



June 4, 2024

SUPREME COURT HOLDS COURT MUST DECIDE WHETHER ARBITRATION CLAUSE OR FORUM SELECTION CLAUSE CONTROLS

The Supreme Court, in deciding a case involving whether the parties had agreed to arbitrate any disputes, emphasized that arbitration agreements are simply contracts. Consequently, the first question in any arbitration dispute must be: What have these parties agreed to?

The case *Coinbase, Inc. v Suski* involved a User Agreement that contained an arbitration provision with a delegation clause, a clause providing that the arbitrator must decide all disputes under the contract, including whether a given disagreement is arbitrable. The second contract, a sweepstake agreement, contained a forum selection clause, which the court interpreted to mean disputes should be decided in court.

The case presented the following question: When two contracts exist, one that sends disputes to the arbitrator and one that send disputes to the courts, who decides the arbitrability of a contract-related dispute between the parties—an arbitrator or the court? According to the Supreme Court in analyzing the conflict between the delegation clause in the first contract and the forum selection clause in the second contract, the question is whether the parties agreed to send the given dispute to arbitration. The Court found that this question must be answered by a court, which the court noted is the usual practice in the absence of an agreement otherwise. The Court noted that arbitration agreements and delegation clauses are merely contracts. Applying basic principals of contract law and consent, if the 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.

The Supreme Court makes it clear that if parties intend an arbitration delegation clause to cover subsequent contracts and disputes, the delegation clause should state this directly. In addition, if there are subsequent contracts to which arbitration is intended to apply, this should be stated directly in the subsequent contract to avoid disputes.

It is advisable to review existing arbitration agreements

periodically to ensure they incorporate all relevant legal developments. In light of this decision, in agreeing and drafting arbitration agreements, special attention should be given to any delegation clause.

If you have questions or would like assistance in drafting or reviewing arbitration agreements, please contact us,

✧ *Elizabeth Anstaett and Mercedes Ramsey*

Darrell L. Dreher
ddreher@dtlaw.com

Elizabeth L. Anstaett
eanstaett@dtlaw.com

Susan L. Dreher
sdreher@dtlaw.com

2750 HUNTINGTON CENTER
41 S. HIGH STREET
COLUMBUS, OHIO 43215
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600
WWW.DTLAW.COM

Michael C. Tomkies
mtomkies@dtlaw.com

Mercedes C. Ramsey
mramsey@dtlaw.com

Robin R. De Leo
robin@deher-la.com

To see previously sent ALERTS, visit our website at www.dtlaw.com

To decline future ALERTS, please contact us at ALERTS@DLTAW.COM.
This ALERT has been prepared for informational purposes only. It does not constitute legal advice and does not create an attorney-client relationship.