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Venue Clauses in Contracts – Beware Listing Only the County and State

Our law firm regularly works on business law disputes, contested real estate / mortgage loan matters, and other cases involving actual or alleged breaches of contract. We also prepare contracts for clients, of course. We know very well that a poorly drafted or inadequately considered contract increases the chances of litigation; if a party to a contract thinks the contract gives him an inch, he may very well try to take the proverbial mile.

Beware the generic venue clause! One extremely important aspect of a contract which is often overlooked as being “basic” or “boilerplate” is the designation of venue. It’s easy, right, the contract just needs to say something like (A) “*Any and all claims shall be litigated in Mecklenburg County, North Carolina.*” or (B) “*Unless the Parties otherwise agree in writing, any lawsuit or legal claim over the subject matter of this Agreement shall be instituted and prosecuted in Charleston County, South Carolina.*” Well, not so fast, my friends. [\[1\]](#)

I suspect that 95% of lawyers or more have never considered this exact issue; I’ll confess that I had not earlier in my career. Let’s take the above two examples, which use fairly ‘standard’ language with regard to venue.

(A) “*Any and all claims shall be litigated in Mecklenburg County, North Carolina.*” If I’ve got a contractual dispute and the contract at issue states that venue shall be in Mecklenburg County, NC, maybe I decide to shake up the opposition by doing something unexpected . . . instead of filing in Superior Court, **I file in the United States District Court for the Western District of North Carolina (Charlotte Division)**. After all, both courts are “*in Mecklenburg County, North Carolina*” even if one is a state court and the other a federal court.

(B) “*Unless the Parties otherwise agree in writing, any lawsuit or legal claim over the subject matter of this Agreement shall be instituted and prosecuted in Charleston County, South Carolina.*” If my partner Jim Spielberger (who is located in Mount Pleasant, SC) is asked to advise a business owner who is expecting to be sued over an alleged breach of contract, can he, with any confidence, assure the client that the case will be in state court based on the venue clause? **Could not the plaintiff, with a straight face, argue that the very language of the contract’s venue clause allows the case to be filed and litigated in the USDC for South Carolina (Charleston Federal Courthouse)?** Again, this generic venue language does not specify state court or federal court.

Those of you who are dealing with venues that lack a federal courthouse may think this cannot pertain to you – and you’d be wrong, or at least potentially wrong. **Some appellate decisions have held that a venue clause similar to those above would allow the case to be litigated in the federal court district which includes the named county, even if that county doesn’t have a federal courthouse / the actual federal courthouse is located in a different county.**

Obviously there are other factors which influence where a case can be filed, where it should be filed, where it must be filed, etc., just as there are various elements to be considered when interpreting the language and intent of a contract. This venue designation issue can be a pit-fall for the unwary lawyer as well as the unknowing client. We have a professional obligation to be mindful of such potential problem areas and also to know when our clients may ethically and legally benefit from such loose language.

[\[1\]](#) Common attribution for this expression goes to [Lee “Scooter” Corso](#), ESPN announcer and former honorable mention All-American football player for Florida State University.

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