# IN THE SUPREME COURT OF GUAM

**HEE K. CHO AND TUMON PARTNERS, LLC**
Proposed Intervenor-Appellants in

**KEVIN SHIN,**
Plaintiff-Appellee,

**v.**

**FUJITA KANKO GUAM, INC.,**
Defendant-Appellee
Superior Court Case No. CV1240-05

**SECURITY TITLE, INC.,**
Plaintiff-Appellee

**v.**

**FUJITA KANKO GUAM, INC. AND KEVIN SHIN,**
Defendant-Appellees
Superior Court Case No. CV0001-06

Supreme Court Case No.: CVA08-002

## OPINION

**Cite as: 2009 Guam 21**

Appeal from the Superior Court of Guam
Argued and submitted on March 17, 2009
Hagåtña, Guam

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BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; and RICHARD H. BENSON, Justice *Pro Tempore.*

**TORRES, C.J.**

**[1]** Appellants and Applicants in Intervention Hee K. Cho and Tumon Partners, LLC ("Cho/TPLLC") appeal from the denial of their motion to intervene in a lawsuit filed by Kevin Shin against Fujita Kanko Guam, Inc. ("Fujita"). In the underlying action, Shin sought specific performance or damages for anticipatory breach and repudiation of an agreement for the purchase and sale of certain real property located in Tumon, Guam. Because we find Cho/TPLLC failed to meet their burden of demonstrating a significantly protectable interest to support their claimed right to intervene, we find no error in the Superior Court's denial of intervention of right or permissive intervention. The judgment below is **AFFIRMED**.

## I. FACTUAL AND PROCEDURAL BACKGROUND

**[2]** Defendant-Appellee Fujita entered into an agreement ("the Agreement") on October 12, 2005 for the sale of twenty parcels of land to Plaintiff-Appellee Kevin Shin. The land in question is located at the site of the former Fujita Hotel in Tumon, Guam (the "Property"). Proposed Intervenor-Appellants' Excerpts of Record ("ER") at 1-2 (Verified Compl. for Anticipatory Breach and Repudiation, Specific Performance, and Breach of Contract and Damages, Dec. 12, 2005). Shin agreed to purchase the Property for $8,250,000.00, with a $300,000.00 deposit to be credited to the purchase price at closing. ER at 14-36 (Verified Compl., Ex. B, "Agreement for Sale of Real Property," Dec. 12, 2005 ) ("Agreement").

**[3]** The Agreement required the closing to occur no later than 60 days from signing, at 10 a.m. (Guam time). ER at 19 (Agreement). A provision stated the Agreement was not assignable

by Shin without Fujita's consent. ER at 24 (Agreement).[1] Another clause stated the Agreement may not be amended except by a writing signed by both parties. ER at 25 (Agreement). In the event of a material default by either party, the non-defaulting party's "sole and exclusive remedy" was to cancel the Agreement by written notice to the other party and to Escrow, whereupon the Deposit and accrued interest would be immediately disbursed to the non-defaulting party. ER at 21 (Agreement).[2] Time was of the essence. ER at 24 (Agreement).

**[4]** Appellant and applicant for intervention Hee K. Cho ("Cho") alleges that in November of 2005, he entered into a separate, oral agreement with Shin, by which he agreed to provide funding to enable Shin to close the purchase of the Property if Shin's investors were unable to provide the necessary funds on time ("November Agreement"). ER at 53 (Decl. Hee K. Cho, May 29, 2007). In exchange, Cho "would have rights to part of the property, and Mr. Shin would have rights to part of the property." *Id.*

**[5]** The parties dispute what happened next. Shin's complaint alleges that Shin and Fujita orally modified the Agreement, mutually agreeing to extend the closing date an additional 90 days (the "Extended Closing Date"). ER at 2 (Verified Compl.). Shin alleges that as the closing date drew near, he demanded Fujita's compliance with the 90-day extension and Fujita had stated it did not intend to comply. *Id.* Fujita denies ever agreeing to an extension. *See* Defendant-Appellee's Supplemental Excerpts of Record ("Defendant-Appellee's SER") at 3

[1] The provision stated that, except for certain exceptions inapplicable to this case, "[t]his Agreement or any rights or interests hereunder shall not be assigned by either party, without the other party's prior written consent, which consent shall not be unreasonably withheld or delayed. . . . ." ER at 24 (Agreement, #20(h)).

[2] This provision stated that "Purchaser and Seller acknowledge and agree that their damages in the event of a material default under this Agreement would be extremely difficult to calculate, and that the foregoing exclusive remedy represents a reasonable estimation under the circumstances of this transaction of the appropriate compensation to either party in the event of a material default." ER at 21 (Agreement).

(Aff. Tamio S. Clark, June 20, 2007); Defendant-Appellee's SER at 5 (Decl. Tamio S. Clark, Sept. 13, 2006). However, it is undisputed that when the closing date written in the Agreement drew near, Cho did not fund the purchase price. Cho claims he did not provide the funding on or prior to December 12, 2005 because Fujita never issued a demand. *Id.* His declaration alleges that if Fujita had issued a written demand to Shin for performance for nonpayment, Cho was prepared to advance sufficient funds to Mr. Shin to close the transaction. ER at 54 (Decl. Cho).

**[6]** On the closing date specified by the Agreement, at 1:14 p.m., Shin filed the complaint for anticipatory breach and repudiation and *lis pendens* with the Superior Court. ER at 1 (Verified Compl.). Fujita alleges that Shin filed the complaint prior to its receipt of written notice of material default. Defendant Appellee's SER at 5-9 (Decl. Clark).

**[7]** In January 2006, with Shin's litigation against Fujita pending, Shin and Cho entered into a memorandum of agreement ("January Agreement"). The January Agreement purportedly granted Cho the right to market portions of the Property to others and identified certain parcels to which Shin would remain entitled upon closing of the Agreement. ER at 54-55 (Decl. Cho). Cho also contends that, in this January Agreement, Shin indicated that Fujita had agreed to the 90-day extension. ER at 54 (Decl. Cho). The January Agreement has not been presented as part of the record on appeal, nor can we find evidence that it was submitted as part of the trial court's record.

**[8]** In May 2006, Shin, Cho and TPLLC entered into another memorandum of agreement in which Shin agreed that Cho/TPLLC would take over control of the litigation against Fujita. ER at 47-48 (Mem. of Agreement, May 25, 2006) ("Litigation Agreement"). According to the Litigation Agreement, Shin "desire[d] that others agree to assume the cost and expense of the

Litigation and any resulting exposure from any adverse result arising out of the Litigation." ER at 47 (Litigation Agreement). The parties anticipated an amended complaint would need to be filed in the Fujita litigation—Fujita had sold some of the Property and the subsequent buyers needed to be named as defendants, and the causes of action and requests for relief expanded upon, requiring extensive discovery. ER at 48 (Litigation Agreement). Cho/TPLLC agreed to indemnify Shin against liability to Fujita. ER at 48 (Litigation Agreement).

**[9]** TPLLC assumed responsibility for all costs and attorney's fees incurred in the Litigation, effective as of May 1, 2006. ER at 48 (Litigation Agreement). In return, Cho/TPLLC would have joint responsibility for "[a]ll significant and material decisions regarding the Litigation, including settlement." ER at 48 (Litigation Agreement). Shin remained the sole named plaintiff and Cho and TPLLC would only be named as plaintiffs if it became necessary. *Id.* A confidentiality clause stated that the Litigation Agreement "shall not be disclosed to any third party prior to closing other than attorneys, affiliates, or as required by law or court order." ER at 49 (Litigation Agreement). Richard Pipes was assigned as counsel for Shin, Cho, and TPLLC, and the parties waived any conflict of interest that might arise from such joint representation. ER at 50 (Litigation Agreement).

**[10]** Recitals in the Litigation Agreement recognized that Cho had acquired "certain rights of Shin under the Fujita Agreement" and that Shin had retained the right to purchase a portion of the Property for $1,000,000.00 pursuant to a January Agreement. *Id.* Furthermore, the recitals acknowledged that TPLLC had agreed to purchase a certain portion of the Property from Cho pursuant to a separate agreement between TPLLC and Cho dated March 11, 2006. *Id.* However, the March agreement itself was not presented to the trial court or to this court on appeal.

**[11]** Pursuant to the Litigation Agreement, Shin substituted Pipes (and co-counsel Debra Dietsch-Perez) as counsel and sought leave to file a First Amended Complaint to add additional parties and cure certain defects in the original complaint. ER at 86 (Docket Sheet, Feb. 22, 2008). Ultimately, the Superior Court granted Shin's motion to amend the complaint to join the additional parties, but refused to allow amendments regarding Fujita's alleged failure to provide notice of default and Cho's assertions regarding his readiness to close on December 12th, finding that those allegations lacked credibility. Plaintiff-Appellee's SER at 127 (Transcript Mot. to Intervene, Dec. 12, 2007)). This court denied interlocutory review of that partial denial in *Shin v. Fujita Kanko Guam, Inc.*, 2007 Guam 18.

**[12]** Less than one week after the Superior Court partially denied leave to file the amended complaint, Shin terminated Attorneys Pipes and Dietsch-Perez, and hired Attorney Louis Yanza to represent him. ER at 58-60 (Decl. Richard A. Pipes in Supp. Mot. to Intervene, Feb. 13, 2007); ER at 86 (Docket Sheet, Entry of Appearance by Maher, Yanza, Flynn and Timblin, Feb. 8, 2007). The following day, Cho/TPLLC filed a motion to intervene. ER at 38-51 (Mot. to Intervene, Feb. 9, 2007). The Superior Court subsequently denied both intervention of right pursuant to Guam Rules of Civil Procedure ("GRCP") 24(a) and permissive intervention pursuant to GRCP 24(b). ER at 61 (Dec. & Order, Feb. 19, 2008). TPLLC and Cho timely appealed. ER at 75 (Not. of Appeal, Feb. 21, 2008).

**[13]** Subsequent to the filing of this appeal, the Superior Court granted Fujita a motion for partial summary judgment, which Shin did not oppose. Plaintiff-Appellee's SER at 172, 175 (Dec. & Order, June 18, 2008). The court found that, even when evidence and inferences were viewed in the light most favorable to Shin, no 90-day extension was ever granted by Fujita.

Plaintiff-Appellee's SER at 175 (Dec. & Order). In Shin's declaration filed in support of the summary judgment proceedings, he alleged "[b]ecause Cho could not arrange the purchase funds by the deadline approaching, Cho instructed me to file the lawsuit to claim that Fujita agreed to a 90-day extension." SER at 175 (Dec. & Order), citing SER at 40 (Decl. Kevin Shin in Support of Opp'n to Mot. to Intervene, May 22, 2007). The Superior Court quoted this statement as indication that no extension was ever granted to Fujita. Plaintiff-Appellee's SER at 175 (Dec. & Order).

**[14]** Cho and TPLLC sought a stay of the summary judgment proceedings, which the trial court denied. Plaintiff-Appellee's SER at 171 (Dec. & Order). On appeal, we granted the stay, effective as of the date of partial summary judgment. Order at 2-3 (Dec. 3, 2008). In doing so, we noted that the question of whether the Litigation Agreement "is valid and enforceable and constitutes an agreement to purchase real property has not been determined by the lower court and is not before this court." *Id.* at 7. We stated simply that a stay was appropriate at that juncture because, *if* the lower court deemed the Litigation Agreement to be an agreement to transfer real property, there would be a presumption that breach of the Litigation Agreement would lead to irreparable harm.

**[15]** Cho and TPLLC have also pursued other avenues of relief, initiating three other related lawsuits in Superior Court. Defendant-Appellee's Br. at 11 (Feb. 11, 2009). Plaintiff-Appellee Shin has filed a request that this court take judicial notice of these related cases. Request for Judicial Notice, Feb. 10, 2009.

## II. JURISDICTION

**[16]** We have jurisdiction to hear appeals of a final order of the Superior Court. 48 U.S.C. §1424-1(a)(2) (2004); 7 GCA § 3107(b) (2005). Guam's rules regarding intervention are modeled after the federal rule. *Compare* GRCP 24 *with* 28 USCA, FRCP Rule 24 (Fed. R. Civ. Proc., Rule 24). This court follows the majority of federal circuits in treating the denial of a motion to intervene of right as a final appealable order. *Limtiaco v. Camacho (Guam Music, Inc.)*, 2009 Guam 7 ¶ 7 (cited herein as "*Guam Music*").

## III. STANDARD OF REVIEW

**[17]** Guam Rule of Civil Procedure 24(a) governs intervention as a matter of right. Rule 24(a)(2) requires the court to allow a party to intervene who meets four criteria. GRCP 24(a)(2); *Guam Music*, 2009 Guam 7 ¶ 10. The Superior Court's determination of the first factor, timeliness, will not be reversed except upon a showing of abuse of discretion. *Guam Music*, 2009 Guam 7 ¶ 11 (citing *NAACP v. New York*, 413 U.S. 345, 365-66 (1973)). Issues other than timeliness primarily involve consideration of legal concepts in the mix of fact and law. *See United States v. McConney*, 728 F.2d 1195, 1202 (9th Cir. 1984) (en banc). We review *de novo* issues other than timeliness. *Guam Music*, 2009 Guam 7 ¶ 26. In contrast, a decision to grant or deny permissive intervention is wholly discretionary with the Superior Court, ". . . even though there is a common question of law or fact, or the requirements of Rule 24(b) are otherwise satisfied." *Guam Music*, 2009 Guam 7 ¶ 9 (citing *New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452, 470-71 (5th Cir. 1984)).

## IV. DISCUSSION

**[18]** Because it is at once apparent, from the initial words of both GRCP 24(a) and (b), that the application for intervention must be timely, we will begin by considering the timeliness of Cho/TPLLC's motion.[3]

### A. Timeliness:

**[19]** The Superior Court held that Cho/TPLLC's motion was untimely. ER at 69 (Dec. & Order, Feb. 19, 2008). The court found that Cho and TPLLC were cognizant of their interest in the litigation "at least since May 25, 2006," when, pursuant to the Litigation Agreement, they sought to obtain control of the litigation. ER at 68 (Dec. & Order, Feb. 19, 2008). However, they waited approximately nine months before filing their motion to intervene. *Id.* The court found such delay was "unjustified" and had "clearly prejudiced the original parties. . . ." *Id.*

**[20]** Cho and TPLLC assert that the trial court applied the wrong legal standard in finding their motion untimely. Appellants' Br. at 8 (Jan. 12, 2009). They contend the court disregarded the fact that Rule 24(a) by its terms states that an applicant shall be permitted to intervene "unless the applicant's interest is adequately represented by existing parties." GRCP Rule 24(a).

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[3] Intervention of right is governed by Guam Rule of Civil Procedure 24, which provides in part as follows:

> 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.

Guam R. Civ. P. 24 (a)(2) (emphasis added).

> Permissive intervention is governed by GRCP 24(b)(2), which provides in relevant part:
>
> Upon *timely* application, anyone may be permitted to intervene in an action: (2) when an applicant's claim or defense 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.

Guam R. Civ. P. 24(b)(2) (emphasis added).

They contend that they were adequately represented by Shin's counsel and therefore legally prevented from moving for intervention of right until February 8, 2007, when Shin fired Pipes as counsel. Appellants' Br. at 9.

**[21]** "Timeliness is to be determined from all the circumstances. And it is to be determined by the court in the exercise of its sound discretion; unless that discretion is abused, the court's ruling will not be disturbed on review." *NAACP v. New York*, 413 U.S. at 366. An abuse of discretion occurs where the court does not apply the proper legal standard or its findings of fact are clearly erroneous. *San Miguel v. Dep't of Pub. Works*, 2008 Guam 3 ¶ 18; *see also Smith v. Marsh,* 194 F.3d 1045, 1049 (9th Cir. 1999) and *In re Mego Fin. Corp. Sec. Litig.,* 213 F.3d 454, 458 (9th Cir. 2000). In considering the totality of the circumstances, three factors that must be considered in determining whether a motion to intervene is timely are: (1) the reason for and length of the delay; (2) the prejudice to the other parties if the motion is granted; and (3) the stage of the proceedings at the time the applicant seeks to intervene. *Guam Music*, 2009 Guam 7 ¶ 12; *see, e.g., Cal. Dep't of Toxic Substances Control v. Commercial Realty Projects, Inc.*, 309 F.3d 1113, 1119 (9th Cir. 2002).

**[22]** Relevant circumstances for determining timeliness include consideration of when the intervenor became aware that its interest would no longer be protected adequately by the parties. *Legal Aid Soc'y of Alameda County v. Dunlop*, 618 F.2d 48, 50 (9th Cir. 1980). Courts should discourage premature intervention that wastes judicial resources. *Sierra Club v. Espy*, 18 F.3d 1202, 1206 (5th Cir. 1994). An applicant should not be expected to petition for intervention in instances in which it has no reason to believe its interests are not being properly represented. *See In re: Discovery Zone Sec. Litig.*, 181 F.R.D. 582, 595 (N.D. Ill. 1998). A presumption of

adequate representation arises when the would-be intervenor has the same ultimate objective as a party to the lawsuit. *See, e.g., Edwards v. City of Houston*, 78 F.3d 983, 1005 (5th Cir. 1996) (en banc). Due to this presumption, a prospective intervenor must produce evidence of the inadequacy of representation, overcoming the presumption by showing divergent interests between existing parties and the movant. *See, e.g., Haspel & Davis Milling & Planting Co. v. Board of Levee Comm'rs*, 493 F.3d 570, 578-79 (5th Cir. 2007). A motion filed within a reasonable amount of time after discovering that a party's counsel is no longer litigating or negotiating on the applicant's behalf is timely. *See Discovery Zone*, 181 F.R.D. at 594.

**[23]** Pursuant to the Litigation Agreement, Shin had agreed to cede control of the litigation to Cho/TPLLC. ER at 47-48 (Litigation Agreement). Cho/TPLLC contend that the Superior Court should have given more weight to the fact that, pursuant to the Litigation Agreement, their interests in the Fujita litigation were adequately represented until the moment Shin terminated Pipes as counsel. We agree. Cho/TPLLC would not have been able to overcome the presumption of adequate representation until they could present evidence that their interest had diverged from the interest of the existing party, Shin. This divergence was presumably only demonstrable from the moment Shin's substitute counsel informed Pipes that Shin would not appeal an adverse ruling and filed a statement of non-opposition to a summary judgment motion by Fujita to extinguish his claims. Cho/TPPLC's motion to intervene, filed the day after Shin terminated Pipes as counsel, was timely.

**[24]** Even if the issue of Shin's adequate representation of Cho/TPLLC's interest need not have controlled the trial court's analysis, other factors do not support the trial court's finding that the application was untimely. The trial court did not give any weight in its analysis to the fact

that the litigation was at an early stage: no scheduling order was entered, a trial date had not been set, and only limited discovery had taken place. Appellant's Br. at 11. Finally, the trial court based its determination that prejudice had resulted from the delay on the fact that ". . . Shin has been unable to proceed in this case as he deems appropriate and because the delay has caused the Court to address numerous issues raised by the Proposed Intervenors, all while the *lis pendens* remains a cloud on the subject property." ER at 68-69 (Dec. & Order, Feb. 19, 2008). However, in light of the fact that Shin had already filed the *lis pendens* on the property under dispute prior to Cho/TPLLC's involvement, it is unclear how Cho/TPLLC's delay in seeking to intervene prejudiced Fujita. Nor is it clear that the court's finding of prejudice to Shin was merited, where the nine months "delay," during which time Cho/TPLLC controlled the litigation was pursuant to an agreement by which Shin had voluntarily ceded his right to proceed in the case as he deemed appropriate in exchange for Cho/TPLLC's funding of the litigation.

**[25]** Because the Superior Court abused its discretion in finding the motion to intervene untimely, we must next consider whether Cho/TPLLC possessed a sufficient interest relating to the subject matter of the litigation to support a right of intervention.

**B. Intervention of right pursuant to GRCP Rule 24(a)**

**[26]** To merit intervention as of right, an applicant must demonstrate that it has a "significant protectable interest" in the litigation. *Guam Music*, 2009 Guam 7 at ¶ 27 (citing *Donnelly v. Glickman*, 159 F.3d 405 at 409 (9th Cir. 1998)). The applicant must establish: (1) "the interest [asserted] is protectable under some law," and (2) there is a "relationship between the legally protected interest and the claims at issue." *Guam Music*, 2009 Guam 7 at ¶ 27 (citing *Sierra Club v. EPA*, 995 F.2d 1478, 1484 (9th Cir. 1993)). A significant protectable interest under Guam law

is to be distinguished from one that is merely economic or remote. *Guam Music*, 2009 Guam 7 at ¶¶ 28-31.

**[27]** Cho/TPLLC argued to the Superior Court that their protectable interest derives from the fact that they "have a contract with Shin that gives them the right to purchase the Property from Shin after he purchases it from Fujita." Plaintiff-Appellee's SER at 23 (Reply to Plaintiff Kevin Shin's Opposition to Cho and Tumon Partners, LLC's Mot. to Intervene, Feb. 9, 2007). The Superior Court found that this interest is contingent on Shin's purchase of the Property. ER at 69 (Dec. & Order, Feb. 19, 2008).[4] The court described the Litigation Agreement as "a gamble that in exchange for funding the litigation, Proposed Intervenors would be able to purchase a part of the property, *if* Shin prevailed and *after* he purchased the property from Fujita" and held that such ". . . contingent, remote, and attenuated interests are insufficient to grant intervention." ER at 69 (Dec. & Order, Feb. 19, 2008) (emphasis added). On appeal, Cho and TPLLC argue that to find their interest to be contingent presupposes the merits of the case and fails to take as true the well-pleaded allegations in the intervention motion. Appellants' Br. at 17-18.

**[28]** In applying Rule 24, we agree with jurisdictions that have determined an application for intervention cannot be resolved by reference to the ultimate merits of the claim the intervenor seeks to assert. *E.g., Oneida Indian Nation v. New York*, 732 F.2d 261, 265 (2d Cir. 1984); *Turn Key Gaming, Inc. v. Oglala Sioux Tribe*, 164 F.3d 1080, 1081 (8th Cir. 1998). Rule 24 is to be construed liberally, and doubts resolved in favor of the proposed intervenor. *Oneida*, 732 F.2d at 265; *see also United States v. Union Electric Co.*, 64 F.3d 1152, 1158 (8th Cir. 1995). The fact

[4] The Court took particular notice of the fact that Cho and TPLLC had explicitly disavowed any status as assignees of Shin's interest in the sale agreement with Fujita under the Litigation Agreement. ER at 67 (Dec. & Order, Feb. 19, 2008).

that an applicant's claim ultimately fails does not affect his status at the time when he first appeared in the suit. *American Nat'l Bank & Trust Co. of Chicago v. Bailey*, 750 F.2d 577, 585 (7th Cir. 1984). "In evaluating the motion to intervene, the district court must accept as true the non-conclusory allegations of the motion and cross-complaint." *Lake Investors Dev. Group v. Egidi Dev. Group*, 715 F.2d 1256, 1258 (7th Cir.1983); *accord United States v. AT&T*, 642 F.2d 1285, 1291 (D.C. Cir. 1980)*; see also Southwest Center for Biological Diversity v. Berg*, 268 F.3d 810, 820 (9th Cir. 2001).

**[29]** Therefore, for purposes of evaluating the motion to intervene, we accept as valid Cho/TPLLC's alleged right to purchase the property from Shin *after* he purchases it from Fujita. However, there is no allegation that Shin has already purchased the property or is currently the rightful owner to the property sufficient to demonstrate that Cho/TPLLC's right to purchase it has been triggered. The applicant in intervention bears the burden of establishing its right to intervene. *Olden v. Hagerstown Cash Register, Inc.*, 619 F.2d 271, 273 (3d Cir. 1980) (citing *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10, (1972), and *Pennsylvania v. Rizzo*, 530 F.2d 501, 505 (3d Cir.), cert. denied, 426 U.S. 921 (1976)). We recently considered a Rule 24 motion for intervention of right in *Limtiaco v. Camacho (Guam Music, Inc.)*, 2009 Guam 7. We found that Guam Music, Inc., as the present owner of gaming machines, had a significantly protectable interest in maintaining the gaming licenses it had already received that permitted it to operate these machines. *Guam Music*, 2009 Guam 7 ¶ 31. We contrasted this with the facts of a Ninth Circuit patent infringement case brought by optics manufacturer Nikon in which another optics manufacturer, Zeiss, was denied intervention of right. *Id., citing Nikon Corp. v. ASM Lithography B. K.*, 222 F.R.D. 647, 648 (D. Cal. 2004). The defendant company made

photolithography equipment using optics supplied by Zeiss and, as Zeiss's only customer, the two were likely to "stand and fall together". *Id.* Even so, Zeiss's interests in intervention were merely "economic" and therefore not sufficiently protectable for purposes of intervention as of right. *Id.* at 650-51. Similarly, Cho/TPLLC's interest will "stand and fall together" with Shin's, but is more remote and contingent than Guam Music, Inc.'s interest as present owners of gaming machines.

**[30]** Cho/TPLLC claim that the standard for intervention does not require them to be actual owners of the subject property in order to have a right to intervene, because ". . . courts grant intervention into cases involving real property when the interest in property is not necessarily by virtue of outright ownership." Appellants' Br. at 19. However, careful examination of the cases on which they rely does not persuade us that courts routinely grant intervention where the claimed interest in real property is contingent on someone else purchasing the property first. Several cases support the rule that an individual or entity claiming title to property has an interest in litigating when such an interest is threatened. *See, e.g., In re Oceana Int'l., Inc.*, 49 F.R.D. 329, 332 (S.D.N.Y., 1970) (A company that had *already* purchased moulds and dies from the bank at a public auction foreclosure sale and was using this property in its production processes had an interest "bottomed on its possessory right" sufficient to intervene in action by creditor to void sales of property allegedly previously encumbered as collateral); *Atlantis Dev. Corp. v. U.S.*, 379 F.2d 818 (5th Cir., 1967) (Intervention granted to corporation that had had already formally informed the federal government of its claim of present ownership by discovery and occupation of coral reefs in suit by federal government, claiming title as sovereign, to enjoin certain Florida developers from constructing structures on coral reefs); *Treasure Salvors, Inc. v.*

*Unidentified Wrecked and Abandoned Sailing Vessel*, 459 F. Supp. 507, 513 (S.D. Fla. 1978) *aff'd in part and rev'd in part on other grounds* 458 U.S. 670 (1982) (Florida state agency had a right to intervene in an *in rem* action brought by treasure-salvage company to confirm its title to a sunken and abandoned vessel); and *Arakai v. Cayetano*, 324 F.3d 1078, 1084 (9th Cir. 2003) (In taxpayer challenge to the constitutionality of race-based privileges granting native Hawaiians the exclusive right to apply to lease certain trust lands, a Native Hawaiian who was not a current lessee of such lands but was eligible to apply for such a lease had a "protectable interest in the *continued* receipt of benefits" sufficient to support a right of intervention. (emphasis added)); *Fed. Deposit Ins. Corp. v. Engle*, 524 F.2d 1339 (9th Cir. 1975) (Applicants who had already acquired contested property in a sheriff's auction had right to intervene in a creditor's action seeking to set aside as fraudulent a transfer of the property earlier in the chain of title.). However, in contrast to *Engle*, Cho and TPLLC have not asserted that they have already paid for and acquired the property, but rather merely that they have a right to purchase the property from Shin if he acquires it.

**[31]** Cho and TPLLC generally contend that interests in property and contract rights are "traditionally protectable interests suitable for intervention." Appellants' Br. at 15 (citing *Southwest Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 820 (9th Cir. 2001)). However, this court will require that such interests still be sufficiently direct and cannot be contingent or speculative. *See, e.g., Greene v. United States*, 996 F.2d 973, 976 (9th Cir. 1993).[5] A

[5] Thus, a claimed right to intervene based on a contingent, unsecured claim against a third-party debtor has been found to fall "far short" of the "direct, non-contingent, substantial and legally protectable" interest required for intervention as a matter of right. *Southern Cal. Edison Co. v. Lynch*, 307 F.3d 794, 803 (9th Cir. 2002) (In action by plaintiff utility against defendant board of commissioners, proposed intervenors had no right of intervention based on $260 million debt of plaintiff arising out of wholesale electricity transactions which, allegedly due to the defendant's actions, plaintiff was unable to repay. )

"contingent" interest is one that is possible but not certain, one that is dependent on or conditional on another occurrence. *See* Black's Law Dictionary, "contingent." When we look to the fact patterns of the cases marshaled by Cho/TPLLC to support their position, we do not find that courts have permitted an applicant with a property interest like Cho and TPLLC's to intervene of right. In all the cases on which Cho/TPLLC seek to rely, the would-be intervenors had a present, vested claim in the property, by possession, discovery, or statutory entitlement—not an exclusive option to purchase contingent on the outcome of the litigation.

**[32]** In reviewing *de novo* Cho/TPLLC's application, we arrive at the same conclusion as the Superior Court. The Superior Court determined that "Proposed Intervenors were [. . .] aware that their purported interest could be completely extinguished should an adverse judgment be rendered against Shin." ER at 68 (Dec. & Order, Feb. 19, 2008). We agree. At best, the Litigation Agreement gave the Proposed Intervenors the right to purchase part of the property from Shin, *if and when* he successfully acquired the property. The declaration of Hee K. Cho itself states that "MOA II gave TPLLC and I the right to purchase portions of the property from Mr. Shin *after* he bought it from Fujita." ER at 55 (Decl. Cho) (emphasis added). This language supports the finding by the court below, that Cho/TPLLC's interest was *contingent* on and arising after Mr. Shin's purchase of the property from Fujita. Because Cho/TPLLC's interest is conditioned on and only arises upon another occurrence—Shin's actual purchase of the property—their claim to a significantly protectable interest that is direct and non-contingent is without merit.

**[33]** Cho/TPLLC based their right to intervene solely on their right to control the litigation pursuant to the Litigation Agreement. Although they repeatedly have referred to the *purpose* of

their agreements with Shin—to obtain the subject property—and the reason they seek to intervene—to enforce specific performance of the sale of the property by Fujita to Shin—an applicant's assertion of reasons that intervention would be helpful to it is not necessarily equivalent to a demonstration of a legally protectable interest. Having failed to demonstrate that they possessed a significant, protectable interest as opposed to a speculative, contingent interest related to the Fujita Agreement, Cho and TPLLC have failed in their burden of showing that *all* the requirements for intervention had been met. *See United States v. Alisal Water Corp.*, 370 F. 3d 915, 919 (9th Cir. 2004). The Superior Court did not err in denying intervention of right to Cho/TPLLC.

**C. Cho/TPLLC's status as assignees of Shin's rights under the Fujita-Shin contract**

**[34]** In the trial court proceedings, Cho and TPLLC did not argue that they were asserting rights as assignees of Shin's contract rights and duties under the Fujita Agreement and as assignees of Shin's cause of action against Fujita for breach of the Agreement. In fact, they expressly and repeatedly disavowed status as assignees. In the Motion hearing, counsel stated:

> [I]n any event, Shin did not assign his rights in the property to Cho and Tumon Partners. Instead, he agreed to sell them portions of the property after he received it and in exchange for payment of litigation costs and full indemnification. *There is no assignment in the case. The word assignment has no place here and it's not an assignment*[.]

Plaintiff-Appellee's SER at 138 (Tr. of Hearing on Mot. to Intervene, Dec. 12, 2007) (emphasis added); *see also* Plaintiff-Appellee's SER at 23 (Reply to Shin's Opp'n, May 29, 2007).[6] They

[6] Cho and TPLLC now contend as their "current position that the November 2005 Cho-Shin agreement is an assignment of contract." Appellants' Br. at 19. However, that was not an allegation before the trial court when it made its decision. The only reference to the November agreement we can discern in their intervention motion before the trial court is where Cho/TPLLC alleged that "Shin, prior to the originally scheduled closing date of December 12, 2005, entered into an agreement with Cho pursuant to which Cho acquired rights in the Contract for

characterized the Litigation Agreement as one in which TPLLC and Cho agreed to assume the costs of litigation and indemnify Shin, and "[i]n return, Shin agreed to sell them part of the Property after he purchased it, and agreed to cede all control of the litigation to Cho and TPLLC." Plaintiff-Appellee's SER at 18-19 (Reply to Shin's Opp'n).

**[35]** On appeal, Cho/TPLLC change their tune, contending that the November Agreement constituted an assignment by Shin of his rights under the Agreement with Fujita, and the Litigation Agreement constituted an assignment of Shin's chose in action. Appellants' Br. at 27, 29, 47-49. A party ordinarily cannot raise for the first time on appeal a novel theory. *See Taitano v. Lujan*, 2005 Guam 26 ¶ 15. Recognizing that ordinarily an argument not made in the trial court would be waived on appeal, Cho/TPLLC assert that the trial court, in concluding that their interest was not sufficiently direct to warrant intervention, "held in so many words that there was insufficient interest for intervention because Proposed Intervenors lacked standing to maintain claims against Defendant Fujita in the Action." Appellants' Br. at 21-22. Therefore, they contend they are not prohibited from raising assignment of contract and assignment of chose in action here in this appeal, "[b]ecause the issues concern their standing and the corresponding subject matter jurisdiction of this Court." Appellants' Br. at 35.

**[36]** The Superior Court relied on Cho and TPLLC's argument that they are *not* assignees: "[I]t is undisputed that the MOA did not purport to effect any assignment of Shin's interest in the sale agreement with Fujita, which is the basis for this entire lawsuit." ER at 67 (Dec. & Order,

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the Property and the obligation to fund." Plaintiff-Appellee's SER at 3 (Mot. to Int. and Mem. P. & A. in Supp. Thereof, Feb. 9, 2007). In their Motion Reply Brief, they allege "Shin and Cho entered into an oral agreement in which Cho would provide the money for Shin to purchase the property if Shin's investors could not wire the money out of Korea in time." Plaintiff-Appellee's SER at 17 (Reply to Shin's Opp'n). Neither of these allegations would support a finding of assignment.

Feb. 19, 2008). Cho and TPLLC denied an interest based on assignment and consequently the Superior Court's factual findings expressly militate against a finding of assignment. We will not consider for the first time on appeal this novel basis for a claimed right of intervention. We acknowledge that a party's lack of standing, should it undermine subject matter jurisdiction, may be raised at any stage of the proceedings, including for the first time on appeal. *Taitano v. Lujan*, 2005 Guam 26 ¶ 15. It may be fairly raised at any stage as a "threshold jurisdictional matter" for the purposes of seeking dismissal of a case. *See Guam Imaging Consultants, Inc. v. Guam Mem'l Hosp. Auth.*, 2004 Guam 15 ¶ 17. However, we will not allow Cho/TPLLC to use it as a backdoor for waived arguments that they are assignees. Cho and TPLLC may not stand the rule on its head by raising the question of their own standing in order to argue on appeal that they are assignees of Shin's rights under the Fujita Agreement.

**D. Cho/TPLLC's Status as Subpurchasers**

**[37]** On appeal, Cho and TPLLC contend that "courts champion the rights of (and recognize standing in) contractual subpurchasers, who have not yet effectuated the subpurchase, to sue the original vendor of subject property for specific performance of the original sale contract to sell it to the original purchaser, which is the only way the subpurchaser may obtain the property from this purchaser/subvendor." Appellant's Br. at 31. While this contention may have merit, from the record before us it appears that, like the issue of assignment, Cho/TPLLC waived this argument by not fairly raising it in their motion.

**[38]** Cho/TPLLC argue the Superior Court "ignored the several subpurchaser cases raised by Cho/TPLLC in their Reply Brief in support of their intervention motion," Appellants' Br. at 30. However, they have not provided us a citation to direct us to where in their motion Reply brief

they referred to the subpurchaser cases. We have instead identified two cases involving *subsequent* purchasers, *Jacobson v. Los Angeles Co.*, 137 Cal. Rptr. 909 (Cal. App. 1977), and *Armour of America v. United States,* 70 Fed. Cl. 240, 244-45 (Ct. Cl. 2006). Plaintiff-Appellee's SER at 23, FN 28 (Reply to Shin's Opp'n). The Superior Court correctly distinguished these cases, determining that "unlike the cases cited, Proposed Intervenors have not actually purchased any property and are not in possession of anything related to the subject action." ER at 70 (Dec. & Order, Feb. 19, 2008).

**[39]** After scrutinizing the Superior Court record before us we have been unable to locate cases discussing the rights of subpurchasers, nor any claim by Cho and TPLLC to that status. *See* Plaintiff-Appellee's SER at 15-38 (Reply to Shin's Opp'n).

**[40]** "As a matter of general practice, this court will not address an argument raised for the first time on appeal." *Tanaguchi-Ruth + Assocs. v. MDI Corp. (Leo Palace)*, 2005 Guam ¶ 78 (*citing Univ. of Guam v. Guam Civil Serv. Comm'n*, 2002 Guam 4 ¶ 20) (internal quotations omitted). Our exercise of discretion to review an issue raised for the first time on appeal is reserved for extraordinary circumstances where review is necessary to address a miscarriage of justice or clarify significant issues of law. *Id.* at 82. We will not reverse the Superior Court "on a contention not presented to it, absent exceptional circumstances, significant questions of general impact, or where injustice might otherwise result." *Id.* at 82, *quoting United States v. Munoz*, 746 F.2d 1389, 1390 (9th Cir. 1984).

**[41]** We do not find here the exceptional circumstances that would favor our exercise of discretionary review over our application of the rule requiring issues to be raised below in the first instance.

**E. Permissive Intervention pursuant to GRCP 24(b)**

**[42]** Cho and TPLLC contend the Superior Court abused its discretion in denying permissive intervention. Rule 24(b) governs permissive intervention, providing that upon timely application, anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common. GRCP 24(b). The Rule goes on to state that "[i]n exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." *Id.*

**[43]** Rule 24(b) intervention often depends on factors with which the trial court is most familiar. *See Sierra Club*, 709 F.2d at 176-77 (stating that the trial court might properly take into account factors such as encumbrance of the proceeding and undue delay under Rule 24(b)). A decision to grant or deny permissive intervention "is wholly discretionary with the [lower] court . . . even though there is a common question of law or fact, or the requirements of Rule 24(b) are otherwise satisfied." *Guam Music,* 2009 Guam 7 ¶ 9. On the other hand, an abuse of discretion occurs if the trial court bases its decision on an erroneous legal standard or on clearly erroneous findings of fact. *San Miguel v. Dep't of Pub. Works*, 2008 Guam 3 ¶ 18.

**[44]** The Superior Court found that permissive intervention was unwarranted due to the absence of any common questions of law or fact between the Proposed Intervenors' claims or defenses and the present action. ER at 71 (Dec. & Order, Feb. 19, 2008):

> As stated above, the MOA [litigation agreement] and the sale agreement are two distinct and unrelated transactions involving different parties. Any claim or defense asserted by the Proposed Intervenors would only relate to the MOA since they were not parties to the sale agreement. The issues relating to the present

> action, *i.e.* the breach of the sale agreement, etc., has [sic] nothing to do with the issues related to the MOA.

*Id.*

**[45]** Cho/TPLLC now argue that the Superior Court's statement quoted above shows that it made an error of law, applying a legal standard that incorrectly grants permission to intervene pursuant to Rule 24(b) only where Proposed Intervenors are parties to the sale agreement. Appellants' Br. at 48-49. Our reading of the Decision and Order, however, does not reveal that the Superior Court applied the wrong legal standard, for the court did not rest its analysis on the mere fact that Cho/TPLLC were not parties to the sale agreement. Rather, the court went on to consider the relationship between the "issues relating to" the breach of the sale agreement and those related to the Litigation Agreement:

> Any claim or defense asserted by the Proposed Intervenors would only relate to the MOA since they were not parties to the sale agreement. The issues relating to the present action, *i.e.*, the breach of the sale agreement, etc. has nothing to do with the issues relating to the MOA.

ER at 71-72 (Dec. & Order, Feb. 19, 2008). It concluded that the issues raised by each agreement had "nothing to do with" the other. ER at 72 (Dec. & Order, Feb. 19, 2008) ("[f]rom a legal and factual standpoint, the two documents simply have nothing to do with each other.").

**[46]** Such a finding is equivalent to a determination that the proposed intervenors' and Shin's claims share no common legal or factual proof, an appropriate determination for the court to make in deciding whether to grant permissive intervention. *See Spangler v. Pasadena City Bd. of Ed.*, 552 F.2d 1326, 1329 (9th Cir. 1977) (finding that a district court may analyze the

relationship between the plaintiff's action and the applicant's claims in deciding whether to exercise its discretion to grant intervention).[7]

**[47]** Similarly, in arguing permissive intervention was wrongly denied, Cho/TPLLC assert that the Superior Court "commit[ed] factual error by ignoring the other agreements besides the MOA that grant independent grounds for jurisdiction," and "focusing narrowly on the MOA provisions dealing with [their] ability to direct the litigation on behalf of Shin in the main action." Cho/TPLLC argue that the trial court abused its discretion by ignoring "crucial factual elements" such as the rights created by other agreements besides the Litigation Agreement, instead focusing "narrowly on the [Litigation Agreement] provisions." Appellants' Br. at 48.

**[48]** However, Cho/TPLLC themselves, in their motion for permissive intervention, focused narrowly on the Litigation Agreement, alleging only "the complete overlap of Shin's claims against defendants and the claims of TPLLC and Cho against defendants." ER at 44 (Mot. to Intervene and Mem. P. & A. in Supp. Thereof). Although Cho/TPLLC now argue that the significance of the Litigation Agreement should not be overestimated, since other agreements conferred proprietary rights to Cho/TPLLC, they have not included the other agreements in the record nor did they argue a right based on those agreements in their motion to the trial court, and therefore they cannot prevail based on allegations concerning those agreements on appeal. If

[7] In their *appellate brief* discussion of contingent vs. non-speculative interests, Cho/TPLLC assert that the court "overestimate[d] the significance of the MOA, which is not the only agreement conferring proprietary rights to Cho/TPLLC." Appellants' Br. at 18. However, in their Motion to Intervene and Memorandum of Points and Authorities in Support Thereof, Cho/TPLLC did not allege a claim based on the other agreements, basing their claim on the fact that Shin entered the Litigation Agreement with them on May 25, 2006 "sharing the claims and property at issue in this suit." ER at 39 (Mot. to Intervene and Mem. P. & A. in Supp. Thereof). However, it is not the Litigation Agreement that purported to share the Fujita Property with Cho and TPLLC, but other agreements that were not presented to us in the record on appeal.

cursory briefing at the trial level invited the trial court to only consider the Litigation Agreement, Cho and TPLLC have no cause for complaint on this ground, on appeal.

**[49]** We apply *de novo* review to Cho/TPLLC's assertion that their claims "share the identical legal and factual questions with the main action because they seek to intervene in order to litigate in Shin's stead the very claims alleged by Shin against Fujita for specific performance of the property sale agreement." *Guam Music*, 2009 Guam 7 ¶ 26; Appellants' Br. at 46-47.

**[50]** Cho/TPLLC seek to support their argument that their claim shares a common question of law or fact with the Fujita Litigation by citation to *Berman v. Herrick*, 30 F.R.D. 9 (E.D. Pa. 1962) (declined to follow, on other grounds, by *Olivieri v. Adams*, 280 F. Supp. 428, 433 (D. C. Pa., 1963)). In *Berman*, the court permitted contractors to intervene in an action by a general contractor, Berman, against a building owner. *Berman v. Herrick*, 30 F.R.D. at 10. The general contractor alleged the building owner had conceived a scheme to renovate the building in question at the expense of Berman and others who furnished labor and materials. *Berman v. Herrick*, 30 F.R.D. at 10. By leasing the building to a thinly-capitalized corporation he controlled, and requiring the corporation to make substantial rental payments as well as pay for improvements, the building owner could render the corporation insolvent and avoid paying the contractors. *Berman v. Herrick*, 30 F.R.D. at 10. The proposed intervenors were other contractors with separate contracts with the defendant, but "all bottom[ed] their claims on the same alleged scheme." *Id.* Because "[t[he factual and legal issues involved in the proof of that scheme provide the main frame work of the trial" and these issues were the same for all the contractors, the court concluded that a common question of law or fact was presented and granted permissive intervention. *Id.*

**[51]** In another case cited by Cho/TPLLC, *Sunbelt Veterinary Supply, Inc. v. International Business Sys. U.S., Inc.*, the court found the commonality requirement satisfied in buyer's breach-of-contract suit against the seller of computer software. *Sunbelt Veterinary Supply, Inc. v. Int'l Bus. Sys. U.S., Inc.*, 200 F.R.D. 463, 466 (D.C. Ala. 2001). The proposed intervenors were buyers of defendant's software who had separate litigation pending in other jurisdictions. They sought modification of a protective order, issued in the underlying litigation, based on their belief that certain relevant and "damaging" documents covered by the protective order would aide them in their own lawsuits. They filed copies of their complaints with the District Court, which was able to compare the complaints to determine that their claims shared common questions of law and fact with the underlying action.

**[52]** In contrast to both *Berman* and *Sunbelt,* we do not find that Cho/TPLLC's claim against Shin necessarily shares a common question of law or fact with Shin's claim against Fujita. An action by Cho/TPLLC asserting their rights against Shin for breach of the Litigation Agreement would raise numerous factual and legal questions: Did Shin breach the Litigation Agreement by substituting his own counsel, after the motion for leave to amend the complaint was denied? (a factual issue); for what kind and quantity of damages would Shin be liable to Cho/TPPLC for breach of the Litigation Agreement? (legal and factual issues); is a confidential agreement ceding control of litigation void as against public policy? (legal question). All of these issues might appropriately be before the court in an independent action by Cho and TPLLC against Shin to enforce the Litigation Agreement.

**[53]** However, none of these issues turn on the same facts or law as the primary issue presented by the Fujita Litigation: whether Shin is entitled to damages or specific performance

due to Fujita's alleged breach of the Fujita Agreement—which primarily involves a determination by the fact-finder of whether the parties in fact agreed to the 90-day Extended Closing Date—whether it was Shin or Fujita who breached the Agreement.[8] Although Cho/TPLLC assert a right stemming from their contract with Shin, there is not direct relationship between this right and the plaintiff's claims against Fujita, or Fujita's defenses.[9] Their interest is wholly dependent on Shin's, but that does not mean it is identical to Shin's.

**[54]** "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." GRCP 24(b). Intervention is designed to accommodate two competing policies: "efficiently administering 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." *United States v. Pitney Bowes, Inc.*, 25 F3d 66, 70 (2d Cir. 1994); *see also Reich v. Webb*, 336

[8] *See* transcript testimony of Attorney Pipes stating "this entire case revolves around the question of which party first materially breached the agreement. Was it Shin or was it Fujita? That's the ultimate question that's before this court for decision." Plaintiff-Appellee's SER at 137 -138 (Tr. Proc., May 8, 2008). Even putting aside the Statute of Frauds issue posed by a claimed oral modification of a contract concerning land, we observe that the clause stating the Agreement may not be amended except by a writing signed by both parties seems to preclude subsequent oral modifications of the contract. *See* ER at 25 (Agreement).

[9] Cho/TPLLC contend on appeal that Shin is contractually obligated to purchase the property and Cho/TPLLC may legally enforce him to do so under their agreements with him. Appellants' Brief at 18. However, nowhere in the record have we identified evidence that any agreement between Shin and Cho or TPLLC contractually obligated Shin to purchase the property, rather than obligating Shin to sell them the property *should he successfully* acquire it.

Moreover, should the claimed contractual modification via a 90-day extension on closing be confirmed, it is questionable that Cho/TPLLC would consequently have a right to the property, in light of the Agreement's "sole and exclusive remedy" clause. This provision stated that "Purchaser and Seller acknowledge and agree that their damages in the event of a material default under this Agreement would be extremely difficult to calculate, and that the foregoing exclusive remedy represents a reasonable estimation under the circumstances of this transaction of the appropriate compensation to either party in the event of a material default." ER at 21 (Agreement).

F2d 153, 160 (9th Cir. 1964). "Litigation will have no end if every time parties resolve amicably (or drop) a point of contention, someone else intervenes to keep the ball in the air. . . ." *United States v. City of Chicago (Appeal of Kimber)*, 897 F.2d 243, 244 (7th Cir.1990) (citations omitted). Here, there are already several related lawsuits ongoing, and the Superior Court may have properly determined that permitting Cho/TPLLC to interject their claims into the Fujita litigation would unnecessarily complicate and prolong it.

**[55]** The Superior Court did not abuse its discretion in denying the application and thus bringing closure to Shin's suit against Fujita. We affirm the Superior Court's denial of Proposed Intervenors' Motion for Permissive Intervention.

## V. CONCLUSION

**[56]** After expressly disavowing an interest based on assignment during the hearing on the motion to intervene, Cho and TPLLC may not assert that they are Shin's assignees on appeal. Instead, their claimed interest stems from a right to purchase the Property from Shin that is wholly *contingent* upon Shin's successful acquisition of the Property. Although Cho and TPLLC's strong desire to intervene to keep alive the dispute between Shin and Fujita is understandable, a strong desire is not equivalent to a right. The Superior Court's denial of the motions for intervention as of right and permissive intervention is **AFFIRMED.**

Original Signed By: **F. Philip Carbullido**
F. PHILIP CARBULLIDO
Associate Justice

Original Signed By: **Richard H. Benson**
RICHARD H. BENSON
Justice *Pro Tempore*

Original Signed By: **Robert J. Torres**
ROBERT J. TORRES
Chief Justice