

Not Intended for Publication or Citation

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE

IN RE: CASE NO. 10-40966)	
)	
WARREN TAM)	
)	
Debtor)	
)	
)	
WARREN TAM)	
YAODI HU)	
)	
Plaintiffs)	
)	
vs.)	PROC. NO. 10-4035
)	
MMBC)	
PAULINE KEMP)	
)	
Defendants)	

DECISION AND ORDER DENYING MOTION TO JOIN

At Fort Wayne, Indiana, on February 25, 2011.

The plaintiffs, who are proceeding pro se, have filed a motion, pursuant to Rule 19 of the Federal Rules of Civil Procedure, to join Marquette Bank as a defendant in this adversary proceeding. There has been no response to the motion within the time required, see, N.D. Ind. L.B.R. B-7007-1(a), and it is now before the court. Despite the fact that there has been no response, the court concludes that the motion should be denied.

Rule 19(a) provides for a the joinder of another party if: (1) in their absence complete relief cannot be afforded to those already parties, or (2) the absent party claims an interest in the subject of the action and disposing of the action in their absence would either impede their ability to protect that interest or subject those already parties to a substantial risk of incurring multiple or inconsistent obligations. See generally, Fed. R. Civ. P. Rule 19(a); Fed. R. Bankr. P. Rule 7019. It is the

movant's burden to demonstrate that the absent party should be joined. See e.g., BFI Waste Systems of North America, Inc. v. Broward County, Fla., 209 F.R.D. 509, 514 (S.D. Fla. 2002). If meeting that burden required nothing more than conclusory allegations or the formulaic recitation of the elements which need to be proved, the motion would be sufficient. But that is not enough. Movants seeking to compel joinder under Rule 19 must do more than recite the language of the rule. Wade v. Hopper, 993 F.2d 1246, 1249 (7th Cir. 1993). The motion must provide the court with facts and the movant must explain how the requirements of the rule have been met. See, Fed. R. Civ. P. Rule 7(b)(1)(B) (a motion must "state with particularity the grounds for seeking the order."). See also, In re King, 2006 WL 1994679, 2006 Bankr. LEXIS 1416 (Bankr. N.D. Ind. 2006) (a proper brief should advance an argument applying the applicable law to the facts of a given matter). The present motion fails to do so.

By this action the plaintiffs seek the forfeiture of the defendants' interest in property they are purchasing under a land contract and to regain possession of that property. Parroting the language of the rule, the plaintiffs contend that Marquette Bank is a "needed party" with "an interest relating to the subject of the action," that the failure to join it may impede its ability to protect that interest and would result in unnecessary litigation.¹ Why or how this is so is never explained; it is simply asserted.

The subject of this action is the land contract between plaintiffs and MMBC. Nothing in the motion that suggests the bank has anything to do with that contract. As best the court can tell, the bank may hold a mortgage upon the property being sold, but that does not give it an interest in contract of sale which is the foundation for the litigation. Bosteve Ltd. v. Marauszki, 110 F.R.D.

¹The motion does not claim that the court cannot accord complete relief to the existing parties in the bank's absence, so the court need not concern itself with that aspect of the rule.

257, 260 (E.D. N.Y. 1986). Where, as here, the bank is not a party to the contract being sued upon and does not appear to have any rights or obligations under it, it is not an indispensable party to the litigation. Davis Companies v. Emerald Casino, Inc., 268 F.3d 477, 484 (7th Cir. 2001) (quoting 7 Wright & Miller, Federal Practice and Procedure, Civil 3d § 1613).

Since the motion fails to demonstrate that the bank has an interest in the subject of the litigation the court does not really need to address the other two elements of Rule 19(a)(1)(B). It should go without saying, however, that absent an interest in the contract between the current parties, it is hard to see how the outcome of this action would impede the bank's ability to enforce its own rights. Whether or not the defendants defaulted under their contract with the plaintiffs should have no bearing on the bank's ability to foreclose its mortgage should the plaintiffs default in their obligations to it. As for the argument about duplicate litigation, this seems to be a function of there being separate, independent obligations among the various players – defendants' obligations to the plaintiffs and plaintiffs' obligations to the bank. It is not litigation that would expose the parties to inconsistent obligations. Since that is the object of the rule – protecting parties, particularly defendants, from inconsistent obligations as a result of future litigation, BFI Waste, 209 F.R.D. at 515 – it does not require joinder.

Plaintiffs' motion to join Marquette Bank as a party to this adversary proceeding is, therefore, DENIED.

SO ORDERED.

/s/ Robert E. Grant
Chief Judge, United States Bankruptcy Court