

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

FREDERICK SCHMIDT, a resident)	
of Japan,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 11C-05-067-JRJ CCLD
)	
MORGAN STANLEY)	
INTERNATIONAL)	
INCORPORATED, a Delaware)	
Corporation,)	
)	
Defendant.)	

ORDER

AND NOW TO WIT, this 26th day of June, the Court having heard and duly considered Defendant Morgan Stanley International Inc.’s Motion to Dismiss for Failure to Join a Necessary Party and Plaintiff’s opposition thereto, **IT APPEARS THAT**:

1. Plaintiff, Frederick Schmidt (“Schmidt”), alleges that Morgan Stanley International, Inc. (“MSII”) owes him certain amounts under a tax equalization policy (“TEP”)¹ and that MSII improperly offset those amounts against money Schmidt owes to MSII.

¹ The purpose of the TEP “is for Schmidt to work as an expatriate employee in Japan and pay the same in taxes as if he were living in the United States.” Plaintiff’s First Amended Complaint (“First Am. Comp.”) (Trans. ID. 41154084) at ¶ 6.

2. MSII argues that Schmidt's claim is based not only on his former employment relationship with MSII, but also on his subsequent employment contract with Morgan Stanley Japan ("MS Japan"), and thus, MS Japan is a necessary party to this suit.

3. MSII further argues that MS Japan, as a necessary party, cannot be made a party to this case for two reasons. First, MS Japan is not subject to personal jurisdiction in Delaware (or anywhere else in the United States), and second, Schmidt's contract with MS Japan contains an "unambiguous forum exclusivity clause which provides that "[a]ny dispute in respect of this...employment contract...shall be subject to the exclusive jurisdiction of the Tokyo District Court."²

4. Thus, according to MSII, since MS Japan is a necessary party, and cannot be joined in this suit, the case must be dismissed pursuant to Superior Court Civil Rules 12(b)(7) and 19.³

² Defendant's Opening Brief ("Def. Op. Br.") (Trans. ID. 43490985) at p. 5 (SCHMIDT-0000044).

³ Super. Ct. Civ. R. 19(a) provides: A person who is subject to service of process and whose joinder will not deprive the Court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the Court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

5. In response, Schmidt argues MSII has not met its initial burden of showing that MS Japan is needed for a just adjudication of Schmidt's claim. And even if MS Japan is a necessary party, according to Schmidt, it is not indispensable under Superior Court Civil Rule 19(b).

6. The threshold issue before the Court is whether complete relief can be granted to Schmidt or MSII in the absence of MS Japan.⁴

7. Plaintiff asserts that MS Japan is not a necessary (or indispensable) party because Schmidt's agreement with MS Japan "is not the contract that Schmidt is enforcing here."⁵

8. Schmidt, as plaintiff, has the right to determine which cause(s) of action to pursue. He has chosen to pursue a claim against MSII for an alleged breach of the TEP, and MSII and Schmidt are the only parties to the TEP.⁶

9. The First Amended Complaint makes clear that Schmidt seeks monies allegedly owed to him as a result of MSII's alleged breach of the TEP,⁷ and that he

⁴ See *Pfizer, Inc. v. Advanced Monobloc Corp.*, 1998 WL 110129, at *6 (Del. Super.) (citing Moore's Federal Practice ¶ 19.0-1[2], at 19-128 (2d. ed. 1979). The purpose of Rule 19(a) is to "protect those who already are parties by requiring the presence of all persons who have an interest in the litigation so that any relief that may be awarded will effectively and completely adjudicate the dispute." *Heritage Homes DelaWarr, Inc. v. Persinger*, 1989 WL 41257, at *3 (Del. Super.) (other citations omitted).

⁵ Plaintiff's Answering Brief ("Pl.'s Ans. Br.") (Trans. ID. No. 44113017) at p. 8. Plaintiff does not dispute he entered into an employment contract with MS Japan; he simply maintains he is not alleging MS Japan breached that contract and he does not seek any damages from MS Japan. See *id.* ("Contrary to MSII's assertions, Schmidt brought suit pursuant to the terms of the TEP, not the MS Japan Employment Contract. Consequently, this is also why the MS Japan Employment Contract was purposely not attached to or referenced in the Amended Complaint.")

⁶ See First Am. Comp. at Ex. A. There is nothing in the record suggesting that MSII assigned or otherwise transferred its rights, obligations or liabilities under the TEP. See Pl.'s Ans. Br. at 9.

⁷ See First. Am. Comp. at ¶¶ 5-16, 21-27.

is not suing to recover damages for an alleged breach of his employment contract with MS Japan.⁸

10. Morgan Stanley argues that Schmidt’s employment contract with MS Japan “supersedes all prior or contemporaneous verbal or written agreements” relating to Schmidt’s employment “as well as previous contracts of agreement with other Morgan Stanley entities.”⁹

11. On a motion to dismiss for failure to join necessary party, the Court may dismiss a claim under Superior Court Civil Rule 12(b)(7) for failure to join a party pursuant to Rule 19.¹⁰ “Rule 19 provides for joinder of persons needed for just adjudication.”¹¹ If a party is necessary for just adjudication and cannot be joined, the Court must dismiss the action for failure to join an indispensable party.¹²

12. MSII has not met its initial burden of showing that MS Japan is needed for just adjudication. Assuming, *arguendo*, Morgan Stanley prevails by convincing the fact finder that the MS Japan Employment Contract does, indeed, supersede the TEP, complete relief can be accorded Morgan Stanley, *i.e.*, by way

⁸ See, e.g. First Am. Comp. at ¶ 6 (“pursuant to the TEP, Morgan Stanley agreed to pay, and in fact did pay for years, Schmidt’s Japanese tax obligations.”); *Id.* (“Specifically, under the TEP, Morgan Stanley admits to owing Schmidt...”); *Id.* at ¶ 11 (“Pursuant to the TEP, Morgan Stanley is also responsible for paying Schmidt’s Japanese National Taxes...”). See also Transcript of Oral Argument at p. 11, 14 (“We’re only seeking money that would be owed to Mr. Schmidt by Morgan Stanley International So, all we’re seeking today, or all we’re seeking in this case is to go after MSI for the money MSI owes him. We’re not asking the Court to order MS Japan to pay anything or to do anything else related to MS Japan.”).

⁹ See Defendant’s Reply Brief (“Def.’s Reply Br.”) at p. 4 (quoting MS Japan Employment Contract dated July 8, 2009). *Id.* at Ex. A, p. 3.

¹⁰ Super. Ct. Civ. R. 12(b)(7).

¹¹ *Brown v. City of Wilmington Zoning Bd. of Adjustment*, 2007 WL 1828261, at * 3 (Del. Super.) (citing Super. Ct. Civ. R. 19(a). “Necessary refers to those absentee [parties] who should be joined in the pending case.” 4 James Wm. Moore *et al.*, Moore’s Federal Practice, § 19.02(2)(c) (3d. ed. 1999).

¹² *Id.* (citing Super. Ct. Civ. R. 19(b) (other citations omitted).

of a defense verdict. The absence of MS Japan does not impede Morgan Stanley's ability to protect its interest, nor does it subject Morgan Stanley to the risk of incurring multiple or inconsistent judgments.¹³ Complete relief can be afforded to either side without MS Japan as a party.

WHEREFORE, IT IS HEREBY ORDERED THAT Defendant's Motion to Dismiss for Failure to Join an Indispensable Party is **DENIED**.

Jurden, J.

cc: Prothonotary – original

¹³ See Super. Ct. Civ. R. 19(a).