Supreme Court To Decide If Stay Is Required Pending Arbitration Appeal

By Benny Osorio

The U.S. Supreme Court will soon hear arguments in a case that could change the way states such as California handle disputes when the enforceability of an arbitration agreement has been contested. In *Coinbase v. Bielski*, and the related case of *Coinbase v. Suki*, the justices have indicated an interest in resolving an intercircuit conflict on the following question: Does a non-frivolous appeal of the denial of a motion to compel arbitration override a district court's jurisdiction to proceed with litigation pending appeal?

When Abraham Belski lost more than $30,000 to a scammer who accessed his account with Coinbase, an online currency and crypto-currency exchange platform, he immediately contacted the company to seek help. Belski initiated a "live chat" with a non-human representative, called the customer service hotline, and ultimately wrote and mailed letters to the company. But he never had the chance to speak with a live person. In fact, he got no response from Coinbase.

It was only when Bielski filed a lawsuit against Coinbase for violations of the Electronic Funds Transfer Act and Regulation E, on behalf of himself and other similarly situated individuals, that Coinbase finally appeared to take notice. The company moved to compel arbitration in accordance with the terms of its user agreement, which states that all "disputes arising out of or related to the interpretation or application of the Arbitration Agreement, including the enforceability, revocability, scope, or validity of the Arbitration Agreement or any portion of the Arbitration Agreement .... shall be decided by an arbitrator and not by a court or judge."

Despite having agreed to the arbitration provision, Bielski contended that Coinbase's agreement was not enforceable and his case should be allowed to proceed to trial. The district court agreed, denying Coin-

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base's motion to compel arbitration because the arbitration and delegation clauses of the company's online agreement were unconscionable.

Coinbase next filed an interlocutory appeal with the U.S. Court of Appeals for the Ninth Circuit along with a motion to stay the underlying action pending the appeal. On appeal, the Ninth Circuit agreed with the district court that the Coinbase arbitration agreement was unconscionable. The court ruled that the delegation clause in Coinbase's agreement imposed an unfair burden on customers because it lacked mutuality.

"The 'Arbitration Agreement' in the user agreement imposes no obligation on Coinbase to arbitrate," the court wrote. "Because only Coinbase users can raise a complaint though the pre-arbitration complaint procedure, the arbitration provision imposes no obligation on Coinbase itself to submit its disputes with users to binding arbitration."

The Ninth Circuit also denied Coinbase's motion to stay the proceedings pending resolution of the arbitration issue. In response to Coinbase's claim that the offending language could be stricken from the agreement, the court noted that "Coinbase's proposed change would be binding only in this case and would leave Coinbase free to insist on its burdensome and one-way preconditions in all other cases. In short, severance is not feasible."

Coinbase subsequently filed a joint petition to the Supreme Court on the question of whether courts have discretion to deny a stay under traditional stay factors and thus require the parties to litigate in court during the pendency of the appeal.

The circuits have been split on the question of whether litigation should be stayed when a defendant appeals a denial of arbitration. The longstanding view in the Ninth Circuit, as well as in the Second and Fifth Circuits, is that an appeal of the denial of a motion to compel arbitration does not result in an automatic stay of the proceedings pending appeal. The majority of circuits, however, have ruled the other way.

From a practical standpoint, denial of a stay pending resolution of the arbitration issue puts the party seeking to compel in a double-bind. While pursuing resolution of the arbitration question on appeal, the party—Coinbase in this instance—must also argue the underlying case before a trial judge. In addition to the high cost of litigating two cases simultaneously, this scenario requires a court to proceed with the underlying case at the same time that its own jurisdiction over the case has been challenged in another forum.

Although a court's decision to stay an action in any particular case is discretionary and decided on a case-by-case basis, the possibility that a stay will be denied poses a clear risk to businesses that rely on boilerplate arbitration provisions in customer agreements.

Given the Supreme Court's recent decisions favoring arbitration—notably, *Epic Systems v. Lewis* and *Viking River Cruises v. Moriana*—as well the strong support it has shown for the Federal Arbitration Act, there is a good likelihood that the court will resolve the intercircuit conflict in favor of the majority position. In fact, according to Coinbase's cert petition, in 2021 "this Court received two certiorari petitions presenting the same question, but the respondents then mooted the petitions by agreeing to a voluntary stay rather than risking this Court deciding the question presented" (citing *PeopleConnect v. Callahan*, No. 21-885 and *PeopleConnect v. Knapke*, No. 21-725).

Should the court rule in Coinbase's favor, California plaintiffs may have to wait an extended period of time before their claims can be heard—either at trial or in arbitration—while California companies will have a final ruling on enforceability of an arbitration agreement prior to trial on the merits of the case. The Coinbase case thus has serious implications for companies that have not been successful in enforcing arbitration agreements in federal district court.

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