

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT**

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IN RE:	)	CASE NO.	18-50122 (JAM)
	)		
HANDSOME, INC.,	)	CHAPTER	11
	)		
DEBTOR.	)		
_____	)		
	)		
HANDSOME, INC.,	)		
PLAINTIFF	)	ADV. PR. NO.	18-05027 (JAM)
	)		
V.	)		
	)	ECF NO.	5
JOSEPH MAREK, JOHN NASTASI,	)		
HUMBERTO RODRIGUES,	)		
DEFENDANTS.	)		
_____	)		

**ORDER GRANTING MOTION FOR PERMISSION TO INTERVENE**

**I. Background**

On February 1, 2018, Handsome, Inc. (the “Plaintiff”), filed a voluntary Chapter 11 petition (Case No. 18-50122). On May 21, 2018, the Plaintiff filed a Complaint to Avoid and Recover Transfer (the “Complaint,” ECF No. 1), against Joseph Marek, John Nastasi, and Humberto Rodrigues (collectively, the “Defendants”), instituting this adversary proceeding. On May 31, 2018, the Town of Monroe (“Monroe”), filed a Motion for Permission to Intervene (the “Motion to Intervene,” ECF No. 5). On June 20, 2018, the Plaintiff filed an Objection to Motion

for Permission to Intervene (the “Objection to Intervention,” ECF No. 10). On July 24, 2018, a hearing was held on the Motion to Intervene and the Objection to Intervention.

At issue in this case are two tax sales conducted by Monroe regarding two pieces of real property to which the Debtor claims to hold title: 125 Garder Road in Monroe, Connecticut (the “Garder Road Property”), and 490 Fan Hill Road in Monroe Connecticut (the “Fan Hill Road Property”). However, it was brought to the Court’s attention during the hearing held on July 24, 2018, that the Debtor does not hold fee simple title to the Garder Road Property, despite its clear representation to the contrary in its Complaint and in Schedule A/B of its chapter 11 case. *See generally* Compl.; Case No. 18-50122, ECF No. 20. Whatever title interest the Debtor had in the Garder Road Property was foreclosed when the law days passed after a judgment of strict foreclosure entered on June 10, 2010 in favor of MD Drilling. *See Handsome, Inc. v. Planning and Zoning Comm’n of Town of Monroe*, 317 Conn. 515, 530 (2015).<sup>1</sup> In response to the Plaintiff’s failure to pay taxes on either of these properties, Monroe conducted a tax sale of both the Garder Road Property and the Fan Hill Property on August 3, 2017.

***A. Tax Sale of the Garder Road Property***

On August 3, 2017, Monroe conducted a tax sale of the Garder Road Property in accordance with the provisions of Connecticut General Statutes § 12-157, *et seq.*, on behalf of Monroe’s tax collector for delinquent taxes and other charges. Mot. to Intervene, Ex. A, “Affidavit of Compliance with Tax Sale Procedures,” ¶ 3. In accordance with Connecticut

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<sup>1</sup> At the July 24, 2018 hearing, the Court ordered the Plaintiff to inform the Court whether or not it would amend the Complaint regarding the Garder Road Property by August 7, 2018. On August 7, 2018, the Plaintiff filed the Debtor’s Statement Re: Amendment to Pleading (ECF No. 21), acknowledging that the Plaintiff no longer owns title to the Garder Road Property. The Plaintiff stated that it would file an amended Complaint to delete the Defendant’s association with the Garder Road Property Transfer and amend its schedules to delete the Garder Road Property as an asset. On August 10, 2018, the Plaintiff filed a Notice of Dismissal Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A) as to Joseph Marek and John Nastasi.

General Statutes §§ 12-157(f), 12-158, and 12-159, in consideration of the high bidder's payment of the auction purchase price, Monroe conveyed the Garder Road Property to new owners Joseph Marek and John Nastasi. On October 31, 2017, Monroe's Municipal Counsel Mr. Adam J. Cohen confirmed that MD Drilling and Blasting, Inc. had received notice of the tax sale and did not contest it. *Id.* at ¶ 10. When the Plaintiff filed its bankruptcy petition on February 1, 2018, the tax sale redemption period was extended by sixty (60) days to April 2, 2018. Neither the Plaintiff, its principal, nor any other record encumbrancer paid the amount of taxes, interest, and charges due by the extended deadline, and a Tax Collector's Deed was subsequently recorded in the town land records. *Id.* at ¶ 12.

***B. Tax Sale of the Fan Hill Road Property***

On August 3, 2017, Monroe conducted a tax sale of the Fan Hill Road Property in accordance with the provisions of Connecticut General Statutes § 12-157, *et seq.*, on behalf of Monroe's tax collector for delinquent taxes and other charges. Mot. to Intervene, Ex. B, "Affidavit of Compliance with Tax Sale Procedures," ¶ 3. In accordance with Connecticut General Statutes §§ 12-157(f), 12-158, and 12-159, in consideration of the high bidder's payment of the auction purchase price, Monroe conveyed the Fan Hill Road Property to new owner Humberto Rodrigues. When the Plaintiff filed its bankruptcy petition on February 1, 2018, the tax sale redemption period was extended by sixty (60) days to April 2, 2018. Neither the Plaintiff, its principal, nor any other record encumbrancer paid the amount of taxes, interest, and charges due by the extended deadline, and a Tax Collector's Deed was subsequently recorded in the town land records. *Id.* at ¶ 12.

## II. Discussion

### A. *Legal Standard*

Federal Rule of Civil Procedure 24, made applicable in bankruptcy court by Federal Rule of Bankruptcy Procedure 7024, provides two bases for a party to intervene. Subsection (a), intervention as of right, provides,

[o]n timely motion, the court must permit anyone to intervene who: (1) is given an unconditional right to intervene by a federal statute; or (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Fed. R. Civ. P. 24(a). Second, under subsection (b), permissive intervention, the court may permit anyone to intervene who “(A) is given a conditional right to intervene by a federal statute; or (B) has a claim or defense that shares with the main action a common question of law or fact.”

Fed. R. Civ. P. 24(b). With respect to these issues, the United States Court of Appeals for the Second Circuit has found that “[i]ntervention is a procedural device that attempts to accommodate two competing policies: efficiently administrating legal disputes by resolving all related issues in one lawsuit, on the one hand, and keeping a single lawsuit from becoming unnecessarily complex, unwieldy or prolonged, on the other hand.” *Floyd v. City of New York*, 770 F.3d 1051, 1057 (2d Cir. 2014) (quoting *United States v. Pitney Bowes, Inc.*, 25 F.3d 66, 69 (2d Cir.1994)).

To be granted intervention as of right or by permission,

an applicant must (1) timely file an application, (2) show an interest in the action, (3) demonstrate that the interest may be impaired by the disposition of the action, and (4) show that the interest is not protected adequately by the parties to the action. We have underscored that a failure to satisfy *any one* of these four requirements is a sufficient ground to deny the application.

*Id.* (internal quotations omitted); *see also Waterkeeper All., Inc. v. Salt*, 714 F.App’x 77, 78 (2d Cir. 2018).

***B. Analysis***

In this case, Monroe meets all four criteria enumerated by the Second Circuit. First, Monroe filed the Motion to Intervene eight (8) days after the Complaint was filed, meeting the timeliness requirement. Second, Monroe has a clear interest in the action. The Complaint challenges two tax sales, where Monroe and each of the Defendants were the parties involved in the sales. If the Defendants have an interest in the proceeding by virtue of allegedly receiving fraudulent transfers from the tax sales, Monroe, as the party that conveyed the properties to the Defendants has at least a parallel interest in the outcome of this action. Third, Monroe’s interest would be impaired by the disposition of the action, because as the town that conveyed the properties through its statutory tax sale procedures to the Defendants, Monroe is bound to defend the sale. *See Conn. Gen. Stat. § 12-158.*

Finally, Monroe’s interest, while similar to the Defendants’ interest, would not be adequately protected by the Defendants. Monroe, as the tax collector for the Garder Road and Fan Hill Properties, is bound “to warrant and defend” the “premises to the said grantee, his heirs and assigns, against all claims and demands arising from any necessary act omitted or unlawful act done by [Monroe’s representative] in connection with the aforesaid levy or sale which impairs the same.” *Conn. Gen. Stat. Ann. § 12-158(a).* If the Plaintiff prevails in this adversary proceeding, and the tax sales are avoided, it will have been based on a conclusion that a “necessary act [was] omitted,” by Monroe or an “unlawful act [was] done” by Monroe, and

would provide the Defendants with a cause to hold Monroe liable for damages.<sup>2</sup> Monroe meets the criteria to intervene as of right under Federal Rule of Civil Procedure 24(a).

### **III. Conclusion**

After careful consideration of the Motion to Intervene and the Objection to Intervention, the arguments presented at the hearing held on July 24, 2018, and the facts of this case, it is hereby

**ORDERED:** The Motion to Intervene is **GRANTED** pursuant to Fed. R. Civ. P. 24(a) and Fed. R. Bankr. P. 7024.

Dated at Bridgeport, Connecticut this 30th day of August, 2018.

*Julie A. Manning*  
Chief United States Bankruptcy Judge  
District of Connecticut



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<sup>2</sup> At the July 24, 2018 hearing, the Defendants' counsel represented that should the Plaintiff prevail and the tax sales are avoided, the Defendants would indeed seek to hold Monroe liable.