SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, COMMERCIAL DIVISION

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

v.

THE NATIONAL RIFLE ASSOCIATION OF AMERICA, INC., WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER, and JOSHUA POWELL,

Defendants,

FRANCIS TAIT, JR., and MARIO AGUIRRE, individually and derivatively on behalf of THE NATIONAL RIFLE ASSOCIATION OF AMERICA, INC.,

Intervenors-Defendants.

Index No. 451625/2020

Hon. Joel M. Cohen

Part 3

Motion Seq. # 020

Memorandum Of Law In Opposition To Cross-Motion For Sanctions Of Defendant National Rifle Association By Proposed Intervenors Francis Tait And Mario Aguirre

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THE COURT SHOULD DENY THE NRA'S MOTION FOR SANCTIONS

Coming from the party and counsel who filed a Chapter 11 case that delayed this action by 5 months,[1] cost the NRA millions of dollars, and was dismissed because it was not filed in good faith, it is apparent that the NRA as presently represented has a different standard for judging what is "frivolous" as to its own conduct versus that of the Proposed Intervenors here.

The Intervenors' motion was a serious and good-faith request that this Court reconsider what Intervenors' counsel believed to be the critical bases of the Court's denial of intervention, and the Court may yet do so. Whether the Proposed Intervenors have a real and substantial interest in this litigation that is not adequately represented by the present parties was the central issue in *Adams v. City of New York* opinion.[2] The ruling in *Adams*, that a pecuniary or tangible property interest is not required to support intervention, is distinctly contrary to this Court's ruling here and accordingly cannot be said to be completely without merit.

The NRA's motion cites two cases[3] for the proposition that a motion for reargument must be "made on the papers submitted on the original motion . . . .". NYSCEF Doc. # 425 at p. 6, n. 28. But this is only the first part of the point in both opinions, which is that new facts may not be submitted. *Phillips*, 394 N.Y.S.2d at 943; *Brenner*, 2012 NY Slip Op 52086(U) slip op. at *1. The Intervenors here submitted no new facts, and the NRA's motion does not cite any case holding that additional legal authority may not be submitted in support of reargument.

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[1] Jan. 15, 2021 to May 11, 2021, plus expiration of the time for post-judgment filings and/or appeal.

[2] No. 160662/2020, 2021 WL 274716, at *2-4, 2021 N.Y. Slip. Op. 30251(U), p. 5-7 (N.Y. Sup. Ct. 2021) ("A proposed intervenor need not have a direct personal or pecuniary interest in the subject of the action", and intervention is proper "if he would be indirectly affected by the litigation in a substantial manner, and his claim or defense with respect to the subject matter of the litigation has a question of law or fact in common therewith.")

[3] *Philips v. Village of Oriskany*, 57 A.D.2d 110, 113 (4th Dep't 1977); *Brenner v. Sheraton Waikiki Hotel and Resort*, 37 Misc.3d 1219(A) at *1 (Sup. Ct. Nassau Cnty. Sep. 18, 2012).

Nor did the Intervenors argue any new theories of law – the authorities submitted were on the same controlling principles argued to the Court originally.

The NRA does not argue that the Intervenors' motion was filed for the purpose of delay, or that they asserted any material factual statements that are false. They do argue that Intervenors' disqualification argument is "based on a false premise" that the Brewer firm is conflicted. But whether the Brewer firm is conflicted has not been shown to be false, and given its previous dual representation of Defendant LaPierre and the NRA the Intervenors' disqualification argument is reasonable to assert. This was not a false statement by the Intervenors but a contested conclusion of law which bears directly on the issue of adequate representation.

"Sanctions are within the sound discretion of the trial court and are reserved for serious transgressions." *Massey v. Byrne*, 2013 NY Slip Op 30088 at *14 (N.Y. Sup. Ct. 2013). In order to impose sanctions, a court must find that the offending party's motion asserts material falsehoods or is without legal merit and undertaken primarily to delay or prolong the litigation, or to harass or maliciously injure another. *Dubovoy v. Gov't Emps. Ins. Co*., 2017 NY Slip Op 50843 at *4 (U) (N.Y. Sup. Ct. 2017), citing *Premier Capital v Damon Realty Corp.*, 299 A.D.2d 158 (1st Dept 2002).

By any reasonable standard the Intervenors' counsel are not guilty of frivolous conduct as the basis for sanctions in 22 NYCRR Part 130.

CONCLUSION

The Court should deny the NRA's motion for sanctions.

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CERTIFICATE OF WORD COUNT

Pursuant to Commercial Division Rule 17, I certify that the foregoing MEMORANDUM OF LAW IN OPPOSITION TO SANCTIONS was prepared using Times New Roman 12-point typeface and contains 668 words, excluding the caption and signature block. This certificate was prepared in reliance on the word-count function of the word processing system (Microsoft Word) used to prepare the document.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: November 8, 2021
New York, New York

/s/ Taylor Bartlett

Taylor Bartlett