

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

| | | |
|------------------------------|---|-------------------------|
| In re: |) | Ch. 11 |
| |) | |
| CENTER CITY HEALTHCARE, LLC, |) | |
| d/b/a HAHNEMANN UNIVERSITY |) | Case No. 19-11466 (MFW) |
| HOSPITAL, et al., |) | |
| |) | |
| Debtors. |) | |
| |) | |
| DE LAGE LANDEN FINANCIAL |) | |
| Services, INC., |) | Adv. Pro. No. 21-50896 |
| |) | (MFW) |
| |) | |
| Defendant/Third- |) | |
| Party Plaintiff, |) | |
| |) | Re: D.I. 1, 23, 35 & 37 |
| |) | |
| v. |) | |
| |) | |
| SANTANDER BANK, N.A., |) | |
| |) | |
| Third-Party |) | |
| Defendant. |) | |
| |) | |

MEMORANDUM OPINION¹

Before the Court is the Motion of De Lage Landen Financial Services, Inc. ("De Lage") for leave to file a third-party complaint in a preference action brought against it by the Debtors. The Motion is opposed by the Debtors. For the reasons stated below, the Court will deny the motion.

¹ The Court is not required to state findings of fact or conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure. Instead, the facts recited are those averred in the Complaint, which must be accepted as true for the purposes of this Motion to Dismiss. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

I. BACKGROUND

Center City Health Care, LLC and its affiliates ("the Debtors") filed chapter 11 voluntary petitions on June 30, 2019. On June 24, 2021, the Debtors filed a Complaint against De Lage seeking to avoid preferential payments of \$323,531 and disallowance of De Lage's claims until the preferences are paid. The payments were made by the Debtors to De Lage under equipment leases executed by the Debtors' predecessor. After the leases were assigned to the Debtors, De Lage executed a Master Recourse Assignment of Lease Payments Agreement ("the Assignment") with Santander Bank ("Santander"). Under the Assignment, De Lage was to pay Santander all proceeds received from the Debtors under the lease.² The Debtors were not a party to the Assignment.

De Lage filed an answer to the preference complaint which raised, *inter alia*, the mere conduit defense, asserting it did not exercise domain, control, or receive the benefit of the funds paid to it by the Debtors.³ De Lage also filed a motion to add Santander as a Third-Party Defendant to the adversary proceeding. By its motion De Lage seeks authority to file a third-party complaint against Santander for a ruling that if it is liable to the Debtors, then Santander is liable to De Lage for that amount. The parties have fully briefed the motion and the matter is ripe for decision.

² Adv. D.I. 38, Ex. 2.

³ Adv. D.I. 15 at 9.

II. JURISDICTION

The Court has jurisdiction over this adversary proceeding.⁴ The Court is permitted to enter appropriate judgments and orders on core proceedings arising under title 11 or arising in a case under title 11. Core proceedings include proceedings to determine, avoid, or recover preferences.⁵

III. DISCUSSION

The parties agree that De Lage's motion is governed by Federal Rule of Civil Procedure 14, which provides:

A defending party may, as a third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must, by motion, obtain the court's leave if it files the third-party complaint more than 14 days after serving its original answer.⁶

The decision to grant or refuse the filing of a third-party complaint lies within the discretion of the court.⁷ In assessing whether to grant such a motion, courts consider: (1) whether there was any delay or dereliction in filing the motion to file a third-party complaint; (2) whether the third-party complaint would cause undue delay or complicate the trial; (3) whether the

⁴ 28 U.S.C. §§ 157(a) & 1334(b).

⁵ Id. at §§ 157(b)(1) & (b)(2)(F).

⁶ Fed. R. Civ. P. 14(a)(1); Fed. R. Bankr. P. 7014.

⁷ See Somportex, Ltd. v. Phila. Chewing Gum Corp., 453 F.2d 435, 439 (3d Cir. 1971).

third-party complaint would cause prejudice to the third-party defendant; and (4) whether the third-party complaint states a claim upon which the court can grant relief.⁸

A. Delay in filing motion

De Lage has known it had a potential claim against Santander since at least October 2021 when it filed its answer. However, it did not file its motion until nine months later. In the interim, mediation and depositions occurred and discovery was almost concluded. Therefore, the Court concludes that this factor weighs in favor of denying the motion.

B. Undue delay or complication of trial

Because De Lage's motion was filed near the end of discovery, trial will likely be delayed. However, no trial date has yet been set so it is still uncertain how much of a delay will be caused from the inclusion of Santander. This factor weighs only slightly in favor of denying the motion.

C. Prejudice to third-party defendant

Santander would be prejudiced by being included in this proceeding. The Trustee has not sued Santander and there is no certainty that any liability will be imputed to Santander. However, granting the motion will necessitate its participation in the adversary proceeding. Therefore, the Court finds that

⁸ Halperin v. MOR MGH Holdings, LLC (In re Green Field Energy Servs.), 554 B.R. 315, 318 (Bankr. D. Del. 2016) (citing Devon Mobile Commc'ns Liquidating Trust v. Adelphia Commc'ns Corp. (In re Adelphia Commc'ns Corp.), 322 B.R. 509 (Bankr. S.D.N.Y. 2005)).

this factor weighs in favor of denying the motion.

D. Whether the third-party complaint states a claim

The Court finds that the fourth factor is dispositive. A claim for relief cannot be granted if the court lacks jurisdiction. A bankruptcy court has jurisdiction over two types of proceedings: (a) core proceedings or (b) non-core, "related to" proceedings.⁹ "[A] proceeding is core under section 157 if it invokes a substantive right provided by title 11 or if it is a proceeding that, by its nature, could arise only in the context of a bankruptcy case."¹⁰ A court has "related to" jurisdiction over claims which are related to the bankruptcy case and could have an effect on the estate.¹¹

De Lage characterizes its potential claim against Santander as a "contractual contribution claim."¹² Generally, claims against third parties made by defendants sued by representatives of the bankruptcy estate for contribution and indemnification are outside the jurisdiction of this Court.¹³ There is an exception,

⁹ 28 U.S.C. §§ 157(b) & 157(c)(1).

¹⁰ Phar-Mor, Inc. v. Coopers & Lybrand, 22 F.3d 1228, 1234-35 (3d Cir. 1994) (citing Barnett v. Stern, 909 F.2d 973, 981 (7th Cir. 1990)).

¹¹ Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984).

¹² Adv. D.I. 36 at 5.

¹³ In re Found. for New Era Philanthropy, 201 B.R. 382, 390 (Bankr. E.D. Pa. 1996) (references omitted) (denying impleader motion because the third-party plaintiff's success or failure in the third-party complaint would not have enhanced the bankruptcy estate but would only benefit the third-party plaintiff).

however, if the third-party plaintiff would otherwise be unable to pay the estate in full.¹⁴ In such a case, the third-party relief would increase the amount available to the bankruptcy estate for distribution. However, De Lage makes no argument that it is unable to satisfy the amount sought by the Debtors in this action.

If De Lage succeeds in its contribution claim against Santander, it will have no effect on the bankruptcy estate in this case. Any judgment on that claim would be in favor of De Lage, and not the estate. Consequently, it would be futile to grant the relief requested in De Lage's Motion. The Court finds that this factor mandates denial of the Motion.

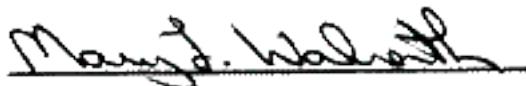
IV. CONCLUSION

For the reasons stated above, the Court will deny the Defendant's Motion for leave to file a third-party complaint.

An appropriate Order is attached.

Dated: November 22, 2022

BY THE COURT:



Mary F. Walrath
United States Bankruptcy Judge

¹⁴ See Joseph v. Cutting/Sewing Room Equip. Co. (In re Willcox & Gibbs, Inc.), 314 B.R. 541, 545 (Bankr. D. Del. 2004) (citing New Era Philanthropy, 201 B.R. at 387).

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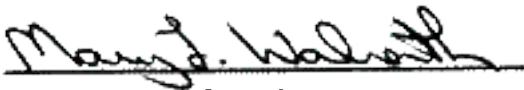
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O R D E R

AND NOW this **22nd** day of **NOVEMBER, 2022**, upon consideration
of the Motion to add Santander Bank, N.A., as a Third-Party
Defendant to the Adversary Proceeding and for reasons stated in
the accompanying Memorandum Opinion, it is hereby
ORDERED that the Motion is **DENIED**.

BY THE COURT:


Mary F. Walrath
United States Bankruptcy Judge

