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Supreme Court Rules That Arbitrators Must Decide Whether A Dispute Is Arbitrable, Not Courts, When The Contract So Provides

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Yesterday, in the first opinion issued by Justice Brett Kavanaugh, the United States Supreme Court held that courts may not use a "wholly groundless" exception to disregard contractual provisions delegating the question of whether a dispute is arbitrable to the arbitrators themselves.[1] Courts must allow the contractual process to play out, even when they believe the argument for arbitrability to be frivolous.

The case, *Henry Schein, Inc. v. Archer & White Sales, Inc.*, involved a dispute between a dental distribution company and its distributor. The distribution company alleged violations of federal and state law, and it sought both money damages and injunctive relief. The underlying contract required the parties to arbitrate disputes, but it explicitly excepted actions for injunctive relief—which allowed room for the parties to argue about whether the particular dispute at issue should be submitted to arbitration. The contract explicitly stated that questions of arbitrability must be submitted to the arbitrators.

The United States District Court for the Southern District of Texas and the Fifth Circuit Court of Appeals ruled that claims at issue in the case were not arbitrable. Both courts determined that Schein's argument for arbitration was "wholly groundless" and that, as a result, the District Court could short-circuit the contractual process and rule that the claims did not have to be arbitrated, despite the fact that the contract required the arbitrators to decide that question.

The Supreme Court rejected this approach, ruling that the "wholly groundless" exception is not consistent with the Federal Arbitration Act. "When the parties' contract delegates the arbitrability question to an arbitrator, a court may not override the contract."[2] In such circumstances, "a court has no power to decide the arbitrability issue"—even when a court thinks the argument for arbitration is wholly groundless.[3]

The Court's decision resolves a long-standing circuit split and closes off an argument that parties in the Fifth Circuit previously had used to shut down frivolous arbitrations at an early stage. Going forward, parties should pay particular attention to arbitration clauses that assign the question of arbitrability to the arbitrators. In Texas, when a contract is silent on the issue, the question of arbitrability is a threshold matter for the court to decide.[4] The decision to alter this rule and assign arbitrability disputes to arbitrators should not be taken lightly, particularly now that the wholly groundless exception has been eliminated.

[1] *Henry Schein, Inc. v. Archer & White Sales, Inc.,* No. 17-1272, slip op. at 1 (U.S. Jan. 8, 2019).

[2] *Id.*

[3] *Id.* at 5.

[4] *See Forest Oil Corp. v. McAllen*, 268 S.W.3d 51, 61 (Tex. 2008).