

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Lynk Remote Technologies, LLC v. Sky Harbour, LLC

No. 24-CV-0551 W (AHG) (S.D. Cal. Mar. 6, 2025) · No. 24-CV-0551 W (AHG) · Decided March 6, 2025

SUMMARY

The United States District Court for the Southern District of California denied Sky Harbour, LLC’s motion to dismiss under Federal Rule of Civil Procedure 12(b)(3). The court held that a forum-selection clause does not establish improper venue under 28 U.S.C. § 1391 and that, under *Atlantic Marine Construction Co. v. U.S. District Court*, Rule 12(b)(3) is not the proper procedure for enforcing such a clause when venue is otherwise proper. The court declined to decide whether the clause was enforceable because venue was proper and the issue was not adequately briefed.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Thomas J. Whelan
JURISDICTION	United States District Court for the Southern District of California
DECIDED	March 6, 2025
DOCKET	24-CV-0551 W (AHG)
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved to dismiss the breach-of-contract action under Federal Rule of Civil Procedure 12(b)(3), asserting that a forum-selection clause designated New York as the exclusive forum. The district court denied the motion.
STANDARD OF REVIEW	On a Rule 12(b)(3) motion, the plaintiff bears the burden of demonstrating that venue is proper. The court need not accept the pleadings' allegations as true and may consider facts outside the pleadings.
PRECEDENTIAL VALUE	Unknown; district court order with no reporter citation

TOPICS

- venue
- motions to dismiss
- forum non conveniens
- breach of contract
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a defendant may use Federal Rule of Civil Procedure 12(b)(3) to dismiss an action based on a forum-selection clause when venue is otherwise proper under 28 U.S.C. § 1391(b).
2. Whether venue was proper in the Southern District of California because a substantial part of the events or omissions giving rise to the claim occurred there.

HOLDINGS

1. Rule 12(b)(3) cannot be used to dismiss an action based solely on a forum-selection clause when the action falls within one of the venue categories in 28 U.S.C. § 1391(b).
2. Venue was proper in the Southern District of California under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred there.

KEY QUOTATIONS

“When a venue is challenged, the court must determine whether the case falls within one of the three categories set out in § 1391(b). If it does, venue is proper; if it does not, venue is improper, and the cause must be dismissed or transferred under § 1406(a). Whether the parties entered into a contract containing a forum-selection clause has no bearing on whether a case falls into one of the categories of cases listed in § 1391(b). As a result, a case filed in a district that falls within § 1391 may not be dismissed under § 1406(a) or Rule 12(b)(3).” (571 U.S. at 577)

FACTUAL BACKGROUND

Lynk develops and provides a mobile application, hardware, and related services for smart hangars. On June 2, 2022, Lynk and Sky Harbour entered into a written agreement under which Lynk would develop a mobile application enabling Sky Harbour's tenants to control hangar devices. Lynk alleged that Sky Harbour breached the agreement; Lynk also contended that performance and payment occurred in the Southern District of California.

PROCEDURAL HISTORY

Lynk filed the action in the Southern District of California on March 22, 2024, alleging that Sky Harbour breached a written agreement and seeking declaratory relief. Sky Harbour moved to dismiss under Rule 12(b)(3) based on the agreement's New York forum-selection clause. The court decided the motion on the papers and denied it.

DISPOSITION

other

CASES CITED

- *Piedmont Label Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir.)
- *Argueta v. Banco Mexicano, S.A.*, 87 F.3d 320, 324 (9th Cir.)
- *Atlantic Marine Construction Co., Inc. v. U.S. District Court*, 571 U.S. 49 (2013)
- *Express Companies Inc. v. Mitel Tech., Inc.*, 2013 WL 5462301 (S.D. Cal. 2013)

OPINION

Lynk Remote Technologies, LLC v. Sky Harbour, LLC

PER CURIAM.

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10 UNITED STATES DISTRICT COURT

11 SOUTHERN DISTRICT OF CALIFORNIA

12

13 LYNK REMOTE TECHONOLOGIES, Case No.: 24-CV-0551 W (AHG)

LLC

14

ORDER DENYING DEFENDANT’S

Plaintiff,

15 MOTION TO DISMISS UNDER

v. FEDERAL RULE OF CIVIL

16

PROCEDURE 12(b)(3) [DOC. 8]

SKY HARBOUR, LLC

17 Defendants. 18

19 20 21 Pending before the Court is Defendant Sky Harbour, LLC’s motion to dismiss under 22
Federal Rule of Civil Procedure 12(b)(3). Plaintiff Lynk Remote Technologies LLC 23 opposes.
24 The Court decides the matter on the papers submitted and without oral argument. 25 See CivLR
7.1(d)(1). For the reasons provided below, the Court DENIES the motion to 26 dismiss [Doc. 8].
27 // 28 //

1 I. BACKGROUND

2 According to the Complaint, “Defendant Sky Harbour develops and leases private 3 aviation
hangar infrastructure campuses at airports throughout the United States.” (Compl. 4 [Doc. 1] ¶ 10.)
Plaintiff Lynk Remote Technologies, LLC “develops and provides a mobile 5 software application
and related hardware which produces a ‘smart hangar’ experience (the 6 ‘Smart Hangar System’)
and also provides support, implementation and maintenance 7 services for its Smart Hangar
System.” (Id. ¶ 8.) 8 On June 2, 2022, Plaintiff and Defendant entered into a written agreement
(the 9 “Agreement”), whereby Plaintiff was to develop a mobile software application for 10
Defendant that would allow its tenants to control devices in the hangar with the mobile 11
application. (Mtn. [Doc. 8] 3:3–9.) On March 22, 2024, Plaintiff filed this lawsuit asserting 12 that

Defendant breached the Agreement and seeking declaratory relief. (See Compl.) 13 Defendant now moves to dismiss under Federal Rule of Civil Procedure 12(b)(3), 14 arguing that the parties' Agreement designated New York as the "exclusive jurisdiction 15 over any and all disputes arising out of or in connection with the Agreement." (Mtn. 3:22– 16 24.) Plaintiff opposes on the basis that a motion to dismiss under Federal Rule of Civil

17 Procedure 12(b)(3) is the incorrect procedure for challenging venue based on a forum-
18 selection clause. (Opp'n [Doc. 11] 1:1–27.) 19

20 II. LEGAL STANDARD

21 Federal Rule of Civil Procedure 12(b)(3) permits a defendant to move to dismiss a 22 complaint for improper venue. Plaintiff bears the burden of demonstrating venue is proper. 23 See *Piedmont Label Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir. 1979). In 24 considering a motion to dismiss under Rule 12(b)(3), a court need not accept the allegations 25 in the pleadings as true and may consider facts outside the pleadings. *Argueta v. Banco 26 Mexicano, S.A.*, 87 F.3d 320, 324 (9th Cir. 1996). 27 Venue is generally governed by 28 U.S.C. § 1391. Under subsection (b), venue exists 28 in: (1) a judicial district in which any defendant resides if all defendants reside in the same 1 state, (2) a judicial district in which a substantial part of the events or omissions giving rise 2 to the claim occurred, or (3) any judicial district in which any defendant is subject to the 3 Court's personal jurisdiction if there is no district in which the action may otherwise be 4 brought. 28 U.S.C. § 1391(b). 5

6 III. DISCUSSION

7 Defendant argues that this case should be dismissed because the forum-selection 8 clause in the parties' Agreement designates New York. (Mot. 3:21–24.) Plaintiff responds 9 that to prevail on the 12(b)(3) motion, Defendant must establish venue is improper under 10 28 U.S.C. § 1391. (Opp'n 1:2–6.) Because performance and payment were completed and 11 received in this district, Plaintiff argues venue is proper and the motion must be denied. 12 (*Id.* 2:14–17, citing Compl. ¶¶ 4, 5.) 13 In *Atlantic Marine Construction Co., Inc. v. U.S. District Court*, 571 U.S. 49 14 (2013), the Supreme Court addressed whether a 12(b)(3) motion to dismiss is the proper 15 procedure to seek dismissal based on a forum-selection clause. Defendant argued that "a 16 party may enforce a forum-selection clause by seeking dismissal of the suit under § 17 1406(a) and Rule 12(b)(3)." *Id.* at 55. The Court rejected defendant's argument and 18 explained: 19 When a venue is challenged, the court must determine whether the case falls within one of the three categories set out in § 1391(b). If it does, venue is 20 proper; if it does not, venue is improper, and the cause must be dismissed or 21 transferred under § 1406(a). Whether the parties entered into a contract containing a forum-selection clause has no bearing on whether a case falls 22 into one of the categories of cases listed in § 1391(b). As a result, a case 23 filed in a district that falls within § 1391 may not be dismissed under § 1406(a) or Rule 12(b)(3). 24

25 *Id.* at 577.

26 Here, Plaintiff contends that jurisdiction exists under § 1391(b)(2) because a 27 substantial part

of the events or omissions giving rise to the claim occurred in this District. (Opp'n 5:25–6:5; see also Compl. ¶¶ 4, 5.) Defendant does not dispute this contention and instead in the Reply doubles down on the argument that under this Court's decision in *Express Companies Inc. v. Mitel Tech., Inc.*, 2013 WL 5462301 (S.D. Cal. 3/20/13) Rule 12(b)(3) may be used to challenge venue based on a forum selection clause. (Reply [Doc. 12] 2:22–24.) *Express Companies*, which relied on the Ninth Circuit's decision in *Argueta*, 876 F.3d 320, was decided before *Atlantic Marine*. As Defendant's counsel should be aware, under these circumstances, *Express Companies* and *Argueta* are no longer good law on point. Because venue is proper under § 1391(b)(2), Defendant's motion to dismiss under Rule 12(b)(3) must be denied.

IV. CONCLUSION & ORDER

For the above reasons, the Court DENIES Defendant's motion to dismiss [Doc. 8]. IT IS SO ORDERED. Dated: March 6, 2025 \ pe lnLor

Hon. Thomas J. Whelan

United States District Judge | Plaintiff also argues the forum-selection clause is unenforceable because it contains a pre-dispute jury waiver. Because Rule 12(b)(3) is the incorrect procedure for enforcing the clause, the Court need not decide the issue. Additionally, because the issue was first raised in the opposition, the parties' briefs do not sufficiently address all the issues relevant to whether the forum-selection clause is enforceable.