

**BLOGS**

Jurisdiction and Procedure

Tennessee Appellate Court Finds that Venue Clause in Franchise Agreement is Permissive and Not Mandatory

11/07/2024 | 2 minute read

The Tennessee Court of Appeals reversed a district court’s dismissal of a franchisee’s declaratory judgment claim, finding that the claim was properly brought in Tennessee. *Lakeway Real Estate2, LLC v. ERA Franchise Sys., LLC*, 2024 WL 4564153 (Oct. 24, 2024). In December 2014, Lakeway Real Estate2, entered into a franchise agreement with the franchisor ERA Franchise Systems. Eight years later, in December 2022, Lakeway filed a complaint in a Tennessee trial court seeking (1) a declaratory judgment that ERA breached the franchise agreement, therefore absolving Lakeway from any further obligations under the agreement, and (2) a ruling that the franchise agreement’s noncompete provision was unenforceable. ERA moved to dismiss the complaint, arguing that the franchise agreement’s venue and jurisdiction clause mandated that claims be brought in New Jersey. The provision read: “You submit to the non-exclusive personal jurisdiction of the state and federal courts of New Jersey Such litigation will have venue in [New Jersey courts].” ERA argued that the use of the term “non-exclusive” in the first sentence of the venue clause—which dictated where personal jurisdiction was proper—and the absence of the term in the second sentence—which stated that litigation “will have venue” in the federal or state courts in New Jersey—necessarily meant that any claim must be brought in New Jersey. The trial court agreed and dismissed Lakeway’s complaint for improper venue.

After Lakeway appealed, the appellate court reversed the dismissal, finding ERA’s reading of the clause incongruent with the parties’ intent. The appellate court reasoned that the term “non-exclusive” modified not just the first sentence, but the whole clause, therefore establishing (1) “non-exclusive” personal jurisdiction in New Jersey and (2) proper venue *should* the case be filed in New Jersey. The appellate court then concluded that, because the venue and jurisdiction clause was permissive and not mandatory, the district erred in dismissing the case for lack of venue.

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