UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JENNIFER MARIE BARRETT and KAREN A. BARRETT, Plaintiffs,	:
-vs-	: Civ. No. 3:02cv1285(PCD)
THE WALT DISNEY COMPANY, *et al*, Defendants.	:

RULINGS ON MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND FORUM NON CONVENIENS AND MOTION TO TRANSFER

Defendants move to dismiss the complaint for lack of personal jurisdiction and for *forum non coveniens*. Defendants move in the alternative to transfer the case to the Middle District of Florida. For the reasons set forth herein, the motion to dismiss is **granted in part** and the motion to transfer is **denied**.

I. BACKGROUND

Defendant The Walt Disney Company ("TWDC") is a Delaware corporation with its principal place of business in Burbank, California. Defendant Walt Disney World Co. ("WDWC") is a Florida corporation identifying its principal place of business as both Florida and California. Walt Disney Parks and Resorts, LLC ("WDPR") is a Florida company with its principal place of business in Florida. Plaintiffs Jennifer Barrett and Karen Barrett are Connecticut citizens.

The following is revealed by the allegations in the complaint and the affidavits of plaintiffs and defendants. In late 1999, plaintiffs were in the initial stages of planning a family vacation to a destination at that time unknown. After viewing commercials placed by WDPR on the local cable television and the Connecticut affiliates of CBS, NBC and ABC, and reading advertisements placed in the

Connecticut Post and the Sunday edition of the New York Times, plaintiffs selected the Walt Disney World Resort as their destination.[1] Plaintiffs also were provided with brochures describing vacations at the Walt Disney World Resort at The Disney Store located in Connecticut. The advertisements collectively invited plaintiffs to call for a free videotape describing an upcoming "Millenium" celebration. Further information was obtained over the Internet through searches of available Worldwide Web pages posted by TWDC or its affiliates.

Plaintiffs allege that they responded to the advertisements and purchased a vacation package. They traveled to Walt Disney World in Orlando, Florida and stayed at WDWC's property, the Grand Floridian Resort and Spa. At the resort, they were provided with a water taxi service facilitating their travel between the various WDWC properties. On June 23, 2000, plaintiffs boarded a water taxi and traveled to Disney's Contemporary Resort. While debarking the water taxi, plaintiff Jennifer Barrett slipped on the wet pier and fell, thereby sustaining injuries. Plaintiffs thereafter filed the present complaint, alleging negligence by virtue of defendants' permitting a dangerous condition on the pier to go unremedied, failing to warn of the condition and failing to inspect the property for dangerous conditions.

In support of their motions, defendants allege that none of the individual defendants maintain a place of business in Connecticut. None either incur or pay Connecticut taxes. None have assets in this state. Of the three, only WDPR is registered to do business in Connecticut. Defendants further allege that the advertising presented by WDPR is either regional or national in scope and not limited to Connecticut. The Disney Store is alleged to be a separate corporate entity and a subsidiary of Disney

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[1] Defendants allege that the newspaper advertisements likely were placed by travel agencies and were not placed by them.

Enterprises, Inc. Disney Enterprises, Inc. ("DE") is a subsidiary of TWDC. DE is the parent company to WDPR.

II. MOTION TO DISMISS

Defendant moves to dismiss the complaint for lack of personal jurisdiction over the separate corporate defendants and for *forum nonconveniens*.

A. Standard

The burden is plaintiff's to establish personal jurisdiction over defendant. *Distefano v. Carozzi N. Am., Inc.*, 286 F.3d 81, 84 (2d Cir. 2001). As such, when the determination is based exclusively on pleadings and affidavits without the benefit of an evidentiary hearing, plaintiff must establish a prima facie showing of personal jurisdiction. *See id.*; *Whitaker v. Am. Telecasting, Inc.*, 261 F.3d 196, 208 (2d Cir. 2001). The allegations set forth in plaintiff's pleadings and affidavits must be construed favorably to plaintiff and all doubts resolved in plaintiff's favor. *Whitaker*, 261 F.3d at 208.

B. Personal Jurisdiction

Defendants argue that plaintiffs' asserted basis for this Court's jurisdiction over them constitutes an inappropriate grouping of separate corporate entities into a single Disney defendant, thereby aggregating the unrelated acts of the separate corporations in an effort to establish jurisdiction. Plaintiffs respond that it has established its prima facie case for jurisdiction, and defendant is properly subject to this Court's jurisdiction.

Resolution of questions of personal jurisdiction involves a two-step process. *Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez*, 305 F.3d 120, 124 (2d Cir. 2002). The initial step entails a review of the relevant state long-arm statute of the forum state to determine whether the statute

affords a basis for jurisdiction over the individual defendant. *See id.* If the long-arm statute affords a basis for jurisdiction, the question becomes whether such exercise of jurisdiction is consistent with the Due Process Clause of the Fourteenth Amendment. *See id.*

The only portion of Connecticut's law arm statute applicable to foreign corporation apparently invoked by plaintiffs is that pertaining to the solicitation of business in Connecticut. That section provides in relevant part that

> Every foreign corporation shall be subject to suit in this state, by a resident of this state or by a person having a usual place of business in this state, whether or not such foreign corporation is transacting or has transacted business in this state and whether or not it is engaged exclusively in interstate or foreign commerce, on any cause of action arising . . . out of any business solicited in this state by mail or otherwise if the corporation has repeatedly so solicited business, whether the orders or offers relating thereto were accepted within or without the state . . . .

CONN. GEN. STAT. § 33-929(f)(2).

Defendants argue that a national advertising campaign not focused on Connecticut does not meet the definition of solicitation for purposes of the long-arm statute, citing *Lombard Bros. v. Gen. Asset Mgmt. Co.*, 190 Conn. 245, 460 A.2d 481 (1983). *Lombard* does not address national advertising *per se*, but rather the frequency of advertising required to satisfy the requirement of "repeatedly . . . solicited" for purposes of the long-arm statute. Such is apparent from the court's conclusion that "placement, sporadically, of advertisements in the New York Times and the Wall Street Journal . . . cannot constitute repeated solicitation of business." *Id.* at 257; *but see Hagar v. Zaidman*, 797 F. Supp. 132, 136 (finding solicitation in placing circulars in newspapers having some

circulation in Connecticut). Plaintiffs allege more than the sporadic placement of advertisements, and their affidavits to that effect will be credited notwithstanding defendants' allegations to the contrary.[2]

A closer question is which defendants, if any, solicited business in Connecticut. The three Disney defendants involved herein are TWDC, the parent company, and child companies on the same level of the corporate hierarchy, WDWC and WDPR. WDPR arranged for the commercials, the beneficiary of which is WDWC, which apparently does no advertising of its own. TWDC apparently is a holding company for Disney, leaving individual lower-level companies to their devices with only a financial interest in their operations. The lower level subsidiary companies nonetheless function, segmentally, in the overall TWDC scheme.

The manner in which responsibilities appear to have been delegated to subordinate Disney companies complicates the question of whether this Court has jurisdiction over the defendants. The corporate structure does not, however, preclude such a finding. Solicitation need not entail the sending of agents or emissaries into Connecticut bearing invitations to residents thereof to conduct business with defendant. Rather, Connecticut has found that a defendant's setting up organizational networks designed to prompt a significant number of Connecticut residents to seek out defendant's services constitutes solicitation. *See Frazer v. McGowan*, 198 Conn. 243, 251-52, 502 A.2d 905 (1986). WDWC has benefitted from such a network, and WDPR has been the vehicle conveying the

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[2] Defendants do not dispute the existence of the television commercials, only plaintiffs' characterization of the commercials as a Connecticut campaign. The distinction is one of semantics, and defendants do not appear to argue that the target audience is unknown. *See Whelen Eng'g Co., Inc. v. Tomar Elecs.*, 672 F. Supp. 659, 663 (D. Conn. 1987) ("Although [defendant] did not specifically target a sales campaign to Connecticut, it engaged the services of a national marketing and distribution company, with the knowledge and belief that one of the territories it covered was Connecticut.") As the commercials themselves satisfy the definition of solicitation, this Court need not reach the question of whether defendants' Worldwide Web pages constitute solicitation for purposes of the long-arm statute. That advertising targets Connecticut, albeit as part of a regional or national program, suffices to constitute a commercial solicitation.

solicitation. Stated differently, solicitation requires only that "at the time the defendant engaged in solicitation in Connecticut, it was reasonably foreseeable that, as a result of that solicitation, the defendant could be sued in Connecticut by a solicited person on a cause of action similar to that now being brought by the plaintiff." *Thomason v. Chemical Bank*, 234 Conn. 281, 296, 661 A.2d 595 (1995). It is likely that such a scenario was anticipated as the corporate structure appears tailored to reduce susceptibility to suit by design. As such, WDWC and WDPR have solicited Connecticut residents and thus are within the reach of Connecticut's long-arm statute, WDPR as the active source of the advertising and WDWC as the beneficiary of the campaign conducted by WDPR analogous to an agency function.

The same is not true of TWDC, the parent corporation to WDWC and WDPR. Other than the fact that it held an annual shareholders meeting in Connecticut in 2002 and its general concerns as to corporate profitability reflected in its annual report, it appears to have insulated itself from the solicitation involved herein. Plaintiffs argue that brochures advertising vacations to WDWC's resort in The Disney Store located in Connecticut provide a basis for jurisdiction. The Disney Store is yet another subordinate corporation on the same hierarchical level as WDWC and WDPR. The involvement of The Disney Store does no more in proving a prima facie case of jurisdiction over TWDC, though its involvement is akin to that of WDPR as discussed above. Deference to the legal fiction of separate corporate existence precludes such a result. *See Keeton v. Hustler Magazine,* 465 U.S. 770, 781 n.13, 104 S. Ct. 1473, 79 L. Ed. 2d 790 (1984) (noting that parent corporation will not be called to defend against a lawsuit by virtue of its status as parent corporation). As such, the motion

to dismiss is granted as to TWDC as plaintiffs have not established a prima facie case for jurisdiction over TWDC.

Having established that the long-arm statute supports personal jurisdiction over WDPR and WDWC, the question then becomes whether the exercise of such jurisdiction comports with the Due Process Clause of the United States Constitution. *Agency Rent A Car Sys., Inc. v. Grand Rent A Car Corp.*, 98 F.3d 25, 32 (2d Cir. 1996); *Bensmiller v. E.I. Dupont De Nemours & Co.*, 47 F.3d 79, 81 (2d Cir. 1995). The resolution of the question depends on whether defendant has sufficient "minimum contacts" with Connecticut such that the exercise of jurisdiction does not offend "traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95 (1945). "[I]t is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 2 L. Ed. 2d 1283 (1958). "[T]he defendant's conduct and connection with the forum State [must be] such that [it] should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62 L. Ed. 2d 490 (1980).[3]

There is no dearth of cases addressing the minimum contacts analysis applicable to the remaining defendants. Review of cases finding personal jurisdiction lacking, *see, e.g., Intermor v. Walt Disney Co.*, No. 01CV7293(SJ), 2003 WL 1206124 (E.D.N.Y. Mar. 6, 2003); *Litman v.*

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[3] Personal jurisdiction may arise by specific jurisdiction, *i.e.* purposeful availment of benefits of forum state, or general jurisdiction, *i.e.* continuous and systematic contacts with forum state not necessarily related to the claim. *Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez*, 305 F.3d 120, 127 (2d Cir. 2002). Having found that defendants acts suffice to establish specific jurisdiction, this Court does not reach the question of whether defendants have the general presence in Connecticut necessary for general jurisdiction..

Walt Disney World Co., No. 01-CV-3891, 2002 WL 468707 (E.D. Pa. Mar. 26, 2002), and those finding jurisdiction, *see Sigros v. Walt Disney World Co.*, 129 F. Supp. 2d 56 (D. Mass. 2001); *Mallon v. Walt Disney World Co.*, 42 F. Supp. 2d 143 (D. Conn. 1998), the latter cases are more persuasive. Jurisdiction over WDWC and WDPR does not violate Due Process principles.

As did the court in *Mallon*, it is found that plaintiffs have established a prima facie case of jurisdiction over WDWC and WDPR as the former reached out to residents in Connecticut through the latter by way of its national advertising campaign directed to bring such residents to purchase vacation packages to its resort in Florida. *See Mallon*, 42 F. Supp. 2d at 144; *O'Brien v. Okemo Mountain, Inc.*, 17 F. Supp. 2d 98, 101 (D. Conn. 1998). Plaintiffs argue that their exposure to commercials endorsing defendants' resort was not infrequent, and it can scarcely be said that the likely outcome of such a national campaign was for purposes other than encouraging residents of Connecticut, a state included in the advertising plan, to purchase vacation packages involving patronage of WDWC services and facilities.

Having found minimum contacts necessary to sustain jurisdiction, the issue becomes whether defendant can establish that the exercise of such jurisdiction is unreasonable. Five factors are considered in determining whether the exercise of jurisdiction is reasonable: "(1) the burden that the exercise of jurisdiction will impose on the defendant; (2) the interests of the forum state in adjudicating the case; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of the controversy; and (5) the shared interest of the states in furthering substantive social policies." *Metropolitan Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 568 (2d Cir. 1996). Defendant must, however, make a compelling showing that

the exercise of jurisdiction is unreasonable under the circumstances. *Id.* Defendants argument does not substantially address this potion of the analysis, focusing instead on minimum contacts. As such, no compelling basis has been adduced on which to decline jurisdiction as unreasonable. The motion to dismiss for lack of personal jurisdiction as to WDWC and WDPR is denied.

C. *Forum Non-Conveniens*

Defendant also moves to dismiss on grounds of *forum non conveniens*. Such dismissals are rare. *See Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 722, 116 S. Ct. 1712, 1718, 135 L. Ed. 2d 1 (1996). The motion is more appropriately considered as a motion to transfer to another federal district pursuant to 28 U.S.C. § 1404 rather than as a motion to dismiss. *See* 15C CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 3828 (2d ed. 1995) (" It is only when the more convenient forum is in a foreign country--or perhaps, under rare circumstances, in a state court or a territorial court--that a suit brought in a proper federal venue can be dismissed on grounds of *forum non conveniens*."). The motion to dismiss on grounds of *forum non conveniens* is accordingly denied.

III. MOTION TO TRANSFER

In the alternative, defendants move to transfer the case to Florida pursuant to 28 U.S.C. § 1404(a), arguing that an independent entity in control of the water taxi at the time of the accident, SD Watersports, not currently a party and not subject to this Court's jurisdiction, requires such a result. SD Watersports allegedly entered contracted with WDWC to operate the water taxi service and was performing such service on the day plaintiff was injured. Defendants further argue that the accident

occurred in Florida and Florida law would presumably apply. Plaintiffs argue that their choice of forum should prevail.

Several factors are relevant in ruling on a motion to transfer. Such factors include the convenience of the parties and witnesses, the relative ease of access to sources of proof, the cost of obtaining the attendance of witnesses and other practical problems that make trial of a case more expeditious and inexpensive, and the interests of justice. *See SEC v. Elecs. Warehouse, Inc.*, 689 F.Supp. 53, 73 (D. Conn. 1988). Unless compelling circumstances warrant otherwise, plaintiff's choice of forum should control. *See Filmline (Cross-Country) Prods. v. United Artists Corp.*, 865 F.2d 513, 525 (2d Cir. 1989); *Iragorri v. United Tech. Corp.*, 274 F.3d 65, 70 (2d Cir. 2001).

Other than the location in which the tort allegedly occurred, and witnesses relevant to the dock and its condition, there is little in the way of access to evidence that suggests that the case should be brought in Florida. Florida witnesses' testimony may be brought to Connecticut by deposition. The existence of a potential third party defendant or witness not subject to this Court's jurisdiction is certainly a factor to consider, but is not necessarily dispositive. *See Dealtime.com, Ltd. v. McNulty*, 123 F. Supp. 2d 750, 757 (S.D.N.Y. 2000) (refusing transfer notwithstanding witness unavailability because of the availability of videotaped testimony of witnesses unwilling to travel); *In re Rick*, 145 F. Supp. 2d 1026, 1038 (N.D. Iowa 2001) (same); *Quezada v. Darden Restaurants, Inc.*, 139 F. Supp. 2d 666, 668 (W.D. Pa. 2001) (refusing transfer notwithstanding presence of potential joint tortfeasor not subject to court's jurisdiction). Other than the problem presented by SD Watersports and its unavailability by virtue of being outside this Court's jurisdiction, it is not apparent that defendants have established that their choice of forum is clearly the more appropriate choice. *See Ford Motor*

Co. v. Ryan, 182 F.2d 329, 330 (2d Cir. 1950). That problem can be solved by tendering the defense of this case to the third party defendant and/or bringing suit in Florida akin to a third party complaint. On balance, the motion to transfer is denied.

IV. CONCLUSION

Defendants' motion to dismiss for lack of personal jurisdiction (Doc. No. 10-1) is **granted in part** as to defendant The Walt Disney Company. The motions to dismiss for *forum non conveniens* or to transfer (Doc. No. 10-1) is **denied**.

SO ORDERED.

Dated at New Haven, Connecticut, May ___, 2003.

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Peter C. Dorsey
United States District Judge