

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.

OPINION

1 2 3 4 5 6 7 8 9 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 28 District.

(Opp'n 5:25–6:5; see also Compl. ¶¶ 4, 5.) Defendant does not dispute this 1 || contention and
instead in the Reply doubles down on the argument that under this Court's 2 || decision in *Express
Companies Inc. v. Mitel Tech., Inc.*, 2013 WL 5462301 (S.D. Cal. 3 ||2013) Rule 12(b)(3) may be
used to challenge venue based on a forum selection clause. 4 || (Reply [Doc.

12] 2:22—24.) 5 *Express Companies*, which relied on the Ninth Circuit's decision in *Argueta*, 87
6 || F.3d 320, was decided before *Atlantic Marine*. As Defendant's counsel should be aware, 7
under these circumstances, *Express Companies* and *Argueta* are no longer good law on 8 point.

Because venue is proper under § 1391(b)(2), Defendant's motion to dismiss 9 ||under Rule 12(b)
(3) must be denied. 10 11 ||IV. CONCLUSION & ORDER 12 For the above reasons, the Court
DENIES Defendant's motion to dismiss [Doc. 8]. 13 IT IS SO ORDERED. 14 || Dated: March 6,
2025 \ pe lnLor 16 Hn. 7 omas J. Whelan 7 United States District Judge 18 19 20 21 22 23 24 25
26 | Plaintiff also argues the forum-selection clause is unenforceable because it contains a pre-
dispute jury 27 || waiver.

Because Rule 12(b)(3) is the incorrect procedure for enforcing the clause, the Court need not 28
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.