

United States District Court
Northern District of California

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

DS-CONCEPT TRADE INVEST, LLC, a
Delaware Limited Liability Company,

Plaintiff,

vs.

**MORGAN-TODT, INC., d/b/a UNITED COLD
STORAGE**, a California corporation,

Defendant.

CASE NO. 16-cv-02785-YGR

**ORDER DENYING DEFENDANT'S MOTION
FOR JUDGMENT ON THE PLEADINGS
PURSUANT TO RULE 12(C)**

Re: Dkt. No. 53

Now before the Court is defendant Morgan-Todt Inc., d/b/a United Cold Storage’s (“United”) motion for judgment on the pleadings pursuant to Fed. R. Civ. Pro. 12(c). United argues that third-parties Gourmet Food Imports, Ltd., and related corporation Gourmet (collectively “Gourmet”), is a necessary party to this litigation pursuant to Fed. R. Civ. P. 19(a)(1)(b)(i), (ii) and thus must be joined. Further, United asserts that Gourmet cannot be joined without depriving this Court of subject-matter jurisdiction which is based on diversity of citizenship. *See* 28 U.S.C. §§ 1332(c)(1). Accordingly, United moves for an order dismissing this action under Fed. R. Civ. Pro. 19(b).

Having carefully considered the pleadings and the papers submitted on this motion, and for the reasons set forth below, defendant’s motion for judgment on the pleadings is **DENIED**.¹

I. Relevant Background

Plaintiff DS-Concept Trade Invest, LLC (“DSC”) is a purchaser of accounts receivable (also known as “trade debt”) from third-party trade companies that exports food products,

¹ Defendant has submitted documents for judicial notice as has plaintiff. (Dkt. Nos. 54, 55-2.) In light of the lack of opposition to either, the Court **GRANTS** both requests for judicial notice, but does not accept the truth of any matters asserted in the documents. The Court gives such documents their proper evidentiary weight.

1 including Gourmet. (Dkt. No. 42, Third Amended Complaint (“TAC”) ¶¶ 3–6, 8, 9.) DSC
2 purchases trade debt from Gourmet pursuant to a “Factoring Agreement.” (*Id.* ¶¶ 8–10.) Under
3 the Factoring Agreement, Gourmet obtains and prepares to fill purchase orders for food products
4 from a buyer, typically third-party Atalanta Corporation (“Atalanta”). Gourmet then designates
5 DSC as the payee on these orders. (*Id.* ¶ 12.) DSC confirms the purchase orders with the buyer
6 and advances funds to Gourmet. (*Id.*) Gourmet uses these funds to acquire and ship the order to
7 the buyer. (*Id.* ¶ 13.) After the buyer receives the goods, DSC is paid “via direct collection of
8 payment” from the buyer. (*Id.*)

9 United is a cold storage facility located in San Francisco, California. (*Id.* ¶ 18.) Between
10 June and August 2015, DSC advanced funds to Gourmet in connection with Gourmet’s purchase
11 of 573,350.93 pounds of pecorino cheese (“the Cheese”). As a result, Gourmet generated
12 \$2,063,883.33 in invoices payable to DSC. (*Id.* ¶ 14, Exh. D.) DSC contends that the Cheese
13 arrived at United’s cold storage facility in San Francisco, (*id.* ¶ 18, Exh. E), but none of the
14 invoices has been paid. (*Id.* ¶ 15.) According to DSC, United improperly stored the Cheese in the
15 freezer, rather than the refrigerator, which diminished the value of the Cheese by rendering it unfit
16 for human consumption. (*Id.* ¶¶ 36–40.) To secure repayment of the advances and other monetary
17 damages, DSC brought three federal suits: this one, a second against (i) United and (ii) Gourmet in
18 this Court, and the third against (iii) Gourmet and Atalanata in the U.S. District Court for the
19 District of New Jersey. *See DS-Concept Trade LLC v. Gourmet Food Imports, LLC*, et al. Case
20 No. 3:16-cv-00466 YGR; *DS-Concept Trade LLC v. Atalanta Corporation, et al.*, Case No. 2:16-
21 cv-00429-SRCCLW. In addition, Gourmet has filed suit against United in the Superior Court of
22 the State of California, County of San Francisco. *See Gourmet Food Imports, LLC v. Morgan-*
23 *Todt, Inc., d/b/a United Cold Storage*, CGC-16-552621.

24 According to DSC, under the Factoring Agreement the Cheese is “property in which DSC
25 holds a beneficial interest (or, alternatively, collateral in which DSC has a security interest).” (*Id.*
26 ¶ 22, Exh. A §§ 11, 14.) DSC alleges that United owed it a duty of care to store the Cheese
27 reasonably because of this beneficial and/or security interest in the Cheese. (*Id.* ¶¶ 20, 57.)
28 Plaintiff alleges that, “based on industry customs and practices,” United understood or should have

1 understood that the Cheese and proceeds from any sale were subject to DSC’s beneficial and/or
2 security interest. (*Id.* ¶ 53.)

3 On March 1, 2017, plaintiff filed a TAC alleging one cause of action against United,
4 namely for negligence. (*Id.* ¶¶ 50-66.) United filed a motion to dismiss on the ground that United
5 did not owe plaintiff a duty of care. (Dkt. No. 43.) On May 18, 2017, this Court denied United’s
6 motion to dismiss and found plaintiff’s allegations sufficient to state a plausible claim for
7 negligence under the six-factor test articulated in *Biakanja v. Irving*, 49 Cal.2d 647 (1958). (Dkt.
8 No. 47.)

9 **II. LEGAL STANDARD**

10 Rule 12(c) provides that any party may move for judgment on the pleadings “after the
11 pleadings are closed – but early enough not to delay trial.” Fed. R. Civ. P. 12(c). A motion for
12 judgment on the pleadings under Rule 12(c) “challenges the legal sufficiency of the opposing
13 party’s pleadings, and the allegations contained therein.” *In re Dynamic Random Access Memory*
14 *Antitrust Litig.*, 516 F.Supp.2d 1072, 1083 (N.D. Cal. 2007).

15 Under Rule 19(a)(1):

16 *Required Party.* A person who is subject to service of process and whose joinder
17 will not deprive the court of subject-matter jurisdiction must be joined as a party
18 if:

- 19 (A) in that person’s absence, the court cannot accord complete relief
20 among existing parties; or
- 21 (B) that person claims an interest relating to the subject of the action and is
22 so situated that disposing of the action in the person’s absence may:
 - 23 (i) as a practical matter impair or impede the person’s ability to
24 protect the interest; or
 - 25 (ii) leave an existing party subject to a substantial risk of incurring
26 double, multiple, or otherwise inconsistent obligations because of
27 the interest.

28 In the event that a required party cannot be joined, Courts must determine whether “equity and
good conscience” will permit the action to proceed in the party’s absence. Fed. R. Civ. P. 19(b). If
not, the party is considered “indispensable” and the lawsuit must be dismissed. *Provident*
Tradesmens Bank & Trust Co. v. Patterson, 390 U.S. 102, 118 (1968). Defendants bear the burden
of persuasion in arguing for dismissal under Rule 19. *See Clinton v. Babbitt*, 180 F.3d 1081, 1088

1 (9th Cir. 1999). To prevail on a motion to dismiss for failure to join an indispensable party,
2 defendant must show that (i) the absent party is “necessary”; (ii) it is “feasible” to join the absent,
3 necessary party; and (3) the absent party is “indispensable.” *EEOC v. Peabody W. Coal Co.*, 610
4 F.3d 1070, 1078 (9th Cir. 2010).

5 **III. DISCUSSION**

6 The Court finds that United’s motion fails because defendant cannot carry its burden to
7 show that Gourmet is a “necessary” party to this litigation. *See id.*

8 United avers that “Plaintiff’s main claim is not that Defendant was negligent,” but that
9 Gourmet “breached the agreement with DSC.” (Dkt. No. 53, Motion Pursuant to Rule 12(c)
10 (“Motion”) at 5 (citing TAC ¶ 19).) According to United, “plaintiff is seeking recovery from
11 Defendant because Gourmet failed to satisfy its contractual obligations to Plaintiff.” (*Id.*)
12 Therefore, defendant argues that Gourmet is a necessary party under both prongs of Rule
13 19(a)(1)(B). Specifically, United contends that absent joinder of Gourmet “[1] complete relief
14 cannot be accorded among those already parties. Additionally, without Gourmet, [2] Defendant is
15 subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by
16 reason of the claimed interest.” (*Id.* at 4.)²

17 Defendant does not persuade. First, a review of the TAC and briefing on defendant’s
18 motion to dismiss indicates that plaintiff’s “main claim” in this lawsuit is precisely that United
19 was negligent in improperly storing the Cheese in the freezer. (TAC ¶¶ 36–40.) In fact, this is the
20 *only* claim asserted in the TAC. Second, contrary to United’s assertion, plaintiff is in fact seeking
21 recovery from United due to United’s own negligence in improperly storing the Cheese. Plaintiff
22 is not seeking recovery on the basis of Gourmet’s alleged conduct.

23 Third, Rule 19(a)(1)(A) does not require joinder of Gourmet because complete relief can

25 ² In defendant’s reply brief, defendant argues for the first time that Gourmet is a necessary
26 party because it has an “interest in the Subject Goods,” namely the Cheese. However, defendant
27 cites no authority for the proposition that a third-party is deemed “necessary” merely because the
28 third-party holds an interest in goods which are subject to the litigation. Under Rule
19(a)(1)(B)(i), “as a practical matter” allowing this matter to go forward in Gourmet’s absence
will not “impair or impede [Gourmet’s] ability to protect” Gourmet’s interest in the Cheese
because Gourmet has elected to pursue this interest through a separate lawsuit against United in
state court. *See Gourmet Food Imports*, CGC-16-552621.

1 be afforded absent joinder. For example, absent joinder of Gourmet this Court can determine (i)
2 whether United owned DSC a duty of care, (ii) whether that duty of care was breached when
3 United stored the Cheese in the freezer, and (iii) resulting damages. Joinder of Gourmet is not
4 necessary for the Court to decide these issues and determine plaintiff's entitlement to damages, if
5 any.³

6 Finally, 19(a)(1)(B)(ii) does not require joinder because the risk of multiple recovery can
7 easily be addressed, if necessary, by providing United with an offset against any recovery that
8 DSC obtains in its litigation against Gourmet. *See DS-Concept Trade LLC v. Gourmet Food*
9 *Imports, LLC, et al.* Case No. 3:16-cv-00466 YGR; *DS-Concept Trade LLC v. Atalanta*
10 *Corporation, et al.*, Case No. 2:16-cv-00429-SRCCLW. Therefore, the Court finds that United
11 has failed to show that Gourmet is not a necessary party under Rule 19(a)(1).⁴ Accordingly,
12 defendant's motion for judgment on the pleadings is **DENIED**.

13 This order terminates Dkt. No. 53.

14 **IT IS SO ORDERED.**

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16 Dated: November 6, 2017



YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

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25 ³ The Court notes that despite the passage from defendant's Motion quoted above,
26 defendant apparently reverses course and concedes in its reply brief that complete relief can be
27 accorded absent joinder of Gourmet. (*See* Dkt. No. 59 at 2 ("United did not argue in its motion
28 that Gourmet was a necessary party because complete relief could not be accorded between
Plaintiff and United").)

⁴ In light of the Court's holding, the Court need not address the parties' arguments
regarding whether (i) joinder of Gourmet is feasible or (ii) the action need be dismissed because
Gourmet is also indispensable.