NO. 124798

IN THE SUPREME COURT OF ILLINOIS

SERGIU TABIRTA,	Plaintiff-Appellee,	Appeal from the Appellate Court of Illinois, First Judicial District No. 1-17-2891
v.		
JAMES J. CUMMINGS, individually, and GILSTER MARY LEE CORP.,	Defendants-Appellants,	Original Appeal from the Circuit Court of Cook County No. 16 L 12605
		The Honorable John Ehrlich, Judge Presiding.

AMICUS CURIAE BRIEF OF ILLINOIS TRIAL LAWYERS ASSOCIATION IN SUPPORT OF PLAINTIFF-APPELLEE

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E-FILED
1/13/2020 12:37 PM
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SUPREME COURT CLERK

I
POINTS AND AUTHORITIES

II
ARGUMENT

Venue determines the location where a case is to be heard. *Slepicka v. Illinois Department of Public Health*, 2014 IL 116927, ¶41. Venue is established by the Illinois Legislature, which has decided that a plaintiff can choose to bring a lawsuit in the county of residence of any defendant joined in good faith or in the county in which the transaction or some part thereof occurred out of which the cause of action arose. 735 ILCS 5/2-101, *Chapelle v. Sorenson*, 11 Ill.2d 472, 476 (1957). A corporation "is a resident of any county in which it has its registered office or other office or is doing business." 735 ILCS 5/2-102 (a). "The statutes thus reflect the legislature's view that a party should not be put to the burden of defending an action in a county where the party does not maintain an office or do business and where no part of the transaction complained of occurred." *Bucklew v. G.D. Searle & Co.*, 138 Ill.2d 282, 289 (1990).

The Illinois Legislature has created three distinct ways that the residency of a corporation can be established in a county so as to make venue proper. First, venue is proper in the county where the defendant chose to maintain its "registered office" that is required for purposes of service of legal process under the Business Corporations Act. 805 ILCS 5/5.05, 5.25. Second, venue is proper in any county where the corporation is doing business, meaning any county where the defendant conducts its usual and customary business. *Bucklew* at 291. Finally, venue is proper in the county where the defendant maintains an "other office," which simply means an "office" that is separate and apart from the corporation's "registered office." 735 ILCS 5/2-102 (a).

I. A HOME OFFICE CAN BE AN "OTHER OFFICE" UNDER THE VENUE STATUTE.

A. The Trial Court and Appellate Court Properly Found That the Term "Other Office" in the Venue Statute Refers to a Fixed Location Where GML's Business is Transacted.

The sole issue in this appeal is the meaning of the phrase "other office" in the venue statute. Because the statute does not specifically define the term "office," Illinois courts properly looked to the plain and ordinary meaning of the term. *See generally In re M.M.*, 2016 IL 119932, ¶16 ("The most reliable indicator of legislative intent is the language of the statute, which should be given its plain and ordinary meaning." The Merriam Webster Dictionary defines "office" to mean "a place where a particular kind of business is transacted or a service is supplied." *Melliere v. Luhr Bros, Inc.*, 302 Ill. App. 3d 794, 799 (5th Dist. 1990), *see also* https://www.merriam-webster.com/dictionary/office?src=search-dict-box, last accessed on December 26, 2019. Using the plain and ordinary meaning of the term "office," Illinois courts have consistently found that a company's "office" is "a fixed place of business at which the affairs of the corporation are conducted in furtherance of a corporate activity." *Melliere* at 800, *Tabirta v. Cummings*, 2019 IL App (1st) 172891-B, ¶30.

B. The Trial Court and Appellate Court Properly Found that Mr. Bolton's Home Office Was an "Office" Under the Venue Statute.

Neither GML nor *amicus* Illinois Association of Defense Trial Counsel propose any alternative definition for the term "office" in the venue statute. Rather, they object to the findings of the Trial Court and Appellate Court that Mr. Bolton's home office fell within the plain and ordinary meaning of "office" under the venue statute. The determination of proper venue, including the existence and location of a company's

"office," is a fact intensive inquiry to be determined on a case-by-case basis. *Tabirta* at ¶32, *see also Corral v. Mervis Industries, Inc.*, 217 Ill.2d 144, 154 (2005).

It is undisputed that GML chose to transact business in Illinois, and has conducted business in Cook County since 1968. *Tabirta* at ¶9. It is further undisputed that GML deliberately employed James Bolton, a fifty year resident of Cook County, as a sales representative / "administrative type point person" in Chicago or Cook County to service GML's clients in Cook County and surrounding counties in northern Illinois. *Id.* at ¶10-13.

GML could have rented, purchased or otherwise supplied work space in Chicago or Cook County for Mr. Bolton to perform his job duties for GML in Chicago and the surrounding counties in Northern Illinois. Under this scenario, there would be no dispute that GML had an "office" in Cook County for purposes of the venue statute, and venue would be appropriate in Cook County.

Alternatively, GML could have rented, purchased or otherwise supplied work space for Mr. Bolton to use in Lake, DuPage or some other county other than Cook County from which he could perform his job. If GML had done this, then there similarly would be no dispute that GML had an "office" in whatever county it chose to provide working space for Mr. Bolton, and venue would be appropriate in that county.

GML chose neither of these options, however, but rather chose to hire Mr. Bolton as an employee without providing him with any fixed location for him to perform his GML related job responsibilities. Instead, GML relied upon Mr. Bolton to provide his own place to transact GML's business, and Mr. Bolton chose to use his Cook County home as the fixed location from which he transacted GML business and provided

customers with GML related services. There is nothing in the factual record showing that GML ever objected to Mr. Bolton using his home office in Cook County as the location from which he transacted GML related business, or otherwise took steps to have Mr. Bolton perform his GML related job duties at some fixed location in some other county.

Under these facts, the Trial Court and Appellate Court properly found that GML had an "other office" in Cook County, as this was the county where Mr. Bolton had a fixed location from which he conducted GML's business and affairs. GML specifically hired Mr. Bolton to service its customers from his Cook County residence, and thus the residence was an "other office" of GML under the Illinois venue statutes. *Tabirta*, at ¶30. To hold otherwise is to disregard the plain and ordinary meaning of the term "office."

II. THIS COURT SHOULD NOT ABANDON THE PLAIN AND ORDINARY MEANING OF THE TERM "OFFICE."

GML and *amicus* Illinois Association of Defense Counsel argue that the Appellate Court's ruling employed an overly broad definition of "office" and effectively opened a company's venue exposure to every county where any employee lives or has a home office. No it doesn't. The Appellate Court merely held that a home office is an "office" for purposes of the venue statute under the unique circumstances of this case where GML knowingly employed Mr. Bolton to work from his home office in Cook County to service GML's customers in Northern Illinois.

To be clear, GML had complete control over the location of its "other office" in Illinois. It could have chosen the location of its "office" in a county other than Cook County by providing working space for Mr. Bolton in another county. It could have also chosen to not employ Mr. Bolton at all, and have an employee service its Northern Illinois clients from its principal place of business in Chester, Illinois or from another

office location in another county. What it cannot do, however, is knowingly employ Mr. Bolton to work out of his Cook County home office to service its Northern Illinois clients, and then complain that this fixed location from which GML (through Mr. Bolton) purposefully transacted its business and supplied its services is not an "office" under the plain and ordinary meaning of the term.

The Illinois Legislature has made clear that venue is proper in any county where a company has an office. Where a company chooses to not make a fixed location available for its employees to perform their jobs and instead relies upon the employee to provide his own fixed location from which to work, the company risks a finding that the fixed location used by the employee is an "office," depending upon the unique facts of each individual case.

This holding does not open the floodgates to findings that a company will be deemed to have an "office" in any county where an employee happens to live if the employee chooses to work from home at certain times. If a company provides an employee with a fixed location from which to work, the fact that the employee chooses to work from home does not change or expand the location of the company's "office." These are not the facts of this case, however, as GML did not provide its employee with a fixed location from which to work, but rather knowingly relied upon the employee to use his own home office in Cook County as the fixed location for conducting GML's affairs.

The modern advancements of virtual offices identified by *Amicus* Illinois Association of Defense Trial Counsel may require the attention of the Illinois Legislature in the future, but provide no basis for this court to discard the plain and ordinary meaning of the term "office" and reverse the findings of the Trial Court and Appellate Court in

this case. It is the role of the legislature and not this Court to restrict or otherwise change the plain meaning of the term "other office" in the venue statute, and the Appellate Court's holding must be affirmed.

III
CONCLUSION

Amicus curiae Illinois Trial Lawyers' Association respectfully requests that this Honorable Court affirm the decision of the Appellate Court.

Respectfully Submitted,

ILLINOIS TRIAL LAWYERS ASSOCIATION

By: /s/David R. Nordwall
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CERTIFICIATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 6 pages.

/s/ David R. Nordwall