

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**JULIANNE VIADRO AS
LIQUIDATING TRUSTEE FOR
HUMBOLDT CREAMERY, LLC,**

Plaintiff and Respondent,

v.

RALPH A. TITUS et al.,

Defendants and Respondents,

LINDA NICHOLSON et al.,

Movants and Appellants.

A132331

**(Humboldt County
Super. Ct. No. DR091101)**

Linda Nicholson, Tom Adam, Jerome Davis, Barbara Davis, Silverio Fernandes, Sandra Fernandes, Rick Santos, and Rebecca Santos appeal from an order denying their motion to intervene in this litigation. They contend they established the requirements for both mandatory intervention and permissive intervention under Code of Civil Procedure section 387. We will affirm the order.

I. FACTS AND PROCEDURAL HISTORY

The Humboldt Creamery, an independent dairy cooperative, was founded in 1929. To aid in the creamery's expansion and to further finance operations, Humboldt Creamery, LLC, was formed in 2004.

During the tenure of Chief Executive Officer Richard Ghilarducci and Chief Financial Officer Tony Titus, the creamery added facilities, increased production, and appeared to be successful and profitable. The creamery was one of the largest employers in Humboldt County.

At various times including early 2009, appellants loaned or invested money in Humboldt Creamery, LLC, or its predecessor, Humboldt Creamery Association, purportedly due to representations made to them by Ghilarducci, Titus, and the creamery's independent auditor, Frank Gloeggler.

A. Financial Misstatements Revealed

On February 20, 2009, Ghilarducci resigned as CEO in a letter that warned of possible inaccuracies in the financial statements of Humboldt Creamery, LLC, and cautioned the board of directors not to offer a second round of preferred securities, the Series B securities offering.

After Ghilarducci's resignation, it was determined that Ghilarducci had overstated the creamery's inventory and accounts receivables, and understated its accounts payable, for many years. Inventory that had been certified by Ghilarducci, Titus, and Gloeggler had been stacked so as to misrepresent its true volume, and most of the inventory on the creamery's financial statements never even existed. As a result, the assets of Humboldt Creamery, LLC, had to be written down from approximately \$85 million to \$43 million, and inventory had to be written down from approximately \$38 million to \$7.5 million. In truth, Humboldt Creamery, LLC, had been financially insolvent for years.

B. Humboldt Creamery, LLC's Bankruptcy Proceedings

On April 21, 2009, Humboldt Creamery, LLC, filed for Chapter 11 bankruptcy protection in the Northern District of California. Respondent herein, Viadro, was designated as the legal successor to, and estate representative of, Humboldt Creamery, LLC.

By the time of the bankruptcy filing, Humboldt Creamery, LLC, owed creditors approximately \$55 million. On August 27, 2009, the assets of Humboldt Creamery,

LLC, were sold for \$19.5 million, and no significant assets remained to pay the \$35.5 million still owing to creditors.

Appellants, who purportedly loaned or invested money in the creamery, filed a motion for relief from the bankruptcy stay in order to file a lawsuit against Ghilarducci, Titus, and Gloeggler and reach their insurance proceeds.

On December 10, 2009, the United States Bankruptcy Court for the Northern District of California granted in part, and denied in part, appellants' motion for relief from the bankruptcy stay (Bankruptcy Order). Under the Bankruptcy Order, the appellants were granted leave to file direct claims against individual defendants, but were prohibited from bringing claims that "constitute derivative claims belonging to the Debtor [Humboldt Creamery, LLC] or its estate."¹ Appellants never filed a complaint against the individual defendants.

C. Viadro's Complaint Against Ghilarducci, Titus and Goeggler

Later in December 2009, respondent Viadro, in her capacity as liquidating trustee, filed the complaint in this action. By an amended complaint filed on June 30, 2010, she seeks recovery against Ghilarducci, Titus and Gloeggler under causes of action for breach of fiduciary duty, professional negligence, fraud, negligent misrepresentation and negligence. Viadro alleges: "The Liquidating Trustee is filing this Complaint to recover damages as a result of the fraud, misrepresentations, and negligence of the Defendants that contributed to the insolvency and eventual demise of Humboldt Creamery as an independent company." More specifically, Viadro alleges that Ghilarducci knowingly

¹ The court's order stated: "This matter came on for hearing on Creditors' Motion for Relief From Stay to pursue officers and/or directors and, to the extent available, proceeds of insurance. The Court has reviewed the Motion and the joint opposition filed by the Debtor and the Unsecured Creditors Committee and oral argument at the time of the hearing, and for the reasons stated on the record, which constitute the findings of this Court pursuant to Federal Rule of Bankruptcy Procedure 7052, [¶] IT IS ORDERED that to the extent any causes of action against officers and/or directors constitute derivative claims belonging to the Debtor or its estate, the Motion is denied. [¶] IT IS FURTHER ORDERED that to the extent any causes of action against officers and/or directors constitute direct claims belonging to moving parties herein, then the automatic stay does not apply."

prepared false and inaccurate financial statements and inventory sheets, Titus failed to verify these financial statements or request back-up documentation, and Gloeggler, as the independent auditor, falsely represented each year in writing that he had audited the financial statements and they were accurate.

On the basis of these allegations, Viadro's amended complaint charges that Ghilarducci and Titus breached their fiduciary duties to Humboldt Creamery by making misrepresentations and omissions in connection with the company's finances. It further alleges that Gloeggler breached the professional duties he owed to Humboldt Creamery with inaccurate audits and omissions related to the company's financial statements. A fraud cause of action charges all three defendants with making false representations and omissions to Humboldt Creamery: Ghilarducci purportedly intended to defraud Humboldt Creamery, LLC, and its "customers, employees, creditors, and co-op members," and Titus and Gloeggler aided and abetted the fraud. In addition, all defendants are charged with negligent misrepresentation, and Ghilarducci and Titus are charged with negligence for breaching their duties of care to Humboldt Creamery. As a result of these acts and omissions, Viadro alleges, respondent was damaged.

D. Appellants' Motion to Intervene and Proposed Complaint in Intervention

Appellants never filed the lawsuit they obtained leave to file from the bankruptcy court. Instead, on February 15, 2011 – over a year after the Bankruptcy Order and the filing of Viadro's complaint – appellants filed a motion for leave to intervene in this case. Appellants contended they had an interest relating to the transactions that were the subject matter of the litigation and an interest in any insurance proceeds that might be paid to those damaged by those transactions, and that the disposition of the litigation might impair or impede appellants' ability to protect their interests or obtain recovery. (See Code Civ. Proc., § 387.)

Along with their motion, appellants submitted their proposed "Complaint in Intervention," which asserted causes of action for negligent misrepresentation and negligent suppression of facts against Ghilarducci, Titus, and Gloeggler. According to their proposed complaint, the defendants made misrepresentations to appellants in the

form of verbal communications, audited financial statements of Humboldt Creamery, and confidential offering memoranda concerning the company's revenue and inventory. As a result, it is alleged, appellants loaned and invested money in Humboldt Creamery Association and Humboldt Creamery, LLC. Appellants thereby suffered a loss of the money that they had purported to invest or loan.

On March 8, 2011, Viadro filed her opposition to appellants' motion to intervene, contending essentially that appellants had not established a right to mandatory or permissive intervention, and appellants' claims based on their ownership of shares constituted derivative claims for which appellants lacked standing due to the Bankruptcy Order. Gloeggler and Titus each filed an opposition on March 10, 2011.

By written order of June 6, 2011, the court denied appellants' motion to intervene on the following grounds: (1) to the extent appellants were asserting derivative claims, the claims fell under the bankruptcy stay; (2) appellants were not entitled to mandatory intervention; and (3) appellants were not entitled to permissive intervention, because intervention would enlarge the issues raised by the original parties, broaden the scope of the action, and interfere with the right of the parties to conduct their own lawsuit.

This appeal followed.

II. DISCUSSION

Appellants contend the court erred in denying their motion to intervene, because they established entitlement to both mandatory intervention and permissive intervention. (Code Civ. Proc., § 387.) We address each in turn.

A. *Mandatory Intervention*

Code of Civil Procedure section 387, subdivision (b) provides: "If any provision of law confers an unconditional right to intervene or if the person seeking intervention claims *an interest relating to the property or transaction which is the subject of the action* and that person is so situated that the disposition of the action may as a practical matter *impair or impede that person's ability to protect that interest*, unless that person's interest is adequately represented by existing parties, the court shall, upon timely application, permit that person to intervene." (Italics added.)

Appellants thus had to establish: (1) they had an interest relating to the property or transaction that is the subject of Viadro’s litigation; and (2) the disposition of the litigation would impair or impede appellants’ ability to protect their interest.

The parties dispute whether we should review the court’s order de novo or review for an abuse of discretion. It is clear that, at least with respect to permissive intervention, the abuse of discretion standard applies. (*California Assn. of Professional Scientists v. Schwarzenegger* (2006) 137 Cal.App.4th 371, 380; *City and County of San Francisco v. State of California* (2005) 128 Cal.App.4th 1030, 1036.) Appellants argue that review should be de novo for mandatory intervention, because Code of Civil Procedure section 387 is the counterpart to rule 24(a) of the Federal Rules of Civil Procedure, and federal appellate courts review de novo the denial of motions to intervene as of right under that rule. (E.g., *U.S. v. State of Wash.* (9th Cir. 1996) 86 F.3d 1499, 1503.) Without deciding the issue, we will apply de novo review; the disposition of this appeal would be the same if we applied the abuse of discretion standard. (See *Siena Court Homeowners Assn. v. Green Valley Corp.* (2008) 164 Cal.App.4th 1416, 1425 [noting question of appropriate standard of review] (*Siena Court*).)

1. *Interest Relating to the Property/Transaction That is the Subject of the Action*

To determine whether appellants have an interest in the property or transaction that is the subject of Viadro’s litigation, we first determine the subject of Viadro’s litigation. As relevant here, a “transaction” in this context includes an “[a]ct of transacting or conducting any business; negotiation, management; proceeding; that which is done; an affair. It may involve selling, leasing, borrowing, mortgaging or lending. *Something which has taken place, whereby a cause of action has arisen.*” (*California Physicians’ Service v. Superior Court* (1980) 102 Cal.App.3d 91, 96 (italicized words underscored in original) (*California Physicians’ Service*).)

Appellants spend most of their argument insisting the transactions that are the subject of Viadro’s litigation are her “tort causes of action.” Taken literally, appellants are incorrect. Viadro’s tort *causes of action* – her rights to seek relief in court – do not in

themselves constitute a “transaction” for purposes of mandatory intervention. It is the conduct *underlying* a tort cause of action that may constitute a “transaction.” (See *California Physicians’ Service, supra*, 102 Cal.App.3d at p. 96.)²

The conduct underlying Viadro’s causes of action consists of the defendants’ acts and omissions in their preparation, verification, and presentation of the creamery’s corporate financial statements. More particularly, the thrust of Viadro’s pleading is on the defendants’ presentation of these financial statements *to the corporation*, in that it precluded the board of directors from taking steps necessary to avoid the corporation’s insolvency. To this end, the amended complaint challenges fraudulent misstatements made *to the corporation*, and breach of fiduciary duties owed *to the corporation*; in short, the transactions underlying Viadro’s causes of action are transactions between the defendants and Humboldt Creamery.

The question, therefore, is whether appellants have shown an adequate interest in transactions between defendants and Humboldt Creamery for purposes of mandatory intervention. In this regard, a mere economic interest or concern about the outcome of the litigation does not suffice; there must be a significant protectable legal interest in the

² Appellants insist that *California Physicians’ Service* “actually confirmed that a tort cause of action could be and was the ‘transaction which is the subject of the action’” because “[t]he court stated that ‘transaction’ includes, ‘[s]omething which has taken place, whereby a cause of action has arisen.’” (Citing *California Physicians’ Service, supra*, 102 Cal.App.3d at pp. 96-97.) To the contrary, the quotation from *California Physicians’ Service* confirms that appellants are incorrect. The court’s statement was not that a transaction includes a “cause of action,” but that a transaction includes an occurrence by which “a cause of action *has arisen*.” (*Id.* at p. 96, italics added.) Further, the court stated: “[t]he ‘transaction’ being litigated is the alleged *tortious conduct* of the real parties in interest and the injury to [plaintiff].” (*Id.* at p. 97, italics added.) Although the court did note that the would-be intervenor did not have an interest in the plaintiffs’ cause of action in tort, the passage in context can only be read to mean that conduct, not a cause of action, can constitute a “transaction.” There is also no dispute that a tort cause of action does not constitute “property” under Code of Civil Procedure section 387, subdivision (b). (*California Physicians’ Service, supra*, 102 Cal.App.3d at p. 96; *Mylan Laboratories Inc. v. Soon-Shiong* (1999) 76 Cal.App.4th 71, 79 [cause of action for breach of fiduciary duty does not qualify as property within context of unconditional intervention] (*Mylan Laboratories*).)

transactions themselves. (*Siena Court, supra*, 164 Cal.App.4th at p. 1425 [adopting standard of federal cases interpreting rule 24(a) of Fed. Rules of Civ. Proc.]; *Donaldson v. United States* (1971) 400 U.S. 517, 531 [“ ‘an interest relating to the property or transaction which is the subject of the action,’ ” is “a significantly protectable interest”]; *Medical Liability Mut. v. Alan Curtis LLC* (8th Cir. 2007) 485 F.3d 1006, 1008 [interest must be direct, substantial, and legally protectable, not a mere economic interest] (*Medical Liability Mut.*); *New Orleans Public Service v. United Gas Pipe Line* (5th Cir. 1984) 732 F.2d 452, 463-464 [same].) An interest in recovery, the outcome of the litigation, or the success of one of the parties, is insufficient for mandatory intervention. (*California Physicians’ Service, supra*, 102 Cal.App.3d at pp. 96.)

Appellants fail to show a significant protectable legal interest in the transactions between defendants and Humboldt Creamery, to which appellants were not a party. While Viadro’s amended complaint seeks relief for transactions between defendants and *Humboldt Creamery*, based on what defendants represented to *Humboldt Creamery*, appellants’ proposed complaint in intervention seeks relief for transactions between *appellants* and Humboldt Creamery, based on what defendants represented to *appellants*. Appellants had no involvement in, and have no direct legal stake in, the transactions between defendants and Humboldt Creamery, and the transactions between defendants and Humboldt Creamery are not alleged to be the cause of harm to appellants. (*California Physicians’ Service, supra*, 102 Cal.App.3d at pp. 96-97 [no right to intervention where the litigation was concerned with the defendant’s tortious conduct toward the plaintiff, while the proposed intervenor’s claim was based on the intervenor’s contract with the plaintiff]; *Medical Liability Mut., supra*, 485 F.3d at p. 1007 [plaintiff in negligence and wrongful death action could not intervene in action between defendant and its insurer regarding coverage].)

Furthermore, contrary to appellants’ suggestion, the fact that the defendants’ transactions with Humboldt Creamery involved the misstatements that defendants also allegedly employed in their transactions with appellants is immaterial; appellants provide no authority that this similarity gives them a sufficient interest in the transactions to

which they were not a party. (See *Mylan Laboratories, supra*, 76 Cal.App.4th at pp. 78-79 [interest in document that may be evidence in the lawsuit is insufficient for intervention].) Even if the defendants' fraudulent scheme spawned both the transactions with Humboldt Creamery and the transactions with appellants, those transactions are still distinct.

Appellants' reliance on *Hodge v. Kirkpatrick Development, Inc.* (2005) 130 Cal.App.4th 540 is misplaced. There, the plaintiff insured filed a construction defect lawsuit against the owner, developer, and contractors of his house. Plaintiff's insurer became subrogated to the plaintiff's claims by law and contract after paying for part of the plaintiff's loss, and thereby "[stood in] the shoes" of the plaintiff. (*Id.* at p. 548.) The insurer's subrogation rights gave the insurer a *direct* pecuniary interest in the litigation, rendering *California Physicians' Service* and *Mylan Laboratories* distinguishable, and provided the insurer a sufficient interest in the transaction underlying the litigation for mandatory intervention. (*Id.* at p. 550.) In the matter before us, by contrast, appellants do not allege any right of subrogation to Viadro's claims.

On this basis, appellants fail to demonstrate a sufficient interest for mandatory intervention.

While the foregoing analysis reflects the best characterization of the transactions underlying Viadro's complaint, we recognize that the transactions might be characterized differently if Viadro's complaint were viewed more broadly. For the sake of a complete analysis, we consider this approach as well.

Ultimately, Viadro's complaint seeks recovery from defendants for the insolvency of Humboldt Creamery, LLC. As Viadro alleges: "The Liquidating Trustee is filing this Complaint to recover damages as a result of the fraud, misrepresentations, and negligence of the Defendants that contributed to the insolvency and eventual demise of Humboldt Creamery as an independent company." The insolvency of Humboldt Creamery, LLC, reflects the fact that it became liable to creditors (and others) in an amount greater than its assets; and these liabilities were necessarily based on *transactions with creditors*. Indeed, Viadro's amended complaint alleges that Ghilarducci made misstatements and omissions

of fact with the intent to defraud Humboldt LLC’s “creditors” and with the intent that those “creditors” rely on them. Thus, it could be argued that the transactions that are the subject of the Viadro complaint are all the transactions by which the creamery became indebted to creditors on the basis of defendants’ inaccurate financial statements.³

Taking this approach, appellants could be said to have an interest in the transactions that are the subject of Viadro’s complaint to the extent those transactions include the transactions of which appellants complain: particularly, the transactions by which appellants loaned money to the creamery and thereby became its creditors.

This approach, however, is also unavailing for appellants. In the first place, it requires appellants to overcome another hurdle: if indeed they are seeking recovery for losses they incurred in transactions that *are* the subject of Viadro’s litigation, does that not make their claims merely derivative of Viadro’s claims (which were brought on behalf of debtor Humboldt Creamery, LLC) rather than the direct claims the Bankruptcy Order permitted appellants to bring? (See *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 793 [derivative claim is one in which the individual’s injury is only incidental to an injury to the corporation].) To the extent appellants’ claims are derivative, appellants have no standing to pursue them, as the trial court correctly concluded.

In any event, whether appellants’ claims are derivative or direct, their mandatory intervention argument fails for another reason: as we discuss next, appellants fail to establish that the disposition of the Viadro litigation will impair or impede their ability to pursue their own claims.

2. *Impair or Impede Appellants’ Ability to Protect Their Interests*

Appellants contend the disposition of Viadro’s action would impair or impede their ability to protect their interests because a judgment in Viadro’s favor on her negligent misrepresentation cause of action could exhaust the limits of defendants’

³ Albeit on a single page of appellants’ opening brief, appellants do describe the “transaction” that is the subject of Viadro’s litigation as the conduct underlying Viadro’s causes of action: the defendants’ misrepresentations in financial statements and inventory lists upon which Humboldt Creamery *and its creditors* relied to their detriment.

insurance policies, leaving the defendants unable to pay any judgment that appellants might obtain. Appellants are incorrect.

Appellants rely on *Fireman's Fund Ins. Co. v. Gerlach* (1976) 56 Cal.App.3d 299 (*Fireman's Fund*). There, a creditor had sold vending machines to Gerlach, who stored them in a building covered by fire insurance from Fireman's Fund. While Gerlach still owed the creditor for the machines, some of the machines were damaged or destroyed in a fire. Fireman's Fund brought an action against Gerlach for a declaratory judgment of no coverage, Gerlach defaulted, but no judgment had yet been entered. Meanwhile, the creditor sued Gerlach for the amounts owed on the machines and obtained a judgment, but Gerlach had no funds to pay the judgment. The creditor therefore sought to intervene in the declaratory relief action, claiming that the insurance proceeds were the only means of satisfying its judgment. Intervention was granted, because the creditor's interest in Gerlach's success in the declaratory relief action was direct, and not merely consequential: the creditor's only possibility of satisfying its judgment resided in Gerlach winning the case against Fireman's Fund, in which Gerlach had defaulted. (*Id.* at pp. 303, 305.)

The matter before us is plainly distinguishable from *Fireman's Fund, supra*, 56 Cal.App.3d 299. Here, unlike the intervenor in *Fireman's Fund*, appellants do not already have a judgment against defendants; here, unlike *Fireman's Fund*, it has not been established that appellants could not recover on their judgment unless Viadro won her lawsuit; and here, unlike Gerlach, there is no indication that Viadro has failed to prosecute her claims.⁴

⁴ We also note that *Fireman's Fund, supra*, 56 Cal.App.3d 299 is not a mandatory intervention case. It was decided under a prior version of Code of Civil Procedure section 387, which authorized only permissive intervention under the language now codified in subdivision (a) of Code of Civil Procedure section 387. As such, *Fireman's Fund* involves the question of whether there is a sufficient interest for permissive intervention, not whether the intervenor's ability to pursue its interest would be impaired or impeded for purposes of mandatory intervention. Moreover, if *Fireman's Fund* were germane, then also germane would be the numerous cases decided under the prior version of Code of Civil Procedure section 387 that consistently held, contrary to appellants'

Appellants next urge that a judgment in favor of defendants may have a collateral estoppel effect on appellants. Not so. Collateral estoppel would not apply, because appellants are neither parties to this litigation nor in privity with a party. (E.g., *Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 797.) Although appellants argue they are in privity with “Humboldt Creamery, whom Viadro represents” because their action is for the same misrepresentations in the same manner by the same defendants during the same time period causing the same damage, they provide no authority to support their argument. Simply because they were allegedly wronged by the same defendants or the same type of conduct does not give them such an identity of interest or relationship that they are in privity; to the contrary, Viadro’s interests and the creamery’s interests are not the same as those of appellants, and elsewhere in their briefs appellants repeatedly insist that Viadro, in representing the creamery’s interests, is *not* adequately representing appellants’ interests.

Lastly, appellants contend that Viadro’s action involves the same witnesses, the same evidence, the same issues, and the same facts, and it will therefore “use the same witnesses and evidence as Appellants’ lawsuit, impairing their availability to Appellants.” Appellants provide no authority for their notion that calling witnesses and introducing documentary evidence in one case uses them up so that no one else can utilize them in another case.

The court did not err in denying appellants’ motion for mandatory intervention under Code of Civil Procedure section 387, subdivision (b).

B. Permissive Intervention

Code of Civil Procedure section 387, subdivision (a) reads: “Upon timely application, any person, who has an interest in the matter in litigation, or in the success of

position, that intervention is impermissible when the intervenor’s concern is merely that the judgment in the litigation would render the parties unable to pay some other judgment that the intervenor might obtain in the future. (See, e.g., *Continental Vinyl Products Corp. v. Mead Corp.* (1972) 27 Cal.App.3d 543, 553 (*Continental Vinyl*); *Bechtel v. Axelrod* (1942) 20 Cal.2d 390, 392-393 (*Bechtel*); *Olson v. Hopkins* (1969) 269 Cal.App.2d 638, 641-642 (*Olson*).)

either of the parties, or an interest against both, may intervene in the action or proceeding.” Under this provision, a court may permit a nonparty to intervene if (1) the nonparty has a direct and immediate interest in the litigation, (2) the intervention will not enlarge the issues, and (3) the reasons for intervention outweigh any opposition by the existing parties. (*Noya v. A.W. Coulter Trucking* (2006) 143 Cal.App.4th 838, 842; *Simpson Redwood Co. v. State of California* (1987) 196 Cal.App.3d 1192, 1199-1204.) We review for an abuse of discretion. (*City and County of San Francisco v. State of California, supra*, 128 Cal.App.4th 1030, 1036.)⁵

1. *Direct and Immediate Interest in the Action*

For purposes of permissive intervention, the intervenor’s interest in the litigation must be so direct and immediate that the intervenor will gain or lose by the direct legal operation and effect of the judgment. (E.g., *Fireman’s Fund, supra*, 56 Cal.App.3d at p. 303.)

Appellants again contend they have a sufficient interest in Viadro’s litigation because a judgment in Viadro’s favor might exhaust defendants’ insurance limits and render defendants unable to pay a judgment that appellants might someday obtain. Appellants’ concern is categorically insufficient for permissive intervention. (*Continental Vinyl*, 27 Cal.App.3d at p. 553 [shareholder of bankrupt corporation has merely a consequential but not direct interest in outcome of litigation]; *Bechtel, supra*, 20 Cal.2d at pp. 392-393 [wife’s interest in community property estate is insufficient for intervention in a debt collection action against her husband]; *Olson, supra*, 269 Cal.App.2d at pp. 641-642 [the interest necessary for intervention “has consistently been defined by the Supreme Court of this state . . . as requiring an interest of a direct and immediate character greater than that possessed by a simple creditor of a party”];

⁵ Another requirement is that the moving party comply with proper procedures, including filing its motion to intervene in a timely manner. Respondent Gloeggler argues, among other things, that the request for intervention was untimely. We need not and do not reach this issue, in light of our disposition of the appeal on other grounds.

intervention is not allowed if it “is only an attempt of one creditor to prevent another creditor obtaining judgment against the common debtor”].)

Appellants’ reliance on *People v. Superior Court (Good)* (1976) 17 Cal.3d 732 is misplaced. There, a district attorney’s litigation against defendants sought restitution for investors based on the same facts as the investors themselves sought restitution from defendants. Under those circumstances, the court held that the investors had a sufficiently direct interest for permissive intervention. (*Id.* at p. 736.) Here, by contrast, Viadro’s litigation against defendants does not seek recovery for appellants, but recovery for Humboldt Creamery.

Appellants’ reliance on *Belt Casualty Co. v. Furman* (1933) 218 Cal. 359 is likewise off the mark. There, in an action by an insurer to rescind its insurance policy with the defendant, two persons who had *already* obtained judgments against the defendant for injuries they sustained as the defendant’s passengers, were permitted to intervene. (*Id.* at p. 361.) The matter before us is distinguishable, since appellants have not already obtained judgments against the defendants in this litigation. Moreover, in *Belt Casualty Co.* the “plaintiff [did] *not* contend that the intervenors have not sufficient interest in the action or in the success of the defendant therein to give them the right to intervene,” but objected on other grounds that appellants do not assert here. (*Id.* at p. 361, italics added.) *Belt Casualty Co.* is unhelpful to appellants.

Lastly, as they also argue in the context of mandatory intervention, appellants contend they have a sufficient interest in the action because of its possible collateral estoppel effect. For the same reason we reject the argument in regard to mandatory intervention, we reject it here.

Appellants failed to establish an interest sufficient for permissive intervention.

2. *Enlargement of the Scope of the Litigation*

In addition, the trial court did not abuse its discretion in concluding that adjudication of appellants’ claims would enlarge the scope of the litigation.

Appellants seek relief based on representations defendants purportedly made to appellants, on which appellants purportedly relied, resulting in some amount of damage

appellants suffered. Even if the “transactions” underlying appellants’ claims are included in the transactions in Viadro’s litigation, appellants can win on their claims only if they establish elements that Viadro would not have to prove for her own recovery on behalf of Humboldt Creamery, LLC. For example, while Viadro’s claims require proof of reliance by the corporation, appellants’ claims require discovery and adjudication of the particular statements made to appellants, appellants’ reliance, whether that reliance was justified under appellants’ circumstances, and the intention of the defendants when the alleged statements to appellants were made.

On this basis as well, the court’s denial of appellants’ motion to intervene was proper.

3. Interference With Rights of Viadro to Control the Litigation

Viadro filed her complaint in this litigation in December 2009, and discovery had presumably commenced before appellants sought to intervene over a year later. It was not arbitrary or irrational for the trial court to conclude that the addition of appellant’s claims to the litigation would require discovery unrelated to Viadro’s claims or duplicative of discovery already taken, and delay Viadro’s pursuit of a judgment against defendants. In their motion to intervene, appellants did not explain – and do not adequately explain now – how the addition of their claims to the litigation would not interfere with Viadro’s right to control the litigation. For this reason also, the court did not err in denying permissive intervention.

Appellants have failed to demonstrate error in the denial of their motion to intervene.

III. DISPOSITION

The order is affirmed.

NEEDHAM, J.

We concur.

SIMONS, Acting P. J.

BRUINIERS, J.