

Supreme Court Says “Stay” Means “Stay,” Not “Dismiss,” in Resolving FAA Circuit Split

On May 16, 2024, the Supreme Court, in *Smith v. Spizzirri*, unanimously held that Section 3 of the Federal Arbitration Act (FAA) requires courts to stay, rather than dismiss, proceedings pending arbitration upon a party’s motion.¹ In doing so, the Court resolved a circuit split and provided clarity to district courts and litigators. Yet, the Court also left avenues for dismissal open, which courts and litigators must learn to navigate and which may result in future disputes.

The Case Below

The FAA provides procedures for enforcing arbitration agreements in federal courts.² Section 3 of the FAA specifies that when a dispute is subject to arbitration (typically via a contract arbitration clause), the court “shall on application of one of the parties stay the trial of the action until [the] arbitration.”³

In *Spizzirri*, a group of former and current delivery drivers for an on-demand delivery service brought suit against the delivery service in Arizona state court alleging violations of federal and state employment laws, claiming that respondents misclassified them as independent contractors, failed to pay required minimum and overtime wages, and failed to provide sick leave. Respondents removed the case to federal court, then moved to compel arbitration and dismiss the suit. The district court issued an order compelling arbitration and dismissing the proceeding without prejudice, noting that “the text of 9 U.S.C. § 3 suggests the action should be stayed,” but that Ninth Circuit precedent gave the court discretion to either stay *or* dismiss if all claims are subject to arbitration.⁴

The Ninth Circuit affirmed, similarly acknowledging that while “the plain text of the FAA appears to mandate a stay,” binding court precedent recognized the district court’s discretion to dismiss.⁵ The Supreme Court granted *certiorari* to resolve a circuit split and determine whether a district court had discretion under the FAA to dismiss or stay the case.⁶

The Supreme Court Decision

In a rare unanimous decision by Justice Sotomayor, the Supreme Court held that Section 3 of the FAA mandates that courts stay claims pending arbitration; district courts have no discretion to dismiss claims subject to arbitration when a party requests a stay.⁷ The Court provided four reasons. First, the FAA states that a court “shall ... stay” a proceeding; “shall” creates a mandatory obligation.⁸ Second, reading “stay” to include “dismiss” creates inconsistency with the surrounding statutory text. Section 3 provides that parties can return to federal court if arbitration breaks down or fails to resolve the dispute: a proceeding is stayed “until such arbitration has been had in accordance with the terms of the agreement” and only so long as the “applicant ... is not in default in proceeding with the arbitration.”⁹ Returning to federal court if the arbitration breaks down would not be available if the proceeding was otherwise dismissed, and would render that statute superfluous. Third, Section 16 of the FAA authorizes an immediate interlocutory appeal when a court denies a request for arbitration, but not when a court compels arbitration.¹⁰ In contrast, dismissal triggers an immediate right to appeal even when the court compels arbitration. Dismissal therefore is inconsistent with Congress’ stated intent to deny such appeals.¹¹ Finally, a stay is consistent with the supervisory role that the FAA envisions for the court in being able to continue to oversee an arbitration by keeping the case on the docket, such as appointing an arbitrator, enforcing subpoenas, and affirming arbitration awards.¹² The district court cannot



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remain involved in arbitration proceedings if the proceedings are dismissed, as that ends the case.

Future Implications

The Court's holding in *Spizzirri* resolved a longstanding and growing circuit split and created a uniform rule for proceedings with arbitration agreements. Proceedings involving arbitration will be more efficient and cost effective now that the threat of immediate appeals after a dismissal has been eliminated. The decision also creates more security for parties engaged in such proceedings. Parties need not concern themselves with, for example, statutes of limitations periods expiring during arbitration, since a stay reserves the statute of limitations.

However, the Court left open several questions. First, the holding is limited to when a party seeks a stay. The Court does not specify what a district court should do when a party moves to compel arbitration without seeking a stay or if it seeks a dismissal in lieu of a stay. District courts may maintain inherent authority to dismiss in such circumstances. Second, the Court explicitly noted that district courts retain inherent authority to dismiss the suit if there is a separate reason to dismiss, unrelated to the fact that an issue in the case is subject to arbitration – for example, if the district court lacks jurisdiction.¹³ This potentially leaves the door open to dismiss for other preliminary reasons, such as failure to state a claim, which may effect a party's right to compel arbitration. Third, the case is specific to federal arbitration, not state arbitration. The influence of this case on state court practices remains uncertain, and removal to federal court is the only sure way to take advantage of the new rule.

Accordingly, to best take advantage of *Spizzirri's* rule, parties should seek a stay when compelling arbitration. Parties should also remove any state court cases to federal court when possible, until it is clear whether state courts will adopt a similar rule. That being said, most states have their own state-specific arbitration act that closely mirrors the FAA; as such, this decision will likely be highly influential on state actions. Likewise, despite the situation where a party does not seek stay and or seek dismissal, it appears more likely than not that a federal court will decide to stay the action and not see dismissal given the Supreme Court's discussion about preserving rights and having continued court oversight.

An interesting and important decision that has not received much press, this case will undoubtedly create further jurisprudence in the future as these and other questions arise.

Should you have questions about this, feel free to contact the authors.

¹ No. 22-1218, slip op. (U.S. May 16, 2024), https://www.supremecourt.gov/opinions/23pdf/22-1218_5357.pdf.

² 9 U.S.C. §§ 1-16.

³ *Id.* § 3.

⁴ *Smith v. Spizzirri*, No. 22-1218, slip op. at 2.

⁵ *Id.*

⁶ *Id.* at 2 n.1.

⁷ *Id.* at 3.

⁸ *Id.* at 4.

⁹ *Id.* at 5.

¹⁰ See 9 U.S.C. § 16(a)-(b).

¹¹ *Smith v. Spizzirri*, No. 22-1218, slip op. at 5-6.

¹² *Id.* at 6.

¹³ *Id.* at 3 n.2.