CLIENT ALERT

Supreme Court Clarifies that the Arbitrator, and Not the Court, Determines when Arbitration Is Required Under the Federal Arbitration Act

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On January 8, 2019, the U.S. Supreme Court in *Henry Schein, Inc. v. Archer and White Sales, Inc.,*586 U.S. ___ (2019) (Slip Op.), unanimously held that a federal court cannot decide whether a contract's arbitration clause applies to a dispute if the contract gives that authority to an arbitrator – even when the argument for arbitration is "wholly groundless."

Federal courts generally enforce arbitration clauses. Parties are free to agree by contract that an arbitrator will decide if the dispute is subject to arbitration under the contract. Even when an arbitrator's authority in a contract is unambiguous, some courts decline to enforce the arbitration agreement when the case for arbitration is "wholly groundless." *See, e.g., Simply Wireless, Inc v. T-Mobile US, Inc*, 877 F.3d 522 (4th Cir. 2017). In *Henry Schein*, Archer and White, Inc., a dental equipment distribution company, entered into a contract with Henry Schein, Inc., a dental equipment manufacturer. The contract required arbitration of all disputes except those seeking injunctive relief or pertaining to trademarks, trade secrets, or other intellectual property. While the contract was in effect, Archer filed a complaint in U.S. District Court in Texas alleging that Schein violated federal and state antitrust laws by conspiring with competitors to restrict Archer's access to the dental equipment market. Archer sought damages and injunctive relief. Schein moved to compel arbitration. Archer responded that the request was "wholly groundless" because the arbitration agreement did not require that claims for injunctive relief be arbitrated. The District Court and the Fifth Circuit agreed with Archer, finding that the District Court had authority to refuse to enforce the arbitration agreement if the claim to arbitration was wholly groundless.

The Fourth, Fifth, Sixth and Federal Circuits have embraced the "wholly groundless" exception, while the Tenth and Eleventh Circuits have rejected it. [1][1] The Supreme Court took up this case to resolve the split. The Supreme Court held under the Federal Arbitration Act that the trial court lacked the authority to address arbitrability questions if the agreement provided that the arbitrator, and not the court, was to determine such questions. Justice Kavanaugh, writing for a unanimous Supreme Court in his first opinion as Justice, held that the Federal Arbitration Act requires courts to enforce arbitration clauses according to the contract's terms. "Just as a court may not decide a merits question that the parties have delegated to an arbitrator, a court may not decide an arbitrability question that the parties have delegated to an arbitrator." *Henry Schein*, 586 U.S. ___ (2019) (Slip Op. at 5). *Henry Schein* resolves the circuit split and informs parties that would like questions of arbitrability determined by the arbitrator, and not the courts, to specifically so provide in their agreements to arbitrate.

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[1] *Compare Simply Wireless, Inc v. T-Mobile US, Inc*, 877 F.3d 522 (4th Cir. 2017); *Douglas v. Regions Bank*, 757 F.3d 460 (5th Cir. 2014); *Turi v. Main St. Adoption Servs., LLP*, 633 F.3d 496 (6th Cir. 2011); *Qualcomm Inc. v. Nokia Corp.*, 466 F.3d 1366 (Fed. Cir. 2006) *with Belnap v. Iasis Healthcare*, 844 F.3d 1272 (10th Cir. 2017); *Jones v. Waffle House, Inc.*, 866 F.3d 1257 (11th Cir. 2017).

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