

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

Case No. 6:07-bk-02502-ABB
Chapter 7

MARK JOSEPH DONAHUE, SR., and
KAREN LEE DONAHUE,

Debtors.

MARK JOSEPH DONAHUE, SR.,

Plaintiff,

vs.

Adv. Pro. No. 6:07-ap-00162-ABB

STATE OF MAINE REVENUE SERVICES,

Defendant.

ORDER

This matter came before the Court on the Motion for Summary Judgment With Incorporated Memorandum of Law (Doc. No. 9) ("Motion") filed by Maine Revenue Services for the State of Maine, the Defendant herein ("Defendant"), seeking summary judgment against the Debtors Mark Joseph Donahue, Sr. and Karen Lee Donahue. A hearing was held on February 11, 2008 at which counsel for the Plaintiff and counsel for the Defendant appeared.

Mark Donahue, as the sole Plaintiff, filed the Complaint (Doc. No. 1) seeking a determination State of Maine income tax debts for tax years 1994 through 2002 are dischargeable pursuant to 11 U.S.C. Section 523(a)(1). Mark Donahue and Karen Donahue are co-debtors in the Chapter 7 main case and are jointly liable for some of the tax debts at issue. Neither party has sought to join Karen Donahue as a party plaintiff.

Federal Rule of Civil Procedure 19, made applicable to bankruptcy adversary proceedings by Federal Rule of Bankruptcy Procedure 7019, allows for the joinder of a required party, if feasible. A joinder determination involves a two-step analysis:

First, the court is to use the criteria in Rule 19(a) to determine whether a party ought to be joined. If so, and if joinder of that party is impossible, the court is to use the criteria in Rule 19(b) to determine whether the court should nevertheless proceed in that party's absence.

Bel-Bel Int'l Corp. v. Cmty. Bank of Homestead, 162 F.3d 1101, 1107 n.14 (11th Cir. 1998). Rule 19(a) provides:

(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;

Fed. R. Civ. P. 19(a).

The issue of joinder may be addressed by a trial court *sua sponte* at any time. Fed. R. Civ. P. 21 ("On motion or on its own, the court may at any time, on just terms, add or drop a party."¹; Moore v. Comfed Sav. Bank, 908 F.2d 834, 838 (11th Cir. 1990). Rule 21 is "intended to permit the bringing in of a person, who through inadvertence, mistake or for some other reason, had not been made a party and whose presence as a party is later found necessary or desirable." United States v. Com. Bank of N. Am., 31 F.R.D. 133, 135 (S.D.N.Y. 1962) (*citation omitted*).

Karen Donahue is an indispensable party to this action. The state tax debts at issue are largely joint obligations of the Debtors. The Court cannot accord complete relief among the existing parties in the absence of Karen Donahue from this action. Joinder of Karen Donahue, as a

¹ Federal Rule of Civil Procedure 21 is made applicable to bankruptcy adversary proceedings by Federal Rule of Bankruptcy Procedure 7021.

co-debtor in a case pending before this Court, is subject to service of process and joinder of her will not deprive this Court of subject-matter jurisdiction. A Rule 19(b) analysis is not required given joinder of Karen Donahue is feasible pursuant to Rule 19(a).

The Complaint is due to be amended to add Karen Donahue as a party plaintiff pursuant to Federal Rules of Civil Procedure 19(a) and 21.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that Karen Lee Donahue is hereby joined as a plaintiff in the above-captioned adversary proceeding pursuant to Federal Rules of Civil Procedure 19(a) and 21 and Federal Rules of Bankruptcy Procedure 7019 and 7021; and it is further

ORDERED, ADJUDGED and DECREED that Plaintiff Mark Donahue, within fifteen (15) days of the date of entry of this Order, shall file and serve an Amended Complaint adding and joining Karen Lee Donahue as a party plaintiff; and it is further

ORDERED, ADJUDGED and DECREED that the Defendant shall file a formal response to the Amended Complaint within fifteen (15) days of service; and it is further

ORDERED, ADJUDGED and DECREED that a status conference shall be held on May 8, 2008 at 10:30 a.m.

Dated this 3rd day of April, 2008.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge