

News & Alerts

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New Supreme Court Case Directs That Forum Selection Clauses Must Be Enforced in All but the “Most Unusual” Cases

It's not often that the Supreme Court of the United States (SCOTUS) resolves construction contract disputes between private companies. But last week, the SCOTUS did just that when it agreed with a Virginia contractor that the forum-selection clause in a subcontract required the parties to resolve their dispute in a Virginia, rather than Texas, courtroom. By doing so, the decision highlights – and perhaps increases – the power and importance of forum-selection clauses.

Atlantic Marine Construction Co. v. U.S. District Court for the Western District of Texas, 571 U.S. ____ (Dec 3, 2013), begins with a fact pattern familiar to many contractors. Atlantic Marine Construction Company, Inc. (AMC), a family owned and operated Virginia contractor, entered into a subcontract with J-Crew Management, Inc. (J-Crew), a Texas company, for work on a child care center at Fort Hood, Texas. When a dispute arose, J-Crew filed a lawsuit against AMC in a Texas federal court. In doing so, J-Crew ignored a forum-selection clause in its subcontract that required all disputes to be litigated in the state or federal court for the City of Norfolk, Virginia. In reliance on the subcontract language, AMC challenged the Texas venue and requested that the case be dismissed outright or transferred to the Virginia federal court.

At this juncture, the case was launched to become the new guide on choice of forum disputes. The Texas trial court refused to dismiss or transfer the case to Virginia. AMC then sought the unusual remedy of a “writ of mandamus” from the Court of Appeals directing the trial court to dismiss or transfer the case in recognition of the forum-selection clause. The Court of Appeals also denied to issue the requested relief.

The SCOTUS accepted the case for review and concluded that the reasoning and results of both the trial court and Court of Appeals were incorrect. The SCOTUS opinion twists and turns its way through numerous procedural rules, cases and policies to conclude that “when the parties have agreed to a valid forum-selection clause, a district court should ordinarily transfer the case to the forum specified in that clause.”

The SCOTUS backed up its support for forum-selection clauses with extra “oomph.” First, the SCOTUS cautioned that “[o]nly under extraordinary circumstances unrelated to the convenience of the parties should [a transfer motion] be denied” (emphasis added). These clauses, the SCOTUS noted, represent the parties’ bargained for agreement and protect their expectations in the deal such that they should be “given controlling weight in all but the most exceptional cases.”

Next, the SCOTUS noted that the plaintiff attempting to seek a different forum has the burden of showing why the case should not be in the bargained-for forum. In doing so, the Court

cautioned, arguments about the parties “private interests” are irrelevant because the forum-selection clause waives the right to claim inconvenience to them or their witnesses. Only “public interest” factors may be considered and those factors, the Court noted, “will not be common.” In all but the “most unusual cases,” the SCOTUS instructed courts that “the ‘interest of justice’ is served by holding parties to their bargain.”

Forum selection clauses often are disregarded by contractors as not-so-important “boilerplate” or “tiny print” in a contract. This new decision from the highest court, however, should have every contractor carefully analyzing the impact of these often shortchanged clauses on the law of their project and the bottom line. Contractors should assume that forum-selection clauses will be enforced in almost every situation. Full and careful consideration must be given to the selected venue and its law. As contractor’s business lines extend across state lines and workforces become spread over greater distances, the risks and benefits of forum-selection clause need to be part of the business negotiations for each deal.

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