

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**

KENT COUNTY COURTHOUSE
38 THE GREEN
DOVER, DELAWARE 19901
PHONE: (302) 735-3910

**CHARLES W. WELCH, III
JUDGE**

September 30, 2014

Gary W. Alderson, Esq.
300 Delaware Ave., Suite 1700
Wilmington, DE 19899-1630

Ms. Nina Shahin
103 Shinnecock Road
Dover, DE 19904

RE: Nina Shahin V. United Parcel Service (UPS) Store, Inc.
C.A.No.: CPU5-14-000379

Decision on Defendant's Motion For Summary Judgment

Dear Mr. Alderson and Ms. Shahin:

The plaintiff, Ms. Nina Shahin, has filed the above-referenced civil debt action against the defendant, United Parcel Service (UPS) Store, Inc., for money that she alleges is owed to her for damage to a glass fireplace door that she sent through the defendant to her daughter. The defendant has filed a motion to dismiss¹ the plaintiff's action against it for the plaintiff's failure to join an indispensable party. The Court heard oral argument on the defendant's motion and reserved decision. This correspondence constitutes the Court's decision. The defendant's motion for summary judgment is denied. However, the plaintiff is ordered to join United Parcel Services of American, Inc. ("UPS"), as an indispensable party to this action.

¹ The defendant has entitled its motion a "motion to dismiss." However, since materials outside the complaint were proffered as evidence at the hearing for the motion, the motion must be treated as a motion for summary judgment. *Johnson v. Redman*, 1985 WL 189301 (Del. Super.).

Facts

From the evidence proffered at the hearing for the defendant's motion for summary judgment, for the purposes of this motion, the Court finds as follows:

The plaintiff purchased a glass fireplace door from Sears a number of years ago. She never used the fireplace door and decided to send it to her daughter, who lives in Portland, Oregon. She took the fireplace door to the defendant in its original packaging so that it could be shipped to her daughter. The defendant accepted the package for shipping and sold the plaintiff insurance to cover any damage that might occur to the glass fireplace door during shipping.

The package containing the fireplace door was then sent via UPS. When the fireplace door arrived in Portland, Oregon, it was damaged. The damage was reported to the defendant, which has refused to reimburse the plaintiff for the damage either through itself or through any insurance. The defendant accepted a claim on the insurance that it sold to the plaintiff and forwarded the claim to UPS, who investigated the claim. The insurance claim for the damaged fireplace door was denied by UPS, on the grounds that the fireplace door was not properly packaged before it was sent.

The defendant has filed a motion for summary judgment seeking the dismissal of the plaintiff's claim against it on the grounds that the proper party against which the plaintiff should be pursuing her claim is UPS. It is the defendant's position that any damage that occurred to the fireplace door occurred during shipping. Since UPS was the carrier for the shipping, and the entity through whom insurance was provided, it is the party from whom the plaintiff should be seeking recovery. The plaintiff opposes the defendant's motion on the grounds that the defendant and UPS are essentially the same entity.

Legal Standard

For the defendant to prevail on its motion for summary judgment, it must prove, by a preponderance of the evidence, that there are no genuine issues as to any material fact and that it is entitled to dismissal as a matter of law. *Browning-Ferris, Inc. v. Rockford Enterprises, Inc.*, 642 A.2d 820, 823 (Del. Super. 1993). In reviewing the record, the Court must view the facts and all reasonable inferences therefrom in the light most favorable to the non-moving party. *Stein v. Griffith*, 2002 WL 32072578, at *1 (Del. Com. Pl. Dec. 12, 2002).

Decision

Court of Common Pleas Civil Rule 19(a) requires that a party:

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.

Ct. Comm. P. Civ. R. 19(a) (emphasis added). The verb “shall” indicates that joinder of a party is mandatory when the specified conditions occur. The court may also order joinder of the mandatory party. *Id.*

The indispensable party rule was created in the interest of judicial efficiency and “to assure that a litigant can have his rights and liabilities determined at one time without

the likelihood of renewed litigation at another time or place involving another claimant whose rights are intertwined with those of the present claimant.” *Industrial America, Inc. v. Minnesota Mining & Mfg. Co.*, 306 A.2d 751, 753 (Del. Super. 1973) (citing 3a MOORE’S FEDERAL PRACTICE 2220, s 19.07(1)). If a party has “a significant interest that could be [adversely] affected by a decision on the merits” it is an indispensable party. *Stoltz Management of Delaware, Inc. v. Justice of the Peace Court*, 2001 WL 1557486, at *3 (Del. Ct. Comm. P. Mar. 27, 2001) (citing *Brandywine Hundred v. New Castle County*, 1991 WL 279374 (Del. Ch. Dec. 26, 1991)). “[T]here is no prescribed formula for determining in every case whether a person is an indispensable party.” *Id.* at 754 (citing *Niles-Bement Pond Co. v. Iron Moulders’ Union Local #68*, 254 U.S. 77 (1920)). Nevertheless, a court may ask four questions to aid in its determination. *Id.* (citing 2 FEDERAL PRACTICE AND PROCEDURE, Barron and Holtzoff (Wright Ed.), 97, s 512). If it answers “no” to any one of these questions, the absent party may be considered indispensable:

- (1) Is the interest of the absent party distinct and severable?
- (2) In the absence of such party, can the court render justice between the parties before it?
- (3) Will the decree made, in the absence of such party, have no injurious effect on the interest of such absent party?
- (4) Will the final determination, in the absence of such party, be consistent with equity and good conscience?

Id.

If a party who is determined to be mandatory cannot be joined, “the Court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as

indispensable.” Ct. Comm. P. Civ. R. 19(b). The Court must consider the following four factors in making this determination: “[1] to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; [2] 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; [3] whether a judgment rendered in the person's absence will be adequate; [and 4] whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.” *Id.*

Finally, Rule 41(b) provides that a dismissal for failure to join a party under Rule 19 is not an adjudication on the merits of the matter. Ct. Comm. P. Civ. R. 41(b).

If this Court applies the four questions adopted by the *Industrial America* court to the situation here, it becomes clear that UPS is an indispensable party. The answer to question #1 is “yes” because UPS is a separate entity from the defendant. The answer to question #3 is also “yes” as a decree made in the suit against the defendant will not have an injurious effect on the interests of UPS since it is an entity apart from the defendant. The salient questions are #2 and #4, and the answer to each of those questions is “no.” The defendant alleges that the damage to the package in question occurred during shipment and that the carrier, UPS, is the party responsible for the damage. Therefore, this Court cannot render complete justice between the plaintiff and the defendant. UPS must be brought into the suit for a determination of the proper distribution of liability between UPS and the defendant. Accordingly, a final determination of liability, if any, in the absence of joinder of UPS will not “be consistent with equity and good conscience.” UPS is therefore an indispensable party to the action.

The Court must next decide whether dismissal of the defendant from this action is appropriate. The answer to that question is no. The plaintiff's claim is for

reimbursement for damage that was caused to the glass fireplace door after it was placed in the possession of the defendant and mailed through UPS. A genuine issue as to material fact exists concerning how and where the fireplace door became damaged. Therefore, a factual determination needs to be made as to whether the damage was caused by the defendant before UPS took possession of the fireplace door. If so, the defendant could be found liable to the plaintiff

Conclusion

As a result of the Court's findings of fact, which are based upon the entire record, and the Court's above-referenced conclusions of law, the plaintiff is ordered to join United Parcel Services of America, Inc., as a party to this action within the next sixty days. Additionally, the defendant's motion for summary judgment is denied since genuine issues of material fact still remain concerning how and where the plaintiff's glass fireplace door was damaged.

IT IS SO ORDERED.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is written in a cursive style with a large initial "C".

Charles W. Welch, III

CWW:mek