ALERT MEMORANDUM

U.S. Supreme Court Rules That An Appeal Of An Order Denying A Motion To Compel Arbitration Automatically Stays District Court Proceedings

June 29, 2023

On June 23, 2023, the United States Supreme Court held in *Coinbase Inc. v. Bielski* that a district court must stay proceedings when a party appeals the denial of a motion to compel arbitration. *Bielski* reversed a decision by the U.S. Court of Appeals for the Ninth Circuit and resolved a circuit split.[1] The 5-4 decision is consistent with a long line of other pro-arbitration Supreme Court rulings reflecting the strong public policy favoring arbitration embodied in the Federal Arbitration Act.

Bielski ensures that a party claiming the right to arbitrate will have the full opportunity to vindicate that right, without having to subject itself to parallel litigation of the merits in a court. Although this was the Court's first decision related to digital assets, the Court did not give any hints as to how it may address digital assets, platforms, or the industry more broadly.

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[1] *Coinbase, Inc. v. Bielski*, 599 U.S. __, No. 22-105, 2023 WL 4138983 (2023) ("*Bielski*").

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Background

The Federal Arbitration Act ("FAA") reflects Congressional policy favoring arbitration. That pro-arbitration policy is reflected in many aspects of the FAA, including provisions allowing immediate appeal of any court order denying a motion to compel arbitration, while denying a right to appeal an order compelling arbitration.[2] The question raised by *Bielski* is whether, in the context of an appeal of an order denying a motion to compel arbitration, a district court is required by the FAA to stay the litigation, an issue on which the FAA is silent. Prior to *Bielski*, the Second, Fifth, and Ninth Circuits had left it to the discretion of the district court to decide whether proceedings should be stayed during such an appeal.[3] By contrast, the D.C., Third, Fourth, Seventh, Tenth, and Eleventh Circuits had held that a stay pending appeal was mandatory.[4]

The case arose out of a putative class action of Coinbase users filed in the U.S. District Court for the Northern District of California, alleging that Coinbase failed to replace certain funds taken from their accounts. Coinbase filed a motion to compel arbitration in the district court, arguing that its user agreement required this dispute to be submitted to arbitration rather than heard by a federal court. Having found that "a district court determines the two gateway issues of 'whether a valid arbitration agreement exists and, if so, whether the agreement encompasses the dispute at issue,'"[5] the district court concluded that the arbitration clause in the user agreement was unconscionable and denied Coinbase's motion.

Coinbase then appealed pursuant to Section 16(a) of the FAA and requested that the district court stay proceedings while its appeal was pending, which the district court denied. The Ninth Circuit affirmed the denial of the stay, relying on controlling Ninth Circuit precedent holding that stays of district court proceedings are not automatically granted pending an appeal of a denial of a motion to compel arbitration. Coinbase petitioned for *certiorari* before the U.S. Supreme Court.

The Supreme Court's Decision

In a 5-4 majority opinion written by Justice Brett Kavanaugh, the Supreme Court reversed and held that an appeal under Section 16(a) requires a stay of the district court proceedings. The Court acknowledged that the FAA "does not say whether the district court proceedings must be stayed," but found support for its conclusion based on the "longstanding tenet of American procedure" that an appeal "divests the district court of control over those aspects of the case involved in the appeal."[6] Therefore, "[b]ecause the question on appeal is whether the case belongs in arbitration or instead in the district court," the district court "must stay its proceedings while the interlocutory appeal on arbitrability is ongoing."[7]

The Court also noted that its ruling was in line with the views of most circuit courts, leading treatises, legislative intent based on statutory context, and "common sense."[8] Echoing other recent pro-arbitration opinions, the majority noted that arbitration's benefits—"efficiency, less expense, less intrusive discovery, and the like"[9]—would be "irretrievably lost" absent a stay of district court proceedings, and parties might be coerced into settling to "avoid the district court proceedings (including discovery and trial) that they contracted to avoid through arbitration," also resulting in wasted "scarce judicial resources."[10]

The majority rejected Bielski's arguments to the contrary, dismissing Bielski's concern that permitting automatic stays would encourage frivolous appeals on the basis that such appeals were infrequent and appeals courts had "robust tools" to prevent them.[11] The majority also rejected Bielski's arguments that its decision would create an "arbitration-preferring

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[2] 9 U.S.C. § 16(a).

[3] *See Motorola Credit Corp. v. Uzan*, 388 F.3d 39, 53–54 (2d Cir. 2004); *Weingarten Realty Inves. v. Miller*, 661 F.3d 904, 907–10 (5th Cir. 2011); *Britton v. Co-op Banking Grp.*, 916 F.2d 1405, 1412 (9th Cir. 1990).

[4] *See Ehleiter v. Grapetree Shores, Inc.*, 482 F.3d 207, 215 n. 6 (3d Cir. 2007); *Levin v. Alms & Assocs., Inc.*, 634 F.3d 260, 264 (4th Cir. 2011); *Bradford-Scott Data Corp., Inc. v. Physician Comput. Network, Inc.*, 128 F.3d 504, 506 (7th Cir. 1997); *McCauley v. Halliburton Energy Servs., Inc.*, 413 F.3d 1158, 1160 (10th Cir. 2005); *Blinco v. Green Tree Servicing, LLC*, 366 F.3d 1249, 1253 (11th Cir. 2004); *Bombardier Corp. v. Nat'l R.R. Passenger Corp.*, No. 02-7125, 2002 WL 31818924, at *1 (D.C. Cir. 2002).

[5] *Bielski v. Coinbase, Inc.*, No. C 21-07478 WHA, 2022 WL 1062049, at *1 (N.D. Cal. Apr. 8, 2022) (citation omitted).

[6] *Bielski* at *3 (citing *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) and noting that "[t]he *Griggs* principle resolves this case").

[7] *Id.* at *3–4.

[8] The "right to interlocutory appeal . . . without an automatic stay . . . is [] like a lock without a key, a bat without a ball, a computer without a keyboard — in other words, not especially sensible." *Id.* at *4.

[9] *Id.* at *4.

[10] *Id.* at *4–5.

[11] *Id.* at *5.

procedural rule," stating that it "simply subject[ed] arbitrability appeals to the same stay principles that courts apply in other analogous contexts."[12]

Justice Jackson, joined by Justices Kagan and Sotomayor in full and in part by Justice Thomas,[13] dissented, arguing that the majority opinion invented a new, "mandatory-general-stay rule" that "comes out of nowhere" and "perpetually favor[s]" the party seeking arbitration.[14] The dissent objected to what it described as the majority opinion's failure to identify any statutory language that requires a stay of district court proceedings pending an appeal under Section 16(a), noting that "nowhere did Congress provide that such an interlocutory appeal automatically triggers a general stay of pre-trial and trial proceedings," nor does Section 16(a) "even mention[] a stay pending appeal."[15] The dissent warned that the automatic stay pending appeal pursuant to Section 16(a) now announced by the Court "may have opened" a "Pandora's box," as it would allow parties seeking arbitration who are "unlikely to succeed on appeal" to obtain an automatic stay regardless of the merits of their case, and "prevents courts from crafting case-specific solutions to balance all the interests at stake."[16]

Practical Impact

Bielski follows a long line of Supreme Court decisions favoring arbitration. By providing for an automatic stay of any district court proceedings, *Bielski* allows a party claiming a right to arbitrate to pursue that right fully without having to litigate the merits of the dispute in parallel. For businesses that see arbitration as a more efficient means of resolving potential disputes, this decision further supports the inclusion of arbitration clauses in customer agreements. In the *Bielski* case itself, the decision will also allow full appeal of the district court's unconscionability ruling—an issue of importance to companies with arbitration clauses in retail customer agreements—without requiring parallel litigation of the underlying case.

The Court rejected Plaintiffs' concerns about potential delay resulting from the Court's ruling, as well as the risk of encouraging frivolous appeals, finding that these concerns did not outweigh the rule favoring a stay. In so doing, the majority reasoned that circuit courts have means to "prevent unwarranted delay and deter frivolous interlocutory appeals," including, for example, because "a party can ask the court of appeals to summarily affirm, to expedite an interlocutory appeal, or to dismiss the interlocutory appeal as frivolous," and "a court of appeals may impose sanctions where appropriate."[17] While these tools are certainly available in appropriate cases, it is not evident that they will fully address the issue of delay in cases where an appeal is unsuccessful but not abusive or frivolous.

The approach of the Court also vindicates district court and circuit court decisions staying actions in the context of other statutes, such as the Foreign Sovereign Immunities Act ("FSIA"), where a defendant appeals a decision denying immunity from suit. While the language of the FSIA similarly does not expressly mandate a stay if the court denies dismissal based on the assertion of immunity, courts have, in practice, provided such a stay during the pendency of an appeal of the immunity denial.[18]

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[12] *Id.* at *2.
[13] Justice Thomas joined Parts II, III, and IV of the dissenting opinion.
[14] *Id.* at *7.
[15] *Id.* at *8.
[16] *Id.* at *7, *12–13.
[17] *Id.* at *5 (noting that "nearly every circuit has developed a process by which a district court itself may certify that an interlocutory appeal is frivolous").
[18] *See, e.g.*, *Princz v. Fed. Republic of Germany*, 998 F.2d 1, 1 (D.C. Cir. 1993) (relying on *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982), and holding that an appeal of the denial of a motion to dismiss on grounds of sovereign immunity divests the district court of jurisdiction).