

# RECENT DEVELOPMENTS

## ARBITRATION

### SUPREME COURT HOLDS FEDERAL ARBITRATION ACT MANDATES A STAY OF LITIGATION WHEN A COURT GRANTS A MOTION TO COMPEL ARBITRATION.

### SECTION 3 OF THE FEDERAL ARBITRATION ACT MANDATES A STAY OF LITIGATION AND DOES NOT PERMIT COURTS TO DISMISS THE CASE INSTEAD.

Smith v. Spizzirri, \_\_\_ U.S. \_\_\_ (2024).  
[https://www.supremecourt.gov/opinions/23pdf/22-1218\\_5357.pdf](https://www.supremecourt.gov/opinions/23pdf/22-1218_5357.pdf)

**FACTS:** Petitioners, current and former delivery drivers (“Petitioners”) for an on-demand delivery service sued the delivery service (“Respondents”) in Arizona state court for violations to federal and state employment laws after Respondents allegedly misclassified Petitioners as independent contractors and failed to pay the required minimum and overtime wages and failed to provide paid sick leave.

Respondents moved for removal to federal court and filed a motion to compel arbitration and to dismiss the suit. Petitioners agreed that their claims were arbitrable, however, Petitioners argued that the Federal Arbitration Act (“FAA”) required the District Court to stay the action pending arbitration rather than dismissing the claim. The District Court ordered arbitration and dismissed the case without prejudice. The Ninth Circuit affirmed.

**HOLDING:** Reversed and remanded.

**REASONING:** Respondents contended that the term “stay” in §3 of the FAA only requires the court to halt parallel in-court litigation, allowing the district courts inherent authority to dismiss proceedings subject to arbitration.

**The Court found that the statutory language of §3 of the FAA—“shall... stay”—clearly mandates a temporary suspension of proceedings.**

The Supreme Court disagreed, interpreting “stay” according to its well-established legal definition, which means to temporarily suspend legal proceedings. The Court emphasized that the FAA’s structure, which permits immediate interlocutory appeals after the denial of an arbitration request, supports this interpretation. The Court found that the statutory language of §3 of the FAA—“shall...stay”—clearly mandates a temporary suspension of proceedings rather than dismissal. The Court referenced the legal definition of “stay” as supported by Black’s Law Dictionary and noted that under 28 U.S.C. §1292(b), an order compelling arbitration is not immediately appealable unless certified by the district court as a controlling question of law. Therefore, the Supreme Court concluded that §3 of the FAA requires a District Court to stay proceedings pending arbitration and does not grant the court discretion to dismiss the

case. Consequently, the Court reversed the Ninth Circuit’s decision and remanded the case.

### PARTIES’ ARBITRATION CLAUSE PROVIDED FOR ARBITRATION PURSUANT TO JAMS RULES

### EXPRESS ADOPTION OF [THE JAMS RULES] PRESENTS CLEAR AND UNMISTAKABLE EVIDENCE THAT THE PARTIES AGREED TO ARBITRATE ARBITRABILITY INCLUDING WHETHER CLASS ARBITRATION WAS AVAILABLE

Work v. Intertek Res. Sols., Inc., \_\_\_ F.3d \_\_\_ (5th Cir. 2024).  
<https://law.justia.com/cases/federal/appellate-courts/ca5/23-20120/23-20120-2024-05-28.html>

**FACTS:** Plaintiff Joseph Work filed a putative collective action against Defendant Intertek Resource Solutions, Inc. for unpaid overtime, liquidated damages, attorneys’ fees, and relief for the collective class. Both parties consented to arbitration but disagreed on whether class arbitration was appropriate. Work sought class arbitration while Intertek sought individual arbitration.

Intertek filed a Motion to Compel Individual Arbitration. Work argued that the inclusion of the JAMS Employment Arbitration Rules and Procedure, as well as the JAMS policy on Employment Arbitration Minimum Standards of Procedural Fairness (“JAMS Rule”), indicated a “clear and unmistakable” intent by both parties to delegate the question of class arbitrability to the arbitrator in accordance with JAMS Rules.

The district court agreed with Work, granting his Motion to Dismiss and denying Intertek’s Motion to Compel Individual Arbitration. Intertek appealed.

**HOLDING:** Affirmed.

**REASONING:** On appeal, Intertek based their argument on *Lamps Plus, Inc. v. Varela* and asserted that (1) there was no consent to class arbitration, and it should not be delegated to the arbitrator, and (2) that the “pursuant to” language in the Arbitration Agreement is not clear enough to indicate an intent to incorporate by reference the JAMS Rules.

The court held Intertek was incorrect in both assertions. First, the court found that *Lamps Plus* did not apply because while that case held that an “ambiguous agreement” cannot provide a “contractual basis for compelling arbitration,” here, the Arbitration Agreement was not ambiguous. Second, the court found that it has been determined that “courts should give contract terms their plain and ordinary meaning unless the instrument indicates the parties intended a different meaning.” Both parties agreed to the clause as follows: “Any arbitration required hereunder shall be governed by the Federal Arbitration Act and administered by JAMS pursuant to its Employment Arbitration Rules & Procedures and subject to JAMS Policy on Employment Arbitration Minimum Standards of Procedural Fairness.”

Therefore, the court held this was an unequivocal incorporation of JAMS Rules, finding that the express adoption of JAMS Rules in the arbitration agreement was “clear and unmistakable” evidence that the parties agreed to arbitrate arbitrability,

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and the incorporation of the JAMS Rules establishes the arbitrator's authority to adjudicate questions of arbitrability.

**ARBITRATION PROVISION IS NOT ENFORCEABLE BECAUSE OF THE UNFETTERED DISCRETION DEFENDANT RETAINED TO MODIFY OR REVOKE THE PROVISION WITHOUT NOTICE.**

**ARBITRATION PROVISION PROMISE TO ARBITRATE IS ILLUSORY.**

Lovinfosse v. Lowe's Home Centers, LLP, \_\_\_ F. Supp. 3d \_\_\_ (E.D. Va. 2024).

<https://law.justia.com/cases/federal/district-courts/virginia/vaedce/1:2023cv00574/537336/23/>

**FACTS:** Defendant Lowe's Home Centers is a national retailer specializing in home improvement products. Plaintiff Eleanor Lovinfosse purchased a washing machine from Lowe's website. As part of the checkout process, the Plaintiff was required to click the "Place Order" button, which was accompanied by a statement indicating that by placing an order, the customer agreed to Lowe's Terms and Privacy Statement. Both "Terms" and "Privacy Statement" were hyperlinked on the website. If a customer clicked on the "Terms" hyperlink, it would lead to Lowe's Terms and Conditions of Use, which included an arbitration provision binding most future claims to arbitration. The Terms and Conditions also stipulated that Lowe's retained the right to modify or terminate the Terms without notice.

Plaintiff filed a lawsuit against Lowe's, alleging deceptive practices related to "Online Choice Architecture," which led her to purchase an unnecessary water hose labeled as "Required for Use" with her washing machine. In response, Lowe's filed a Motion to Compel Arbitration and Dismiss the Case, or alternatively, a Motion to Dismiss for Failure to State a Claim.

**HOLDING:** Motions denied.

**REASONING:** Defendant argues that because Plaintiff agreed to be bound by the Terms and Conditions, which included the arbitration provision, the parties formed a valid and enforceable arbitration agreement. The plaintiff counters that the arbitration agreement is unenforceable because (1) she was not given sufficient notice to assent to the term's arbitration provisions, and (2) the arbitration agreement cannot be enforced for being illusory.

The court rejected Plaintiff's contention that she had not been given enough notice to assent to the arbitration agreement. The court noted that courts have consistently held that an electronic "click" can signify acceptance of a contract as long as the website's layout and language give the user reasonable notice that the click will manifest agreement. In this instance, the court held that Lowe's website language and layout gave the plaintiff at least constructive knowledge of what she agreed to. However, the court held that enforcing the arbitration provision is not appropriate because Lowe's retained the right to modify or terminate the contract in any way without providing any notice, which made their entire promise to arbitrate illusory.

**WHERE PARTIES HAVE AGREED TO TWO CONTRACTS—ONE SENDING ARBITRABILITY DISPUTES TO ARBITRATION, AND OTHER EITHER EXPLICITLY OR IMPLICITLY SENDING ARBITRABILITY DISPUTES TO THE COURTS—A COURT MUST DECIDE WHICH CONTRACT GOVERNS.**

**THE QUESTION IS WHETHER THE PARTIES AGREED TO SEND THE GIVEN DISPUTE TO ARBITRATION—AND, PER USUAL, THAT QUESTION MUST BE ANSWERED BY A COURT.**

**DISPUTES ARE SUBJECT TO ARBITRATION IF, AND ONLY IF, THE PARTIES ACTUALLY AGREED TO ARBITRATE THOSE DISPUTES.**

Coinbase v. Suski, \_\_\_ U. S. \_\_\_ (2024).

[https://www.supremecourt.gov/opinions/23pdf/23-3\\_879d.pdf](https://www.supremecourt.gov/opinions/23pdf/23-3_879d.pdf)

**FACTS:** Two contracts were executed between Coinbase, Inc. ("Petitioner") and a class action was filed consisting of Coinbase users ("Respondents") regarding a sweepstakes promoting Dogecoin. The first contract was the Coinbase User Agreement, which included a mandatory arbitration clause and a delegation provision stating that arbitrability disputes would be decided by an arbitrator. The second contract was the Official Rules for the sweepstakes, which contained a forum selection clause stating that all disputes related to the promotion would be resolved exclusively in California courts.

Respondents filed a class action in California for violations of California laws by the actions of the sweepstakes. Petitioner moved to compel arbitration based on the User Agreement's delegation clause. The District Court denied the motion in support of the forum selection clause under the Official Rules. The Ninth Circuit affirmed.

**HOLDING:** affirmed.

**REASONING:** Petitioner argued that the Ninth Circuit should have applied the severability principle which makes an arbitration provision severable from the remainder of the contract. Petitioner also argued that the Ninth Circuit was erroneous in their holding that the Official Rules' forum selection clause superseded the User Agreement's delegation provision because of California state law. Petitioner argued that the User Agreement's delegation clause controls.

The Supreme Court evaluated four different layers of arbitration disputes with the case at hand that involved questioning what happens when parties enter multiple agreements that conflict on who decides arbitrability. Case law indicates that an arbitration clause with a delegation provision must be honored when there are no challenges to the provision. But, where there are two contracts with conflicting arbitration provisions, the court decides which contract governs. The Court held that because the parties agreed to two contracts that contradict one another over whether to go to court or to have disputes arbitrated, a court must decide which contract governs. And because it is considered a basic legal principle, arbitration must be consented to in contracts and, therefore, a dispute is subject to arbitration if the parties agree to arbitrate the disputes. Therefore, the Supreme Court held that a court, not an arbitrator, must decide which agreement controls and affirmed the Ninth Circuit's holding.