

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

<b>ELLORA’S CAVE PUBLISHING, INC.,</b>	:	Case No. 5:14-cv-2331
<b>et al.</b>	:	
	:	Judge John R. Adams
Plaintiffs,	:	
	:	<b>MOTION TO INTERVENE AS</b>
v.	:	<b>COUNTERCLAIM DEFENDANT</b>
	:	
<b>DEAR AUTHOR MEDIA NETWORK,</b>	:	
<b>LLC, et al.</b>	:	
	:	
Defendants.	:	

Ann Josephson hereby moves for permissive intervention as a counterclaimant under Fed. R. Civ. P. 24(b)(1)(B). Josephson is an author who has published approximately forty works of fiction with plaintiff Ellora’s Cave Publishing, Inc. Generally speaking, the attached intervening counterclaim alleges that Ellora’s Cave miscalculated royalty payments, failed to timely pay royalties to the intervenor, and failed to timely transfer copyrights to the intervenor. The intervenor seeks a declaratory judgment to that effect, as well as injunctive relief in the form of an order from this Court directing Ellora’s Cave to comply with the terms of the publishing contracts.

In the main action the plaintiffs, including Ellora’s Cave, have alleged that the defendants defamed the plaintiffs by stating that the plaintiffs have failed to timely pay royalties to Ellora’s Cave authors. *See* Complaint at ¶ 12, dkt. 1-1, PAGEID # 8. The intervenor’s claims therefore have not only *common* questions of fact and law with the main action, but actually *substantially identical* questions of fact and law with the main action. To put it more simply, if the intervenor prevails on her intervening counterclaims, the claims in the complaint (or at least a portion of them) fail as a matter of law, because the allegedly defamatory statements will have been shown to be true.

Allowing intervention will not prejudice any party to the main action. The intervenor seeks

to intervene as a defendant-counterclaimant, not as a plaintiff, and the intervenor seeks *permissive* intervention under Rule 24(b), not mandatory intervention under Rule 24(a). As a result, her intervention would not deprive this Court of diversity subject matter jurisdiction. *See Freeport McMoRan, Inc. v. K N Energy, Inc.*, 498 U.S. 426, 428-29 (1990) (“Jurisdiction once acquired . . . is not divested by a subsequent change in the citizenship of the parties. Much less is such jurisdiction defeated by the intervention, by leave of the court, of a party whose presence is not essential to a decision of the controversy between the original parties”) (quoting *Wichita Railroad & Light Co. v. Public Util. Comm'n of Kansas*, 260 U.S. 48, 54(1922) (citations omitted). (As to the jurisdictional issue, the intervenor notes that her claims do satisfy the diversity jurisdiction requirements anyway. The intervenor is a citizen of Florida and thus is completely diverse from the parties to the main action, and her counterclaim includes both claims for past monetary damages believed to be in excess of \$75,000, and claims for future declaratory or injunctive relief the value of which may exceed \$75,000 in and of itself.) The intervenor understands that the parties to the main action have jointly consented to complete disposition of this case by a Magistrate Judge (dkt. 28) and the intervenor would also so consent.

The intervenor additionally notes that while the preliminary discovery deadline has recently passed, it would appear from the defendants’ recent status reports (such as dkt. 38 and dkt. 39) that no representative of the plaintiff has yet been deposed and that relatively minimal paper discovery has been produced by the plaintiff. (The plaintiffs have not filed any recent status reports.) As a result additional discovery relating to the intervening counterclaim would not appear to be duplicative of what discovery may remain to be done in the main action. Thus while it is possible (though not certain) that allowing permissive intervention might delay adjudication of the main action, it does not appear to the intervenor that it would unduly or substantially delay the

main action. Additionally, the intervenor states that the conduct complained of in the intervening counterclaim—especially the failure or refusal to revert copyrights to the intervenor, but other conduct as well—has been ongoing and occurred as recently as August 7, 2015.

**Conclusion**

Josephson respectfully requests that the Court grant leave for her to permissively intervene as a counterclaimant under Rule 24(b). Pursuant to Rule 24(c) a copy of the proposed intervening counterclaim is attached.

Respectfully submitted,

/s/ Jeffrey M. Nye  
Jeffrey M. Nye (0082247)  
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**Attorney for movant/intervening  
counterclaimant Ann Josephson**

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a copy of the foregoing was served upon counsel for all parties through the court's CM/ECF system on August 20, 2015.

/s/ Jeffrey M. Nye  
Jeffrey M. Nye (0082247)