

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

MICHAEL RAPP a/k/a	:	
MICHAEL RAPAGNANI,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 98-3478
	:	
THE WALT DISNEY COMPANY, INC.,	:	
Defendant.	:	

MEMORANDUM

R.F. KELLY, J.

SEPTEMBER, 1998

Plaintiff, Michael Rapp ("Rapp"), has brought this action against Defendant, the Walt Disney Company Inc. ("WDC"), alleging copyright infringement. Presently before the Court is WDC's Motion to Dismiss for Lack of Personal Jurisdiction and Improper Venue or in the alternative, for Transfer. For the reasons that follow, WDC's Motion to Dismiss is granted and WDC's Motion to Transfer is denied.

I. FACTS.

Rapp is the author of a "stage show" entitled "My Dinner with Uncle G." In connection with this work, Rapp and an associate developed a logo, parodying the familiar Godfather puppeteer logo, consisting of a disembodied hand holding a fork and spoon with strands of spaghetti hanging down to the word "Uncle G." Rapp claims to have filed an application for Works of Visual Art with the United States Copyright Office for this logo,

but to be waiting for final designation.

Rapp alleges that in May of 1998 he was informed that WDC, through Touchstone Pictures, was releasing a film entitled "Jane Austen's Mafia," and, in connection with that film, had developed a logo similar to the logo for "My Dinner with Uncle G." Rapp investigated and learned that the competing logo is identical to his, except that the strands of spaghetti lead to the word "Mafia" and there is a bowl of spaghetti underneath.

Through counsel, Rapp contacted Touchstone Pictures requesting information regarding the ownership of the Mafia logo and demanding that its use in the film "Jane Austen's Mafia" cease. Counsel for WDC responded, stating that an investigation was underway and requesting that Rapp supply information concerning ownership of the Uncle G logo. Rapp's attorney complied by supplying affidavits from six individuals who had information concerning Rapp's play and logo. After receiving no further reply from WDC, Rapp filed the complaint in this action.

II. STANDARD.

WDC has moved to dismiss Rapp's complaint on two grounds, improper venue and lack of personal jurisdiction. FED.R.CIV.PRO. 12(b)(2),(3). Because this is a copyright action, these inquiries are combined. 28 U.S.C. § 1400.

Proper venue for a copyright action lies "in the district in which the defendant or his agent resides or may be

found." 28 U.S.C. § 1400. Essentially, this means "venue in a copyright action is proper in any judicial district in which the defendant would be amenable to personal jurisdiction if the district were a separate state." Blackburn v. Walker Oriental Rug Galleries, 999 F. Supp 636, 638 (E.D. Pa. 1998). Thus, in this action, a determination of venue is really a determination of personal jurisdiction, although limited by the boundaries of the Eastern District of Pennsylvania.

Pursuant to Rule 12(b)(2), WDC asks this Court to dismiss Rapp's complaint for lack of personal jurisdiction. "Personal jurisdiction is a fact-specific inquiry. The focus is on the relationship among the defendant, the forum state and the litigant." AMP Inc. v. Methode Elecs. Inc., 823 F. Supp. 259, 262 (M.D. Pa. 1993). WDC has properly raised a jurisdictional defense, thus, it is Rapp's burden to prove, by affidavits or other competent evidence, that WDC has sufficient contact with the Eastern District of Pennsylvania to establish personal jurisdiction. North Penn Gas Co. v. Corning Natural Gas Corp., 897 F.2d 687, 689 (3d Cir. 1990), cert denied, 498 U.S. 847 (1990); Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 63 (3d Cir. 1984).

III. DISCUSSION.

This Court is bound to apply the long arm statute of Pennsylvania in determining whether or not personal jurisdiction

exists. FED. R. CIV. PRO. 4(e). Pennsylvania's long arm statute allows this Court to exercise personal jurisdiction to the limits of the due process clause of the Fourteenth Amendment. 42 Pa.C.S.A. § 5322(b). To comply with due process the exercise of personal jurisdiction must be based on sufficient "minimum contacts" with the forum state "such that the maintenance of suit does not offend traditional notions of fair play and substantial justice." Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).

It is clear that WDC lacks any contact with the Eastern District of Pennsylvania. WDC is a holding company, registered in Delaware with its principle place of business in California, whose only business is the ownership of various subsidiaries. (Def.'s Mot. for Summ. J. Reed Aff. ¶¶ 3-4.) WDC does not maintain offices, employees, agents, property or bank accounts in Pennsylvania. (Id. at ¶ 3.) WDC does not have an agent for service of process in Pennsylvania. (Id.) WDC essentially contends that Rapp has sued it in error, and the proper defendant in this matter is its subsidiary, Walt Disney Pictures & Television ("WDPT"), which produces movies under the Touchstone Pictures label.

Rapp disagrees and seeks to impute the contacts of WDPT to WDC. To do so, Rapp must show that the WDC controls WDPT to the extent that WDPT is really the "alter ego or agent" of WDC.

Arch v. Am. Tobacco Co., 984 F. Supp. 830, 837 (E.D. Pa. 1997).

All relevant factors should be considered to determine whether the degree of control WDC exercises over WDPT "is greater than normally associated with common ownership and directorship."

Arch, 984 F. Supp. at 837(citing Savin Corp. v. Heritage Copy Prods., Inc., 661 F. Supp. 463, 469 (M.D. Pa. 1987)). If WDC exerts undue control over its subsidiary, then the jurisdictional contacts of WDPT may properly be imputed to WDC. Arch, 984 F. Supp. at 837.

WDC has shown, by affidavit, that it "does not manage or direct the operations or affairs of WDPT; the two corporations maintain separate books, records, bank and other accounts officers and employees." (Def.'s Mot. for Summ. J. Reed Aff. ¶¶ 3-4.) These facts are sufficient to prove that WDC does not exert undue control over WDPT.

Still, Rapp claims that there is sufficient evidence to hold that WDC and WDPT are not separate entities. First, Rapp points out that his original letter to Touchstone Pictures was responded to by WDC's legal department, and thereafter, all communication was sent to and mailed from WDC. Second, Rapp notes that WDC's account with the United States Copyright Office was used to pay for the copyright application for the Mafia logo. Rapp alleges that this constitutes co-mingling of funds between WDC and WDPT. Neither of these allegations are sufficient to

impute the contacts of WDPT to WDC.

As to shared legal departments, at least two courts have held that a parent corporation's legal department may represent a subsidiary without subjecting the parent to jurisdiction or liability for its subsidiaries' acts. Continental Ins. Co. v. Loewen Group, Inc., No. 96-1427, 1998 WL 142380, *11 (N.D. Ill. Mar. 17, 1998); Spinozzi v. ITT Sheraton Corp., No. 93-0885, 1994 WL 559110, *3 (N.D. Ill. Oct. 6, 1994).

Co-mingling of funds is a more serious allegation. Evidence that a parent corporation pays expenses for its subsidiary tends to show the existence of an "alter-ego relationship." Savin, 661 F. Supp. at 469. Rapp supports this allegation by reference to the Application for a Work of the Visual Arts submitted to the United States Copyright Office by "Touchstone Pictures (an alternate designation of DISNEY ENTERPRISES, INC.)" (Def.'s Mot. for Summ. J. Ex. D.) That application shows that WDC's account was used to pay a \$20.00 filing fee. Id.

Despite Rapp's allegation of co-mingling, I hold that WDC and WDPT are separate corporate entities.* Even if Rapp is correct, the test is "of all relevant factors"; one factor alone is insufficient to impute WDPT's contacts to the WDC. Savin, 661

* In making this decision, I do not decide whether WDPT is subject to personal jurisdiction in either the Eastern District of Pennsylvania or the State of Pennsylvania generally.

F. Supp. at 471 (holding that factors indicative of an alter-ego relationship where offset by factors indicative of separateness). Further, WDC explains that it is common practice for a parent corporation's legal department to utilize its Copyright Office account when filing on behalf of a subsidiary, just as any law firm would do for a client. It is Rapp's burden to prove otherwise and he has failed to present any evidence that the fee will not be repaid as WDC alleges. For these reasons, WDC's Motion to Dismiss is granted and WDC's Motion to Transfer is denied.

An appropriate Order follows.

