CP Solutions PTE, Ltd. v. *General Electric Co*: Second Circuit Rejects Bright Line Approach in Determining "Indispensable" Party Status under Rule 19(b)

On January 6, 2009, the United States Court of Appeals for the Second Circuit issued its decision in *CP Solutions PTE, Ltd.* v. *General Electric Co.*[1] holding that a non-diverse defendant was not an "indispensable" party under Rule 19(b) of the Federal Rules of Civil Procedure, even though it was alleged to have breached the contract that was the subject of the lawsuit. In reaching this conclusion, the Court of Appeals emphasized that district courts should not apply rigid tests to determine whether or not a particular party is indispensable, but rather should undertake a flexible fact-specific evaluation, guided by the factors specified in Rule 19(b).

I. Background and Procedural History

In late 2002, CP Solutions PTE, Ltd. ("CP Solutions"), a Singaporean corporation, contracted with Tru-Tech Electronics ("Tru-Tech") to procure parts that Tru-Tech needed in order to assemble electrical products it had agreed to provide various General Electric ("GE") companies. Pursuant to their agreements with Tru-Tech, the GE companies provided Tru-Tech with electrical circuits to be integrated into Tru-Tech's final products, but reserved the right to deduct any unpaid debt that Tru-Tech owed for the electrical circuits from the amount payable to Tru-Tech for the final products. As Tru-Tech's unpaid debt to the GE companies increased, CP Solutions became concerned about Tru-Tech's ability to pay CP Solutions. This concern led CP Solutions to refuse to procure parts for Tru-Tech until the GE companies agreed not to claim set-offs against payments owed to CP Solutions. According to CP Solutions, the GE companies—including GE Multilin, Inc. ("GE Multilin"), a Canadian GE subsidiary—agreed in early 2003, both orally and in writing, either to pay CP Solutions for its services directly or to guarantee that monies due CP Solutions would not be subject to a set-off claim. The GE companies, however, later denied having entered into a contract with CP Solutions, and in July, 2003, they claimed a set-off for the amount Tru-Tech owed them against payments due CP Solutions.[2]

In April 2004, CP Solutions filed a diversity action in the United States District Court for the Central District of California, naming as defendants the GE parent company ("GE Co.") and a number of affiliated entities, including GE Multilin, and seeking damages for breach of contract and related causes of action.[3] In December 2004, the case was transferred to the United States District Court for the District of Connecticut and proceeded to discovery. In November 2006, more than two years after the complaint was filed, the defendants moved to dismiss the suit for lack of subject matter jurisdiction on the ground that diversity of citizenship was lacking because both CP Solutions and GE Multilin were foreign entities.[4] CP Solutions opposed the motion, and

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1 No. 07-3444-cv, 2009 WL 23575 (2d Cir. Jan. 6, 2009), *available at* http://www.ca2.uscourts.gov:8080/isysnative/RDpcT3BpbnNcT1BOXDA3LTM0NDQtY3Zfb3BuLnBkZg==/07-3444-cv_opn.pdf (hereinafter "Slip Opinion").

2 *Id*. at 3.

3 *Id*. at 3-4. The complaint actually named "GE Multilin Power Management Lentronics," a nonexistent entity, but the district court, and thereafter the Court of Appeals, concluded that CP Solutions intended to name "GE Multilin, Inc.," a Canadian subsidiary of GE Co. that was dissolved in 2004. *Id*. at 4, 6 n.1

4 The original jurisdiction of the federal district courts extends to actions between "citizens of a State and citizens or subjects of a foreign state," and between "citizens of different States and in which citizens of a foreign state are additional parties," but not to actions "where on one side there are citizens [of a State] and aliens and on the opposite side there are only aliens." *Id*. at 6 (quoting 28 U.S.C. § 1332(a)(2), (3); *Universal Licensing Corp.* v. *Paola del Lungo S.p.A.*, 293 F.3d 579, 581 (2d Cir. 2002)).

proposed amending the complaint to omit claims against GE Multilin, which had been dissolved in February 2004, arguing that it was not an indispensable party under Rule 19(b). As proposed by CP Solutions, the amended complaint would name GE Co. as the only defendant.

In a decision dated January 24, 2007, the district court granted the defendants' motion and dismissed CP Solutions's complaint, finding that GE Multilin was, as a party to the contract alleged to have been breached, "the paradigm of an indispensable party." [5] Upon reconsideration, the court engaged in a somewhat more detailed discussion of indispensability, but adhered to its decision, finding that application of the factors listed in Rule 19(b) to the circumstances of the case dictated dismissal because (1) a judgment rendered in GE Multilin's absence might be wholly or partially incomplete, thereby prejudicing CP Solutions, (2) there were no available means of limiting this prejudice, (3) an incomplete judgment was likely to prompt subsequent piecemeal litigation, and (4) CP Solutions could sue all of the named defendants in state court.[6]

II. The Second Circuit's Decision

In a per curiam opinion, the Court of Appeals reversed the district court's judgment of dismissal, holding that it was an abuse of discretion to find GE Multilin an indispensable party, and remanded the case with instructions to allow CP Solutions to amend its complaint to drop GE Multilin from the lawsuit.

The Court of Appeals began its analysis by noting that all parties agreed the presence of foreign corporations on both sides of the lawsuit destroyed diversity, and that, accordingly, the only issue to be decided was whether CP Solutions could amend its complaint to omit GE Multilin. The court explained that Rule 21 of the Federal Rules of Civil Procedure allows a court to drop a non-diverse party at any time to preserve diversity jurisdiction, provided that party is not indispensable under Rule 19(b).[7] Rule 19(b) specifies four factors for a court to consider in making this determination:

> (1) whether a judgment rendered in a person's absence might prejudice that person or parties to the action, (2) the extent to which any prejudice could be alleviated, (3) whether a judgment in the person's absence would be adequate, and (4) whether the plaintiff would have an adequate remedy if the court dismissed the suit.[8]

The Court of Appeals noted that the district court had, in its initial decision, failed to apply these factors, instead adopting a bright-line rule that all parties to a contract are indispensable. The Court of Appeals rejected this approach as inconsistent with Rule 19(b)'s flexible standard and with prior Second Circuit rulings.[9] The Court of Appeals further found that although the district court identified the correct Rule 19(b) factors in its decision on reconsideration, it abused its discretion in applying those factors.

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5 *CP Solutions PTE, Ltd.* v. *Gen. Elec. Co.*, 470 F. Supp. 2d 151, 157 (D. Conn. 2007) (quoting *Travelers Indem. Co.* v. *Household Int'l, Inc.*, 775 F. Supp. 518, 527 (D. Conn. 1991)).

6 *CP Solutions PTE, Ltd.* v. *Gen. Elec. Co.*, 244 F.R.D. 137, 143-44 (D. Conn. 2007).

7 Effective since December 1, 2007, the current version of Rule 19(b), although substantively identical to the previous version, no longer uses the term "indispensable." The Court of Appeals acknowledged this, but continued to use the term for the sake of convenience. Slip Opinion at 7 n.2.

8 *Id*. at 7 (citing Fed. R. Civ. P. 19(b)).

9 *Id*. at 7-8 (citing *Merrill Lynch & Co.* v. *Allegheny Energy, Inc.*, 500 F.3d 171, 180 (2d Cir. 2007); *Universal Reins. Co.* v. *St. Paul Fire & Marine Ins. Co.*, 312 F.3d 82, 87 (2d Cir. 2002); *Jaser* v. *N.Y. Prop. Ins. Underwriting Ass'n*, 815 F.2d 240, 242 (2d Cir. 1987)).

First, the Court of Appeals found that the district court erred in its application of the first two Rule 19(b) factors by focusing on the potential prejudice to CP Solutions. CP Solutions was willing to bear any prejudice resulting from GE Multilin's absence from the lawsuit, and as such, the district court's analysis should have focused on the possible prejudice to the defendants. The court noted that dismissing the lawsuit after two years of litigation would prejudice CP Solutions to a greater degree than would dropping GE Multilin as a defendant.

Turning to the question of prejudice to the defendants, the Court of Appeals rejected the contention that either the remaining defendants, or GE Multilin, would be significantly prejudiced by the proposed amendment to the complaint. The court found it unlikely that GE Multilin's absence would prejudice the remaining defendants because the complaint alleged no wrongdoing attributable only to GE Multilin. Moreover, the court found that CP Solutions's offer to amend the complaint to allege that only GE Co. breached the contract would ensure that only GE Co. could be found liable, and only by virtue of its own conduct. With regard to GE Multilin, the court noted that it was dissolved and had no assets, and that CP Solutions was thus unlikely to "be eager for the chance to procure blood from a stone."[10] The court found no indication that CP Solutions intended to go after the subsidiary that acquired GE Multilin's assets, especially in light of the proposed amended complaint. Additionally, the court found that even if GE Multilin's conduct remained relevant after it was dropped as a party, GE Co. could "champion its interest," as the two defendants were represented by the same counsel, and there had been no indication that their interests were adverse.

In considering the third Rule 19(b) factor, the Court of Appeals found that a judgment in GE Multilin's absence would be adequate. Adequacy in this context, explained the court, refers to the "public stake in settling disputes by wholes, whenever possible," and the "social interest in the efficient administration of justice and the avoidance of multiple litigation."[11] The court also noted that the procedural posture of the case was central to the adequacy determination. After reiterating its view that piecemeal litigation was unlikely and noting that the parties had been litigating the case for more than two years, the court stated that "[i]t would make little sense to require them to start over in state court simply because an asset-less, dissolved subsidiary of a diverse defendant cannot be joined in federal court."[12]

Finally, turning to the last Rule 19(b) factor, the Court of Appeals determined that even though CP Solutions could likely sue GE Multilin together with the other defendants in state court, that consideration was far outweighed by the prejudice to CP Solutions and the waste of judicial resources that would result from dismissal. Finding that it was not within the district court's permissible range of choices to conclude that GE Mulitin was indispensable, the Court of Appeals reversed the district court's decision, and remanded with instructions to allow the case to proceed without GE Multilin.[13]

III. The Significance of the Decision

In *CP Solutions*, the Court of Appeals endorsed a flexible fact-specific approach to application of Rule 19(b), paying particular attention to the procedural posture of the case and the potential prejudice that each party is likely to face if the non-diverse party is dropped from the case, or in the alternative, if the case is dismissed.

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10 *Id*. at 9.

11 *Id*. at 10-11 (quoting *Republic of Philippines* v. *Pimentel*, 128 S. Ct. 2180, 2193 (2008); *Ill. Brick Co.* v. *Illinois*, 431 U.S. 720, 738 (1977) (internal quotation marks omitted)).

12 *Id*. at 11 (citing *Newman-Green, Inc.* v. *Alfonzo-Larrain*, 490 U.S. 826, 836 (1989)).

13 *Id*. at 12.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Charles A. Gilman at 212.701.3403 or cgilman@cahill.com; Jon Mark at 212.701.3100; jmark@cahill.com; John Schuster at 212.701.3323 or jschuster@cahill.com or Benjamin D. Battles at 212.701.3228 or bbattles@cahill.com.