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STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CUMSC-CV-15-151

JAMES D. KLEIN and)
MARGARET L.K. SELIAN,)
))
Plaintiffs,)
))
v.)
))
MARK C. KLEIN)
))
Defendant,)
))
and)
))
GEROLD K.V. KLEIN, JR.,)
ELEANOR K. IYER, KATE E. KLEIN,)
PETER L. KLEIN, and)
MARGARET L. KLEIN,)
))
Parties-in-Interest.)

ORDER ON DEFENDANT'S
MOTION TO DISMISS

STATE OF MAINE
Cumberland Clerk's Office
MAR 29 2016
RECEIVED

Presently before the court is Defendant Mark C. Klein's motion to dismiss for failure to join necessary parties or, in the alternative, for an order requiring the mandatory joinder of necessary parties. Oral argument was held on January 26, 2016.

Based on the following, Defendant's motion to dismiss or for an order requiring mandatory joinder is denied.

I. BACKGROUND

According to the second amended complaint, Dr. Gerold K.V. Klein and Mrs. Margaret L. Klein were married and had seven children. (2d Amend. Compl. ¶¶ 1-2.) Dr. Klein died testate on June 11, 1994. (*Id.* ¶ 6.) Dr. Klein's will bequeathed substantially all of his assets to Mrs. Klein. (*Id.* ¶ 8.) The will gave Mrs. Klein the authority to disclaim any property passing under the will, which would then be distributed to a "Disclaimer Trust." (*Id.* ¶¶ 9-10.) Pursuant

to the terms of the will, income from the Disclaimer Trust was to be paid to Mrs. Klein. (*Id.* ¶ 11.) Upon Mrs. Kelin's death, the remaining corpus of the Disclaimer Trust is to be distributed to the seven children. (*Id.* ¶ 12.) Thus, the seven children are remainder beneficiaries of the Disclaimer Trust. (*Id.* ¶ 13.) The will appointed Mrs. Klein as trustee of the Disclaimer Trust and authorized her to appoint a co-trustee. (*Id.* ¶ 14.) Mrs. Klein appointed Defendant Mark C. Klein, one of the seven children, as co-trustee of the Disclaimer Trust. (*Id.* ¶ 15.)

The complaint alleges that, on or about March 6, 1995, Mrs. Klein disclaimed her interest in certain patents bequeathed to her under the will and assigned those patents to the Disclaimer Trust. (*Id.* ¶¶ 37-39.) On April 15, 1998, Mrs. Klein and Defendant, as trustees of the Disclaimer Trust, assigned the patents to Mrs. Klein. (*Id.* ¶ 43.) That same day, Mrs. Klein transferred her interest in the patents to Defendant. (*Id.* ¶ 44.) The complaint alleges that Defendant has profited from licensing the patents to another company. (*Id.* ¶¶ 51-57.)

On April 13, 2015, five of the seven siblings, James D. Klein, Margaret L.K. Selian, Eleanor K. Iyer, Kate E. Klein, and Peter L. Klein filed this action against Defendant. (Compl. 1.) The complaint sought a declaratory judgment that the assignment of the patents is voidable and that the siblings, as remainder beneficiaries, are entitled to an accounting of the Disclaimer Trust and a portion of the profits from the licensing of the patents. (*Id.* ¶¶ 76-79.) The complaint also asserted five counts of breach of fiduciary duty, one count of tortious interference with expectancy of a legacy, and one count of unjust enrichment against Defendant. (*Id.* ¶¶ 80-116.) The complaint also sought to remove Defendant as trustee of the Disclaimer Trust. (*Id.* ¶¶ 117-20.) The complaint named Mrs. Klein and another sibling who chose not to participate in action, Gerold K.V. Klein, Jr., as parties-in-interest. (*Id.* at 1.)

The complaint was amended on July 10, 2015, because one of the sibling-plaintiffs, Kate E. Klein, had decided to withdraw from the litigation. (Amend. Compl. 1.) The amended complaint named Kate E. Klein as a party-in-interest in the action. (*Id.*) The complaint was amended a second time on October 6, 2015, because two additional sibling-plaintiffs also decided to withdraw from the litigation. (2d Amend. Compl. 1.) Only two of the siblings, James D. Klein and Margaret L.K. Selian, remain as plaintiffs in this action (collectively “Plaintiffs”). (*Id.*) Plaintiffs have named all of the other siblings, Gerold K.V. Klein, Jr., Eleanor K. Iyer, Kate E. Klein, Peter L. Klein (collectively the “Non-Plaintiff Siblings”), and Mrs. Klein as parties-in-interest. (*Id.*)

On October 28, 2015, Defendant filed a motion to dismiss for failure to join necessary parties or, alternatively, for an order requiring mandatory joinder of necessary parties. (Def. Mot. Dismiss 1.) Defendant asserts that the Non-Plaintiff Siblings are necessary parties to this action under Maine Rule of Civil Procedure 19(a) because of their interests in the remainder of Disclaimer Trust. (*Id.* at 6.) Defendant asserts that, without joinder of the Non-Plaintiff Siblings as plaintiffs or defendants, complete relief cannot be accorded, that disposition of this action may impair the Non-Plaintiff Siblings’ ability to protect their interests, and that Defendant could be subject to multiple litigations. (*Id.* at 6-8.) Plaintiffs do not dispute that the Non-Plaintiff Siblings are necessary parties. (Pls. Opp’n to Def. Mot. to Dismiss 4-8.) Rather, Plaintiffs argue that joinder of the Non-Plaintiff Siblings as parties-in-interest satisfies Rule 19(a). (*Id.*) Defendant argues that Plaintiffs’ joinder of the Non-Plaintiff Siblings as parties-in-interest does

not satisfy Rule 19(a) and that the Non-Plaintiff Siblings must be joined as plaintiffs or defendants in this litigation.¹ (Def. Reply to Pls. Opp'n to Def. Mot. Dismiss 4.)

II. STANDARD OF REVIEW

Pursuant to Maine Rule of Civil Procedure 12(b)(7), the court may dismiss a civil action when the complaint fails to join a necessary party pursuant to Rule 19. M.R. Civ. P. 12(b)(7). However, if joinder of a necessary party is feasible, the court may order the party be join in the action.² M.R. Civ. P. 19(a), 21.

When interpreting the Maine Rules of Civil Procedure, the court looks to the plain language of the rule to determine its meaning. *Gauthier v. Gerrish*, 2015 ME 60, ¶ 9, 116 A.3d 461. Maine Rule of Civil Procedure 19(a) provides:

A person who is subject to service of process 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.

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

III. ANALYSIS

There is no dispute between Plaintiffs and Defendant that the Non-Plaintiff Siblings are necessary parties to this litigation because of their interest in the Disclaimer Trust as remainder beneficiaries. (Def. Mot. Dismiss 6-8; Pls. Opp'n to Def. Mot. to Dismiss 4-8.) Further, the Law Court has held that future interest holders are necessary parties to ensure full and fair

¹ Defendant does not challenge Plaintiffs' joinder of Mrs. Klein as a party-in-interest though Mrs. Klein, as the present beneficiary and co-trustee of the Disclaimer Trust, has as much an interest in this litigation as the Non-Plaintiff Siblings.

adjudication. *Larrabee v. Town of Knox*, 2000 ME 15, ¶¶ 7-8, 744 A.2d 544. The Declaratory Judgment Act also states, “When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration...” 14 M.R.S. § 5963. Because this action seeks a declaratory judgment regarding the parties’ interests in the Disclaimer Trust, all persons with a present and future interest in the Disclaimer Trust are necessary parties to this action. Therefore, the only issue for the court is whether Plaintiffs’ joinder of the Non-Plaintiff Siblings as parties-in-interest satisfies Rule 19(a).

Rule 19(a) does not define necessary parties “according to abstract labels that may be applied to their interest.” 2 Harvey, *Maine Civil Practice* § 19:1 at 558 (3d ed. 2011). Rather, Rule 19 defines necessary parties by describing the practical effect of their nonjoinder. *Id.* Rule 19(a) simply requires the joinder of all persons who have an interest in an action, “so that any judgment will effectively and completely adjudicate the dispute.” *Ocwen Fed. Bank v. Gile*, 2001 ME 120, ¶ 14, 777 A.2d 275 (internal citation and quotation marks omitted). Rule 19(a) ensures that unjoined parties’ interests will not be prejudiced without their participation and that active parties will not have to relitigate the issues. *Id.* Nothing in the plain language of Rule 19(a) requires that necessary parties be joined only as plaintiffs or defendants. Rule 19(a) merely requires that persons who must be joined in order to ensure just adjudication be made parties to the action in some way.

Additionally, with regard to necessary parties that should be joined as plaintiffs, Rule 19(a) states: “If the person should join as a plaintiff but refuses to do so, the person *may* be made a defendant.” M.R. Civ. P. 19(a) (emphasis supplied). This language is plainly and unambiguously permissive, not mandatory. Therefore, Rule 19(a) does not require a necessary plaintiff who refuses to join in an action be made a defendant, it simply permits plaintiffs or the

court to join a necessary plaintiff who refuses to participate in the action as a defendant though no claims are asserted against them.


Here, the Non-Plaintiff Siblings have either withdrawn or chosen not to participate as plaintiffs. Nevertheless, they are necessary parties to this litigation because of their future interests in the Disclaimer Trust. Complete and fair adjudication cannot be achieved without their participation. Therefore, Plaintiffs properly joined the Non-Plaintiffs Siblings in this action. Rule 19(a) did not require the Non-Plaintiff Siblings be made plaintiffs or defendants. As parties-in-interest, the Non-Plaintiff Siblings are parties to this action and any outcome will have preclusive affect on them. Whether the Non-Plaintiff Siblings actively participate in this action in order to protect their rights is entirely their decision. Therefore, Plaintiffs have joined all necessary parties in this action.

IV. CONCLUSION

Defendant's motion to dismiss for failure to join necessary parties or for an order requiring mandatory joinder is denied.

The Clerk is directed to enter this Order on the civil docket by reference pursuant to Maine Rule of Civil Procedure 79(a).

Date: 3/29/14


Lance E. Walker
Justice, Superior Court