In recent years, the U.S. Supreme Court has taken a keen interest in the enforceability of contractual arbitration provisions. But in one of the first cases argued during the current term, it took up an important issue surrounding another common contractual provision—the forum-selection clause.

In Atlantic Marine Construction Co. v. United States District Court (No. 12-929), the Court held that a defendant who is sued in a forum other than the one it agreed to in its contract with the plaintiff, must move to transfer the lawsuit to the agreed-upon forum under 28 U.S.C. §1404(a), rather than move to dismiss the complaint under 28 U.S.C. §1406(a) or Fed. R. Civ P. 12(b)(3).

Moreover, the Supreme Court held that a motion to transfer the lawsuit to a forum agreed upon by the parties in a valid forum-selection clause should ordinarily be granted absent “extraordinary circumstances.” While this decision, on a relativelydry, procedural issue, is not likely to rank as one of the most talked-about cases of the current term, it is nonetheless important given how common forum-selection clauses are in modern contracts, and how often these clauses are the subject of motion practice.

In Atlantic Marine, the U.S. Army Corps of Engineers hired Atlantic Marine Construction Co., a Virginia company, to build a child development center at Fort Hood in Texas. Atlantic Marine subsequently entered into a subcontract with J-Crew Management, a Texas corporation, to perform certain work on the project. The subcontract contained a forum-selection clause, which provided that any disputes arising under the subcontract “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.” Notwithstanding this clause, after a dispute arose between the parties, J-Crew sued Atlantic Marine in the U.S. District Court for the Western District of Texas.

Atlantic Marine moved to dismiss the complaint under Section 1406(a) and Rule 12(b)(3), which allow for dismissal when venue is “wrong” or “improper.” Alternatively, Atlantic Marine moved to transfer the case to Virginia under Section 1404(a), which allows for transfer in the interests of justice or for the convenience of the parties and witnesses. The district court rejected both arguments, and denied the motion. The district court held that Section 1406(a) and Rule 12(b)(3) did not apply because venue was properly in the U.S. District Court for the Western District of Texas, and that transfer under Section 1404(a) was inappropriate because of the inconvenience to J-Crew of litigating in Virginia.

The U.S. Court of Appeals for the Fifth Circuit affirmed the district court’s decision, and Atlantic Marine appealed. The Supreme Court reversed the Fifth Circuit, sort of. It held, in a unanimous opinion written by Justice Samuel Alito, that the Fifth Circuit correctly concluded that a motion to transfer was the proper procedure to follow, but that the Fifth Circuit did not give enough weight to the forum-selection clause when determining whether the motion should have been granted.

On the threshold issue, the Supreme Court held that a motion to dismiss under Section 1406(a) or Rule 12(b)(3) was not the proper mechanism to enforce a forum-selection clause, unless venue was “wrong” or “improper” in the chosen district. Under Section 1391, venue is proper in: any district where any defendant resides; any district where a substantial part of the events giving rise to the dispute occurred; or any district in which any defendant is subject to the court’s personal jurisdiction. If a case falls within one of these three broad cat-

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According to the Supreme Court, "only the plaintiff has "effectively exercised its tion clause in a bargained for agreement, privilege" courts have dubbed the "plaintiff's venue clause, should be afforded no weight. Instead, the private interest factors automatically weigh "entirely in favor of the preselected forum" because, when they agree to a forum-selection clause, the parties waive the right to argue that the selected forum is inconvenient "for themselves or their witnesses, or for their pursuit of the litigation."

Second, courts should not consider arguments about the parties’ private interests when evaluating a motion to transfer based on a forum-selection clause. Rather, the private interest factors might require a jury trial to resolve. As a result, the Supreme Court created an exception to this rule when a case is transferred under Section 1404(a). In that case, a district court is supposed to apply the law of the original forum state, not the state where it sits. The Supreme Court created this exception to prevent defendants from using Section 1404(a) to "defeat…the state-law advantages that might accrue from the exercise of the plaintiff’s venue privilege." However, as discussed above, the Supreme Court held that a plaintiff who files suit in violation of a valid forum-selection clause enjoys no such privilege.

Third, when a case is transferred under Section 1404(a), it does not carry with it the original venue’s choice-of-law rules. Normally, a district court sitting in diversity applies the law of the state in which it sits. However, the Supreme Court created an exception to this rule. As set forth in a forum-selection clause, defendants might have “sensible reasons to invoke” Section 1404(a)…in addition to Rule 12(b)(6).” Regardless of whether a motion to dismiss under Rule 12(b)(6) might not be practical, even if it was permissible, because such a motion, unlike a motion to transfer under Section 1404(a), might lead to factual issues related to the validity of the forum-selection clause, which might require a jury trial to resolve. As a result, the Supreme Court held that defendants might have “sensible reasons to invoke” Section 1404(a) and Rule 12(b)(3) were inapplicable.

Fourth, when a case is transferred under Section 1404(a), it does carry with it the original venue’s choice-of-law rules. Normally, a district court applying the law of the state in which it sits. However, the Supreme Court created an exception to this rule when a case is transferred under Section 1404(a). In that case, a district court is supposed to apply the law of the original forum state, not the state where it sits. The Supreme Court created this exception to prevent defendants from using Section 1404(a) to “defeat…the state-law advantages that might accrue from the exercise of the plaintiff’s venue privilege.” However, as discussed above, the Supreme Court held that a plaintiff who files suit in violation of a valid forum-selection clause enjoys no such privilege. As a result, the exception does not apply, and the district court to which a case is transferred should apply the law of the state in which it sits.

Finally, the Supreme Court left open the possibility that Rule 12(b)(6) could also be used to dismiss a lawsuit filed in contravention of a forum-selection clause. This option was proposed by an amicus party and was not briefed by the parties, therefore the Supreme Court did not directly address the issue. Nonetheless, the Supreme Court held that a motion to dismiss under Rule 12(b)(6) might not be practical, even if it was permissible, because such a motion, unlike a motion to transfer under Section 1404(a), might lead to factual issues related to the validity of the forum-selection clause, which might require a jury trial to resolve. As a result, the Supreme Court held that defendants might have “sensible reasons to invoke” Section 1404(a)…in addition to Rule 12(b)(6).” Regardless of whether a motion to dismiss under Rule 12(b)(6) was an available alternative to a motion to transfer under Section 1404(a), however, the Supreme Court was clear that Section 1406(a) and Rule 12(b)(3) were inapplicable.