UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MICHAEL W. KENNEDY, Plaintiff, v. GUILFORD SAAB, a.k.a. WHITCOMB MOTORS, INC., and CHASE MANHATTAN AUTOMOTIVE FINANCE CORPORATION, Defendants.	CASE NO. 3:00CV00055(AWT)

RULING ON MOTION TO DISMISS

Plaintiff Michael W. Kennedy ("Kennedy") brought this action claiming that the defendants violated both the Consumer Leasing Act, 15 U.S.C. § 1667 (the "CLA"), and the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a ("CUTPA"), in the context of an automobile lease entered into between Kennedy and defendant Guilford Saab a/k/a Whitcomb Motors, Inc. ("Whitcomb"). The plaintiff has also named Chase Manhattan Bank, USA as a defendant. The defendants have moved to dismiss the complaint, and also to join an additional party, Tanya Iannuzzi ("Iannuzzi") as a counterclaim defendant. For the reasons set forth below, the defendants' motion to dismiss is being denied, and their motion to join an additional party as a counterclaim defendant is being granted.

I. Background

On or about December 11, 1998, Whitcomb leased a Saab automobile to Kennedy and Iannuzzi as co-lessees; each co-lessee signed the lease agreement. See Lease, signature box, p. 2. The term of the lease was 39 months. See Lease, ¶ 5. The plaintiff claims that the defendants did not fully and accurately disclose the lease terms, including: (1) "the correct amount due at inception", Compl. ¶ 13; (2) "the correct amount of the deposit", Compl. ¶ 14; (3) "a rebate in the amount of $1,200.00 which is not accounted for in the lease", Compl. ¶ 15; (4) "the charge to be imposed upon the lessee in the event of voluntary early termination during the first 12 months of the lease", Compl. ¶ 16; (5) "the correct initial payment", Compl. ¶ 17; and (6) "the lessee's liability for early termination of the lease car [sic] in a clear and conspicuous manner or in a clear and reasonably understandable form", Compl. ¶ 18. The plaintiff claims that these alleged failures constitute violations of the CLA and CUTPA.

The defendants have moved to dismiss the complaint on two grounds. First, they argue that defendant Chase Manhattan Bank, USA is not a proper defendant. Second, they argue that the plaintiff has failed to join a necessary party, Ianuzzi, and that therefore the case must be dismissed pursuant to Rule 12(b)(7) of the Federal Rules of Civil Procedure.

II. Discussion

A. Chase Manhattan Bank USA is not a proper defendant

The defendants claim that Chase Manhattan Bank USA is not a proper defendant. They assert that the proper defendant in this case is Chase Manhattan Automotive Finance Corporation ("CMAFC"), which was a party to the lease at issue. The plaintiff agrees that CMAFC is the proper party, and has amended its complaint accordingly. The defendants' motion to dismiss on these grounds is therefore being denied as moot.

B. Failure to Join a Necessary Party

The defendants further argue that the case should be dismissed in its entirety, as against all defendants, pursuant to Rule 12(b)(7) of the Federal Rules of Civil Procedure for failure to join a necessary party under Rule 19. Rule 19 reads, in relevant part:

> 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 matter 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).

However, a "joint obligor is not an indispensable party under [the Truth in Lending Act]". Aldrich v. Upstate Auto

Wholesale of Ithaca, 564 F.Supp. 390, 392 (N.D.N.Y. 1982).[1] See also Greenleaf v. Safeway Trails, Inc., 140 F.2d 889, 890 (2d Cir. 1944), cert. denied, 322 U.S. 736 (1944)(holding that "one of several joint obligors is not an indispensable party to an action against the others"); Tehran-Berkeley Civil and Environmental Engineers v. Tippetts-Abbett-McCarthy-Stratton, 888 F.2d 239, 243 (2d Cir. 1989)(reaffirming the holding in Greenleaf). Thus her mere status as a joint obligor does not make Iannuzzi a necessary party.

Iannuzzi has not "claimed an interest relating to the subject of the action" within the meaning of Rule 19(a)(2). Although Iannuzzi, as a signatory to the lease, has certain rights that likely would be affected by the outcome of this action, she has not *claimed* an interest in the subject matter of this litigation.[2] Although the defendants have attempted to assert Iannuzzi's interests on her behalf, the Second Circuit has held that "[i]t is the absent party that must claim an interest." Peregrine Myanmar Ltd. v. Segal, 89 F.3d 41, 49 (2d Cir. 1996)(internal quotation marks omitted). See also Conntech Dev'pt Co. v. University of Connecticut Educ. Props., Inc., 102

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[1] The CLA is a part of the Truth in Lending Act.

[2] Iannuzzi's interest that could be affected here is her possessory interest in the leased vehicle. As discussed below, Iannuzzi is being joined as a counterclaim defendant to this action. The counterclaim requests, inter alia, return of the vehicle and termination of the lease. Thus, Iannuzzi will be given an opportunity, in her role as counterclaim defendant, to assert and protect her rights under the lease.

F.3d 677, 682 (2d Cir. 1996)(holding that "because it does not claim an interest relating to the subject of the action, [the third party] is not required to be joined under either prong of Rule 19(a)(2).").

Further, the defendants concede that the CLA specifically states that "[w]hen there are multiple obligors in a . . . consumer lease, there shall be no more than one recovery of damages" provided for by the statute. 15 U.S.C. § 1640(d). Thus, the defendants could not possibly face multiple obligations under the CLA; if Kennedy recovers under the CLA, Iannuzzi can not. As for their liability under CUTPA, if the defendants violated that law as to Iannuzzi, she is entitled to bring suit in her own behalf, regardless of any suit brought by Kennedy. Although allowing Iannuzzi to pursue a suit separately under CUTPA would be inefficient, it would not give rise to "inconsistent obligations" on the part of the defendants.

Iannuzzi is not a "necessary party" under Rule 19(a). Therefore, her non-joinder does not necessitate dismissal of this action, and the defendants' motion to dismiss pursuant to Rule 12(b)(7) is being denied.

C. Motion to Join Iannuzzi as a Counterclaim Defendant

The defendants have also moved to join Iannuzzi as an additional counterclaim defendant pursuant to Rule 19 or Rule 20(a) of the Federal Rules of Civil Procedure. The counterclaims seek termination of the lease, return of the

vehicle, and money damages. The defendants argue, first, that Iannuzzi is a necessary party to be joined under Rule 19; the court has determined that Iannuzzi is not a necessary party, as discussed above. The defendants also argue, however, that Iannuzzi should be joined under the permissive joinder provisions of Rule 20(a). Rule 20 reads, in relevant part, as follows:

> 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.

Fed. R. Civ. P. 20(a). The counterclaims arise out of Kennedy and Iannuzzi's alleged failures to comply with the lease terms. Kennedy and Iannuzzi are jointly and severally liable on the lease, according to its terms. Thus, the claims against them arise out of the same lease transaction, and they involve common questions of law and fact. Therefore, the requirements of Rule 20 for permissive joinder are met, and Iannuzzi may be joined as an additional counterclaim defendant.

III. Conclusion

For the reasons set forth above, the defendants' motion to dismiss [Doc. # 8] is hereby DENIED, and the defendants' motion to join Tanya Iannuzzi as an additional counterclaim defendant [Doc. # 16] is hereby GRANTED. The defendants shall file forthwith their Counterclaims in substantially the form attached

as Exhibit “A” to their Memorandum in Support of Motion to Join Additional Party as Counterclaim Defendant [Doc. # 17].

It is so ordered.

Dated this 17th day of January, 2001, at Hartford, Connecticut.

Alvin W. Thompson
United States District Judge