

STATE OF MAINE  
CUMBERLAND, ss

SUPERIOR COURT  
CIVIL ACTION  
Docket No. CV-14-400 ✓

NM-CUM-12-10-14

LAURIE L. CHAMPAGNE  
And CHAMP, INC.,

Plaintiffs

ORDER ON DEFENDANT'S  
MOTION TO DISMISS OR FOR  
JOINDER OF PARTIES

v.

PHENIX TITLE SERVICES,  
LLC,

Defendant

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I. BACKGROUND

A. Procedural Posture

In their complaint, plaintiffs Laurie L. Champagne and Champ, Inc. seek declaratory relief and damages against defendant Phenix Title Services, LLC arising out of a real estate transaction. Plaintiffs allege the following claims: count I: declaratory judgment; count II: negligent misrepresentation; count III: conversion; and count IV: passing bad checks. Before the court is defendant's motion to dismiss pursuant to M.R. Civ. P. 12(b)(7) for failure to join necessary parties under M.R. Civ. P. 19 or, in the alternative, a motion to join those parties. For the following reasons, the motion to dismiss is denied and the motion to join is granted as to William G. Silber and denied as to Tony Langdon.

B. Facts<sup>1</sup>

Plaintiff Laurie Champagne is an individual and plaintiff Champ, Inc. is a Maine corporation. (Compl. ¶¶ 2-3.) Defendant Phenix Title Services, LLC is a foreign limited liability company with an office in Portland, Maine. (Compl. ¶ 4.)

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<sup>1</sup> Some facts discussed in the memoranda do not appear in the complaint or documents the court can consider.

Plaintiff Champagne provided services pertaining to the sale of a house in Falmouth, Maine and plaintiff Champ, Inc. spent money to prepare and maintain the house for sale. (Compl. ¶ 5.) The closing took place on March 21, 2014. At the closing, defendant issued two checks, one for \$2,468.76 to plaintiff Champagne, and the other for \$35,075.41 to plaintiff Champ, Inc. (Compl. ¶ 6.)

Five days later, defendant stopped payment on the checks because of a real estate title encumbrance on the property. (Compl. ¶ 7.) Plaintiffs made several demands for defendant to honor the checks but defendant refused. (Compl. ¶ 8.) On May 28, 2014, plaintiffs delivered to defendant's attorney a written Notice for Nonpayment pursuant to 14 M.R.S. § 6073 (2013). (Compl. ¶ 9.) On June 25, 2014, plaintiffs delivered a letter to defendant's attorney, in which plaintiffs requested an accounting from defendant. (Compl. ¶ 10.) Defendant did not provide the accounting and stated it was holding \$47,782.31 as a trustee in a separate matter in the Maine Superior Court, Katahdin Trust Company v. William G. Silber et al., CARSC-RE-14-09. (Compl. ¶ 10.)

## II. DISCUSSION

### A. Motion to Dismiss Under Rule 12(b)(7) and Rule 19 Standard

Defendant contends William G. Silber, the seller of the Falmouth property, and Tony Langdon, the auctioneer who conducted the sale, are necessary parties under M.R. Civ. P. 19. (Def.'s Mot. Dismiss 1, 9.) Rule 19 requires joinder of parties subject to service of process and deemed necessary by reference to the following:

[I]f (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.

M.R. Civ. P. 19(a). Joinder under Rule 19 “protect[s] 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.” Peoples Heritage Bank v. Grover, 609 A.2d 715, 716 (Me. 1992) (citations omitted). The rule protects the present parties by ensuring that “issues will not have to be relitigated,” and avoids prejudice to unjoined but interested parties. Ocwen Fed. Bank, FSB v. Gile, 2001 ME 120, ¶ 14, 777 A.2d 275 (citations omitted).

Dismissal under Rule 19(b) is discretionary,<sup>1</sup> and appropriate only when joinder of parties deemed necessary is not possible. Larrabee v. Town of Knox, 2000 ME 15, ¶ 11, 744 A.2d 544; see also Grover, 609 A.2d at 716 n.1 (noting dismissal is proper under Rule 19(b) where absent parties are “indispensable” to the action and cannot be joined). If, however, a necessary party can be joined, joinder is mandatory. M.R. Civ. P. 19(a) (“[T]he court shall order that the person be made a party.”)

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<sup>1</sup> The court shall determine “whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable” and considers the following factors:

first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

M.R. Civ. P. 19(b).

B. Mr. Silber Is a Necessary Party

The parties dispute the consequences that flow from the attachment in the Katahdin case. Based on plaintiffs' complaint and relevant documents,<sup>3</sup> there is no dispute that the basis for this suit is defendant's cancellation of the checks to plaintiffs and there was no contractual relationship between plaintiffs and defendant.

According to the HUD-1 settlement statement and attachments, payments in the amount of \$2,468.76 to plaintiff Champagne and \$35,075.41 to plaintiff Champ, Inc. were to be deducted from the sale proceeds paid to Mr. Silber. (Def.'s Mot. Dismiss Ex. A.) After the closing, defendant received a trustee summons from the Katahdin case that showed an attachment had been ordered on Mr. Silber's property and requested defendant disclose any property held. (Def.'s Mot. Dismiss Ex. F.) Defendant disclosed to the court that it held \$47,782.31 from the Falmouth property sale. (Def.'s Mot. Dismiss Ex. G.) The attachment in favor of Katahdin Trust Company was eventually released. (Def.'s Reply Ex. A.)

In defendant's view, the order, attachment, and trustee process gave Katahdin Trust Company priority as a secured creditor and compelled defendant to cancel the checks issued to plaintiffs. Defendant argues payment for plaintiffs'

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<sup>3</sup> While ordinarily a court may not examine documents outside the pleadings on a motion to dismiss, the Law Court has recognized an exception for "official public documents, documents that are central to the plaintiff's claim, and documents referred to in the complaint . . . when the authenticity of such documents is not challenged." Moody v. State Liquor & Lottery Comm'n, 2004 ME 20, ¶ 10, 843 A.2d 43. Plaintiffs aver in the complaint that defendant was responsible for conducting the closing; the accuracy of documents from the closing has not been challenged. The HUD-1 settlement statement may therefore be properly considered without converting the motion to dismiss to a motion for summary judgment. Id. (Ex. A attached to Def.'s Mot.) The court refers to the trustee summons and other documents from the Katahdin case and the deed because they are public documents. (Exhs. B, C, D, F, G.)

services arose from an agreement with Mr. Silber or Mr. Langdon and because defendant merely complied with the court's order in the Katahdin case, any recourse plaintiffs may have for nonpayment is against Mr. Silber or Mr. Langdon or both. (Def.'s Mot. Dismiss 6-7.)

Plaintiffs argue that responsibility for the underlying issue that led defendant to cancel the checks, the attachment in the Katahdin case, rests with defendant because it failed to record immediately the deed for the Falmouth property. (Pls.' Opp. 2.) Plaintiffs contend that had defendant recorded the deed prior to the attachment, the checks would have been honored and this dispute would not have arisen. (Id. 1-2.)

On this sparse record, Mr. Silber appears to be a necessary party, while Mr. Langdon is not.<sup>4</sup> Plaintiffs seek compensation for the "services" provided to facilitate the sale of the Falmouth property. (Compl. ¶ 5.) Under the HUD-1 settlement statement, plaintiffs were entitled to compensation from the sale proceeds to Mr. Silber. Aside from the requirement to issue the checks at the parties' request, there was no contractual relationship between plaintiffs and defendant.

As noted, under Rule 19(a), a party is necessary either if "in the person's absence complete relief cannot be accorded among those already parties," or if a

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<sup>4</sup> The details of any agreements or understandings among Mr. Silber, Mr. Langdon, and plaintiffs are not apparent from the record. Mr. Langdon's status as a necessary party is far from clear. The HUD-1 settlement statement lists payoffs to plaintiff Champagne in the amount of \$2,468.76 and to Mr. Langdon in the amounts of \$35,075.42 and \$1,377.35. An attachment to the document allocates another \$35,075.41 to plaintiff Champ, Inc. (Def.'s Mot. Dismiss Ex. A.) In the motion to dismiss, defendant alleges that because Mr. Langdon directed defendant to issue the checks to plaintiffs, "he may stake a claim to a portion of the funds." (Def.'s Mot. Dismiss 9.) That is not a matter of this record. Even if this was the arrangement, Mr. Langdon's interest in plaintiff Champagne's commission is speculative and not sufficient to deem Mr. Langdon a necessary party in this action. Mr. Langdon's potential claims against Mr. Silber similarly do not make Mr. Langdon a necessary party to this pending suit.

present party risks “incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.” M.R. Civ. P. 19(a)(1), (2)(ii). Having used the escrowed funds to satisfy Mr. Silber’s other debt obligations in the Katahdin case, defendant now risks incurring additional liability. See M.R. Civ. P. 19(a)(2)(ii). Plaintiffs have sued defendant for an obligation that Mr. Silber may owe. Furthermore, any relief could prejudice Mr. Silber, including any claim to any money defendant continues to hold. (Def.’s Reply 4.) If plaintiffs prevail, defendant may seek indemnification from Mr. Silber, which would require re-litigation of the issues in this case, an inefficient result that Rule 19 is designed to avoid. See Ocwen, 2001 ME 120, ¶ 14, 777 A.2d 275.

In opposing the motion to dismiss, plaintiffs claim other potential parties “had nothing to do with Defendant’s reason for putting a stop payment on the checks.” (Pl.’s Opp. 3.) Mr. Silber’s failure to pay other creditors, however, resulted in the attachment that led defendant to stop payment. (Def.’s Mot. Dismiss Ex. F.) Plaintiffs primarily focus on how defendant handled recording the deed and whether defendant had adequate justification to cancel the checks. The court need not reach these issues at this stage of the proceeding. In light of the interests at stake and the relief sought, Mr. Silber is a necessary party who must first be joined.

### C. Silber Must Be Joined

Plaintiffs do not address the issue of whether Mr. Silber can be joined. Based on this record, it appears Mr. Silber can be made a party to this lawsuit. Accordingly, Mr. Silber must be joined and defendant’s motion to dismiss must be denied. Larrabee, 2000 ME 15, ¶¶ 10-11, 744 A.2d 544. If adding Mr. Silber as a

party to this lawsuit proves impossible, the court may at a later date consider whether this action can proceed in his absence. M.R. Civ. P. 19(b).

The entry is

William Silber will be joined as a necessary party.

Defendant's Motion to Dismiss is DENIED.

Date: 12-10-14

  
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