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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA / SANTA ANA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

TLC INVESTMENTS & TRADE CO., TLC  
AMERICA, INC. dba BREA DEVELOPMENT  
COMPANY, TLC BROKERAGE, INC., dba  
TLC MARKETING, TLC DEVELOPMENT,  
INC., TLC REAL PROPERTIES, RLLP-1,  
CLOUD & ASSOCIATES CONSULTING,  
INC., ERNEST F. COSSEY, GARY W.  
WILLIAMS AND THOMAS G. CLOUD,

Defendants.

Civil Action No. SACV 00-960-DOC (EEx)

**RECEIVER'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
OPPOSITION TO MOTION TO  
INTERVENE; DECLARATION OF  
BYRON Z. MOLDO**

**Date: February 26, 2001**

**Time: 8:30 a.m.**

**Place: Courtroom 9-D  
411 West Fourth Street  
Santa Ana, CA 92701**

**INTRODUCTION**

Robb Evans, Receiver for TLC Investments & Trade Co., Inc. and various related entities ("Receiver") hereby opposes the Motion to Intervene filed by Patricia Kryder et al., denominated in the motion as the "investor class". {<sup>1</sup>The Receiver is unaware of any class action having been filed related to this matter or any certification by this or any other Court of an investor class.}

The Receiver opposes the Motion to Intervene and believes the Motion to Intervene must be denied because (1) the Motion does not comply to the rules of this Court; (2) the Motion does not comply with Federal Rules of Civil Procedure, Rule 24; (3) the Motion is devoid of any admissible evidence; and (4) the movant has not met its burden to establish that intervention is proper in this case.

**THE PROPOSED INTERVENOR HAS NOT COMPLIED WITH THE LOCAL RULES**

Local Rule 7.4.1 provides in part:

In all cases not listed as exempt in Local Rule 6.10 . . . counsel contemplating the filing of any motion shall first contact opposing counsel to discuss thoroughly, preferably in person, the substance of the contemplated motion and any potential resolution. . . If the parties are unable to reach a resolution which eliminates the necessity for a hearing, counsel for the moving party shall include in the notice of motion

a statement to the following effect: "This motion is made following the conference of counsel pursuant to Local Rule 7.4.1 which took place (date)."

While the Motion to Intervene indicates that counsel for the proposed intervenor circulated a draft of the Motion to Intervene, and received correspondence from the SEC that it would not consent to intervention and that a statute relied on by the SEC prevented intervention absent its consent, it does not appear that counsel for the intervenor complied with the local rule. There is no indication in the Motion that counsel discussed the proposed intervention with all opposing counsel, especially the defendants' counsel. There is no indication, if counsel did discuss the matter with defense counsel, what they said. Further, the required Rule 7.4.1 statement of compliance with the local rule is not contained in the notice of motion. Finally, the representation that the Receiver's counsel approved, authorized or consented to the filing of this Motion is false. See attached Declaration of Byron Z. Moldo.

Because the proposed intervenor has not complied with Local Rule 7.4.1 the Motion should be denied.

**THE MOTION DOES NOT COMPLY WITH RULE 24 OF THE  
FEDERAL RULES OF CIVIL PROCEDURE**

Rule 24 (c) provides in part:

"A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefore and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought."

Rule 24(c) has not been complied with in at least two respects. First, it does not appear that the movant served the Motion "upon the parties as provided in Rule 5". The proof of service accompanying the Motion does not show that defendants Cloud & Associates Consulting, Inc. or Thomas G. Cloud or their counsel, Gary A. Barnes of Gambrell & Stolz, LLP, were served with the Motion. {<sup>2</sup>The failure to serve these defendants or their counsel also violates Local Rule 7.4.2. While neither the Receiver or his counsel are listed on the proof of service, the Receiver's counsel did receive a copy of the Motion. }

Second, a motion to intervene generally requires that it be accompanied by a "complaint in intervention" setting forth the claims or defenses the proposed intervenor seeks to assert. Rule 24(c); Elvarado v. J.C. Penny Co., Inc. 997 F.2d 803,805 (10<sup>th</sup> Cir. 1993). No such complaint in intervention accompanied the Motion to Intervene. This is because, the Receiver believes, the proposed intervenors do not wish to intervene in the SEC action against the defendants in order to assert claims or defenses they may have which, absent their intervention, might impair their interests. Instead, the Receiver believes it is quite clear that what the proposed intervenors want to do is second-guess the Receiver's exercise of his business judgment in operating the Receivership Estate and this Court's instructions to the Receiver. The entire basis for the Motion appears to be the Movants' disagreement with the Receiver's business decision not to waste Estate assets on unsubstantiated proposals by unknown third parties wishing to purchase or manage the Estate's assets. That is not a basis for intervention and the proposed intervenors have cited no case law or other authority allowing them to intervene for such purposes.

While courts have, on occasion, granted motions to intervene where a complaint in intervention has not accompanied the pleading, those cases have generally dealt with parties seeking to intervene to challenge protective orders. See Beckman Industries, Inc. v. International Ins. Co., 968 F.2d 470, 474 (9<sup>th</sup> Cir. 1992) [involving Rule 24(b)] and cases cited therein. Further, where the literal terms of Rule 24 (c) were not complied with, such motions "fully stated the legal and factual grounds for intervention". Id. Here that is not the case. There is no evidence in support of the Motion to Intervene. The Motion is based on unsubstantiated hearsay and self-serving letters for which no foundation has been laid. See accompanying Motion to Strike. The Motion is also devoid of any legal authority other than counsel's simply citing Rule 24. Indeed, as indicated below, one is left to guess as to whether the Movants seek to intervene as a matter of right under Rule 24(a) or seek permissive intervention under Rule 24(b). Because the Movants have not complied with the requirements of Rule 24(c) the Motion must be denied.

**THE MOVANTS HAVE NOT MET THEIR BURDEN  
TO ESTABLISH THAT INTERVENTION IS PROPER.**

The burden is on the prospective intervenor to demonstrate that the conditions for intervention are satisfied. Petrol Stops Northwest v. Continental Oil Co., 647 F.2d 1005, 1010, Fn. 5 (9<sup>th</sup> Cir. 1981). Here the Movants have not met their burden. As previously indicated, the Motion is not supported by any admissible evidence. Further, no points and authorities, as required by the Local Rules, were submitted with the Motion. (Local Rule 7.5.1(a)) The Motion consists solely of unsupported narrative complaining that the Receiver would not provide confidential investor information to unidentified third-parties and would not waste the Estate's assets and the Receiver's and his professional's time dealing with unidentified third-parties who might have an interest in some of the Receivership Estate's assets. Movants have provided no authority that the Receiver's actions justify their intervention in this litigation. Movants have provided no authority that intervention is proper to second guess the exercise of the Receiver's business judgment in managing the Receivership Estate. Finally, the Movants have failed to establish, as required by Rule 24(a), that their interests are not "adequately represented by existing parties". Indeed, in similar situations in bankruptcy court, intervention has been denied to creditors such as the proposed intervenors. See In re Thompson, 965 F.2d 1136, 1142 (1<sup>st</sup> Cir. 1992) and cases discussed therein.

Not only have the Movants failed to meet their burden to establish that their interests are not adequately represented by the existing parties, but the Movants have not even established the other requirements of intervention under Rule 24(a). They have not asserted or proved that ". . . a statute of the United States confers an unconditional right to intervene" or that Movants' claim "an interest relating to the property or transaction which is the subject of the action and that the applicant is so situated that disposition of the action may as a practical matter impair or impede the applicants ability to protect that interest", the two alternate grounds for intervention under Rule 24(a). {<sup>3</sup>Although Movants do not come out and say whether they seek intervention by right or permissive intervention under Rule 24, it appears, given the language of Rule 24 cited to in the Motion (Motion p. 2 lines 7-11) that the Movants seek intervention as of right, as set forth in rule 24(a) and do not permissive intervention. If the Movants seek permissive intervention they have not complied with any of the bases for permissive intervention set forth in Rule 24(b).} Because the Movants have not submitted any admissible evidence with their Motion, the Court cannot even conclude that the Movants are creditors of the Receivership Estate; that they have any interest in the Receivership Estate's property; and more importantly, that the disposition of the action will impair or impede their ability to protect their interests. As a result, because the Movants have not met their burden and because the Movants' motion is devoid of any evidence, or even legal argument, the Motion must be denied.

**CONCLUSION**

For the reasons set forth above this Court should deny the Motion to Intervene.

Dated: February \_\_\_\_, 2001 DRESSLER REIN EVANS & SESTANOVICH, LLP

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PETER A. DAVIDSON, ESQ.  
Attorneys for ROBB EVANS,  
RECEIVER

**DECLARATION OF BYRON Z. MOLDO**

I, Byron Z. Moldo, declare:

I am an attorney admitted to practice law in the State of California and before this Court. I am one of the attorneys representing Robb Evans, the Permanent Receiver in this case. I have personal knowledge of the facts set forth herein and if called as witness I could and would competently testify thereto.

1. I received a prior draft of the Motion to Intervene in this case from attorney Richard O. Weed. I discussed the proposed intervention with Mr. Weed on a number of occasions. Contrary to the statement made in the Motion to Intervene, page 5 lines 24-25, neither I, nor any other attorney in my office, approved, authorized or consented to the filing of the Motion to Intervene. I did indicate in a conversation with Mr. Weed that if he intended to go forward and file a Motion to Intervene, that he please clear the hearing date with me first, so the Receiver could be in attendance at the hearing. That was not done. The Receiver has indicated to me that he will not be available to be at the hearing set for February 26, 2001.

2. On February 5, 2001, I received the Motion to Intervene from Mr. Weed. On the same day, I telephoned Weed to inform him that the Receiver was not available to attend the February 26, 2001 hearing, and I suggested that the hearing be continued to either March 5 or March 12, 2001. Weed was not in his office at the time and I left a detailed voicemail message for him. I subsequently spoke to Mr. Weed who would not agree to continue the hearing absent the Receiver agreeing to provide some of the confidential information he has been seeking.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on February \_\_\_\_\_, 2001, at Los Angeles, California.

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BYRON Z. MOLDO

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