

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

RAYMOND AND VERA POTEAU                   :       CIVIL ACTION  
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WALT DISNEY WORLD COMPANY               :       No. 99-CV-843

**MEMORANDUM**

**I.           Introduction**

Raymond and Vera Poteau (“the Poteaus”) are husband and wife and residents of Wayne, Pennsylvania. The Walt Disney World Company (“WDW”) at all relevant times owned, operated, managed, possessed, and controlled EPCOT, an amusement park including rides located at Lake Buena Vista, Florida. While visiting the park on or about July 18, 1998, the Poteaus were passengers on one of WDW’s trams, when they allegedly fell from the tram sustaining personal injury. The Poteaus filed action against WDW in Pennsylvania.

Before the court is WDW’s Motion to Dismiss plaintiffs’ complaint for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2). For reasons that follow, WDW’s motion is denied and the civil action shall be transferred to the Middle District of Florida.

## II. Legal Standard

A federal district court may assert jurisdiction over a nonresident of the state in which the court sits to the extent authorized by the law of that state. Fed. R. Civ. P. 4(e). The Pennsylvania Long-Arm Statute provides in relevant part that “the jurisdiction of the tribunals of this Commonwealth shall extend . . . to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States.” 42 Pa. Cons. Stat. Ann. § 5322(b).

The Due Process clause of the Fourteenth Amendment of the United States Constitution limits the reach of long-arm statutes so that a court may not assert personal jurisdiction over a nonresident defendant who does not have “certain minimum contacts with [the forum] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” See International Shoe Co. v. State of Washington, 326 U.S. 310, 316 (1945). The nature of these contacts must be such that the defendant should “reasonably anticipate being haled into court” in the forum state. See World Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 287 (1980).

Once a jurisdictional defense has been raised, the plaintiff bears the burden of establishing, with reasonable particularity, sufficient contact between the defendant and the forum state to support jurisdiction. See Gehling v. St. George’s School of Medicine, Ltd., 773 F.2d 539, 542 (3d Cir. 1985). To meet this burden, the plaintiff must

establish either that the particular cause of action sued upon arose from the defendant's activities within the forum state ("specific jurisdiction") or that the defendant has "continuous and systematic" contacts with the forum state ("general jurisdiction"). See Provident National Bank v. California Federal Savings & Loan Ass'n, 819 F.2d 434, 437 (1987) (citing Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 421 (1984)).

The Poteaus failed to assert specific jurisdiction. It does not exist. The question becomes whether WDW has sufficient, continuous and systematic general business contacts within Pennsylvania to confer personal jurisdiction over the action filed here.

### **III. The Poteaus' Arguments**

The Poteaus contend that WDW engages in activities in Pennsylvania on a continuous and systematic basis, thus establishing general jurisdiction. They assert that WDW has sufficient contacts with Pennsylvania through places of business and various methods of advertisement and promotion in Pennsylvania.

The Poteaus contend that WDW has a place of business in Pennsylvania through The Disney Store. They assert that there are direct retail distributions from WDW to The Disney Store, and that these contacts are sufficient to establish a substantial relationship between WDW and Pennsylvania. In an attempt to support their position,

they have provided a business information report from Dun & Bradstreet on The Walt Disney Company, not WDW, stating that WDW “engages in direct retail distribution principally through The Disney Stores, and produces books and magazines for the general public in the United States and Europe.” See Dun & Bradstreet Business Information Report, dated January 4, 1999 (attached to the Poteaus’ Brief at Exhibit C). The Poteaus have provided proof that The Disney Store is registered with the Pennsylvania Department of State. See Pennsylvania Department of State Corporation Bureau Record Search, dated January 12, 1999 (attached to the Poteaus’ Brief at Exhibit F). In addition, they contend that WDW is currently engaged in the negotiation and construction of a five story amusement facility called Disney Quest at 8th and Market Streets in Philadelphia. The Poteaus assert that WDW advertises Disney Quest as part and parcel of its corporate business, thereby creating continuous and substantial contacts with Pennsylvania.

Further, the Poteaus assert that WDW contracts with Philadelphia’s major newspapers, television, and radio stations for the specific purpose of making citizens of the Commonwealth aware of their facilities in Florida on an almost daily basis. They contend that WDW advertises in these newspapers that readers should call the Disney World Reservation Center located in Florida. The Poteaus’ submitted a state record reporting a fictitious name filing by the Reservation Center in 1978, but no proof that the reservation center is registered with the Pennsylvania Department of State or associated with WDW. See Pennsylvania Department of State Corporation Bureau Record, dated

January 12, 1999 (attached to the Poteaus' Brief at Exhibit E). They contend that the Reservation Center is owned by WDW. The Poteaus also assert that WDW maintains a toll free telephone number in Pennsylvania for reservations and retains Pennsylvania travel agents for the purpose of obtaining customers. Further, they assert that WDW sends brochures to all American Express Platinum Card holders in the country, including those that reside in Pennsylvania. The Poteaus have not stated where they purchased their WDW tickets.

The Poteaus cite Eastern District decisions where the courts have found jurisdiction over WDW based on WDW's substantial advertisement and presence in the state, and the activities of The Walt Disney Company, as a corporate parent, to WDW, as its wholly owned subsidiary. See Weintraub v. Walt Disney World Co., 825 F.Supp. 717, 719 (E.D. Pa. 1993) (finding jurisdiction over WDW where it regularly promoted its facilities through newspapers and magazines, sent promotional materials to and maintained a national "800" number for the use of travel agents, and conducted business seminars in Pennsylvania, and its parent company, The Walt Disney World Company, maintained contacts in the state ); Gavigan v. Walt Disney World Co., 630 F.Supp. 148, 152 (E.D. Pa. 1986) (finding jurisdiction over WDW where it regularly advertised and promoted its facilities, maintained an 800 telephone number, awarded honorary citizenship to Philadelphia's mayor, and the activities of WDW's parent company in Pennsylvania benefited WDW). The Poteaus contend that in accordance with the above

cases, WDW should be found to have expected to be “haled into court” in the Commonwealth.

#### **IV. WDW’s Arguments**

WDW has provided an affidavit from Carol S. Pacula, a Vice President of WDW who avers that as a corporate officer she has first hand knowledge of pertinent matters relating to WDW. See Declaration of Carol S. Pacula, dated February 22, 1999, at ¶¶ 1, 2 (attached to WDW’s Brief at Exhibit A). Through her declaration, WDW avers that it is not and has never been qualified to do business in Pennsylvania. Id. at ¶ 5.

WDW contends that it is not, and has never been, incorporated, organized, or existing under the laws of the Commonwealth of Pennsylvania, nor registered to do business as a foreign corporation in the Commonwealth of Pennsylvania. Id. at ¶¶ 7, 8. Pacula states in her declaration that WDW is a Florida corporation with its principal place of business in Lake Buena Vista, Florida and that WDW neither has a “place of business” in Pennsylvania nor “regularly and actively conducts business” in Philadelphia. Id. at ¶¶ 3, 10, 11.

Pacula avers that The Disney Store, Inc. is a different and separate corporation from WDW and that WDW does not own, operate, or control The Disney Store or any Disney store in Pennsylvania or anywhere else. Id. at ¶ 16. Further, she avers that WDW has no involvement in the negotiation, the construction or any other

aspect of a Disney Quest facility in Pennsylvania. See Supplemental Declaration of Carol S. Pacula, dated March 23, 1999, at ¶ 7 (attached to WDW's Reply Brief at Exhibit A).

Through Pacula's declaration, WDW states that The Walt Disney Company is a separately incorporated corporate holding company that owns stock in other corporations. Id. at ¶¶ 3,5. WDW avers that WDW is directly owned by another separate corporation, Disney Enterprises, Inc., which is owned by The Walt Disney Company. Id. at ¶ 6.

Through Pacula, WDW avers that it has no appointed agent for service of process in Pennsylvania, has no employees in Pennsylvania, has no telephone listing or bank account in Pennsylvania, and has no assets in Pennsylvania. Id. at ¶ 6. WDW further avers that it does not engage in sales, solicitations, acceptance of reservations, ownership and leasing of real estate, or other similar activities in Pennsylvania, that it does not purchase or place any advertising in any newspaper, on any television station, or on any radio stations in Pennsylvania, and that advertising or promotions for facilities operated by WDW and others are conducted by a different and wholly separate corporate subsidiary of WDW's parent company, not by WDW. Id. at. ¶¶ 13, 14, 15. WDW asserts that it simply does not have continuous, systematic and substantial contacts with Pennsylvania sufficient to sustain general jurisdiction and that the Poteaus' limited allegations concerning WDW's alleged contacts with Pennsylvania are inaccurate.

WDW cites numerous cases in which trial courts in this district have granted motions to dismiss for lack of personal jurisdiction over WDW. WDW contends

that even if the court were to find the Poteaus' assertions to be significant to establish the contacts, the contacts alleged are insufficient to warrant jurisdiction over WDW in this district.

## **V. Analysis**

The Poteaus have not proved that The Disney Store and the proposed Disney Quest are owned and operated by WDW. They submitted a business information report by Dun & Bradstreet which alleges that The Walt Disney Company, a separate parent company, engages in direct retail distribution principally through The Disney Stores. That report does not address WDW and is not from The Walt Disney Company. On the other hand, WDW avers by declaration that it does not have a place of business in Pennsylvania through The Disney Store and that The Disney Store is a different and separate company from WDW, and that WDW has no involvement in the negotiation, construction, or any other aspect of Disney Quest. In addition, plaintiffs' own evidence suggests that The Disney Store and the proposed Disney Quest are owned by The Walt Disney Company. See Philadelphia Inquirer Articles (attached to the Poteaus' Brief at Exhibits K and J).

The Poteaus rely on Eastern District cases which have held that advertising and promotional activities of a parent corporation can be imputed to WDW to support an assertion of personal jurisdiction over it. See Weintraub, 825 F.Supp. 717 (E.D. Pa.

1993); Gavigan, 630 F.Supp. 148 (E.D. Pa. 1986). Other Eastern District courts have held that such a parent/subsidiary relationship is not enough to establish jurisdiction, particularly when the parent/subsidiary is not acting as an agent for the defendant corporation. See Jennings, 1992 U.S. Dist. LEXIS 11001, at \*5-6 (citing Schulman v. Walt Disney Work Co., No. 91-5259 (E.D. Pa. February 25, 1992); Dutoit v. Strategic Minerals Corp., 735 F.Supp 169 (E.D. Pa.), aff'd, 922 F.2d 830 (3d Cir. 1990); Coleman Financial Serv. v. Charter Equip. Leasing Corp., 708 F. Supp. 664 (E.D. Pa. 1989)). The Poteaus have provided no evidence of an agreement between WDW and The Disney Store or WDW and The Walt Disney Company which creates an agency relationship between the companies. Accordingly, their respective corporate activities cannot be imputed to each other to establish jurisdiction.

As regards WDW's alleged advertising, while the Poteaus have submitted some evidence of advertisements for WDW run in a Philadelphia newspaper around the time of the alleged injury, they have failed to prove that WDW placed them. Also, the Poteaus have failed to show that WDW placed advertisements through any other forms of communication such as radio or television. Moreover, the Poteaus have not proven that WDW maintains a toll free number in Pennsylvania, retains travel agents here, or sent personal solicitations to American Express Platinum Card holders in the state. WDW has provided an affidavit to the contrary, stating that they do not purchase or place advertisements in Philadelphia, engage in sales or solicitations, or accept reservations in

Pennsylvania. Further, some of the advertisements submitted by the Poteaus indicate in their text that they are associated with Walt Disney Travel Co., Inc., “an affiliate of The Walt Disney Company.” See Philadelphia Inquirer Article (attached to the Poteaus’ Brief at Exhibit D; American Express Platinum Solicitation (attached to the Poteau’s Brief at Exhibit I).

Even if the Poteaus’ assertions that WDW advertised or promoted its facilities in Pennsylvania were supported, such contacts alone are not sufficient to establish jurisdiction in Pennsylvania. See Schulman, 1992 U.S. Dist. LEXIS 2267, at \*5 (citing Scheidt v. Young, 389 F.2d 58, 60 (3d Cir. 1968) (holding that advertising in the forum media without more is not sufficient to establish jurisdiction)). Following the plaintiff’s logic, WDW could be subject to personal jurisdiction everywhere its advertisements may be found. The test is whether WDW could expect to be haled into court in the forum state for a non-forum accident merely because of its advertising. If the advertisements had any effect, it was not to entice plaintiffs to make a contract with WDW in Pennsylvania, but rather to make a contract with WDW in Florida, either through a travel agent or by buying tickets at the WDW facilities there. Such advertisements would not fairly cause a defendant to expect to be haled into court in Pennsylvania where no harm befell the plaintiffs through contract or personal injury.



**VI. Conclusion**

As WDW lacks continuous and substantial contacts with the Commonwealth of Pennsylvania, the court lacks jurisdiction over WDW. Since a district court lacking jurisdiction can transfer a case to a district in which the case could have been brought originally, in the interest of justice, this matter is to be transferred to the United States District Court for the Middle District of Florida pursuant to 28 U.S.C. § 1406 and 28 U.S.C. § 1631.

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WALT DISNEY WORLD COMPANY : No. 99-CV-843

**ORDER**

AND NOW, this            day of August 1999, upon consideration of defendant's Motion to Dismiss, it is hereby Ordered, that said Motion is GRANTED, in part, and DENIED in part. For want of jurisdiction and in the interest of justice, it is hereby Ordered that the matter is TRANSFERRED to the Middle District of Florida pursuant to 28 U.S.C. § 1406 (a) and 28 U.S.C. § 1631. The Clerk of Court is hereby directed to transfer the entire file to the United States District Court for the Middle District of Florida and to close this docket for statistical purposes.

BY THE COURT:

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James T. Giles,            C.J.