FOURTH DIVISION
December 22, 2016

No. 1-16-1062

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GREEN TREE SERVICING, LLC,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 13 CH 21631
	)	
DAVID S. CAPUA, et al.,	)	Honorable
	)	Michael Otto,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Ellis and Justice Burke concurred in the judgment.

ORDER

¶ *1* *Held*: We affirm the trial court's order granting defendant's motion to dismiss complaint for plaintiff's failure to post security for costs; plaintiff is not an Illinois resident under the security for costs statute because simply registering with the Illinois Secretary of State and maintaining a registered agent is insufficient in Illinois for a foreign corporation to be considered a resident under 735 ILCS 5/5-101.

¶ 2 BACKGROUND

¶ 3 Illinois law requires all non-resident plaintiffs to post security for costs in order to proceed with a civil action. 735 ILCS 5/5-101 (West 2012). Plaintiff Green Tree Servicing, LLC (Green Tree) is a foreign corporation incorporated in Delaware, and its current principal place of business is not in Illinois. Plaintiff was assigned a mortgage on property located in Illinois and initiated an action to foreclose mortgage against defendant David Capua on September 20, 2013. However, plaintiff failed to post security for costs. In his first appearance at court, on May 28, 2014, defendant filed a motion to dismiss the complaint, pursuant to section 5-103 of the Code of Civil Procedure (Code) (735 ILCS 5/5-103 (West 2012)), for plaintiff's failure to post security. Section 5-101 provides that:

> "in all civil actions, where the plaintiff, or person for whose use an action is to be commenced, is not a resident of this State, the plaintiff, or person for whose use the action is to be commenced, shall, before he or she institutes such action, file, or cause to be filed, with the clerk of the court in which the action is to be commenced, security for costs ***." 735 ILCS 5/5-101 (West 2012).

¶ 4 In reply, plaintiff argued it was not required to post security because it was an Illinois resident due to the fact that it received authorization to conduct business in Illinois by registering with the Secretary of State and maintaining an authorized agent to receive service of process. Plaintiff never submitted evidence or alleged it maintained an office or a place of business in Illinois. On August 6, 2015, the trial court found that plaintiff was not an Illinois resident and was required to post security for its foreclosure action, giving plaintiff until September 3, 2015 to post security. Plaintiff failed to do so. On September 11, 2015, plaintiff filed a motion to reconsider. On March 21, 2016, that motion was denied, the case was dismissed, and this appeal followed.

¶ 5 ANALYSIS

¶ 6 The issue presented for appeal is whether a foreign corporation is considered an Illinois resident under section 5-101 of the Code (735 ILCS 5/5-101 (West 2012)) simply if it is authorized to conduct business in Illinois by registering with the Secretary of State to conduct business and maintains a registered agent. For the following reasons, we find that a foreign corporation does not become an Illinois resident for purposes of section 5-101 simply by being authorized by the Secretary of State to conduct business in Illinois. We further find that the common law does not regard a corporation that is simply authorized to conduct business in the State as a resident for any purpose other than those specifically provided for by statute.

¶ 7 Because this appeal requires us to "review the trial court's ruling on a motion to dismiss, the standard of review is *de novo*. [Citations.] Further, issues of statutory construction are questions of law, which are reviewed *de novo*." *Bouton v. Bailie*, 2014 IL App (3d) 130406, ¶ 7. Statutory terms are interpreted using "their ordinary and popularly understood meaning." *Kozak v. Retirement Board of the Firemen's Annuity and Benefit Fund*, 95 Ill. 2d 211, 215 (1983). We read the statute as it was written without "search[ing] for any subtle or not readily apparent intention of the legislature." *Id*. at 216. "We cannot read into the statute words which are not within the plain intention of the legislature as determined from the statute itself. [Citations.] We cannot restrict nor enlarge the plain meaning of an unambiguous statute. [Citation.]" *Bovinette v. City of Mascoutah*, 55 Ill. 2d 129, 133 (1973). "When the language of a statute is plain and unambiguous, courts may not read in exceptions, limitations, or other conditions." *In re D.D.*, 196 Ill. 2d 405, 419 (2001) (citing *People v. Lavallier*, 187 Ill. 2d 464 (1999); *People v. Daniels*, 172 Ill. 2d 154 (1996)).

¶ 8 Certain statutory terms have clear and well settled meaning under the common law. When interpreting statutory "words and phrases having well-defined meanings in the common law," we utilize the common law construction "in statutes dealing with the same or similar subject matter as that with which they were associated at common law." *Scott v. Dreis & Krump Manufacturing Co.,* 26 Ill. App. 3d 971, 983 (1975). Those well-defined meanings in the common law are utilized because "courts will presume that the legislature knew of prior interpretations placed on particular language by judicial decision." *People v. Bailey*, 375 Ill. App. 3d 1055, 1061 (2002) (citing *Carver v. Bond/Fayette/Effingham Regional Board of School Trustees*, 146 Ill. 2d 347, 353 (1992)). This stems from the presumption that "the legislature acted with knowledge of the prevailing case law" when a statute is written after publication of judicial interpretations. *People v. Hickman*, 163 Ill. 2d 250, 262 (1994). This is consistent with "the rule of construction that statutes should be construed with reference to the principles of the common law, and it will not be presumed that an innovation thereon was intended farther than is specified or clearly to be implied [citation.]" *Scott*, at 983.

¶ 9 <u>Registering With the Secretary of State and Maintaining an Authorized Agent Does Not Make a Corporation an Illinois Resident Under 735 ILCS 5/5-101</u>

¶ 10 Plaintiff has advanced the argument that it is an Illinois resident under 735 ILCS 5/5-101 because it has registered with the Secretary of State and maintains a registered agent. We disagree. Whether a corporation is an Illinois resident is a statute-specific inquiry. *LeBlanc v. G.D. Searle & Co.,* 178 Ill. App. 3d 236, 240 (1988). Cases deciding on residency look specifically to the purpose of the particular statute rather than creating a uniform rule for all statutes about the residence of a foreign corporation. *Id*. Given the dearth of legislative history on the statute in question, we look to similar statutes or areas of law to guide us. *Lease Partners*

Corp. v. R & J Pharmacies Inc., 329 Ill. App. 3d 69, 75 (2002). Specifically examining such factors as who the intended beneficiary of a statute is, whether the statutes both concern procedural or substantive rights, and whether they serve similar purposes. *Id*. This court previously had the opportunity to examine the purpose behind this statute to post security for costs, and found that security for costs statutes are similar to statutes of limitations. "Like security for costs, the primary benefactor of statutes of limitations are defendants ***." *Id*. (citing *Geneva Construction Co. v. Martin Transfer & Storage Co.*, 4 Ill. 2d 273 (1954)). The reasoning behind statutes of limitations is "equally apposite to the issue of security for costs. Like statutes of limitations, the security for costs requirement is generally for the benefit of the defendant, securing potential costs paid by the defendant during the proceedings. Furthermore, the requirement is procedural and not jurisdictional ***." *Id*. at 76.

¶ 11 When attempting to recover costs, to reach the foreign assets of either a registered foreign corporation or an unregistered foreign corporation requires domestication of the Illinois judgment in a state where the foreign corporation has assets. "Orders commanding action or inaction have been denied enforcement in a sister State when they purported to accomplish an official act within the exclusive province of that other State or interfered with litigation over which the ordering State had no authority." *Baker by Thomas v. General Motors Corp.*, 522 U.S. 222, 224 (1998). If a party wins a judgment in Illinois, that judgment "does not carry with it into another state, the efficacy of the judgment upon property, or upon persons to be enforced by execution. To give it the force of a judgment in another state, it must be made a judgment there; and can only be executed in the latter as its laws may permit." *McElmoyle, for Use of Bailey v. Cohen*, 38 U.S. 312, 324 (1839). Domestication of judgment is a procedural hurdle defendants would not have to leap over if they attempted to recover costs from a corporation with a place of business in Illinois. That corporation can be physically reached by Illinois' police powers because it resides within Illinois. The security for costs statute looks to protecting defendants. *Id*. at 75. Construing the statute in light of its purpose of protecting defendants in the manner described above, foreign corporations with only an agent to receive service of process are similarly situated with unregistered foreign corporations with no place of business in Illinois. Neither have any property in Illinois. Plaintiff is a foreign corporation with no place of business in Illinois and nothing for defendant to seize in case defendant must recover costs. In this regard, plaintiff does not resemble the domestic corporations considered residents, and is more similar to the unregistered foreign corporations. Therefore, plaintiff is not an Illinois resident under this statute.

¶ 12 Plaintiff attempts to cite authority for the proposition that simply registering with the Secretary of State is sufficient to become an Illinois resident. However, the cases plaintiff cites are easily distinguishable. Plaintiff specifically claimed *Sandra F. Monroe & Co., Inc. v. National Equipment Services, Inc.*, 99 C 3120, 2000 WL 420746 (N.D. Ill. Apr. 12, 2000) stood for the proposition that a foreign corporation was an Illinois resident simply because it was required to register with the Illinois Secretary of State. We disagree. Nowhere did that court indicate registration was a sufficient ground. Rather, it looked to a number of factors, including how the defendant had "its headquarters and principal place of business are in Illinois." *Id*. at *2. Plaintiff Green Tree does not have its principal place of business, much less any evidence of having a place of business, in Illinois. Plaintiff claims that the other authority it cites, *Square D Co. v. Johnson*, 233 Ill. App. 3d 1070 (1992), stands for using a wide reading of residency. Not so. Our holding specifically was: "we find that because Square D has its world headquarters in Illinois and operates its jet out of an Illinois hangar, it is a 'resident' of Illinois for purposes of the Aeronautics Act." *Id*. at 1085. We were dealing with residency requirements in regard to taxing authority rather than in the civil action context of a requirement made to protect a defendant by the plaintiff's posting security for costs. Meaning that our holding in *Square D* is easily distinguishable from the instant case where plaintiff has no place of business in Illinois. Therefore, the authorities plaintiff cited do not stand for the proposition that simply registering with the Illinois Secretary of State and maintaining a registered agent is sufficient to be an Illinois resident under 735 ILCS 5/5-101.

¶ 13 Instead, we find support in the fact that the security to post costs statute was designed to protect defendants (*Lease Partners Corp.*, at 75) and that it would be inconsistent with this purpose to treat plaintiff as a resident. Plaintiff would have a layer of insulation from judgments against it not afforded to domestic corporations because a defendant must domesticate a judgment in a state where plaintiff has property in order to seize that property (see *McElmoyle*, at 324). That extra hurdle defendants face indicates it would be contrary to protecting defendants if we regarded plaintiff as an Illinois resident. Simply registering with the Secretary of State when the corporation does not have any place of business in Illinois is insufficient to be considered a resident under 735 ILCS 5/5-101.

¶ 14 <u>A Foreign Corporation With No Place of Business in Illinois is Not an Illinois Resident Under the Common Law</u>

¶ 15 The common law regards a corporation as having its residence where it is incorporated, and not as a resident of every state in which it is registered to do business. "Under the common law, a corporation is considered a resident only of the state(s) in which it is incorporated, and not of all states in which it is licensed to do business or subject to the jurisdiction of the local courts. [Citations.]" *Hollins v. Yellow Freight System, Inc.*, 590 F.Supp. 1023, 1026 (1984). The legislature denotes when it wishes departure from the common law definition of a corporation's residence: corporations "may have many residences for some purposes, such as for venue, it does not follow that such rule should be applicable *** unless the legislature clearly indicates the opposite ***." *Village of Hodgkins v. Margarites*, 113 Ill. App. 2d 140, 148 (1969). The legislature is aware of the common law proposition that:

> " 'a corporation is a resident, or has its legal domicile in the state or country by and under whose laws it was organized. As said by one court: 'A corporation can exist only within the sovereignty which created it, although, by comity, it may be allowed to do business in other jurisdictions through its agents. It can have but one legal residence, and that must be within the state or sovereignty creating it.' The authorities are practically unanimous on this proposition.' " *Thornton v. Nome & Sinook Co.*, 260 Ill. App. 76, 82 (1931).

¶ 16 Consistent with this reasoning, in other statutes the legislature has codified specific departures from the common law definition of a corporation's residence. When determining whether a corporation should be subject to the jurisdiction of a local court, on the other hand, "[t]he residence of a corporation *** is necessarily where it exercises corporate functions. It dwells in the place where its business is done." *Bristol v. Chicago & A.R. Co.*, 15 Ill. 436, 437 (1854). This departure from the common law has been codified by the legislature: for venue purposes, "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." 735 ILCS 5/2-102 (West 2012). Different statutes have different definitions of corporate residency. The specific statutes provide guidance for departure from the common law because the different statutes define residency with different limitations.

> "We also note other instances in which our legislature has expressly provided that foreign corporations are considered Illinois residents for specific purposes. For example, the Code of Civil Procedure provides that for purposes of venue a corporation is a resident of any county in which it has an office or does business, whereas a corporation not authorized to do business in Illinois is a nonresident [citation] and, under the Motor Vehicle Code, a corporation is a resident of this State if it is incorporated or has its principal place of business in Illinois [citation]. However, the point is that the legislature has made these provisions based upon specific purposes. On the other hand, our legislature has left our borrowing statute intact notwithstanding the judicially created residency exception in favor of Illinois residents. [Citation.] Had the legislature intended to make foreign corporations, either doing business in Illinois or having their principal place of business here, residents for the purpose of the borrowing statute, it could easily have done so. Since it has not, this court sees no basis for judicially amending the borrowing statute." *LeBlanc*, 178 Ill. App. 3d at 240.

¶ 17 If the legislature intended departure from the near unanimous common law proposition that corporations can only have one legal residence, the security for costs statute would contain an alternate definition. However, the statute reads:

> "in all civil actions, where the plaintiff, or person for whose use an action is to be commenced, is not a resident of this State, the plaintiff, or person for whose use the action is to be commenced, shall, before he or she institutes such action, file, or cause to be filed, with the clerk of the court in which the action is to be commenced, security for costs ***." 735 ILCS 5/5-101 (West 2012).

¶ 18 Nowhere in this statute does the legislature indicate the use of an alternate definition of residency. "If a statute is enacted which covers an area formerly covered by common law, such statute must be construed as adopting common law unless there is clear and specific language showing that change in the common law was intended by the legislature. [Citations.]" *Berlin v. Nathan*, 64 Ill. App. 3d 940, 956 (1978).

¶ 19 Just as the legislature could have provided for a deviation from the common law definition of a corporation's residence in the borrowing statute, so too could the legislature have provided which foreign corporations are Illinois residents in 735 ILCS 5/5-101. It did not do so. "[A] court cannot construe a statute in derogation of the common law beyond what the words of the statute expresses or beyond what is necessarily implied from what is expressed." *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 69 (2004). The common law is clear that a corporation has only a single residence, and is not a resident of each state in which it is authorized to do business in. *Thornton*, 260 Ill. App. at 82. Where the legislature intended departure from the common law, it wrote into the specific statutes how to determine corporate residency. See, *e.g.*, 625 ILCS 5/1-173 (West 1970) and 735 ILCS 5/2-102 (West 1984). Moreover, the legislature has not been uniform in how it regards corporate residency in the statutes where it does provide a definition. As noted above, the Motor Vehicle Code looks to whether the corporation is incorporated, or has its principal place of business, in Illinois. 625 ILCS 5/1-173 (West 1970). However, the Code goes further in extending corporate residency for venue: all corporations authorized to do business in Illinois are residents and may be sued accordingly. 735 ILCS 5/2-102 (West 1984). Plaintiff's proposed interpretation of 735 ILCS 5/5-101 would extend residency beyond the scope of how the Motor Vehicle Code defines it. The problem is that even the Motor Vehicle Code explicitly defined residency, but 735 ILCS 5/5-101 is silent on the matter. We cannot read a departure from the common law into the statute when the statute does not tell us to do so, especially when other statutes provide instruction for when and how to depart from the common law. *Adams*, 211 Ill. 2d at 69. The fact that the legislature has defined corporate residency in numerous other statutes indicates its awareness of the common law definition, and how it only wishes departure from that common law definition when it makes that departure specific. Therefore, we keep with the common law that a foreign corporation does not become an Illinois resident under 735 ILCS 5/5-101 simply by being authorized to do business in Illinois.

¶ 20 Plaintiff is a foreign corporation incorporated in Delaware, and its current principal place of business is not in Illinois. Plaintiff has not alleged it was incorporated in Illinois, nor does plaintiff allege that it has any place of business in Illinois. Plaintiff's only argument is that it is authorized to conduct business in Illinois and maintains a registered agent. Plaintiff is neither incorporated in Illinois nor does it have a place of business in Illinois, therefore it is also not an Illinois resident under the common law. Even under the Motor Vehicle Code's extension of corporate residency, plaintiff would still not be an Illinois resident. See 625 ILCS 5/1-173 (West 1970). The legislature failed to indicate a departure from the common law definition of residency in 735 ILCS 5/5-101, though it easily could have done so, and we shall not amend the statute with such a broad departure from the common law without legislative instruction. *LeBlanc*, 178 Ill. App. 3d at 241. Because the legislature has not instructed us to depart from the common law in this statute, and because plaintiff is not a resident under the common law, we conclude plaintiff is not a resident under 735 ILCS 5/5-101.

¶ 21 The trial court's ruling on defendant's motion to dismiss and its order rejecting plaintiff's motion to reconsider are affirmed.

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, the circuit court of Cook County is affirmed.

¶ 24 Affirmed.