Supreme Court Shakes Up Arbitration Appellate Rules (Part I: Federal Courts)

Client Alert
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As it ended its term in June, the Supreme Court gave people quite a few things to talk about and ponder. But one decision that will have broad-ranging effects on businesses across the country has gotten less attention than it deserves: *Coinbase Inc. v. Bielski*, which the Court announced on June 23, 2023. In *Coinbase*, the Court significantly recalibrated the rules for litigating arbitration.

Arbitration clauses have frequently been included in commercial, consumer, investment and many other contracts to improve the efficiency and reduce the costs of litigation. Under the typical contract arbitration provision, the parties are required to submit any disputes arising under the contract to binding arbitration. Many businesses prefer arbitration over lawsuits because arbitration is more streamlined and is thus typically faster and less expensive than litigation in the courts.

But what happens if one party ignores the arbitration clause and files a suit in court instead? Or if after one party files an arbitration, the other heads to court seeking an injunction to stop the arbitration and try the case in court? If the opposing party wants the advantages of arbitration, it will typically file a motion asking the court to stay (i.e., suspend) the lawsuit and compel the party bringing the lawsuit to submit to arbitration instead. But sometimes even that is not enough. Sometimes the suing party will convince the judge either that the arbitration clause is inapplicable or that, under the circumstances of the case, the clause should be ignored. For instance, some courts have held that it is against public policy to require class actions – cases in which a few plaintiffs claim to represent many (sometime thousands or millions) other people with similar grievances against the company – to be arbitrated and have refused arbitration. *Coinbase* was exactly this type of class

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action case. In other instances, courts have held that the defendant waived its right to arbitration and must therefore litigate the dispute in court. Many other examples could be cited.

Until Congress amended the Federal Arbitration Act in 1988, the defendant was compelled to proceed with discovery leading to trial. That is because federal law prohibits an aggrieved party from filing an appeal in the middle of the case in all but the most unusual circumstances. But in 1988, Congress took the extraordinary step of authorizing an appeal from a court order denying a motion to compel arbitration. The appeal allowed a defendant to challenge the court's ruling immediately, before discovery or trial.

But even though the statute entitles the defendant to an immediate appeal, it does not explicitly say that the district court must halt discovery or trial while the appeal is taken. Many federal trial judges did exactly that, and proceeded forward with discovery and trial in spite of the appeal. In at least one instance, a judge in the Eastern District of Michigan – encompassing the eastern half of the Lower Peninsula, from Monroe County to Cheboygan County – took this approach. And three of the largest circuit courts of appeals, covering over 128 million U.S. inhabitants, agreed and allowed trial courts to proceed. But six of the remaining ten circuits disagreed and required federal trial courts to halt all proceedings while the appeal was pending. The other four circuits, including the Sixth Circuit that subsumes Michigan, never took a position one way or the other. The trial courts in those four circuits were allowed to take whatever approach they found most convincing. That meant that if your arbitration case went to court, the result you got depended on which judge was assigned to your case.

The Supreme Court addressed this state of confusion in *Coinbase* and decided that trial courts are required to freeze their proceedings while the appellate court entertains the defendant's appeal. The appeal, the Court observed, concentrates on whether the case should be tried in federal court or submitted to arbitration. It made no sense, the Court concluded, "for trial to go forward while the court of appeals cogitates on whether there should be one." The Court held that, to preserve resources and avoid confusion resulting from two courts addressing the same issues simultaneously, the district court must stay its proceedings while the appeal is pending.

It should be noted that if the trial court rules in favor of the proponent of arbitration, the opponent is not entitled to an immediate appeal. The statute gives that right only to a proponent who loses a motion to proceed with the arbitration and postpone litigation; it does not give that same right to the party seeking to postpone the arbitration and proceed with the litigation.

As a result of *Coinbase*, the proponent of arbitration has gained a significant advantage in federal court. Appeals in federal court typically take a year and a half or longer to be resolved. Assuming that its appeal is not frivolous, the proponent of arbitration can now tie up the court litigation for more than a year even if the district court rules that the arbitration clause is inapplicable. *Coinbase* adds significantly to the time and expense necessary to litigate in federal court whether the arbitration clause is valid and applicable. It thus significantly increases the likelihood that the case will be arbitrated and reduces the likelihood that opponent of arbitration will seek to have the case tried

instead of arbitrated.

But *Coinbase* affects only arbitration cases brought in federal court; it does not include how arbitration cases brought in state courts should be handled. Our next client alert will address that and related issues.

Please feel free to contact the authors of this alert or your Butzel attorney if you have any questions or matters to address.

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