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LANDSCAPE ARCHITECT IS NOT FORCED TO LITIGATE ITS CASE OUT OF STATE WHEN ITS OFFICE AND PROJECT ARE LOCATED IN CALIFORNIA

In *Vita Planning & Landscape v. HKS,* a Texas corporation, HKS, building a luxury hotel in Mammoth Lakes, California contracted with Vita Planning & Landscape ("Vita") to perform landscape architectural services.

After Vita had performed its architectural services, the project was put on hold. HKS refused to pay Vita, and Vita sued in California. HKS tried to move the case to Texas where the law would have protected them due to a forum selection clause in the contract that states, "Texas law was to apply" if a dispute arose.

The California court refused to apply the clause finding it "void" under California law. HKS appealed. The San Francisco appellate courts also found the clause void and unenforceable under California law due to a statute typically applied to contractors or subcontractors, or Civil Code Section 410.42. The appellate court said that there was nothing in the statute that excluded architects versus contractors and under the language of this statute, an architect could be a "contractor" as it had a contract with the owner. Since the project was in California, and the architect's office was in California, California would be the proper forum for the case.

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