Supreme Court Decision in *Coinbase* Gives Parties Seeking to Compel Arbitration an Automatic Stay of Court Proceedings

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In its June 23, 2023 opinion in *Coinbase, Inc. v. Bielski*, the U.S. Supreme Court decided that a party's appeal from the denial of a motion to compel arbitration triggers an automatic stay of the merits of the underlying district court proceedings. The Court's decision ensures that a party seeking to enforce in federal court an agreement to arbitrate will not be required to litigate the merits of its dispute while the appellate court decides whether the case should instead be referred to arbitration. However, the party resisting arbitration is not without recourse if it believes that the interlocutory appeal is simply a delay tactic aimed at securing the automatic stay. As the Court noted, the party resisting arbitration can still ask the appeals court to expedite the interlocutory appeal, to dismiss the appeal as frivolous, or to summarily affirm the district court's ruling. This case should be of particular interest to individuals and corporations considering whether to select the United States as the seat of arbitration as part of any arbitration agreement.

Background. Abraham Bielski filed a putative class action against Coinbase, an online exchange that permits users to trade both cryptocurrencies and fiat currency, in the U.S. District Court for the Northern District of California. Bielski alleged that Coinbase failed to replace funds that a scammer had fraudulently taken from his account, and filed suit on behalf of himself and a class of similarly situated Coinbase users.

However, Coinbase's User Agreement, which its users agree to when creating an account, contained an arbitration clause providing for binding arbitration of disputes arising under the agreement. Coinbase accordingly moved to compel arbitration. When the District Court denied its motion, Coinbase filed an interlocutory appeal to the U.S. Court of Appeals for the Ninth Circuit under the Federal Arbitration Act (FAA), 9 U.S.C. § 16(a), which authorizes an immediate interlocutory appeal from a denial of a motion to compel arbitration.

Coinbase also moved the district court to stay the proceedings pending the Ninth Circuit's decision, but the district court denied the motion. The Ninth Circuit likewise declined to stay the district court proceedings, consistent with established precedent that a party appealing a denial of a motion to compel arbitration is not entitled to an

automatic stay of the lower court proceedings. *See Britton v. Co-op Banking Grp.*, 916 F.2d 1405, 1412 (9th Cir. 1990).

The Supreme Court granted certiorari to resolve a disagreement among the Circuits as to whether a stay in those circumstances is discretionary—as the Second, Fifth, and Ninth Circuits had determined[1]—or mandatory, as most other Courts of Appeals have held.[2]

The Supreme Court Decision. In a 5-4 majority opinion authored by Justice Kavanaugh, the Supreme Court held that "a district court must stay its proceedings" while an interlocutory appeal on arbitrability under Section 16(a) of the FAA is ongoing.

Because the FAA does not expressly address whether an interlocutory appeal under Section 16(a) stays the district court proceedings, the Court turned to a "clear background principle" of U.S. civil procedure: Appeals, including interlocutory appeals, "divest[] the district court of its control over those aspects of the case involved in the appeal." The Court relied primarily on its 1982 decision in *Griggs* v. *Provident Consumer Discount Co.*, 459 U.S. 56, for what it termed the "*Griggs* principle."

The Court concluded that the *Griggs* principle mandates a stay pending an interlocutory appeal from a denial of a motion to compel arbitration under Section 16(a) because "the question on appeal is whether the case belongs in arbitration or instead in the district court" and thus "the entire case is essentially 'involved in the appeal.'" The Court noted that its decision was in line with analogous Circuit court decisions requiring an automatic stay of district court proceedings pending an interlocutory appeal on qualified immunity or double jeopardy. The Court also explained why its decision made sense from a policy perspective: Absent a stay, "many of the asserted benefits of arbitration (efficiency, less expense, less intrusive discovery and the like) would be irretrievably lost—even if the court of appeals later concluded that the case actually had belonged in arbitration all along." Similarly, simultaneous proceedings create "the possibility that the district court will waste scarce judicial resources" if the appellate court ultimately determines that the dispute should be arbitrated.

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1 *See Motorola Credit Corp. v. Uzan*, 388 F. 3d 39, 53–54 (2d Cir. 2004); *Weingarten Realty Investors v. Miller*, 661 F. 3d 904, 907–910 (5th Cir. 2011); *Britton v. Co-op Banking Group*, 916 F. 2d 1405, 1412 (9th Cir. 1990).

2 *Ehleiter v. Grapetree Shores, Inc.*, 482 F. 3d 207, 215, n. 6 (3d Cir. 2007); *Levin v. Alms & Assoc., Inc.*, 634 F. 3d 260, 266 (4th Cir. 2011); *Bradford-Scott Data Corp. v. Physician Computer Network, Inc.*, 128 F. 3d 504, 505–507 (7th Cir. 1997); *McCauley v. Halliburton Energy Servs., Inc.*, 413 F. 3d 1158, 1162–1163 (10th Cir. 2005); *Blinco* v. *Green Tree Servicing, LLC*, 366 F. 3d 1249, 1253 (11th Cir. 2004); *Bombardier Corp. v. National R. Passenger Corporation*, 333 F. 3d 250, 252 (D.C. Cir. 2003).

Justice Jackson authored a dissent that was joined by Justice Sotomayor, Justice Kagan, and, in part, by Justice Thomas. The dissent claimed that *Griggs* does not require a mandatory stay because it provides for a district court to lose "control over those aspects of the case involved in the appeal," and an appeal from a denial of a motion to compel arbitration raises only the question of arbitrability, not the merits. The dissent would instead have applied a different background principle: namely, that an interlocutory appeal of a trial court order leaves the rest of the case at the trial court level, and the trial court "then makes a particularized determination upon request, based on the facts and circumstances of that case, as to whether the remaining part of the case should continue unabated." The dissent concluded that the Court had granted defendants seeking arbitration a "windfall," and warned that its decision may "upend federal litigation as we know it" if it were to be applied to "any appeal over the proper forum for a dispute."

Takeaways and Practical Implications. The decision ensures that a party seeking review of a district court's denial of a motion to compel arbitration will not be required to litigate the merits of the dispute at the same time that it appeals the lower court's denial. In practice, the Court's approach will enable appellants to avoid burdensome and expensive phases of U.S. pre-trial proceedings, including discovery, while awaiting a ruling. The party resisting arbitration is not entirely without recourse if it believes that the opposing party has filed a meritless appeal to secure an unwarranted delay. As the Court's decision recognizes, parties opposing arbitration can still request that the court of appeals summarily affirm, move to dismiss the appeal as frivolous, or request to expedite the appeal under local rules. In some Circuits, a party may also ask the district court to certify an interlocutory appeal as frivolous, which can enable the district court to retain jurisdiction over the merits pending summary disposition of the appeal.

The Court's decision thus minimizes unwarranted delay and costs for parties seeking to compel arbitration in the United States, and enhances the appeal of the United States as the seat for arbitration proceedings. In particular, the decision makes cities in New York and California more appealing seats for arbitration because an automatic stay was previously unavailable under the Second and Ninth Circuit precedents that *Coinbase* overturned.

The Court's decision also makes the United States, alongside France, stand out compared to some other jurisdictions commonly chosen as arbitral seats. France likewise provides for an interlocutory appeal from a denial of a motion to compel arbitration and an automatic stay pending the appeal, consistent with its general rule for appeals of a jurisdictional decision.[3] By contrast, in England & Wales a party may appeal the lower court's decision not to refer the dispute to arbitration only with permission

[3] *See* Article 80 of the French Code of Civil Procedure.

from the High Court or the Court of Appeal.[4] A stay pending appeal is a matter of discretion, not right.[5] Hong Kong, like England & Wales, permits an appeal from a decision refusing to refer the dispute to arbitration only with leave of court,[6] and there is no applicable statute or precedent indicating whether the lower court proceedings may or must be stayed pending the appeal.

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[4] The Law Commission has proposed to codify in the forthcoming revisions to the Arbitration Act 1996 that such appeal is available under section 9 of the Arbitration Act 1996. Law Commission, Review of the Arbitration Act 1996 Consultation Paper (22 September 2022) ¶¶10.12-10.17; *see also* Law Commission, Review of the Arbitration Act 1996 Second Consultation Paper (27 March 2023), ¶¶3.74-3.79.

[5] Civil Procedure Rule 52.16 ("Unless . . . the appeal court or the lower court orders otherwise . . . an appeal shall not operate as a stay of any order or decision of the lower court."). The court also has inherent jurisdiction to stay the effect of its judgment pending an application for permission to appeal.

[6] Article 20(9), Hong Kong Arbitration Ordinance (Cap. 609).