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Supreme Court Holds That Courts Must Decide Conflict Between Arbitration Delegation Clause And Later Forum Selection Clause

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***Coinbase, Inc. v. Suski et al.*, No. 23-3** – Decided May 23, 2024

Today, the Supreme Court unanimously held that a court, not an arbitrator, should decide if an arbitration agreement containing a delegation clause was narrowed by a later contract providing for disputes to be decided in court.

> *"[W]here, as here, 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."*

Justice Jackson, writing for the Court

Background:

Arbitration agreements often include a delegation clause providing that an arbitrator, not a court, should decide threshold questions about the agreement's scope, applicability, and validity. David Suski entered a user agreement with Coinbase, a cryptocurrency exchange platform, that included an arbitration agreement with a delegation clause. Later, Suski participated in a Coinbase-sponsored sweepstakes, the rules of which included a forum selection clause that directed sweepstakes-related disputes to California state and federal courts.

Suski filed a putative class action against Coinbase alleging that its promotion of the sweepstakes violated California law. Coinbase moved to compel arbitration under the user agreement and argued that any dispute about arbitrability was for the arbitrator, not the court. Suski argued that the sweepstakes rules' forum selection clause superseded the arbitration agreement. The district court agreed and denied arbitration. The Ninth Circuit affirmed, concluding that the interaction between the user agreement and the sweepstakes rules was an issue that could not be delegated to an arbitrator. The court went on to hold that Suski's claims were not arbitrable because the sweepstakes rules' forum selection clause superseded the arbitration agreement in these circumstances.

Issue:

Where parties enter into an arbitration agreement with a delegation clause, should an arbitrator or a court decide whether that arbitration agreement is narrowed by a later contract that is silent as to arbitration and delegation?

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Court's Holding:

A court should decide the conflict between the agreements under the particular circumstances of this case.

What It Means:

- Today's decision is narrow and may have limited effect beyond the factual circumstances presented in the case, which involved a second-in-time contract that was arguably in conflict with first-in-time contract's arbitration and delegation clauses. The Court reaffirmed the general rule that "where parties have agreed to only one contract, and that contract contains an arbitration clause with a delegation provision, then, absent a successful challenge to the delegation provision, courts must send all arbitrability disputes to arbitration." Op. 8. It also emphasized that it "would not be deciding this case" if the parties had made only their first agreement, which "quite clearly" delegated arbitrability issues to an arbitrator. Op. 2.
- The Court's ruling highlights the benefits of including consistent dispute-resolution provisions across multiple agreements between the same parties.
- Justice Gorsuch concurred to emphasize that parties retain the freedom to agree to broad delegation clauses that apply across multiple contracts. He also expressed skepticism of the Ninth Circuit's reasoning below, further underscoring the limited nature of today's decision.

The Court's opinion is available here.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the U.S. Supreme Court. Please feel free to contact the following practice leaders:

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