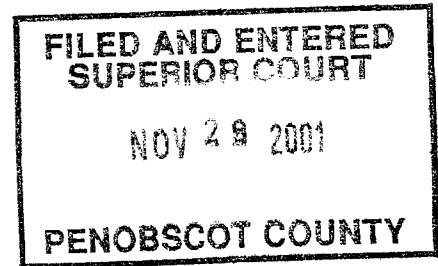


STATE OF MAINE
PENOBSCOT, SS.

SUPERIOR COURT
Docket No. CV-01-168
AMM - PENOBSCOT

EREMITA & VALLEY, LLP,)
Plaintiff,)
)
)
v.)
)
)
TRANS WORLD)
ENTERTAINMENT)
CORPORATION,)
Defendant.)

ORDER



The parties represent that the Motion for Attachment is not ripe for adjudication. As such, it will be deferred until request for hearing by a party.

The Motion to Amend is granted: Record Town, Inc., is added as a defendant and the Amended Complaint is approved.

The remaining matter of adjudication is the Defendant's Motion to Dismiss. Defendant invites the court to consider facts outside the proceedings on its Rule 12 (b) motion as done in Beaucage v. City of Rockland, 2000 ME 184; 760 A.2d 1054 (Me. 2000). Doing so effectively transforms the motion into a motion for summary judgment. The court has the exclusive discretion to consider matters outside the pleadings.

The materials outside the pleadings present a compelling argument for the dismissal of Trans world Entertainment Corporation from this case. Although discovery may reveal additional means by which to reach Trans World Entertainment Corporation, Plaintiff presently has only the letter of Bruce Eisenberg of June 1, 1999, (Exhibit C to Plaintiff's Response to Motion to Dismiss) upon which to found liability.¹ Given the unequivocal nature of

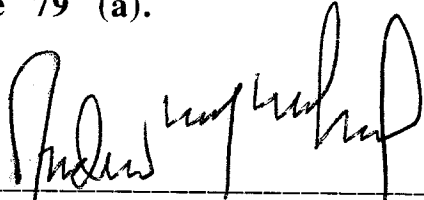
¹ - The letter of October 15, 1997, from mark Briggs (Exhibit B to Plaintiff's Response to Motion to Dismiss) is of no legal import significance in Plaintiff's efforts to reach Trans World Entertainment Corporation.

the assignment from Strawberries, Inc., to Record Town, Inc. (Exhibit A to Motion for Attachment), the Defendant may well prevail upon a future motion for summary judgment.² However, the court declines to consider matters outside the pleadings at this juncture and must, therefor, deny the motion to dismiss.

So Ordered.

The Clerk may incorporate this Order into the docket by reference pursuant to M.R.Civ.P Rule 79 (a).

Dated: November 29, 2001



JUSTICE, SUPERIOR COURT

² - As noted above, the court declines to treat the present pleadings as a motion for summary judgment. Such a motion is better presented after full discovery and upon a complete record.

Date Filed 8/31/01 Penobscot County Docket No. CV-2001-168

Action Civil - Contract

ASSIGNED TO JUSTICE ANDREW M. MEAD

EREMITA & VALLEY, LLP

vs.

RECORD TOWN, INC. (amended 11/29/01)
TRANS WORLD ENTERTAINMENT CORP.

Plaintiff's Attorney

GROSS MINSKY MOGUL & SINGAL, PA
P O Box 917
Bangor ME 04402-0917
BY: Edward W. Gould, Esq.

Defendant's Attorney

EATON, PEABODY BRADFORD &
VEAGUE, P.A.
FLEET CENTER -- 80 EXCHANGE STREET
P O BOX 1210
BANGOR ME 04402-1210
By: William B. Devoe, Esq.

Date of
Entry