

STATE OF NORTH CAROLINA
IREDELL COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24 CVS 543

GREENTOUCH USA, INC.,
Plaintiff,

v.

LOWE'S COMPANIES, INC. and L G
SOURCING, INC.,
Defendants,

and

LOWE'S COMPANIES, INC. and L G
SOURCING, INC.,
Counterclaim
Plaintiffs,

v.

GREENTOUCH USA, INC. and
GREENTOUCH HOME LTD. –
HONG KONG (f/k/a GREENTOUCH
CHINA, LTD.),
Counterclaim
Defendants.

**ORDER ON COUNTERCLAIM-
PLAINTIFFS' MOTION TO ADD
GREENTOUCH HOME LTD. - HONG
KONG AS A PARTY**

THIS MATTER is before the Court on Counterclaim-Plaintiffs Lowe's Companies Inc. ("Lowe's) and L G Sourcing, Inc's ("LGSI," and together with Lowe's, "Defendants") Motion to Add Greentouch Home Ltd. - Hong Kong as a Party ("Motion," ECF No. 34).

THE COURT, having considered the Motion, the parties' briefs, the arguments of counsel, the applicable law, and all appropriate matters of record, **CONCLUDES** that the Motion should be **GRANTED** as set forth below.

INTRODUCTION

1. The present Motion requires the Court to address the circumstances under which a party may be added as a counterclaim-defendant pursuant to Rule 13(h) of the North Carolina Rules of Civil Procedure.

FACTUAL AND PROCEDURAL BACKGROUND

2. The Court does not make findings of fact in connection with the present Motion and instead recites only those facts contained in the applicable pleading that are relevant to the Court's determination of the Motion. *See, e.g., Constr. Managers, Inc. of Goldsboro v. Amory*, 2019 NCBC LEXIS 122, at *3 (N.C. Super. Ct. Oct. 14, 2019). A complete discussion of the factual and legal issues previously addressed by the Court in this case can be found in its Order and Opinion on Defendants' Partial Motion to Dismiss. *See Greentouch USA, Inc. v. Lowe's Cos. Inc.*, 2024 NCBC LEXIS 132 (N.C. Super. Ct. Oct. 2, 2024).

3. On 20 February 2024, Plaintiff Greentouch USA, Inc. ("Greentouch") initiated this action by filing a Complaint in Iredell County Superior Court asserting various claims for monetary relief stemming from its commercial relationship with Defendants. ("Complaint," ECF No. 3.)

4. In addition to asserting its own claims in the Complaint, Greentouch also pled factually related claims that had purportedly been assigned to it by Greentouch Home Ltd. - Hong Kong ("HK Greentouch" and, together with Greentouch, "the Greentouch Entities"). (Compl. ¶ 5.)

5. On 22 October 2024, Defendants filed an Answer and Counterclaims (the “Counterclaims”) in which they asserted claims against both Greentouch and HK Greentouch for breach of contract and indemnity.¹ (ECF No. 33.)

6. In the Counterclaims, Defendants allege that HK Greentouch is an “affiliate” of Greentouch and is a “limited company” organized under the laws of Hong Kong, with its principal place of business in Hong Kong. (Countercls. ¶ 11.)

7. Like Greentouch, HK Greentouch served as one Defendants’ commercial vendors, supplying Lowe’s with bathroom vanities, fireplaces, and related fixtures and furniture. (Countercls. ¶ 15.)

8. Defendants allege that throughout their commercial relationship, the Greentouch Entities were under a complete identity of control—sharing executives, key employees, and email address domains—and that the agreements that are the subject of Defendants’ counterclaims were entered into jointly by the Greentouch Entities. (Countercls. ¶¶ 16–18, 20, 25, 47.)

9. On 31 October 2024, Defendants filed the present Motion seeking an Order from the Court adding HK Greentouch to the action as a counterclaim-defendant under Rule 13(h).

10. Although counsel for Greentouch was served with a copy of the Motion, Defendants did not provide notice to HK Greentouch that the Motion had been filed. As a result, no attorney has made an appearance on behalf of HK Greentouch.

¹ As noted below, Defendants waited nine days after filing the Counterclaims to seek the Court’s authorization to bring HK Greentouch into the case as a counterclaim-defendant. The Court observes that the better practice would have been for Defendants to seek leave from the Court prior to the filing of the counterclaims against HK Greentouch.

11. Greentouch has filed a memorandum in response to Defendants' Motion, claiming that the Motion is procedurally improper. (ECF No. 40.)

12. The Court held a hearing on the Motion on 15 January 2025 at which Greentouch and Defendants were represented by counsel.

13. The Motion has been fully briefed and is ripe for resolution.

LEGAL STANDARD

14. Joinder of a party under Rule 13(h) is required if the movant "establish[es] . . . (1) that the purported counterclaim defendants are required for granting complete relief of a properly pleaded counterclaim or crossclaim and (2) that the court can obtain jurisdiction over the purported counterclaim or crossclaim defendant." *Constr. Managers, Inc. of Goldsboro*, 2019 NCBC LEXIS 122, at *7 (cleaned up). However, a valid "counterclaim must first exist, thereby making joinder necessary." *Davis Lake Comm. Ass'n v. Feldmann*, 138 N.C. App. 322, 323 (2000).

15. In ruling on a motion brought under Rule 13(h), the Court accepts as true the allegations made in support of the counterclaims or crossclaims. *See S.P.A. Ricordi Officine Grafiche v. World Art Reprods. Co., Inc.*, 22 F.R.D. 312, 316 (S.D.N.Y. 1958). The "Court must also consider whether defendants would be prejudiced if the counterclaim defendant was not added as a party to the action." *Biogas Corp. v. NC Biogas Dev., LLC*, 2023 N.C. Super. LEXIS 68, at *1 (N.C. Super. Ct. Aug. 16, 2023) (cleaned up).

ANALYSIS

16. In the Motion, Defendants assert that HK Greentouch is required to be joined as a counterclaim-defendant under Rule 13(h) because the Counterclaims

“directly implicate HK Greentouch’s contractual obligations to [Defendants,]” “concern HK Greentouch’s financial liability to [Defendants,]” and “seek associated damages from HK Greentouch.” (Mot. at 2.) Defendants argue that HK Greentouch’s presence is also necessary because if Greentouch is ultimately successful on its claims against Defendants, Defendants would be entitled to set off against any damages imposed against them the sums owed to them by HK Greentouch. (Mot. at 3.)

17. Greentouch opposes the Motion primarily on the ground that Defendants have not served the Motion on HK Greentouch. (Pl.’s Br. at 3, ECF No. 40.) Greentouch asserts that HK Greentouch may have independent grounds for opposing the Motion and argues that HK Greentouch should be given notice and an opportunity to be heard regarding the Motion before it is ruled upon.² (Pl.’s Br. at 7–8.)

18. Rule 13(h) of the North Carolina Rules of Civil Procedure states as follows:

When the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counterclaim . . . the court shall order them to be brought in as defendants as provided in these rules, if jurisdiction of them can be obtained.

N.C.G.S. § 1A-1, Rule 13(h).

19. The Court will address both elements of Rule 13(h) in conjunction with the parties’ respective arguments.

A. Presence Required for the Granting of Complete Relief

² Although Greentouch opposes the present Motion, counsel for Greentouch has made clear that they do not represent HK Greentouch in this action and are not authorized to make arguments on HK Greentouch’s behalf. (Pl.’s Br. at 12.)

20. With regard to the first element—that the new party’s presence is required for the granting of complete relief—Defendants assert that “it is undeniable that some rights, responsibilities, and substantive issues in this case arise from HK Greentouch’s commercial relationship” with Defendants. (Mot. at 3.)

21. North Carolina courts have recognized that when the resolution of a counterclaim invokes questions of law or fact common to both an existing counterclaim-defendant and a third-party, the presence of the third-party may be required for the granting of complete relief on that counterclaim. *See Constr. Managers, Inc. of Goldsboro*, 2019 NCBC LEXIS 122, at *12 (holding that the presence of individual corporate shareholders was “required” under Rule 13(h) when “[d]etermination of [the counterclaim-plaintiff’s] claims for judicial dissolution will require inquiry into whether the [corporate shareholders’] conduct resulted in the diminution of the value of [the corporation], and a fair dissolution of [the corporation] may involve determining whether [the shareholders] should be required to return certain assets to [the corporation]”); *see also Brooks v. Rogers*, 82 N.C. App. 502, 510 (1986) (noting that third parties may be joined under Rule 13(h) as counterclaim-defendants to claims “ar[ising] out of the same transactions that are the subject matter of [plaintiff’s] claims against [defendant]”).

22. Based on the allegations in the Counterclaims, it appears that an adjudication of Defendants’ claims for breach of contract will necessarily involve questions of law and fact common to both Greentouch Entities concerning the interpretation of the contracts at issue, the parties’ performance thereof, and any resulting liability.

23. Likewise, in their counterclaim for indemnification, Defendants assert that the Greentouch Entities are contractually obligated to “indemnify, defend, and hold [Defendants] harmless for all claims, losses, and reasonable expenses[,]” related to any “action, claim, suit, proceeding . . . actually or allegedly arising from, or related to” the 2019 Import Master Buying Agreement.³ (Countercls. ¶ 68.) Adjudication of this claim will necessarily involve a determination as to Defendants’ ability to obtain relief from one or both of the Greentouch Entities.

24. Therefore, Defendants have made a sufficient showing that HK Greentouch’s presence is required for the granting of complete relief regarding their Counterclaims.

B. Obtaining Jurisdiction Over HK Greentouch

25. As for the second element under Rule 13(h), Defendants assert that the Court can obtain jurisdiction over HK Greentouch for two independent reasons. First, Defendants contend that HK Greentouch has contractually consented to be subject to the jurisdiction of North Carolina’s courts. Second, Defendants allege that HK Greentouch has engaged in significant commercial activity within this State that suffices to establish personal jurisdiction under North Carolina’s long-arm statute and the Due Process Clause of the United States Constitution.

26. Although Greentouch notes that Defendants have not put any actual evidence into the record (via affidavit or otherwise) purporting to show that HK Greentouch actually did consent to the personal jurisdiction of North Carolina courts,

³ Defendants allege that the 2019 Import Master Buying Agreement is a joint contract entered into between Defendants and the Greentouch Entities that provides the master terms governing the parties’ commercial relationship. (Countercls. ¶¶ 16, 25.)

neither the text of Rule 13(h) nor the interpretative caselaw requires them to do so. Rather, Rule 13(h) appears to require nothing more than the type of allegations that would be sufficient to satisfy Rule 12(b)(2).

27. Under Rule 12(b)(2), “the allegations of the [pleading] must disclose jurisdiction although the particulars of jurisdiction need not be alleged,” *Parker v. Town of Erwin*, 243 N.C. App. 84, 96 (2015) (cleaned up), and the trial court must determine whether the “allegations [], if taken as true, set forth a sufficient basis for the court’s exercise of personal jurisdiction,” *Banc of Am. Sec. LLC v. Evergreen Int’l Aviation, Inc.*, 169 N.C. App. 690, 693 (2005) (cleaned up).

28. Our Supreme Court has recognized that “a ‘consent to jurisdiction’ clause merely specifies a court empowered to hear the litigation, in effect waiving any objection to personal jurisdiction or venue.” *Johnston Cnty. v. R.N. Rouse & Co.*, 331 N.C. 88, 93 (1992) (cleaned up). And “while a forum selection/consent-to-jurisdiction clause by itself is not sufficient to confer personal jurisdiction over a defendant as a matter of law, such clauses do create a presumption in favor of jurisdiction[.]” *Federated Fin. Corp. of Am. v. Jenkins*, 215 N.C. App. 330, 334 (2011) (cleaned up).

29. Here, Defendants allege that:

[t]his Court . . . has personal jurisdiction of the Counterclaim Defendants, as they expressly consented in the December 19, 2019 Import Master Buying Agreement (the “2019 MBA”), signed by the President of HK Greentouch . . . to the jurisdiction of North Carolina state courts in all disputes related to their commercial relationship with Lowe’s[.]

(Countercls. ¶ 13.)

30. Such an allegation is facially sufficient to satisfy the second element of Rule 13(h).⁴

C. Notice

31. Greentouch primarily opposes the Motion on the ground that HK Greentouch has not yet been given notice of the Motion or otherwise served with process. In essence, Greentouch contends that HK Greentouch must be given the opportunity to oppose the Motion *before* being formally joined as a counterclaim-defendant under Rule 13(h).

32. However, Greentouch has failed to cite any caselaw requiring that the party sought to be joined under Rule 13(h) must be given advance notice before a motion under the Rule can be granted. To the contrary, our Court of Appeals in *Pask v. Corbitt*, 28 N.C. App. 100 (1975), has suggested that no such advance notice is required.

33. In *Pask*, the Court of Appeals stated the following in addressing an analogous joinder issue:

[The party to be joined] was not entitled to notice and a hearing with respect to the orders allowing plaintiff to amend her complaint and to add an additional party. Obviously, it is not necessary to notify a party that he is about to be sued. The summons and complaint are adequate notice.

Id. at 105.

34. As Defendants acknowledge, even if the present Motion is granted, Defendants will be required to serve HK Greentouch with process. Assuming service

⁴ It is important to note, however, that the Court is by no means making a final determination as to whether personal jurisdiction over HK Greentouch actually exists in this Court. Rather, the Court is simply ruling that the factual allegations in the Counterclaims are sufficient to satisfy the threshold requirement of Rule 13(h).

is properly effectuated, HK Greentouch will have a full and fair opportunity to assert any arguments it may possess as to why it should not be a party to this lawsuit—including any jurisdictional arguments. *See Crest Auto Supplies, Inc. v. Ero Mfg. Co.*, 360 F.2d 896, 898 (7th Cir. 1966) (observing that counterclaim-defendants could have “raise[d] any joinder or jurisdictional objection[s] by motion” after being joined and served).

35. The Court is therefore satisfied that the granting of the present Motion will not prejudice HK Greentouch’s rights despite the fact that it did not receive advance notice of the filing of the Motion.

CONCLUSION

Accordingly, the Court **CONCLUDES** that Defendants’ Motion should be **GRANTED**. The Iredell County Clerk of Superior Court is hereby **DIRECTED** to issue a summons for Greentouch Home Ltd. - Hong Kong as a counterclaim-defendant in this action. Defendants shall notify the Court when service has been effectuated.

SO ORDERED, this the 23rd day of January 2025.

/s/ Mark A. Davis
Mark A. Davis
Special Superior Court Judge for
Complex Business Cases