Federal District Courts Must Stay Proceedings While an Interlocutory Appeal on Arbitrability is Pending, United States Supreme Court Held

In a recent 5-4 decision in *Coinbase, Inc.* v. *Bielski*, the United States Supreme Court held that federal district courts must stay proceedings while interlocutory appeals of orders denying motions to compel arbitration are pending.[1] District courts typically have discretion to stay proceedings while interlocutory appeals are pending or proceed with the aspects of the case not subject to the appeal. Since interlocutory appeals about arbitrability concern the core issue of whether "the litigation may go forward in the district court," most federal circuit courts of appeal have held that all district court proceedings must be stayed pending an appeal of an order denying a motion to compel arbitration.[2] On July 11, 2022, however, the Court of Appeals for the Ninth Circuit reached the opposite conclusion, holding that district courts have discretion – but are not required – to stay cases when arbitrability is on appeal. On June 23, 2023, the Supreme Court resolved this circuit split, reversing the Ninth Circuit's decision and holding that district courts must stay proceedings while interlocutory appeals on arbitrability are pending.

I. Factual and Procedural Background

In 2021, Coinbase was named in a putative class action lawsuit alleging that the company violated the Electronic Funds Transfer Act and Regulation E by failing to replace funds fraudulently removed from users' accounts by third-parties. Since Coinbase's user agreement provides for dispute resolution through binding arbitration, Coinbase moved to compel arbitration.[3] After the district court denied Coinbase's motion, Coinbase filed an interlocutory appeal to the Ninth Circuit. While the appeal was pending, Coinbase sought to stay the district court proceedings, which both the district court and the Ninth Circuit declined to do, holding – contrary to the view held by the majority of circuits – that appeals of orders denying motions to compel arbitration do "not automatically stay district court proceedings." On December 9, 2022, the Supreme Court granted *certiorari* to address this important question.

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[1] *Coinbase, Inc.* v. *Bielski*, No. 22-105, 2023 WL 4138983 (U.S. June 23, 2023).

[2] *See, e.g., Levin* v. *Alms & Assocs., Inc.*, 634 F.3d 260, 263 (4th Cir. 2011); *Ehleiter* v. *Grapetree Shores, Inc.*, 482 F.3d 207, 215 n. 6 (3d Cir. 2007); *McCauley* v. *Halliburton Energy Servs., Inc.*, 413 F.3d 1158, 1162–63 (10th Cir. 2005); *Blinco* v. *Green Tree Servicing, LLC*, 366 F.3d 1249, 1253 (11th Cir. 2004); *Bradford-Scott Data Corp.* v. *Physician Computer Network, Inc.*, 128 F. 3d 504, 506 (7th Cir. 1997).

[3] *Coinbase*, 2023 WL 4138983, at *1.

II. The Supreme Court Decision

On June 23, 2023, the Supreme Court issued an opinion affirming the majority view that "[w]hen a federal district court denies a motion to compel arbitration, the losing party has a statutory right to an interlocutory appeal . . . [and] the district court must stay its pre-trial and trial proceedings while the interlocutory appeal is ongoing."[4] The Court relied on its 1982 holding in *Griggs* v. *Provident Consumer Discount Company* that an interlocutory appeal "divests the district court of its control over those aspects of the case involved in the appeal."[5] Since the question in an interlocutory appeal concerning arbitrability is "whether the case belongs in arbitration or instead in the district court, the entire case is essentially 'involved in the appeal.'"[6] Accordingly, *Griggs* "dictates" that district court proceedings must be stayed while a party appeals the denial of a motion to compel arbitration.[7]

In so ruling, the Supreme Court looked at Congress's intent when enacting the Federal Arbitration Act. The Court noted that "[w]hen Congress wants to authorize an interlocutory appeal and to automatically stay the district court proceedings during that appeal, Congress ordinarily need not say anything about a stay."[8] Rather, when Congress authorizes interlocutory appeals, it typically explicitly notes that a stay is *not* automatic, meaning a stay is presumed absent an explicit statement to the contrary from Congress. The Court further noted that if district court proceedings were not stayed, "the asserted benefits of arbitration (efficiency, less expense, less intrusive discovery, and the like) would be irretrievably lost," which may force defendants to settle even unmeritorious claims to avoid the costs of defense – an issue particularly acute in class action litigation, where defendants face the "possibility of colossal liability."[9] There is also the risk that "scarce judicial resources" could be needlessly consumed if district court proceedings continue and the court of appeals eventually rules that the matter should be sent to arbitration.[10] For all of these reasons, the Court held that it is "common sense" "for a district court to stay its proceedings while the interlocutory appeal on arbitrability is ongoing."[11]

The Supreme Court rejected all of plaintiffs' arguments to the contrary. *First*, plaintiffs argued that an automatic stay would promote frivolous appeals.[12] The Court rejected this theory because the plaintiffs had not argued that Coinbase's appeal was frivolous, nor had they demonstrated how frequently defendants file frivolous appeals under such circumstances or why existing remedies such as court-imposed sanctions are an insufficient deterrent.[13] *Second*, plaintiffs cited two statutes with an explicit stay requirement as proof that "an interlocutory appeal d[oes] not ordinarily stay district court proceedings."[14] The Court distinguished both statutes, noting that one required proceedings to be stayed pending arbitration (not appeals) and the other made clear that only one subsection of the statute provided for an automatic stay since other subsections explicitly made stays discretionary

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[4] *Id*.

[5] *Griggs* v. *Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982).

[6] *Coinbase*, 2023 WL 4138983, at *1 (quoting *Griggs*, 459 U.S. at 58).

[7] *Id.* at *4.

[8] *Id*. at *1.

[9] *Id*. at *4.

[10] *Id*. at *5.

[11] *Id*. at *4.

[12] *Id*. at *5.

[13] *Id.*

[14] *Id*. at *6.

and Congress ostensibly wanted to avoid confusion.[15] *Third*, plaintiffs argued that an automatic stay would create a "special, arbitration-preferring procedural rule."[16] The Court rejected this argument, noting that plaintiffs' preferred approach "would *disfavor* arbitration."[17] *Fourth*, plaintiffs argued that the rights of defendants are adequately protected by giving district courts discretion to impose stays.[18] The Court rejected this view, since "experience shows" that district courts frequently deny stays without "consider[ing] litigation-related burdens" such as "continued District Court proceedings."[19] *Finally*, plaintiffs cited a statement in a 1983 Supreme Court case that questions of arbitrability are "'severable from the merits of the underlying disputes.'"[20] However, the arbitrability question at issue in that case was not whether or not arbitration was the proper forum for dispute resolution, but rather whether that question should be addressed in federal or state court.[21] The Court in *Coinbase* viewed the cited language as distinguishable, since the "sole issue here is whether the district court's authority to consider a case is 'involved in the appeal' when an appellate court considers the threshold question of arbitrability," and the "answer is yes."[22]

Justice Jackson wrote a dissent, in which she was joined by Justices Sotomayor and Kagan, and in part by Justice Thomas. The dissent argued that the "mandatory-general-stay rule for interlocutory arbitrability appeals comes out of nowhere"[23] and would mandate a stay even where "none of the traditional stay prerequisites are present: likelihood of success on the merits, irreparable harm, favorable balance of equities, and alignment with the public interest."[24] The dissent also argued that Congress did not expressly mandate such stays when it passed the Federal Arbitration Act, and that a mandatory stay could irreparably harm a party's case if, for example, a witness died during the stay.

III. Implications

Under the Supreme Court's decision, district court proceedings are now automatically stayed when a party appeals the denial of a motion to compel arbitration. While the impact of this decision is yet to be seen, the ruling should help defendants – particularly businesses with arbitration provisions in their user agreements – avoid the significant burdens of litigating cases that properly belong in arbitration.

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If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email authors Joel Kurtzberg (Partner) at 212.701.3120 or jkurtzberg@cahill.com; John MacGregor (Partner) at 212.701.3445 or jmacgregor@cahill.com; or Lisa J. Cole (Associate) at 212.701.3247 or lcole@cahill.com; or email publications@cahill.com.

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15 *Id.*

16 *Id.*

17 *Id.* (emphasis in original).

18 *Id.*

19 *Id.*

20 *Id*. at *7 (quoting *Moses H. Cone Memorial Hospital* v. *Mercury Constr. Corp*, 460 U.S. 1, 21 (1983)).

21 *Moses H. Cone*, 460 U.S. at 20–21.

22 *Coinbase*, 2023 WL 4138983, at *7.

23 *Id.* at *7 (Jackson, J., dissenting).

24 *Id*. at *12 (Jackson, J., dissenting).

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