Articles + Publications | June 3, 2024

Locke Lord QuickStudy: Supreme Court's Two Arbitration ?Opinions Prohibit Dismissal of Case Pending Arbitration and ?Require Court to Assess Conflicting Contracts

Locke Lord LLP

WRITTEN BY

Louis J. Manetti, Jr. | P. Russell Perdew

The Supreme Court recently issued a pair of unanimous decisions clarifying how arbitration clauses impact litigation. One decision restricts a court's discretion to dismiss—rather than stay—litigation after ordering the parties to arbitration; the other requires a court—rather than an arbitrator—to interpret multiple contracts between the same parties with conflicting arbitration provisions.

Courts should generally stay—rather than dismiss—a lawsuit after compelling arbitration.

On May 16, 2024, the Court decided *Smith v. Spizzirri*, where the district court had compelled arbitration in an employment lawsuit and dismissed the case without prejudice pending arbitration.[1] The Court found dismissal was improper, holding that when "a federal court finds that a dispute is subject to arbitration, and a party has requested a stay of the court proceeding pending arbitration, the court does not have discretion to dismiss the suit on the basis that all the claims are subject to arbitration."[2]

The Court began with Section 3 of the Federal Arbitration Act, which states that when an issue is subject to arbitration, the court "shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement . . . ."[3] It noted that "shall" creates an obligation "impervious to judicial discretion", and that it had previously held that the term "shall" in other sections of the FAA constituted a command for the district court.[4]

The Court also rejected the argument that a "stay" encompasses dismissal of the case because such a reading would disregard longstanding legal notions of a stay.[5] Also, interpreting "stay" to mean "dismiss" does not comport with the FAA's surrounding text: Section 3 instructs that the stay lasts only so long as the applicant is not in default in the arbitration proceeding, ensuring that "the parties can return to federal court if arbitration breaks down or fails to resolve the dispute."[6] More broadly, the Court held that a stay supports the supervisory role that the FAA envisions for the district court. Under the FAA, the district court can appoint an arbiter, enforce subpoenas, and facilitate recovery on the award.[7]

In a footnote, the Supreme Court clarified that nothing in its decision bars a district court from dismissing the lawsuit if there is a separate reason to dismiss, such as lack of jurisdiction.[8]

Courts—rather than arbitrators—must decide which of two conflicting contracts governs arbitrability of a dispute.

On May 23, 2024, the Supreme Court issued a decision stressing the contractual nature of arbitration clauses in *Coinbase, Inc. v. Suski*.[9] In that case, the Court considered two agreements between Coinbase, the operator of a cryptocurrency exchange platform, and the plaintiffs. The first contract was the User Agreement that the plaintiffs entered into when they created their accounts.[10] That contract contained an arbitration clause in which the parties specifically agreed to arbitrate disputes involving the "enforceability, revocability, scope, or validity" of the arbitration clause.[11] The second contract was a set of rules governing a sweepstakes that Coinbase offered. This contract contained a forum-selection clause declaring that California state and federal courts had sole jurisdiction over any controversies about the sweepstakes.[12]

After the sweepstakes, the plaintiffs sued Coinbase in California federal court, and Coinbase moved to compel arbitration.[13] The district court held that the plaintiffs' sweepstakes-related dispute was not subject to arbitration, and the Ninth Circuit affirmed.[14] The Supreme Court granted certiorari to decide the question of "who—a judge or an arbitrator—should decide whether a subsequent contract supersedes an earlier arbitration agreement that contains a delegation clause."[15]

The Supreme Court stressed that arbitration is strictly a matter of consent, and the FAA places arbitration provisions on "equal footing with other contracts."[16] The Court described three kinds of disputes regarding arbitration:

- a first-order disagreement, which is about the merits of the dispute;[17]
- a second-order dispute, which is about whether the parties agreed to arbitrate on the merits;[18] and
- a third-order dispute—which is about who decides arbitrability, a judge or an arbitrator.[19]

The Court noted that, ordinarily, a party who has not agreed to arbitrate has the right to a court's decision on the merits, so courts should not assume that parties agreed to arbitrate arbitrability unless there is clear and unmistakable evidence that they did so.[20]

The Supreme Court held that, given the conflict between the delegation clause in the first contract and the forum selection clause in the second contract, "the question is whether the parties agreed to send the given dispute to arbitration—and, per usual, *that* question must be answered by a court."[21] The Court repeated its emphasis that arbitration and delegation agreements are simply contracts, and if a party says that a contract is invalid, the court must address that argument before deciding the merits of the contract dispute.[22]

It concluded that "where, as here, parties have agreed to two contracts—one sending arbitrability disputes to arbitration, and the other either explicitly or implicitly sending arbitrability disputes to the courts—a court must decide which contract governs", because to hold otherwise would elevate a delegation provision over other forms of contract.[23]

—

[1] No. 22-1218, 2024 U.S. LEXIS 2170, at *4 (U.S.S.C. May 16, 2024).

[2] *Id.* at *5-6.

[3] *Id.* at *6.

[4] *Id.* at *6-7.

[5] *Id.* at *7.

[6] *Id.* at *7-8.

[7] *Id.* at *9.

[8] *Id.* at *6 n.2.

[9] *Coinbase, Inc. v. Suski*, No. 23-3, 2024 U.S. LEXIS 2263 (U.S.S.C. May 23, 2024).

[10] *Id.* at *5.

[11] *Id.* at *6.

[12] *Id.* at *6-7.

[13] *Id.* at *7.

[14] *Id.* at *8.

[15] *Id.*

[16] *Id.* at *8-9 (citing *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 67 (2010)).

[17] *Id.* at *9.

[18] *Id.* at *10.

[19] *Id.*

[20] *Id.*

[21] *Id.* at *11-12 (emphasis in original).

[22] *Id.* at *13.

[23] *Id.* at *14.

RELATED INDUSTRIES + PRACTICES

- Bad Faith
- Financial Services Litigation
- Litigation + Trial
- Class Action