No. 124798
IN THE
SUPREME COURT OF ILLINOIS

SERGIU TABIRTA,

Plaintiff-Appellee,

v.

JAMES J. CUMMINGS, individually
and GILSTER MARY LEE CORP.,

Defendants-Appellants.

On leave to appeal form the Appellate Court of Illinois,
First District, No. 1-17-2891.
There on appeal from the Circuit Court of
Cook County, Illinois, No. 2016-L-012605
Hon. John Ehrlich, Presiding.

REPLY BRIEF OF DEFENDANTS-APPELLANTS

Jason D. Guerra, 06281822
Ted L. Perryman, 02170504
Steven A. Ahillen, 06305353
1034 S. Brentwood Blvd., Suite 2100
St. Louis, MO 63117
(314) 421-1850
(314) 421-4346 Facsimile
tperryman@robertsperryman.com
jguerra@robertsperryman.com
sahillen@robertsperryman.com
Attorneys for Defendants-Appellants James Cummings & Gilster-Mary Lee Corp.

ORAL ARGUMENT REQUESTED

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sahillen@robertsperryman.com
Attorneys for Defendants-Appellants James Cummings & Gilster-Mary Lee Corp.

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ARGUMENT

Venue is not proper in Cook County in this case. The venue statute requires that a case be brought in a county where the defendant is doing business or has its registered office or other office. Gilster-Mary Lee Corp. ("GML") has no registered office in Cook County. GML is not "doing business" in Cook County. The residence of James Bolton does not constitute an "other office" of GML. Bolton is a part-time employee who telecommutes to work. His home is not a "fixed location purposely selected" by GML to carry on corporate activities in Cook County. Rather, his home is simply his residence. This court has explained that the venue statute is designed to ensure that the action will be brought in a location convenient to the defendant. To hold that Bolton's personal residence is an "other office" of GML would fly in the face of that statutory purpose. This Court should decline Plaintiff's invitation to upend the balance of the venue statute by adopting such a broad interpretation of "other office."

1. Bolton's Residence Does Not Constitute an "Other Office" of GML

Contrary to Plaintiff's distorted presentation of the facts in this case, Bolton's home does not constitute an "other office" of GML. Appellee's Brief twists or misrepresents numerous, uncontroverted facts. For example, Bolton serviced only one customer in Cook County, not multiple; his other customers were in other counties such as Kane, DuPage, Kendall, and Will Counties. *Bolton Dep., E785, 12:19-13:14; Bolton Affidavit, E736, ¶6-10; Welge Affidavit, E740, ¶3-6.* Plaintiff's focus on Bolton's move from Palatine, Illinois misses the mark. His move from Palatine has nothing to do with his employment with GML (moreover, Palatine is a village in Cook County, so Bolton was merely moving from one residence in Cook County to another). GML did not "set

up" Bolton in a new residence for purposes of employment; he was moving back to his childhood home. *Bolton Dep., E154.* GML did not pay for any utilities at Bolton's home, including internet service. Bolton's phone number was an extension that rang his cell phone, not a separate "1-800 number." *Bolton Dep., E791, 18:6-8; Bolton Affidavit, E736, ¶11-13; Welge Affidavit, E989, ¶7-9.* Plaintiff attempts to paint a picture that Bolton's computer was some type of archaic, secure terminal, a fixed point of access for Bolton to do work; that simply was not the case. There is no testimony that Bolton could *only* receive emails or conduct work using the computer in his home. His phone was a cellular phone, and there is no testimony that he could *only* receive or make work phone calls from the home office. Bolton did not sell any GML products to GML customers, either in Cook County or elsewhere. *Welge Dep., E1020, 32:14-33:25; Bolton Affidavit, E736, ¶9; Welge Affidavit, E989, ¶6.*

GML does not have a registered office in Cook County. Its principal place of business and its registered agent both are located in Randolph County. *See Affidavit of Michael Heffernan, E20-E21.* It is undisputed that GML does not have any interests in any property in Cook County. *See Affidavit of Michael Heffernan, E734; Affidavit of James Bolton, E736; Affidavit of Thomas Welge, E740.* Further, GML is not "doing business" in Cook County, nor does Plaintiff's brief even attempt to argue that it does. Therefore, the sole salient question is whether the home office of a part-time employee is an "other office" of the corporation sufficient to establish venue such that a defendant may be haled into court in that county. The facts, caselaw, and purpose of the venue statute all agree that it is not sufficient.

The venue statute reflects 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) (emphasis added). However, GML does not "maintain" an office in Cook County. GML does not own or control Bolton's residence in any way. *See Bolton Affidavit, E736, ¶11-13; Welge Affidavit, E989, ¶7-9; Bolton Dep. E791, 18:6-8.* Bolton receives work call on his cell phone, which is not paid for by GML. His phone number is not listed anywhere as a GML phone number. GML does not pay for any expenses associated with Bolton's residence, including rent/mortgage, taxes, utilities, or internet. *Bolton Dep., E791, 18:6-8; Bolton Affidavit, E736, ¶11-13; Welge Affidavit, E989, ¶7-9.*

The Fifth District has held that an "other office" is "a fixed location purposely selected to carry on an activity in furtherance of the corporation's business activities." *Melliere v. Luhr Bros., Inc.*, 302 Ill.App.3d 794, 800 (5th Dist. 1999). However, Bolton's residence is not a fixed location purposefully selected by GML. Bolton has never had a customer to his home. *Bolton Dep., E802, 29:10-12; Bolton Affidavit, E736, ¶11.* Bolton does not sell any GML products from his residence. *Welge Dep., E1020, 32:14-33:25; Bolton Affidavit, E736, ¶9 ; Welge Affidavit, E989, ¶6.* When GML hired Bolton, they were hiring a part-time employee, not purchasing or renting an office. He could have moved without any effect on his employment. *Welge Affidavit, E 740, ¶4.* Bolton only visited his single Cook County customer once or twice per year. *See Bolton Dep., E797, 24:10-20; Bolton Affidavit ¶9-10.* Where Bolton lived did not matter. There is no evidence in the record indicating that GML was even aware of, much less

considered, the specific county that Bolton resided in at the time that he was hired. To the contrary, the record unequivocally states that when GML wanted someone in northern Illinois, the city or county of residence was of no significance in the hiring decision, that Bolton's employment was in no way contingent on him residing in any particular county and if Bolton decided to move to another residence in another county, his employment would not be effected. *Welge Affidavit, E 740, ¶4.*

2. The Dictionary Definition of "Office" is Irrelevant to the Issues on Appeal

In its opinion in this case, the appellate court noted the paucity of caselaw interpreting the phrase "other office" in the venue statute. This perhaps explains why without much in the way of caselaw to support his argument, Plaintiff's brief focuses on things such as dictionary definitions, proposed or abandoned bills in the legislature, and the statutes of foreign jurisdictions. All such analysis is irrelevant and unavailing. The undisputed facts conclusively demonstrate that Bolton's personal residence does not meet the standard for an "other office" articulated by the Illinois venue statute and caselaw.

Plaintiff's delve into the dictionary definition of an office, while perhaps an interesting detour for lexicographers, adds no clarity to the issue before this Court. The salient issue is not whether the physical space in Bolton's house could be considered a home office. Defendant has never argued that Bolton's residence does not contain a home office. Also, while it may be obvious, there is no genuine dispute as to whether a home office meets the dictionary definition of an office. Plaintiff's citations to various definitions of "office" only demonstrates that the dictionary definition of "office" is a loose term; a homeowner could designate any room of a dwelling as an office. The pertinent question is not whether or not James Bolton's residence contained a home

office, but rather, whether his residence should be considered a corporate office of GML sufficient to establish venue, allowing GML to be sued in Cook County.

Plaintiff's proposed definition of an office is unreasonably broad. Plaintiff's brief opines that "*what matters when defining an 'office' is that work is performed in a physical space.*" *See Plaintiff's Response Brief, p. 14.* This expansive definition would turn every location where anyone does any work for a corporation into an "other office" of the company. Such a definition could apply to a hotel room, property owned by another party where the corporation's employee is performing some task, or even a Starbucks or a vehicle. Merely performing work at a location as an employee of the company does not automatically render that location an office of the company. More is required than merely the existence of a physical space where work is performed. *Melliere* offers some guidance by interpreting "other office" as "a fixed location purposely selected to carry on an activity in furtherance of the corporation's business activities." *Melliere v. Luhr Bros., Inc.*, 302 Ill.App.3d 794, 800 (5th Dist. 1999).

Here, the facts show that Bolton's residence was not a fixed location purposely selected by GML to carry on its business. GML never "selected" Bolton's house, either for its location or any other reason, to be an office of the company. Rather, they chose to hire Bolton for his experience. GML never held out Bolton's residence as an office of the company, nor has Bolton. His address was never advertised as or listed anywhere as a company office. His phone number was never posted in any directory as even related to GML. *Bolton Dep., E791, 18:6-8; Bolton Affidavit, E736, ¶11-13. Welge Affidavit, E 740, ¶7-9.* Bolton's employment with GML is in no way contingent on the location of his residence. *Welge Affidavit, E740, ¶3-4.* The fact that Bolton received work calls on

his cell phone and had an email address do not raise any inference that his home was a corporate office. His cell phone is mobile, and his email exists in a cloud, not at his residence.

3. The Legislative History of the Venue Statute Is Not Relevant to Any Issue on Appeal

Plaintiff's examination of the history of the Illinois venue statute is unavailing. Plaintiff, in a conclusory fashion, states that the lack of any recent changes to the statute means that his preferred interpretation of "other office" and his application of that principle to the facts of this case is the correct one. Plaintiff's conclusion does not follow from his premise. No specific, definite inference can be drawn from the fact that the statute has not recently been amended. Moreover, this is not a case where the appellant is arguing for this Court to overturn its prior interpretation of the statute. Rather, if anything, the issue is the lack of a specific definition of "other office" in the statute itself. As such, Plaintiff's presentation of a venue statute that has "stood the test of time" is extraneous and not germane to any legal issue presented in this appeal.

The fact that there has been so little caselaw on the interpretation of the phrase "other office" in the statute further undercuts Plaintiff's proposed apotheosis of the venue statute. As the appellate court properly noted in its opinion, there is a paucity of case law interpreting the phrase "other office" in the venue statute. This appeal is not a case concerning a legal definition that has faced rigorous legal scrutiny over the years, with mountains of caselaw piling up providing guidance on how to apply it. This is a statute where the sole occasion where this court had the opportunity to address it in caselaw, the record on appeal was so deficient that the court had no choice but to sustain the appellate court's decision. *Corral v. Mervis Industries, Inc.*, 217 Ill.2d 144 (2005). That is not a

robust legal history that compels any type of *stare decisis*, assuming hypothetically that *Corral* could even be considered grounds for such an argument.

Moreover, Plaintiff's discussion of statutes from foreign jurisdictions is unhelpful and only serves to cloud the issue to be decided in this case. Plaintiff's apparent point is that Illinois provides three bases for venue when suing a corporation, whereas statutes in other states sometimes provide fewer or use a hybrid approach. The crux of Plaintiff's argument in this respect appears to be that venue can be established without a showing that a corporate defendant is "doing business" in a venue. Both the trial court and the appellate court held that GML is not "doing business" in Cook County, and Plaintiff's brief makes no attempt to argue that those courts erred in ruling as they did. As such, the discussion of this aspect of Illinois' venue statute is superfluous. At most, Plaintiff's analysis serves as a tacit admission on the part of the Plaintiff that GML was not "doing business" in Cook County.

4. An Analysis of Hypothetical Tax Reporting Implications Has No Foundation in the Statute or Case Law

Plaintiff's entire analysis of the potential tax reporting implications of Bolton's home office is unfounded and finds no basis in the statute or case law. Plaintiff's discussion of federal taxes and IRS guidelines are a red herring that this Court should ignore. The venue statute does not contain any reference to federal income tax or any other tax. Plaintiff fails to cite to a single appellate case interpreting the Illinois venue statute that refers to the tax implications of an office; there are no such cases. To apply an analysis of taxes in the context of the venue statute would be completely novel. Moreover, there is no evidence in the record that Bolton ever took any deduction on his

taxes for his home office. Plaintiff's entire argument is based on a hypothetical unmoored from any evidence in the record. This Court should disregard it.

A decision in this case that Bolton's home office constitutes an other office of GML will open the door to all employees' home offices in Illinois constituting an "other office" of their employers. These home offices are by their nature located in the residences of the employees. Hence, the residency of the employee who works out of his home would be relevant to determining whether the employer corporation could be sued in that venue.

CONCLUSION

The Illinois statutory requirements for venue cannot be satisfied in Cook County. Neither defendant is a resident of Cook County. No part of the "transaction" between the parties took place in Cook County. GML does not "do business" in Cook County, as defined by binding precedent. GML has no registered office or "other office" in Cook County. GML has only an insignificant relationship with Cook County. Cook County has no logical connection with an accident that occurred in Delaware County, Ohio. This case should be transferred to a county where venue is proper, such as Randolph County, Illinois.

WHEREFORE, Defendants James Cummings and Gilster-Mary Lee Corp., pursuant to Supreme Court Rule 306(a)(4), respectfully pray that this Court enter an Order reversing the order of the circuit court entered on October 27, 2017, instructing the case to be transferred to a county where venue is proper, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

ROBERTS PERRYMAN, P.C.

/s/ Jason D. Guerra
Jason D. Guerra, 06281822
Ted L. Perryman, 02170504
Steven A. Ahillen, 06305353
1034 S. Brentwood Blvd., Suite 2100
St. Louis, MO 63117
(314) 421-1850
(314) 421-4346 Facsimile
tperryman@robertsperryman.com
jguerra@robertsperryman.com
sahillen@robertsperryman.com
Attorneys for Defendants
James Cummings & Gilster-Mary Lee Corp.

CERTIFICATE OF COMPLIANCE

I certify that this Reply Brief of Defendants-Appellants conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding pages or words contained in 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 **10** pages.

/s/ Jason D. Guerra

CERTIFICATE SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I, Jason D. Guerra, an attorney, state that I caused a copy of the Reply Brief of Defendants-Appellants, to be served upon Mark G. Patricoski, 1755 S. Naperville Rd., #206, Wheaton, Illinois 60189, the counsel of record as referenced above by depositing same in the U.S. Mail at 1034 S. Brentwood, Blvd. St. Louis, MISSOURI, 63117, postage pre-paid, at or before 5:00 p.m. on **January 17, 2020**.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Jason D. Guerra

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	)	Honorable John Ehrlich, Presiding
Defendants-Appellants.	)	

NOTICE OF FILING

TO: Mark G. Patricoski
1755 S. Naperville Rd. #206
Wheaton, Illinois 60189
Office (630) 993-8000
Fax (630)690-5558
mark@markpatlaw.com

Please take notice that on January 17, 2020, the undersigned filed and electronically submitted to the Supreme Court clerk's office the REPLY BRIEF OF DEFENDANTS-APPELLANTS with the Clerk of the Supreme Court of Illinois, a copy of which is attached hereto and served upon you.

Respectfully submitted,

ROBERTS PERRYMAN, P.C.

/s/ Jason D. Guerra
Jason D. Guerra, 06281822
Ted L. Perryman, 02170504
Steven A. Ahillen, 06305353
1034 S. Brentwood Blvd., Suite 2100
St. Louis, MO 63117
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(314) 421-4346 Facsimile
tperryman@robertsperryman.com
jguerra@robertsperryman.com
sahillen@robertsperryman.com
Attorneys for Defendants

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/s/ Jason D. Guerra
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