

## **Supreme Court Rules that Federal Cases Are Automatically Stayed Pending Appeal of the Trial Court's Denial of a Motion to Compel Arbitration**

Let's say you sue in federal court and your opponent files a motion to compel arbitration. The trial court denies the motion and your opponent files an interlocutory appeal asking the court of appeals to reverse. While the appeal is ongoing does the lawsuit proceed in the trial court?

On June 23, the United States Supreme Court decided this issue in *Coinbase, Inc. v. Bielski*. The Court held that the trial court must stay its proceedings while the interlocutory appeal is ongoing. In so doing the Court resolved a split in the federal appellate courts in which three circuit courts left the decision to stay up to the discretion of trial judges, and six circuit courts granted the stays automatically. In a 5-4 opinion written by Justice Kavanaugh (joined by Justices Roberts, Alito, Gorsuch, and Barrett), the Supreme Court sided with the six circuits endorsing an automatic stay of trial court proceedings pending interlocutory appeal of the arbitrability issue.

In reaching this result the Court observed that although the Federal Arbitration Act allows for interlocutory appeal when a motion to compel arbitration is denied it does not explicitly require that litigation be stayed. In deciding that litigation nevertheless must be stayed the Court relied on its 1982 decision in *Griggs v. Provident Consumer Discount Co.*, which held that an appeal "divests the district court of its control over those aspects of the case involved in the appeal." The Court held that because the question in *Coinbase* was whether the case belongs in arbitration or instead in the trial court, the entire case was essentially "involved in the appeal." The Court reasoned that it "makes no sense for trial to go forward while the court of appeals cogitates on whether there should be one."

The Court observed that if the trial court could move forward with pre-trial and trial proceedings while the appeal on arbitrability was ongoing, then many of the asserted benefits of arbitration such as efficiency, lower cost, and less intrusive discovery would be irretrievably lost — even if the court of appeals were to later conclude that the case had belonged in arbitration all along.

The Court posited that absent a stay, parties could be forced to settle to avoid the trial court proceedings that they had already contracted to avoid through arbitration. Continuation of proceedings in the trial court "largely defeats the point of the appeal."

The Court noted that allowing a case to proceed simultaneously in the trial court and the court of appeals also creates the possibility that the trial court will waste judicial resources on a dispute that will ultimately head to arbitration in any event.

Justice Jackson drafted the dissent, in which she was joined in full by Justices Sotomayor and Kagan, and in part by Justice Thomas. She wrote that because Congress was silent on the issue, the job of managing the litigation belongs to the trial judge, who can best balance all of the relevant issues rather than favoring defendants who seek arbitration. She observed that as a result of the Court's opinion, "any defendant that devises a non-frivolous argument for arbitration can not only appeal, but also press pause on the case—leaving plaintiffs to suffer harm, lose evidence, and bleed dry their patience and funding in the meantime." She noted that the majority's concern

about judicial resources fades if the party seeking arbitration is unlikely to succeed on appeal. She reasoned that, on the other hand, forcing trial court proceedings to a halt for months or years pending appeal is itself inefficient. While the majority emphasized losing the benefits of arbitration absent a stay, Justice Jackson pointed out that a stay deprives the parties of the benefits of immediate litigation, including the possibility of obtaining injunctive protection against imminent harm. And she observed that, whereas the majority lamented settlement pressure on parties seeking arbitration, the majority's new rule will impose settlement pressure on parties opposing arbitration, who after all *won* the arbitrability issue in the trial court.

In the end, however, the Court reached a decision that is consistent with its decades-long trend of issuing opinions that broadly favor arbitration. When bringing a lawsuit, parties will now need to consider carefully not only whether the other side might seek to compel arbitration of the dispute, but also whether they might defeat the motion in the trial court only to be faced with a lengthy delay while the other side appeals. And parties seeking to compel arbitration now have additional leverage even if they fail to convince a trial court that the dispute belongs in arbitration.

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