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The Supreme Court holds that, where parties have agreed to contracts with conflicting dispute resolution provisions, the court – not the arbitrator – must decide which contract governs

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Takeaway: In *Coinbase, Inc. v. Suski*, No. 23-3, 2024 WL 2333424 (U.S. May 23, 2024), the Supreme Court unanimously held that where parties have agreed to two contracts – one with an arbitration clause and one without – the court, not the arbitrator, must decide which contract governs. The *Coinbase* decision decisively resolves a conflict between the well-established rule that the question of whether there is an agreement to arbitrate is for the court and the separate rule that courts must enforce provisions delegating arbitrability disputes to the arbitrator.

Suski brought putative class claims against Coinbase alleging that a Coinbase-hosted sweepstakes violated California's False Advertising Law, Unfair Competition Law, and Consumer Legal Remedies Act.

The parties had agreed to two contracts. First, Suski had agreed to the Coinbase User Agreement. The User Agreement included a broad arbitration clause that delegated the question of arbitrability to the arbitrator. 2024 WL 2333424, at *2. Second, when Suski entered the sweepstakes, he agreed to the Official Rules of the sweepstakes. The Official Rules included a forum selection clause granting California courts sole jurisdiction over any controversy related to the sweepstakes. *Id.* at *3.

Suski moved to compel arbitration. The District Court denied the motion, reasoning that, because the sweepstakes Official Rules superseded the Coinbase User Agreement, the dispute was not subject to arbitration. The Ninth Circuit affirmed. The Supreme Court granted certiorari to address the question of who – a judge or an arbitrator – should decide the question of arbitrability. *Id.*

The Supreme Court affirmed, concluding that a "court, not an arbitrator, must decide whether the parties' first agreement was superseded by their second." *Id.* at * 6. Justice Jackson, writing for a unanimous court, identified three layers of arbitration disputes: (1) merits; (2) arbitrability; and (3) who decides arbitrability. *Id.* at *4. The Supreme Court viewed *Coinbase* as involving a fourth order of dispute: what happens if parties have multiple, conflicting agreements about dispute resolution. *Id.*

The Court concluded that the core issue in that "fourth order" dispute is "whether there is an agreement to arbitrate." *Id.* Parties can contractually agree to delegate questions of arbitrability to the arbitrator. But because arbitration is a matter of contract, whether the parties agreed to arbitrate (including whether the parties agreed

to arbitrate arbitrability itself) remains a question for a trial court. If the parties did not contractually agree to arbitrate arbitrability, the arbitrator has no authority. Thus, tf the second contract superseded the User Agreement, the parties did not agree to arbitrate any issues, including arbitrability. *Id.*

The Supreme Court rejected Coinbase's reliance on the doctrine of severability. Under that doctrine, arbitration agreements constitute independent contracts severable from the larger contract of which they are a part. While challenges directed to the arbitration agreement or a delegation clause within the arbitration agreement (which is likewise "severable" from the larger arbitration agreement) should be decided by a trial court, challenges that concern the entire contract—such as a claim that the agreement as a whole should be set aside for fraud—should be decided by the arbitrator. Explaining that the severability doctrine "does not require that a party challenge *only* the arbitration or delegation provision," the Court ruled that the question of which contract (and thus which dispute resolution provision) applies challenges *both* the arbitration clause specifically *and* the enforceability of the contract as a whole. *Id.* at *5.

Conclusion: While *Coinbase* extends Supreme Court precedent, the Court emphasized the limited scope of its opinion. *Coinbase* does not undermine the enforceability of delegation clauses where the parties have agreed to a single contract. *Coinbase* stands only for the narrow proposition that, where the parties have agreed to two contracts—one with an arbitration clause and one without—the court must decide which contract applies. *Coinbase* would dictate a different result in *Montoya v. King.com Ltd.*, Civil Action No. 3:23cv314, 2024 WL 1680028 (E.D. Va. Apr. 18, 2024), discussed in a previous post.