

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

C & J LEASING CORP.,

Plaintiff,

vs.

SPARTA COMMUNITY UNIT SCHOOL
DISTRICT #140,

Defendant.

No. 4:03-cv-40010

**ORDER ON ALL
PENDING MOTIONS**

This matter comes before the Court on various motions by the parties. The motions came on for hearing on April 18, 2003, with attorney Edward McConnell appearing on behalf of C & J, and attorneys Colin Witt and Edward W. Remsburg appearing on behalf of Sparta.

I. BACKGROUND FACTS AND PROCEDURAL HISTORY

Pending before the Court are various motions filed both by Defendant, Sparta Community Unit School District #140 (“Sparta”), an Illinois school district, and Plaintiff, C & J Leasing Corporation (“C & J”), an Iowa corporation. The dispute in this case relates to a financing agreement that Sparta and C & J entered into in mid-July, 2002. Under this financing agreement, Sparta was to make fifteen (15) payments of \$21,500.00 each, over a sixty (60) month period of time, to C & J for certain copy machines Sparta uses in its schools. This was the sixth in a series of financing agreements Sparta entered into to finance these machines. After the sixth agreement was finalized, an Illinois State Chartered Bank (“the Bank”) contacted Sparta claiming its right to collect monthly

payments under a prior financing lease agreement, the fifth one, which the Bank said had been assigned to it by Quick Lease of Ill. Inc., an Illinois corporation. Based on this contact with the Bank, Sparta refused to pay C & J under the sixth agreement, believing C & J may not have a perfected, first security interest in the machines but rather the Bank may, under some prior assigned right.

A. The Present Lawsuit.

Sparta's refusal to tender payment led C & J to institute an action against Sparta in Iowa State District Court for Polk County, Iowa, on November 21, 2002. C & J alleges Sparta has defaulted on the sixth lease agreement and requests \$324,306.02. On January 7, 2003, Sparta removed the state action to this court pursuant to 28 U.S.C. § 1446. This court's jurisdiction was based on diversity of citizenship. See 28 U.S.C. § 1332. On January 14, 2003, Sparta answered C & J's removed complaint and simultaneously filed a Motion to Dismiss Under Rule 12(b)(7), or in the Alternative to Dismiss for Forum Non Conveniens or to Transfer Venue. Rather than resist Sparta's motion on its merits, C & J responded by filing a Motion to Amend Removed Petition in which C & J sought to add a new declaratory count against a new party, Wells Fargo Financial Leasing, Inc. ("Wells Fargo"), an Iowa citizen. If the amendment were allowed, this court would be divested of subject matter jurisdiction since C & J and Wells Fargo are both Iowa citizens. Recognizing this, C & J contemporaneously filed a motion to remand this case back to Iowa state court.

Sparta resisted C & J's motions to amend the complaint and motion to remand. Sparta urges the court to deny C & J's motion to amend and alternatively argues that if C & J is allowed to amend, this court should realign the parties based upon their "real interests" and conclude that diversity jurisdiction has not been destroyed by the addition of Wells Fargo. Furthermore, recognizing that C & J had yet to resist the merits of Sparta's motion to dismiss/transfer, Sparta specifically requested a hearing be held on (1) its resistance to C & J's motion to amend; (2) its motion to dismiss/transfer; and (3) its resistance to C & J's Motion to remand.

Sparta's posture prompted C & J to file a Supplemental Resistance to Defendant's Motion to Dismiss or in Alternative to Dismiss for Forum Non Conveniens or to Transfer and to Realign the Parties. In the brief accompanying this supplemental resistance, C & J argues Sparta's attempt to transfer this case contravenes the venue and jurisdiction terms laid out in a forum selection clause¹ contained in the agreement Sparta signed with C & J. C & J argues Sparta's motion in the alternative to transfer and its argument that Iowa is an inconvenient forum are tactical moves in search of a more favorable forum. Lastly, in the event this Court grants its motion to amend, C & J resists Sparta's request to realign the parties.

The Court denied Sparta's motion to strike this supplemental resistance by C & J. The Court did allow, and Sparta has filed, a reply to C & J's supplemental resistance.

¹ The sixth agreement's forum selection clause reads in pertinent part that the ". . . proper place for bringing any action on this lease shall be determined by Chapter 616 of The Code of Iowa, but in any event within the Jurisdiction of Iowa Courts."

For the reasons expressed in this order, the Court must deny C & J's Motion to Amend (Clerk's No. 7), deny C & J's Motion to Remand (Clerk's No. 9), and grant Sparta's Motion to Dismiss pursuant to 12(b)(7) (Clerk's No. 5).

B. The Six Financial Lease Agreements.

In or about March of 2001, an Illinois citizen named Kevin Welch ("Welch") approached representatives of Sparta about providing copy machines and related lease financing. The parties agreed Welch would provide eleven copy machines and the related lease financing. Sparta took possession of eleven copy machines in March and April of 2001.²

On March 29, 2001, Sparta entered into its first agreement to finance the copiers with Wells Fargo. On May 31, 2001, on the advice of Welch, Sparta entered into a second financing agreement for the machines with Wells Fargo. On this second financing agreement, the supplier of the machines is listed as "CSC", and the contact person for CSC is listed as Welch.³ This second financing agreement canceled and replaced the first financing agreement dated March 29, 2001. As is discussed in relation to the sixth

² Sparta initially leased eleven copy machines but says on the advice of Welch, it replaced between one and three of the machines with different copiers. By February 21, 2001, Sparta was leasing twelve machines, the majority of which were the same as originally part of the first lease agreement Welch provided for Sparta.

³ Sparta has provided a web page from the Illinois Secretary of State indicating CSC is an assumed name of Quick Lease of Ill., Inc. Quick Lease of Ill., Inc., appears to be an Illinois corporation. The agent listed for Quick Lease of Ill., Inc., is Welch; and Welch is also named as president and secretary of Quick Lease of Ill., Inc. An "agent change date" is noted to have occurred on April 6, 2001, contemporaneous with when Sparta received the machines from Welch and when Welch was arranging for the financing.

financing agreement, on August 5, 2002, C & J paid Wells Fargo full payment owed to Wells Fargo under this second financing agreement.

Less than one month later and, according to Sparta, because of representations made by Welch that switching financing was either necessary or in Sparta's best interest, a third financing agreement for the machines was entered into on June 25, 2001. On the third agreement, the financing entity listed was Bi-State Leasing, Inc., and CSC remained listed as supplier of the machines. On February 25, 2002, Bi-State Leasing, Inc. acknowledged having received full payment due under the third financing agreement and released all liens and interests it had in the machines.

On February 21, 2002, and April 4, 2002, fourth and fifth financing agreements, respectively, were entered. On both agreements, CSC was no longer listed as the supplier of the machines, but, instead, Southern Ill. Business Systems was listed as having supplied the machines. In addition to serving as president of CSC and Quick Lease of Ill., Inc., Welch was also the president of Southern Ill. Business Systems. The financing entity named on the fourth and fifth financing agreements was Quick Lease of Ill., Inc.

By letter dated February 21, 2002, the day the fourth financing agreement was entered, C & J replied to an inquiry from the Bank regarding whether C & J had any interest in the copier machines involved in this case. C & J's president indicated its companies had no interest in the equipment at issue in this case. On April 5, 2002, one day after the fifth lease agreement was entered into, Quick Lease of Ill., Inc., through its

president Welch, assigned its rights to collect financing lease payments under the fifth agreement to the Bank.

Although Sparta claims C & J knew of the Bank's intentions on acquiring an interest in Sparta's machines five months earlier, in July of 2002, C & J agreed to provide Sparta with financing for the leased copy machines. In association with this sixth financing agreement, C & J performed its due diligence as required under the Uniform Commercial Code ("UCC") and investigated the official public filing of UCC-1 Financing Statements, to discover any parties that had or may have previously registered security interests in the machines. During this inquiry, C & J noticed registered interests in the machines and sought to address them. On August 5, 2002, C & J paid Wells Fargo \$168,502.00 to buy out Wells Fargo's recorded interest in the machines under the second financing agreement.⁴

On the sixth financing agreement, the listed supplier of the machines had changed for the second time, now indicating that Quick Lease of Ill. had supplied the machines instead of the previously listed CSC or Southern Ill. Business Systems. Prior to the sixth financing agreement, Quick Lease of Ill. Inc., had only been listed as the financing entity on the fourth and fifth financing agreements.

⁴ Although by this time Quick Lease of Ill., Inc., had assigned its rights to collect payment from Sparta under the fifth agreement to the Bank, the record demonstrates on August 1, 2002, Kevin Welch, writing on Southern Illinois Business Systems' letterhead, requested C & J pay \$7,500 to Quick Lease of Ill., Inc., and \$8,700 to Leasing One Corp. in association with the sixth financing agreement, presumably to satisfy interests in the machines. C & J made these payments. C & J also made a wire transfer of \$25,000 to Welch's Southern Illinois Business Systems on August 5, 2002.

II. PENDING MOTIONS

A. C & J's Motion to Amend (Clerk's No. 7).

If C & J's motion to amend the removed petition is granted and Wells Fargo is included in this lawsuit as a defendant, this Court would be divested of its requisite jurisdiction; therefore, this motion is addressed first. See Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 578 (1999) (indicating that no hierarchy of jurisdictional analysis exists and reaffirming the customary procedure of a federal court first resolving doubts about its jurisdiction over the subject matter, yet recognizing limited "circumstances in which a district court appropriately accords priority to a personal jurisdictional inquiry" before analyzing a court's subject matter jurisdiction); see also 28 U.S.C. § 1447(c) (indicating that "[i]f at any time before final judgment it appears the district court lacks subject matter jurisdiction, the case shall be remanded"). Only after this case was removed from the Iowa District Court for Polk County did C & J seek to amend its complaint to add Wells Fargo. C & J asserts that in order to obtain a valid perfected, first security interest in the machines it was financing, it paid Wells Fargo \$168,502.00 to buy out the Wells Fargo interest in the machines. C & J maintains it made this payment at the direction of Sparta.⁵ Now that Sparta refuses to pay because it does not know whether the Bank or C & J has a valid perfected, first security interest, C & J argues its ability to recover under the sixth equipment lease could be limited unless its claim to a perfected security

⁵ Sparta refutes this allegation with an affidavit of Don Outten, the superintendent of Sparta, who swears he never told anyone at C & J, and, to the best of his knowledge, no one representing Sparta told C & J it needed to pay off Wells Fargo to obtain an ownership interest in the machines. See Sparta's Brief in Resistance to C & J's Motion to Remand, Ex. 19, at ¶¶ 3-4.

interest in the equipment is decided. C & J contends its declaratory action against Wells Fargo is necessary in this case, since the declaration directly affects the enforcement of remedies C & J has under the sixth financing agreement it signed with Sparta, namely repossession and sale of the equipment without interference from interloping third parties. Alluding to its perceived status as a bona fide purchaser, C & J argues that if Wells Fargo did not hold a first, perfected security interest in the machines, but allowed C & J to pay it for this nonexistent interest, then C & J is entitled to receive back the money it paid to Wells Fargo and, additionally, C & J is also entitled to receive money from Sparta under the sixth financing agreement. For these reasons, C & J argues Wells Fargo needs to be a part of this action and its motion to amend, therefore, should be granted.

Sparta resists, arguing C & J's attempt to join Wells Fargo constitutes fraudulent joinder done solely to defeat this court's diversity jurisdiction. In the alternative, Sparta asks this Court to conclude that C & J's attempt to join Wells Fargo falls within a sub-set of the fraudulent joinder doctrine called "egregious misjoinder". Sparta argues C & J is trying to join an entirely new cause of action against a new party who should not be joined in this action under any of the principles controlling necessary or permissive joinder. For these reasons, Sparta asks this Court to deny the C & J motion to amend pursuant to 28 U.S.C. § 1447 (e) (allowing a court to deny joinder of an additional defendant after removal, when the joinder would destroy subject matter jurisdiction). In the alternative, Sparta asks this Court to realign the parties according to their true

interests, with Wells Fargo and C & J being aligned together, in which case, this Court's diversity jurisdiction would be maintained.

1. Is Wells Fargo a necessary party?

Under Fed. R. Civ. P. 19(a), in determining whether Wells Fargo should be a party to this action, this Court must decide

(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.

See Fed. R. Civ. P. 19(a).⁶ It would appear to this Court that Wells Fargo is not a necessary party to this action who is "to be joined if feasible." Id. Wells Fargo claims no interest in the sixth financing agreement, which is the subject matter of the current litigation. Fed. R. Civ. P. 19(a)(2), therefore, does not apply, since Wells Fargo does not claim "an interest relating to the subject of the action" See Fed. R. Civ. P. 19(a)(2) (requiring an absent party to claim an interest relating to the subject matter of the action).

⁶ The first portion of Fed. R. Civ. P. 19(a) suggests the analysis need only be made in cases where "joinder will not deprive the court of jurisdiction over the subject matter of the action" See Fed. R. Civ. P. 19(a). As literally read, the language of the rule suggests that because joining Wells Fargo to this action would destroy the Court's subject matter jurisdiction in this case (diversity jurisdiction would be destroyed since the Plaintiff, C & J, and newly added Defendant, Wells Fargo, would both be from Iowa), the factors delineated in Rule 19 do not need analysis. However, even in such a situation, courts proceed with the analysis of necessary and indispensable parties. See, e.g., Rochester Methodist Hosp. v. Travelers Ins. Co., 728 F.2d 1006, 1016-17 (8th Cir. 1984) (indicating that Rule 19(a) and (b) is used to determine whether an absent party whose joinder would destroy subject matter jurisdiction needed to be joined in the action).

C & J's belief that without Wells Fargo in this action C & J's remedies are limited as it would be unable to repossess the machines without fear of violating a third party's rights seems to relate to 19(a)(1) and whether in Wells Fargo's "absence complete relief cannot be accorded among those already parties" See Fed. R. Civ. P. 19(a)(1). However, C & J's concern in this regard does not apply to Wells Fargo. Complete relief to both Sparta and C & J concerning the subject matter of this case, the sixth agreement, is possible in the absence of Wells Fargo. Moreover, since Wells Fargo received full payment owed under the second agreement, Wells Fargo is not asserting any interest in the machines. Other than C & J, the only party asserting any interest whatsoever which would have an impact on the subject matter of this litigation (i.e., the sixth financing agreement) is the Bank. While C & J may have grounds to institute a separate action against Wells Fargo related to the money C & J paid to Wells Fargo, that right of action is separate from the subject matter of this action and is not lost nor at risk of being altered in any way if this action proceeds in Wells Fargo's absence. That it may be convenient or strategically beneficial to C & J to have Wells Fargo a part of this case does not make the collateral claim against Wells Fargo an interest relating to this action on the sixth financing agreement.

Having found Wells Fargo is not a necessary party under Rule 19(a), the Court does not address whether, under 19(b), Wells Fargo is indispensable. See Temple v. Synthes Corp. Ltd., 498 U.S. 5, 8 (1990) (indicating 19(a) must be satisfied before 19(b)

is analyzed). Although the Court does not believe Wells Fargo must be joined, the question becomes whether Wells Fargo may be joined.

2. May Wells Fargo be made a party to this action?

Under rule 20(a),

All persons . . . may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.

See Fed. R. Civ. P. 20(a). The declaratory judgment action against Wells Fargo that C & J wishes to bring in this case is unrelated to the contract action C & J has brought against Sparta for purposes of this analysis. The claims C & J wishes to bring against Wells Fargo are not joint and/or several to the claims C & J has brought against Sparta. Determining whether Wells Fargo may permissively be joined then hinges on whether the claims C & J wishes to bring against Wells Fargo equates to “a right to relief . . . arising out of the same transaction, occurrence or series of transactions or occurrences” as the claim C & J has brought against Sparta, *and* some “question of law or fact common to” the claims against Sparta and Wells Fargo will arise in the case. See generally The Travelers Ins. Co. v. Intraco, Inc., 163 F.R.D. 554, 556 (S.D. Iowa 1995) (quoting Rule 20).

The current case concerns whether C & J can hold Sparta liable on the sixth of a series of financing lease agreements. Attempting to perfect a security interest in the machines, C & J paid off what it believed were existing security interests, one of which

included Wells Fargo's interest under the second financing agreement. The Bank now is asserting its own right to collect payments from Sparta for the same machines, which C & J interprets as meaning it did not receive from Wells Fargo what it paid for, a perfected first security interest in the machines. However, this dispute is between Wells Fargo and C & J. Wells Fargo is not asserting any right to collect payments from Sparta under either the second or the sixth financing agreement. Moreover, all of the reasons C & J now points to as justifying its attempt at now joining Wells Fargo existed at the time C & J initially filed this suit. C & J has not explained why it only moved to join Wells Fargo after this case had been removed. At oral argument, Plaintiff's counsel necessarily agreed that each financing lease agreement was a separate and distinct individual contract. Under these facts, the Court must conclude any right of relief C & J may assert against Wells Fargo concerning the buyout of the second financing agreement is separate and distinct from the right of relief C & J asserts against Sparta under the sixth financing agreement. The Court determines C & J's right to relief, if any, against Wells Fargo does not "arise out of the same transaction, occurrence, or series of transactions or occurrences" as C & J's right to relief, if any, against Sparta. Fed. R. Civ. P. 20(a).⁷ As Wells Fargo is not a party who may or should be joined under either

⁷ Even if C & J's asserted right against Wells Fargo and Sparta were viewed as "arising out of the same transaction, occurrence, or series of transactions or occurrences" and assuming a "question of law or fact common to all defendants" would arise in the case, and thus, under Rule 20, Wells Fargo was a party who could be joined in this action, the Court could not grant C & J's motion to amend and allow Wells Fargo to be joined in this case. Examining "the face of [C & J's original state court pleading]" against Sparta as it existed at the time of removal, "no cause of action lies against [Wells Fargo] . . ." See Palmquist v. Conseco Med. Ins. Co., 128 F. Supp. 2d 618, 621 (D. S.D. 2000) (quoting Anderson v. Home Ins. Co., 724 F.2d 82, 84 (8th Cir. 1983)). "Joinder designed solely to deprive federal courts of jurisdiction

mandatory or permissive joinder, C & J's motion to amend is denied. This necessarily determines C & J's motion to remand, which also is denied.

B. Sparta's Motion to Dismiss/Transfer (Clerk's 5).

While this Court concludes Wells Fargo's joinder will not take place, C & J's concern that its remedies may be limited in the absence of certain parties remains a valid concern. However, C & J's concern illustrates the significance of Sparta's own motion. Sparta argues that, under the aforementioned principles of Rule 19, Welch and the Bank are necessary parties and indispensable to this case. Sparta asserts prejudice is unavoidable if both Welch and the Bank are not made part of this litigation, and any judgment taken without the Bank and Welch will be inadequate. However, neither Welch nor the Bank is subject to the jurisdiction of Iowa, a contention C & J has not challenged. Therefore, as necessary and indispensable parties cannot be made parties to this action in Iowa, Sparta argues this Court should dismiss the case pursuant to Rule 12(b)(7). Determining whether Sparta's 12(b)(7) motion to dismiss should be granted requires this Court to re-analyze the previously mentioned factor under Fed. R. Civ. P. 19. See Fed. R. Civ. P. 12(b)(7) (allowing for dismissal of a case for "failure to join a party under rule 19"); see also Central De Fianzes, S.A. v. Bridgefarmer & Assocs., Inc., 2002 WL 1477444 (N.D. Tex. July 5, 2002) (analyzing rule 19(a) and (b) to decide a

is fraudulent and will not prevent removal." Kohl v. American Home Prods. Corp., 78 F. Supp. 2d 885, 889 (W.D. Ark. 1999) (quoting Anderson, 724 F.2d at 84, which cites Tedder v. F.M.C. Corp., 590 F.2d 115, 117 (5th Cir. 1979)).

party was “necessary and indispensable” and concluding the 12(b)(7) motion should be granted).

1. Is Welch a necessary party?

Under the factors of Rule 19, the Court finds that despite Welch’s involvement at all stages of the six financing agreements, complete relief on the sixth financing agreement – the subject of this case – can be accorded the parties to this case, even in the absence of Welch. See Fed. R. Civ. P. 19(a)(1). Just as Wells Fargo does not, Welch does not claim an interest in the subject of this litigation. Therefore, just as it did not apply to Wells Fargo, 19(a)(2) does not apply to Welch. See Fed. R. Civ. P. 19(a)(2) (requiring that an absent party claim an interest relating to the subject of the action). Welch is likely to be an important witness as Sparta alleges Welch’s actions and representations led it to enter into the six financing agreements, and it is apparent that Welch was somehow involved in some of the companies financing the machines and two of the companies listed as having supplied the machines during the time the various financing agreements were in effect. It appears from the record that Welch was also somehow involved in the assignment of Quick Lease of Ill. Inc.’s rights under the fifth financing agreement to the Bank and also played a role in finalizing C & J’s sixth financing agreement. Still, no right to relief, if any, that Sparta or C & J may have against Welch is prejudiced in any way by this action continuing in Welch’s absence as a party; and, despite the absence of Welch, complete relief between C & J and Sparta can be accorded. The Court concludes Welch is not a necessary party under 19(a) and does not address 19(b) in relation to

Welch. See Temple, 498 U.S. at 8 (indicating 19(a) must be satisfied before 19(b) is analyzed).

2. Is the Bank a necessary party?

Unlike Wells Fargo and Welch, however, the Bank does currently claim “an interest relating to the subject of the action.” Fed. R. Civ. P. 19(a)(2). The Bank’s belief that it is owed payments under the fifth financing agreement as an assignee does relate to the subject matter of the action this case, that is, whether C & J is owed payments under the sixth financing agreement. The Bank is “so situated that the disposition of the action in the [Bank’s] absence may (i) . . . impair or impede [the Bank’s] ability to protect that interest.” Fed. R. Civ. P. 19(a)(2)(i). This is because this Court could determine C & J has a right to payments under the sixth agreement, having the effect of impeding the Bank’s ability to protect its asserted interest. Moreover, without the Bank’s involvement, Sparta, already a party to this action, may be “subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.” Fed. R. Civ. P. 19(a)(2)(ii). In fact, a separate action against Sparta has been commenced in Illinois.⁸ This Court and the court in Illinois could reach different conclusions regarding Welch’s conduct and the impact of that conduct on the rights of the parties. A serious potential exists that, without the Bank involved, Sparta

⁸ As the proponent of the 12(b)(7) motion to dismiss, Sparta “has the burden of producing evidence showing the nature of the interest possessed by an absent party and that the protection of that interest will be impaired by the absence.” De Wit v. Firststar Corp., 879 F. Supp. 947, 992 (N.D. Iowa 1995). To meet this obligation, Sparta has supplemented the record with an exhibit indicating the Bank has instituted a separate action against Sparta in Illinois for payments under the assigned fifth financing agreement.

could face the prejudice of different courts fashioning multiple obligations for the lease payments on the machines. Based on this analysis, the Court believes the Bank is a necessary party under 19(a).

The Court next determines if, under 19(b), the Bank is indispensable to this action. See Fed. R. Civ. P. 19(b); see also Temple, 498 U.S. at 8 (indicating 19(a) must be satisfied before 19(b) is analyzed). To make this determination, relevant factors the Court must consider include the

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

See Fed. R. Civ. P. 19(b).

As explained, the Bank claims Sparta owes it monthly payments under the fifth financing lease agreement, the right to collect such payments having been assigned to it by Welch's company, Quick Lease of Ill., Inc., on April 5, 2002. Inconsistent court determinations could prejudice the Bank. As previously indicated in the analysis of the Bank under 19(a)(2)(ii), Sparta is already prejudiced by facing multiple litigation. See Provident Tradesmens Bank & Trust Co. v. Patterson, 390 U.S. 102, 110 (1968) (indicating a defendant's interest in avoiding multiple litigation is a concern which can justify classifying a party as indispensable). Under the second 19(b) factor, the Court determines it would be unable to fashion a remedy which would mitigate the harm caused to Sparta of having to litigate the issues surrounding the various leases on more than one

occasion, which may occur in the pending Illinois state action, since the Bank, a non-party to this federal suit, would not be barred from addressing the same issues. See generally, Sty-Lite Co. v. Eminent Sportswear, Inc., 115 F. Supp. 2d 394, 400 (D.N.Y. 2000) (determining prejudice was unavoidable and concluding the case had to be dismissed for inability to join indispensable guarantors in an action seeking payment for goods delivered). Furthermore, any judgment rendered in a case without the Bank may not be adequate. See generally, id. (determining, among other things, that because it was “doubtful” that the court could render an efficient and complete resolution to the matter, certain absent banks were deemed to be indispensable parties under 19(b)). Finally, the Court notes under the last factor of rule 19(b) that C & J can still pursue a remedy in Illinois should this case be dismissed.⁹ Under the foregoing analysis, the Court determines the Bank is an indispensable party to this action under 19(b).

As indicated, Sparta alleges Iowa lacks personal jurisdiction over the Bank, an allegation C & J has not challenged and which the Court, therefore, accepts as true. This results in the Bank, a necessary and indispensable party, not being able to be made a party to this action. The Court must, therefore, determine whether “in equity and good

⁹ After oral argument, Sparta stipulated it would not rely upon the forum selection clause in the sixth agreement with C & J to resist or prevent C & J from maintaining suit against it in Illinois. Subsequent to this, C & J filed a memorandum of law regarding the forum selection clause. The essence of the memo is C & J’s assertion that “Des Moines, Polk County, Iowa” is the only proper forum regarding jurisdiction. C & J asserts the forum selection clause uses “mandatory” language of “shall” and “in any event”. C & J’s ultimate fear is that if it initiates suit against Sparta in Illinois, Sparta will rely on the forum selection clause and seek dismissal on the grounds that Illinois has no jurisdiction. Thus, C & J has not waived the forum selection clause. The Court concludes Sparta’s stipulation settles the matter. The Court has relied upon the Sparta stipulation that it would not use the forum selection clause as a defense to an action in Illinois as a material fact upon which this Court has acted.

conscience” this case should proceed without the Bank. See Provident Tradesmens, 390 U.S. at 109-11; see also Pebina Treaty Comm. v. Lujan, 980 F.2d 543, 545 (8th Cir. 1992) (acknowledging that if an absent Native-American tribe could not be made a party the court would need to determine whether “in equity and good conscience” the case should continue). The relevant interests this Court must recognize include

First, the plaintiff has an interest in having a forum Second, the defendant may properly wish to avoid multiple litigation, or inconsistent relief, or sole responsibility for a liability he shares with another Third, there is the interest of the outsider whom it would have been desirable to join Fourth, there remains the interest of the courts and the public in complete, consistent, and efficient settlement of controversies.

See De Wit v. Firststar Corp., 879 F. Supp. 947, 994 (N.D. Iowa 1995) (quoting Nichols v. Rysavy, 809 F.2d 1317, 1332 (8th Cir. 1987), and Provident Tradesmens, 390 U.S. at 109-11). The focus of the Court must remain on the particular circumstances of each case. See Provident Tradesmens, 390 U.S. at 119.

First, the Court notes that C & J will not be deprived of a forum in the event this case is dismissed.¹⁰ C & J can bring its cause of action against Sparta in Illinois, the state where personal jurisdiction over both Sparta and the Bank exists. Second, Sparta understandably wishes to avoid the multiple obligations which may potentially occur if this case proceeds in the Bank’s absence and the pending Illinois state court action continues. Under the third interest, the Court notes that obviously the Bank does have an interest related to the subject matter of this litigation, the sixth financing agreement, an interest

¹⁰ See Footnote 9.

Sparta claims C & J knew about, and is attempting to preempt by having filed this suit in the Iowa District Court for Polk County. Lastly, the court and the public have an interest in the complete, consistent, and efficient settlement of controversies which the Court notes is more effectively accomplished in Illinois rather than Iowa. This sufficiently demonstrates to this Court that in “equity and good conscience” this case should not proceed in the absence of the Bank, a necessary and indispensable party to this action. As a result of the foregoing determinations, the Court does not address Sparta’s alternative motion to dismiss for forum non conveniens or alternative motion to transfer venue.

As the Court has concluded that the absence of a necessary and indispensable party means in “equity and good conscience” this case should not go forward, the Court must address the apparent collision with the forum selection clause in the sixth financing agreement. A party resisting enforcement of a forum selection clause must make a clear showing that enforcement is “unreasonable under the circumstances” to sufficiently overcome the presumption of enforceability. See M/S Bremen v. Zapatta Off-Shore Co., 407 U.S. 1, 10 (1972).

The Supreme Court has discussed when unreasonableness in enforcing a forum selection clause could potentially exist. See Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585, 595-96 (1991). Some articulated reasons of when “unreasonableness” may exist include where (1) the incorporation of the clause into the agreement was the product of fraud or overreaching; (2) the party seeking to escape enforcement “will for all

practical purposes be deprived of his day in court” because of the grave inconvenience or unfairness of the selected forum; (3) the fundamental unfairness of the chosen law will deprive the plaintiff of a remedy; or (4) enforcement of the clause would contravene a strong public policy of the forum state. See Haynsworth v. Lloyd’s of London, 121 F.3d 956, 963 (5th Cir. 1997) (citing Carnival Cruise Lines, 499 U.S. at 595-96). The party resisting enforcement of a forum selection clause bears a “heavy burden of proof.” M/S Bremen, 407 U.S. at 17.

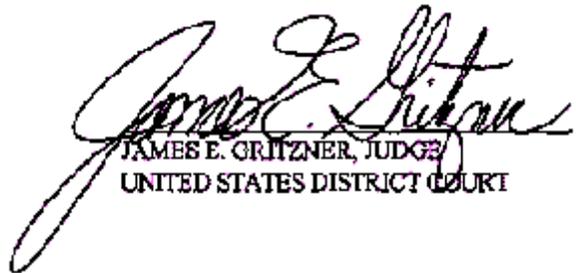
Where litigating this case in Iowa means doing so in the absence of a necessary and indispensable party, such as in this case, the Court concludes under the second factor discussed in Carnival Cruise Lines that it would be unfair to Sparta. See Carnival Cruise Lines, 499 U.S. at 595. Sparta has sufficiently met the heavy burden of showing enforcement of the forum selection clause would be, under the circumstances, unjust and unreasonable, especially where, as here, Sparta is at risk of facing multiple and potentially inconsistent judgments. See M/S Bremen, 407 U.S. at 17; see also M.B. Rest. Inc. v. CKE Rest. Inc., 183 F.3d 750, 752 (8th Cir. 1999) (stating “[f]orum selection clauses . . . are enforced unless they are unjust or unreasonable . . .”). For these reasons, the Court determines enforcing the forum selection clause in this case and requiring this action to remain in Iowa without a necessary and indispensable party would be unjust and unreasonable under the circumstances presented in this case. For this reason, Sparta’s motion to dismiss pursuant to 12(b)(7) must be granted and this case dismissed in its entirety.

III. CONCLUSIONS

Based on the foregoing analysis, the Court has found the above-entitled action must not proceed. The Motion to Amend (Clerk's No. 7) and Motion to Remand (Clerk's No. 9) filed by C & J are **denied**. Sparta's Motion to Dismiss Under Rule 12(b)(7) is **granted**, and Sparta's Motion to Dismiss for Forum Non Conveniens and Motion to Transfer Venue are **denied as moot** (Clerk's No. 5).

IT IS SO ORDERED.

Dated this 27th day of June, 2003.



JAMES E. GRITZNER, JUDGE
UNITED STATES DISTRICT COURT