

DJW/mat

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

MAHURIN'S CONSTRUCTION CO.,

Plaintiff,

v.

Case No. 04-2174-CM-DJW

GRANITE RE, INC.,

Defendant.

ORDER

Miller Paving and Construction, LLC ("Miller") was the general contractor on the construction project underlying this case brought by Mahurin's Construction Company ("Mahurin"), one of Miller's subcontractors, against Granite RE, Inc. ("Granite"), Miller's surety. Miller has moved to intervene as of right under Rule 24(a) or, in the alternative, for permission to intervene under Rule 24(b), as a defendant in order to assert a counterclaim against Mahurin (doc. 5). The Court concludes that Miller should be permitted to intervene for those purposes and grants its motion on that basis under Rule 24(b).

It is well established that district courts have broad discretion under Fed. R. Civ. P. 24(b) to grant or deny motions to intervene. Rule 24(b) requires an applicant to file a timely motion and demonstrate that its claim or defense has a question of law or fact in common with the main action. The rule directs the district court to consider whether intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Plaintiff Mahurin argues that permitting Miller to intervene will needlessly complicate and delay its attempt to recover on the surety bond issued by Granite. The Court is not persuaded by

Mahurin's argument, as there is no evidence that Mahurin will be unduly prejudiced or delayed in its attempt to recover on the surety bond if Miller is permitted to intervene to oppose that effort. Moreover, permitting Miller to intervene conforms with Rule 24's central goal of preventing a multiplicity of suits that involve common questions. If Miller is not permitted to intervene and Mahurin prevails in this action, Granite likely will seek reimbursement from Miller, who in turn likely will seek to recover against Mahurin.

For these reasons, Miller's Motion to Intervene as Defendant and Counterclaimant is granted and Miller is ordered to file and serve on or before **September 10, 2004** an Answer and Counterclaim limited to the defenses and/or counterclaims set forth in its Motion.

IT IS SO ORDERED.

Dated in Kansas City, Kansas on this _____ day of October, 2004.

David J. Waxse
United States Magistrate Judge

cc: All counsel and *pro se* parties