

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHER DISTRICT OF TEXAS
DALLAS DIVISION

U S BANK, NATIONAL
ASSOCIATION, Litigation Trustee of the
Idearc Inc., *et al.*, Litigation Trust,

Plaintiff,

vs.

VERIZON COMMUNICATIONS INC.,
e al.,

Defendants.

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CIVIL ACTION NO. **3:10-CV-1842-G**
ECF

MOTION TO INTERVENE FOR LIMITED PURPOSE

Proposed Intervenors, ASSOCIATION OF BELLTEL RETIREES INC., PHILIP A. MURPHY, JR., SANDRA R. NOE and CLAIRE M. PALMER, by and through their counsel, pursuant to Fed.R.Civ.Proc. Rule 24(b)(1), move for permissive intervention for the limited purposes of filing a motion to unseal certain court filings related to the parties’ motions for summary judgments. As grounds, Proposed Intervenors state:

Introduction.

1. In this civil action, Plaintiff (hereinafter “Bank”), as trustee of a litigation trust in a bankruptcy of Idearc Inc., asserts a panoply of claims stemming from Verizon Communications Inc.’s (hereinafter “Verizon”) spin-off and creation of Idearc Inc during late 2006. The Bank has asserted causes of action against Verizon, Verizon Financial Services LLC and GTE Corporation for actual and constructive fraudulent transfer under the Texas Business and Commerce Code and the federal Bankruptcy Code. The Bank also asserted claims for breach of fiduciary duty against Verizon Executive Vice President John W. Diercksen, aiding and abetting Diercksen’s breach of fiduciary duty against Verizon, and unlawful dividend under the General Corporation Law of Delaware against both Diercksen and Verizon.

2. Proposed Intervenor Association of BellTel Retirees Inc. (hereinafter “Association”) is a non-profit organization serving over 100,000 members who are retirees of Verizon, GTE and Idearc (now known as Supermedia Inc.). The Association owns Verizon common stock and for more than a decade has been actively involved with Verizon shareholder proposals. The Association serves as conduit of information to its membership about Verizon’s business dealings and matters of significant interest to retirees and their beneficiaries. See www.belltelretirees.org

3. Proposed Intervenors Philip A. Murphy, Jr., Sandra R. Noe and Claire M. Palmer are each Class representatives in the related case of *Murphy, et al., v. Verizon, et al.*, Case No. 3:09-cv-02262-G (N.D. Texas), pending before this Court. The *Murphy* class action for the benefit of over 2,750 retirees involves ERISA claims arising out of the same spin-off transaction that gave rise to the parties’ disputes in this action.

4. Since the inception of this action, the Association and the *Murphy* Class representatives have carefully monitored all court filings in this action and have kept the Association’s members informed. However, the free flow of information about this case came to an abrupt end when the parties’ filed summary motions, all of which were sealed from public view. (See, *e.g.*, Docket entry Nos. 371-393).

5. Accordingly, on June 8, 2012, counsel for the Association and *Murphy* Class representatives communicated the following message and request to all counsel in this case:

Counsel:

This is an effort to confer with you, pursuant to Local Rule 7.1 of the Dallas federal court, and obtain your agreement not to oppose two matters to be sought on behalf of the Class representatives in the related case of *Murphy v. Verizon, et al.*, Case No. 3:09-cv-02262-G (N.D. Texas, J. Fish) as well as the Association of BellTel Retirees Inc., (“Association”), a long established retiree group representing tens of thousands of Verizon retirees. For more information about the Association, please see:

http://www.belltelretirees.org/index.php?option=com_content&view=frontpage&Itemid=1)

Both the Association and *Murphy* Class representatives intend to file in your pending litigation: 1) a motion for permissive intervention, pursuant to Fed.R.Civ.Proc. Rule 24(b), for the limited purposes of filing a motion to unseal the pending motions for summary judgments, briefs and appendices; and 2) a motion to unseal your clients' summary judgment court filings, e.g., Dockets 371-391, as well as the responses and replies thereto soon to be filed.

As you know, the *Murphy* Class representatives have been pursuing litigation on behalf of retirees who were surreptitiously and involuntarily transferred from Verizon's sponsored pension plans into Idearc/SuperMedia's sponsored pension plans, and the *Murphy* case is pending before Senior Judge A. Joe Fish. The *Murphy* case claims arise from the same spin-off transaction which is the subject of your litigation also pending before Judge Fish. For the latest information about the *Murphy* case, please see: http://www.belltelretirees.org/index.php?option=com_content&view=article&id=44%3Alegal-developments&catid=5%3Aassociation-activities&Itemid=32

The Association seeks to serve as a guardian of the public's presumptive right of access and seeks public disclosure of the summary judgment filings in your case so as to inform its membership, many of whom are Verizon shareholders. The Association's membership body, both as Verizon retirees and shareholders, have a compelling public interest in your litigation since the outcome potentially exposes Verizon to billions of dollars in liabilities.

First, It is the position of the *Murphy* Class representatives and the Association that their proposed motion to intervene is timely, as just this week over twenty court filings related to summary judgment motions were filed under seal. The *Murphy* Class representatives and the Association share questions of law or fact in common with your litigation and their limited intervention will not unduly delay or prejudice the adjudication of any of your clients' respective rights.

Second, it is the position of the *Murphy* Class representatives and the Association that their proposed motion to unseal has substantial merit, as they seek only to unseal the summary judgment briefs and related documents. *Murphy* Class representatives and the Association seek access to those sealed motions, memorandum briefs and documents concerning the numerous summary judgment motion papers filed with the Court. Neither *Murphy* Class representatives nor the Association believe that the parties in your litigation can meet their respective high burden under the terms of the June 14, 2011 Protective Order entered in your case of showing why all of the associated summary judgment papers should remain sealed. My clients contend that your clients have a heightened burden to overcome the presumptive right of the public to access of the briefs and supporting documents at issue because they were filed in support of and in opposition to motions for summary judgment. See *Joy v. North*, 692 F.2d 880, 893 (2d Cir.1982) (“[D]ocuments used by parties moving for, or opposing, summary judgment should not remain under seal absent the most compelling reasons.”).

My clients find it especially incomprehensible that every page connected to the menagerie of summary judgment filings you have submitted constitutes only sensitive trade secrets or other proprietary information that may be shielded from public view. None of the parties in your litigation has contested any other parties' needless designation of each piece of paper, including summary judgment legal arguments, as confidential. Disclosure of the summary judgment filings will not result in any serious competitive or financial harm to any of your clients.

Therefore, please respond to me via email indicating where your clients oppose either my clients' motion for permissive intervention or motion to unseal the summary judgment filings, or both proposed motions. Please kindly provide me with a response by the end of next Thursday, June 14, so that I may inform the Court of your client's position on these two matters. Thank you.

6. Attorney John B. Strasburger, speaking on behalf of Defendants Verizon, Verizon Financial Services LLC, GTE Corporation and John W. Diercksen, informed Counsel for Proposed Intervenors that, presently, said defendants oppose Prospective Intervenors' motion for limited intervention but that the parties are considering whether and how to provide redacted court filings limited to viewing by certain Proposed Intervenors, but not the Association. To date, there has been no position statement communicated directly from counsel for the Bank. Therefore, this motion is opposed.

Argument.

7. The Association and *Murphy* Class representatives (hereinafter collectively referred to as "Proposed Intervenors") seek permissive intervention pursuant to Federal Rule of Civil Procedure 24(b)(1). Rule 24(b)(1) provides in relevant part:

In General. On timely motion, the court may permit anyone to intervene who:
... (B) has a claim or defense that shares with the main action a common question of law or fact.

8. Proposed Intervenors seek to intervene for the limited purpose of seeking public disclosure of the summary judgment motions and related memorandum briefs, but not including

matters that are subject to the parties' joint attorney-client privilege. The Fifth Circuit has held a nonparty must file a motion to intervene as required by Rule 24(c) in order to have a protective order modified or vacated. *In re Beef Indus. Antitrust Litig.*, 589 F.2d. 786, 789 (5th Cir.1979).

9. Permissive intervention pursuant to Rule 24(b)(1) is appropriate when: “(1) timely application is made by the intervenor, (2) the intervenor’s claim or defense and the main action have a question of law or fact in common, and (3) intervention will not unduly delay or prejudice the adjudication of the rights of the original parties.” *League of United Latin Am. Citizens, Council No. 4434 v. Clements, et al.*, 884 F.2d 185, 189 n. 2 (5th Cir.1989); *Sierra Club v. Fed. Emergency Mgmt. Agency*, 2008 WL 2414333, at *6 (S.D. Tex. June 11, 2008) (citing *Clements*). “Permissive intervention is within a court’s discretion.” *Newby v. Enron Corp.*, 443 F.3d 416, 424 (5th Cir. 2006).

10. Proposed Intervenors seek the non-privileged information contained in the parties' summary judgment motions and briefs so that Proposed Intervenors can more thoroughly investigate and report about this action, which is a matter of great public interest among numerous members of the Association and the Class members in the related *Murphy* case which action contains questions of fact in common with this action. Accompanying this motion, in accordance with Fed.R.Civ.Proc. Rule 24(c), is Exhibit 1, a copy of Docket entry No. 217 herein, the Bank's current pleading entitled “Plaintiffs Amended Complaint and Jury Demand (Expurgated)”. Exhibit 2 accompanying this motion is a copy of Docket entry No. 64 in the *Murphy* class action, the current pleading entitled “Second Amended Complaint for Proposed Class Action Relief Under ERISA.” All of the claims asserted in both actions involve the same corporate spin-off transaction.

11. Since there is a significant relationship between the *Murphy* case and the

underlying action, the summary judgment motion filings should not be shielded from the public. Proposed Intervenor should be granted permission to argue herein that “[T]he courts of this country recognize a general right to inspect and copy judicial records and documents.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597, 98 S.Ct. 1306 (1978). This right of public access serves to “promote trustworthiness of the judicial process, to curb judicial abuses, and to provide the public with a more complete understanding of the judicial system, including a better perception of fairness.” *SEC v. Van Waeyenberghe*, 990 F.2d 845, 849 (5th Cir.1993) (quoting *Littlejohn v. BIC Corp.*, 851 F.2d 673, 678 (3rd Cir.1988)). “Under the common law, there is a long-standing presumption of public access to judicial records.” *Gitto v. Worcester Telegram & Gazette Corp.*, 422 F.3d 1, 6 (1st Cir. 2005). The decision to seal court records and pleadings should not be taken lightly. As the First Circuit explained, “[o]nly the most compelling reasons can justify non-disclosure of judicial records.” *Gitto*, 422 F.3d at 6.

12. Proposed Intervenor should be granted limited permissive interventions because the parties herein have a heightened burden to overcome the presumptive right of the public access to motions for summary judgment and related oppositions and reply briefs. See *Joy v. North*, 692 F.2d 880, 893 (2d Cir.1982) (“documents used by parties moving for, or opposing, summary judgment should not remain under seal absent the most compelling reasons.”). Proposed Intervenor should be granted permissive intervention to submit their motion to unseal because the parties to this underlying action have no compelling reason for every page of the summary judgment motions and supporting memorandum briefs to remain sealed.

WHEREFORE, Proposed Intervenor respectfully request the Court grant them permissive intervention for the limited purpose of obtaining an order unsealing the summary judgment motions and related memorandum briefs filed in this action.

DATED this 22nd day of June, 2012.

Respectfully submitted,

s/ Curtis L. Kennedy

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CERTIFICATE OF CONFERENCE

On June 8, 2012, Proposed Intervenors' counsel sent to all counsel in this underlying action the communication reflected in paragraph No. 5 hereinabove. Several times since then, counsel speaking on behalf of all defendant parties has conferred with Proposed Intervenors' counsel and stated that while the parties are contemplating whether there may be a way to provide the summary judgment motions and memorandum brief in a redacted fashion limited to viewing by certain Proposed Intervenors, but not the Association, they are uncertain and, accordingly, presently oppose this motion. To date, counsel for the Bank in this action has not provided a position statement on this motion. Therefore, the motion is opposed.

DATED this 22nd day of June, 2012.

Respectfully submitted,

s/ Curtis L. Kennedy

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of June, 2012, a true and correct copy of the above and foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system and a courtesy copy was emailed to all counsel of record as follows:

<p>Werner A. Powers werner.powers@haynesboone.com Robin Phelan robin.phelan@haynesboone.com Patrick Keating patrick.keating@haynesboone.com David Taubenfeld david.taubenfeld@haynesboone.com HAYNES AND BOONE LLP 2323 Victory Avenue, Suite 700 Dallas, Texas 75219-7673 Telephone: (214) 651-5000</p> <p>Nicholas A. Foley nfoley@neliganlaw.com Douglas J. Buncher dbuncher@neliganlaw.com John D. Gaither jgaither@neliganlaw.com NELIGAN FOLEY LLP 325 N. St. Paul, Suite 3600 Dallas, TX 75201 Telephone: (214) 840-5300</p> <p><i>ATTORNEYS FOR U.S. BANK NATIONAL ASSOCIATION as Litigation Trustee on Behalf of the Idearc Inc. et al. Litigation Trust</i></p>	<p>T. Ray Guy ray.guy@weil.com WEIL, GOTSHAL & MANGES, LLP 200 Crescent Court, Suite 300 Dallas, Texas 75201 Telephone: (214) 746-7700</p> <p>John B. Strasburger john.strasburger@weil.com WEIL, GOTSHAL & MANGES LLP 700 Louisiana, Suite 1600 Houston, TX 77002-2755 Telephone: (713) 546 5102</p> <p>Philip D. Anker philip.anker@wilmerhale.com WILMER CUTLER, <i>et al.</i>, LLP 399 Park Avenue New York, NY 10022 Telephone: (212) 230-8800</p> <p>Scott H. Angstreich sangstreich@khhte.com David L. Schwarz dschwarz@khhte.com KELLOGG, HUBER, <i>et al.</i>, P.L.L.C. 1615 M Street, N.W., Suite 400 Washington, D.C. 20036-3215 Telephone: (202) 326-7900</p> <p><i>ATTORNEYS FOR DEFENDANTS VERIZON COMMUNICATIONS, VERIZON FINANCIAL SERVICES, LLC, and GTE CORPORATION</i></p> <p>J. Robert Arnett, II barnett@carterstafford.com E. Leon Carter lcarter@carterstafford.com CARTER STAFFORD ARNETT, et al 8150 N. Central Expressway, Suite 1950 Dallas, Texas 75206 Telephone: (214) 550-8188</p> <p><i>ATTORNEYS FOR JOHN W. DIERCKSEN</i></p>
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Also, copy of the same was delivered via email to Proposed Intervenors as follows:

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