

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
NORTH CAROLINA

Daniel M. Thelen v. First Choice Professionals, LLC

No. 5:25-CV-00101-KDB-DCK (W.D.N.C. Dec. 17, 2025) · No. 5:25-CV-00101-KDB-DCK · Decided
December 18, 2025

SUMMARY

The court denied the defendant’s motion to dismiss for improper venue but granted its alternative motion to transfer under 28 U.S.C. § 1404(a). It held that the Employment Agreement’s mandatory forum-selection clause covering Maricopa County, Arizona, applied to the plaintiff’s contract and North Carolina Wage and Hour Act claims and was valid and enforceable. The court ordered transfer to the United States District Court for the District of Arizona.

CASE DETAILS

COURT	United States District Court for the Western District of North Carolina
WRITING FOR THE COURT	Kenneth D. Bell
JURISDICTION	United States District Court for the Western District of North Carolina, Statesville Division
DECIDED	December 18, 2025
DOCKET	5:25-CV-00101-KDB-DCK
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Motion to dismiss for improper venue under Rule 12(b)(3) or, in the alternative, motion to transfer under 28 U.S.C. § 1404(a) pursuant to a forum selection clause.
STANDARD OF REVIEW	For a Rule 12(b)(3) motion, the plaintiff bears the burden of demonstrating proper venue, but need only make a prima facie showing, with facts viewed in the light most favorable to the plaintiff.
PRECEDENTIAL VALUE	unpublished

TOPICS

- forum non conveniens
- venue
- motions to dismiss
- breach of contract
- employment contracts

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the forum selection clause in the Employment Agreement is mandatory.
2. Whether the forum selection clause is applicable to the plaintiff's breach of contract and NCWhA claims.
3. Whether the forum selection clause is valid and reasonable.
4. Whether the case should be transferred under 28 U.S.C. § 1404(a) pursuant to the forum selection clause.

HOLDINGS

1. Dismissal under Rule 12(b)(3) or transfer under 28 U.S.C. § 1406(a) is improper when venue is otherwise proper in the district of filing; § 1404(a) is the exclusive vehicle for enforcing a forum selection clause designating another federal forum.
2. The forum selection clause is mandatory because it uses language granting 'sole and exclusive jurisdiction' to the designated forum.
3. The forum selection clause applies to the plaintiff's breach of contract and NCWhA claims because they 'arise under' the Employment Agreement.
4. The forum selection clause is valid and reasonable, as the plaintiff failed to make a clear showing that enforcement would be unreasonable under the circumstances.
5. The case should be transferred to the United States District Court for the District of Arizona pursuant to 28 U.S.C. § 1404(a) because the valid forum selection clause is controlling and public interest factors favor transfer.

KEY QUOTATIONS

“The Supreme Court has emphasized that § 1404(a) provides the exclusive vehicle for enforcing a forum selection clause designating another federal forum, where venue is otherwise proper in the district of filing.”
(at 6-7)

“The language of the forum selection clause contained in the Employment Agreement is clearly mandatory. It states that a court of competent jurisdiction in Maricopa County, Arizona has the “sole and exclusive jurisdiction over any and all controversies”” (at 8-9)

“The Supreme Court in Stewart made clear that the validity of a forum selection clause is governed by federal law, and that a clause’s inconsistency with the public policy of the forum is merely one factor in a broader, multi-factor analysis—not a basis, standing alone, to invalidate the clause.” (at 12-13)

“Under Atlantic Marine, when a valid forum selection clause governs, only public, not private, factors may be considered.” (at 16-17)

FACTUAL BACKGROUND

In July 2022, Defendant hired Plaintiff as its Chief Operating Officer, and the parties executed an Employment and Confidentiality Agreement. As consideration, Defendant granted Plaintiff Deferred Compensation Units under a Deferred Compensation Plan and Agreement. The Employment Agreement contained a mandatory forum selection clause designating Maricopa County, Arizona as the exclusive forum for disputes. After Plaintiff's position was eliminated, a Severance Agreement was created for payout of the DCUs, but Defendant later refused to pay. Plaintiff filed suit for breach of contract and NCWhA violations.

PROCEDURAL HISTORY

Plaintiff Daniel Thelen sued Defendant First Choice Professionals, LLC in Watauga County Superior Court for North Carolina, alleging breach of contract and violation of the North Carolina Wage and Hour Act. Defendant removed the case to federal court based on diversity jurisdiction and moved to dismiss for improper venue or, alternatively, to transfer to Arizona based on a forum selection clause in the Employment Agreement.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Clerk is directed to transfer the matter to the United States District Court for the District of Arizona.

CASES CITED

- Atl. Marine Const. Co., Inc. v. U.S. Dist. Court for W. Dist. of Texas, 571 U.S. 49 (2013)
- Pee Dee Health Care, P.A. v. Sanford, 509 F.3d 204 (4th Cir. 2007)
- Aggarao v. MOL Ship Mgmt. Co., Ltd., 675 F.3d 355 (4th Cir. 2012)
- Mitrano v. Hawes, 377 F.3d 402 (4th Cir. 2004)
- Peguero v. Halal Food Cart, LLC, No. 3:24-CV-00281-MOC-DCK, 2024 WL 3730647 (W.D.N.C. Aug. 8, 2024)
- Albemarle Corp. v. AstraZeneca UK Ltd., 628 F.3d 643 (4th Cir. 2010)
- IntraComm, Inc. v. Bajaj, 492 F.3d 285 (4th Cir. 2007)
- Bartels by & through Bartels v. Saber Healthcare Grp., LLC, 880 F.3d 668 (4th Cir. 2018)
- United States v. Tourtellot, 483 B.R. 72 (M.D.N.C. 2012)
- Long v. Silver, 248 F.3d 309 (4th Cir. 2001)
- Nissan Fire & Marine Ins. Co., Ltd. v. Fortress Re, Inc., No. 1:02CV00054, 2002 WL 737789 (M.D.N.C. Feb. 25, 2002)
- Thomas v. Matrix Sys. Auto. Finishes, LLC, No. CIV.A.6:09-2169HFF, 2010 WL 147956 (D.S.C. Jan. 14, 2010)
- Bradley v. DentalPlans.com, No. CV 20-1094-BAH, 2024 WL 2865075 (D. Md. June 6, 2024)
- Evans v. Bldg. Materials Corp. of Am., 858 F.3d 1377 (Fed. Cir. 2017)
- Am. Recovery Corp. v. Computerized Thermal Imaging, Inc., 96 F.3d 88 (4th Cir. 1996)

- Sharpe v. Ally Fin., Inc., No. 3:17CV189-GCM, 2017 WL 5078900 (W.D.N.C. Nov. 3, 2017)
- Flahive v. VONQ, Inc., No. 5:24-CV-323-FL, 2024 WL 4843729 (E.D.N.C. Nov. 20, 2024)
- The Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972)
- Allen v. Lloyd's of London, 94 F.3d 923 (4th Cir. 1996)
- Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585 (1991)
- Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22 (1988)
- Cable-La, Inc. v. Williams Communications, Inc., 104 F. Supp. 2d 569 (M.D.N.C. 1999)
- Pacheco v. St. Luke's Emergency Associates, P.C., 879 F. Supp. 2d 136 (D. Mass. 2012)
- Scholl v. Sagon RV Supercenter, LLC, 249 F.R.D. 230 (W.D.N.C. 2008)
- Peltier v. Mathis, No. 1:15CV133, 2016 WL 4386091 (W.D.N.C. June 23, 2016)
- Waycaster Tire Serv., Inc. v. United Cmty. Bank, No. 1:22-CV-269-MOC, 2023 WL 2672825 (W.D.N.C. Mar. 28, 2023)
- Trustees of the Plumbers and Pipefitters Nat'l Pension Fund v. Plumbing Servs., Inc., 791 F.3d 436 (4th Cir. 2015)
- Bryant Elec. Co. v. City of Fredericksburg, 762 F.2d 1192 (4th Cir. 1985)
- Mercury Coal & Coke, Inc. v. Mannesmann Pipe & Steel Corp., 696 F.2d 315 (4th Cir. 1982)
- True Homes LLC v. Clayton Homes, Inc., No. 318CV00345KDBDCK, 2020 WL 4432849 (W.D.N.C. July 31, 2020)
- Brown v. Advanced Digital Sols., LLC, No. 517CV00034RLVDSC, 2017 WL 3838640 (W.D.N.C. Sept. 1, 2017)