

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAROL BEATSON-LOCKE, et al. : CIVIL ACTION  
v. :  
KMART CORPORATION, et al. : NO. 01-CV-2213

**ORDER**

AND NOW, this 20<sup>th</sup> day of November, 2001, upon consideration of defendant Tri State Mall Limited Partnership's Motion to Dismiss Based on Lack of Personal Jurisdiction (Docket #7), as well as the plaintiffs' opposition thereto, IT IS **HEREBY ORDERED** that the defendant's motion is GRANTED and Tri State Limited Partnership and Tri State Mall, Inc.<sup>1</sup> are dismissed from this action.

The defendant Tri State Mall Limited Partnership ("Partnership") argues that this Court does not have personal jurisdiction over it because it has no contacts with Pennsylvania. Once a defendant raises the defense of lack of personal jurisdiction, the burden is on the plaintiff to adduce facts which establish that there is jurisdiction. Mellon Bank (East) PSFS, Nat'l Ass'n v. Farina, 960 F.2d 1217, 1223 (3d Cir. 1992).

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1. The defendant argues that the case against Tri State Mall, Inc. should be dismissed because there is no such entity. The plaintiffs do not refute this.

In their opposition papers, the plaintiffs set out the following facts, which the defendant does not contest in its reply. The plaintiff Carol Beatson-Locke, a resident of Pennsylvania, **was** injured when **she slipped and fell at the Kmart store** at the Tri State Mall in Claymont, Delaware. She then filed this personal injury suit against Kmart and the Partnership, in Pennsylvania.

The Partnership **owns** the Tri State Mall; it leases the **property** and the building of the Mall to A.A.R. Realty Corporation. A.A.R. Realty and its tenants, the Mall's merchants, reach out to Pennsylvania for customers. For **example**, A.A.R. Realty **paid** to have a water **tower**, which is **visible** in Pennsylvania, painted **with** the words Tri State Mall, and the plaintiffs attach to their opposition papers advertisements for two of the Mall's merchants which ran in **Pennsylvania newspapers**, The Partnership benefits from the Outreach, because the amount of rent the Partnership receives is based in **part** on the **performance of** the **Mall's** merchants, but the Partnership itself does not engage in outreach.

**These facts** establish that the Partnership benefits financially from the fact that Pennsylvania residents go to the Tri **State** Mall and spend money there. This alone **is not a basis**

for personal jurisdiction in Pennsylvania. See Gehling v. St. George's Sch. of Med., Ltd., 773 F.2d 539, 543 (3d Cir. 1985) (fact that percentage of defendant school's student body came from Pennsylvania, and that defendant school thereby derived revenue from Pennsylvania residents, **was** not basis for jurisdiction). The Gehling Court quoted with approval the Supreme Court's finding that: "'The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.'" Gehling, 773 F.2d at 542-543 (quoting Hanson v. Denckla, 357 U.S. 235, 253 (1958)).

The plaintiffs argue that the Partnership is nevertheless subject to personal jurisdiction in Pennsylvania, **because A.A.R.** Realty Corporation's contacts can be imputed to **the** Partnership. The **plaintiffs** do not cite to any cases which **address** the question of when a lessee's contacts may be imputed to a lessor. There are, however, cases which address whether a subsidiary's contacts may be imputed to its corporate parent, **as** well as whether a franchisee's contacts may be imputed to its franchiser. The reasoning of these cases can be extended to the lessor-lessee context, because the cases address the general

question of when the actions of one legally-separate entity can be imputed to another.

The Third Circuit has noted that: "Generally, '[a] foreign corporation is not **subject** to the jurisdiction of the forum state merely **because** of **the** ownership of the shares of stock of a subsidiary doing business in the state.'" Lucas v. Gulf & Western Indus., Inc., 666 F.2d 800, 805-806 (1981). In Gallagher v. Mazda Motor of America, 781 F.Supp. 1079, 1083-1084 (E.D. Pa. 1992), the Court set forth three tests, derived from three lines of cases, for when it is permissible to **impute** the jurisdictional contacts of a subsidiary to a parent and vice versa.

The first test is based on the Supreme Court's decision in Cannon Manufacturing Co. v. Cudahy Packing Co., 267 U.S. 333 (1925), in which the Court held that a subsidiary's actions would not be imputed to its parent corporation as long as both corporations observed the corporate form. Cannon, 267 U.S. at 337. This formalistic analysis has been called into question in light of International Shoe Co. v. Washinston, 326 U.S. 310 (1945), and the cases that have followed it, which establish a test for personal jurisdiction that de-emphasizes issues of form and focuses instead on the nature and quality of the contacts

that the defendant has had **with** the forum state. International Shoe, 326 U.S. at 316.

The second test holds that a subsidiary's actions should be imputed to its parent where the parent exercises total control over the subsidiary, and can therefore be said to be the subsidiary's alter *ego*. Gallasher, 781 F.Supp. at 1084. **The final test is** whether the subsidiary is engaged in activities that, but for the existence of the subsidiary, the parent would ordinarily undertake itself. Id.

The Court in Arch v. American Tobacco Co., 984 F.Supp. 830, 836 (E.D. Pa. 1997), determined that the best approach is not to adopt one test to the exclusion of the others, but rather "to examine all relevant factors such as whether the subsidiary corporation played any part in the transaction at issue, **whether** the subsidiary **was** merely the alter ego or agent of the parent...whether the independence of the separate corporate entities was disregarded, and whether the subsidiary is necessarily performing activities that the parent would otherwise have to perform in the absence of the subsidiary." Arch, 984 F.Supp. at 837. The degree of control exercised by the parent over the subsidiary must be greater than that normally exercised

where two corporations have common owners and common directors.<sup>2</sup>

Id.

The plaintiffs in this case have established only that the Partnership owns land and a building, and that the Partnership benefits financially from the activities of **the** tenants of **the** building, including **their** activities directed towards the state of Pennsylvania. However, financial benefit alone does not establish a close-enough tie to impute jurisdiction. If it did, there would be no need for the three tests set out in Gallagher and Arch, since it can be assumed that every parent corporation benefits financially from the activities of its subsidiary.

The plaintiffs **have not provided evidence** that A.A.R. Realty is an **alter** ego or agent of the Partnership, that the independence of the separate entities has been disregarded, or that the Partnership would have to run the Tri State Mall if A.A.R. Realty did not. As the defendant points out, it is uncontradicted that the Partnership **exercises** no control **over** the Mall, including advertising, management, maintenance and leasing.

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2. The cases dealing with the relationship between franchisers and franchisees similarly require something beyond the normal degree of control to **find** that contacts **should be** imputed. See Wright v. American Standard, Inc., 637 F.Supp. 241, 243 (E.D. Pa. 1985).

Because A.A.R. Realty Corporation's contacts with the state of Pennsylvania can not be imputed to the Partnership under any of the tests given in Gallasher and Arch, the defendant's motion to dismiss is granted.

BY THE COURT:

  
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MARY A. McLAUGHLIN, J.