



SO ORDERED,

Judge Selene D. Maddox

United States Bankruptcy Judge

The Order of the Court is set forth below. The case docket reflects the date entered.

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI**

IN RE: PAMELA LYNETTE MORGAN

CASE NO.: 19-12879-SDM

DEBTOR

CHAPTER 13

PAMELA L. MORGAN

PLAINTIFF

v.

ADVERSARY PRO. NO.: 20-01050-SDM

DITECH FINANCIAL

DEFENDANT

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This adversary proceeding comes before the Court on the Plaintiff's *Motion for Summary Judgment* (the "Motion")(Dkt. #47) and *Brief in Support of Motion for Summary Judgment* (the "Supporting Brief")(Dkt. #48), and the *Response to Plaintiff's Motion for Summary Judgment* (the "Response")(Dkt. #51) filed by U.S. Bank, N.A. ("U.S Bank").

The Court did not hold a hearing, but after reviewing the pleadings, including the briefs and attached exhibits, the Court is prepared to rule. Based on certain procedural deficiencies and related arguments made in the pleadings, the Court finds that the Plaintiff's Motion should be denied without prejudice.

I. JURISDICTION

This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1334(a), 28 U.S.C. § 157(a), and the Standing Order of Reference signed by Chief Judge L.T. Senter and dated August 6, 1984. This is a “core proceeding” under 28 U.S.C. §§ 157(b)(2)(A) (matters concerning the administration of the estate).

II. FACTS AND PROCEDURAL HISTORY

On August 26, 2020, the Plaintiff, Pamela Morgan (“Pamela”), filed her *Adversary Complaint* (the “Complaint”) (Dkt. #1) against the named Defendant, Ditech Financial (“Ditech”). In her Complaint, Pamela alleges that she was married to her husband, Jerry Morgan (“Jerry”), on May 12th, 2000, and that in the same year the couple built a home on their homestead property.¹ On February 23, 2001, Jerry executed a deed of trust and promissory note to Jim Walter Homes, Inc., to build a home on their property; however, Jerry executed the deed of trust and promissory note without Pamela’s signature. Pamela further alleges that she made all the payments on the property to Ditech from the time Jerry executed the promissory note and deed of trust. On July 13, 2007, Jerry and Pamela separated. Pamela’s Complaint seeks to have the promissory note and deed of trust set aside under Mississippi Code § 89-1-29 because Jerry executed the promissory note and deed of trust without Pamela’s signature, even though Pamela and Jerry were married until July 13, 2007. Because Pamela failed to execute the promissory note and deed of trust, Pamela argues that the instruments are invalid and void. In addition, Pamela seeks to have all money and interest paid to Ditech returned to her because Ditech knew, or should have known, that Jerry and Pamela were married at the time the instruments were executed and that, by operation of Mississippi law, both instruments were void and invalid.

¹ The property is located at 13971 Hwy 14, Sallis, Mississippi, 39160.

After several attempts to properly execute service of the Complaint to Ditech, service was executed by U.S. mail on November 24, 2020. (Dkt. #9). Ditech did not file an answer to the Complaint. On January 8, 2021, Pamela filed an *Application to Clerk for Entry of Default and Supporting Affidavit* (Dkt. #12), seeking an entry of default for Ditech's failure to timely file an answer. The Clerk of Court entered default against Ditech on the same day. Two months later, on March 3, 2021, Pamela filed her *Application for Entry of Default Judgment by the Court* (Dkt. #24), and on March 10, 2021, the Court entered its *Order Granting Motion for Default Judgment* (the "Default Judgment Order") (Dkt. #25). In its Default Judgment Order, the Court ordered that the deed of trust and promissory note executed by Jerry be set aside and declared invalid and void. The Court also ordered that all money paid to Ditech, including interest, was to be returned to Pamela, together with attorney fees in the amount of \$1,500.00. On April 5, 2021, the adversary proceeding was closed.

The tale does not end there, however. On November 17, 2021, U.S. Bank filed a *Motion to Reopen Adversary Proceeding* (Dkt. #28), seeking to reopen the adversary proceeding so that it could file a motion under Rule 60 of the Federal Rules of Civil Procedure to set aside the Default Judgment Order. The Court re-opened the adversary proceeding on November 18, 2021, and on November 19, 2021, U.S. Bank filed its *Motion for Relief from Judgment* (the "Motion to Vacate") (Dkt. #30). In its Motion to Vacate, U.S. Bank argued that the Default Judgment Order should be set aside under Rule 60(b) of the Federal Rules of Civil Procedure because Pamela failed to properly name and notice U.S. Bank of the adversary proceeding challenging its interest in the property of which U.S. Bank was a lienholder and creditor in interest. The Court held a hearing on the Motion to Vacate on January 13, 2022, and on February 16, 2022, the Court entered its *Order Granting Motion to Vacate* (the "Vacating Order") (Dkt. #45).

The adversary proceeding remained inactive for several months until June 27, 2022, on which date the instant Motion was filed. In the Motion, Pamela recounted the procedural history surrounding U.S. Bank's Motion to Vacate and maintained that, as the Court addressed the facts pled in the adversary Complaint in its Default Judgment Order, the matters raised in the Complaint "have been decided" and, accordingly, there are no genuine issues of material fact. Therefore, Pamela maintains, she is entitled to judgment as a matter of Mississippi law. Pamela failed to outline the facts surrounding the Mississippi state law claim in her Motion, and Pamela also failed to attach any exhibits to her Motion. Pamela did, however, "outline" the following facts in her Supporting Brief:

- (1) Pamela and Jerry were married on May 12, 2000;
- (2) Pamela and Jerry entered into a contract with Jim Walter Homes, Inc. to build a house upon their homestead property in 2000;
- (3) Jerry executed a deed of trust to Jim Walter Homes, Inc., on February 23, 2001; and
- (4) Pamela and Jerry separated on or about July 13, 2007.

Further, Pamela attached the following exhibits to her Supporting Brief:

- (A) The deed of trust executed by Jerry;
- (B) A Mississippi assignment of the deed of trust, indicating that the deed of trust was transferred from Mid-State Trust IX to First Union National Bank on March 10, 2001;
- (C) The marriage license of Pamela and Jerry, indicating that they were married in the state of Mississippi on May 1, 2000;
- (D) A scanned photograph of Mississippi Code Annotated § 89-1-29;
- (E) Scanned photographs of the case of *Travis v. Dantzler*, 141 So.2d 556 (Miss. 1962);

(F) Scanned photographs of the case of *Hendry v. Hendry*, 300 So.2d 147 (Miss. 1974); and

(G) Scanned photographs of the case of *Thornhill v. Caroline Hunt Trust Estate*, 594 So.2d 1150 (Miss. 1992).

U.S. Bank filed its Response on July 19, 2022, asserting the following arguments in opposition to the Motion:

(1) Pamela cannot recover any relief against U.S. Bank because, after the Vacating Order reverted the case to its prior status, Pamela neither filed a motion to join U.S. Bank as a required party nor did she request leave to file an amended complaint against U.S. Bank.

(2) The Mississippi Code section at issue, § 89-1-29, does not apply here because the subject property could not have been a “homestead” as the promissory note and deed of trust were executed before Pamela and Jerry acquired title and began residing in the home built on the property. U.S. Bank argues that while Jerry signed the promissory note and deed of trust on February 23, 2001, title to the property was not acquired until May 18, 2001, and Pamela and Jerry did not take possession of the property until October 8, 2001.

(3) Ditech Holding Corporation and its affiliates, including Ditech Financial, LLC, filed chapter 11 petitions in the U.S. Bankruptcy Court for the Southern District of New York on February 11, 2019.² Ditech’s chapter 11 plan was confirmed on September 26, 2019, containing a permanent injunction. This injunction prohibits holders of claims arising prior to the plan’s effective date from “commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind [. . .] against or affecting [Ditech].” As a result of

² *In re Ditech Holding Corp.*, 19-10412-JLG, and *In re Ditech Holding Corp.*, 2021 WL 3716398 (Bankr. S.D.N.Y. Aug. 20, 2021).

the injunctive language contained in Ditech's chapter 11 plan above, U.S. Bank argues that Pamela is barred from pursuing claims in this adversary proceeding against Ditech or its successors in interest arising from conduct occurring prior to the September 30, 2019 effective date of the chapter 11 plan.

U.S. Bank also attached several exhibits to their Response, including:

(A) A declaration under penalty of perjury of Paula Gonzales, an authorized representative for Shellpoint Mortgage Servicing (hereinafter, "Shellpoint");

(B) The building contract with Jim Walter Homes, Inc., executed by Jerry on February 23, 2001;

(C) A legal description of the subject property attached to the building contract;

(D) The promissory note between Jim Walter Homes, Inc. and Jerry, executed on February 23, 2001;

(E) The deed of trust between Jim Walter Homes, Inc., and Jerry, executed on February 23, 2001;

(F) A warranty deed conveying the subject property to Jerry from Marshall Wingard, signed on May 18, 2001, and filed for record on June 11, 2001;

(G) A pre-instruction meeting guide from Jim Walter Homes, Inc.;

(H) A tender acknowledgement/completion certificate from Jim Walter Homes, Inc., signed by Jerry on October 8, 2001;

(I) An assignment of the deed of trust from Mid-State Trust X to U.S. Bank, dated June 26, 2018;

(J) A letter to Jerry from Shellpoint indicating the transfer of the mortgage servicer from Ditech to Shellpoint; and

(K) The case of *In re Ditech Holding Corp.*, 2021 WL 3716398 (Bankr. S.D.N.Y., August 20, 2021).

III. DISCUSSION

Although this adversary proceeding is before the Court at the summary judgment phase, the Court is concerned by Pamela's failure to join the proper party to the adversary. Without the proper parties joined to this adversary proceeding under Rule 19 of the Federal Rules of Civil Procedure, the Court is unable to grant the requested relief. The Court will, however, briefly address the standards under Rule 56 for the purposes of this Order.

A. Failure to Name or Join a Necessary Party

Pamela's failure to properly name or join the correct party (or parties) to her adversary proceeding following the entry of this Court's Vacating Order has doomed this Motion from the outset. Rule 19³ draws a line between two types of absent parties to a suit: "those whose joinder is feasible and those whose joinder is not feasible, because it would defeat subject matter jurisdiction, or the [absentee] is beyond the personal jurisdiction of the court, or the [absentee] has and makes a valid objection to venue." *Delgado-Caraballo v. Hospital Pavia Hato Rey, Inc.*, 889 F.3d 30, 36 (1st Cir. 2018) (internal citations omitted). In other words, Rule 19 provides "for the joinder of all parties whose presence in a lawsuit is required for the fair and complete resolution of the dispute at issue," and further for the "dismissal of litigation that should not proceed in the absence of the parties that cannot be joined." *HS Res., Inc. v. Wingate*, 327 F.3d 432, 438 (5th Cir. 2003).

An analysis under Rule 19 is a two-part inquiry. First, the court must determine whether the party should be added under the requirements of Rule 19(a), which provides that a person

³ Rule 19 of the Federal Rules of Civil Procedure is made applicable to bankruptcy by Rule 7019 of the Federal Rules of Bankruptcy Procedure.

subject to process and whose joinder will not deprive the court of subject matter jurisdiction *must* be joined 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.

Fed. R. Civ. P. 19(a)(1); *Hood ex rel. Mississippi v. City of Memphis, Tenn.*, 570 F.3d 625, 628 (5th Cir. 2009). If the court determines that the party to be joined is, in fact, a necessary party under Rule 19(a)(1), but their joinder to the lawsuit destroys the court's subject matter jurisdiction, the court then must "determine whether that person is 'indispensable,' that is, whether litigation can be properly pursued without the absent party." *Id.* at 629 (citing *H.S. Res. v. Wingate*, 327 F.3d at 439).

Here, the Court need not reach the second half of this two-part inquiry. It is clear to the Court that Pamela has failed to join, or even name, the necessary parties in interest to this adversary proceeding. While Pamela initially filed her Complaint against Ditech, a simple review of Pamela's current bankruptcy docket⁴ demonstrates that on August 19, 2020—seven days prior to the filing of her most current adversary complaint—U.S. Bank's claim was transferred from Ditech to Shellpoint (Dkt. #14). Further, the exhibits attached to U.S. Bank's Response to the Motion demonstrate the same: that on March 17, 2020—five months prior to the filing of Morgan's adversary complaint—Jerry received a notice indicating that servicing of his mortgage had been transferred from Ditech to Shellpoint. Perhaps most concerning to the Court is that, as reflected in Proof of Claim #3-1 filed in Morgan's bankruptcy on January 16, 2020, U.S. Bank has always

⁴ *In re Pamela Lynette Morgan*, 19-12879-SDM.

been listed as the creditor and primary lienholder of the mortgage securing the property. Without both U.S. Bank and Shellpoint joined to this adversary proceeding, this Court cannot give complete relief to Pamela or any other party to this adversary proceeding. Therefore, U.S. Bank and Shellpoint are required and necessary parties that must be added to this adversary proceeding under Rule 19 for the Court to afford any relief to the parties.

B. Summary Judgment Standard and the Relevant Law

While this Court is denying the Motion for failure to join a necessary party under Rule 19, the Court will very briefly address summary judgment under Rule 56(c) of the Federal Rules of Civil Procedure⁵ and the relevant underlying Mississippi law for the parties' benefit. Rule 56(c) provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c)(1); *Latimer v. Smithkline & French Labs.*, 919 F.2d 301, 303 (5th Cir. 1990). The party moving for summary judgment has "the initial responsibility of informing the court of the basis for its motion and identifying those parts of the record that it believes demonstrate the absence of a genuine issue of material fact." *Id.* (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). The moving party must "demonstrate the absence of a genuine issue of material fact," but the movant need not negate the elements of the nonmovant's case. *Guerin v. Pointe Coupee Parish Nursing Home*, 246 F.Supp.2d 488, 494 (M.D. La. 2003) (citing *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994)). If the movant fails to meet this initial burden, the motion must be denied, regardless of the nonmovant's response. *Id.* Only

⁵ Rule 56 of the Federal Rules of Civil Procedure is made applicable to bankruptcy by Rule 7056 of the Federal Rules of Bankruptcy Procedure.

disputes over “facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (U.S. 1986).

The law concerning the execution of a deed of trust upon an exempted homestead by a married spouse in Mississippi is well established. Mississippi Code Annotated § 89-1-29 states, in relevant part: “A conveyance, mortgage, deed of trust or other incumbrance upon a homestead exempted from execution shall not be valid or binding unless signed by the spouse of the owner if the owner is married and living with the spouse or by an attorney in fact for the spouse.” Miss. Code Ann. § 89-1-29. The Mississippi Supreme Court, in interpreting § 89-1-29, has repeatedly held that a deed of trust on a homestead executed by one spouse without the signature or consent of the other is absolutely void. *Ramsey v. Countrywide Home Loans, Inc. (In re Ramsey)*, 424 B.R. 217, 221 (Bankr. N.D. Miss. 2009) (citing multiple Mississippi cases holding the same). But the Mississippi Supreme Court has also addressed a different, albeit very similar, situation: where a married spouse executes a deed of trust given to secure the purchase money of a homestead without the signature of their husband or wife. *See Jarvis v. Armstrong*, 48 So. 1 (Miss. 1909). In fact, this Court has previously addressed this very issue in the context of a summary judgment motion in *Burks v. BAC Home Loans Servs., LP (In re Burks)*, 421 B.R. 762 (Bankr. N.D. Miss. 2009) (finding no genuine issue of material fact where the debtor’s spouse did not sign a deed of trust executed to secure purchase money to obtain his homestead residence).

While the Court will not reach the merits of Pamela’s Motion or U.S. Bank’s Response under Rule 56 due to the procedural deficiency under Rule 19 as discussed above, the Court encourages the parties to review the relevant case law cited above in continuing to prosecute and defend this adversary proceeding as it relates to their respective claims and defenses, including

claims and defenses under Mississippi Code Annotated § 89-1-29. The Court would further suggest that the Plaintiff review the necessary prerequisites for satisfying her initial burden as the movant in any future summary judgment pleading.

IV. CONCLUSION

Because of the failure of the Plaintiff to properly join the required and necessary parties under Rule 19 of the Federal Rules of Civil Procedure, it is therefore **ORDERED** that the Plaintiff's *Motion for Summary Judgment* (Dkt. #47) is **DENIED** without prejudice. Should the Plaintiff desire to proceed with prosecution of her claims in this adversary proceeding, the Plaintiff is hereby given fourteen (14) days from the date of entry of this Order to file an amended complaint naming the correct and required parties to this adversary proceeding. Failing to abide by the terms of this Order will result in the automatic dismissal of this adversary proceeding without prejudice.

##END OF ORDER##