

STATE OF MAINE
CUMBERLAND, ss.

BUSINESS AND CONSUMER COURT
Location: Portland
Docket No. BCD-11-CV-12

Scott Thompson,

Plaintiff

v.

James Stoneton, et al.,

Defendants

ORDER
(Motion to Dismiss)

This matter was heard on June 15, 2011, on Defendants' Motion to Dismiss.¹ Attorney Susan Thiem represented the Plaintiff. Attorney Phillip Buckley represented the Defendants.

Factual Background

In this action, Plaintiff seeks to recover the amount of the earnest money (\$15,000) that was tendered in connection with the attempted purchase of certain real estate located in Belfast, Maine. Plaintiff is the assignee of his brother, Stuart Thompson, and another individual, Michael Loosen, who had offered to purchase the property from the United States Marshal Service, which is a federal agency. Evidently, Plaintiff had advanced the funds for the earnest money deposit to his brother.

A review of the pleadings reveals that both the Plaintiff and the United States Marshal Service claim an interest in the money. Defendants have, therefore, maintained the money in an escrow account. Plaintiff has not, however, joined in this action the United States Marshal Service, the other party to the agreement to purchase the real estate.

¹ In support of the motion, Defendants filed the affidavit of James Stoneton. Ordinarily, the filing of the affidavit would convert the motion to dismiss to a motion for summary judgment. However, the Court need not and will not consider the affidavit in its assessment of Defendants' motion. The Court can and will consider the documents attached to Plaintiff's Complaint. *See Moody v. State Liquor & Lottery Comm'n*, 2004 ME 20, ¶ 8, 843 A.2d 43, 47, ("a court [may] consider official public documents, documents that are central to the plaintiff's claim, and documents referred to in the complaint, without converting a motion to dismiss into a motion for a summary judgment when the authenticity of such documents is not challenged.")

Discussion

Defendants argue that dismissal is appropriate because Plaintiff has failed to join an indispensable party, the United States Marshal Service, as a party to this action. M.R. Civ. P. 19, which governs the joinder of parties, provides in pertinent part:

A person who is subject to service of process 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. If the person has not been so joined, the court shall order that the person be made a party.

M.R. Civ. P. 19(a). Upon review of Plaintiff's Complaint, the Court is convinced that the United States Marshal Service is a necessary party as contemplated by M.R. Civ. P. 19.

First, if the United States Marshal Service is not a party to this action, it could lose its opportunity to secure the earnest money deposit to which it claims entitlement. In addition, because the Court cannot adjudicate the United States Marshal Service's claim to the money if it is not a party, the Court's disposition of the matter could expose Defendants to potential liability to both parties. That is, if the matter proceeded without the United States Marshal Service, and if the matter resulted in a judgment in Plaintiff's favor, Defendants would be obligated to pay the money to Plaintiff while continuing to face the prospect of a claim asserted by the United States Marshal Service. The United States Marshal Service is, therefore, a necessary party to this action.

The Court cannot, however, simply order that Plaintiff join as a party the United States Marshal Service, an agency of the United States government. Because the United States government is immune from suit, absent the consent of the United States Marshal Service, Plaintiff cannot pursue its claim against the Service in state court. Accordingly, the Court cannot compel the United States Marshal Service to participate in this action.

When a necessary party cannot be joined in a particular action, M.R. Civ. P. 19(b) authorizes the Court to dismiss the matter under certain circumstances. After consideration of the relevant factors,² the Court concludes that dismissal is appropriate. The Court cannot adjudicate Plaintiff's claim to the money without determining whether the United States Marshal Service is entitled to the money. Importantly, Plaintiff is not without a remedy if the Court dismisses this action. With the United States Marshal Service joined as a party, Plaintiff can bring this action in federal court. *See* 28 U.S.C. § 1491 (sovereign immunity of the United States is waived and jurisdiction granted to federal court for monetary claims founded on the Constitution, any act of Congress, any regulation of an executive department, *or any express or implied contract with the United States*). Although this Court could conceivably adjudicate Count II of Plaintiff's Complaint (Violation of the Real Estate Brokerage License Act) without the United States Marshal Service as a party, the Court could not grant the ultimate relief (i.e., recovery of the earnest money) that Plaintiff seeks. Judicial economy thus militates in favor of Plaintiff prosecuting all of his claims in federal court.³

Conclusion

Because the United States Marshal Service is a necessary party to this action, and because the United States Marshal Service cannot be joined as a party to this action without its consent, the Court grants Defendants' motion and dismisses this matter without prejudice and without costs.

Pursuant to M.R. Civ. P. 79(a), the Clerk shall incorporate this Order into the docket by reference.

Date: 6/28/11



Justice, Maine Business & Consumer Court

² The Rule provides, "[t]he factors to be considered by the court [when deciding whether dismissal is appropriate] include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder." M.R. Civ. P. 19(b).

³ At oral argument, both parties expressed their preference that all of Plaintiff's claims be tried at the same time in one court.