

U.S. Supreme Court Provides Guidance on Litigation Over Arbitration Clauses

Insight

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Arbitration agreements are intended to preclude litigating disputes in court, but the U.S. Supreme Court has clarified in two recent decisions — *Coinbase Inc. v. Suski* and *Smith v. Spizzirri* — that in certain circumstances, even the undisputed existence of an arbitration agreement does not compel dismissal of a lawsuit.

In one decision, dueling contracts, one of which required arbitration and one of which did not, meant that a court — and not an arbitrator — had to decide in the first instance whether the parties' dispute was subject to arbitration. In the other, the Federal Arbitration Act (FAA), which governs the procedures for enforcing arbitration agreements in federal court, required that a lawsuit remain pending but stayed until the conclusion of arbitration.

The lesson from these cases is that arbitration agreements are not silver bullets for eliminating the risk of lawsuits, but there is still room for companies to structure their contracts in ways to minimize the risk of having to go to court to resolve disputes.

COINBASE INC. V. SUSKI

In *Coinbase Inc. v. Suski*, the Supreme Court addressed the following question: When the parties enter into multiple contracts, some of which provide for arbitration and some of which do not, who decides the issues of whether a particular dispute is subject to arbitration?

Coinbase, a cryptocurrency exchange, required its users to execute a user agreement containing a delegation clause in which all disputes, including disputes regarding which issues are subject to arbitration (known as arbitrability), were to be resolved by arbitration. Coinbase then subsequently offered a

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sweepstakes in which the official rules provided for all disputes to be resolved in California courts.

The plaintiffs filed a class action suit relating to the sweepstakes, and both the district court and the U.S. Court of Appeals for the Ninth Circuit denied Coinbase's motion to compel arbitration. The Supreme Court affirmed. The Court defined the dispute as a conflict over which contract (the user agreement or the sweepstakes rules) controlled resolution of the issue.

Coinbase argued that the courts should have severed the arbitration clause in the user agreement from the remainder of the contract and left the validity of the user agreement as an issue for the arbitrator to resolve. The Supreme Court declined, concluding that "basic principles of contract and consent" required that a court address the validity of the user agreement's arbitration clause. Otherwise, the effect would be to unduly elevate the delegation clause over other contracts. A court, not an arbitrator, had to decide whether the parties' first agreement was superseded by the second.

Companies who enter into multiple contracts with the same parties should be vigilant to ensure that the dispute resolution clauses are consistent. If arbitration is the goal, each contract should clearly call for arbitration. Otherwise, a dispute may end up in court, diverting time and resources to arguing in that forum about who will decide the dispute before ever reaching its merits.

SMITH V. SPIZZIRRI

In *Smith v. Spizzirri*, the plaintiffs were delivery drivers who sued for violations of employment laws. The defendants moved to compel arbitration and to dismiss the suit. Although the plaintiffs conceded that their claims were subject to arbitration, they argued that the FAA required the district court to stay the lawsuit pending the resolution of the arbitration, rather than dismiss it entirely.

In a unanimous opinion, the Supreme Court agreed with the plaintiffs, concluding that the FAA's statutory language required a stay, not a dismissal. Section 3 of the FAA provides, in relevant part, that 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." Justice Sonia Sotomayor, writing for the Court, noted that "'shall' means 'shall'" and "'stay' means 'stay.'" Justice Sotomayor also noted that if a district court could dismiss a lawsuit subject to arbitration, then that dismissal would trigger a right to an immediate appeal in a circumstance where Congress had not authorized an appeal. Thus, section 3 of the FAA properly enforced a stay, not a dismissal, where one of the parties had asked for it. Thus, the statute overrode "any discretion a district court might otherwise have had to dismiss a suit when the parties have agreed to arbitration."

Smith does not mean that every lawsuit is immune to dismissal. In a footnote, the Supreme Court noted that the FAA does not bar motions to dismiss based on reasons "unrelated to the fact that an issue in the case is subject to arbitration." A defendant who has a traditional basis for dismissal, such as a lack of

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jurisdiction, can still file — and win — a motion to dismiss.

Companies facing a lawsuit in which an arbitration agreement clearly determines the issues should still have counsel review the suit for possible grounds for dismissal that do not involve direct attacks on the issues subject to arbitration.

TAKEAWAY

Both *Smith* and *Coinbase* highlight the importance of companies having a comprehensive arbitration strategy, including consulting with counsel from the moment that litigation is imminent, and managing contracts to ensure that there are no conflicts among dispute resolution clauses that might allow a plaintiff to force a defendant to litigate preliminary questions of arbitrability in the courts.

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