

**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

**UNITED BANK, INC.**, a West Virginia  
banking corporation,

Plaintiff,

v.

**Civil Action No.: 16-C-1486**  
**Judge Jennifer F. Bailey**

**CRISWELL FRENCH, PLLC**, a West Virginia  
professional limited liability company, formerly known as  
Criswell French Condaras PLLC and Criswell & French, PLLC;  
**MATTHEW S. CRISWELL**, an individual;  
**STACI N. CRISWELL**, an individual;  
**MARK L. FRENCH**, an individual; and  
**ASHLEY W. FRENCH**, an individual,

Defendants.

**MOTION TO DISMISS**

Now come the Defendants, Criswell French PLLC, Matthew S. Criswell, Staci N. Criswell, Mark L. French, and Ashley W. French, by and through counsel, Matthew S. Criswell, Mark L. French, and the law firm Criswell French PLLC, pursuant to Rules 12(b)(7) and 19 of the *West Virginia Rules of Civil Procedure* and for their motion to dismiss state as follows:

**The Complaint Must Be Dismissed Because Plaintiffs Failed to Join  
Necessary and Indispensable Parties**

In this matter, United Bank, Inc. ("United") has sued the Defendants asserting breach of contract claims for loans entered into by six different individuals. Oddly, United has chosen to sue only four of those individuals. The claims asserted by United cannot be disposed of during the course of this litigation because two necessary and indispensable parties, namely Steve Condaras and Amy Condaras, have been omitted from the litigation.

**EXHIBIT  
B**

Rule 12(b)(7) allows dismissal for "failure to join a party under Rule 19." Rule 19(a)

states as follows:

(a) **Persons to be joined if feasible.** A person who is subject to service of process shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest, or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

W. Va. R.C.P., Rule 19

This rule requires two general inquiries for joinder of a person who is subject to service of process. First, is his presence necessary to give complete relief to those already parties? Second, does he have a claim that, if he is not joined, will be impaired or will his nonjoinder result in subjecting the existing parties to a substantial risk of multiple or inconsistent obligations? If the absent person meets the foregoing test, his joinder is required. However, in the event that the absent person cannot be joined, the suit should be dismissed only if the court concludes that the criteria of subdivision (b) cannot be met.

*Wachter v. Dostert*, 172 W. Va. 93, 303 S.E.2d 731 (1983); *State ex rel. One-Gateway Assocs. v. Johnson*, 208 W. Va. 731, 542 S.E.2d 894 (2000).

This rule requires joinder where, in the absence of the person whose joinder is sought, complete relief cannot be accorded among those who are already parties. This provision is directed at the perspective of those who are already parties to the litigation to determine whether

complete relief can be accorded among them. *Glover v. Narick*, 184 W. Va. 381, 400 S.E.2d 816 (1990).

In this matter, United has failed to name as parties the other two guarantors on the loan agreements that United claims were breached. United's decision not to name Steve and Amy Condaras in this matter is curious. United is well aware the Mr. and Mrs. Condaras signed the loans as guarantors and that Mr. Condaras signed the Promissory Notes. As a matter of fact, the loan documents attached to United's Complaint bear the signatures of Amy Condaras on one of the loan documents and Steve Condaras on both of the loan documents. *See Exhibits 2, 4, 5 and 17 to the Complaint*. It is as though United has made a separate agreement with Steve and Amy Condaras, presumably for an amount of money. However, if that is the case, and Steve and Amy Condaras paid money toward the loans taken out by the law firm Criswell French PLLC, (formerly Criswell French Condaras, PLLC) then the firm and its guarantors would be entitled to the same forbearance granted to Steve and Amy Condaras.

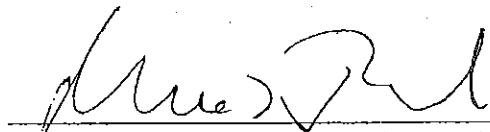
Regardless of what United's motivation for not including Steve and Amy Condaras in this matter, it is clear that the issues for which United has sued the above-named defendants cannot be resolved without the inclusion of all parties to the loan agreements. Specifically, Steve and Amy Condaras are jointly and severally liable under the loan agreements and must be included as parties to this action. As guarantors to the loans in question, Steve and Amy Condaras are necessary and indispensable parties as they are liable for one-third of the debt for which United has sued and if they are not joined, their liability in this matter will not be extinguished. In addition, failure to join the co-debtors and co-guarantors would result in an incomplete adjudication and inconsistent result in this matter.

This Court cannot proceed without the necessary and indispensable parties without affecting their rights, or subjecting the existing parties to an inconsistent outcome. Plaintiff's failure to name all necessary and indispensable parties requires dismissal of their Complaint.

Based on the foregoing, the Plaintiff's Complaint fails to state a claim upon which relief may be granted and fails to name indispensable parties. Accordingly, Defendants respectfully request that this Court enter an Order dismissing the Complaint, with prejudice, and granting such other and further relief as this Court deems appropriate.

WHEREFORE, based upon the above stated, and for all other reasons as may appear on the record, Defendants respectfully request that this Court **DISMISS** the Complaint, along with all other and further relief this Honorable Court deems just and proper.

**MATTHEW S. CRISWELL, STACI N.  
CRISWELL, MARK L. FRENCH, and  
ASHLEY W. FRENCH**



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Matthew S. Criswell, Esquire (WVSB# 8796)  
Mark L. French, Esquire (WVSB# 9061)  
CRISWELL FRENCH PLLC  
105 Capitol Street, Suite 200  
Charleston, WV 25301  
Telephone: 304.720.6220  
Facsimile: 304.720.6221

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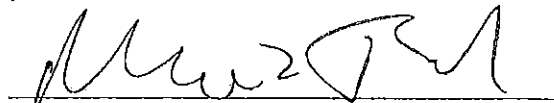
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CERTIFICATE OF SERVICE

I, Mark L. French, Esquire, counsel for Defendants, Matthew S. Criswell, Staci N. Criswell, Mark L. French, and Ashley W. French, hereby certify that on this 26<sup>th</sup> day of October, 2016, true and correct copies of the foregoing "*Motion to Dismiss*" were served upon counsel of record via hand delivery, to the following addresses:

Richard M. Frances, Esquire (WVSB# 1275)  
Stuart A. McMillan, Esquire (WVSB# 6352)  
Andrew C. Robey, Esquire (WVSB# 12806)  
BOWLES RICE LLP  
600 Quarrier Street  
P.O. Box 1386  
Charleston, WV 25325-1836



Mark L. French, Esq.  
West Virginia Bar No. 9061  
Criswell French PLLC  
105 Capitol Street, Ste. 200  
Charleston, WV 25301  
(304) 720-6220 Telephone  
(304) 720-6221 Facsimile