

A bakery incorporated and headquartered in State A had a dispute with a mill incorporated and headquartered in State B over the quality of the flour the mill had delivered to the bakery. The bakery sued the mill in a federal court in State A for breach of contract, seeking \$100,000 in damages.

The contract between the bakery and the mill contained a clause designating State B courts as the sole venue for litigating disputes arising under the contract. Under precedent of the highest court in State A, forum-selection clauses are unenforceable as against public policy; under U.S. Supreme Court precedent, such clauses are enforceable.

The mill has moved to transfer the case to a federal court in State B, citing the forum-selection clause in the parties' contract and asserting the facts that the flour was produced in State B and that the majority of likely witnesses are in State B.

Is the court likely to grant the mill's motion?

- A. No, because State A law treats forum-selection clauses as unenforceable.
- B. No, because the mill should have instead filed a motion to dismiss for improper venue.
- C. Yes, because federal common law makes the forum-selection clause controlling.
- D. Yes, because federal law governs transfers of venue, and it would be more convenient for the witnesses and parties to litigate the claim in State B.

Explanation:

Venue

Proper venue

Case may be brought in any federal district where:

(28 U.S.C. § 1391)

- any defendant resides, if defendants all reside in same state
- substantial part of events giving rise to claim occurred or property at issue is located
- any defendant is subject to court's personal jurisdiction (if neither of the above provisions applies)

Transfer from proper venue

When venue is proper, district court may transfer case to any other proper venue for convenience of parties/witnesses & in interest of justice

(28 U.S.C. § 1404)

Transfer or dismissal from improper venue

When venue is improper, district court must either:

(28 U.S.C. § 1406)

- dismiss case
- transfer case to proper venue (if interest of justice requires)

A federal court's **subject-matter jurisdiction** is based on diversity when the amount in controversy exceeds \$75,000 and the parties are **citizens** of different states. In a **diversity action**, the court must apply:

- **state substantive law** – for issues regarding **legal rights and duties** (eg, to determine the elements of a claim or affirmative defense) *and*
- **federal procedural law** – for issues regarding **remedies and procedures** (eg, to determine venue, sufficiency of pleadings, or rules of discovery).

Here, the State A federal court has diversity jurisdiction since the amount in controversy (\$100,000) exceeds \$75,000 and the bakery and mill are citizens of different states (States A and B, respectively). Therefore, the court must determine what law to apply. Since State A law treats forum-selection clauses as unenforceable, the court could not transfer the case if state law applied. However, transfer of venue is a *procedural* issue that is governed by federal law (**Choice A**).

Federal law allows a district court to **transfer venue** for the **convenience of parties and witnesses**, and in the interest of justice, to (1) any federal district to which all the parties have consented or (2) another proper venue. Venue is proper in any district where:

- any **defendant resides**, if all defendants reside in the same state

- a substantial part of the **events that gave rise to the suit occurred** or property at issue is located *or*
- any defendant is subject to the court's personal jurisdiction (if neither of the above provisions applies).

Here, venue in State A was proper since the flour that gave rise to this suit was delivered to the bakery there **(Choice B)**. But it would be more convenient to litigate the claim in State B, where the flour was produced and most witnesses are located. And since venue would also be proper in State B (where the only defendant resides), the court is likely to grant the mill's motion to transfer.

(Choice C) Although forum-selection clauses are enforceable under Supreme Court precedent (ie, federal common law), federal statutory law supersedes federal common law. Therefore, the federal statute governing transfer of venue (28 U.S.C. § 1404) controls.

Educational objective:

In a federal diversity action, the district court must apply state substantive law (eg, elements of a claim or defense) and federal procedural law (eg, venue—the district where a federal case can be heard).

References

- 28 U.S.C. § 1652 (state law determines substantive issues in federal diversity cases).
- 28 U.S.C. § 1391 (proper venue).
- *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 32 (1988) (holding that 28 U.S.C. § 1404 governs whether a district court should give effect to a forum-selection clause and transfer a case).
- 28 U.S.C. § 1404(a) (transfer of venue).

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