

RECENT DEVELOPMENTS

ARBITRATION

SUPREME COURT REQUIRES STAY OF PROCEEDINGS IN DISTRICT COURT PENDING APPEAL OF A DENIAL OF A MOTION TO COMPEL ARBITRATION

Coinbase v. Bielski, 599 U.S. ____ (2023).
https://www.supremecourt.gov/opinions/22pdf/22-105_5536.pdf

FACTS: Petitioner Coinbase operates an online marketplace where users buy and sell cryptocurrencies and government-issued currencies. Respondent Abraham Bielski agreed to the Coinbase User Agreement (“Agreement”) to access this marketplace. The Agreement directed disputes arising under the Agreement be resolved through binding arbitration. When Bielski filed a putative class action on behalf of Coinbase users, Coinbase filed a motion to compel arbitration, citing its binding arbitration provision. The district court denied Coinbase’s motion to compel. Coinbase filed an interlocutory appeal to the Ninth Circuit under 9 U.S.C. §16(a).

Simultaneously, Coinbase filed a motion to stay proceedings in the district court. The court declined to stay proceedings, and Coinbase filed the same motion to stay in the Ninth Circuit. The Ninth Circuit refused to stay the district court’s proceedings. Unlike other Circuits, the Ninth Circuit reiterated its precedent did not automatically grant a stay upon interlocutory appeal of a court’s denial of a motion to compel arbitration. Coinbase then filed a petition for a writ of certiorari to the Supreme Court, which the Court granted to resolve circuit disagreement.

HOLDING: Reversed and remanded.

REASONING: Bielski argued against the *Griggs* principle that allowed an automatic staying of proceedings upon appeal of the court’s denial to compel arbitration. Because the discretionary stay adequately protected parties’ rights, Bielski asserted an automatic stay was unnecessary and created a special procedural rule favoring arbitration. Bielski argued that automatically granting stays upon interlocutory appeals for arbitrability would encourage frivolous appeals and cause improper delays. Bielski contrasted §16(a) with other sections enacted by Congress containing explicit stay requirements. Bielski suggested Congress would only do this if Congress understood that an interlocutory appeal on arbitrability did not ordinarily stay proceedings. Bielski relied on the Court’s precedent holding questions on arbitrability as severable from the disputes in the case.

While acknowledging that §16(a) was silent on whether stays were automatically required, the Court stressed that §16(a) was enacted alongside the Court’s ruling in *Griggs*. In *Griggs*, the Court held that an appeal divests district courts of jurisdiction over any aspects of the case involved or at issue in the appeal. Here, the Court held that *Griggs* demanded district courts stay proceedings when the issue on appeal concerned whether the case be bound to arbitration or the district court.

The Court reasoned Congress’ non-stay provisions indicated Congress’ understanding that an interlocutory appeal would ordinarily stay proceedings. Furthermore, the Court noted the existing ability of lower courts to track and sanction those appealing frivolously and rejected the assertion that their holding

would generate frivolous appeals. The Court added that the lower court’s current discretionary four-factor standard often disfavored granting stays upon arbitrability appeals, which highlighted the need for their ruling in their eyes. To the Court, it defied common sense to permit interlocutory appeals on arbitrability as of right without granting to stay proceedings in tandem.

SUBSCRIBER AGREED TO ARBITRATION PROVISION BY CONTINUING TO USE ESPN AFTER THE COMPANY SENT HIM EMAILS REGARDING UPDATES

Sadlock v. The Walt Disney Co., No. 22-cv-09155-EMC (N.D. Cal. July 31, 2023). <https://casetext.com/case/Sadlock-v-the-walt-disney-co>

FACTS: Joshua Sadlock created an account with ESPN.com, a company owned by The Walt Disney Co. As a regular practice, Disney collected information about users’ interactions with its websites. Disney collected information from Sadlock’s interactions with the ESPN.com website. Sadlock created a Disney streaming account and subscribed to a Disney Bundle subscription that included ESPN+. He agreed to a Subscriber Agreement upon registration. Disney later sent Sadlock two emails with notice of an updated Subscriber Agreement. The emails had clear language, encouraged Sadlock to review the agreement, and highlighted specific changes to the agreement, including the arbitration provision. Sadlock brought a class action lawsuit against Disney for violation of the Pennsylvania Wiretapping and Electronic Surveillance Control Act for people whose electronic communications were intercepted or recorded on behalf of Disney.

Disney filed a motion to compel arbitration by the agreement between Sadlock and Disney. Sadlock challenged Disney’s motion.

HOLDING: Granted.

REASONING: Disney argued that Sadlock was bound to the arbitration agreement because he met the criteria of an inquiry notice by registering for an ESPN account and subscribing to ESPN+. An inquiry notice is met, and a consumer manifests assent to the terms, if the website provided reasonably conspicuous notice of the terms to which the consumer will be bound and the consumer took some action, such as clicking a button or checking a box. The court rejected

Sadlock unambiguously manifested his assent by continuing to use the service after he received emails updating the Subscriber Agreement.

Disney’s argument that registering for an ESPN account created an inquiry notice but accepted the argument that continuing use after receiving emails of an updated Subscriber Agreement created an inquiry notice.

The court reasoned that Sadlock did not unambiguously manifest his assent to the terms of the initial Subscriber Agreement because the screen format could be interpreted to imply an agreement to pay Disney in exchange for the subscription to the

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service. However, Sadlock unambiguously manifested his assent by continuing to use the service after he received emails updating the Subscriber Agreement because the emails gave conspicuous notice and Sadlock continued to use the service after receiving the notice. The emails had a clear and relevant subject line, linked the Subscriber Agreement, and clearly outlined changes to the agreement. The court concluded that Sadlock was bound to the arbitration agreement because he had an opportunity to discontinue use of the service before the changes were effective and by continuing use, he agreed to the terms.

TEXAS SUPREME COURT DISCUSSES DIRECT BENEFITS ESTOPPEL

Lennar Homes of Tex. Land & Constr., Ltd. v. Whiteley, ___ S. W. 3d ___ (Tex. 2023).
<https://cases.justia.com/texas/supreme-court/2023-21-0783.pdf?ts=1683900566>

FACTS: Respondent Kara Whiteley purchased a home built by Petitioner Lennar Homes of Texas (“Lennar”) from its original purchaser, Cody Isaacson. When Isaacson bought the house, he executed a Purchase and Sale Agreement (“PSA”) and Special Warranty Deed with Lennar. The PSA incorporated the terms of Lennar’s warranty booklet. The booklet stated Lennar was only making the express warranties outlined while disavowing warranties of workmanship and habitability. Any disputes arising under the PSA were bound to arbitration. The arbitration clause stated Isaacson executed the agreement on behalf of his children and any other home occupants with the intent that all such parties would likewise be bound. When Isaacson sold the home to Whiteley, he did not assign the PSA or Special Warranty to Whiteley but conveyed title via a General Warranty Deed.

Shortly after purchasing the home, Whiteley discovered mold growing in the house and sued Lennar and brought claims for negligent construction and breach of implied warranties of habitability and good workmanship. Lennar filed an application to stay proceedings pending arbitration, relying on clauses within the PSA and Special Warranty Deed. The trial court granted Lennar’s request for a stay, and the parties proceeded to arbitration. Whiteley was denied all relief sought in arbitration. Lennar was awarded costs and attorney’s fees. Lennar returned to the trial court filing a Motion to Confirm Arbitration Award, which Whiteley opposed by filing a Motion to Vacate in response. The trial court denied Lennar’s motion and vacated the arbitration award against her. Lennar appealed. After the appellate court affirmed, Lennar filed a petition for review, which the supreme court granted.

HOLDING: Reversed and remanded.

REASONING: Lennar argued the trial court erred in vacating the arbitration award because the PSA’s arbitration clause compelled Whiteley to arbitration as a third-party beneficiary and because the doctrine of direct-benefits estoppel applied to estop Whiteley from avoiding the PSA’s arbitration clause. Whiteley argued the direct-benefits estoppel was inapplicable since her implied warranty claims were derived from common law.

Relying on its precedent, the court stated a non-signatory plaintiff could be bound to arbitrate when their claim’s basis of liability was based on a contract with an arbitration clause.

Although implied warranties are imposed by operation of law, the obligation only arose when a contract was present, and the implied warranties were not waived. A contract’s express warranty could supersede an implied warranty of good workmanship if the agreement provided how the builder was to perform. An implied warranty of habitability could be waived where the buyer had express and complete knowledge of the defects affecting the home’s habitability.

Although Lennar’s liability did not arise solely under its PSA, Lennar’s liability could only be determined by reference to it. For both implied warranty claims, the court must review the Limited Warranty in the PSA. For an implied warranty of habitability, the court must review disclosures regarding the home and the likelihood of mold growth in the house. Because Lennar’s nonliability could only be determined with reference to its PSA, the court held that Whiteley’s claims were not independent of the PSA and must be bound to the PSA’s arbitration provision under the doctrine of direct benefits estoppel.

Relying on its precedent, the court stated a non-signatory plaintiff could be bound to arbitrate when their claim’s basis of liability was based on a contract with an arbitration clause.