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Coinbase v. Bielski: Uniform Automatic Stay in Interlocutory Arbitrability Appeals Across the 12 U.S. Federal Circuits

Ibrahim Ati (American Bar Association) · Wednesday, December 20th, 2023 · Young California Arbitration (Young CalArb)

In June of 2023, the U.S. Supreme Court issued its opinion in *Coinbase, Inc. v. Bielski*, which settled an important circuit court split with significant relevance to arbitrations. In *Coinbase*, the Supreme Court considered whether a U.S. federal district court proceeding is automatically stayed during an interlocutory appeal of a denial of a motion to compel arbitration. After analyzing the text of the Federal Arbitration Act (the “FAA”) and certain principles applicable to interlocutory appeals, the Supreme Court held that a U.S. federal district court is required to stay its proceedings while the appeal on arbitrability is ongoing.

Coinbase stems from a class-action lawsuit in the U.S. District Court for the Northern District of California (the “Northern District”). The class representative, Bielski, alleged that Coinbase failed to replace funds fraudulently taken from his and other users’ accounts. In response, Coinbase filed a motion to compel arbitration, based on its [user agreement](#)’s binding arbitration clause. In April 2022, the Northern District denied the motion to compel arbitration after finding that the arbitration clause was unconscionable and therefore unenforceable. Coinbase then filed an interlocutory appeal to the U.S. Court of Appeals for the Ninth Circuit pursuant to [Section 16 of the FAA](#).

Among other things, Section 16(a) of the FAA allows parties to make an interlocutory appeal of an order denying a motion to compel arbitration. The FAA does not, however, explicitly address whether the district court must stay its proceedings while the interlocutory appeal is pending, sparking a circuit split and a division of opinion among the courts. The majority position, endorsed by the Third, Fourth, Seventh, Tenth, Eleventh, and D.C. Circuits, was that stays pending appeal were obligatory. The minority position, initially articulated by the Ninth Circuit (which includes California) and followed by the Second and Fifth Circuits (which include New York and Texas), permitted district court proceedings to proceed during ongoing arbitrability appeals unless the district court opted to exercise its discretion to grant a stay.

Consistent with its prior precedent in *Britton v. Co-op Banking Group*, the Ninth Circuit ruled against Coinbase’s motion. The Supreme Court subsequently granted *certiorari* in order to resolve the circuit split on whether the stay of proceedings pending the appeal of a denial of a motion to compel arbitration is discretionary (the minority view) or mandatory (the majority view).

The Supreme Court issued its decision on June 23, 2023, reversing the Ninth Circuit. In the absence of express language in the FAA, the Supreme Court invoked the divestiture principle

established in *Griggs v. Provident Consumer Discount Co.*:

“Section 16(a) does not say whether district court proceedings must be stayed pending resolution of an interlocutory appeal. But Congress enacted the provision against a clear background principle prescribed by this Court’s precedents: An appeal, including an interlocutory appeal, ‘divests the district court of its control over those aspects of the case involved in the appeal.’”

The Supreme Court then highlighted the alignment of Congress’ historical practice with the *Griggs* rule, finding that when Congress has intended to create an interlocutory appeal without an automatic stay, it says so explicitly. For example, the Veterans’ Judicial Review Act (102 Stat. 4120, as amended, 38 U. S. C. §7292(b)(1)), passed shortly before Congress debated Section 16 of the FAA , contains a “non-stay” provision that states that “Neither the application for, nor the granting of, an appeal ... shall stay proceedings in the Court of Veterans Appeals.”

The Supreme Court’s reasoning also rested on the principle that two courts should not simultaneously “control” the same case. Essentially, when an appeal is initiated, the district court’s authority no longer extends to the issues under appeal. However, it retains jurisdiction over matters unrelated to the appeal. When an appeal concerns arbitrability, whether the district court can even hear the case is the issue under appeal. Thus, a stay in the district court is required to ensure that the district and appellate courts are not simultaneously controlling the same case.

The Court’s reasoning also took into account that, because a successful appeal leads the case towards arbitration, it implies that the party seeking arbitration should never have been compelled to initiate district court litigation. Requiring a party to litigate while simultaneously arguing that the case falls outside of the district court’s jurisdiction therefore gives rise to significant fairness concerns.

Finally, the Court emphasized that issuing a stay during the appeal of a motion to compel arbitration is a component of sound judicial policy to preserve the advantages linked to arbitration, including speed, cost reduction, and limited discovery. The Court cautioned that the absence of a stay might exert undue pressure on parties to settle, particularly in cases involving class actions. The Supreme Court did, however, address potential concerns about parties using interlocutory appeals to manufacture unjustified delays. In this regard, the Supreme Court explained that parties retain the option to petition an appellate court to dismiss the appeal on grounds of frivolity.

Justice Brown Jackson penned a dissenting opinion, which Justices Sotomayor and Kagan joined in full, and Justice Thomas joined in part. Her dissent argued that appeals stemming from motions to compel arbitration solely focus on the matter of arbitrability and avoid delving into the underlying merits of a case. She expressed concerns that the Court’s decision could disproportionately favor defendants seeking arbitration and, if applied too broadly, could disrupt the long-standing structure of federal litigation, especially in cases involving disputes over the appropriate forum for resolution.

This holds particular significance in light of the increasing number of cryptocurrency-related disputes involving entities like Coinbase, where user agreements typically require arbitration proceedings within the U.S.

The Supreme Court, having granted *certiorari* on November 3, 2023, to review the Ninth Circuit's decision in *Coinbase Inc. v. Suski*, is now tasked with determining the precedence of a subsequent contract, disputed by Coinbase, containing a forum selection clause over the initial user agreement with a delegation clause empowering an arbitrator. This delegation clause specifically empowers an arbitrator to decide on the enforceability of valid arbitration agreements.

A circuit split also exists, with the First and Fifth Circuits favoring arbitrator decision and the Third and Ninth Circuits opting for court determination, which added complexity and uncertainty for the U.S. as a seat of arbitration.

In line with the *Coinbase v. Bielski* precedent, it is anticipated that the Supreme Court will confirm the authority of arbitrators, further solidifying the United States as an arbitration-friendly jurisdiction.

Ibrahim Ati is a member of Young California Arbitration (Young CalArb), which assisted in the preparation of this article. Young CalArb believes that the future of international arbitration in California lies in the hands of our promising young professionals. Its mission is to provide a dynamic platform that nurtures their growth and strengthens their network within the arbitration community. Young CalArb is committed to advancing the cause of California Arbitration in developing and promoting California as a hub for international arbitration. Its vision is to shape a progressive future for international arbitration in California. Young CalArb is sponsored by California Arbitration.

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