



IT IS ORDERED as set forth below:

Date: July 18, 2016

**W. Homer Drake
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

IN THE MATTER OF:	:	CASE NUMBERS
	:	
HIGH-TOP HOLDINGS, INC.,	:	16-10022-WHD
_____	:	
	:	
HIGH-TOP HOLDINGS, INC.,	:	ADVERSARY PROCEEDING
Plaintiff,	:	NO. 16-1010-WHD
	:	
v.	:	
	:	
RREF II BB ACQUISITIONS, LLC,	:	IN PROCEEDINGS UNDER
and CARMEL, LLC,	:	CHAPTER 11 OF THE
Defendants.	:	BANKRUPTCY CODE

ORDER

Before the Court is the Motion to Add RREF II BB-GA, LLC As a Party Defendant and Leave to Amend the Complaint (hereinafter the “Motion”) filed by High-Top Holdings, Inc. (hereinafter “High-Top”), the plaintiff in the above-styled adversary proceeding. High-Top seeks to join RREF II BB-GA, LLC (hereinafter

“BB-GA”) as a defendant in this adversary proceeding, and requests leave to amend its complaint to reflect that joinder. The Motion arises in connection with High-Top’s complaint seeking to determine the validity and extent of a lien held by RREF II BB Acquisitions, LLC (hereinafter “Acquisitions”). Therefore, this is a core proceeding over which this Court has subject matter jurisdiction. *See* 28 U.S.C. §§ 157(a), (b)(2)(K) & 1334.

Background

High-Top initiated this adversary proceeding, along with three others,¹ on April 5, 2016. In its complaint, High-Top alleges that in September of 2013, Acquisitions filed a lawsuit in the Superior Court of Lamar County (hereinafter the “Superior Court”) on a note held by Holiday Investments, Inc. and guaranteed by High-Top, Michael Jackson (High-Top’s Chief Financial Officer), and C. Richard Morrow. In April of 2014, a settlement agreement was entered into between Michael Jackson, C. Richard Morrow, Holiday Investments Inc., and Acquisitions. Though High-Top is also identified as a signatory to that agreement, it maintains that it was not a party and that it did not authorize any of the parties involved to sign on its behalf. Following the settlement agreement, the Superior Court entered judgment for Acquisitions in the amount of \$607,360.23, plus interest and

¹ *High-Top Holdings, Inc. v. RREF BB Acquisitions, LLC*, No. 16-1008 (Bankr. N.D. Ga. filed Apr. 5, 2016); *High-Top Holdings, Inc. v. RREF BB Acquisitions, LLC*, No. 16-1011 (Bankr. N.D. Ga. filed Apr. 5, 2016); *High-Top Holdings, Inc. v. RREF BB Acquisitions, LLC*, No. 16-1012 (Bankr. N.D. Ga. filed Apr. 5, 2016).

attorney's fees. As a result of this judgment, Acquisitions obtained a lien on two pieces of real property known as 2547 Old Atlanta Road, Spalding County, Georgia, and 4180 Old Atlanta Road, Spalding County, Georgia (hereinafter the "Properties"), to which High-Top holds legal title.

In the instant proceeding, High-Top seeks a determination of the validity and extent of Acquisition's lien on the Properties. For that purpose, High-Top named as a defendant, in addition to Acquisitions, Carmel, LLC, an entity High-Top alleges holds equitable title to the Properties.

In its answer to High-Top's complaint, Acquisitions states that it transferred and assigned the Superior Court's judgment and related lien to BB-GA. (Doc. No. 4, at ¶ 19). In the instant motion, High-Top argues that because Acquisitions has allegedly assigned its rights in the judgment to BB-GA, BB-GA may also have an interest in the Properties that should be adjudicated in this action. Citing Rule 19 of the Federal Rules of Civil Procedure, High-Top requests that BB-GA be joined to the proceeding as a defendant. No party has filed a response to the Motion, so it is deemed unopposed. *See* BLR 7007-1(c) ("Failure to file a response shall indicate no opposition to the motion.").

Discussion

A. Amendment of the Complaint

Before considering the appropriateness of joining BB-GA to this proceeding, the Court must address High-Top's entitlement to amend its complaint. *See Cooper v. Bullock (In re Bullock)*, 2012 WL 4511266, at *2 (Bankr. N.D. Ga. Aug. 14, 2012) (Diehl, J.) ("Before meeting the requirements of Rule 20, a plaintiff must first meet the requirements of Rule 15..."). Federal Rule of Civil Procedure 15, incorporated into adversary proceedings in Bankruptcy by operation of Federal Rule of Bankruptcy Procedure 7015, allows a party to amend its complaint once, "as a matter of course," within certain time restrictions. FED. R. CIV. P. 15(a)(1); *see also* FED. R. BANKR. P. 7015. If a plaintiff wishes to amend its pleading outside of the prescribed situations, it may do so "only with the opposing party's written consent or the court's leave." FED. R. CIV. P. 15(a)(2). The rule mandates that courts "should freely give leave when justice so requires." *Id.*; *see also Foman v. Davis*, 371 U.S. 178, 182 (1962) ("[O]utright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.").

Here, High-Top cannot take advantage of an amendment "as a matter of course," but the Court concludes that leave to amend should be granted. The Court

finds no grounds for denying the requested amendment, particularly as none of the existing defendants nor BB-GA has filed a response to the motion. Therefore, should the Court determine that BB-GA may be joined to this proceeding, High-Top may amend its complaint to reflect that joinder.

B. Joinder of BB-GA

In the Motion, High-Top argues that BB-GA should be joined to this adversary proceeding by operation of Federal Rule of Civil Procedure 19, which deals with the joinder of necessary parties. *See* FED. R. CIV. P. 19; *see also* FED. R. BANKR. P. 7019. However, a court need not embark on an analysis under Rule 19 if the party sought to be joined may be added to the proceeding pursuant to Rule 20, which deals with the permissive joinder of parties. *See Titan Fin. Grp. II, LLC v. Delta Family P'ships, L.P. (In re Titan Fin. Grp. II, LLC)*, 2009 WL 6499335, at *2 (Bankr. N.D. Ga. Feb. 2, 2009) (Diehl, J.); *see also* FED. R. CIV. P. 20; FED. R. BANKR. P. 7020. Rule 20 allows the joinder of parties as defendants if two conditions are met: “(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action.” FED. R. CIV. P. 20(a)(2).

Concerning the first condition, “[t]here are no hard rules for determining what constitutes a single transaction or a series of transactions, but a logical

relationship between the existing [d]efendants and the [p]roposed [d]efendants can satisfy this requirement.” *In re Titan Grp. II, LLC*, 2009 WL 6499335, at *2. In the instant case, there is a “logical relationship” between Acquisitions (an existing defendant) and BB-GA (the proposed defendant) in that they are both alleged to have an interest in the Properties as a result of a lien arising from the judgment of the Superior Court. Therefore, the first condition is satisfied.

The second condition is likewise satisfied in this case. This proceeding hinges on a determination of the validity of the lien allegedly held by Acquisitions or BB-GA, and the extent to which that lien entitles the entity holding it to an interest in the Properties. Thus, the issue of who holds what interest in the Properties is a question of fact common to all of the defendants, both existing and proposed. Therefore, the second condition is satisfied, and BB-GA may be joined to this proceeding pursuant to Rule 20.

Conclusion

For the reasons set forth above, it is hereby **ORDERED** that the Motion is **GRANTED**, and BB-GA shall be joined to this proceeding as a defendant.

IT IS FURTHER ORDERED that High-Top shall have fourteen (14) days from the entry of this Order to amend its complaint to include BB-GA as a defendant.

The Clerk is **DIRECTED** to serve this Order on High-Top, all defendants, and BB-GA.

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