



ACA Financial Guaranty Corporation et al v. City of Buena Vista, Virginia et al

2017 | Cited 0 times | W.D. Virginia | December 19, 2017

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF VIRGINIA

LYNCHBURG DIVISION ACA FINANCIAL GUARANTY CORPORATION AND UMB BANK,
N.A., Plaintiffs,

v. CITY OF BUENA VISTA, VIRGINIA, ET AL.,

Defendants.

CASE NO. 6:17 cv 00013

MEMORANDUM OPINION

JUDGE NORMAN K. MOON

The plaintiffs in this case, a bank and a bond insurer, assert an enforceable obligation either in contract or tort against the defendants to receive repayment stemming from the refinancing of a municipal golf course. Before the Court is a Rule 12(b)(7) motion to dismiss for failure to join a necessary party. The motion relates to two deeds of trust executed in favor of plaintiff real estate as collateral in the event that the defendants (the City of Buena Vista, Virginia and its recreational authority) did not repay the bank. Defendants contend that the Trustees to the deeds are necessary parties whose presence is mandatory but would destroy the diversity jurisdiction of the Court.

To prevail, Defendants must show that: first, the Trustees are necessary parties under Rule 19(a); second, their addition to the case would destroy complete diversity of citizenship; and third, the case cannot fairly proceed without the Trustees, per Rule 19(b). 1

The motion fails at the second step. The Trustees (who are Virginia citizens) should be added to this case as defendants. This leaves them on the same side of the case as the original Virginia defendants.

1 See *Owens-Illinois, Inc. v. Meade*, 186 F.3d 435, 440 (4th Cir. 1999); 5C Wright & Miller, *Fed. Prac. & Proc. Civ.* § 1359 (3d ed.) (quoting *Paiute-Shoshone Indians of Bishop Cmty. of Bishop Colony v. City of Los Angeles*, 637 F.3d 993, 997 (9th Cir. 2011)).

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This Court, in looking to Virginia law, previously held that the Trustees are necessary parties who, be joined. Dkt. 29, available at 2017 WL 3431592 (W.D. Va. Aug. 9, 2017); see *Delta Fin. Corp. v. Paul D. Comanduras & Assocs.*, 973 F.2d 301, 305 (4th Cir. 1992) (holding that while federal standards ultimately govern, a federal court must look to the state-law relationships between the parties when determining which parties are, as a practical matter, necessary for a *jus* for Rule 12(b)(7) purposes, then, was whether adding the Trustees would jeopardize jurisdiction. The Court, however, previously citizenship, so it ordered supplemental briefing on that and other issues bearing on the Rule

12(b)(7) motion. (Dkt. 30).

The parties now agree that the Trustees are Virginians. (Dkt. 36 at 2; dkt. 37 at 1 2). So the question presented is: Should they be aligned as plaintiffs or defendants? Because Defendants are citizens of Virginia, see Complaint ¶¶ 3 4, aligning the Trustees as plaintiffs would destroy complete diversity and require a Rule 19(b) analysis to see if the case could proceed without them. On the other hand, if the Trustees are aligned as defendants, complete diversity remains (because Plaintiffs are citizens of Maryland, New York, and Missouri 2

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2 Plaintiff ACA is a corporation incorporated in Maryland with its principle place of business in New York. (Complaint ¶ 1). Plaintiff UMB Bank is a national banking association who Wachovia Bank v. Schmidt, 546 U.S. 303, 307 (2006). It Missouri with its principal place of business there as well. (Complaint ¶ 2). 3 See *Jordan v. Washington Mut. Bank*, 211 F. Supp. 2d 670, 675 (D. Md. 2002) (holding and their joinder would deprive the Court of jurisdiction ; *CSX Transp., Inc. v. Forst*, 777 F. Supp. 435, 444 (E.D. Va. e this

When deciding how to align which entails two steps. *U.S. Fid. & Guar. Co. v. A & S Mfg. Co.*, 48 F.3d 131, 133 (4th Cir.

1995); see *City of Indianapolis v. Chase Nat. Bank*, 314 U.S. 63, 69 must determine the primary issue in the controversy. Next, the court should align the parties

according to their positions with *res A & S Mfg.*, 48 F.3d at 133.

The -level summary of the claims rather than a discrete, narrow legal issue presented by the case. This point is best shown by considering how other courts have framed the matter.

In a debt collection lawsuit by a phone company against a telephone customer, the

Palisades Collections LLC v. Shorts, 552 F.3d 327, 337 (4th Cir. 2008). In a declaratory judgment action by an insurer against the insured and other



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insurers to determine which policies provided coverage for environmental liability, the Fourth Circuit concluded that the primary issue was whether the insurers owed the insured a duty to defend and a duty to indemnify. U.S. Fid. & Guar. Co. v. A & S Mfg. Co., 48 F.3d 131, 134 (4th Cir. 1995); see Lott v. Scottsdale Ins. Co., 811 F. Supp. 2d 1220, 1224 (E.D. Va. 2011) (same). In a shareholder declaratory judgment derivative action to gain control of the

y. Gressette v. Sunset Grille, Inc., 447 F. Supp. 2d 533, 536 37 (D.S.C. 2006). In a case filed to confirm an arbitration award terminating a sports ownership

arbitration award t Canadian , 686 F. Supp. 2d 579, 588 (M.D.N.C. 2010). In a tort and contract case by a remediation company over unpaid invoices, the

primary issue was performed. Ryan Envtl., Inc. v. Hess Oil Co., 718 F. Supp. 2d 719, 728 (N.D.W. Va. 2010).

In light of these authorities, the primary issue here is whether Defendants have breached various documents or acted tortiously by refusing to repay Plaintiffs for financing of a golf Palisades, 552 F.3d at 337, is to achieve to receive recompense in

some form such as payment, or possession and control of the encumbered property (or both) propriate funds. (E.g.,

Complaint ¶¶ 43 47, 60 64, 68 69, 71, 76, 88, 92, 97, 101, 108, 119, 131 35).

Next, the Court must align the Trustees with respect to this issue. The Trustees are best The claims and relief they desire would upset the status quo in a way would largely oust (or at For instance, by filing their lawsuit, Plaintiffs seek to have this Court decide whether the terms of the deeds of trust were breached, a determination which would ordinarily be left to the Trustees. (See Complaint ¶¶ 60, 62 63). Under § 4.4 of the deeds of trust, the Trustees have the power to adjudge whether the deeds of trust are satisfied and, if not, to: foreclose on the properties; repair and maintain them; and payments Plaintiffs allege are owed. assume the Trustees role. (E.g. the relevant property), 90 92, 99 101 (asserting alleged breaches entitle

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Similarly, § 4.5 of the deeds of trust grants the Trustees power to act as receivers. This places the T (Complaint ¶ 132). Indeed, because Plaintiffs assert Case 6:17-cv-00013-NKM-RSB Document 53 Filed 12/19/17 Page 4 of 6 Pageid#: 1232 property which has vested in view of the express l rust, id. ¶ 135, Plaintiffs seek to displace the Trustees as current legal titleholders to the properties.

The Fourth Circuit endorses the consideration of aligning the parties. U.S. Fid. & Guar. Co. v. A & S



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Mfg. Co., 48 F.3d 131, 134 (4th Cir. 1995); see Beaufort Cty. Sch. Dist. v. United Nat. Ins. Co., 519 F. Supp. 2d 609, 616 (D.S.C. 2007). Practically speaking, the Court believes that the interests of Plaintiffs, as framed by the primary issue in this case, are adverse to the that exist absent this lawsuit.

This conclusion is further supported by the fact that the Trustees were involved as attorneys for the City in drafting the agreements at issue in this case. (Dkt. 37-1 at ECF 8). Their then- transactions, and also provided opinion letters that Plaintiffs allege purportedly fraudulent activity. This relationship would present numerous practical difficulties

were the Trustees aligned as plaintiffs, such as potential conflicts of interests and attorney-client privilege. See Va. R. Prof. Conduct 1.6, 1.9(c). Moreover, when there is an indication that a necessary third-party was involved with a de that form part of the basis of the dispute, the Fourth Circuit has suggested the third-party should be aligned with the defendant. See Delta Fin. Corp. v. Paul D. Comanduras & Assocs., 973 F.2d 301, 305 n.4 (4th Cir. 1992) (concluding, in case to dissolve partnership, that third-party should be aligned as defendant where named defendant had purported prior to litigation to substitute the third-party as a limited partner for plaintiff).

* * * 7) motion will be denied. Because the Trustees are necessary parties whose alignment Case 6:17-cv-00013-NKM-RSB Document 53 Filed 12/19/17 Page 5 of 6 Pageid#: 1233 jurisdiction, they will be added to this case. Plaintiffs will be ordered to serve on or before seven days from the date of this opinion, and in accordance with the Federal Rules of Civil Procedure the Trustees with a copy of the Complaint opinion holding that the Trustees are necessary parties. Upon service, the responsive deadlines of the Federal Rules of Civil Procedure will apply to the Trustees, who may submit a responsive -ripe motion to dismiss for failure to state a claim, or file any other proper motion or pleading. The Court will the pending Rule 12(b)(6) motion.

An appropriate order will issue. The Clerk of Court is requested to send a copy of this opinion and the accompanying order to counsel of record.

Entered this _____ day of December, 2017.

19th

