

To: Our Clients and Friends

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SUPREME COURT CLARIFIES LAW ON FORUM SELECTION CLAUSES: Choice of Forum in Contract Should Be Enforced Absent “Extraordinary Circumstances”

Earlier this month, the Supreme Court handed down an important decision regarding forum-selection clauses in contracts, ruling that such clauses should be enforced unless “extraordinary circumstances unrelated to the convenience of the parties clearly disfavor a transfer.” Atl. Marine Const. Co., Inc. v. U.S. Dist. Court for W. Dist. of Texas, No. 12-929, 2013 WL 6231157 at *4 (U.S. Dec. 3, 2013).

The case, Atlantic Marine Construction Co., Inc. v. United States District Court for the Western District of Texas, clarifies the Court’s position on the enforcement of forum-selection clauses. Specifically, the Court explained how to proceed when a plaintiff brings an action under a contract in a forum other than the forum agreed upon in the forum-selection clause. In “all but the most unusual cases,” a court should transfer the case. Convenience of the parties and their other “private interests” should not be considered, contrary to how some federal courts erroneously interpreted the holding of the Court’s previous decision in Stewart Organization, Inc. v. Ricoh Corp., 487 U.S. 22 (1988). Atlantic Marine clarifies and potentially overrules the prevailing law in some federal circuits that a forum selection clause is just one of several factors to consider when deciding a motion to transfer. According to Atlantic Marine, it is the only factor absent the “most unusual” circumstances.

The case involved a construction contract between Virginia corporation Atlantic Marine and Texas corporation J-Crew Management, Inc. which contained a forum-selection clause stating that disputes between the parties would be litigated in Virginia. When a dispute about payment under the contract arose, J-Crew filed its suit in the Western District of Texas. Atlantic Marine moved to dismiss the case, arguing that venue in the Western District of Texas was “wrong” under §1406(a) and “improper” under Federal Rule of Civil Procedure 12(b)(3). In the alternative, Atlantic Marine filed a motion to transfer the case to the Eastern District of Virginia under §1404(a). The Fifth Circuit upheld the trial court’s

denials of each motion, finding that Atlantic Marine had failed to meet its burden of showing that transfer was appropriate.

In a unanimous opinion authored by Justice Alito, the Court held that the case should have been transferred under §1404(a) to the forum agreed upon in the contract. In reversing the Fifth Circuit's decision, the Court outlined three ways in which a change of venue analysis should be altered when a forum-selection clause is present.

First, unlike a typical change of venue analysis where "plaintiff's venue privilege" is taken into account, the plaintiff's choice of forum holds no weight when a forum-selection clause is present. Since the plaintiff is the party that has defied the forum-selection clause, it bears the burden to show that transferring the case to the forum originally agreed upon in the contract is unwarranted.

Second, a court should not consider arguments about the parties' "private interests" when a forum-selection clause is present. The Court stated that by entering into a contract containing a forum-selection clause, the parties have waived their "right to challenge the preselected forum as inconvenient or less convenient for themselves or their witnesses." As such inconveniences are foreseeable at the time of contracting, the Court reasoned, parties should be held to their agreement.

Third, when a party bound by a forum-selection clause files suit in a different forum, the original venue's choice-of-law rules will not apply. Normally, transfers of venue under §1404(a) require that state law applicable in the original court also apply in the transferee court to prevent defendants from gaining the advantage of forum shopping. In a situation where a forum-selection clause is present, it is the plaintiff who would have the advantage of forum shopping if the original venue's choice-of-law rules applied. The court in the contractually selected venue should therefore not apply the law of the transferor venue.

With this case in mind, attorneys should be particularly cautious when drafting contracts containing forum-selection clauses. Additionally, attorneys filing lawsuits without regard to the forum selection clause should be aware that a court is highly likely to grant a defendant's motion to transfer the case to the forum originally selected in the contract. Although Justice Alito did not provide guidance on precisely what type of facts a plaintiff would need to prove to avoid transfer, the Court repeatedly emphasized that the burden is remarkably high, using language like "exceptional cases," "rarely," and "the practical result is that forum-selection clauses should control except in unusual cases." The Court ultimately concluded that enforcement of forum-selection clauses protects parties' "legitimate expectations and furthers vital interests of the justice system." Thus, it is likely that federal courts will enforce virtually all forum-selection clauses in the future, except in the most extreme cases.

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