions to intervene were pursuant to [Rule 24\(b\)](#), they withdrew those claims in their reply brief and instead stated that their motions to intervene were pursuant to [Rule 24\(a\)](#). Accordingly, we only address the applicability of [Rule 24\(a\)](#). (See Reply Movant Supp. Mot. Intervene at 2.)
- 2 These companies include Med Resorts International, Inc.; World Connections, Inc.; Mediterranean Resorts, Inc.; Destinations Unlimited of Delaware, Inc.; Bay Financial Services, Inc.; and V-Pac, Inc. Claveau and Marianne Borden-Myers, an officer of some of the aforementioned companies, have also been named defendants in the suit.
- 3 The parties to the original proceeding consented to have this Court conduct any and all proceedings, including the entry of final judgment. See [28 U.S.C. § 636\(c\)](#); Local R. 73.1(b). This provides this Court with the power to rule on the instant motions to intervene and for relief from the stay. See *id.*; see also [People Who Care v. Rockford Bd. of Educ., Sch. Dist. No. 205](#), 171 F.3d 1083, 1089 (7th Cir.1999) (holding that "the power to rule on motions to intervene is a necessary and proper incident of the magistrate judge's power to decide the underlying case").
- 4 Break-A-Way vacations "consist of hotel accommodations for 2 persons for [a] vacation period ranging from 3 to 7 nights at popular resort areas." (Mot. Intervene Ex. C at 10.)
- 5 Quick Connections vacations consist of vacation opportunities that are available only on very short notice. Generally, these vacation opportunities materialize only when there is excess inventory at certain resorts. (See Defs.' Mem. Law Opp'n to Pls.' Mot. Prelim. Inj. at 8.)
- 6 Bearing the slogan "If You're Not Happy, We're Not Happy!" the Iron-Clad Guarantee consists of the following:

If you are dissatisfied in any way with your accommodations, we'll provide you with an additional Break-A-Way of your choice, FREE!

If at the time of ticketing you find a lower fare for identical dates, in the same class of service and [Med Resorts] can book/issue tickets, you will be ticketed at the lower fare and the difference will be refunded!

(Mot. Intervene Ex. C. at 11.)

7 The Duckworths did not bother providing this Court with an account of the events leading up to the present dispute.

8 The stay reads as follows:

Except by leave of this Court, during the pendency of the receivership ordered herein, Defendants and all other persons and entities be and hereby are stayed from taking any action to establish or enforce any claim, right, or interest for, against, on behalf of, in, or in the name of, the Receivership Defendants, any of their subsidiaries, affiliates, partnerships, assets, documents, or the Receiver or the Receiver's duly authorized agents acting in their capacities as such, including, but not limited to, the following actions:
a. Commencing, prosecuting, continuing, entering, or enforcing any suit or proceeding, except that such actions may be filed to toll any applicable statute of limitations

(Stipulated Prelim. Inj. Asset Freeze Appointment Permanent Receiver at 22–23.)

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