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

PROPERTY MANAGEMENT, INC.,)	Civil Action No. 92-1455
)	
Plaintiff,)	
)	
v.)	DECISION AND ORDER ON
)	DEFENDANT'S MOTIONS FOR LEAVE
SHINJI INOUE,)	TO FILE THIRD-PARTY COMPLAINT
)	AND TO DISMISS FOR FAILURE TO
Defendant.)	NAME INDISPENSABLE PARTY
)	

On January 25, 1994, Defendant Shinji Inoue requested leave to file a third-party complaint against Mr. Keisuke Ohtani in this matter, and asserted that Mr. Ohtani should be joined as an indispensable party with respect to the Plaintiff's contract claim, or alternatively, that this matter should be dismissed for failure to name an indispensable party. The Defendant bases his claim on evidence produced during the July 1993 deposition of Mr. Ohtani tending to show that he was a partner of Ikuo Yoshizawa. Plaintiff PMI opposes the motion, claiming that the Defendant has failed to meet the standards for issuance of a third-party complaint under Rule 14, and has failed to show that Mr. Ohtani is a necessary or indispensable party under Rule 19 of the Commonwealth Rules of Civil Procedure.

FOR PUBLICATION

1 **I. FACTS**

2 Most of the pertinent facts of this case have been set out in
3 this Court's Decision and Order on Plaintiff's Motion for Partial
4 Summary Judgment. See *Property Management, Inc. v. Inoue*, Civil
5 Action No. 92-1455, slip op. at 2-6 (Super. Ct. April 4, 1994).
6 In that decision, the Court denied the Plaintiff's Motion for
7 Partial Summary Judgment, and acknowledged the existence of "a
8 sufficient dispute of fact to preclude summary judgment that
9 Messrs. Inoue and Yoshizawa formed a partnership with respect to
10 the Obyan project." As a result, the issue of the alleged
11 Yoshizawa-Inoue partnership will be heard in an upcoming trial.

12 Perceiving the possibility that he could incur substantial
13 liability if found to be Mr. Yoshizawa's partner at trial, the
14 Defendant has asked this Court for leave to file a third party
15 complaint against Mr. Ohtani. Defendant contends that Mr.
16 Yoshizawa and Mr. Ohtani were partners or joint venturers with
17 respect to the Obyan transactions. Defendant's contentions are
18 based on the deposition testimony of Mr. Ohtani which indicates
19 that Mr. Ohtani discussed "profits" in the form of "dividend pay
20 out[s] from PRDI" with Mr. Yoshizawa. Ohtani Deposition
21 *Transcript*, at 231/17, 233/20-234/2. Thus, the Defendant would
22 like Mr. Ohtani to be joined as a defendant in this action. If a
23 jury finds that the Defendant and Mr. Yoshizawa were partners with
24 respect to the Obyan transactions and subsequently finds the
25 Defendant liable to the plaintiff, the jury could simultaneously
26 determine whether Mr. Ohtani should be made to contribute to any
27 liability which the Defendant may incur.

1 **II. ISSUE**

2 1. Should the Court grant the Defendant leave to file a third
3 party complaint against Mr. Ohtani pursuant to Rule 14 of the
4 Commonwealth Rules of Civil Procedure?

5 2. Should the Court dismiss this action for failure to name an
6 indispensable party under Rule 19 of the Commonwealth Rules of
7 Civil Procedure?

8
9 **III. ANALYSIS**

10 **A. RULE 14 - IMPLERADER**

11 The Defendant has requested leave to implead Mr. Ohtani, and
12 thus make him a party to Civil Action No. 92-1455 pursuant to Rule
13 14(a) of the Commonwealth Rules of Civil Procedure. The impleader
14 procedure functions to avoid the situation that arises when a
15 defendant, having been held liable to a plaintiff, finds it
16 necessary to bring a separate action against a third individual
17 who may be liable to the defendant for all or part of the
18 plaintiff's original claim. 6 WRIGHT & MILLER, FEDERAL PRACTICE AND
19 PROCEDURE at §1442 (1993)(hereinafter WRIGHT). When the rights of
20 all three parties spring from a common factual setting, economies
21 of time and expense can be achieved by merging the suits into one
22 action. Id.

23 Rule 14 requires a defendant to obtain leave to serve a
24 complaint upon a third party if more than ten days have elapsed
25 since the defendant filed his original answer. Com. R. Civ. Proc.
26 14(a). Using broad discretion, a trial court will grant or deny
27 such leave by determining whether the defendant has demonstrated
28

1 proper grounds for the filing of the complaint. Manglona v.
2 *Camacho*, 1 CR 820, 829 (D.N.M.I. App. 1983).

3 Rule 14 allows a third-party plaintiff to implead a nonparty
4 "who is or may be liable to him...". Comm. R. Civ. Proc. 14(a)
5 (emphasis added). Thus, third-party claims which obviously lack
6 merit will be denied. *Karon Business Forms, Inc. v. Skandia Ins.*
7 *Co.*, 80 F.R.D. 501, 505 (D.C. Puerto Rico 1978).

8 In addition, the trial court will balance the potential
9 prejudice to the plaintiff resulting from a delay in issue
10 resolution against the potential reduction of time and cost of
11 further litigation in the resolution of issues arising from the
12 same fact situation. *Id.*

13 14 **1. Common Factual Setting**

15 In this case, the Plaintiff has accused the Defendant of
16 participating in a partnership with Mr. Yoshizawa with respect to
17 the Obyan transactions. The Defendant has responded by alleging
18 the existence of a partnership between Mr. Yoshizawa, and Mr.
19 Ohtani, and has supported this allegation with excerpts from Mr.
20 Ohtani's deposition acknowledging that he discussed the receipt of
21 profits from the Obyan transactions with Mr. Yoshizawa. Thus, it
22 is clear that the Defendant's grounds for his third-party
23 complaint arise from a common factual setting: the Obyan
24 transactions. In light of Mr. Ohtani's proximity to the Obyan
25 transaction, the Court finds that some of the answers in his
26 deposition testimony are sufficient to support the Defendant's
27 request for leave to file his third-party claim.

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1 **2. Balancing Judicial Economy with Plaintiff's Hardships**

2 The Plaintiff contends that the interest of judicial economy
3 would be hampered by the addition of Mr. Ohtani as a party to this
4 suit. The Plaintiff foresees that the addition of Mr. Ohtani will
5 trigger a myriad of complex issues certain to confuse the jury and
6 ultimately add to the costs of litigation. The Court does not
7 agree. Most of the so called "complex issues" found in the
8 Plaintiff's papers involve legal questions not addressable by a
9 jury. The Court expects the remainder of additional issues
10 concerning Mr. Ohtani's alleged business relationship with Mr.
11 Yoshizawa to naturally follow from the issues concerning Mr.
12 Inoue's business relationship with Mr. Yoshizawa. Of course, the
13 option of bifurcation will still be left for the consideration of
14 all parties and for a determination by the Court.

15 In the Court's view, Mr. Inoue's third-party complaint
16 involves issues similar to those involved in the Plaintiff's
17 original law suit. If this Court were to deny the Defendant's
18 application and the Plaintiff ultimately succeeded in his suit
19 against the Defendant, this Court would have to return to similar
20 issues involving the same transactions. The Court sees little
21 judicial economy in that scenario. Accordingly, the Defendant's
22 Motion for Leave to File Third-Party Complaint is GRANTED.

23
24 **B. RULE 19 - JOINDER**

25 Rule 19 provides an exception to the traditional practice of
26 allowing the plaintiff to decide who shall be parties to a lawsuit
27 by directing a trial court to require a party to join a lawsuit
28 when significant countervailing considerations make the party's

1 joinder desirable. 7 WRIGHT at §1602. The United States Supreme
2 Court has recognized four relevant interests with respect to Rule
3 19 joinder: 1) the plaintiff's interest in having a forum; 2) the
4 defendant's desire to avoid multiple litigation, inconsistent
5 relief, or sole responsibility for a liability he shares with
6 another; 3) the interest of the outsider whom it would have been
7 desirable to join; and, 4) the public interest in efficient
8 settlement of controversies. Provident Tradesmens Bank & Trust Co.
9 v. Patterson, 88 S.Ct. 738-39 (1968)(hereinafter Provident
10 Tradesmens).

11 In the Defendant's second motion, the Court has been asked to
12 require Mr. Ohtani to join this action as an indispensable party
13 with respect to Plaintiff's contract claim or to dismiss
14 Plaintiff's action for failure to join an indispensable party.
15 The Defendant bases his argument on the general rule: where two or
16 more parties are joint obligees, they are indispensable parties in
17 an action for enforcement of that obligation. Harrell & Sumner
18 Contracting v. Peabody Petersen, 546 F.2d 1227, 1228-29 (5th Cir.
19 1977)(emphasis added). The cases cited by the Defendant in
20 support of this rule involve factual settings where the existence
21 of a partnership or joint obligation was not in dispute. However,
22 the threshold question in the case at bar revolves around the
23 existence of a partnership.

24 The Plaintiff's theory of recovery depends in part upon its
25 ability to prove that Mr. Inoue acted as Mr. Yoshizawa's partner
26 during the Obyan transactions. Similarly, the success of Mr.
27 Inoue's third-party complaint will depend on his ability to prove
28 that Mr. Ohtani acted as Mr. Yoshizawa's partner. Thus, granting

1 the Defendant's Rule 19 motion would be tantamount to endorsing
2 the Defendant's allegations concerning an Ohtani-Yoshizawa
3 partnership.

4 Couched in terms of the four part balancing test articulated
5 in Provident *Tradesmens*, supra, Mr. Inoue's desire to avoid
6 multiple litigation and sole liability for his alleged part in the
7 Obyan transactions does not weigh as heavily as Mr. Ohtani's
8 interest as an outsider accused of maintaining a partnership with
9 Mr. Yoshizawa. The Court's order granting Mr. Inoue leave to file
10 a third-party complaint will adequately protect his interests and
11 will give Mr. Ohtani the opportunity to respond to the Defendant's
12 allegations. Thus, the Plaintiff's interest in having a forum
13 will only be disrupted to the extent that the Defendant's third-
14 party complaint is found to have merit. Finally, the public
15 interest in having this controversy settled efficiently can be
16 satisfied by the Court's order granting the Defendant leave to
17 file his third-party complaint. For all these reasons, the Court
18 does not find Mr. Ohtani to be an indispensable party.
19 Accordingly, the Defendant's motion to dismiss for failure to join
20 an indispensable party is DENIED.

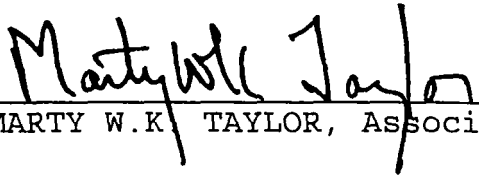
21 22 **IV. CONCLUSION**

23 For the foregoing reasons, the Defendant shall have leave to
24 file a third-party complaint against Mr. Ohtani. Mr. Ohtani's
25 response shall be in accordance with Rule 14 governing third-party
26 practice. However, at this stage in the proceedings, the Court
27 finds that any classification of Mr. Ohtani as indispensable to
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these proceedings would be premature. Thus, the Defendant's motion to dismiss is DENIED.

So ORDERED this 25th day of May, 1994.


MARTY W.K. TAYLOR, Associate Judge