

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

TROPICISLES CABLE TV CORP.)
d/b/a SAIPAN CABLE T.V.,)
))
Plaintiff,))
))
vs.))
))
SUSANA T. MAFNAS d/b/a)
TRAVELLERS' LODGE AND)
APARTELLE,))
))
Defendant.))
_____)

Civil Action No. 95-0430

**ORDER DENYING MOTION
FOR JOINDER/MOTION TO
DISMISS FOR FAILURE TO JOIN AN
INDISPENSABLE PARTY**

This matter came before the court on February 24, 2000, on Defendant Susana T. Mafnas' ("Mafnas") d/b/a Travellers' Lodge and Apartelle ("The Lodge") motion to dismiss for Plaintiff's failure to join Marianas Cable Vision ("MCV") as an indispensable party (the "Motion"). Peter F. Perez, Esq. appeared on behalf of the Defendant, and Jay H. Sorensen, Esq. appeared on behalf of the Plaintiff, Tropic Isles Cable TV Corporation d/b/a Saipan Cable T.V. ("SCTV"). The court, having heard the arguments and reviewed all the evidence presented, now renders its written decision.

[p. 2]

I. BACKGROUND

SCTV and the Lodge entered into a contract for the delivery of cable television signal services (the "Contract") on August 16, 1991. Under the terms of the Contract, SCTV agreed to install and maintain 33 cable TV outlets at the Lodge for a period of three years, in exchange for which the Lodge agreed to pay certain installation and monthly service charges. On August 17, 1992, Mafnas sent a facsimile transmission (the "fax") to SCTV stating: "Please discontinue my cable television service effective immediately, I have elected to use an alternate service." Although there is a dispute

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as to whether the fax referred to Mafnas' personal account or her account for the Lodge, SCTV admits both that it received the fax and that it terminated cable service to the Lodge shortly after receiving the fax.

Following Mafnas' discontinuation of service, the Lodge began receiving cable television service from MCV. On September 8, 1995, SCTV commenced this lawsuit, claiming that it had performed all conditions of the Contract and was therefore entitled to \$13,307.91 along with interest and attorney's fees. On April 15, 1996, the matter came before the court for trial, and on April 27, 1997, the court entered its Findings of Fact and Conclusions of Law (the "Findings") as well as judgment in favor of the Defendant.

In its Findings, the court gave credence to an affidavit of SCTV employee Lysander Tudela (the "Tudela Affidavit"), stating that he, Tudela, had disconnected the SCTV service to the Lodge pursuant to instructions given by SCTV management. SCTV's former Technical Operations Manager, however, testified at trial that Tudela's sworn testimony was false, but offered no explanation as to how or why SCTV service to the Lodge was disconnected. Findings at 2. Giving credence to the Tudela Affidavit, the court determined that the Lodge's SCTV service had been disconnected pursuant to instructions by SCTV management. The court later relied upon [p. 3] SCTV's knowledge of the disconnection to conclude that the Contract had either been abandoned or rescinded.¹

SCTV appealed, challenging the admission of the Tudela affidavit over hearsay objections. SCTV contended that because the court's conclusion of abandonment of the contract rested, at least in part, upon SCTV's disconnection of cable service and hence the Tudela Affidavit, the judgment should be overturned. On September 22, 1998 the Supreme Court reversed the decision of the trial court and remanded the matter to this court for further proceedings.

II. MOTION FOR JOINDER OR DISMISSAL

On February 1, 2000, Defendant filed this Motion pursuant to Com. R. Civ. P. 12(b)(7) and Com. R. Civ. P. 19(a) and (b) to dismiss the complaint for failure to join an indispensable party. In

¹ Specifically, the court concluded that "the Lodge's fax letter of repudiation, the subsequent disconnection of SCTV service to the Lodge, and the Lodge's transfer to MCV service constitutes conduct inconsistent with the continued existence of the ...Contract." See Findings of Fact and Conclusions of Law at 3.

the Motion, Defendant pointed to trial testimony suggesting that MCV, and not SCTV, had disconnected the cable connection. According to the Defendant, MCV must be joined as a party in this case because “MCV’s conduct ...would, if true expose MCV to be either contributorily liable for said breach in either tort or contract” (Motion at 2). Absent joinder of MCV, Mafnas asserts that she would not be able to obtain complete relief (Motion at 3), and that she runs a substantial risk of incurring inconsistent obligations “by reason of her claimed interest.” *Id.*

The court finds Defendant’s position untenable. The structure of Rule 19 provides the analytical sequence that the court should follow in deciding a party joinder problem. In material part, Rule 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 his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a [p. 4] practical matter impair or impede his 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 its claimed interest.

Once an issue of compulsory joinder is raised, the court must initially determine whether the absent person’s interest in the litigation is sufficient to satisfy one or more of the tests set out in the first sentence of Rule 19(a): whether nonjoinder would prevent the award of complete relief, prejudice the absentee’s interests, or subject persons already parties to a substantial risk of double or inconsistent obligations. Once the court determines that a party is necessary, it proceeds to the second step and decides under Rule 19(b) whether “in equity and good conscience” a court should proceed without the absent party. *See Provident Bank v. Patterson*, 390 U.S. 102, 109, 88 S.Ct. 733, 737, 119 L.Ed.2d 936 (1968). It is a misapplication of Rule 19(a) to add parties who are neither necessary nor indispensable, who are not essential for just adjudication, and who have a separate cause of action entirely. *See La Chemise Lacoste v. General Mills, Inc.*, 53 F.R.D. 596, 601 (D.Del. 1971), *aff’d*, 487 F.2d 312 (3d Cir. 1973).

Defendant initially argues that because MCV may have disconnected the Lodge’s cable service, the court cannot afford complete relief between the parties since MCV could be “contributorily liable” to the Plaintiff in contract or in tort. Defendant admits, at the same time, that

she unilaterally terminated the Contract and switched to a new provider by her own volition. The court finds it difficult, at best, to comprehend how MCV can be culpable on these grounds. Mafnas essentially asserts that the termination relieved her of any further liability under the Contract, and that SCTV, by its conduct, consented to, acquiesced in, or ratified Defendant's termination of cable services by disconnecting cable service from the Lodge. Accordingly, Mafnas has not alleged, nor could she on these facts, that there is privity of contract between MCV and SCTV. Nor has she asserted that her performance was prevented, in whole or in part, by the actions of a third party. See Answer filed September 8, 1995.² The pleadings before the [p. 5] court do not assert that MCV tortiously interfered with contractual performance, nor do they contain any facts giving rise to a claim for interference with prospective business advantage. Since the court must base its decision on the pleadings as they appear at the time of the proposed joinder,³ the court finds no basis in the grounds urged by the Defendant for ruling that MCV must be made a party to this dispute.

In her argument, Defendant also overlooks the principle that courts construe the "complete relief" provision of the Rule narrowly; it applies only when the court cannot, for some reason, render complete justice among those parties already joined. *See Angst v. Royal Maccabees Life Ins. Co.*, 77 F.3d 701, 705 (3d Cir. 1996) ("completeness is determined on the basis of those persons who are already parties, and not as between a party and the absent person whose joinder is sought"); *Bedel v. Thompson*, 103 F.R.D. 78 (D. Ohio 1984) ("complete relief" provision relates to those persons already parties and does not concern any subsequent relief via contribution or indemnification for which the absent party might later be responsible). Because the "complete relief" provision in Rule 19(a)(1) does not apply "to the speculative possibility of further litigation between a party and an absent person," the fact that either party may have a claim against MCV cannot serve as the basis for bringing MCV into this litigation. *See LLC Corp. v. Pension Benefit Guarantee Corp.*, 703 F.2d 301, 305 (8th Cir. 11983); 11 WRIGHT AND MILLER, *supra* note 3, at § 1604 n.20, §

² In her Answer, Mafnas asserts six defenses. In addition to her first defense which asserts that the complaint fails to state a cause of action, Defendant raises additional defenses of waiver and estoppel, inability to perform all conditions of the contract, mutual termination, reliance on conduct leading Plaintiff to believe that the contract was terminated, and unclean hands.

³ *See generally*, C. Wright, A. Miller, M. Kane, 11 FEDERAL PRACTICE AND PROCEDURE [hereinafter, WRIGHT AND MILLER] § 1604 at 40-41 & N.15 (1995).

1622.

As to the inquiry of Rule 19(a)(2), Defendant does not contend that nonjoinder would prejudice MCV's interests. Instead, Defendant asserts that nonjoinder would subject her to a substantial risk of double or inconsistent obligations. In making this argument, however, Defendant misses the point. As set forth above, Defendant has yet to assert some cognizable theory under which MCV could be liable to SCTV. Similarly, Defendant fails to explain how nonjoinder would expose [p. 6] her to multiple obligations and how compliance with any order of this court would cause her to breach another court's order concerning the same incident. Since Defendant also fails to demonstrate how nonjoinder would expose her to inconsistent obligations, detrimentally affect any party's ability to protect its property, or prejudice a party's ability to prosecute or defend against any subsequent litigation in which it might become involved, the court does not find any basis for compelling MCV to participate as a party.

Because MCV is not a necessary party, the court need not decide under Rule 19(b) whether "in equity and good conscience" this litigation should proceed in its absence *Provident Bank*, 390 U.S. at 109, 88 S.Ct. at 737. Accordingly, the Motion for Joinder/Motion to Dismiss for Failure to Join an Indispensable Party is DENIED.

SO ORDERED this 29 day of February, 2000.

BY THE COURT:

/s/ Timothy H. Bellas
TIMOTHY H. BELLAS, Associate Judge