

IN THE SUPREME COURT OF GEORGIA

CASE NO. S16C0490

PANDORA FRANCHISING, LLC,

Petitioner-Appellant

v.

KINGDOM RETAIL GROUP, LLLP,

Respondent-Appellee

**GEORGIA DEFENSE LAWYERS ASSOCIATION'S
AMICUS CURIAE BRIEF**

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**AMICUS CURIAE BRIEF OF
THE GEORGIA DEFENSE LAWYERS ASSOCIATION**

COMES NOW the Georgia Defense Lawyers Association (“GDLA”) and files this Brief as *amicus curiae* in the above-styled appeals, showing this honorable Court as follows:

STATEMENT OF INTEREST

The GDLA is an association of more than 825 Georgia lawyers, including sole practitioners and members of law firms of all sizes, who engage in litigation, primarily for defendants in civil lawsuits. The GDLA is dedicated to, among other purposes, supporting and improving the civil defense bar, improving the adversary system of jurisprudence in our courts, eliminating court congestion and delay in litigation, and otherwise promoting improvements in the administration of justice.

Ensuring reasonable, accurate, and consistent interpretation and application of constitutional and statutory venue provisions is important to any individual or company that may be subject to suit in the state of Georgia. In addition, corporations and other business entities doing business within the state are entitled to rely on the plain meaning of statutes enacted by the General Assembly. All persons and companies doing business within the state have an interest in ensuring that the courts do not improperly and inappropriately limit or modify the venue provisions set forth in the Georgia Constitution and by statute.

Furthermore, all citizens of Georgia have an interest in avoiding the detrimental effects on the state's economy and statewide job prospects are likely to result from the Court of Appeals' holding. Aside from violating applicable rules of statutory construction, the Court of Appeals' interpretation of O.C.G.A. § 14-2-510(b)(4) below works to deprive corporations of a statutory right granted them by Georgia's legislature. The Court of Appeals' holding, if it should stand, would deter foreign corporations from locating some of their operations in Georgia by taking away one of the benefits for doing so. This Court should reverse the Court of Appeals' decision below and should hold that O.C.G.A. § 14-2-510(b)(4) says what it means and means what it says – that where venue in a case against a corporation is based solely on the location where the cause of action

originated, the corporation has the right “to remove the action to the county in Georgia where the defendant maintains its principal place of business.”

STATEMENT OF FACTS

In this case, Kingdom Retail Group, LLC (“Kingdom”) sued Pandora Franchising, LLC (“Pandora”), alleging that Pandora wrongfully declined to consent to Kingdom’s bid to acquire 21 Pandora franchises. Kingdom filed the lawsuit in Thomas County, Georgia, alleging that venue was proper because the cause of action arose there. Relying on O.C.G.A. § 14-2-510(b)(4), Pandora removed the case to Gwinnett County, where Pandora’s registered agent and registered office with the Secretary of State are located. Pandora also apparently does substantial business within Gwinnett County with and through one of its franchisees. Kingdom filed an objection to the removal in the Superior Court of Thomas County, which declined to return the case to Thomas County.¹

¹ Notably, by filing its objection to the removal in Thomas County, Kingdom clearly failed to comply with the procedure set forth in O.C.G.A. § 14-2-510(b)(4), which provides that “[u]pon motion by the plaintiff filed within 45 days of the removal, the court to which the case is removed may remand the case to the original court if it finds that removal is improper....” *Id.* (emphasis supplied). Indeed, it does not appear that the Superior Court of Thomas County would have had jurisdiction to do anything in the case once Pandora had removed the case to Gwinnett County. Nevertheless, given the potential for confusion and unfairness that would result from the Court of Appeals’ interpretation of O.C.G.A. § 14-2-510(b)(4) below, the GDLA respectfully submits that this Court should reach the issue of whether the Court of Appeals’ interpretation of the statute is correct.

The Court of Appeals granted Kingdom's application for discretionary review and reversed, with one of three judges concurring in the judgment only.² Essentially, the Court of Appeals held that only Georgia-based corporations (i.e., corporations with their national headquarters located within the state) can take advantage of the removal right set out in O.C.G.A. § 14-2-510(b)(4).³ Pandora filed a petition for *certiorari* of the Court of Appeals' decision, which this Court granted.

ARGUMENT AND CITATION OF AUTHORITY

In reaching its decision in this case, the Court of Appeals appears to have disregarded its own wise words by failing to "presume that the General Assembly meant what it said and said what it meant."⁴ What the General Assembly said in enacting O.C.G.A. § 14-2-510(b)(4) is:

In actions for damages because of torts, wrong, or injury done, [any corporation is subject to venue] in the county where the cause of action originated. **If venue is based solely on this paragraph, the defendant shall have the right to remove the action to the county in Georgia where the defendant maintains its principal place of business.**⁵

² *Kingdom Retail Group, LLC v. Pandora Franchising, LLC*, 334 Ga. App. 812 (2015) (physical precedent only).

³ *Id.* at 817-18.

⁴ *Id.* at 814.

⁵ O.C.G.A. § 14-2-510(b)(4) (emphasis supplied).

By including the words “in Georgia,” the General Assembly made clear that it meant that any corporate defendant be permitted to remove an action in which the plaintiff relies solely on that provision to establish venue to the county where the defendant’s principal place of business in Georgia is located. But the Court of Appeals interpreted the statute much differently; what the General Assembly actually meant, according to the Court of Appeals, was that if venue is based solely on that paragraph, the defendant may remove the action to the county in Georgia where the defendant maintains its principal place of business only if its worldwide headquarters is in Georgia.

In reaching its decision in this case, the Court of Appeals incorrectly conflated the language “the county in Georgia where the defendant maintains its principal place of business” in O.C.G.A. § 14-2-510(b)(4) with the question of what constitutes a corporation’s “principal place of business” for purposes of “determining questions of residency and jurisdiction.” The Court of Appeals’ interpretation of O.C.G.A. § 14-2-510(b)(4) cannot be correct, however, because it renders the words “in Georgia” mere surplusage.⁶ At the same time, the Court of Appeals held that “the county in Georgia where the defendant maintains its

⁶ See, e.g., *Roseburg Forest Prods. Co. v. Barnes*, Case no. S15G1808, 2015 Ga. LEXIS 401, *4 (1) (June 6, 2016); *Slakman v. Cont’l Cas. Co.*, 277 Ga. 189, 191 (2003).

principal place of business” means something completely different than “the county where the defendant maintains its principal place of business in Georgia”:

It is true that subsection (b)(4) allows a transfer to the “county in Georgia” where the defendant has its principal place of business. But read together with the remainder of the statute, we cannot conclude that the legislature meant that to mean “principal place of business in Georgia.” Rather, the plain meaning of subsection (b)(4) allows a transfer only if a defendant's principal place of business, as defined above, is located in Georgia.

The GDLA respectfully submits that the interpretation applied to O.C.G.A. § 14-2-510(b)(4) is something other than the statute’s plain meaning. Indeed, had the General Assembly intended that the statute have the meaning assigned to it by the Court of Appeals in this case, there are a number of different ways the statute could have been written. The statute could have said that the defendant could remove the case “to the county where the defendant maintains its principal place of business, if the defendant’s principal place of business is in Georgia.” Or even more succinctly, the statute simply could have permitted removal only “to the county where the defendant maintains its principal place of business.” Instead, the legislature wrote the statute so that “where the defendant maintains its principal place of business” modifies “the county in Georgia.” Only one reasonable conclusion can be drawn from that language.

The importance of the Court of Appeals’ erroneous interpretation of O.C.G.A. § 14-2-510(b)(4) cannot be overstated. The Court of Appeals’ holding in

this case deprives an entire group of desirable corporate citizens of their constitutional right to be tried at home.⁷ This constitutional right belongs to corporations both foreign and domestic and it is protected in every subsection of the corporate venue statute.⁸ To presume that the legislature intended to deprive companies with a significant business presence in Georgia (or even an insignificant, but persistent and genuine one) of that right if they are headquartered outside Georgia is illogical, not supported by the law, and not good for Georgia.

One first has to consider the reasoning behind a rule such as the right of removal granted to corporate defendants by O.C.G.A § 14-2-510(b)(4). What possible desired end could be reached by preventing this one group of defendants (resident corporations headquartered elsewhere) from being tried at their “home” within the state? Appellee suggests that it is to avoid a fluid definition of “principal place of business” which would depend in various cases on where the corporate defendant has the most employees, makes the most sales, maintains its registered agent, or similar factors. There is, however, nothing improper or unusual about such a fact-based, case-specific definition. The law is replete with

⁷ See GA. CONST. 1983, Art. VI, § II, ¶VI; *Benton Rapid Exp. v. Johnson*, 202 Ga. 597 (1947).

⁸ *Orkin Exterminating Co., Inc. v. Gilland*, 130 Ga. App. 788 (1974). See also O.C.G.A. § 14-2-510(b)(1)-(b)(4)

instances in which courts make factual determinations on a case-by-case basis (e.g., sufficient minimum contacts for personal jurisdiction, adequate indicia of trustworthiness for hearsay, ineffective counsel or judgment call). Indeed, the question of where a company's "principal place of business" lies is always fact-based and determined on a case-by-case basis.⁹

Appellee also suggests that the Court of Appeals' decision would help prevent venue-shopping. Under the present statutory scheme, however, there is ample opportunity for a plaintiff to present to a court evidence of improper venue-shopping and the trial court can and should take that into consideration in making its decision in any given case. It is therefore illogical to deny every resident corporate defendant whose national or worldwide headquarters are located outside the state of the right to be tried in the county in Georgia in which its principal place of business within Georgia is located.

Turning next to the legal authority cited by the Court of Appeals, one still finds no support for the decision. Citing cases in which the phrase "principal place of business" is used in other contexts, the Court of Appeals blithely finds that the General Assembly did not mean what it said because in all of those cases the courts referred to the world headquarters of the companies as the principal places of

⁹ See *Hertz Corp. v. Friend*, 559 U.S. 77, 95-96, 130 S. Ct. 1181 (2010).

business. In none of those cases, however, was the question presented “what is a company’s principal place of business in Georgia” or “what is the principal place of business for purposes of the corporate venue statute.” In each of those cases, “principal place of business” was used as a term of art and simply stated as fact. None of the decisions relied on by the Court of Appeals in this case discussed the definition of “principal place of business” and none indicated it was making a decision that it expected to be applied to venue determinations. Thus, it is inaccurate for the Court of Appeals to suggest that the term was “defined above” by other cases when it was, in truth, the Court of Appeals that converted the words into a definitional statement.

Appellant in this case freely admits that, for purposes of registering with the Georgia Secretary of State, its principal place of business is Maryland. As the trial court correctly found, however, Appellant’s principal place of business within Georgia is Gwinnett County. Consequently, Appellant is constitutionally entitled to remove the case to Gwinnett County.

Finally, one must consider the deleterious practical effects of the Court of Appeals’ decision. For example, Siemens is a global technology and power generation company with its global headquarters in Germany and its American division headquartered in Washington, D.C. Siemens maintains a large operation in Fulton County employing hundreds of Georgians. The company also has

helped revitalize Atlanta communities through Siemens Caring Hands Foundation and has donated money and equipment to the Georgia Institute of Technology to establish laboratories on its Atlanta campus. Under the Court of Appeals' holding in this case, however, Siemens would not be able to take advantage of O.C.G.A. § 14-2-510(b)(4) to remove certain tort cases to its Georgia "home" of Fulton County. The company thus would lose the benefit of having cases against it heard and decided by people familiar with the company and its way of doing business.

Siemens is just one example; numerous other corporations based outside Georgia—often far outside—nonetheless have substantial operations in Georgia which should be taken into account in determining venue.¹⁰ Indeed, the rule created in this case by the Court of Appeals not only would diminish foreign companies' incentive to locate some of their operations in Georgia, but it would

¹⁰ For example, Kia Motors' worldwide headquarters are located in Seoul, South Korea but the company has a large manufacturing plant located in West Point, Georgia. Aircraft manufacturer Boeing is headquartered in Chicago but has a plant in Macon. Snack food manufacturer Frito-Lay is based on Texas but employs numerous Georgians at its facility in Perry. Global forest products company Rayonier is headquartered in Jacksonville, Florida but maintains a plant in Jesup. And John Deere is headquartered in Illinois but operates a plant outside Augusta where tractors are manufactured. Of course, there are many other such examples—according to an informal response from the Director of Corporations in the Secretary of State's Office, as of June 14, 2016, some 66,108 foreign (non-Georgia) companies headquartered outside Georgia were registered with the Secretary of State.

drastically reduce the incentive for foreign corporations to be good corporate citizens within Georgia. This clearly is not what the legislature intended in enacting O.C.G.A. § 14-2-510(b)(4), and it is not consistent with the Georgia Constitution's guarantee that defendants generally be tried where they reside.

Admittedly, the legislature intended to expand venue as to corporations through O.C.G.A. § 14-2-510(b)(4), but the expansion was not without limits. As indicated by its incorporation into the Georgia constitution, venue is an important right in Georgia. Persons and companies sued in Georgia generally have a right to be tried by a jury of their neighbors and to be held to the standards of the community in which they operate and reside. For a corporation or limited-liability company, that is the primary place where it does business in Georgia, regardless of whether that place also serves as the company's national or worldwide headquarters. This Court should reverse the Court of Appeals' holding and should reinstate the decision of the trial court. More importantly, this Court should confirm that O.C.G.A. § 14-2-510(b)(4) "means what it says and says what it means."

CONCLUSION

The Court of Appeals erred in holding that the right of a corporate defendant under O.C.G.A. § 14-2-510(b)(4) to "remove" a case to the county in which its principal place of business within the state is located only applies to

corporations headquartered in Georgia. That conclusion is not supported by the plain language or intent of the statute, nor is it fair or reasonable. This Court should reverse the Court of Appeals' holding and should hold instead that any company may utilize O.C.G.A. § 14-2-510(b)(4), where it applies, to remove a tort case to the company's "principal place of business" within Georgia.

Respectfully submitted, this 17th day of June, 2016.

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Certificate of Service

The undersigned hereby certifies that she has this day served a true and correct copy of the foregoing upon all counsel by electronic service and/or by placing a copy of **AMICUS CURIAE BRIEF OF THE GEORGIA DEFENSE LAWYERS ASSOCIATION** via the Court's electronic filing/service system and by placing a copy in the United States Mail, with First Class postage prepaid, properly addressed as follows:

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This 17th day of June, 2016.

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