

PUBLICATION

LLCs Could Face Increased Litigation in Tennessee

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An increased volume of lawsuits against LLCs that use the C.T. Corporation System as their registered agent could be the result of a recent decision by the Tennessee Court of Appeals.

The Tennessee Court of Appeals recently determined that the Knox County Chancery Court was a proper venue for a "transitory action" filed against a limited liability company (LLC) that did not maintain its place of business in that county. *Federal Express v. American Bicycle Group, LLC*, No. E2007-01483-COA-RPCV, 2008 Tenn. App. LEXIS (Tenn. Ct. App. 2008).

Tenn. Code Ann. § 20-4-101(a) provides that "in all civil actions of a transitory nature, unless venue is otherwise expressly provided for, the action may be brought in the county where the cause of action arose or in the county where the defendant resides or is found." A "transitory action" differs from a "local action" in that it is an action in which the injury occurs to a subject not having an immovable location. *Curtis v. Garrison*, 211 Tenn. 339, 364 S.W.2d 933 (Tenn. 1963). The classic example of a "local action" is an injury to real property and those actions must be brought in the county in which the property is located. Conversely, typical examples of transitory actions are actions sounding in tort and contract.

Tennessee courts have never interpreted this Code provision to determine the meaning of the phrase: "where the defendant...is found." One question that has arisen is whether LLCs could be "found" in a county where they do not maintain their place of business. The answer to this question governs the related question of whether an LLC can be sued in a county where it does not maintain its place of business and where the cause of action did not arise.

In *Federal Express*, the plaintiff sued the Defendant LLC over a debt. The complaint was filed in the Knox County Chancery Court and the LLC entered a limited appearance for the purpose of challenging venue. The Defendant LLC argued that venue was improper because its place of business was in Hamilton County and because the alleged cause of action arose in Shelby County. The trial court denied the motion to dismiss and thereafter the Defendant LLC sought an interlocutory appeal which was granted.

Broadly speaking, the issue on appeal was whether the trial court correctly determined that Knox County was a permissible venue for the lawsuit. Specifically, however, the issue was whether the Defendant LLC could be "found" in Knox County.

Because the defendant in the case was an LLC, the Court looked for guidance from the statutes governing such entities. Under Tenn. Code Ann. § 48-208-101 and § 48-208-102, LLCs are required to maintain 1) a registered office; and 2) a registered agent that must maintain a business office with an address identical to that of the registered office.

In *Federal Express*, the Defendant LLC's registered agent was the well-known C.T. Corporation System, whose business office is located in Knox County. The Court reasoned that for the purposes of the "LLC" statutes, C.T. Corporation System's Knoxville address was its business office which, according to the statute, must also be considered the Defendant LLC's registered office. Therefore, the Court determined that the Defendant LLC had in Knox County: (1) a registered agent; (2) a registered office; and (3) a business office.

Consequently, the Court held that Knox County was a permissible venue for the lawsuit and that the Defendant LLC could be "found" in Knox County pursuant to Tenn. Code Ann. § 20-4-101.