

**MasterCard International, Inc. v.
Visa International Service Association**

471 F.3d 377 (2nd Cir. 2006).

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Federation Internationale de Football Association (FIFA) is the worldwide governing body of soccer, and the organizer of the World Cup soccer tournament. In 2002, MasterCard (MC) and FIFA entered into a contract that would give MC the exclusive sponsorship rights in its products category for FIFA competitions between 2003 and 2006, including the World Cup tournament. Allegedly, this contract included a "first right to acquire," giving MC a right of first refusal to obtain exclusive sponsorship rights from 2007 to 2010. However, on April 5, 2006, FIFA informed MC they entered into a contract with Visa to give them the exclusive sponsorship rights to FIFA competitions through 2014. MC immediately filed suit for breach of contract and sought injunctive relief preventing FIFA from performing any terms within the Visa contract and requiring FIFA to perform its obligations with MC. Two weeks prior to the preliminary injunction hearing at the Southern District of New York, Visa filed a notice indicating it is a necessary and indispensable party to the litigation because of the contractual agreement Visa had with FIFA. Visa appealed the District Court's denial of Visa's motion to dismiss for failure to join a necessary party under Federal Rule of Civil Procedure 19. In addition, Visa appealed the District Court's denial of Visa's motion to intervene in the underlying action under Federal Rule of Civil Procedure 24. The Second Circuit Court of Appeals dismissed the appeal, vacated the stay previously granted by this court, and remanded the matter to the District Court.

The Court of Appeals determined Visa is not a necessary and indispensable party as defined by Rule 19 and Visa is not entitled to intervene under Rule 24 in the suit between MC and FIFA because Visa's interest in the suit would not be impaired or impeded. Under Rule 19(a)(1), a party is necessary only if in that party's absence complete relief cannot be granted to those already parties. MC and FIFA can both obtain complete relief without Visa's presence because the dispute is between MC and FIFA. Therefore, Visa's presence was not necessary.

Under Rule 19(a)(2)(i), a party is necessary if their rights are impaired or impeded without participation in the suit. The Court concluded that Visa's potential harm is not caused by its absence in the suit, but caused by FIFA's alleged conduct in awarding Visa exclusive sponsorship rights that they could not legally give. The Court concluded Visa could sue FIFA for breach of the warranty provision in its contract if the outcome of the suit between MC and FIFA grants MC exclusive sponsorship rights.

Under Rule 19(a)(2)(ii), a party must be joined if there is a substantial risk of inconsistent obligations caused by the non-party's absence in the case. FIFA's alleged breach of its contract with MC and subsequent award of sponsorship rights to Visa which it did not have the right to award would be the cause of multiple obligations, not the absence of Visa in the suit.

In order to determine if the District Court's dismissal of Visa's motion to intervene was appropriate, the Court reviews the discretion used by the District Court. The Court concluded there was no abuse in discretion because if a party is not necessary under Rule 19(a), it cannot satisfy the test for intervention as a right under Rule 24. The motion to intervene was untimely because Visa knew of the dispute between MC and FIFA since the beginning of the litigation and had maintained communication with

FIFA throughout the course of the litigation, yet filed the motion one day prior to the preliminary injunction hearing. Therefore, the court ruled the delay in filing the motion to intervene was unjustified and resulted in prejudice for the existing parties.

Because Visa is not a necessary party in the suit between MC and FIFA, the District Court appropriately denied Visa's motion to join under Rule 19. In addition, Visa's motion to intervene under Rule 24 was also appropriately denied because the motion was not timely and Visa does not meet the conditions required to allow a party to intervene. This Court's ruling has denied Visa's involvement in a case that will ultimately determine if they will have exclusive sponsorship rights for a major sporting event.