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# NY Bank Investors Spar Over Bid To Merge, Pause Suits

By **Isaac Monterose**

Law360 (April 30, 2024, 5:35 PM EDT) -- New York Community Bancorp Inc. shareholders traded barbs in filings this week over whether a New York federal judge should allow an individual shareholder to intervene in the larger group's attempt to consolidate and stay their derivative shareholder suits against the bank.

In their brief filed Monday, shareholders Joseph Hauser, Elaine Wang, Aaron Pierce, and Selwyn Karp urged U.S. District Judge Nina R. Morrison to deny shareholder Robert Garfield's intervention bid, using the same arguments that they and New York Community Bancorp made when the bank and the investors both **asked** Judge Morrison to consolidate and pause the claims on April 2.

Garfield's Tuesday response, which raised similar arguments to his April 4 letter filed in Pierce's case, described him as a "long-time stockholder" of the bank and said he's opposing the joint stipulation because it will impede his efforts to probe the bank's records under the inspection statute of the Delaware General Corporation Law. Garfield also stated in his letter that his probe could lead to a bench trial in Delaware Court of Chancery.

The individual shareholders had noted Monday that Judge Morrison is presiding over two similar securities class actions filed against the bank by named plaintiffs **Walter E. Lemm Jr.** and **Dale Miskey** and that the judge could weigh dismissal motions for both class actions in the future. The individual shareholders and the bank wanted the suits consolidated and stayed until Judge Morrison decides whether to dismiss the class actions.

In their Monday brief, the shareholders claimed that their joint stipulation with the bank won't negatively impact future derivative shareholder suits against New York Community Bancorp or Garfield's interests.

"Indeed, the proposed intervenor — who has yet to even receive any documents from NYCB, let alone initiate any litigation involving, or on behalf of, the company — has no cognizable interest to protect through intervention," the shareholders argued. "The proposed intervenor asserts only that he may, or may not, decide to commence an action after receiving company documents and concluding his investigation."

"Nothing in the joint stipulation, however, impairs or impedes the proposed intervenor's ability to obtain those documents, conduct an investigation, or initiate litigation," the shareholders further argued. Additionally, according to the shareholders, New York federal courts and other courts have granted stipulations in other cases, such as *Polilingua v. Dines et al.*, that would allow litigants to obtain records under Delaware General Corporation Law's inspection statute.

The shareholders also claimed that Garfield failed to allege how they aren't adequate representatives for his interests, pointing to the Second Circuit's May 2001 decision in *Butler Fitzgerald & Potter v. Sequa Corp.* According to the shareholders, the Second Circuit ruled that intervenors must be held to higher standards when it comes to showing that litigants don't adequately represent the intervenor's interests.

"Here, proposed intervenor cannot rebut the presumption that the interests of the company and its shareholders are already adequately represented," the shareholders alleged. "Instead, the proposed intervenor erroneously argues that his strategy is superior."

"Moreover, proposed intervenor's gratuitous attacks on the sufficiency of plaintiffs' complaints — which do not serve to protect any legitimate interest he may have in the derivative actions — underscore his efforts to leverage this motion for strategic advantage," the shareholders said.

Garfield's counsel declined to comment Tuesday. Counsel for the other shareholders and the bank didn't respond to requests for comment.

Hauser and Karp are represented by Gregory M. Egleston of Gainey McKenna & Egleston.

Pierce is represented by Joshua H. Grabar of Grabar Law Office.

Wang is represented by Timothy J. MacFall of Rigrotsky Law PA.

Garfield is represented by Laurence D. Paskowitz of The Paskowitz Law Firm PC and Emily Komlossy of Komlossy Law PA.

New York Community Bancorp is represented by Jay B. Kasner, Shaud G. Tavakoli and Susan L. Saltzstein of Skadden Arps Slate Meagher & Flom LLP.

The cases are Wang v. Cangemi et al., case number 1:24-cv-01422, Karp v. Cangemi et al., case number 1:24-cv-01421, Pierce v. Cangemi et al., case number 1:24-cv-01408, and Hauser v. Cangemi et al., case number 1:24-cv-01207, in the U.S. District Court for the Eastern District of New York.

--Editing by Marygrace Anderson.