

IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION

FILED

November 28, 1995

Cecil Crowson, Jr.
Appellate Court Clerk

JONESBORO DRYWALL & PLASTER)	C/ A NO. 03A01-9508-CH-00276
CO., INC.,)	
)	WASHINGTON CHANCERY
Plaintiff - Appellant,)	
)	HON. LEWIS W. MAY, JR.,
v.)	CHANCELLOR
)	
CHARLIE O. KIRBY, d/b/a)	
BROTHERS CONSTRUCTION COMPANY,)	AFFIRMED
)	AND
Defendant - Appellee.)	REMANDED

RICK J. BEARFIELD, Johnson City, for Plaintiff - Appellant.

JOHN S. TAYLOR, McKinnon, Fowler, Fox & Taylor, Johnson City,
for Defendant - Appellee.

O P I N I O N

Franks. J.

This action was filed in Washington County, and process sent to Hamilton County where service was made upon defendant. Responding to defendant's motion to dismiss either on the grounds of jurisdiction or venue, the Trial Judge

dismissed the action. He concluded Tennessee courts do not have subject matter jurisdiction in this case.

A general contractor building housing in Boone, N. C., subcontracted with Plaintiff to install a exterior insulation finishing system. Plaintiff then subcontracted with Defendant and the parties agreed that plaintiff would provide supplies and materials for the insulation system and defendant would provide the labor.

A dispute arose between the parties and plaintiff filed a complaint seeking damages for consequential expenses incurred by plaintiff in subcontracting with another party to complete the work, reimbursement for materials provided to defendant which were lost or destroyed, and reimbursement for plaintiff's own expenses in completing the work.

The Trial Court granted the motion to dismiss pursuant to T. R. C. P. Rules 12.02(1).

The issue before us is one of law and the scope of review is *de novo* with no presumption of correctness accompanying the Chancellor's conclusions of law. *Union Carbide Corp. v. Huddleston*, 854 S.W2d 87 (Tenn. 1993).

Subject matter jurisdiction relates to the nature of the controversy and the type of relief sought. *Young v. Kittrell*, 833 S.W2d 505 (Tenn. App. 1992). It is a question of whether a court has been given the power to decide a particular type of controversy.¹ *Swift & Co. v. Memphis Cold*

¹ Defendant's brief states that "[T]his case is essentially one of whether the Tennessee Courts have subject matter jurisdiction to decide a case which is primarily...intertwined with issues as to real property located in North Carolina... Kirby is not disputing whether Circuit or Chancery Court would be the appropriate Tennessee tribunal to hear this type case if it were otherwise appropriate to be brought in a Tennessee tribunal." Appellee seems to have confused the concepts of personal or

Storage Warehouse Co., 128 Tenn. 82, 158 S.W. 480 (1913). The General Assembly has defined the subject matter jurisdiction of the chancery court as follows:

The chancery court has concurrent jurisdiction, with the circuit court, of all civil causes of action, triable in the circuit court, except for unliquidated damages for injuries to person or character, and except for unliquidated damages for injuries to property not resulting from a breach of oral or written contract; and no demurrer for want of jurisdiction of the cause of action shall be sustained in the chancery court, except in the cases excepted . . .

Tenn. Code Ann. §16-11-102 (1994).

Plaintiff argues that this suit deals with property, while defendant argues that it is a contract action. While real property is necessarily implicated in a building project, no injuries to the real property are alleged. The complaint focuses on the alleged breach of contract and asks for damages for the breach. Accordingly, this suit may be properly characterized as a contract action and the Chancery Court properly has subject matter jurisdiction. T.C.A. §16-11-102.

The familiar rule that where a trial court reaches a correct result for the wrong reason, the judgment may be affirmed, is applicable here.

Venue for transitory actions is proper in the county where the cause of action arose or in the county where the defendant resides or is found. Tenn. Code Ann. §20-4-101. An action based on contract is a transitory action. *Five Star Express Inc. v. Davis*, 866 S.W.2d 944 (Tenn. 1993).

in rem jurisdiction and subject matter jurisdiction. Personal or in rem jurisdiction deals with a court's ability to reach parties or properties in another state. See 20 Am Jur 2d Courts §70 (1995). Subject matter jurisdiction deals with which court within a state may hear a type of action. *Id.*

Plaintiff argues that Washington County, where its principal place of business is located, is the county in which the cause of action arose and for this proposition relies on *Insituform of North America v. Miller Insituform*, 695 S.W2d 198 (Tenn. App. 1985). In *Insituform*, the court found that venue was proper in Shelby County where plaintiff's principal place of business was located. The factors that led the court to that conclusion were: all notices pursuant to a licensing agreement were to be given to the plaintiff in Shelby County, material sold was priced F.O.B. Memphis, and accounts owing were due and payable in Shelby County. *Id.* Here, while plaintiff has its principal place of business in Washington County, the contract was signed in Boone County, North Carolina, and the work was to take place there and all materials for the project were purchased in North Carolina. The contract makes no reference to any payments or activities that are to take place in Washington County. Unlike *Insituform*, the plaintiff's principal place of business does not serve as a focal point for the subcontract.

Since the cause of action arose in North Carolina, the only Tennessee forum is in the county where the defendant resides or is found. Tenn. Code Ann. §20-4-101. For purposes of venue, the "residence" of a corporation is its principal place of business. *Five Star*. Accordingly, the appropriate venue is Hamilton County, Tennessee, where defendant has its principal place of business.

The dismissal by the Trial Court was proper on the issue of venue, since defendant properly raised the issue of venue in its motion.

The judgment of the Trial Court is affirmed, and the costs are assessed to plaintiff.

Herschel P. Franks, J.

CONCUR:

Don T. McMuray, J.

Charles D. Susano, Jr., J.