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Supreme Court Rules Courts, Not Arbitrators, Must Decide Between Contracts Conflicting on Arbitration

SUMMARY

Parties can agree to send a dispute to arbitration, and can also agree to delegate to an arbitrator the power to decide the threshold issue of *whether* a given dispute is subject to arbitration (i.e., its “arbitrability”). But what happens if parties have contracts that conflict over the answer of who decides those arbitrability disputes? On May 23, 2024, the U.S. Supreme Court released its opinion in *Coinbase, Inc. v. Suski*, clarifying that where parties formed two contracts—one sending arbitrability disputes to arbitration and the other sending all disputes to the courts—a court, not an arbitrator, must decide which contract governs in the first instance.¹ The decision has implications for parties who enter a series of agreements that could arguably call for differing results on what disputes go to arbitration.

BACKGROUND

In *Coinbase*, users of the cryptocurrency exchange platform agreed to the Coinbase User Agreement when creating their accounts. This contract included an “Arbitration Agreement” with a delegation clause sending to arbitration “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.”²

In 2021, Coinbase ran a sweepstakes offering entrants a chance to win a cryptocurrency called Dogecoin. In submitting their entries, users agreed to a second contract—the Official Rules of the sweepstakes, which included a forum selection clause that designated California courts as the forum having “sole jurisdiction of any controversies regarding the promotion.”³

Entrants in the Dogecoin sweepstakes later filed a class action complaint in the U.S. District Court for the Northern District of California alleging that the sweepstakes violated several laws. In response, Coinbase

moved to compel arbitration, relying on the User Agreement and its delegation clause. The District Court denied the motion and reasoned that the question of “which contract governed” was a question for the court to decide, not an arbitrator. It found that the Official Rules’ forum selection clause controlled, so the parties could not be compelled to go to arbitration. The Ninth Circuit affirmed.

THE SUPREME COURT’S DECISION

The Supreme Court unanimously affirmed, holding that where “parties have agreed to two contracts—one sending arbitrability disputes to arbitration, and the other either explicitly or implicitly sending arbitrability disputes to the courts—a court must decide which contract governs.”⁴ As the Court explained, “[a]rbitration is a matter of contract and consent, and we have long held that disputes are subject to arbitration if, and only if, the parties actually agreed to arbitrate those disputes.”⁵ Parties can form multiple levels of arbitration agreements, which means they may “agree by contract that an arbitrator, rather than a court, will resolve threshold arbitrability questions as well as underlying merits disputes.”⁶ But “a party who has not agreed to arbitrate,” the Court reasoned, “will normally have a right to the court’s decision about the merits of its dispute.”⁷ Thus, “[c]ourts should not assume that the parties agreed to arbitrate arbitrability unless there is ‘clea[r] and unmistakabl[e]’ evidence that they did so.”⁸ In the event of a conflict between the parties’ two contracts as to who will decide arbitrability, “the question is whether the parties agreed to send the given dispute to arbitration—and, per usual, *that* question must be answered by a court.”⁹

The Court rejected Coinbase’s argument that the Ninth Circuit failed to adhere to the severability principle and declined to revisit the Ninth Circuit’s application of state law. The Court also rejected Coinbase’s policy argument that the Court’s approach would “invite chaos by facilitating challenges to delegation clauses.”¹⁰ The Court reasoned that, where parties have only one contract with an arbitration clause and a delegation provision, “then, absent a successful challenge to the delegation provision, courts must send all arbitrability disputes to arbitration.”¹¹ But in the more unusual situation with two conflicting agreements, the Court held that “a court, not an arbitrator, must decide whether the parties’ first agreement was superseded by their second.”¹²

IMPLICATIONS

The Court’s decision is narrow: it applies settled contract law principles, and as the Court emphasized, the decision should have no impact in cases where parties have only one agreement between them. But where contracting parties have entered multiple agreements—for example, as customers, employees, etc.—the decision clarifies what will happen where those agreements are inconsistent on the chosen forum for a dispute: a court will have to decide which agreement controls. As the lengthy jurisdictional quarrel in *Coinbase* illustrates, care should be taken when parties enter a series of agreements to avoid differing clauses that could arguably call for differing results on what disputes go to arbitration.

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ENDNOTES

- 1 *Coinbase, Inc. v. Suski*, 602 U.S. ____ (2024), slip op.
- 2 *Id.* at 2.
- 3 *Id.* at 3.
- 4 *Id.* at 8 (emphasis omitted).
- 5 *Id.* at 1.
- 6 *Id.* at 4 (quoting *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 65 (2019)).
- 7 *Id.* at 5 (quoting *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 942 (1995)).
- 8 *Id.* (quoting *First Options of Chicago, Inc.*, 514 U.S. at 944).
- 9 *Id.* at 6.
- 10 *Id.* at 8.
- 11 *Id.*
- 12 *Id.*

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