Crowell

CLIENT ALERT

U.S. Supreme Court Holds That Federal Courts May Not Address Threshold Arbitrability Issue Where the Parties' Agreement Delegates That Question to the Arbitrators

January 11, 2019

On January 8, 2019, the U.S. Supreme Court in *Henry Schein, Inc. v. Archer and White Sales, Inc.*, No. 17-1272, 2019 WL 122164 (Jan. 8, 2019) unanimously held that, where parties to a contract agree that the threshold issue of arbitrability of disputes is itself arbitrable, federal courts may not address that question, even where the court determines that the argument in favor of arbitration is "wholly groundless."

In *Henry Schein*, the parties' contract contained an arbitration clause that provided, "[a]ny 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." *Id.* at *2. Archer filed a federal court complaint alleging "violations of federal and state antitrust law[s]" and seeking "both monetary damages and injunctive relief." *Id.* In response, Schein moved to compel arbitration, noting that, by incorporating the AAA rules, the parties agreed that "an arbitrator – not the court – had to decide whether the arbitration agreement applied to this particular dispute." *Id.* at *3. Archer opposed the motion, arguing that the dispute was not subject to arbitration because the complaint sought injunctive relief, which, it argued, was expressly carved out of the arbitration clause. *Id*. Archer responded that a federal court may resolve "the threshold question of arbitrability" in circumstances where (as Archer argued was the case there), the motion to compel arbitration was "wholly groundless." *Id.* at *3. The district court denied the motion to compel, finding that it had the authority to consider the arbitrability issue and that "Schein's argument for arbitration was wholly groundless." *Id.* The Fifth Circuit affirmed. *Id.*

The Supreme Court vacated the Fifth Circuit's decision. The court noted that "arbitration is a matter of contract," that "parties may agree to have an arbitrator decide not only the merits of a particular dispute but also 'gateway' questions of 'arbitrability,'" and that, under the Federal Arbitration Act, "courts must enforce arbitration contracts according to their terms." *Id.* at*3.

The court then rejected the so-called "wholly groundless" exception, whereby "federal courts . . . short-circuit the process and decide the arbitrability question themselves if the argument that the arbitration agreement applies to the particular dispute is 'wholly groundless.'" *Id.* at *2. The court held that the exception is "inconsistent with the statutory text [of the Act] and with [Supreme Court] precedent." *Id.* at *5. The court stated that "[t]he Act does not contain a 'wholly groundless' exception, and we are not at liberty to rewrite the statute passed by Congress and signed by the President." Accordingly, "[w]hen the parties' contract delegates the arbitrability question to an arbitrator," a court "may not override the contract," but, rather, "must respect the parties' decision as embodied in the contract." *Id.* at *4, *5. "In those circumstances, a court possesses no power to decide the arbitrability issue…even if the court thinks that the argument that the arbitration agreement applies to a particular dispute is wholly groundless." *Id.* at *4.

The court "express[ed] no view about whether the contract at issue . . . in fact delegated the arbitrability question to an arbitrator," and remanded that question to the Court of Appeals, noting that, "[u]nder our cases, courts 'should not assume that the parties agreed to arbitrate arbitrability unless there is clear and unmistakable evidence that they did so." *Id.* at *6.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Harry P. Cohen
Partner – New York
Phone: +1.212.803.4044
Email: hcohen@crowell.com

Michael K. Robles
Partner – New York
Phone: +1.212.803.4035
Email: mrobles@crowell.com

Brian J. O'Sullivan
Senior Counsel – New York
Phone: +1.212.803.4056
Email: bosullivan@crowell.com

Kelly H. Tsai
Senior Counsel – New York
Phone: +1.212.803.4069
Email: ktsai@crowell.com