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.

BRIEF AND ARGUMENT OF DEFENDANTS-APPELLANTS

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ORAL ARGUMENT REQUESTED

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POINTS AND AUTHORITIES

I. THE COURT ERRED IN HOLDING THAT VENUE WAS PROPER IN COOK COUNTY ON THE BASIS OF THE PERSONAL RESIDENCE OF A SINGLE, PART-TIME EMPLOYEE WHO WORKS OUT OF HIS HOME IN COOK COUNTY.

NATURE OF THE CASE

This appeal involves a personal injury action arising out of an accident that occurred on December 13, 2016, on Interstate 74 in Delaware County, Ohio, involving a tractor-trailer driven by Plaintiff, Sergiu Tabirta, and a tractor-trailer owned by Defendant Gilster-Mary Lee Corp. ("GML") and driven by its driver, Defendant James Cummings. Plaintiff filed this suit on December 27, 2016 alleging that Defendants were negligent, causing him to sustain bodily injuries. *See Plaintiff's Complaint, C1.* Defendants timely moved to dismiss or alternatively transfer venue from the Circuit Court of Cook County due to improper venue. *See Defendant GML's Motion to Dismiss/Transfer, C5.* The parties conducted discovery and submitted briefs on the venue issue. On October 27, 2017, the circuit court denied Defendants' Motion to Dismiss for Improper Venue or in the Alternative to Transfer Venue. *See Order, C87.*

Defendants timely filed a Petition for Leave to Appeal Pursuant to Supreme Court Rule 306 in the First District Appellate Court, seeking review of the denial of the Motion to Dismiss. *See Defendants-Petitioners' Petition for Leave to Appeal, C88.* On February 5, 2017, the First District Appellate Court issued an Order denying the Defendants' Petition for Leave to Appeal. *See Order Denying Petition for Leave to Appeal, C141.* Thereafter, Defendants filed a Petition for Leave to Appeal to the Supreme Court. *See Defendants' Petition for Leave to Appeal, C142.* On May 30, 2018, the Supreme Court entered an order denying Defendant's Petition for Leave to Appeal. However, the Supreme Court exercised its supervisory authority and directed the First District Appellate Court to vacate its order denying the Defendants' previous Petition for Leave to Appeal and to allow the petition for leave to appeal. *See Order of the Supreme Court,*

C170. The First District entered an Order on July 16, 2018 allowing Defendants' Petition for Leave to Appeal. Parties submitted briefs, and oral arguments were held.

On March 26, 2019, the First District delivered its judgment and opinion affirming the order of the circuit court. *See Judgment of the Appellate Court, with Opinion, C256.* Defendants filed a Petition for Leave to Appeal to the Supreme Court. On September 25, 2019, this Court allowed the Petition for Leave to Appeal.

JURISDICITONAL STATEMENT

This is an appeal under Supreme Court Rule 306. This Court entered an Order on September 25, 2019 allowing Defendants' Petition for Leave to Appeal.

ISSUES PRESENTED FOR REVIEW

1. Whether the circuit court erred in ruling that venue was proper in Cook County?

STATEMENT OF FACTS

On December 13, 2016, an accident occurred on Interstate 74 in Delaware County, Ohio, involving two tractor-trailers. One tractor-trailer was driven by Plaintiff, Sergiu Tabirta, and the other tractor-trailer was owned by Defendant GML and driven by its driver, Defendant James Cummings. Plaintiff filed a Complaint in the Circuit Court of Cook County, Illinois on December 27, 2016, alleging that Defendants' negligence caused him to sustain personal injury. *See Plaintiff's Complaint, C1.*

On February 24, 2017, Defendant GML timely moved to dismiss or in the alternative to transfer venue from the Circuit Court of Cook County for lack of proper venue. *See Defendant GML's Motion to Dismiss/Transfer, C5.* Defendant Cummings later joined in Defendant GML's motion. *See Defendant Cummings' Motion to Dismiss, C36.* Defendants argued that venue was improper in Cook County, because no part of the "transaction" out of which the cause of action arose occurred in Cook County, and neither Defendant was a resident of Cook County. *See Defendant's Motion to Dismiss/Transfer and Memorandum in Support, C13.* Further, GML had no office in Cook County and was not "doing business" in Cook County pursuant to 735 ILCS 5/2-102. *See Defendant's Memorandum in Support, C13.* Defendant GML is a Missouri Corporation with its principal place of business in Chester, Randolph County, Illinois, and has no office in Cook County. *See Defendant's Memorandum in Support, C13.* Defendant James Cummings also was not a resident of Cook County. *See Defendant's Memorandum in Support, C13.*

Following a period of discovery, Plaintiff Tabirta responded to the motion to transfer venue on September 5, 2017. *See Plaintiff's Response, C44.* Plaintiff argued that venue was proper in Cook County; that GML was "doing business" in Cook County; and/or that the presence of part-time GML employee James Bolton's personal home in Cook County constituted an "other office" in Cook County.

Defendants filed a reply on September 15, 2017, arguing that GML was not doing business in Cook County, because its Cook County sales constituted only 0.19% of its overall sales. *See Defendants' Reply, C66.* Further, the presence of Bolton, a part-time

customer representative who worked out of his own home, did not constitute an "other office" for purposes of venue. *See Defendants' Reply, C67.*

The court denied Defendant's motion to dismiss or transfer venue. *See Order, C87.* The Circuit Court concluded that GML was not doing business in Cook County. *See Transcript of Hearing, R5.* The Court also found that GML did not have a registered office in Cook County. *See Transcript of Hearing, R6.* However, the Court also determined that the home of part-time employee James Bolton constituted an "other office" under the statute. *See Transcript of Hearing, R9.* It was solely on this basis that the trial court determined that venue was proper in Cook County.

On March 26, 2019, the First District delivered its judgment and opinion affirming the order of the circuit court. This appeal followed pursuant to Rule 306.

STANDARD OF REVIEW

The determination of proper statutory venue raises separate questions of fact and law. *Corral v. Mervis Industries, Inc.*, 217 Ill.2d 144, 154-55 (2005). In determining whether the circuit court erred, the reviewing court applies a two-step process. *Id.* First, the trial court's underlying factual findings are reviewed deferentially and will not be disturbed unless those findings are against the manifest weight of the evidence. *Id.* A decision is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence. *Id.* Second, the trial court's conclusions of law are reviewed *de novo*. *Id.*

ARGUMENT

Defendants James J. Cummings and Gilster-Mary Lee Corp. petition this Court to reverse the circuit court's denial of their motion to dismiss or in the alternative to transfer

for improper venue pursuant to 735 ILCS 5/2-101. There is no valid basis for venue in Cook County. The court erred in finding that the presence of a single, part-time GML employee who works out of his home constituted an "other office" making venue proper in Cook County, and therefore this Court should reverse.

I. The Trial Court Erred in Denying Defendants' Motion to Transfer Venue Because No Part of the "Transaction" Occurred in Cook County, and No Defendant is a Resident of Cook County as Required by 735 ILCS 5/2-101.

This Court should reverse, because the circuit court erred in denying Defendants' motion to transfer for improper venue. The circuit court correctly found, and the appellate court agreed, that there obviously was no basis for venue under the "transaction prong," because the accident occurred in Delaware County, Ohio. *See Transcript of Hearing, R4.* There is no dispute that Defendant James Cummings is not a resident of Cook County. The circuit court also correctly found that Defendant GML is not a resident of Cook County, because it is not "doing business" in Cook County. *See Transcript of Hearing, R5.* However, the circuit court and appellate court erred in concluding that the personal home of James Bolton constituted an "other office" of GML sufficient to establish venue in Cook County. *See Transcript of Hearing, R6.* Appellate courts previously have held that a "home office" is not sufficient to establish venue under the. *Peterson v. Monsanto*, 157 Ill. App.3d 508, 510-11 (5th Dist. 1987). While the *Peterson* focused on the "doing business" prong, its logic is also compelling in the "other office" analysis. The circuit court and appellate court erred by not following this precedent, and this Court should reverse.

Being sued in a proper venue is an important statutory privilege which is given great weight. *Stambaugh v. International Harvester Co.*, 102 Ill.2d 250, 260 (1984);

Lake County Riverboat L.P. ex rel. FGRP, L.P. v. Illinois Gaming Bd., 313 Ill. App. 3d 943, 951 (2nd Dist. 2000). The venue statute is designed to ensure that the action will be brought in a location convenient to the defendant. *Id.* 735 ILCS 5/2-101 states that every action must be commenced (1) in the county of residence of any defendant who is joined in good faith and with probable cause for the purpose of obtaining a judgment against him or her and not solely for the purpose of fixing venue in that county, or (2) in the county in which the transaction or some part thereof occurred out of which the cause of action arose. 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).

Any private corporation organized under the laws of Illinois, or any foreign corporation authorized to transact business in Illinois, 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 phrase "other office" is not defined in the statute. However, at least one appellate court has interpreted it to mean "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).

In order for a foreign corporation to be "doing business," it must be conducting its usual and customary business within the county in which venue is sought. *Baltimore & Ohio R.R. Co. v. Mosele*, 67 Ill.2d 321, 329-30 (1977). "Doing business" in a county for purposes of venue requires more extensive contacts than is necessary under the familiar due process requirement of "minimum contacts" to sustain jurisdiction. *Id.* at 327-30.

Venue is not proper where a defendant has only an insignificant relationship with the county in which venue is sought. *Stambaugh*, 102 Ill.2d at 262-63. A company is not doing business in a county simply because it solicits business from or sells goods to customers there. *Id.* at 292. The quantity or volume of business done by a company in a county is relevant to determining whether a company is "doing business" for the purposes of determining whether venue is proper. Where the quantity of the business done in the county is small as compared to the amount of business generated by the company as a whole, the company is not "doing business" in the county for the purposes of venue. *Bucklew*, 138 Ill.2d at 291-92.

A. No Part of the Transaction Occurred in Cook County.

Venue is not proper in Cook County under the "transaction" prong, because no part of the transaction took place in Cook County. All parties agree that the accident in question occurred on Interstate 71 in or near the Township of Berkshire, Delaware County, Ohio. *See Plaintiff's Complaint, C1*; *Transcript of Hearing, R5*. Plaintiff filed this suit in Cook County, Illinois, but his Complaint does not even mention Cook County a single time. *See Plaintiff's Complaint, C1-C4*. This is because Cook County has no relationship whatsoever with the "transaction" (the accident) giving rise to this claim. There is no dispute that no part of the "transaction" occurred in Cook County, and there is no basis for venue under this prong of the venue statute. Therefore, the circuit court and appellate court correctly concluded that the location of the "transaction" does not serve as a basis for venue in Cook County. *See Transcript of Hearing, R5; Order/Opinion dated 3/26/19, A6.*

B. No Defendant Resides in Cook County.

Venue is not proper in Cook County based on the residency of the Defendants, because neither defendant resides in Cook County. It is undisputed that Defendant James Cummings is not a resident of Cook County. Further, GML does not have a registered office in Cook County; it does not have an "other office" in Cook County; and it is not "doing business" in Cook County. Therefore, neither Defendant is a resident of Cook County, and there is no basis for venue in Cook County.

1. GML Does Not Have a Registered Office in Cook County.

Defendant GML is a Missouri Corporation with its principal place of business in Randolph County, Illinois. *See Affidavit of Michael Heffernan, E20-E21.* Its registered agent is located in Randolph County. *Id.* GML does not have any ownership in any property in Cook County, and it does not lease or otherwise occupy any office space in Cook County. *See Affidavit of Michael Heffernan, E734; Affidavit of James Bolton, E736; Affidavit of Thomas Welge, E740.* Plaintiff offered no competent evidence to the contrary.

Plaintiff's Complaint oddly alleged that GML is an Illinois corporation with its registered agent and office in DuPage County, Illinois. Even if Plaintiff's assertion were true, which it clearly is not, having an office or agent in DuPage County would not have any relevance to the analysis of whether venue is proper in Cook County. Regardless, Plaintiff's allegation is plainly incorrect. The circuit court correctly concluded that Defendant GML does not have a registered office in Cook County. *See Transcript of Hearing, R4, R6.*

2. James Bolton's Personal Residence Does Not Constitute an "Other Office" of GML Sufficient to Establish Venue.

The circuit court and appellate court erred in concluding that the presence of a single, part-time employee of Defendant GML, who resides in Cook County and at times works out of his home, constitutes an "other office" sufficient to make venue proper in Cook County. *See Transcript of Hearing, R6.* In so doing, the court overlooked the persuasive reasoning that a "home office" is not a sufficient basis to establish venue. *Peterson v. Monsanto*, 157 Ill. App.3d 508, 510-11 (5th Dist. 1987). Therefore, the court erred, and this Court should reverse.

James Bolton has resided in Cook County continuously since 1956, and he was residing at his current address prior to working for GML. *See Deposition of James Bolton, E779, 6:8-15*; *Bolton Affidavit, E736, ¶1-3.* James Bolton was hired by GML in 2011 to serve as a customer service and account representative on a part-time basis. *See Deposition of Thomas Welge, E1019, 31:21-32:6; Bolton Affidavit, E736, ¶7-9 & Welge Affidavit, E740, ¶3-6.* GML desired to hire an individual with experience in the food industry to service one customer in particular located in northern Illinois: Aldi, Inc. *Id.* Aldi is located in Batavia, Illinois, a city in DuPage and Kane Counties. Bolton had recently retired after over 50 years of working in the food industry, but decided to go back to work. GML hired Bolton to work part-time, about 20 hours per week, and he is paid by the hour. Bolton works out of his home, where he already resided at the inception of his employment. *Bolton Affidavit, E736, ¶3-5.* His home happens to be in Cook County. Bolton's employment was not and is not contingent on the county of his residence. If Bolton moved to a neighboring county, it would not affect his job with GML. *Welge Affidavit, E740, ¶3-4.*

Even under the loosest interpretation, Bolton's personal residence does not constitute an "other office" under the venue statute. Bolton's private residence is simply his home; it is not a "fixed location purposely selected" by GML to carry on corporate activities in Cook County. *Id.* Bolton telecommutes for work. He has never had any work-related meetings, appointments or anything that could be construed as a "corporate activity" at his residence. *Bolton Affidavit, E736 ¶ 11; Bolton Dep. E802, 29:10-12.*

GML has no ownership or financial interest in Bolton's home, does not manage or control the property in any way, and does not have the right to manage or control the property or any activities at the property. *See Bolton Affidavit, E736, ¶11-13; Welge Affidavit, E989, ¶7-9; Bolton Dep. E791, 18:6-8.* Bolton's residence is not advertised as or represented as a "GML office" or location in any way to anyone. *Id.* There is no listed phone number for Bolton's residence designated as a GML phone number; Bolton has never had a customer to his home for a business appointment or otherwise. *Bolton Dep., E802, 29:10-12; Bolton Affidavit, E736, ¶11.* While it is true that Bolton works out of his home at times, his work consists of phone calls and emails, less than 5% of which are related to his sole Cook County customer. Bolton is not a salesman, and he does not sell products, much less to his single Cook County "customer." *Welge Dep., E1020, 32:14-33:25; Bolton Affidavit, E736, ¶9 ; Welge Affidavit, E989, ¶6.*

GML pays for absolutely nothing relating to Bolton's residence or any of the expenses associated with his residence or the work that does there. GML does not pay for any portion of the rent/mortgage, real estate taxes, cell phone or land line, internet charges, utility bills, gas, water, electric, trash removal, etc. Bolton is personally responsible for these and all other expenses related to this property, which is his personal

residence. *Bolton Dep., E791, 18:6-8; Bolton Affidavit, E736, ¶11-13; Welge Affidavit, E989, ¶7-9.*

In the instant case, the circuit court's and appellate court's reasoning stretches far beyond the text and intent of the statute, as well as existing precedent. The circuit court opined that Bolton's home constituted an "other office" of GML on the basis that Bolton was carrying on activities in furtherance of the interests of GML. *See Transcript of Hearing, R7.* Similarly, the appellate court reasoned that Bolton was "furthering GML's corporate interests" and was given an "e-mail address and a corporate extension." *See Order/Opinion date 3/26/19, A6.* However, the argument that the presence of a "home office" can constitute a basis for venue, albeit under the "doing business" prong, was rejected in *Peterson v. Monsanto*, 157 Ill. App.3d 508, 510-11 (5th Dist. 1987). In *Peterson v. Monsanto*, Plaintiffs argued that the corporate defendant, Monsanto, was conducting its usual and customary business in Madison County, because an employee of the corporate defendant who lived in the subject county and worked out of his home was "maintained" by the defendant in Madison County. *Peterson v. Monsanto Co.*, 157 Ill. App. 3d 508, 510–11, 510 N.E.2d 458, 460 (1987). The Court disagreed, reasoning that the employee was not "maintained" in Madison County by the corporate Defendant. *Id.* at 510. Instead, he resided there because of his personal choice. *Id.* His work was directed from a corporate office in Decatur. *Id.* The defendant corporation did not pay any part of the employee's expenses, nor require his residence there. *Id.* He engaged in no direct selling of his employer's products, nor did he solicit orders, but only engaged in promotional activities. *Id.*

The instant case is analogous to *Peterson* and demands the same result. Like in *Peterson*, GML employee James Bolton lives in Cook County by choice and his work is directed from GML's Chester, Illinois office. *Bolton Affidavit, E736, ¶ 1-4; Bolton Dep., E799, 26:8-19.* His employment is not contingent on living in Cook County; if Bolton moved to a neighboring county, it would not affect his job with GML. *Welge Affidavit, E740, ¶3-4.* Just as in *Peterson*, GML does not pay any of his expenses or require his residence there. *Bolton Dep., E791, 18:6-8; Bolton Affidavit, E736, ¶11-13 Welge Affidavit, E 740, ¶7-9.* Akin to the employee in *Peterson*, Bolton does not solicit orders, but serves as a customer service representative, very minimally for only one customer in Cook County, but also for customers in the counties of Kane, DuPage, Kendall and Will Counties. *Bolton Dep., E785, 12:19-13:14; Bolton Affidavit, E736, ¶6-10; Welge Affidavit, E740, ¶3-6.* Bolton has never held any work-related meetings, appointments, or anything else that could be construed as "corporate activity" at his home. *Id.* The facts in *Peterson* on the issue of an employee working out of his home are analogous to the facts presented here. If under *Peterson* a home office is not a place where a company is "*doing business*," then it follows that a home office is not a place "purposely selected to carry on an activity in furtherance of the corporation's *business activities*" under *Melliere*. *Melliere*, 302 Ill.App.3d at 800 (emphasis added). Therefore, GML has no office of any kind in Cook County.

The circuit court also mistakenly focused its analysis on whether Bolton would be able to take a deduction on his taxes for having a home office. *See Transcript of Hearing, R7.* Although the statute does not establish any criteria for determining what constitutes an "other office," none of the appellate case law has ever discussed relying on

tax implications as the basis for determining whether a home office is an "other office." In short, the circuit court had no basis for hinging its decision on whether or not Bolton took a deduction on his personal taxes for a home office. Further, even if the circuit court were considering tax implications as a factor, the circuit court had no evidence before it that Bolton ever took any deduction on his taxes for a home office. Thus, even using the circuit court's novel tax implications analysis, the circuit court inappropriately assumed a fact that was not part of the record, and the circuit court's conclusion does not follow from the evidence before it. Therefore, the court erred in finding that Bolton's personal residence constituted an "other office" of GML.

The circuit court erred by basing its decision on a hypothetical that amounted to pure speculation, which was unmoored from the basic facts in the record. The circuit court hypothesized that *if* GML did not employ someone like Bolton who could work out of his home that GML would have to secure office space somewhere in northern Illinois. *See Transcript of Hearing, R8.* There are several flaws with this reasoning. There is no indication in the record, much less any guarantee, that GML would have secured office space in northern Illinois at all, much less Cook County, if it had not hired Bolton, who could work out of his home. In the absence of hiring Bolton, GML very well could have not hired any employee in northern Illinois. Likewise, GML could have hired a part-time employee residing in one of a handful of nearby counties. It always will remain unknown, because that scenario never actually came to pass; it was speculative of the circuit court to assume so. The circuit court's analysis should have focused on the actual facts as they existed, not on conjecture. Namely, the Court based its decision on what GML *possibly could have done* had GML not hired Bolton, instead of what GML

actually did. Regardless of whether GML *could have* leased office space in Cook County, the simple truth is that *it never did.* The undisputed facts are that GML has no office in Cook County, and that Bolton was a part-time employee who worked out of his home. Moreover, the evidence is clear that Bolton had resided in Cook County for over 50 years prior to his employment with GML and that his employment was not contingent on him residing in Cook County. The circuit court's hypothetical should not have served as a basis for concluding that Bolton's home constituted a GML office.

Regardless, even accepting the premise for the sake of argument, the primary purpose of having a customer relations employee in northern Illinois was to manage GML's relationship with its most significant customer in the area, Aldi, Inc. *See Deposition of Thomas Welge, E1019, 31:21-32:6; Bolton Affidavit, E736, ¶7-9 & Welge Affidavit, E740, ¶3-6.* Aldi's office is located in Batavia, Illinois, which is a city in DuPage County and Kane County. Thus, if GML were to have an office in northern Illinois for the purpose of serving Aldi, it would have been just as probable, if not more likely, that GML would have located any such hypothetical office in DuPage County or Kane County. Since this never happened, it is impossible to say with any reasonable certainty what might have occurred, and so the circuit court was merely speculating.

The appellate court also erred in its analysis by misconstruing GML's hiring of Bolton. The appellate court, relying on *Melliere*, concluded that Bolton's home constituted a "fixed location purposely selected to carry on an activity in furtherance of the corporation's business activities." *See Order/Opinion date 3/26/19, A6.* However, this distorts GML's decision by transforming it from a personnel hiring decision into a choice about office real estate. GML chose to hire Bolton for his experience in the food

industry and knowledge of the northern Illinois market. *Welge Affidavit, E 740, ¶3-4.* What GML desired was Bolton's knowledge and experience, not his house. GML did not "purposely select" Bolton's private residence as a location to carry on the company's business. *Welge Affidavit, E 740, ¶3-4.* In fact, where Bolton lived was irrelevant to GML. *Welge Affidavit, E 740, ¶4.* GML never "purposely selected" Bolton's house for anything.

Further, the appellate court erred in its application of *Melliere* by discounting the importance of GML's lack of any ownership interest in Bolton's house. The appellate court reasoned that the "crux" of the *Melliere* court's analysis was not on whether the company possessed an ownership interest in the facility, but rather, "whether the property was a fixed location purposely selected to carry on an activity in furtherance of the corporation's business activities." *See Order/Opinion date 3/26/19, A6.* It is true that the *Melliere* court did focus its analysis on whether the location was purposely selected to carry on the business of the company. *Melliere*, 302 Ill.App.3d at 799. However, here the appellate court's analysis of whether Bolton's residence constituted such a location overlooked all the factors the *Melliere* court considered in making that determination. *Id.* The court in *Melliere* listed the following factors: (1) the defendant leased the hangar in St. Clair County; (2) the defendant housed a corporate-owned airplane in the hanger; (3) the defendant employed two full-time pilots at the hangar; (4) the pilots and plane transported executives using the plane stored at the hanger to job sites and conventions; (5) the hangar was equipped with a telephone, the number for which was listed in a publicly available phone book; (6) the phone book listed the address associated with the

phone number as belonging to the company; and (7) the large directory posted at the airport listed the hangar as being owned by the defendant. *Id.*

By contrast, in the instant case, GML had no ownership interest whatsoever in Bolton's house; GML paid for no expenses associated with the house; Bolton was the sole, part-time employee working out of his home; GML did not provide any telephone service for Bolton; Bolton's phone number was not listed in any public directory as being associated with GML; and Bolton's home address was not listed anywhere as being associated with GML. *Bolton Dep., E791, 18:6-8; Bolton Affidavit, E736, ¶11-13. Welge Affidavit, E 740, ¶7-9.* Ultimately, it is correct that venue is a factual determination per *Melliere*, and the court in *Melliere* properly considered the totality of the circumstances by examining numerous relevant factors, of which no single factor was determinative. In the instant case, the appellate court only relied on the fact that (1) GML wanted a point person for its northern Illinois clients; (2) GML forwarded calls to Bolton; and (3) GML provided Bolton with an email address. However, it is undisputed that Bolton's employment with GML is in no way contingent on the location of his residence. *Welge Affidavit, E740, ¶3-4.* Further, Bolton's cellular phone and email address are completely portable and in no way tied to a specific physical location. In examining the totality of the circumstances, the court should draw the line and find that Bolton's home does not constitute an "other office" of a corporation sufficient to allow his employer to be haled into court there.

Lastly, to hold that venue is proper solely on the presence of a part-time employee in a county who does some work out of his home would defy the purpose of the statute by creating a gigantic exception to the venue rules that the legislature never intended.

Unlike in *Corral*, where the Supreme Court was unable to determine whether or not the circuit court had relied on the residence of a single employee to establish venue against a company, here there is ample evidence in the record that Bolton's residence was the sole basis on which the circuit court and appellate court determined that venue was proper in Cook County. Both courts explicitly stated in their rulings that venue was proper in Cook County based solely on its determination that Bolton's personal residence was an "other office" of GML under the statute. *See Transcript of Hearing, R5-8.* See *Corral*, 217 Ill.2d at 155-56. Under that overbroad interpretation of the statute, a company would be subject to venue in any county where any of its agents or employees conducted any work out of their homes. That result would be directly contrary to the legislature's intent in enacting the venue statute to protect defendants from being sued in counties "where the party does not maintain an office or do business and where no part of the transaction complained of occurred." *Bucklew*, 138 Ill.2d at 289. The lower courts' approach would change the standard so that a company would be subject to venue not just where the company resides, but rather, where any employee lives. The appellate court's demurrer that each case would be decided on its facts offers little consolation. In this case, the employee was a single, semi-retired, part-time employee working out of his house, and very little of the employee's work related to clients in the same county. If that is enough to establish venue, then every employee's home office in Illinois constitutes an "other office" allowing their employer to be sued there for events that took place in an entirely different state and that have nothing to do with that employee. That is a far cry from this Court's articulation of the legislature's intent 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).

In today's era of sophisticated telecommunications, modern technology allows for people to connect across vast distances and share data in real time. Across a wide array of industries, the power of the Internet has made it possible for people to work remotely from their homes more effectively and efficiently than ever before in history. It would defy the intent of the statute and the legislature to hold that a company should be subject to venue in every county where any of its employees reside and "telecommute" to work. Whether the statute should be expanded so radically is a question best left for the legislature to determine. Under the statute as currently written, and under this Court's existing precedent, there is no basis for such an expansive interpretation of proper venue. Therefore, the personal residence of James Bolton is not a corporate office or "other office" of GML, and consequently, it does not establish GML's residency in Cook County.

3. GML is Not "Doing Business" in Cook County.

The trial court correctly found that GML does not conduct its usual and customary business in Cook County. *See Transcript of Hearing, R6.* GML's business is food manufacturing. GML does not design, manufacture, advertise, finance, or sell its products from within Cook County, Illinois. *See Affidavit of Mike Heffernan, E20, ¶8; Welge Affidavit, E740, ¶10.* GML's annual sales in Cook County were even lower than in other cases in which the Supreme Court has held that the defendant was not doing business in the county in question. Therefore, GML is not "doing business" in Cook County for purposes of venue.

Stambaugh is illustrative. In *Stambaugh*, the plaintiff farmer brought a products liability action against defendant tractor manufacturer in St. Clair County. *Stambaugh*, 102 Ill.2d at 252. The circuit court denied the defendant's motion to transfer venue. On appeal, the Supreme Court reversed, holding that venue was improper in St. Clair County. *Id.* at 261. The Court explained that the defendant had no ownership interest in facilities located in that county. *Id.* The Court further reasoned that the defendant did not design, manufacture, directly advertise, finance, or sell its products from within St. Clair County. *Id.* at 263. Although the defendant sold $2.6 million of its products to St. Clair County dealers, the $2.6 million accounted for less than 1% of the company's annual sales. *Id.* Therefore, the court reasoned that the defendant had only "an insignificant relationship" with the county and was not "doing business" there. *Id.* at 259.

In holding that venue was improper in *Stambaugh*, the Court noted that the provisions of the venue statute are *to be liberally construed in order to effect rather that defeat a change of venue*. *Id.* at 261. The Court further warned that to uphold venue as proper in that case would have been to allow "the institution of actions in locations with little connection with the defendant and with no connection with the activities which give rise to the suit." *Id.* at 262. Since the defendant was not conducting its "usual and customary business within the county," venue was improper. *Id.* at 261.

The instant case is indistinguishable from *Stambaugh*. Here, just as in *Stambaugh*, venue is improper in the county where the Plaintiff initiated the suit. Just as the defendant in *Stambaugh* had no office in St. Clair County, so too does GML have no office in Cook County. *Id.* at 256-57. The *Stambaugh* defendant's sales totaled $2.6 million in 1976 dollars. *Id.* at 261. Here, GML's 2016 sales to Cook County were

$1,348,507.00. *See Affidavit of Michael Heffernan, E21, ¶ 9; Affidavit of Thomas Welge, E742, ¶11; GML Sales Data, E744; and 2nd Affidavit of Michael Heffernan, E1186, ¶3.* This raw figure is approximately ***half*** the amount in *Stambaugh*, even without adjusting for any inflation from *Stambaugh*'s use of 1976 dollars. Therefore, even considering raw figures, GML's sales are well below amounts in which the Supreme Court has found that a company was not doing business in a county.

Just as the Defendant in *Stambaugh* did not design, manufacture, advertise, finance, or sell its products from within St. Clair County, so too GML does not design, manufacture, advertise, finance, or sell its products from within Cook County, Illinois. *See Affidavit of Mike Heffernan, E20, ¶8; Welge Affidavit, E740, ¶10.* See also *Gardner v. International Harvester Co.*, 113 Ill.2d 535, 542 (1986) (holding that the defendant was not "doing business" in St. Clair County because the defendant did not design, manufacture, advertise, finance, or sell its products from within St. Clair County). See also *Boxdorfer v. DaimlerChrysler Corp.*, 339 Ill. App. 3d 335, 342 (5th Dist. 2003) (holding that the defendant was not "doing business" in Madison County; even though the defendant sold its vehicles to dealers in Madison County, the sales were conducted and completed in Michigan, and the defendant retained no interest in the products after they were sold). Just as in *Stambaugh*, GML's sales to Cook County dealers are completed outside of Cook County, namely, in Randolph County. *Id.* at 259. Once the sale of products to dealers is made, GML no longer has any ownership or interest in the products. Moreover, the visits once or twice per year by Bolton to a single Cook County customer are akin to the "infrequent, but regular" visits in *Stambaugh*. *Id.* at 258. *See Bolton Dep., E797, 24:10-20; Bolton Affidavit ¶9-10.*

The amount of GML's annual sales in Cook County as a percentage of total sales illustrates that GML was not "doing business" in Cook County. The proportion of GML's business attributable to Cook County is virtually identical to the sales made by the defendants in *Stambaugh*, *Bucklew*, and *Gardner*. See *Stambaugh*, 102 Ill.2d at 262-63 (defendant was not doing business in St. Clair County, where its $2.6 million in sales in 1976 in St. Clair County constituted less than 1% of its annual sales); *Bucklew*, 138 Ill.2d at 291-92 (defendant was not doing business in St. Clair County, where its $289,760 in sales in St. Clair County constituted 2.5% of its Illinois sales and 0.12% of its national sales); and *Gardner v. International Harvester Co.*, 113 Ill.2d 535, 540 (1986) (the same defendant as in *Stambaugh* was not doing business in St. Clair County, where its $2.25 million in sales in 1982 was less than 1% of its total sales).

In the instant case, GML's annual sales in Cook County in 2016 constituted just 0.19% of its total annual sales. *See Affidavit of Michael Heffernan, E21,¶ 9.* In the five (5) years *prior* to the accident, GML's annual sales in Cook County did not exceed 0.47% of its total sales for each respective year. *2nd Affidavit of Michael Heffernan, E1186, ¶4.* Simply put, in 2016, the year of the accident and the year this cause of action was initiated, GML's Cook County sales were less than one-fifth of 1% of its total sales. Moreover, sales for each of the five prior years were less than one-half of 1% of its total sales. These cases are controlling and compel the conclusion that GML was not "doing business" in Cook County.

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.

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CERTIFICATE OF COMPLIANCE

I certify that this Appellant's Brief 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 **22** 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 Appellant's Brief, 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 **November 25, 2019**.

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

APPENDIX

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Order (Rev. 02/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

TABERTA
v.
GILSTER

No. 16 L 12605
10/27/17

ORDER

This matter coming to be heard on Defendants motion to Dismiss/Transfer Venue, & to motion to Dismiss having been denied (FNC) & Plaintiffs "Petrucco" motion, this Court orders as follows:

(1) Defendants motion to Dismiss Re Venue is hereby Denied per ruling in court.
(2) Plaintiffs Response / Petrucco motion is set for ruling on 12/18/17 at 10:00 AM,
(3) Defdnt to answer complaint on or before 11/24/17
(4) Parties to Issue Written by 11/08/17
(5) Plaintiff to provide List & Status by 11/8/17
(6) Parties to answer Pending Discov by 11/24/17

Attorney No.: 23274
Name: MARK PATRICOSKI
Atty. for: PLT
Address: 1755 S. Naperville Rd
City/State/Zip: #206, Wheaton, IL
Telephone: 630-933-2000

ENTERED:
Dated: 10/27/17

Judge Judge John H. Ehrlich Judge No.

OCT 27 2017
Circuit Court 2075

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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Lawyers

2019 IL App (1st) 172891-B
No. 1-17-2891

SECOND DIVISION
March 26, 2019

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SERGIU TABIRTA, Plaintiff-Respondent-Appellee,	)	Appeal from the Circuit Court of Cook County.
v.	)	No. 16L12605
JAMES J. CUMMINGS and GLISTER MARY LEE CORP. Defendants-Petitioners-Appellants.	)	The Honorable John H. Ehrlich, Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court, with opinion.
Justices Mason and Hyman concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff Sergiu Tabirta filed a negligence action in Cook County, Illinois, against James Cummings and Glister Mary Lee Corporation (GML) after sustaining injuries in a vehicle accident that occurred in Ohio. Defendants, in turn, challenged Tabirta's chosen venue because the accident did not occur in Cook County and neither defendant admitted to being a "resident" of the county as required by the Illinois venue statute. The circuit court denied defendants' motions to change venue, and defendants have appealed the court's ruling. For the reasons explained herein, we affirm the judgment of the circuit court.

¶ 2 I. BACKGROUND

¶ 3 On December 13, 2016, at approximately 2:20 p.m., a tractor trailer driven by Cummings collided with the commercial truck that plaintiff[1] was driving near mile post 168 on Interstate Road 71, a public highway located in Delaware County, Ohio. At the time of the accident, the tractor trailer that Cummings was operating was owned by GML, a Missouri corporation that manufactures, sells, and delivers private-label nonperishable food items and has its principal place of business located in Randolph County, Illinois. Tabirta suffered multiple serious injuries as a result of the accident, including the amputation of both of his legs.

¶ 4 Following the accident, Tabirta brought suit against Cummings and GML. Tabirta alleged in pertinent part that Cummings was negligent in the manner in which he operated the tractor trailer. Tabirta further alleged that Cummings was an agent of GML at the time of the accident, and thus he sought to hold the company accountable pursuant to an agency theory of liability. Tabirta, a resident of Cook County, Illinois, filed his suit in Cook County. He mistakenly identified GML as an Illinois corporation with its principal place of business in Cook County, Illinois.

¶ 5 In response, GML filed a motion to dismiss Tabirta's lawsuit on the grounds that it was not initiated in a proper venue. Alternatively, GML requested that Tabirta's suit be transferred to an appropriate venue. In support of its motion, GML argued: "Defendant James Cummings does not reside in Cook County, Illinois. Defendant GML does not own or lease any property in Cook County, does not have a registered office/agent in Cook County, and does not conduct its usual and customary business in Cook County." Given that the vehicle accident that precipitated Tabirta's lawsuit did not occur in Cook County, Illinois, and that neither defendant resided in

[1] At the time of the accident, plaintiff was an employee of GT Express and was operating a truck owned by that company.

Cook County, Illinois, GML argued that the requirements of the Illinois venue statute were not satisfied.

¶ 6 In support of its motion, GML attached an affidavit completed by Michael Heffernan, the company's transportation safety and risk manager. In his affidavit, Heffernan averred that GML is a Missouri corporation with its registered agent and principal place of business located at "1037 State Street, Chester, Illinois, 62233, County of Randolph." Heffernan further averred that GML does not own or lease any real property or office space in Cook County and does not have an authorized agent in Cook County. Heffernan also stated that GML "does not conduct its usual and customary business within Cook County, Illinois," and expressly denied that GML designs, manufactures, advertises, or finances its products from within Cook County. Finally, Heffernan averred that GML's "annual sales in Cook County, Illinois, in 2016 constituted 0.19% [ ] of its overall national annual sales" and that GML's annual sales in Cook County "did not exceed 0.47% of its overall national sales" during any of the five years preceding the accident.

¶ 7 Cummings also filed a motion to dismiss Tabirta's lawsuit or, alternatively, to transfer to the suit to another venue. He expressly adopted, realleged, and incorporated the substance of GML's motion in his own filing.

¶ 8 After defendants filed their motions challenging Tabirta's chosen venue, the parties engaged in limited discovery with respect to that issue. During the course of that discovery, GML submitted answers to plaintiff's interrogatory requests, and several of its employees were deposed.

¶ 9 In its answers, GML admitted that it had conducted business in Cook County since 1968 but denied that it was "doing business" in the county within the meaning of the Illinois venue statute. Specifically, GML admitted that it purchased materials and supplies from vendors

located in Cook County and that it sold some products to customers located in Cook County. In addition, GML acknowledged that delivery vehicles that it owned traveled on roads in Cook County. GML, however, denied advertising in Cook County. GML's total national and international sales in 2016 amounted to $686,328,949. Sales in Cook County in 2016 amounted to $1,348,507 and comprised only 0.19% of its total annual revenue.

¶ 10 In a discovery deposition, James Bolton, a Cook County resident for the past 50 years, testified that he commenced part-time employment with GML in 2011. His understanding was that he was hired because GML needed a point person in Chicago. He services three customers, only one of which is located in Cook County. Bolton testified that he corresponds with the customers via phone and e-mail and uses his own cell phone and computer to do so. GML provided him with a corporate 1-800 number for clients to reach him. He "occasionally" meets with GML's customers in person and is reimbursed for any travel expenses. GML does not, however, reimburse him for his home office expenses. Bolton does not maintain any files or records at his home office.

¶ 11 Bolton also completed an affidavit. In his affidavit, he reiterated that he was hired to service three customers—Aldi, Central Grocery, and Sears/Kmart—and averred that 85% of his time is spent dealing with Aldi. Aldi's headquarters is located in Batavia, which straddles Kane and Du Page Counties. The headquarters of one of his other clients, Sears/K-Mart, is located in Cook County, and he visits that office approximately twice per year. Bolton estimated that he devotes "less than 5%" of his work involved dealing with Sears/K-Mart. He never meets with clients at his home.

¶ 12 Michael Heffernan, GML's transportation safety and risk manager, was also deposed. He acknowledged that Bolton was a W2 employee of GML and classified Bolton as a sales

representative. Although GML conducted some business in Cook County, Hefferman testified that Cook County was "not a significant part or a focus of GML's business" and that "very little" of GML's overall sales occurred in Cook County. From 2011-16, GML's sales in Cook County totaled $17,297,873.32.

¶ 13 Thomas Welge, general counsel for GML, was also deposed. He classified Bolton as an "administrative type point person." Welge denied that Bolton was hired because GML specifically needed a point person in Chicago or Cook County. He explained that the company simply wanted a contact person in Illinois to service Aldi, one of GML's biggest customers, which had an office in Batavia, Illinois. In his accompanying affidavit, Welge reiterated that when GML hired Bolton, the company was seeking to hire an employee who lived near the general vicinity of Aldi's Batavia office. He averred that residence in Cook County specifically was not a job requirement and that Bolton's employment was not contingent upon him residing in Cook County.

¶ 14 Upon the completion of the aforementioned discovery, Tabirta filed his response to defendants' motions challenging his choice of Cook County as a proper venue. Relying on Bolton's deposition testimony, Tabirta argued that, although GML's registered agent and office were located in Randolph County, Bolton's Cook County residence from which he serviced three GML clients constituted an "other office" within the meaning of the Illinois venue statute. Moreover, citing GML's long-standing history of conducting business in Cook County, Tabirta argued that GML was also "doing business" in the county. Given that GML maintained an "other office" and was "doing business" in Cook County, Tabirta argued that Cook County was a proper venue and that defendants' challenges toward his chosen venue lacked merit.

¶ 15 Following a hearing, the circuit court denied defendants' motions to dismiss Tabirta's suit for being initiated in an improper venue. In doing so, the court acknowledged that the accident did not occur in Cook County and found that GML was not truly "doing business" in Cook County given that only a "very, very small percentage of [its] sales" occur within the county. Nonetheless, the court concluded that venue was proper in Cook County because GML maintained an office in Cook County, by virtue of the fact that James Bolton, one of its employees, "service[ed] clients on behalf of his employer" out of his Cook County residence. The court concluded that "the simple fact that [Bolton's] working out of his home doesn't *** deny the fact that it's still a place where GML is doing business out of."

¶ 16 Following entry of the circuit court's order, defendants filed a petition for leave to appeal with this court pursuant to Illinois Supreme Court Rule 306(a)(4) (eff. Nov. 1, 2017) seeking review of the circuit court's judgment. This court, however, denied defendants' petition for leave to appeal. In response, defendants filed a petition for leave to appeal with the Illinois Supreme Court. The supreme court also denied defendants leave to appeal; however, in an exercise of its supervisory authority, the court directed this court to vacate our prior order and to allow the petition. *Tabirta v. Cummings*, No. 123344 (Ill. Feb. 5, 2018). In light of the supreme court's exercise of its supervisory authority in this matter, we now allow defendants' petition for leave to appeal and consider their appeal on the merits.

¶ 17 II. ANALYSIS

¶ 18 On appeal, defendants contend that the circuit court erred in denying their motion to transfer venue because "no part of the 'transaction' occurred in Cook County and no defendant is a resident of Cook County."

¶ 19 Tabirta responds that the circuit court properly found that venue is proper in Cook County, Illinois, because GML "has a fixed office in Chicago, Cook County, managed and maintained by its salaried employee James Bolton and operated in furtherance of *** GML's corporate interests and in support of its Cook County, Illinois[,] customers."

¶ 20 Being subject to suit in a proper venue is an important statutory privilege. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 154 (2005); *Lake County Riverboat L.P. v. Illinois Gaming Board*, 313 Ill. App. 3d 943, 951 (2000). As such, a defendant has the right to insist that a lawsuit proceed in a proper venue provided that the objection is made in a timely manner. *Corral*, 217 Ill. 2d at 154. A defendant who objects to a plaintiff's chosen venue then bears the burden of proving that the venue is incorrect and must be able to identify specific facts that establish that the plaintiff's choice of venue is not proper. *Id.* at 155; *Reynolds v. GMAC Financial Services*, 344 Ill. App. 3d 843, 848 (2003). Any inconsistencies and doubts in the record with respect to the issue of venue will be resolved against the defendant. *Corral*, 217 Ill. 2d at 155; *Reynolds*, 344 Ill. App. 3d at 848. Because the issue of venue presents mixed questions of fact and law, the circuit court's underlying factual findings will not be disturbed unless they are against the manifest weight of the evidence; however, its ultimate determination as to whether the venue statute is satisfied is subject to *de novo* review. *Corral*, 217 Ill. 2d at 154-55.

¶ 21 "The purpose behind venue statutes is to protect defendants against a plaintiff's arbitrary selection of forum." *Lake County Riverboat*, 313 Ill. App. 3d at 951. To effectuate that purpose, venue statutes restrict proper venue to places that are convenient either to a defendant or to potential witnesses. *Bucklew v. G.D. Searle & Co.*, 138 Ill. 2d 282, 288-89 (1990); *Lake County*

Riverboat, 313 Ill. App. 3d at 951. Section 2-101 of the Code of Civil Procedure (Code) governs venue in Illinois and provides, in pertinent part, as follows:

> "Except as otherwise provided in this Act, every action must be commenced (1) in the county of residence of any defendant who is joined in good faith and with probable cause for the purpose of obtaining a judgment against him or her and not solely for the purpose of fixing venue in that county, or (2) 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 (West 2014).

¶ 22 This statute "reflects a legislative determination that a party should not be required to defend an action in a county that has little or no relation to the party or the transaction that is the subject of the [plaintiff's] suit." *Melliere v. Luhr Bros., Inc.*, 302 Ill. App. 3d 794, 796 (1999).

¶ 23 Here, the traffic accident took place in Ohio. It is thus undisputed that no part of the underlying transaction at issue occurred in Cook County. It is also undisputed that defendant Cummings is not a Cook County resident. Venue in Cook County is thus only proper in the instant case if GML is a resident of Cook County.

¶ 24 With respect to county of residence of corporate defendants, section 2-102 of the Code provides that "[a]ny private corporation *** organized under the laws of this State, and any foreign corporation authorized to transact business in this State is a resident of any county in which it has its registered office or *other office* or is *doing business*." (Emphasis added.) 735 ILCS 5/2-102(a) (West 2014). This provision "reflect[s] the legislature's view that a [corporate defendant] 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*, 138 Ill. 2d at 289.

¶ 25 GML is a Missouri corporation with its principal place of business and registered agent located in Randolph County, Illinois. Pursuant to section 2-102 of the Code, venue is thus only proper in Cook County if GML has an "other office" in Cook County or is "doing business" in Cook County.

¶ 26 The term "other office" is not defined by statute, and aside from the Fifth District's decision in *Melliere*, 302 Ill. App. 3d 794, there is a dearth of case law construing the phrase. In *Melliere*, the plaintiff filed suit in St. Clair County, Illinois, against his employer after he sustained injuries on a construction site located near Kentucky. His employer, an Illinois construction corporation with its corporate headquarters located in Monroe County, Illinois, filed a motion to transfer the case for lack of venue. The circuit court, however, denied the motion, finding that the corporation maintained an "other office" in St. Clair County by virtue of the fact that it leased a hangar at a local airport, which the company used to house its corporate aircraft. The court noted that the company employed two full-time pilots who regularly reported to work at the hangar to fly company employees to job sites, job bids, and to construction industry meetings and conventions. In addition, the hangar was equipped with a phone and desk for the pilots to use and a local telephone directory contained a listing for the company at the airplane hangar. *Id.* at 796.

¶ 27 The company appealed the circuit court's ruling, arguing that the phrase "other office" should be "defined as a place for the regular transaction of business or performance of a particular service" and that the airplane hangar did not fall within that definition because the company was not engaged in the business of commercial aviation and none of its employees responsible for the transaction of its regular construction business reported to work at the hangar. *Id.* at 797. According to the company, the term "other office" should be limited to a facility in

which its clerical work was performed and from which it prepared its construction bids, fielded inquiries about its business, and dispatched its employees to perform construction-related tasks. *Id.* at 798.

¶ 28 The Appellate Court, Fifth District, however, rejected the company's "narrow" and "restrictive" interpretation of the word "office." In doing so, the court found persuasive a Georgia Supreme Court decision broadly construing the term "office" as used in the Georgia venue statute as simply a "place of business." *Id.* at 798-99 (citing *Scott v. Atlanta Dairies Cooperative*, 238 S.E.2d 340 (Ga. 1977)). Relying on this construction of the term, the Georgia Supreme Court concluded that a filling station, rented by the defendant dairy company that was used to maintain its delivery trucks and from which it dispatched its employees to pick up milk, constituted an office even though the building was not a traditional clerical office that was open to the public. *Id.* at 799 (citing *Atlanta Dairies*, 238 S.E.2d 340). Employing the rationale utilized by the Georgia Supreme Court, the Fifth District in *Melliere* concluded that

> "the phrase other office as used in [the Illinois] venue statute means a fixed place of business at which the affairs of the corporation are conducted in furtherance of a corporate activity. This other office may be, but need not be, a traditional office in which clerical activities are conducted. Rather, we believe that the phrase other office includes any fixed location purposely selected to carry on an activity in furtherance of the corporation's business activities. The facility may be open to the public or may be a strictly private corporate operation." (Emphasis omitted.) *Id.* at 800.

Accordingly, given that the company's airplane hangar was regularly used to further its construction business activities, the Fifth District concluded that the hangar was an "other office" within the meaning of the Illinois venue statute.

¶ 29 Both parties rely on *Melliere* to support their respective venue arguments. Defendants argue that Bolton's "private residence is simply his home" and that GML has no ownership or financial interest in his home and does not manage or control the property in any way. Because Bolton's home is not a "fixed location purposely selected by GML to carry on corporate activities in Cook County," defendants argue that it does not meet the *Melliere* court's definition of an office for purposes of venue. Tabirta, in turn, responds that Bolton was specifically hired to work out of his Cook County residence to service several of GML's Illinois customers. Because Bolton's residence is a fixed location chosen specifically by GML to tend to its Illinois customers and facilitate its corporate interests, Tabirta asserts that Bolton's home office meets the *Melliere* court's definition of the term office as used in the Illinois venue statute. We agree with Tabirta.

¶ 30 The record establishes that GML is in the business of manufacturing, selling, and delivering nonperishable private-label food items. Some of GML's sales are derived from customers located in Illinois. The record also establishes that Bolton was hired in 2011 for the express purpose of servicing three of GML's Illinois customers, the most important of which was Aldi, a food retailer with a corporate office located in Batavia, a city in northern Illinois that straddles Du Page and Kane Counties. The record further establishes that Bolton's residence, located in nearby Cook County, was a factor in his hiring. In his discovery deposition, GML's general counsel, Thomas Welge, explained that GML was looking to hire a "point person" in Illinois who lived in close proximity to Aldi's Batavia office. Bolton's Cook County residence satisfied this requirement. Since his hiring, Bolton has worked approximately 24 hours per week to service and maintain GML's relationships with those clients. He is not a traveling salesperson; rather, he spends the vast majority of his time communicating with GML's customers via e-mail

and over the phone from his home, a fixed location. Although GML does not possess an ownership interest in Bolton's personal residence, we do not find that the lack of such an interest precludes a finding that Bolton's residence is an "other office." Admittedly, the corporate defendant in *Melliere* leased the facility found to be an "other office" for purpose of venue; however, the crux of the *Melliere* court's analysis as to whether the facility constituted an "office" for purposes of venue was not whether the corporate defendant possessed an ownership interest in the property. Instead, the relevant inquiry was whether the property was a "fixed location purposely selected to carry on an activity in furtherance of the corporation's business activities." *Id.* Employing this rationale, we find that Bolton's home residence satisfies the *Melliere* court's definition of the term "other office" and that GML is thus a resident of Cook County. GML specifically hired Bolton to service three of its Illinois customers from his Cook County residence and provided him with an e-mail address and a corporate extension with which to do so. Since his hiring, Bolton has acted as GML's "point person" in Illinois and has worked to maintain GML's business relationships with its Illinois clients, thereby furthering GML's corporate interests. We therefore conclude that the circuit court did not err in denying defendants' motions seeking dismissal of Tabirta's lawsuit for lack of proper venue.

¶ 31 In so finding, we are unpersuaded by defendants' reliance on *Peterson v. Monsanto Co.*, 157 Ill. App. 3d 508 (1987), a case in which the Fifth District rejected the argument that the location of an employee's home office in the plaintiff's chosen venue was sufficient to establish that the defendant company was "doing business" in that venue. *Id.* at 510. Neither the parties nor the court engaged in any analysis as to whether the employee's home office constituted an "other office" within the meaning of the Illinois venue statute. *Id.* Instead, the court was only asked to determine whether a company could be found to be doing business in a county simply

because one of its employees had a home office located in that county. *Id.* Accordingly, we disagree that *Peterson* necessarily compels a different result.

¶ 32 We further disagree that our decision would improperly subject a company to venue in "any county where any of its agents or employees conduct[ ] any work out of their homes" and would thus "defy the purpose of the [Illinois venue] statute," which is designed to protect defendants against being subjected to a plaintiff's arbitrary choice of venue. We emphasize that cases involving questions of venue are fact specific and that our conclusion is based solely upon the facts present in this case. A fair reading of this disposition does not support the conclusion that venue is proper in any county in which a corporation's employee maintains a home office; rather, we are simply holding that, in this case, Bolton's home office in which he regularly services three of GML's customers constitutes an "other office" within the meaning of the venue statute. We therefore affirm the judgment of the circuit court.[2]

¶ 33 III. CONCLUSION

¶ 34 The judgment of the circuit court is affirmed.

¶ 35 Affirmed.

[2] In light of our conclusion that GML maintains an office in Cook County, we need not address Tabirta's alternative argument that venue in Cook County is also proper because GML is doing business in Cook County.

No. 124798
IN THE
SUPREME COURT OF ILLINOIS

SERGIU TABIRTA,	)	On leave to appeal from the
	)	Appellate Court of Illinois, First
Plaintiff-Appellee,	)	District, No. 1-17-2891.
	)	
v.	)	There on appeal from the Circuit
	)	Court of Cook County, Illinois,
JAMES J. CUMMINGS, individually	)	No. 2016-L-012605
and GILSTER MARY LEE CORP.,	)	
	)	Honorable John Ehrlich, Presiding
Defendants-Appellants.	)	

NOTICE OF FILING

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Please take notice that on November 25, 2019, the undersigned filed and electronically submitted to the Supreme Court clerk's office the APPELLANT'S BRIEF with the Clerk of the Supreme Court of Illinois, a copy of which is attached hereto and served upon you.

Respectfully submitted,

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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 Appellant's Brief 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 **November 25, 2019**.

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
Jason D. Guerra

E-FILED
11/25/2019 1:20 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK