SCOTUS: *Atlantic Marine Constr. Co., Inc.* v. *U.S. District Court for the Western District of Texas*: Valid Forum-Selection Clauses Are Enforceable Absent "Extraordinary Circumstances"

I. Introduction

The Supreme Court of the United States recently held that a valid forum-selection clause in a contract must be enforced by federal courts when a party to the contract files a lawsuit in a forum other than the one the parties bargained for.[1] Absent certain "extraordinary circumstances" of public policy, "[w]hen the parties [to a contract] have agreed to a valid forum-selection clause, a district court should ordinarily transfer the case to the forum specified in that clause."[2]

II. Factual Background and Procedural History

In Atlantic Marine, a Virginia construction company (Atlantic Marine) won a federal contract to build a child-development center near Austin, Texas. Atlantic Marine hired a Texas company (J-Crew Management, Inc.) to work on the project and the parties entered into a subcontract. Their contract included a forum-selection clause which stated that all disputes between the parties "shall be litigated in the Circuit Court for the City of Norfolk, Virginia, or the United States District Court for the Eastern District of Virginia, Norfolk Division."[3] When a dispute about payment under the subcontract arose, J-Crew sued Atlantic Marine in the Western District of Texas invoking diversity jurisdiction.

Atlantic Marine moved to dismiss J-Crew's lawsuit suit due to improper venue under Federal Rule of Civil Procedure 12(b)(3), or in the alternative to transfer the case to the Eastern District of Virginia, per their contract's forum-selection clause, under 28 U.S.C. §1404(a). The district court denied both motions, and the United States Court of Appeals for the Fifth Circuit affirmed the district court.[4]

III. Valid Forum-Selection Clauses Require Transfer Absent "Extraordinary Circumstances"

The Court reversed and remanded the Court of Appeals decision for the following reasons: Section 1404 of the United States Code "permits transfer [of a lawsuit] to any district where venue is also proper . . . or to any other district to which the parties have agreed by contract or stipulation." The Court explained that "[s]ection 1404(a) therefore provides a mechanism for enforcement of forum-selection clauses that point to a particular federal district." When "parties have agreed to a valid forum-selection clause, a district court should ordinarily transfer the case to the forum specified in that clause," absent only "extraordinary circumstances unrelated to the

[1] *Atlantic Marine Construction Company, Inc. v. U.S. District Court for the Western District of Texas*, No. 12-929 (Dec. 3, 2013) ("*Atlantic Marine*"), available at ttp://www.supremecourt.gov/opinions/13pdf/12-929_olq2.pdf. Citations are to the Slip Opinion.

[2] *Id.*, at 11.

[3] *Id.*, at 1 (quoting the parties' contract).

[4] *Id.*, at 2-4.

convenience of the parties . . . ."[5] This is because the "enforcement of valid forum-selection clauses, bargained for by the parties, protects their legitimate expectations and furthers vital interests of the justice system."[6]

In practice, this means that "because the overarching consideration under §1404(a) is whether a transfer would promote 'the interest of justice,' 'a valid forum-selection clause [should be] given controlling weight in all but the most exceptional cases.'"[7] As a result, lower courts must adjust their "usual §1404(a) analysis in three ways" when presented with a valid forum-selection clause. The plaintiff's choice of forum and the parties' private interests are accorded no weight, as the forum-selection clause trumps both. In addition, "a §1404(a) transfer of venue will not carry with it the original venue's choice-of-law rules."[8] In ordinary circumstances, when a case is transferred from one federal venue to another, the state law applicable in the transferor federal court should be applied by the transferee federal court; but not in cases where transfer under section 1404(a) is because of the parties' forum-selection clause. That is because a plaintiff who files suit in violation of a forum-selection clause is not entitled to the "privilege" of having its original forum's concomitant "state-law advantages" apply to their case. As a result, the district court in which the parties bargained to litigate should apply the law of its own venue.[9]

This analysis does not change if a valid forum-selection clause points to a state court. Lower courts "should evaluate a forum-selection clause pointing to a nonfederal forum in the same way that they evaluate a forum-selection clause pointing to a federal forum" because "both §1404(a) and the *forum non conveniens* doctrine from which [section 1404(a)] derives entail the same balancing-of-interests standard." The Court noted that this is because section 1404(a) "is merely a codification of the doctrine of *forum non conveniens* for the subset of cases in which the transferee forum is within the federal court system; in such cases, Congress has replaced the traditional remedy of outright dismissal with transfer."[10]

IV. Forum-Selection Clauses Make Venue Neither "Wrong" nor "Improper" under §1406(a)

In addition to clarifying the rule for enforcing forum-selection clauses via section 1404(a)'s *transfer* mechanism, the Court also provided lower courts with further guidance on the applicability of section 1406(a), which permits a district court to dismiss a case if the venue chosen by the plaintiff was "wrong" or "improper." The Court clarified that, for purposes of section 1406(a), venue is neither "wrong" nor "improper" because of a forum-selection clause that requires suit be brought in another forum. The Court engaged in a detailed analysis of what the terms "forum" and "venue" mean for the purposes of section 1406(a), and noted that "venue" for the purposes of section 1406(a) must be read in line with 28 U.S.C. §1391, which provides that venue in "all civil actions" must be determined in accordance with certain criteria set forth in section 1391. Importantly, those

[5] *Id.*, at 9, 11.

[6] *Id.*, at 12 (quoting *Stewart Org., Inc.* v. *Ricoh Corp.*, 487 U.S. 22, 33 (1988) (Kennedy, J., concurring)

[7] *Id.* (quoting *Stewart*, 487 U.S. at 33 (Kennedy, J. concurring) (brackets in original)).

[8] *Id.*, at 13, 14.

[9] *See id.*, at 14-15.

[10] *Id.*, at 10.

criteria do not include "extrastatutory limitations on the forum" such as a contractual forum-selection clause.[11] The Court concluded that "venue is proper so long as the requirements of §1391(b) are met, irrespective of any forum-selection clause . . ." because "[i]f the federal venue statutes establish that suit may be brought in a particular district, a contractual bar cannot render venue in that district 'wrong.'"[12]

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Charles A. Gilman at 212.701.3403 or cgilman@cahill.com; Jon Mark at 212.701.3100 or jmark@cahill.com; John Schuster at 212.701.3323 or jschuster@cahill.com; or Guillaume Buell at 212.701.3012 or gbuell@cahill.com.

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[11] *Id.*, at 4-6.

[12] *Id.*, at 6, 7.