

A business incorporated in State A hired an advertiser living in State B and a lawyer living in State C to help the business's advertising efforts in a foreign country. The contract was signed in the foreign country, and all work to be performed under the contract was to be done in that country. The advertiser and the lawyer failed to arrange for the advertising in the foreign country as required by the contract.

The business sued the advertiser and the lawyer in State B federal court for breach of contract, requesting \$400,000 in damages. The advertiser was properly served with process at his residence, and the lawyer was properly served with process while conducting business in State B. The two defendants have timely filed a pre-answer motion to dismiss the case for improper venue.

How should the federal court rule on the defendants' motion to dismiss?

- A. Deny the motion, because the advertiser resides in State B.
- B. Deny the motion, because the defendants are subject to personal jurisdiction in State B.
- C. Grant the motion, because a substantial portion of the events giving rise to the breach of contract claim did not occur in State B.
- D. Grant the motion, because the lawyer does not reside in State B.

Explanation:

Under 28 U.S.C § 1391(b), **venue is proper** in any **federal district where**:

- any defendant **resides**—as long as all defendants reside in the *same* state (ie, **residency-based venue**)
- a substantial part of the events that gave rise to the suit occurred (ie, **events-based venue**) or a substantial part of the property at issue is located (ie, **property-based venue**) *or*
- **any defendant is subject** to the court's **personal jurisdiction**—but only when venue cannot be established under the first two provisions (ie, **fallback provision**).

Here, there is no residency-based venue because the defendants reside in different states—States B and C (**Choice A**). Additionally, there is no events-based venue because the events—where the contract was signed and to be performed—occurred in the foreign country. And since this case does not concern property, there is no property-based venue.

However, venue is proper in State B under the fallback provision because the State B federal court has personal jurisdiction over the advertiser who resides (ie, is domiciled) there. The court also has personal jurisdiction over the lawyer because he was served with process while voluntarily in State B on business. Therefore, the defendants' motion to dismiss for improper venue should be denied (**Choices C & D**).

Educational objective:

Venue is proper in any federal district where: (1) any defendant resides, so long as all defendants reside in the same state, (2) a substantial part of the events occurred or the property at issue is located, or (3) any defendant is subject to personal jurisdiction—but only if the first two provisions do not apply.

References

- 28 U.S.C. § 1391(b) (proper venue).

Proper court

