

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In re

SHARON A. CRUTCHFIELD,

Case No. 02-12671-MAM-11

Debtor.

SHARON A. CRUTCHFIELD,

Plaintiff,

vs.

Adv. No. 03-1264

MAGNOLIA MORTGAGE COMPANY,
L.L.C.,

Defendant.

**ORDER COMPELLING MICHAEL S. MCDONALD TO JOIN
PLAINTIFF'S LAWSUIT AS A NAMED PARTY**

C. Michael Smith and William M. Doyle, Mobile, Alabama, Attorneys for Sharon A. Crutchfield

Donald J. Stewart, Ian D. Rosenthal, and Jarrod J. White, Mobile, Alabama, Attorneys for Magnolia Mortgage Company, L.L.C.

This case is before the Court on Magnolia Mortgage Company's motion to join Michael S. McDonald, whom it alleges to be the debtor's common law husband, as a party to this adversary proceeding under Fed. R. Bankr. P. 7019. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2) and the Court has the authority to enter a final order. For the reasons given below, the Court finds that Michael McDonald must be joined as a named party to Sharon Crutchfield's lawsuit against Magnolia Mortgage Company, L.L.C.

FACTS

The debtor, Sharon Crutchfield, filed a chapter 11 bankruptcy case in this Court on May 14, 2002. In her schedules, Ms. Crutchfield listed Magnolia Mortgage Company (“Magnolia”) as holding a \$450,000 claim against her secured by mortgages on eight pieces of real property. The claim is described as disputed and the co-debtor box is marked “yes.” One of the eight pieces of real property is marked “j” in the box labeled “husb.,wife joint or comm.” as a joint debt. The others are not marked.

Ms. Crutchfield initiated an adversary proceeding against Magnolia on October 22, 2003. In her eleven count complaint, Ms. Crutchfield alleges various causes of action against Magnolia based on its treatment of her debt resulting from the mortgages. They include: (1) violation of the automatic stay; (2) usury; (3) declaratory judgment; (4) fraud; (5) suppression of material facts; (6) deceit; (7) fraud on the court/abuse of process; (8) conversion; (9) breach of contract; (10) slander of title; and (11) equitable subordination. Three of these causes of action, violation of the automatic stay, fraud on the court/abuse of process, and equitable subordination arise under Bankruptcy Code; the other eight arise under Alabama state law.

Michael McDonald, whom Magnolia alleges is the debtor’s common law husband, was a co-obligor on the promissory note and mortgages upon which Ms. Crutchfield bases her complaint. However, Ms. Crutchfield’s complaint does not name Mr. McDonald as a party nor does it state a reason for why he was not joined. Ms. Crutchfield suggests that it is not necessary to name Mr. McDonald as a party in her complaint because she can adequately represent his interest in the lawsuit. She also argues that Magnolia will not be subject to a substantial risk of incurring inconsistent obligations if Mr. McDonald is not named as a party because any decision

of this Court would be given issue preclusive or claim preclusive effect in any subsequent state court lawsuit brought by Mr. McDonald against Magnolia.

Magnolia argues that Mr. McDonald should be joined as a party to Ms. Crutchfield's complaint because she cannot adequately represent his interest in the lawsuit. Magnolia states that it will be subject to incurring inconsistent obligations if Mr. McDonald is not named as a party because the likelihood that any decision of this Court would be given issue preclusive and claim preclusive effect in any subsequent state court proceeding is uncertain. Additionally, even assuming that the parties share a common interest in the contract claims, for which Ms. Crutchfield may represent Mr. McDonald's interest, Magnolia argues that Ms. Crutchfield and Mr. McDonald share entirely separate interests in their tort claims.

LAW

Federal Rule of Bankruptcy Procedure 7019 governs whether a person must be joined as a party to an adversary proceeding. It generally applies the same criteria for joinder as Fed. R. Civ. P. 19; however, there are some important differences between the two rules. Under Rule 19, a federal district court must conduct a two part analysis. The first part of the analysis is a determination of whether it is "feasible" to join a person under Rule 19(a). *Janney Montgomery Scott, Inc. v. Shepard Niles, Inc.*, 11 F.3d 399, 404 (3rd Cir. 1993). If it is feasible, the inquiry ends because the person's joinder is compulsory; if it is not feasible (because doing so would destroy diversity jurisdiction) the district court must make a second determination of whether the entire case should be dismissed because the person is "indispensable" to the disposition of the case under Rule 19(b). *Id.*

Under Fed. R. Bankr. P. 7019, a federal bankruptcy court must conduct only the first part (is it feasible) of the Rule 19 analysis. If joinder is feasible, it is compulsory. The second part

(is the person indispensable) of the Rule 19 analysis is unnecessary because “joinder of an absent person will never destroy the [bankruptcy] court’s subject matter jurisdiction over the original action because jurisdiction over that action is not based on diversity.” Lawrence Ponoroff & Stephen E. Snyder, *Commercial Bankruptcy Litigation* § 3:8 (2004). Instead, a proper objection to the bankruptcy court’s subject matter jurisdiction by the joined person merely results in *his* dismissal from the adversary proceeding. *Id.* The entire adversary proceeding is never dismissed. *Id.*

Having dispensed with the above analysis of Fed. R. Bank. P. 7019, the Court must decide if it is feasible to join Mr. McDonald as a party under Rule 19(a). If his joinder is feasible, it will be compulsory, *Janney Montgomery Scott* at 404, and subject only to a subsequent objection by Mr. McDonald that this Court does not have subject matter jurisdiction over his claims. Ponoroff & Snyder, *supra*. If Mr. McDonald’s joinder is not feasible, Ms. Crutchfield’s adversary proceeding against Magnolia will continue without him. *Id.*

Rule 19(a) gives the criteria for determining whether a person’s joinder is feasible and therefore compulsory. It states in relevant part:

(a) Persons to be Joined if Feasible. 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 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.

Fed. R. Civ. P. 19(a). Although Rule 19(a) has two separate clauses, it is best understood as having three separate tests under which an absent party must be joined if any one is met. As explained in *BFI Waste Sys. of North America v. Broward County, Florida*:

First, an absent person shall be joined when complete relief cannot be granted among those already parties. Fed.R.Civ.P. 19(a)(1). This clause reflects the judicial system's interest in resolving disputes efficiently and avoiding duplicative litigation. *See* Fed.R.Civ.P. 19, advisory committee's note. Second, an absent person shall be joined if the absent person claims an interest in the case, and a judgment may as a practical matter impair the absent person's ability to protect that interest. Fed.R.Civ.P. 19(a)(2)(i). This clause reflects the judicial system's interest in avoiding prejudice to the absent person. *See* Fed.R.Civ.P. 19, advisory committee's note. And third, an absent party shall be joined if the absent person claims an interest in the case, and a judgment may subject one of the parties in the case to a "substantial risk" of incurring multiple or otherwise inconsistent obligations as a result of the interest claimed by the absent person. Fed.R.Civ.P. 19(a)(2)(ii). This clause reflects the judicial system's interest in protecting the parties, usually the defendant, from the risk of inconsistent obligations that may arise due to future litigation. *See* Fed.R.Civ.P. 19, advisory committee's note.

209 F.R.D. 509, 514-15 (S.D. Fla. 2002). The Court will consider whether Mr. McDonald must be joined as a party to this lawsuit under each of these three tests.

I. RULE 19(a)(1)

Under Rule 19(a)(1), a Court must determine if complete relief may be accorded to the parties already named in an action if the absent person is not joined. Fed. R. Civ. P. 19(a)(1). Its "inquiry is limited to whether [the Court] can grant complete relief to the persons already parties to the action [t]he effect a decision may have on the absent party is not material." *Janney Montgomery Scott* at 405. Therefore, for purposes of its Rule 19(a)(1) analysis, the Court will only consider if complete relief may be accorded to the current parties in Ms. Crutchfield's lawsuit against Magnolia without joining Mr. McDonald as a party.

Like Ms. Crutchfield, Mr. McDonald is a co-obligor on the promissory note and mortgages upon which Ms. Crutchfield's complaint is based. However, he is not currently named as a party in Ms. Crutchfield's complaint nor is any reason given to explain his absence. Ms. Crutchfield argues that she can adequately represent Mr. McDonald's interest in the state law causes of action. Her position is that Magnolia will not be subject to a substantial risk of

incurring inconsistent obligations if Mr. McDonald is not named as a party because any decision of this Court would be given issue preclusive or claim preclusive effect in any subsequent state court lawsuit brought by Mr. McDonald against Magnolia.

Magnolia argues that Ms. Crutchfield's assertions are incorrect because she cannot represent Mr. McDonald's interest in all of the state law causes of action listed in her complaint. Even if Ms. Crutchfield can represent Mr. McDonald's interest in the complaint's contract claims, Magnolia argues that Ms. Crutchfield cannot represent his interest in the tort claims because they share separate interests. Magnolia also argues that the likelihood that any decision of this Court would be given issue preclusive and claim preclusive effect in any subsequent state court proceeding is uncertain.

The Court agrees with Magnolia. The policy behind Rule 19(a)(1) "reflects the judicial system's interest in resolving disputes efficiently and avoiding duplicative litigation." *BFI* at 514-15. It would be inefficient and it would possibly lead to duplicative litigation to allow Ms. Crutchfield's lawsuit against Magnolia to proceed without Mr. McDonald. Although Ms. Crutchfield argues that she can adequately represent Mr. McDonald's interest so that any decision of this Court would be given issue preclusive or claim preclusive effect in a subsequent lawsuit filed by him against Magnolia, *see N.A.A.C.P. v. Hunt*, 891 F.2d 1555 (11th Cir. 1990)(barring subsequent lawsuit by plaintiffs under res judicata where one of the plaintiffs had filed an earlier lawsuit based on essentially the same causes of action); *Terrell v. DeConna*, 877 F.2d 1267 (5th Cir. 1989)(barring wife's consortium claim under issue preclusion where the wife's claims were derivative of claims made by her husband in a prior lawsuit), the general rule is that judgments are not binding on nonparties under the doctrines of issue or claim preclusion. *BFI* at 516.

The Court recognizes that there are three exceptions to the general rule that issue and claim preclusion may not be invoked against a nonparty. They include: (1) “a nonparty who has succeeded to a party’s interest in property is bound by any prior judgments against that party,” *Terrell* at 1270; (2) “a nonparty who controlled the original suit will be bound by the resulting judgment,” *Id.*; and (3) “federal courts will bind a nonparty whose interests were represented adequately by a party in the original suit,” *Id.* Ms. Crutchfield cites to the third exception - that her representation of Mr. McDonald’s interests will be adequate. However, she has not submitted any evidence or given any testimony to indicate why she meets that exception. The Court is left with only Ms. Crutchfield’s bare assertion that her representation will suffice. Without more, the Court must find that Ms. Crutchfield’s representation of Mr. McDonald’s interest would not sufficiently protect Magnolia from a substantial risk of incurring inconsistent obligations through a later suit by Mr. McDonald. Allowing Ms. Crutchfield’s case to proceed without Mr. McDonald would be inconsistent with Rule 19(a)(1)’s policy of avoiding duplicative litigation; therefore, the Court finds that Mr. McDonald is a necessary party to Ms. Crutchfield’s lawsuit under Rule 19(a)(1).

II. RULE 19(a)(2)(i)

Under Rule 19(a)(2)(i), the Court must determine if the absence of a nonparty with an interest relating to the subject matter of a lawsuit will impair or impede its ability to protect its interest as a practical matter if the lawsuit proceeds in the nonparty's absence. Fed. R. Civ. P. 19(a)(2)(i). Unlike a Court's Rule 19(a)(1) analysis, which only considers the effect on persons already parties to the action, Rule 19(a)(2)(i) "requires a court to take into consideration the effect that resolution of the dispute among the parties before it may have on an absent party." *Janney Montgomery Scott* at 406. Therefore, for purposes of its Rule 19(a)(2)(i) analysis, the Court will consider whether Mr. McDonald must be joined because he has an interest in the subject matter of Ms. Crutchfield's lawsuit that may be impaired if he is not named as a party.

Mr. McDonald has not appeared in this Court and nothing in Ms. Crutchfield's complaint indicates that he may have an interest in participating in her lawsuit against Magnolia. The only interest Mr. McDonald may have in Ms. Crutchfield's lawsuit relates to his status as a co-obligor on the promissory notes and mortgages upon which her complaint is based. Nonetheless, the Court finds that Mr. McDonald does have an interest in Ms. Crutchfield's lawsuit because he is jointly and severally liable for the debt at issue. Therefore, the Court must determine if Mr. McDonald's absence will, as a practical matter, impair or impede his ability to protect his interest in the lawsuit. Fed. R. Civ. P. 19(a)(2)(i).

As stated in the Court's Rule 19(a)(1) analysis, Ms. Crutchfield has not presented any evidence or given any testimony to indicate why her representation of Mr. McDonald's interests would preclude him from bringing a subsequent lawsuit against Magnolia. The general rule is that Mr. McDonald, as a nonparty to Ms. Crutchfield's lawsuit, will not be bound by any judgment under the doctrines of issue or claim preclusion. *BFI* at 516. Because Mr. McDonald

would not be bound by any determination of this Court, it finds that his interest in the subject matter of Ms. Crutchfield's lawsuit would not be impaired if it proceeds in his absence. Mr. McDonald is not a necessary party to Ms. Crutchfield's lawsuit under Rule 19(a)(2)(i).

III. RULE 19(a)(2)(ii)

Under Rule 19(a)(2)(ii), the Court must determine if the absence of a nonparty with an interest relating to the subject matter of a lawsuit will leave any of the existing parties to the lawsuit subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the nonparty's claimed interest. Fed. R. Civ. P. 19(a)(2)(ii). Similar to a Rule 19(a)(1) analysis, Rule 19(a)(2)(ii) focuses on the persons already parties to an action. Therefore, for purposes of its Rule 19(a)(2)(ii) analysis, the Court will consider whether Mr. McDonald must be joined because going forward without him will leave Magnolia subject to a substantial risk of incurring multiple, double, or inconsistent obligations.


As stated in both its Rule 19(a)(1) and (a)(2)(i) analyses, Ms. Crutchfield has not presented any evidence or testimony to show that her representation of Mr. McDonald's interests in her lawsuit against Magnolia would preclude him from bringing a subsequent lawsuit against Magnolia. For this reason, Magnolia would be subject to a substantial risk of incurring multiple, double, or inconsistent obligations if Ms. Crutchfield's lawsuit against Magnolia is allowed to proceed without naming Mr. McDonald as a party. The Court finds that Mr. McDonald is a necessary party under Rule 19(a)(2)(ii).

CONCLUSION

An absent party, like Mr. McDonald, must be joined if any one of Rule 19(a)'s three separate tests are met. Fed. R. Civ. P. 19(a). The Court has found that it is feasible to join Mr. McDonald in Ms. Crutchfield's lawsuit against Magnolia under two of these tests - Rule 19(a)(1) and Rule 19(a)(2)(ii). Therefore, Mr. McDonald's joinder is compulsory. *Janney Montgomery Scott* at 404. However, because his joinder is being compelled by a bankruptcy court, Mr. McDonald retains the right to object this Court's subject matter jurisdiction over his state law claims against Magnolia. Lawrence Ponoroff & Stephen E. Snyder, *Commercial Bankruptcy Litigation* § 3:8 (2004). Upon a proper objection by Mr. McDonald, he will be dismissed as a party to this adversary proceeding and the lawsuit will continue between the other parties without him. *Id.*

It is ORDERED that, pursuant to Federal Rule of Bankruptcy Procedure 19, Michael S. McDonald is compelled to join as a named party in the lawsuit filed by Sharon A. Crutchfield against Magnolia Mortgage Company, LLC.

Dated: January 28, 2004


MARGARET A. MAHONEY
U.S. BANKRUPTCY JUDGE