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WDW/SIPKEMA

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

ROBERT W. SIPKEMA, II and
KATHLYN K. SIPKEMA, husband & wife,

CASE NUMBER CI96-114

Plaintiffs,

vs.

WALT DISNEY WORLD COMPANY
d/b/a REEDY CREEK IMPROVEMENT
DISTRICT, a foreign corporation,

Defendant.



ORDER ON PUBLIC RECORDS REQUEST
PURSUANT TO CHAPTER 119 FLORIDA STATUTES

The plaintiffs filed a wrongful death suit against the defendant, Walt Disney World Company ("WDW"). During the course of investigating that case, plaintiffs' counsel made a public record request pursuant to Florida Statutes 119, "Public Records," requesting documents of "WDW." The requested documents included the "Standard Operations Procedure Manual for Security Operations" in effect as of August 31, 1994; all moving and nonmoving traffic citations issued by agents of "WDW" for January 1, 1990 through December 1, 1995; all traffic accident reports issued, authored and/or prepared by agents of "WDW" for January 1, 1990 through December 1, 1995; and all incident reports for crimes occurring within the Reedy Creek Improvement District issued by agents of "WDW" for January 1, 1990 through December 1, 1995. Plaintiffs' counsel argued that "WDW" was acting on behalf of a public agency, to-wit: Reedy Creek Improvement District, and therefore is subject to the Public Records Act.

Reedy Creek Improvement District responded in a letter dated December 26, 1995, that a review of their files indicated that none of the items which were requested were in their possession. At a hearing on December 11, 1995, "WDW" offered to hand over the security manual if the plaintiffs would stipulate to and the Court would enter a protective order to limit the use of the security manual to purposes germane to the preparation for and presentation of the a wrongful death lawsuit. Plaintiffs' counsel contended that since the documents requested were public records there should be no strings attached.

The issue presented in this case is whether certain records maintained by a private entity, "WDW," are subject to disclosure as "public records" within the contemplation of Florida Statute 119, Public Records Act.

Chapter 119 of the Florida Statutes states:

"Public records" means all documents, papers, letters, maps, book, tapes, photographs, films, sound recording, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

"Agency" means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethic, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

The term "agency" as used in Chapter 119, is defined broadly to include private entities acting on behalf of any public agency. This broad definition serves to ensure that a public agency cannot avoid disclosure under Chapter 119, by contractually delegating to a private entity that which otherwise would be an agency responsibility.

Chapter 119, does not define the type of conduct which is essential for a private business entity to become an "agency" acting "on behalf of" a public agency.

There are two basic means that an entity can be deemed "an agency" under Chapter 119, Public Records Act. One, an entity can be a governmental unit created or established by law, and therefore be an agency for purposes of all of the records of that governmental unit. Lastly, a private entity can be deemed an agency to the extent that it is "acting on behalf of any public agency," but only to the extent of records maintained by the private entity which made or received by the private entity in connection with the services the private entity is providing on behalf of the public agency.

The evidence is quite clear that "WDW" is not a government unit created or established by law, but is a private corporation for profit. Now we must examine whether "WDW" can be deemed to be an agency because it is "acting on behalf of any public agency." The narrower issue presented in this case is whether "WDW" is subject to public record disclosure, as result of providing security services to "RCID" on "RCID" public property and providing security services on it's own private property, the massive Walt Disney World complex.

Reedy Creek Improvement District ("RCID") contracted with "WDW" to provide "RCID" with routine premises security in the nature of what is generally termed "night watchman" services. Tom Moses, the District Administrator for the Reedy Creek Improvement District, testified that Disney was contracted to basically check for locked doors, turn lights on and off, and to check "RCID" parking lots.

Mr. Moses and Mr. Perry Doran, Director of Security for "WDW" both testified that "WDW" security was not delegated any responsibility to prepare and maintain any of the records sought by the plaintiffs in this case. The contract between "RCID" and "WDW" provided in part the following:

"WHEREAS the District does not presently have the staff required for the performance of certain financial, administrative and other related services which must be performed on behalf of the District; and

WHEREAS the District's Board of Supervisors has determined that it would be more economical and efficient, and therefore in the best interests of the District, to employ an outside agency to perform such services on behalf of the District rather than to increase and maintain a staff for such purposes; and

WHEREAS Worldco is qualified, staffed, and equipped to perform such service for the District;

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreement hereinafter contained, Worldco and District hereby agree as follows:

(g) performing such others services as the District may, from time to time, deem necessary to meet its needs for security, financial, administrative, legal and other related services with Worldco agrees to perform."

In making the decision whether "WDW" is private entity "acting on behalf of" a public agency the Court must use a "totality of factors" analysis as mentioned in the landmark case of News & Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc., 596 So.2d 1029, (Fla. 1992). The Florida Supreme Court held that for the purposes of Florida's Public Records Act, a private corporation does not act "on behalf of" public agency merely by entering into a contact to provide professional services to agency.

Justice Kogan in his opinion explains that due to the unique circumstances present in each case, a “totality of factors” analysis is the appropriate test to resolve whether the facts surrounding a contract to provide services between a public agency and a private entity results in a private entity being deemed to have acted “on behalf of” a public agency.

Under the “totality of factors” analysis, the Supreme Court said the factors that should be considered in making this determination, but not limited to are:

1. The level of public funding;
2. Commingling of funds;
3. Whether the activity was conducted on publicly owned property;
4. Whether services contracted for are an integral part of the public agency’s chosen decision-making process;
5. Whether the private entity is performing a governmental function which the public agency otherwise would perform;
6. The extent of the public agency’s involvement with, regulation of, or control over the private entity;
7. Whether the private entity was created by the public;
8. Whether the public agency has a substantial financial interest in the private entity, and;
9. For who’s benefit the private entity is functioning.

FUNDING

The first factor to be considered is the level of public funding. The question to be answered is whether the public agency provided substantial funds, capital, or credit to the private entity?

While "WDW" received public funds from "RCID", the funds were given in consideration for professional services rendered. The public funds received by "WDW" were no different than those received from any other customer. (See Sarasota Herald-Tribune v. Community Health Corporation, Inc., 582 So.2d 730 (2 DCA, 1991) merely providing money to private entity in consideration for goods or services is not an important factor in analysis). While the plaintiffs presented some testimony that "RCID" provide some standard services to "WDW" such as utilities, sewers, and fire protection there is no evidence of public funding by "RCID" of "WDW". Nor has there been any evidence that "RCID" provided any credit to "WDW". This factor (level of public funding) is not present.

COMMINGLING OF FUNDS

The second factor to be considered is commingling of funds. There was no evidence that was presented that suggest the presence of this factor. This factor (commingling of funds) is not present.

ACTIVITY WAS ON PUBLICLY OWNED PROPERTY

The testimony indicated from time to time, "WDW" security engaged in private security activities on public roads within "RCID" which are bounded on both sides by "WDW" property. The testimony clearly established that this activity was done by "WDW" for its own benefit in order to promote the safety and security of guests, employees, participants, and others traveling to and from the "WDW" Resort. Mr. Moses and Mr. Doran testified that the "WDW" security activities on public roads of "RCID" were not conducted by "WDW" on behalf of or pursuant to contract with "RCID".

Sheriff Kevin Beary and Lt. Floyd Baker of the Florida Highway Patrol testified law enforcement on those public roads was exclusively within the jurisdiction of and handled by the Orange County Sheriff's Office and the Florida Highway Patrol.

It is the contention of the plaintiffs that "WDW" by conducting the type of activities relative to security is subject to the Public Records Law. This places "WDW" in a "dam if do, dam if you don't situation." The state of the law places certain duties upon such entities as "WDW".

The Supreme Court of Florida in the case of Orlando Executive Park, Inc. v. Robbins, 433 So.2d 493 (1983) said that:

"an innkeeper owes the duty of reasonable care for the safety of his guests and it is peculiarly a jury function to determine what precautions are reasonably required in the exercise of a particular duty of due care."

The Fourth District Court of Appeal of Florida in the case of Gunlock v. Gill Hotels Co., Inc. 622 So.2d 163 said:

"Although a landowner is most commonly liable for injuries that occur on its property, a landowner may be liable for a dangerous condition that results in injury off its premises. Generally, where a landowner creates a foreseeable zone of risk, a landowner has a duty either to lessen the risk or take sufficient precautions to protect invitees from the harm the risk poses. Thus, a landowner may be required to protect invitees on nearby property if a landowner's foreseeable zone of risk extends beyond the boundaries of its property."

Justice Kogan, in Union Park Memorial Chapel, et al., v. Hutt, 1996 WL 122172 (Fla. 1996) said:

"We hold that a funeral director who voluntarily undertakes to organize and lead a funeral procession owes a duty of reasonable care to procession participants; In joining a funeral procession that has been organized by the funeral director, procession participants are likely to rely to some degree on the director for their safety in transit;"

“ Thus, depending on the circumstances, the director’s failure to exercise reasonable care in planning and leading a procession foreseeably may increase the risk of harm to procession members.”

“WDW” clearly was engaged in this activity for its own benefit and in order to promote the safety and security of guests, employees, participants and others traveling to and from “WDW” properties. Under the law “WDW” owed a duty to provide the type of security services that they provided or face the consequences of not providing security.

DECISION-MAKING PROCESS

The fourth factor to be considered is whether services contracted for are an integral part of the public agency’s chosen decision-making process.

The services contracted for were not an integral part of the “RCID” decision making process. “WDW” was merely providing professional services. There is no evidence that show a delegation of or participation in any aspect of “RCID” decision making process. This factor is not present.

GOVERNMENTAL FUNCTION

The fifth factor to be considered is whether the private entity is performing a governmental function or a function which the public agency otherwise would perform.

The evidence does not support the fact that “WDW” was performing a governmental function by providing routine premises security to “RCID” and by engaging in security activities on it’s property. The evidence clearly showed that the law enforcement functions were being performed by the Orange County Sheriff’s Office and the Florida Highway Patrol. This factor is not present.

REGULATION OR CONTROL OVER THE PRIVATE ENTITY

The sixth factor to be considered is the extent of the public agency's involvement with, regulation of, or control over the private entity.

The evidence shows that "RCID" does not regulate or control the professional activity or judgment of "WDW" in the execution of its duties pursuant the contractual agreement between the two parties. This factor is not present.

CREATION

The seventh factor to be considered is whether the private entity was created by the public entity. Based upon the evidence present, this factor is not present.

FINANCIAL INTEREST

The eighth factor to be considered is whether the public agency has a substantial financial interest in the private entity. There is absolutely not evidence that "RCID" has any financial interest in "WDW". This factor is not present.

BENEFIT

The ninth factor to be considered is for who's benefit the private entity is functioning. Based upon the evidence it can not be said that "WDW" is functioning for the benefit of "RCID". While "WDW" receives a financial benefit from the contract with "RCID", it can not be said that "WDW" motivation for rendering professional service was to provide a public service. This factor is not present.

CONCLUSIONS

The plaintiffs asks that the Court also take the following factors in consider:

1. Whether the private entity has dedicated its lands to the public's use;
2. Whether the private entity controls the public agency;
3. Whether the private entity keeps control over the public agency by de-annexing residential development.

In News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc., 596 So.2d 1029 (Fla. 1992) the Court noted that the purpose of the inclusion of private entities acting "on behalf of" agencies in the definition of "agency" was to "insure that a public agency cannot avoid disclosure under the Act by contractually delegating to a private entity that which would be an agency responsibility." It was never the intent of the Public Records Act to make a private entity subject to this law, if it was not acting on behalf the agency. The factors advanced by the plaintiffs have nothing do with agency control over the private entity. Thus, the Court will not taking those factors in consideration.

It is this Court's conclusion after reviewing the relevant factors in this case, Walt Disney World was not acting on behalf of Reedy Creek Improvement District for the purposes of the Chapter 119, Florida Statutes.

THEREFORE IT IS, ORDERED AND ADJUDGED that the Plaintiffs' Public Records Request pursuant to Chapter 119, Florida Statute is **HEREBY DENIED**.

DONE AND ORDERED Chambers, at Orlando, Orange County, Florida this 29th May, 1996.

Belvin Perry, Jr.
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing has been furnished by fax and U.S. Mail to: Mr. Eric H. Faddis, Esquire, Faddis, Oldham & Smith, P.A., 135 N. Magnolia Avenue, Orlando FL 32801-2328, (Fax 407-843-0420) Attorneys for the Plaintiffs and Mr. David L. Evans, Esquire, Mateer & Harbert, P.A., 225 East Robinson Street, Suite 600, Orlando, FL 32801 (Fax 407-423-2016), this 29 day of May, 1996.

/s/ Jill Gay

Judicial Assistant