

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

ENTERTAINMENT TECHNOLOGY CORPORATION,	:	
	:	
Plaintiff,	:	Civil Action No. _____
	:	
v.	:	JURY TRIAL DEMANDED
	:	
WALT DISNEY IMAGINEERING	:	
and	:	
WALT DISNEY IMAGINEERING RESEARCH & DEVELOPMENT, INC.	:	
and	:	
THE WALT DISNEY COMPANY	:	
and	:	
WALT DISNEY WORLD CO.,	:	
	:	
Defendants.	:	

COMPLAINT

Plaintiff, Entertainment Technology Corporation ("ETC"), in support of its complaint, hereby avers as follows:

1. ETC seeks damages in an amount exceeding \$15 million for defendants' wrongful refusal to pay ETC the amounts owed to it for designing and building the new "Mission: Space" ride at Walt Disney World's Epcot theme park (the "Ride") and for other injury caused by defendants to ETC. The Ride, a space flight simulator, is a multiple-arm centrifuge which simulates the g-force load of space launch and reentry.

2. ETC also seeks specific performance of the defendants' obligation to include ETC in the safety testing of the Ride.

3. Further, ETC sues to obtain, among other relief, a declaratory judgment regarding

its right to design, build, and be paid for future rides for the defendants.

THE PARTIES

4. Plaintiff ETC is a Pennsylvania corporation with its principal place of business at 125 James Way, Southampton, Pennsylvania, 18966.

5. Upon information and belief, defendant Walt Disney Imagineering (“WDI”) is a California corporation with its principal place of business at 1365 Avenue of the Stars, Lake Buena Vista, Florida, 32830.

6. WDI is the name of the party that contracted and has done business with ETC for the design and construction of the Ride. If WDI is not a corporate entity, then it is, upon information and belief, either (a) a trade name for defendant Walt Disney Imagineering Research & Development, Inc.; (b) an operating division of defendant The Walt Disney Company; or (c) a trade name for defendant Walt Disney World Co.

7. Upon information and belief, defendant Walt Disney Imagineering Research & Development, Inc. is a Delaware corporation with its principal place of business at 500 South Buena Vista Street, Burbank, California, 91521. Upon information and belief, WDI may be a trade name for defendant Walt Disney Imagineering Research & Development, Inc.

8. Upon information and belief, defendant The Walt Disney Company is a Delaware corporation with its principal place of business at 500 South Buena Vista Street, Burbank, California 91521. Upon information and belief, WDI may exist as an operating division of The Walt Disney Company.

9. Upon information and belief, defendant Walt Disney World Co., trading as Walt Disney Imagineering, is a Florida corporation with its principal place of business at 1375 Buena

Vista Dr., 4T, Lake Buena Vista, Florida 32830. Upon information and belief, WDI may be a trade name for defendant Walt Disney World Co.

10. WDI, Walt Disney Imagineering Research & Development, Inc., The Walt Disney Company and/or Walt Disney World Co. may be referred to herein collectively as “Disney.”

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332 because ETC, on the one hand, and all of the defendants, on the other hand, are citizens of different states and because the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

12. Under 28 U.S.C. §1391, venue is proper in this judicial district because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district. By way of example only, the parties’ agreements were negotiated and executed, at least in part, in this district. The Ride was designed, tested and demonstrated in this district. Materials were procured and subcontracts were negotiated and executed in this district.

13. This Court has personal jurisdiction over defendants because, among other reasons, (a) the causes of action arise from defendants transacting business in Pennsylvania; and (b) defendants carry on a continuous and systematic part of their general business within Pennsylvania.

BACKGROUND

The Parties Enter Into the Contract

14. In January 2000, Disney and ETC entered into a contract for ETC to design and

build the Ride. The contract was modified by no fewer than twenty-three change orders (the most significant of which was Change Order 22, discussed below). The contract, as modified by the change orders, is referred to herein as the “Contract.”

15. The Contract originally was a “Firm Fixed Price” contract in the amount of \$25,741,772.00. The original contract amount encompassed, among other things, all direct costs that would be incurred in the design and construction of the Ride, all overhead and administrative expenses incurred in the project and all profit to ETC. In exchange for the contract price, ETC was to handle the design, procurement, purchasing, production and assembly for the Ride (defined in the Contract as ETC’s “Work.”).

16. The parties agreed that the fixed contract price would be adjusted to reflect any changes in the scope of ETC’s Work per any change orders.

The Ride Project Moves Forward

17. In 2000 and into the fall of 2001, ETC worked to design and construct the Ride in accordance with the Contract.

18. After executing a series of prior change orders, on or about January 28, 2001, the parties executed Change Order 21, confirming that the total Contract price had increased to \$29,825,081.00 (a total increase of \$4,083,309.00 from the original Contract price of \$25,741,772.00).

Execution of Change Order 22

19. In the fall of 2001, several Contract disputes between ETC and Disney occurred.

20. In November 2001, in an effort to resolve the disputes, the parties executed Change Order 22 to the Contract.

21. Change Order 22 modified the Contract in several substantive ways.

22. Change Order 22 converted the Contract from a "Firm Fixed Price" contract to a "Time and Materials" contract. Under Change Order 22, the contract price consists of three components: (a) total direct costs (TDC) for purchases to design and construct the Ride, (b) ETC's general and administrative expenses (a 36% mark-up on the total direct costs), and (c) ETC's profit allocation.

23. Under Change Order 22, the parties agreed that the minimum of the not to exceed (NTE) contract amount would be \$35.1 million.

24. Change Order 22 acknowledged that the minimum NTE contract amount would increase if the total direct costs required to complete the project increased.

25. Change Order 22 correspondingly also acknowledged that, as the total direct costs increased, ETC would be entitled to increased mark-ups on account of ETC's general and administrative expenses as well as its profit and that the NTE contract amount would be adjusted upward to facilitate such mark-ups and profit allocation.

26. Change Order 22 does not require ETC to incur any direct costs without receiving a mark-up on those costs for general and administrative expenses and for profit.

27. In fact, Change Order 22 expressly recognized that "both parties agree that the NTE Total Contract Amount [which included total direct costs, general and administrative costs and profit] is based on estimates and **the final Contract Amount will be adjusted based on actual costs** and on that basis may be more or less than the above stated Contract Amount [of \$35.1 million]." (emphasis added).

28. Additionally, in Change Order 22, the parties agreed that Disney would not

change the scope of ETC's Work under the Contract, thereby reducing the amounts that would be payable to ETC as profit and as the 36% general and administrative mark-up on the direct costs.

29. Specifically, Change Order 22 expressly states as follows:

(a) "Buyer [Disney] further agrees that **the scope of work will not be substantively changed.**" (emphasis added).

(b) "Vendor [ETC] to continue procurement of remaining goods and services **required to complete** the ride system." (emphasis added).

(c) "Vendor [ETC] will . . . provide information necessary to prepare and update estimated final costs for the ride system. This includes all existing and future Purchase Orders for materials, equipment and services."

(d) Buyer [Disney] could not effect a "net reduction in the total amount of Vendor's Work hereunder, except where required to remain within the \$25 million TDC cap." [emphasis added.]

30. Further, Change Order 22 restated the parties' original agreement on certain exclusivity rights in connection with the Ride. Specifically, Disney agreed that for a period of five (5) years after final acceptance of the Ride, ETC will have the right to contract with Disney or its affiliates for the design, fabrication, construction and delivery of a ride system based on a multi-arm centrifuge.

31. Correspondingly, ETC agreed that for a period of five (5) years after final acceptance of the Ride, ETC will not manufacture for, negotiate with or sell to any entity other than Disney or its affiliates a ride system based on a multi-arm centrifuge for use as an entertainment device to be located within 100 miles of Disney's theme parks in Florida,

California, Paris or Tokyo.

Disney's Breaches After the Execution of Change Order 22

32. After the execution of Change Order 22, Disney breached the Contract.

33. Disney attempted to reduce ETC's responsibilities associated with the selection of materials and the completion of engineering packages originally done by ETC as a part of its Contract Work.

34. In several instances, Disney re-engineered portions of the Ride system previously and adequately completed by ETC, causing an increase in time and costs expended.

35. In late August 2002, as anticipated in Change Order 22, ETC informed Disney of revised expense estimates for the completion of the Work under the Contract (a revised NTE contract amount of \$44.1 million, including payment to ETC for profit and for general and administrative expenses on the increased direct costs).

36. Most of these increases were necessitated by design changes insisted upon by Disney.

37. In September 2002, contrary to the express terms of Change Order 22, Disney took steps to reduce the scope of ETC's work under the Contract, to ETC's significant financial detriment. For example, even though ETC was to handle the design, procurement, purchasing, production and assembly for the completion of the Ride, Disney issued a contract directive demanding that ETC assign to Disney all open purchase orders to subvendors so that Disney would be responsible for procuring and completing those projects.

38. When Disney delivered the contract directive, it informed ETC that ETC had until noon the following day to assign all of the purchase orders or Disney would declare ETC in

default of the Contract.

39. In order to try to keep the Ride project on track and to continue to work productively with Disney, ETC assigned the open purchase orders to Disney with the understanding that ETC was reserving all of its rights against Disney for Disney's improper conduct and demands.

40. By its conduct, Disney caused significant harm to ETC. By improperly changing and reducing the scope of the Work that ETC was to perform under the Contract, Disney reduced the amounts that would otherwise have been payable to ETC for profit and for the 36% general and administrative mark-up on the direct costs associated with those purchase orders.

41. Additionally, Disney not only improperly reduced the scope of ETC's work to ETC's financial detriment, it also added certain projects to ETC's Work without paying value for such Work.

42. Under Change Order 22, Disney had the right to assign "Additional Work" to ETC.

43. In connection with the Additional Work Disney assigned to ETC after Change Order 22 was signed, the total direct costs of the project increased and Disney paid ETC the 36% general and administrative mark-up on those direct costs. However, even though such Additional Work increased the NTE Total Contract Amount, Disney refused to pay ETC any profit component for the Additional Work. Further, Disney has failed to pay ETC all of the direct costs incurred by ETC on Disney's behalf through purchase orders issued for the Ride by ETC.

44. At all times throughout the Contract, ETC performed its obligations under the

Contract in a professional, workmanlike manner and to the specifications agreed upon by the parties. Nevertheless, Disney has breached its obligations to ETC under the Contract.

Count I

Breach of the Contract

45. ETC incorporates by reference the preceding paragraphs of the Complaint as if set forth in full herein.

46. ETC and Disney are parties to the Contract, as modified.

47. Disney has breached the Contract by, among other things, failing to make payments due to ETC under the Contract, improperly reducing the scope of ETC's Work under the Contract, and improperly adding to ETC's Work without paying value for such work.

48. ETC has been harmed and damaged as a result of Disney's breaches of the Contract.

49. All conditions precedent necessary to bring this action have been performed or have occurred.

WHEREFORE, plaintiff, Entertainment Technology Corporation, demands the following relief against defendants:

a. compensatory damages in an amount in excess of the arbitration amount in effect in the Eastern District of Pennsylvania, exclusive of costs and interest; and

b. interest, costs of suit and such other relief as the Court deems just and proper.

Count II

Unjust Enrichment

50. ETC incorporates by reference the preceding paragraphs of the Complaint as if set forth in full herein.

51. Disney has received the benefit of ETC's efforts in the design, procurement, purchasing, production and assembly for the Ride. Disney has not paid for the value of all the benefits conferred by ETC.

52. When Disney accepted those benefits, it knew that ETC expected to be paid for the benefits conferred.

53. ETC has not received value from Disney in exchange for the value of all the benefits conferred by ETC on the Ride project.

54. Disney has been unjustly enriched at the expense of ETC.

55. It would be inequitable, unjust and unconscionable to allow Disney to retain such benefits without paying ETC value therefor.

WHEREFORE, plaintiff, Entertainment Technology Corporation, demands the following relief against defendants:

a. compensatory damages in an amount in excess of the arbitration amount in effect in the Eastern District of Pennsylvania, exclusive of costs and interest; and

b. interest, costs of suit and such other relief as the Court deems just and proper.

Count III

Breach of The Settlement Agreement

56. ETC incorporates by reference the preceding paragraphs of the Complaint as if set forth in full herein.

57. On or about November 15, 2001, ETC and Disney entered into a settlement agreement to resolve several outstanding issues between them (the "Settlement Agreement").

58. Under the Settlement Agreement, Disney agreed to pay ETC \$1,012,000.00 upon execution of the Settlement Agreement.

59. However, Disney has only paid 12,000 of this amount.

60. Disney has breached the Settlement Agreement by failing to pay ETC the remaining \$1,000,000.00 when and as due under the Settlement Agreement.

61. ETC has been harmed and damaged as a result of Disney's breaches of the Settlement Agreement.

62. All conditions precedent necessary to bring this action have been performed or have occurred.

WHEREFORE, plaintiff, Entertainment Technology Corporation, demands the following relief against defendants:

a. compensatory damages in an amount in excess of the arbitration amount in effect in the Eastern District of Pennsylvania, exclusive of costs and interest; and

b. interest, costs of suit and such other relief as the Court deems just and proper.

Count IV

Specific Performance

63. ETC incorporates by reference the preceding paragraphs of the Complaint as if set forth in full herein.

64. Under the Contract, ETC's scope of "Work" includes safety testing and analysis for the Ride.

65. Specifically, the Design Requirements Specification that is incorporated into and made a part of the Contract provides, among other things, that ETC:

a. "shall be responsible for preparation of test procedures and reports [and] preparation of the Quality Control and Inspection Plan [and] preparation of demonstration, test and inspection activities with clear pass/fail criteria and acceptable tolerances."

b. "shall provide all test equipment required for testing (at all test locations), including but not limited to calibrated test instrumentation, sensors and gauges, data acquisition equipment (i.e. meters, displays, oscilloscopes), data records (i.e. chart records, x-y plotters), inspection and/or measurement tools."

c. "shall submit to [Disney] for approval detailed Test Procedures and Test Plans for all testing to be performed."

d. "**shall perform final on-site performance acceptance tests and each Ride System (MAC) shall be subjected to a 48 hour cycle on-site operational test, at the WDW attraction site. The on-site test shall be performed prior to acceptance of the Ride System. Final acceptance of the Ride System is predicated on successfully passing this test.**" (emphasis added).

e. shall perform detailed engineering analyses including, among other things,

analyses of “safety factors” and “safety hazards.”

66. The Contract allocated responsibility for safety testing and analysis for the Ride to ETC due to ETC’s years of experience in designing, fabricating, constructing and testing human centrifuge systems.

67. In fact, at or about the time that the Contract was awarded to ETC, the chief executive officer of The Walt Disney Company, Michael Eisner, informed ETC that, rather than have the work done “in house” at Disney by its “imagineers,” Disney specifically wanted ETC to build the Ride due to its experience with centrifuge systems.

68. Even though the Contract allocates to ETC the right (and responsibility) to conduct the safety testing for the Ride, and despite repeated requests and demands from ETC, Disney refuses to allow ETC to participate in the safety testing and analysis as contemplated by the Contract.

69. Further, despite repeated requests and demands from ETC, Disney refuses to supply ETC with information and data required to ensure the safe and successful completion of the Ride.

70. On several occasions, ETC’s president raised the safety data and testing issues with the chief executive officer of The Walt Disney Company, Michael Eisner. ETC specifically informed Mr. Eisner of the risks associated with preventing ETC’s participation in the safety testing and analysis as contemplated by the Contract.

71. Nevertheless, defendants have continued to refuse to permit ETC to participate in the safety testing and analysis as contemplated by the Contract.

72. If ETC is prevented from using its years of experience with human centrifuge

systems to participate in the safety testing and analysis as contemplated by the Contract, then there are increased risks of injury to the public at-large, and the associated increased risk of irreparable damage to ETC's reputation.

73. ETC has offered to fulfill its safety testing and analysis duties set forth in the Contract and is ready, willing and able to fulfill those contractual duties.

74. Disney is able to allow ETC to participate in the safety testing and analysis as contemplated by the Contract.

75. There is no adequate remedy at law to compensate ETC for Disney's breach of the Contract with regard to safety testing and analysis.

76. It is equitable to the parties and to the public at-large to provide the relief of specific performance. Disney will suffer no harm. To the contrary, Disney will gain the expert assistance of a company with years of experience building and testing human centrifuge systems.

77. Further, the benefit to the public heavily weighs in favor of ETC's participation in the safety testing and analysis as contemplated by the Contract. The experience of ETC in testing human centrifuge systems will provide greater safety assurance to the members of the public who will utilize the Ride.

78. All conditions precedent necessary to bring this action have been performed or have occurred.

WHEREFORE, plaintiff, Entertainment Technology Corporation, demands the following relief against defendants:

a. a declaration that ETC is entitled to specifically perform all of its testing and safety duties under the Contract and is entitled to participate in the safety testing and analysis

of the Ride as contemplated by the Contract.

b. the issuance of an order directing Disney immediately to allow ETC to access to the Ride at the Epcot location in Florida so that ETC may participate in the safety testing and analysis of the Ride as contemplated by the Contract.

c. the issuance of an order directing Disney immediately to provide ETC with access to any safety or testing data relating to the Ride in Disney's possession, custody or control.

Count V

Declaratory Judgment

79. ETC incorporates by reference the preceding paragraphs of the Complaint as if set forth in full herein.

80. ETC seeks a declaratory judgment under 28 U.S.C. §§ 2201 and 2202 for the purpose of determining a question of actual controversy between the parties concerning their legal rights under the Contract and under applicable law with respect to the exclusivity rights and obligations in the Contract.

81. Specifically, upon information and belief, Disney is considering building a ride system based on a multi-arm centrifuge for use in its Tokyo theme park without contracting with ETC to design, fabricate, construct and deliver such a ride system, which would violate the Contract.

82. ETC seeks a declaration that ETC is entitled, for a period of five (5) years after final acceptance of the Ride, to contract with Disney or its affiliates for the design, fabrication, construction and delivery of a ride system based on a multi-arm centrifuge.

WHEREFORE, plaintiff, Entertainment Technology Corporation, demands the following relief against defendants, jointly and severally:

- a. a declaratory judgment that ETC is entitled, for a period of five (5) years after final acceptance of the Ride, to contract with Disney or its affiliates for the design, fabrication, construction and delivery of a ride system based on a multi-arm centrifuge; and
- b. interest, costs of suit and such other relief as the Court deems just and proper.

Count VI

Declaratory Judgment

83. ETC incorporates by reference the preceding paragraphs of the Complaint as if set forth in full herein.

84. ETC seeks a declaratory judgment under 28 U.S.C. §§ 2201 and 2202 for the purpose of determining a question of actual controversy between the parties concerning their legal rights under the Contract and under applicable law with respect to their proprietary rights to the Ride.

85. Specifically, it is ETC's understanding that the Contract grants it exclusive rights to any aspects of the Ride that are based on concepts or technology that ETC possessed before the parties contracted. Such information would include the technology to construct other multi-arm centrifuge rides. Disney is the proprietary owner only of aspects of the Ride that ETC created uniquely for the Ride.

86. Disney, however, has issued the following statement in its Annual Report:

In consultation with former NASA advisers, astronauts and scientists, Imagineers developed *Mission: SPACE* with next-generation technologies featuring high-resolution computer-

generated imagery combined with advanced audio and optics and a **proprietary ride system**.

(emphasis added).

87. Article 28, subparagraph e. of the Contract, however, provides that “nothing in this Article 28 shall be construed as Vendor’s conveyance to Buyer . . . any ownership interest in or license to use any of Vendor’s existing data, know-how, processes, concepts, and technology, **whether or not any such data, know-how, processes, concepts, and technology are incorporated or embodied in any deliverables hereunder**. . . . [E]ach party retains **exclusive ownership rights** under this subparagraph e. subject to the provisions of Article 23 (Confidentiality) . . .” (emphasis added).

88. Disney is entitled to “a limited royalty-free license to use the data, know-how, processes, concepts and technology **of which Vendor retains exclusive ownership** under subparagraph e. in connection with the operation and maintenance of the ride system produced by the Work;” Art. 28, ¶ f.

89. The Contract only grants Disney proprietary rights to “Deliverables,” (defined under subparagraph a. as “drawings, data, progress reports, materials or designs, etc.”) **arising out of the Work** and any inventions, ideas or **original works of authorship** in whole or in part conceived or made by Vendor **which arise from or result from the Work**” Art. 28, ¶¶ a., b.

90. Moreover, the Contract states that ETC may build “a ride system based upon a multi-arm centrifuge for use as an entertainment device [provided it is not] located within 100 miles of any of the following: Walt Disney World in Florida; Disneyland Park in California; Disneyland Paris in France; and, Tokyo Disneyland in Japan. Art. 28, ¶ h.

91. Accordingly, the Contract clearly contemplates that ETC retains exclusive ownership over the information and technology it possessed prior to contracting with Disney to build multi-arm centrifuge rides. ETC's only limitation is that such rides may not be located within a 100 miles of a Disney theme park. The Contract only grants Disney the rights to information that was uniquely generated by ETC for use with the Ride. Thus, Disney's statement in its Annual Report, that it has "a proprietary ride system" is not accurate, in violation of ETC's proprietary rights, and is likely to generate future disputes.

92. Therefore, ETC is entitled to a declaration that (i) ETC is the proprietary owner of all information and aspects of the Ride, including, the multi arm centrifuge design, that existed before the parties contracted; (ii) Disney is the proprietary owner only of aspects of the design that ETC created uniquely for the Ride; (iii) ETC is not prohibited from manufacturing for, negotiating with or selling to any entity other than Disney or its affiliates a ride system based on a multi-arm centrifuge for use as an entertainment device, provided it is not within 100 miles of a Disney theme park; and (iv) any ride system that Disney builds based on a multi-arm centrifuge system is in violation of ETC's proprietary rights.

WHEREFORE, plaintiff, Entertainment Technology Corporation, demands the following relief against defendants, jointly and severally:

a. a declaratory judgment that (i) ETC is the proprietary owner of all information and aspects of the Ride, including, the multi-arm centrifuge design, that existed before the parties contracted; (ii) Disney is the proprietary owner only of aspects of the design that ETC created uniquely for the Ride; (iii) that ETC is not prohibited from manufacturing for, negotiating with or selling to any entity other than Disney or its affiliates a ride system based on a multi-arm centrifuge for use as an entertainment device, provided it is not within 100 miles of a

Disney theme park; and (iv) any ride system that Disney builds based on a multi-arm centrifuge system is in violation of ETC's proprietary rights; and

b. interest, costs of suit and such other relief as the Court deems just and proper.

Count VII

Breach of the Implied Duty of Good Faith and Fair Dealing

93. ETC incorporates by reference the preceding paragraphs of the Complaint as if set forth in full herein.

94. The Contract includes an implied covenant of good faith and fair dealing.

95. Disney has breached the implied covenant of good faith and fair dealing in several ways, including, but not limited to, the following:

a. By hindering or obstructing ETC from performing its obligations under the Contract through improperly reducing the scope of ETC's work and preventing ETC from performing the obligations specifically allocated to ETC under the Contract.

b. By unreasonably insisting that ETC assign purchase orders to Disney within a matter of hours of receiving contract directives.

c. By imposing additional work on ETC not contemplated by the Contract without paying fair value to ETC for such additional work.

d. By withholding money due to ETC under the Contract in an effort to improperly extract contract concessions or modifications from ETC.

96. As a result of Disney's breaches of the implied covenant of good faith and fair dealing, ETC has been harmed.

97. All conditions precedent necessary to bring this action have been performed or have occurred.

WHEREFORE, plaintiff, Entertainment Technology Corporation, demands the following relief against defendants:

- a. compensatory damages in an amount in excess of the arbitration amount in effect in the Eastern District of Pennsylvania, exclusive of costs and interest; and
- b. interest, costs of suit and such other relief as the Court deems just and proper.

KLEHR, HARRISON, HARVEY,
BRANZBURG & ELLERS LLP

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