

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

<b>ENVIRONMENTAL TECTONICS, CORPORATION and ENTERTAINMENT TECHNOLOGY CORPORATION,</b>	:	<b>CIVIL ACTION</b>
	:	
<b>Plaintiffs,</b>	:	
<b>v.</b>	:	
	:	
<b>WALT DISNEY WORLD CO. d/b/a WALT DISNEY IMAGINEERING,</b>	:	<b>NO. 05-6412</b>
<b>Defendant.</b>	:	

**MEMORANDUM AND ORDER**

**Stengel, J.**

**April 26, 2006**

**I. Motion to Dismiss**

In January 2000, Plaintiffs Environmental Tectonics Corporation and Entertainment Technology Corporation (“ETC”) and Defendant Walt Disney Imagineering (“Disney”) signed an agreement wherein Plaintiffs were to design and implement a new ride at Disney’s EPCOT Center called Mission: Space (“the Ride”). As the result of circumstances not made entirely clear in the parties’ briefs, a Settlement Agreement was signed between them in November 2001. In it, ETC apparently released Disney as to liability for certain types of claims, including those for breach of confidentiality. The parties dispute whether the Settlement Agreement was applicable to all claims or just those that had arisen at the time they executed the agreement.

Nevertheless, it appears the parties encountered a number of further disputes under the initial contract, and Plaintiffs filed a lawsuit against Defendant on June 9, 2003, alleging breach of contract and requesting declaratory relief in connection with the construction and delivery of the Ride. Defendant counter-claimed, alleging breach of contract due to late delivery, and seeking lost profits as a result of the alleged delay. On December 13, 2005, Plaintiff filed the instant action, alleging further breaches of contract due to a breach of confidentiality, as well as for unfair competition. On February 13, 2006, Defendant filed a 12(b)(6) Motion to Dismiss.

The purpose of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) is to test the legal sufficiency of a complaint. *Sturm v. Clark*, 835 F.2d 1009, 1011 (3d Cir. 1987). The court may grant a motion to dismiss only where “it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief.” *Carino v. Stefan*, 376 F.3d 156, 159 (3d Cir. 2004) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). In deciding a motion to dismiss, the court must construe the complaint liberally, accept all factual allegations in the complaint as true, and draw all reasonable inferences in favor of the plaintiff. *Id.*; see also *D.P. Enters. v. Bucks County Cmty. Coll.*, 725 F.2d 943, 944 (3d Cir. 1984).

In its Motion to Dismiss, Defendant alleges that Plaintiffs released all claims against it in the 2001 Settlement Agreement. Plaintiffs argue in response that they have learned of facts that were concealed/undiscovered when they signed the Settlement

Agreement, and that furthermore there are ongoing breaches of confidentiality that are not subject to the 2001 Agreement.

Defendant argues additionally that Plaintiffs' unfair competition claims are barred by the 2-year statute of limitations under Pennsylvania law for tort claims.

Defendant argues that because the alleged breaches of confidentiality occurred prior to the signing of the 2001 Agreement, Plaintiffs are barred from suing over those breaches now. Plaintiffs respond that they were unaware of the breaches when they signed the 2001 Settlement Agreement, and that in any case, they are on-going, and the Settlement Agreement does not preclude them from bringing actions for events occurring subsequent to execution of the Agreement.

I find that Plaintiffs have pled sufficient facts to withstand a Motion to Dismiss. Taken as true, Plaintiffs' allegations state a cause of action for continuing behavior by Defendants that may underlie an unfair competition claim, which may vitiate the statute of limitations issue. I also find that Plaintiffs' allegations of subsequent actions by Defendant are not, at this state in litigation, precluded by the 2001 Settlement Agreement.

## **II. Motion for Leave to File a Reply**

Disney has also requested leave to file a reply brief to ETC's response to their Motion to Dismiss. In Defendant's Brief in Opposition to Plaintiffs' Brief in Opposition to Defendant's Motion to File a Reply, Disney notes their desire to avoid

“additional briefing” which is “extraordinary and unnecessary.” I agree with this sentiment and will therefore deny leave to file a reply.

**ORDER**

**AND NOW**, this 26th day of April, 2006, after consideration of Defendant's Motion to Dismiss Plaintiffs' Complaint (Dkt. # 9), and any responses thereto, it is hereby **ORDERED** that Defendants' Motion to Dismiss is **DENIED**.

It is further **ORDERED** that after consideration of Defendant's Motion to File a Reply Brief (Dkt. # 11), and any responses thereto, the Motion is **DENIED**.

BY THE COURT:

/s/ Lawrence F. Stengel  
LAWRENCE F. STENGEL, J.