

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

LAUREN BROOKE TOLL, a minor by
her parents and natural
guardians, L. Richard Toll and
Linda Toll, his wife, and L.
RICHARD TOLL and LINDA TOLL,
in their own right,
Plaintiffs,

v.

FRENCH WOODS FESTIVAL OF
PERFORMING ARTS
and
WABASH VALLEY MANUFACTURING,
INC.,
Defendants.

Civil Action
No. 97-5271

Gawthrop, J.

March 13, 1998

M E M O R A N D U M

Plaintiff Lauren Toll and her parents brought this civil action for personal injury damages after she was allegedly injured while attending a summer camp operated by French Woods. Now before the court is a motion brought by defendant French Woods Festival of the Performing Arts ("French Woods") to dismiss for lack of jurisdiction, pursuant to Federal Rule of Civil Procedure 12(b)(2), and for improper venue, pursuant to Federal Rule of Civil Procedure 12(b)(3).

A federal district court can exercise personal jurisdiction over defendants to the extent permissible under the law of the state in which it sits. Fed. R. Civ. P. 4(e). Under

Pennsylvania law, a court can exercise jurisdiction over an out-of-state defendant based upon the specific acts of the defendant which give rise to the cause of action, under 42 Pa. Cons. Stat. Ann. § 5322, or upon the general business activity of the defendant corporation within the state, under 42 Pa. Cons. Stat. Ann. § 5301. Here, the basis for the plaintiffs' cause of action against French Woods, alleged negligence in maintaining camp property, took place in the state of New York, outside this forum. Thus, jurisdiction in this court depends upon whether the defendant did "a continuous and systematic part of its general business within this Commonwealth" as to permit an assertion of personal jurisdiction over the defendant. 42 Pa. Cons. Stat. Ann. § 5301(a)(2)(iii); see Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 415 (1984) (holding no personal jurisdiction where the defendant's activities did not constitute the kind of continuous and systematic general business contacts necessary to satisfy due process).

The plaintiffs bear the burden of demonstrating that the defendant possesses sufficient contacts with the forum state to establish personal jurisdiction. See Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 63 (3d Cir. 1984). French Woods claims that the plaintiffs did not, and could not, meet this burden. It claims that it has no substantial contacts with Pennsylvania, and it does not avail itself of the privilege of conducting business in this state. French Woods is a New York

corporation licensed to operate a camp under New York law. It does not own property, does not maintain bank accounts, does not appear in telephone directories, and does not have offices in the Commonwealth of Pennsylvania. Moreover, it is not registered to do business, has no authorized agents, and has no employees assigned to work in Pennsylvania. When faced with facts and allegations similar to the ones presently before this court, other federal courts have dismissed the complaints for lack of personal jurisdiction. See e.g., Marks v. Farm and Wilderness Found., 753 F. Supp. 523 (S.D.N.Y. 1991) (granting motion to dismiss for lack of personal jurisdiction where child injured in out-of-state camp); Ross v. Colorado Outward Bound Sch., Inc., 603 F. Supp. 306 (W.D.N.Y. 1985) (finding no personal jurisdiction over diversity action brought by mother where alleged tortious conduct and death of child occurred in recreational facility in another state).

The plaintiffs claim that French Woods availed itself of the forum and established sufficient contacts by sending an enrollment contract and a promotional video tape to them at their residence in Pennsylvania. However, French Woods sent the enrollment contract and descriptive material only after the plaintiffs had inquired about enrollment for Plaintiff Lauren Toll. They had learned of the summer camp from a child who had previously attended the camp. French Woods claims that it does not otherwise advertise to the residents of Pennsylvania except

by sending promotional material after receiving an inquiry. This type of mailing does not constitute continuous and systematic contact with Pennsylvania such as to establish jurisdiction. See Johnson v. Summa Corp., 632 F. Supp. 122, 126 (E.D. Pa. 1985) (finding single mailing of promotional material and maintenance of toll free number in Pennsylvania insufficient for the exercise of personal jurisdiction); Diskin v. Starck, 538 F.Supp. 877, 880 (E.D.N.Y. 1982) (holding advertisement of Vermont summer camp in New York newsweekly, along with follow-up mailings, not sufficient to create jurisdiction for action by plaintiff injured at the camp). The plaintiffs cite case law finding jurisdiction based upon extensive advertising and promotional activities by non-resident defendant corporations. See Gavigan v. Walt Disney World Co., 630 F. Supp 148 (E.D. Pa. 1986) (finding personal jurisdiction over non-resident defendant corporation based upon its advertising and promotional activities for its resort directed specifically towards residents of Pennsylvania); Busch v. Sea World of Ohio, 95 F.R.D. 336 (W.D. Pa. 1982) (same). However, the plaintiffs have not shown that French Woods engaged in extensive promotional activities within Pennsylvania, and, thus, their reliance on these cases is misplaced.

Further, it appears to the court that the plaintiff's Complaint fails to set forth the requisite elements to satisfy diversity jurisdiction. The relevant jurisdictional statute provides that "district courts shall have original jurisdiction

of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs" 28 U.S.C. § 1332 (West 1996). The plaintiff's Complaint states that the matter in controversy exceeds \$50,000, a sum insufficient to comply with the jurisdictional requirement. The plaintiffs, then, have not shown that any federal court would have jurisdiction over this matter. Thus, I need not address the issue of improper venue and shall grant French Woods' motion to dismiss for lack of jurisdiction. See, e.g., Hodson v. A. H. Robins Co., Inc., 528 F. Supp. 809, 816 (E.D. Va. 1981) ("Where the alternative forum is a state court or a court of a foreign country, however, the court chosen by the plaintiff may dismiss the action.").

An order follows.

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O R D E R

AND NOW, this 13th day of March, 1998, upon
consideration of the Motion to Dismiss by Defendant French Woods
Festival of the Performing Arts, and the response thereto, the
Motion is hereby GRANTED.

So also, is the case dismissed as to Wabash Valley
Manufacturing, Inc. for want of jurisdiction. See 28 U.S.C. §
1332.

BY THE COURT

Robert S. Gawthrop, III, J.

