White and Williams LLP

Supreme Court Rejects "Wholly Groundless" Exception to Question of Arbitrability

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In newly appointed Supreme Court Justice Brett Kavanaugh's first opinion, the United States Supreme Court held that the "wholly groundless" exception to arbitrability, which some federal courts had relied on as justification to decide questions of arbitrability over the express terms of a contract, was inconsistent with the Federal Arbitration Act and Supreme Court precedent. Based on this decision, where a contract delegates the question of arbitrability to an arbitrator, courts must respect the parties' contract and refer the question to the arbitrator. *Schein v. Archer & White*, 586 U.S. __ (2019).

In *Schein*, Archer & White brought a lawsuit against Henry Schein alleging violations of federal and state antitrust laws and seeking both monetary damages and injunctive relief. The relevant contract between the parties contained an arbitration provision that provided:

> "Any dispute arising under or related to this Agreement (except for actions seeking injunctive relief . . .) shall be resolved by binding arbitration in accordance with the arbitration rules of the American Arbitration Association."

Based on the arbitration provision, Schein invoked the Federal Arbitration Act and asked the District Court to refer the parties' dispute to arbitration. Archer & White objected, arguing that because the complaint sought injunctive relief, the dispute was not subject to arbitration. Thus, the question for the court was who decides the question of whether the dispute was arbitrable, an arbitration panel or the court. Relying on Fifth Circuit precedent, the District Court held that because Schein's argument for arbitration was "wholly groundless" the court could decide the threshold question of arbitrability even if the parties had agreed an arbitrator would decide such arbitrability questions. The Fifth Circuit thereafter affirmed the District Court's decision.

Holding that the "wholly groundless" exception was inconsistent with the Federal Arbitration Act and Supreme Court precedent, the Court vacated the Fifth Circuit's decision. In support, the Court held that it must "interpret the [Federal Arbitration] Act as written, and the Act in turn requires that [the Court] interpret the contract as written." Relying on prior Supreme Court precedent, the Court held that where parties delegate the question of arbitrability to an arbitrator, a court possesses no authority to decide the arbitrability issue. Going further, the Court held this to be the case "even if the court thinks that the argument that the arbitration agreement applies to a particular dispute is wholly groundless."

Notably, while the Court vacated the Fifth Circuit's decision, the Court did not decide whether the contract at issue actually delegated the arbitrability question to an arbitrator. Rather, the Court remanded the case to the Fifth Circuit to decide, noting that courts "should not assume that the parties agreed to arbitrate arbitrability unless there is clear and unmistakable evidence that they did so."

This case is significant as it will ensure that an arbitrator, and not the courts, will decide questions of arbitrability where parties have contracted for such a result. Importantly, this will be the case regardless of whether the reviewing court believes the argument for submitting the dispute to arbitration is "wholly groundless."

If you have questions or would like further information, please contact Justin Fortescue (215.864.6823; fortescuej@whiteandwilliams.com).

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