NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse
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Fairfax, Virginia 22030-4009
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April 23, 2025

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Re: *Equity Trustees LLC v. Mark G. Carlson et. al.*, CL-2024-17355

Dear Mssrs. Shannon and Brown:

This matter came before the Court on April 11, 2025, on Paramount Investments LLC's ("Paramount") *Motion for Joinder*. Respondents, Mark G. Carlson and Scott B. Preston, timely filed an opposition on April 7, 2025.

POSTURE OF THE CASE

This is an interpleader action brought by Equity Trustees, LLC ("Equity"). Equity contends that it foreclosed on a home located at 7804 Lee Avenue (the "Home") in the Alexandria part of Fairfax County, Virginia.[1] At foreclosure, the Home was purchased by Paramount. After Equity took its share of the sales proceeds to satisfy its lien, it paid the funds that remained (the "Surplus Funds") into court so that persons with competing claims to the Surplus Funds could battle over their proper distribution.

[1] Alexandria is an historic area that in modern times is encompassed by the City of Alexandria and parts of Fairfax County, Virginia.

By order of this Court dated March 7, 2025, Paramount intervened as a defendant. On March 28, 2025, Paramount filed a crossclaim against Mark G. Carlson ("Carlson"), who it says claims an ownership interest in the Property.

Also on March 28, 2025, Paramount filed the instant motion to join Scott B. Preston ("Preston") and certain unnamed "Occupants" of the Home. Taken together in the light most favorable to Paramount, paragraphs 5-9 of the motion to join can be read to allege that Preston contends he has an ownership interest in the Property from which it may be further inferred that Preston might have a claim to the Surplus Funds. Paramount also appears to allege that Preston is a holdover tenant who owes Paramount back rent which could be satisfied from the Surplus Funds. Paramount does not make any assertions in the motion to join that the Occupants have a claim to the Surplus Funds.

Paramount says it intends, in the future, to file a crossclaim against Preston and the Occupants for possession of the Property, unpaid rent, and related damages. No such pleading was presented with the motion to join and to the Court's knowledge it has not yet been filed. No other pleading has been filed or tendered going to the issue of Preston's ownership of the Property or his potential right to the Funds.

In their joint opposition to Paramount's motion to join, Carlson and Preston argue that Paramount's motion for joinder is improper.[2] They stipulate that Preston has no ownership interest in the Property; thus, they say Preston should not be interpleaded because he has no interest in the Surplus Funds.

Carlson and Preston further contend that on the facts of this case the interpleader action does not extend to post-foreclosure possession and rent disputes and that those issues should be litigated separately. Carlson and Preston also argue that joining unidentified Occupants of the Property is procedurally defective and irrelevant to any issues around surplus foreclosure funds.

ANALYSIS

The question presented by the motion to join is whether Paramount, an interpleaded party, may bring claims against a non-interpleaded party on the facts of this case.

Va. Code § 8.01-364(A) provides as follows:

> Whenever any person is or may be exposed to multiple liability through the existence of claims by others to the same property or fund held by him or on his behalf, such person may file a pleading and require such parties to interplead their claims. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the

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[2] Paramount's motion to join does not seek to join Carlson as a party (he is already a party). Accordingly, the arguments by joint counsel for Carlson and Preston will be construed as being made only for Preston.

> plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant in an action who is exposed to similar liability may likewise obtain such interpleader. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in § 8.01-5.

"Interpleader was an old equitable remedy which grew cumbersome and was replaced by a series of statues which culminated in 1977 in a useful modern statute." Sinclair, *Virgina Remedies* §52.2 (2025). Although the modern version of the interpleader statute has employed language to permit a broader class of actions than was the case under prior practice, *see Babyak v. Watts*, 19 Va. Cir. 196 (1990) (permitting counterclaim by interpleaded defendant against a trustee for claims "independent" of the trustee's claim to quiet title to the interpleaded funds), the "modern" statute still uses important limiting language. Specifically, Va. Code § 8.01-364(A) limits the persons who may file "a pleading" in an interpleader action to persons who may be exposed to multiple liability "through the existence of claims by others *to the same property or fund held by him or on his behalf*" (emphasis added). Defendants in interpleader actions "may likewise obtain *such* interpleader." *Id.* (emphasis added).

In short, the essence of interpleader under Va. Code § 8.01-364(A) is still to adjudicate among competing claims for one fund or *res*. It follows that if Preston or the Occupants make no claim to the interpleaded funds, they are not proper parties to this action.

In his Opposition to the Motion to Join, Preston has affirmatively stipulated that he makes no claim to the Surplus Funds based on any ownership interest in the Property. Joinder of Preston on that basis is, accordingly, not appropriate.

Joinder of unnamed "Occupants" is likewise inappropriate. If identifiable persons are discovered who have claims to the Surplus Funds that matter can be addressed upon proper motion in the future.

This leaves Paramount's claim that joinder of Preston is appropriate based on Paramount's allegation that Preston is a holdover tenant who owes back rent and other damages. The Court concludes that this is not a sufficient basis to hold Preston in the case. Here, there is no allegation that Preston has a made a claim to the Surplus Funds. Whatever action for rent or related damages that may exist should be pursued in a separate action. In such a case, the Court makes no findings as to whether some form of consolidation would be appropriate.

ACCORDINGLY, it is hereby ORDERED that the motion for joinder shall be, and hereby is, DENIED.

An appropriate Order will follow.

Very Truly Yours,

Timothy J. McEvoy
Judge, Circuit Court for Fairfax County