

E N D O R S E M E N T

COMMONWEALTH OF MASSACHUSETTS et al. v. E*TRADE ACCESS, INC.
03-CV-11206-MEL

LASKER, D.J.

Defendant moves to require that plaintiffs join third party merchants as necessary parties under Fed. R. Civ. P. 19. For the reasons given below, the motion is DENIED.

Rule 19(a) identifies several grounds to establish whether a non-party to a lawsuit is a necessary party who shall be joined if so doing will not deprive the court of jurisdiction:

- (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 substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

Under Rule 19(a)(1), the issue is whether the relief requested is complete "as between the persons already parties, and not as between a party and the absent person whose joinder is sought." Sindia Expedition, Inc. v. Wrecked & Abandoned Vessel, 895 F.2d 116, 121 (3rd Cir. 1990). Joinder is not necessary where, "although certain forms of relief are unavailable due to a party's absence, meaningful relief can still be provided." Id. The requirement that complete relief be available "does not mean that every type of relief sought must be available, only that meaningful relief be available." Henne v. Wright, 904 F.2d 1208, 1212 n. 4 (8th Cir. 1990). Accordingly, even if the merchants themselves would not be bound by a potential injunction, meaningful relief could still be granted as between the plaintiffs and E*Trade.

Moreover, the merchants' absence from this suit will not necessarily impair or impede their ability to protect their interests under Rule 19(a)(2)(i). "If an absent party's interests are the same as those of an existing party, and the existing party will adequately protect those interests, this bears on whether the absent party's interest will be impaired by its absence from the litigation." Tell v. Trustees of Delaware Coll., 145 F.3d 417, 419 (1st Cir. 1998). E*Trade is represented

by an able law firm that is capable of pursuing all procedural and substantive grounds for its client. E*Trade's interests will necessarily lead it to make the arguments that would also be offered on behalf of the merchants. The interests of E*Trade and the merchants do not diverge to the extent that in defending itself E*Trade will not adequately defend the merchants as well.


Nor will the merchants' absence leave E*Trade with a substantial risk of incurring multiple or inconsistent obligations under Rule 19(a)(2)(ii). This rule concerns only inconsistent obligations, not inconsistent adjudications. Delgado v. Plaza Las Americas, Inc., 139 F.3d 1, 3 (1st Cir. 1998). It does not appear that E*Trade will be unable to comply with one court order regarding the ATM machines without breaching another court order concerning the same issue.

For the preceding reasons, I conclude that it is at least premature, at this time, to require joinder of the approximately 11,000 third party merchants as necessary parties. Concerns of judicial efficiency and economy weigh against such a massive and unwieldy arrangement. However, E*Trade raises issues that are not capricious. If in the development of this case it appears necessary to review the decision, such a possibility exists.

Accordingly, the motion is DENIED.

It is so ordered.

Dated: September 22, 2004
Boston, Massachusetts


/s/ Morris E. Lasker
U.S.D.J.