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### Airbnb, Inc. v. Rice, 138 Nev. Adv. Op. 65 (Sept. 29, 2022)

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*Airbnb, Inc. v. Rice*, 138 Nev. Adv. Op. 65 (Sept. 29, 2022)<sup>1</sup>

ARBITRABILITY: COURTS HAVE NO AUTHORITY TO DECIDE WHETHER AN ARBITRATION AGREEMENT APPLIES TO A DISPUTE WHEN A CONTRACT DELEGATES THE ARBITRABILITY QUESTION TO AN ARBITRATOR, EVEN WHERE THE ARGUMENT FOR ARBITRABILITY IS WHOLLY GROUNDLESS.

**Summary**

When parties clearly and unmistakably delegate the issue of arbitrability to an arbitrator, the United States Supreme Court held in *Henry Schein, Inc. v. Archer & White Sales, Inc.*, that, under the Federal Arbitration Act (FAA), a court has no power to determine the arbitrability of a dispute where the contract delegates the arbitrability question to an arbitrator, even if the argument that the arbitration agreement applies to the dispute is “wholly groundless.”<sup>2</sup> Courts err when deciding on an arbitrability question itself if the required standard established in *Henry Schein* has been met.

**Background**

Respondents Eric Rice, Raheem Rice’s father; Jefferson Temple, as special administrator of Raheem’s estate (the Estate); and Bryan Lovett sued Appellant Airbnb, Inc. (Airbnb), and other defendants for wrongful death and personal injury, alleging that Airbnb’s services had been used to rent the house where the shooting occurred resulting in the death of Raheem and injuring Bryan.

Appellant filed a motion to compel arbitration, asserting that Raheem, Bryan, and Eric all had Airbnb accounts at the time of the shooting and had agreed to Airbnb’s Terms of Service during the account registration process. The Terms and Service specified, in part, that the parties “mutually agree that any dispute, claim or controversy arising out of or relating to these Terms...will be settled by binding arbitration (the ‘Arbitration Agreement’)” and “[i]f there is a dispute about this arbitration agreement can be enforced or applies to our Dispute, you and Airbnb agree that the arbitrator will decide the issue.” Additionally, the Arbitration Agreement informs that FAA governs the interpretation and enforcement of the provision above.

Appellant argued that the claims alleged were subject to arbitration under the Terms and Service agreements and that any disputes about whether the arbitration agreement applied to those claims had to be submitted to an arbitrator. The district court denied the motion to compel in two separate orders concerning Mr. Lovett and Mr. Rice individually. Appellant appeals only the order concerning Mr. Rice and the Estate.

**Discussion**

Appellant argues that the district court lacked the discretion to determine whether the dispute was arbitrable because the arbitration agreement in the Terms and Service included a delegation provision requiring the issue of arbitration to be submitted to an arbitrator.

The Nevada Supreme Court addressed whether the district court erred in finding that the arbitration agreement did not apply to the claims and in refusing to submit the question of arbitrability to an arbitrator. In addressing these issues, the court analyzed the arbitration

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<sup>1</sup> By Roberto Nolasco-Cruz.

<sup>2</sup> *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 528 (2019).

agreement, which specified that the FAA governed its enforcement and interpretation. Relying on *Henry Schein*, the Court established that, under the FAA, arbitration is a matter of contract, and courts must enforce arbitration contracts according to their terms. When deciding whether to compel arbitration, the Court applied *Howsam v. Dean Witter Reynolds, Inc.*, where a court must resolve whether the parties have a valid agreement to arbitrate and whether the agreement applies to the dispute.<sup>3</sup> However, the Court recognized from *Rent-A-Ctr., W., Inc., v. Jackson*, that parties may agree to arbitrate “gateway questions of arbitrability, such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy.”<sup>4</sup> Therefore, relying on *Rent-A-Ctr.*, “when parties clearly and unmistakably agree to delegate these questions to an arbitrator, the delegation agreement must be enforced like any other arbitration agreement under the FAA.”<sup>5</sup> The Court emphasized the rationale in *Henry Schein* that when a contract “delegates the arbitrability question to an arbitrator, a court may not override the contract,” and under these conditions, “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.”<sup>6</sup>

The Court determined that the parties here had a valid arbitration agreement with a clear delegation clause requiring that an arbitrator decide any dispute as to whether the agreement applies to the claim at issue. The district court, however, found that Appellant’s argument regarding the claim toward Eric and the Estate was wholly groundless. The Court disagreed with the district court’s rationale, finding that *Henry Schein* explicitly precludes the court from deciding on a wholly groundless basis when there is a delegation agreement.

Mr. Rice and the Estate argued that there is no “clear and unmistakable evidence” as required in *Henry Schein* and because their claims clearly do not relate to or arise from the Appellant’s Terms of Service, no arbitration agreement applies to those claims and thus no showing of intent to arbitrate the claims. The Court disagreed with this argument, emphasizing that a valid arbitration agreement that delegates the arbitrability issue to an arbitrator serves as “clear and unmistakable” evidence of an agreement to arbitrate, evidence illustrated in the arbitration agreement, in this case, that expressly delegates to an arbitrator.

Further, the Court remained cognizant that the dispute in the present case did not arise out of a contract between the parties and that the facts underlying the Respondent’s wrongful death action had no relation to the Respondent’s use of the Appellant’s services or platform. However, the Court believed that *Henry Schein’s* abrogation of *Douglas v. Region Bank* expressly rejected the rule used in *Douglas* because that decision was inconsistent with the FAA. The Court stated that it could infer that the wholly groundless exception is improper even where the arbitration agreement clearly is unrelated to the dispute, adding that if there is a delegation clause, the court has no authority to decide the arbitrability question but must instead grant the motion to compel arbitration.

Respondents relied on *Coors Brewing Co. v. Molson Breweries*,<sup>7</sup> stating that courts may decide the arbitrability of a dispute despite a delegation provision, and *Moritz v. Universal City Studios LLC*,<sup>8</sup> stating that the district court’s denial of a motion to compel was correct because

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<sup>3</sup> *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84, 123 S.Ct. 588, 593 (2002).

<sup>4</sup> *Rent-A-Ctr., W., Inc., v. Jackson*, 561 U.S. 63, 68–69, 130 S.Ct. 2772, 2777 (2010).

<sup>5</sup> *Id.* at 70, 2778. *See also* *First Option of Chi., Inc. v. Kaplan*, 514 U.S. 938, 943, 115 S.Ct 1920, 1923–24 (1995).

<sup>6</sup> *Henry Schein*, 139 S. Ct. at 529 (emphasis added).

<sup>7</sup> *Coors Brewing Co. v. Molson Breweries*, 51 F.3d 1511, 1516 (10th Cir. 1995).

<sup>8</sup> *Moritz v. Universal City Studios LLC*, 268 Cal. Rptr. 3d 467, 473 (Cal. Ct. App. 2020).

the arbitration agreement and delegation clause did not apply to the dispute, to support their argument that the district court's decision to deny the motion to compel was the appropriate decision. The Court rejected both cases and arguments, stating that *Coors* pre-dated *Henry Schein* and that it cannot support such a reading of *Henry Schein* in *Moritz* because the Court is bound by the decisions made by the United States Supreme Court on this matter.

### **Conclusion**

The United States Supreme Court has held in *Henry Schein* that when a contract delegates the arbitrability question to the arbitrator, a court has no authority to decide whether the arbitration agreement applies to the dispute, even where the argument for arbitrability is wholly groundless. The FAA governs the enforcement of the arbitration agreement at issue here. The arbitration agreement delegates the arbitrability question to an arbitrator. The district court erred in deciding the arbitrability question itself, and the Nevada Supreme Court reversed the district court's order denying the Appellant's order to compel arbitration and remanded for further proceedings consistent with its opinion.

### **Dissent**

Justices Stiglich and Herndon dissented, noting that the majority's opinion misreads *Henry Schein* and that extending an arbitration clause's scope beyond the reach of the parties' contract would lead to absurd results. The dissenting Justices believe that the majority has erred in reaching its disposition.