

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

IN RE: §
§
INDEPENDENCE FUEL § Case No. 22-60301
SYSTEMS LLC §
§
Debtor § Chapter 11

INDEPENDENCE FUEL §
SYSTEMS LLC, §
§
Plaintiff §
§
v. § Adversary No. 23-06006
§
EASTMAN GAS COMPANY LLC, §
§
Defendant. §

**ORDER GRANTING AND DENYING IN PART
DEFENDANT’S MOTION TO DISMISS
UNDER FED. R. CIV. P. 12(b)(6) AND 12(b)(7)**

ON THIS DATE the Court considered the “Motion to Dismiss Under FRCP 12(b)(6) and 12(b)(7) and FRBP 7012” (the “Motion”) filed by Defendant, Eastman Gas Company LLC (the “Defendant”), and the response thereto filed by Plaintiff, Independence Fuel Systems LLC (“Plaintiff” or “Debtor”).¹ The Court finds that the Motion was properly served pursuant to the Federal and Local Rules of Bankruptcy Procedure, that the arguments

¹ Both parties also filed briefs to support their respective positions. Def.’s Br., ECF No. 7 and Pl.’s Br., ECF No. 23.

and authorities of the parties are adequately presented in the pleadings, and that the Court's decision regarding the Motion would not be significantly aided by oral argument. Upon due consideration of the pleadings and the relevant legal authorities, the Court finds this proceeding must be dismissed under Fed. R. Civ. P. 12(b)(7).

I. Background

Plaintiff as Debtor filed a Chapter 11 bankruptcy case on July 14, 2022.² Debtor's reorganization efforts were successful, and the Court confirmed the Debtor's SubChapter V plan on December 16, 2022.³ Contained within that plan was an agreement to settle claims between Debtor and Eastman Midstream, LP.⁴ This settlement was "intended to settle and fully resolve any and all claims that exist, or may exist, by the Debtor against Eastman, Raymond Russell and Matthew Russell, as of the date of confirmation of [the] Plan."⁵ After confirmation the Court entered a final

² Case No. 22-60301, ECF No. 1.

³ Case No. 22-60301, ECF No. 102.

⁴ Case No. 22-60301, ECF No. 101, Pg. 16-17.

⁵ *Id.* The confirmed plan states that Debtor did "forever release, settle, compromise, acquit and forever discharge Eastman, Raymond Russell and Matthew Russell, from any and all claims, causes, causes of action, damages, costs, expenses, and liabilities of any kind, character or description, whether direct or indirect, known or unknown, contingent or non-contingent, disclosed or hidden, in law or equity, that it has, had or may have against Eastman, Raymond Russell and Matt Russell as of the date of confirmation of this Plan." *Id.* "Eastman" in the plan refers to Eastman Midstream, LP. Case No. 22-60301, ECF No. 101, Pg. 9. Defendant, Eastman Gas Company, LLC, "is the general partner and 1% owner

decree on April 24, 2023,⁶ and the case was closed on May 15, 2023.

This adversary proceeding was filed on January 24, 2023 in state court in Dallas County, Texas, after entry of the confirmation order but prior to entry of the final decree.⁷ Neither Eastman Midstream, LP nor R. Kevin Russell are named as defendants.⁸ After service, Defendant, Eastman Gas Company LLC, removed the suit to federal court. Defendant file the Motion seeking dismissal under Fed. R. Civ. P. 12(b)(6) and (7).⁹ Plaintiff timely responded, opposing both requests.¹⁰ This Court has already denied Plaintiff's motion for remand,¹¹ as well as Defendant's motion to strike Plaintiff's jury demand.¹²

II. Legal Standard

The Court first considers the Rule 12(b)(7) portion of Defendant's Motion. Fed. R. Civ. P. 12(b)(7) authorizes the Court to dismiss an action

of Eastman Midstream, LP." Def.'s Br., ¶ 1, 1, ECF No. 7.

⁶ Case No. 22-60301, ECF No. 121.

⁷ ECF No. 1.

⁸ *Id.*

⁹ ECF Nos. 6, 7, 18, 20, and 29.

¹⁰ ECF Nos. 23 and 24.

¹¹ ECF No. 36.

¹² ECF No. 37.

because of failure under Fed R. Civ. P. 19 to join a party. *HS Res., Inc. v. Wingate*, 327 F.3d 432, 438 (5th Cir. 2003). There are two steps for the Court's consideration of a Rule 19 question. *Diamond v. Keaton*, No. 6:22-CV-00045-JDK, 2022 WL 2707953, at *2 (E.D. Tex. June 15, 2022), report and recommendation adopted, No. 6:22-CV-45-JDK, 2022 WL 2706099 (E.D. Tex. July 9, 2022).

First is whether a non-party should be joined under Rule 19(a)(1).¹³ *Id.* If the non-party *should not* be joined under that rule, the Rule 19 inquiry ends and the motion under Rule 12(b)(7) should be denied. If the non-party *should* be joined, then the non-party is necessary and should be “brought into the lawsuit.” Fed. R. Civ. P. 19(a)(2); *see HS Res., Inc.*, 327 F.3d at 439; *Arigna Tech. Ltd. v. Bayerische Motoren Werke AG*, No. 2:21-CV-00173-JRG, 2023 WL 6606722, at *3 (E.D. Tex. Oct. 6, 2023). A court does not err by

¹³ Fed. R. Civ. P. 19(a) states:

(a) Persons Required to Be Joined if Feasible.

(1) **Required Party.** A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

refusing to dismiss for failure to join a "necessary" party who is within the venue and jurisdiction of the court, but whom the present parties fail to join. *Ranger Transp., Inc. v. Wal-Mart Stores, Inc.*, 903 F.2d 1185, 1187 (8th Cir. 1990); *De Wit v. Firststar Corp.*, 879 F. Supp. 947, 993 (N.D. Iowa 1995).

Second, the Court must decide whether the necessary non-party, if any, is also indispensable. "A party is indispensable only if the claims raised cannot be adjudicated without it." *Shelton v. Exxon Corp.*, 843 F.2d 212, 218 (5th Cir. 1988). Thus, if a non-party *should* be joined, but "cannot be joined" or doing so would destroy jurisdiction, "then the [C]ourt must determine whether to press forward without the non-party or to dismiss the ligation under Rule 19(b)."¹⁴ *Keaton*, 2022 WL 2707953 at *2. Precedent from the Fifth Circuit sets out the following factors for considering whether a non-party is indispensable under Rule 19(b): "(1) prejudice to an absent party or

¹⁴ Fed. R. Civ. P. 19(b) states:

(b) When Joinder Is Not Feasible. If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

- (1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;
- (2) the extent to which any prejudice could be lessened or avoided by:
 - (A) protective provisions in the judgment;
 - (B) shaping the relief; or
 - (C) other measures;
- (3) whether a judgment rendered in the person's absence would be adequate; and
- (4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

others in the lawsuit from a judgment; (2) whether the shaping of relief can lessen prejudice to absent parties; (3) whether adequate relief can be given without participation of the party; and (4) whether the plaintiff has another effective forum if the suit is dismissed.” *HS Res., Inc.*, 327 at 439. These are the same factors contained in Rule 19(b). Unless the Court finds a necessary non-party indispensable, it has no discretion to dismiss the case, except in the most exceptional cases, even if a necessary non-party cannot be joined. *Shelton*, 843 F.2d at 218. The threat of multiple litigation does not make a non-party indispensable. *Id.* at 216. In sum, Rule 19(b) requires as a matter of equity that if the lawsuit cannot proceed without the necessary absent non-party, then that necessary non-party shall be considered indispensable and the case dismissed.

III. Analysis

The first step of the Rule 12(b)(7) analysis as outlined is whether Eastman Midstream, LP should be joined under Rule 19(a)(1). Neither party argues Eastman Midstream, LP cannot be served process, nor that adding Eastman Midstream, LP would deprive the court of subject-matter jurisdiction.¹⁵ Could this Court then, in Eastman Midstream, LP’s absence,

¹⁵ This Court has already found it has subject matter jurisdiction over this proceeding, and adding Eastman Midstream, LP as a party would not affect that prior analysis. See Order Den. Mot. Remand, 5-6, ECF No. 36.

either accord complete relief or dispose of this proceeding, without “impairing or impeding [Eastman Midstream, LP’s] ability to protect its interest?”¹⁶

The Court finds that Eastman Midstream, LP is a necessary party and that complete relief cannot be afforded to the existing parties without impairing Eastman Midstream, LP’s ability to protect its interests. Plaintiff’s suit seeks a monetary judgment against Defendant, Eastman Gas Company LLC, but also seeks a declaratory judgment voiding Defendant’s alleged ownership of the pipelines at issue and a constructive trust over the pipelines.¹⁷ Before Plaintiff can obtain a constructive trust, it must establish that the pipelines are owned by Defendant, Eastman Gas Company LLC.¹⁸

¹⁶ Neither party argued that moving forward in Eastman Midstream, LP’s absence would “leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.” Fed. R. Civ. P. 19(a)(1)(B)(ii).

¹⁷ See Def. Not. Removal, Ex. 3, Orig. Pet., ¶66, 17, ECF No. 1. More specifically, Plaintiff prays in part for the following relief:

“5. A Declaratory Judgement providing as follows:

a. Plaintiffs Operating Agreement governs the method by which any sale and/or transfer of ownership of Plaintiffs assets (specifically the pipelines) shall occur, and the terms and provisions of Plaintiffs current Operating Agreement are fully enforceable and binding on Defendant.

b. Pursuant to the IFS Operating Agreement and other applicable law, the purported transfer of Plaintiffs assets to Defendant is unenforceable and void *ab initio*.”

Def. Not. Removal, Ex. 3, Orig. Pet., 19, ECF No. 1.

¹⁸ One Court has explained the requirement for obtaining a constructive trust under Texas law follows:

This is because a constructive trust is only available over identifiable property.¹⁹ In this proceeding the non-party, Eastman Midstream, LP, has an undeniable interest in the success of Defendant's argument that the pipelines

A party seeking to impose a constructive trust must establish (1) breach of a special trust or fiduciary relationship or actual or constructive fraud, (2) unjust enrichment of the wrongdoer, and (3) an identifiable res that can be traced back to the original property. *KCM Fin. LLC v. Bradshaw*, 457 S.W.3d 70, 87 (Tex. 2015). The proponent of a constructive trust must strictly prove these elements. *Hubbard v. Shankle*, 138 S.W.3d 474, 485 (Tex. App.—Fort Worth 2004, pet. denied). To prove an identifiable res, the proponent of the constructive trust must show that the specific property that is subject to the constructive trust is the same property—or the proceeds from the sale thereof or revenues therefrom—that was somehow wrongfully taken. *Wheeler v. Blacklands Prod. Credit Ass'n*, 627 S.W.2d 846, 851 (Tex. App.—Fort Worth 1982, no writ). When the property sought to be recovered or its proceeds have been dissipated so that no product remains, the constructive-trust-seeking proponent's only claim is that of a general creditor. See *Great-W. Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 214, 122 S. Ct. 708, 714, 151 L. Ed. 2d 635 (2002). A constructive trust on unidentifiable cash proceeds is inappropriate. *Meadows v. Bierschwale*, 516 S.W.2d 125, 131 (Tex. 1974).

In re Hayward, 480 S.W.3d 48, 52 (Tex. App.—Fort Worth 2015, no pet.).

¹⁹ The Texas Supreme Court has written:

Thus, to obtain a constructive trust over these properties located in Texas, Longview [Plaintiff] must have procedurally proved that the properties, or proceeds from them, were wrongfully obtained, or that the party holding them is unjustly enriched. See *KCM Fin. LLC v. Bradshaw*, 457 S.W.3d 70, 88 (Tex. 2015). "Definitive, designated property, wrongfully withheld from another, is the very heart and soul of the constructive trust theory." *Id.* Imposition of a constructive trust is not simply a vehicle for collecting assets as a form of damages. *Id.* And the tracing requirement must be observed with "reasonable strictness." *Id.* That is, the party seeking a constructive trust on property has the burden to identify the particular property on which it seeks to have a constructive trust imposed.

Longview Energy Co. v. Huff Energy Fund LP, 533 S.W.3d 866, 873 (Tex. 2017).

are owned by Eastman Midstream, LP. How could the Court dispossess Eastman Midstream, LP of pipelines by granting relief only against Eastman Gas Company LLC? To afford such relief to Plaintiff at the expense of an unserved non-party, Eastman Midstream, LP, impairs its ability to protect its interests and warrants joinder under Rule 19(a)(1).

Though joinder is warranted under Rule 19(a)(1), Eastman Midstream, LP cannot be joined as a defendant by Plaintiff. This is because Plaintiff previously and voluntarily released its claims against Eastman Midstream, LP.²⁰ This release pertained to “any and all claims that exist, or may exist . . . as of the date of confirmation of [the] Plan.”²¹ The plan in Plaintiff’s bankruptcy case was confirmed on December 16, 2022.²² The release date is after occurrence of the events on which Plaintiff’s claims are based.²³ The Court declines to ignore the release contained in the confirmed plan because Plaintiff now finds the effect of that release inconvenient.

Because Eastman Midstream, LP is a necessary non-party, but cannot be joined, the final step in the Court’s analysis is to “determine whether, in

²⁰ Case No. 22-60301, ECF No. 101, Pg. 16-17.

²¹ *Id.*

²² Case No. 22-60301, ECF No. 102.

²³ ECF No. 1.

equity and good conscience, the action should proceed among the existing parties or should be dismissed.” Fed R. Civ. P. 19(b). In other words, under the factors from Rule 19(b) and *HS Res., Inc.*, is Eastman Midstream, LP indispensable? Defendant, Eastman Gas Company LLC, argues that Eastman Midstream, LP is “an indispensable party because it owns the Pipelines which Plaintiff seeks to acquire and/or alleges were wrongfully obtained.”²⁴ Plaintiff disagrees, responding that “Plaintiff has affirmatively asserted that Defendant is the current owner and financial benefactor of the pipelines according to the Texas Railroad Commission.”²⁵ The Court earlier ruled that the parties dispute ownership of the pipelines and recognized that Defendant alleges they are owned by non-party Eastman Midstream, LP.²⁶

The first factor to consider is whether a judgment rendered in Eastman Midstream, LP’s absence might prejudice it or the existing parties. Fed. R. Civ. P. 19(b)(1). The Court has already found doing so would prejudice

²⁴ Def.’s Br., ¶ 9, 3, ECF No. 7.

²⁵ Pl.’s Br., 8, ECF No. 23.

²⁶ This Court ruled in part: “In evaluating the substance of this proceeding and whether subject matter jurisdiction exists, Defendant’s framing of the dispute is more convincing. If the pipelines are owned by Eastman Midstream, LP, then at issue is the scope and enforcement of the release provisions in the confirmed plan. If the pipelines are owned by Plaintiff, then they were property of Plaintiff’s bankruptcy estate and it is necessary to consider whether they were disclosed to creditors, treated properly under the plan, and whether Plaintiff’s claims are possibly estopped.” Order Den. Mot. Remand, 5, ECF No. 36.

Eastman Midstream, LP. Eastman Gas Company LLC benefits from dismissal and is not prejudiced. Plaintiff's claims against Defendant would be prejudiced but not its previously released claims against Eastman Midstream, LP.

Next is whether the prejudice to either Eastman Midstream, LP or Plaintiff could be lessened or avoided. Fed. R. Civ. P. 19(b)(2). Because Eastman Midstream, LP was released voluntarily by Plaintiff, the Court fails to see how prejudice to Eastman Midstream, LP could be lessened should the suit proceed. The only conceivable way to do so would be to guarantee that Eastman Midstream, LP, if found to own the pipelines, would not be dispossessed of them. Yet, to dispossess those pipelines from their current owner is the core aim of Plaintiff's suit. Such a guarantee would also unavoidably prejudice Plaintiff, because if Eastman Midstream, LP is found to own the pipelines, Plaintiff would be deprived of achieving its core aim.

A judgment rendered in the absence of Eastman Midstream, LP, would not be adequate. Fed. R. Civ. P. 19(b)(3). Plaintiff's claims rest on the idea that the pipelines in question are its property and not the property of Defendant or Eastman Midstream, LP. Plaintiff cannot be successful without a determination of ownership of the pipelines, but an ownership determination requires Eastman Midstream, LP. Plaintiff assumes the

pipelines are currently owned by Defendant, but Defendant plausibly contests this assumption by pointing to Eastman Midstream, LP as the current owner. The Court can, therefore, only provide adequate relief to a victorious Plaintiff on its claims as pled if a hypothetical judgment is binding on Eastman Midstream, LP.

Last, Plaintiff would not have a constructive trust remedy if this proceeding is dismissed for non-joinder. Fed. R. Civ. P. 19(b)(4). This is no great loss, however, because Plaintiff voluntarily released its claims against Eastman Midstream, LP as part of plan confirmation. Plaintiff should not have a remedy against Eastman Midstream, LP for claims it previously released. Conversely, claims against Defendant, if any, have not been released. For this reason, Plaintiff would have an adequate remedy against Defendant if the action is dismissed, so long as Plaintiff does not assert claims requiring joinder of Eastman Midstream, LP. Claims seeking purely economic recompense from Defendant for alleged wrongdoing, if any, might not implicate the plan releases of Eastman Midstream, LP as this proceeding does. It is not for this Court to speculate, but only to recognize the possibility of an adequate remedy available to Plaintiff against Defendant in a differently pled action.

Considering the Rule 19(b) factors, the Court finds Eastman

Midstream, LP to be a necessary and indispensable party without whom this proceeding cannot continue. As a result dismissal of this proceeding under Fed R. Civ. P. 12(b)(7) is warranted.

Defendant also moved for relief under Fed R. Civ. P. 12(b)(6) for failure to state a claim, but the Court need not wax eloquent over this portion of Defendant's Motion. The Court has evaluated the merits of the Motion under the established standards for evaluating the merits of a motion brought under Fed. R. Civ. P. 12(b)(6).²⁷ Under those strict standards, the Court finds that the Plaintiff has stated plausible causes of action under state law. However, those causes of action cannot be prosecuted as pled absent joinder of Eastman Midstream, LP as a necessary and indispensable party. Because joinder is an impossibility as set forth above, and despite denial of the Fed. R. Civ. P.

²⁷ Fed. R. Civ. P. 12(b)(6) authorizes the Court to dismiss an action because of failure to state a claim on which relief may be granted. A motion to dismiss under Fed. R. Civ. P. 12(b)(6) cannot be properly granted if a claim "may be supported by showing any set of facts consistent with the allegations in the complaint." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544-, 127 S.Ct. 1955, 1969, 167 L.Ed.2d 929 (2007). In other words, a claim may not be dismissed based solely on a court's supposition that the pleader is unlikely "to find evidentiary support for his allegations or prove his claim to the satisfaction of the factfinder." *Id.* at n. 8. Although detailed factual allegations are not required, a plaintiff must provide the grounds of its entitlement to relief beyond mere "labels and conclusions," "a formulaic recitation of the elements of a cause of action will not do." *Id.* at 1964-65. The complaint must be factually suggestive, so as to "raise a right to relief above the speculative level," *Id.* at 1965, and into the "realm of plausible liability." *Id.* at 1966 n. 5. In passing on a Rule 12(b)(6) motion, a court must accept all of the plaintiff's allegations as true. *Ballard v. Wall*, 413 F.3d 510, 514 (5th Cir. 2005). Motions to dismiss under Rule 12(b)(6) are disfavored and are rarely granted. *Priester v. Lowndes County*, 354 F.3d 414, 418 (5th Cir. 2004); *Ollie v. Plano Independent School Dist.*, 564 F.Supp.2d 658, 660 (E.D. Tex. 2008).

12(b)(6) portion of Defendant's Motion, this proceeding should still be dismissed.

IV. Conclusion

Accordingly, the Court finds that just cause exists for the entry of the following order.

IT IS THEREFORE ORDERED that the "Motion to Dismiss Under FRCP 12(b)(6) and 12(b)(7) and FRBP 7012" filed in this adversary proceeding by Defendant, Eastman Gas Company LLC, is hereby **GRANTED in part**, and this proceeding is **DISMISSED** pursuant to Fed. R. Civ. P. 12(b)(7) for failure to join Eastman Midstream, LP as a necessary and indispensable non-party under Fed. R. Civ. P. 19.

IT IS FURTHER ORDERED that the remainder of the Motion is **DENIED**.

Signed on 12/12/2023



THE HONORABLE JOSHUA P. SEARCY
UNITED STATES BANKRUPTCY JUDGE