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Supreme Court Rejects "Wholly Groundless" Exception To Rule That Parties May Refer Arbitrability Disputes To Arbitration

***Henry Schein, Inc. v. Archer & White Sales, Inc.*, No. 17-1272**

Decided January 8, 2019

The Supreme Court held 9-0 that courts may not decline to enforce agreements delegating arbitrability issues to an arbitrator, even if the court concludes that the claim of arbitrability is "wholly groundless."

Background:

The Federal Arbitration Act generally permits courts to decide whether a contract requires arbitration of a dispute. The Act, however, also requires courts to interpret contracts as written, and the Supreme Court has held that an arbitration agreement may "clearly" and "unmistakably" refer the arbitrability issue to an arbitrator. Here, the defendants in an antitrust lawsuit sought to compel arbitration, citing a clause in their contracts with the plaintiff requiring arbitration of any "dispute arising under or related to" the contracts, "except for actions seeking injunctive relief." Although the plaintiff sought both damages and injunctive relief, the defendants argued that arbitration was required because damages were the predominant form of relief requested. The Fifth Circuit held that the trial court properly declined to refer the arbitrability issue to an arbitrator because the plaintiff's claim for injunctive relief made the defendants' request for arbitration "wholly groundless."

Issue:

May a court decline to enforce an agreement delegating arbitrability issues to an arbitrator, and resolve arbitrability disputes itself, if it concludes that the claim of arbitrability is "wholly groundless"?

"The [Federal Arbitration] Act does not contain a 'wholly groundless' exception. . . . When the parties' contract delegates the arbitrability question to an arbitrator, the courts must respect the parties' decision as embodied in the contract."

Justice Kavanaugh,
writing for the unanimous Court

Court's Holding:

No. Courts must enforce agreements to delegate arbitrability issues to an arbitrator, even if the court concludes that a claim of arbitrability is "wholly groundless," because the Federal Arbitration Act does not contain a "wholly groundless" exception.

What It Means:

- In Justice Kavanaugh's first opinion, the Court was "dubious" that recognizing a "wholly groundless" exception would save time and money, as such an exception would "inevitably spark collateral litigation" over whether a claim for arbitration is "groundless," as opposed to "*wholly* groundless."
- The decision removes an opportunity for plaintiffs to avoid arbitration of threshold issues of arbitrability where a contract has delegated those issues to an arbitrator.
- The Court emphasized again the importance of enforcing arbitration agreements as they are drafted and refusing to create exceptions that would permit judicial second-guessing of arbitration agreements.

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

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