

SCOTUS Interprets FAA to Impose Mandatory Stay of Proceedings in District Courts Pending Interlocutory Appeal From Denial of Motion to Compel Arbitration

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In a 5–4 decision issued June 23, 2023, in *Coinbase Inc. v. Bielski*, the U.S. Supreme Court resolved a circuit split over whether trial courts have the discretion to stay proceedings pending interlocutory appeal from a denial of a motion to compel arbitration, or if a stay is otherwise automatic pending appellate determination of arbitrability.

Relying primarily on the rationale of the “*Griggs* rule,” the court interpreted the provision for interlocutory appeal in section 16(a) of the Federal Arbitration Act to mandate a stay of all proceedings in the district court pending appeal. In so holding, the court noted that most circuit courts and the two primary treatises on federal practice agree with this interpretation and the notion that the alternative “discretionary” stay would largely nullify Congress’ decision to permit interlocutory appeal. The dissenting opinion, by contrast, characterizes the majority’s mandatory rule as coming “out of nowhere,” concluding that the court is venturing “down an uncharted path — and that way lies madness.”

The case arose in the context of a putative class action filed in the Northern District of California by Abraham Bielski on behalf of Coinbase users, alleging that Coinbase, an online currency platform, failed to replace funds fraudulently taken from users’ accounts. Because Coinbase’s user agreement provides for dispute resolution through binding arbitration, Coinbase filed a motion to compel arbitration. The district court denied the motion. Coinbase then filed an interlocutory appeal to the

Ninth Circuit Court of Appeals under the FAA, 9 U. S. C. § 16(a), which expressly authorizes an interlocutory appeal from the denial of a motion to compel arbitration. Coinbase simultaneously moved the district court to stay all proceedings pending the resolution of the interlocutory appeal. Coinbase’s request for a stay was denied by both the district and appellate court. Ninth Circuit precedent provided that such a stay is not automatic but may instead be granted at the discretion of the trial court.

The Supreme Court began its analysis by citing the rule established in *Griggs v. Provident Consumer Discount Co.* that an appeal, including an interlocutory appeal, divests the district court of its control over those aspects of the case involved in the appeal, reasoning that because the question on appeal is whether the case belongs in arbitration or instead in the district court, the entire case is essentially “involved in the appeal.” As such, the court concluded that a simple application of the *Griggs* principle mandated an automatic stay during the pendency of an arbitrability appeal under section 16(a) of the FAA. In further support, the court reasoned that “it makes no sense for trial to go forward while the court of appeals cogitates on whether there should be one.”

The court then proceeded to reject each of Bielski’s arguments in favor of the discretionary (rather than mandatory) stay. Among other things, the court noted that lower courts possess robust tools to prevent unwarranted delay and deter frivolous conduct that an automatic stay would otherwise encourage. The court also found that the discretionary factors considered by courts in the Ninth Circuit, including irreparable injury absent a stay, were insufficient to protect the parties’ rights during an interlocutory appeal addressing arbitrability — even substantial and non-recoupable litigation expense. And finally, the court distinguished its holding in *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.* to the effect that questions of arbitrability are severable from the merits of the underlying disputes, noting that here, by contrast, the issue was more broadly whether a court’s authority to consider a case was “involved in the appeal” when the appellate court is considering an issue of arbitrability. As the court succinctly concluded: “The answer is yes, and *Moses H. Cone* says nothing to the contrary.”

In these authors’ view, it is difficult to assail the plain logic and practical underpinnings of the court’s ruling at a time when both the legislative and judicial branches, over many decades, have strongly supported alternative dispute resolution through the recognition and enforcement of arbitration agreements, with only limited judicial review, and the concomitant growth in the use of arbitration not only domestically, but around the world, and particularly in the context of commercial disputes. As the court recognized in *Coinbase*: “Absent an automatic stay ... [the] right to an interlocutory appeal would be largely nullified ... [i]f the district court could move forward with pre-trial and trial proceedings while the appeal on arbitrability was ongoing.” Indeed, “many of the asserted benefits of arbitration (efficiency, less expense, less intrusive discovery, and the like) would be irretrievably lost ... if the court of appeals later concluded that the case actually had belonged in arbitration all along.”

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