

June 26, 2023

Supreme Court Holds That District Courts Must Stay Proceedings Pending Appeals of Denials of Motions to Compel Arbitration

On June 23, 2023, the Supreme Court held in *Coinbase v. Bielski* that district court proceedings must be stayed pending resolution of an interlocutory appeal of the denial of a motion to compel arbitration under Section 16(a) of the Federal Arbitration Act (FAA). The decision allows parties seeking to compel arbitration the ability to halt proceedings pending such an appeal, rather than expending litigation resources simultaneously in the trial court and the appellate court.

Background

This case arises from a putative class action lawsuit filed against Coinbase in the United States District Court for the Northern District of California. Because Coinbase's User Agreement contained an arbitration provision, Coinbase filed a motion to compel arbitration. That motion was denied. Subsequently, Coinbase appealed that decision under Section 16(a) of the FAA, which permits an immediate appeal of a district court's denial of a motion to compel arbitration.

Under Ninth Circuit precedent, such an appeal did not automatically stay proceedings in the district court—meaning that the district court had discretion to proceed with the litigation despite the pendency of the appeal. And while Coinbase filed motions to stay the district court proceedings in both the district court and the Ninth Circuit, both of those motions were denied.

The Supreme Court granted review to decide whether an appeal of the denial of a motion to compel arbitration ousts a district court's jurisdiction to proceed with the litigation pending appeal.

Supreme Court Decision

In an opinion written by Justice Kavanaugh, the Court held that district courts must stay proceedings pending an interlocutory appeal pursuant to Section 16(a) of the FAA. In doing so, the Court reasoned that the principle expounded in *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982)—that an appeal “divests the district court of its control over those aspects of the case involved in the appeal,” *id.* at 58, “resolve[d] this case.” Justice Kavanaugh explained that because, in the context of an appeal of the denial of a motion to compel arbitration, whether the litigation can go forward in the district court is exactly what is to be decided, the *Griggs* principle controls this case. The Court rejected the respondent's attempts to overcome that principle. In doing so, Judge Kavanaugh noted that (1) the courts of appeals have ample methods to defend against frivolous appeals (like sanctions), such that an automatic stay here would not increase the number of such appeals, (2) the lack of an explicit stay provision in the text was of no moment given the *Griggs* background principle, (3) an automatic stay does not create an

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arbitration-specific procedural rule, because the *Griggs* principle applies in other analogous contexts where interlocutory appeals are authorized, (4) whether the ordinary stay factors might protect litigants is irrelevant given the *Griggs* rule, and (5) the notion that questions of arbitrability are “severable from the merits of the underlying dispute[]” is irrelevant here, where the sole issue is the question of whether or not the district court has jurisdiction to consider the case is “involved in the appeal” when an appellate court considers whether the case is arbitrable.

Justice Jackson filed a dissenting opinion, joined by Justices Sotomayor and Kagan in whole and Justice Thomas in part. In doing so, Justice Jackson reasoned that the statute’s text does not contain an automatic stay provision. Moreover, she disagreed with the applicable background rule—she opined that instead, the traditional background rule is a case-by-case determination of whether a case must be stayed pending an interlocutory appeal. And in her view *Griggs* is more narrow—the principle is simply that “[t]wo courts should avoid exercising control over the same order or judgment simultaneously.” Indeed, Justice Jackson wrote that the only cases that are impacted by the Court’s ruling are those that would have otherwise not been stayed under the traditional stay factors—likelihood of success on the merits, irreparable harm, favorable balance of the equities, and alignment with the public interest. Accordingly, the impact of this decision would be that “any defendant that devises a non-frivolous argument for arbitration can not only appeal, but press pause on the case—leaving plaintiffs to suffer harm, lose evidence, and bleed dry their patience and funding in the meantime.” She concluded by writing that, although the Court’s decision is limited to interlocutory appeals under Section 16(a), the reasoning is applicable to a wide swath of cases and would allow defendants an almost unfettered ability to prolong litigation.

Justice Thomas did not join the portions of the dissenting opinion regarding Justice Jackson’s analysis of the statute or the concluding discussion of the potential wider consequences of this case.

Implications

The decision in *Coinbase* makes easier the decision of whether to file a Section 16(a) appeal once faced with the denial of a motion to compel arbitration. That is likely to increase the number of such appeals, because those seeking to compel arbitration no longer need to consider the possibility that they will be expending litigation costs at the trial level while the appeal is pending. And those seeking to avoid arbitration will need to be mindful of that reality when thinking about whether and how to proceed in a potentially arbitrable case, given the possibility that proceedings in the district court may be stayed for a year or more after the denial of a motion to compel arbitration.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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