

3-8-1979

## McClune v Shamah

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26 Fed.R.Serv.2d 1261

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Distinguished by [In re Enron Corp. Securities, Derivative & Erisa Litigation](#), S.D.Tex., February 25, 2004

593 F.2d 482

United States Court of Appeals,  
Third Circuit.

Robert C. McCLUNE, and Hilda A. McClune, his wife, Joseph C. Weimer, Jack D. Adelson and Ruth B. Adelson, his wife, Sidney N. Busis and Sylvia A. Busis, his wife, Gaetano Dentici, Calvin Hill, James P. O'Malley and Dorothy J. O'Malley, his wife, Allen J. Cousin, Thomas D. O'Malley and Mary Alice O'Malley, his wife, Gerald S. Soroker, Stephen Bruno, Richard Dipietro, Mark H. Wholey, M. N. Adelson & Sons, Inc., a Pennsylvania business corporation, James Sloss, Leonard Merkow, Ned A. Nutz, Alex E. Sebastian, Miriam H. Sadler, Maida R. Rubenstein, William J. Ivill and Linda M. Ivill, his wife, Robert S. Ruben and Anne H. Ruben, his wife, J. L. Coon and Grace H. Coon, his wife, Robert Gifford, and Roman A. Babin

v.

Alfred A. SHAMAH, Steven J. Gumenick, Donald F. Martin, Jr., Brunswick Management Corporation, a Delaware business corporation, Babbitt Meyers & Company, a Pennsylvania partnership, Robert E. Rose, Spector Cohen Hunt & Rosen, a Pennsylvania professional corporation, and Arthur R. Spector, Edward E. Cohen, and Betsy Z. Cohen, trading as Spector & Cohen, a Pennsylvania partnership, Cedar Bayou, Ltd., a Pennsylvania limited partnership, Appellant.

No. 78-1795.

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Argued Jan. 12, 1979.

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Decided March 8, 1979.

### Synopsis

Limited partnership appealed from order of the United States District Court for the Western District of Pennsylvania, William W. Knox, J., denying its motion to intervene in lawsuit brought by all of its limited partners. The Court of

Appeals, Seitz, Chief Judge, held that: (1) limited partnership did not have absolute right to intervene the action, despite partnership's contention that its interests would not be represented at all if plaintiff limited partners were precluded from asserting claims stated in three counts on ground they belonged to partnership as an entity, where, if that happened, the partnership would not be bound by res judicata from later bringing its own action asserting those claims, and (2) limited partnership was precluded from intervening, either as matter of right or pursuant to its motion for permissive intervention, where partnerships' motion for intervention was directed toward forestalling defendants' argument that certain claims asserted by plaintiffs belonged to partnership entity rather than its limited partners.

Motion to dismiss appeal denied and order denying motion for intervention affirmed.

West Headnotes (9)

### [1] [Federal Courts](#) [Parties and Process](#)

[170B](#) Federal Courts

[170BXVII](#) Courts of Appeals

[170BXVII\(C\)](#) Decisions Reviewable

[170BXVII\(C\)2](#) Particular Decisions, Matters, or Questions as Reviewable

[170Bk3297](#) Parties and Process

[170Bk3298](#) In general

(Formerly 170Bk587)

When absolute right to intervene in lawsuit is claimed, and claim is rejected, order denying intervention is considered final and appealable. [Fed.Rules Civ.Proc. rule 24\(a\)\(2\)](#), [28 U.S.C.A.](#)

4 Cases that cite this headnote

### [2] [Federal Courts](#) [Parties and Process](#)

[170B](#) Federal Courts

[170BXVII](#) Courts of Appeals

[170BXVII\(C\)](#) Decisions Reviewable

[170BXVII\(C\)2](#) Particular Decisions, Matters, or Questions as Reviewable

[170Bk3297](#) Parties and Process

[170Bk3298](#) In general

(Formerly 170Bk555)

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When motion for intervention claims absolute right to intervene, appealability does not turn on merits of the motion and it is sufficient that intervention of right was sought and denied to render the denial appealable. [Fed.Rules Civ.Proc. rule 24\(a\)\(2\)](#), 28 U.S.C.A.

6 Cases that cite this headnote

[3] **Federal Courts** 🔑 Parties and Process

170B Federal Courts  
170BXVII Courts of Appeals  
170BXVII(C) Decisions Reviewable  
170BXVII(C)2 Particular Decisions, Matters, or Questions as Reviewable  
170Bk3297 Parties and Process  
170Bk3298 In general  
(Formerly 170Bk555)

Order denying intervention was appealable where it was claimed that applicant had absolute right to intervene, and, alternatively, that district court abused its discretion in denying permissive intervention. [Fed.Rules Civ.Proc. rule 24\(a\)\(2\)](#), 28 U.S.C.A.

3 Cases that cite this headnote

[4] **Federal Civil Procedure** 🔑 Particular Intervenor

170A Federal Civil Procedure  
170AII Parties  
170AII(H) Intervention  
170AII(H)2 Particular Intervenor  
170Ak331 In general

Limited partnership did not have absolute right to intervene in action brought by partners, despite partnership's contention that its interests would not be represented at all if plaintiff limited partners were precluded from asserting claims stated in three counts on ground they belonged to partnership as an entity, where, if that happened, the partnership would not be bound by res judicata from later bringing its own action asserting those claims. [Fed.Rules Civ.Proc. rule 24\(a\)\(2\)](#), 28 U.S.C.A.

4 Cases that cite this headnote

[5] **Federal Civil Procedure** 🔑 Particular Intervenor

170A Federal Civil Procedure  
170AII Parties  
170AII(H) Intervention  
170AII(H)2 Particular Intervenor  
170Ak331 In general

Limited partnership did not have absolute right to intervene in action brought by limited partners where, to extent that resolution of issues raised in counts of limited partners' complaint might affect later resolution of claims belonging to partnership, complete identity of interest of legal representation between partnership and its limited partners insured that partnership's interests would be adequately represented by existing parties to lawsuit. [Fed.Rules Civ.Proc. rule 24\(a\)\(2\)](#), 28 U.S.C.A.

8 Cases that cite this headnote

[6] **Federal Civil Procedure** 🔑 Intervention

170A Federal Civil Procedure  
170AII Parties  
170AII(H) Intervention  
170AII(H)1 In General  
170Ak311 In general

Intervention will not be permitted to breathe life into nonexistent lawsuit. [Fed.Rules Civ.Proc. rule 24\(a\)\(2\)](#), 28 U.S.C.A.

11 Cases that cite this headnote

[7] **Federal Civil Procedure** 🔑 Nature and purpose

170A Federal Civil Procedure  
170AII Parties  
170AII(H) Intervention  
170AII(H)1 In General  
170Ak312 Nature and purpose

Motion for intervention is not appropriate device to cure situation in which plaintiffs may have stated causes of action that they have no standing

to litigate. [Fed.Rules Civ.Proc. rule 24, 28 U.S.C.A.](#)

[15 Cases that cite this headnote](#)

**[8] Federal Civil Procedure**  Particular Intervenor

[170A](#) Federal Civil Procedure

[170AII](#) Parties

[170AII\(H\)](#) Intervention

[170AII\(H\)2](#) Particular Intervenor

[170Ak331](#) In general

Limited partnership was precluded from intervening in lawsuit brought by limited partners, either as matter of right, or pursuant to its motion for permissive intervention, where partnerships' motion for intervention was directed toward forestalling defendants' argument that certain claims asserted by plaintiffs belonged to partnership entity rather than its limited partners. [Fed.Rules Civ.Proc. rule 24\(a\)\(2\), 28 U.S.C.A.](#)

[10 Cases that cite this headnote](#)

**[9] Federal Courts**  Pleading

[170B](#) Federal Courts

[170BXVII](#) Courts of Appeals

[170BXVII\(C\)](#) Decisions Reviewable

[170BXVII\(C\)2](#) Particular Decisions, Matters, or Questions as Reviewable

[170Bk3300](#) Pleading

[170Bk3301](#) In general

(Formerly [170Bk588](#))

Order denying motion to amend complaint to include limited partnership as party plaintiff in action brought by limited partners was not a final appealable order; thus the limited partnership, an unsuccessful applicant for intervention, could not challenge that order on appeal. [Fed.Rules Civ.Proc. rule 24\(a\)\(2\), 28 U.S.C.A.](#)

[5 Cases that cite this headnote](#)

**All Citations**

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