

12-929 ATLANTIC MARINE CONSTRUCTION CO. V. USDC WD TX

DECISION BELOW: 701 F.3d 736

LOWER COURT CASE NUMBER: 12-50826

QUESTION PRESENTED:

Following the Court's decision in *M / S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972), the majority of federal circuit courts hold that a valid forum-selection clause renders venue "improper" in a forum other than the one designated by contract. In those circuits, forum-selection clauses are routinely enforced through motions to dismiss or transfer venue under Fed. R. Civ. P. 12(b)(3) and 28 U.S.C. § 1406. The Third, Fifth, and Sixth Circuits, however, follow a contrary rule. This Petition presents the following issues for review:

1. Did the Court's decision in *Stewart Organization, Inc. v. Ricoh Corp.*, 487 U.S. 22 (1988), change the standard for enforcement of clauses that designate an alternative federal forum, limiting review of such clauses to a discretionary, balancing-of-conveniences analysis under 28 U.S.C. § 1404(a)?

2. If so, how should district courts allocate the burdens of proof among parties seeking to enforce or to avoid a forum-selection clause?

CERT. GRANTED 4/1/2013