IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

DANA HILL,

Plaintiff-Petitioner,

v.

EAN HOLDINGS, LLC d/b/a ENTERPRISE CAR SALES,

Defendant-Respondent.

Case No. 122,055

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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April 17, 2026

This Court should grant certiorari because the decision below is directly contrary to *Coinbase, Inc. v. Suski*, 602 U.S. 143 (2024), which held that where a party specifically challenges an arbitration clause in addition to, and for the same reasons as, the larger agreement, a court must consider that challenge. Plaintiff-Petitioner Dana Hill has done exactly that: He has specifically challenged an arbitration clause on the same basis he contends the larger agreement cannot be enforced, and so, under *Coinbase*, a court, and not an arbitrator, must consider his challenge to the arbitration clause. In contending otherwise, Defendant-Respondent EAN Holdings, LLC (Enterprise) makes the same arguments *Coinbase* considered and rejected. This Court must do so too.

ARGUMENT

Mr. Hill Specifically Challenged The Arbitration Clauses Below, And *Coinbase* Requires That A Court Decide That Challenge.

A. Mr. Hill expressly challenged the arbitration clause throughout this litigation.

There can be no dispute that Mr. Hill has repeatedly and consistently argued that the arbitration clauses under which Enterprise seeks to compel arbitration are unenforceable, and that constitutes a specific challenge to those clauses. Indeed, courts generally find the specific-challenge requirement to not be met when the party fails to expressly challenge the arbitration clause at all. *See, e.g.*, *Rent-a-Center W. v. Jackson*, 561 U.S. 63, 72 (2010); *Stephen v. Security Fin. of Okla.*, 653 F. Supp. 3d 1077, 1083 (W.D. Okla. 2023).

That is obviously not the case here. In his opposition to Enterprise's motion to compel arbitration, Mr. Hill repeatedly and explicitly challenges the arbitration clauses. Right up front, the second sentence explains that "the Dispute Resolution Clause (DRC) within that voided contract is also void." Pl.'s Resp. to Def.'s Mot. to Compel 1 (Jul. 20, 2023). The opposition then has an entire section explaining why a court may not compel arbitration

before determining whether the parties actually agreed to arbitrate. *Id.* at 5-6. Here, Mr. Hill argued, Enterprise cannot enforce the arbitration clause because the contract was not concluded—a position, as the opposition pointed out expressly, that is consistent with *Aguirre v. M&N Dealerships, LLC*, Case No. 117243 (unpublished). Pl.'s Resp. at 7-8. Further, Mr. Hill argued, Enterprise should be estopped from seeking to enforce certain contract terms—arbitration, specifically—"in the very contracts it argues are void." *Id.* at 9. [1] And finally—contrary to Enterprise's position that Mr. Hill has only mentioned this issue in "passing," Resp.'s Ans. to Pet. 3-4 n.3—Mr. Hill explained that neither the arbitration clause in the buyer's order nor the arbitration clause in the finance agreement are enforceable because they contain material, conflicting requirements for arbitration. Pl.'s Resp. at 15-19.[2]

Mr. Hill's appellate briefing similarly calls out the arbitration clauses specifically. Again, it begins by stressing that arbitration is a matter of contract and that arbitration cannot be compelled where there is no agreement to do so, Appellee's Br. 3, explaining that the "primary issue on appeal is whether, as a matter of contract law, there is an agreement to arbitrate between the Appellant and the Appellee," *Id.* at 4. It then argues that, as a matter of Oklahoma law, "the contract is not consummated, and any arbitration clause within that contract is also not effective." *Id.* at 6. Mr. Hill again relied on *Aguirre*, which addressed the enforcement of an arbitration clause in similar circumstances. *Id.* at 6-7. And he concluded by stating that "[w]here, as here, the contract is revoked pre-consummation, ab initio under

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[1] Mr. Hill also argued that the Oklahoma law regulating car dealers only provides for post-dispute agreements to arbitrate—not the pre-dispute agreements Enterprise seeks to enforce here. Pl.'s Resp. at 7.

[2] Specifically, the two agreements have material differences with regard to pre-arbitration notice, confidentiality, forum, identity of arbitrators, fees, and who is required to arbitrate. *See* Pl.'s Resp. at 16-17. Neither the trial court nor the appellate court addressed this specific challenge to the arbitration clauses.

state law, any arbitration clause or a delegation clause therein is likewise revoked re-consummation." *Id.* at 9. Given that the enforcement of the arbitration clause specifically was the primary focus of Mr. Hill's briefing, he has well exceeded his obligation to expressly challenge the arbitration clause.[3]

B. *Coinbase* rejected the argument that where a party expressly challenges both the arbitration clause and the larger agreement, a court is absolved of ensuring that there is a valid agreement to arbitrate.

In contending that Mr. Hill nevertheless failed to specifically challenge the arbitration clause, Enterprise makes the same arguments rejected in *Coinbase*. Enterprise's sole argument as to why Mr. Hill's extensive arguments regarding the enforceability of the arbitration clause do not add up to a specific challenge to that clause is that Mr. Hill is making the same arguments as to both the arbitration clause and the larger agreement—because the requirements for consummation were not met, the agreement, including its arbitration clause, is void and does not exist as a matter of Oklahoma law. *See* Resp.'s Ans. at 4-5. In *Coinbase*, Coinbase had made strikingly similar arguments, contending that the plaintiff had not raised a specific challenge to the delegation clause because he argued that the arbitration agreement as a whole was superseded by a later contract's forum-selection clause, and the only basis for the invalidity of the delegation clause was that it was unenforceable for the same reason, as part of that larger agreement. *Coinbase, Inc. v. Suski*,

[3] In a footnote, Enterprise contends that Mr. Hill has never raised a challenge to the arbitration clause's delegation clause, which purports to send the question whether the arbitration agreement is enforceable to the arbitrator. Ans. at 6 n.5. But Enterprise has never argued that arbitration should be compelled here under a delegation clause, and so it has forfeited that argument. *See Coinbase*, 602 U.S. at 151 n.* ("Coinbase's argument that respondents failed to challenge the delegation provision in the District Court is itself forfeited."); *Rader v. Ox Car Care Inc.*, 2025 WL 1908968, at *4 (N.D. Okla. July 10, 2025) (collecting cases).

No. 23-3, Pet.'s Br. 29. *Coinbase* rejected that argument, explaining that the plaintiff had nevertheless sufficiently specifically challenged the delegation clause. *Coinbase, Inc. v. Suski*, 602 U.S. 143, 150 (2024).[4] It made clear that where a party "equally" challenges the larger agreement and the arbitration agreement, a court must consider the challenge to the arbitration provision, and, in doing so, is not limited to "consider[ing] only arguments specific to that provision." *Id.* at 150-51.[5] *Coinbase* is explicit that its holding applies equally to delegation clauses vis-à-vis larger arbitration clauses and arbitration clauses vis-à-vis larger agreements. *Id.*

Under *Coinbase*, because Mr. Hill specifically challenged the enforceability of the arbitration clause, a court must decide that question. That is consistent with black-letter law, under which a court cannot enforce an arbitration agreement, like other agreements, unless it is satisfied that the agreement is enforceable. *See Coinbase*, 602 U.S. at 147-48; *Okla. Oncology & Hematology P.C. v. US Oncology, Inc.* 2007 OK 12 ¶¶ 19-22. The severability doctrine does not alter that basic principle.

Under the severability doctrine, where a party challenges the agreement as a whole—or a provision unrelated to the arbitration agreement—but does not specifically challenge the arbitration clause, those non-arbitration clause challenges are for the arbitrator, not the court to decide. *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445-46 (2006). The key being that the arbitration clause is not specifically challenged. That was taken as a given, for

[4] Contrary to Enterprise's position, Mr. Hill does not suggest that *Coinbase* did away with the requirement that an arbitration clause be specifically challenged. *See* Ans. at 3 n.1.

[5] Enterprise asserts that Mr. Hill somehow waived "an equal challenge theory" but it is unclear what Enterprise thinks an "equal challenge" means if not what Mr. Hill argued below: that the arbitration clause and entire agreement do not exist for the same reason. *See* Ans. at 4.

example, in *Buckeye Check Cashing*, on which Enterprise heavily relies. *Id.* at 444. *Coinbase* does not do away with these fundamental aspects of the severability principle—rather, it clarified what it means to specifically challenge an arbitration agreement. And, it held that severability doctrine's specific challenge is met when a party calls out an arbitration clause as unenforceable, even if it is unenforceable for the same reasons as the larger contract. *Coinbase*, 602 U.S. at 150-51. As the Court explained, the severability "rule does not require that a party challenge only the arbitration or delegation provision. Rather, where a challenge applies 'equally' to the whole contract and to an arbitration or delegation provision, a court must address that challenge." *Id.* at 151 (quoting *Rent-A-Center*, 561 U.S., at 71).[6]

Contrary to Enterprise's arguments, this understanding of the severability doctrine, dictated by the U.S. Supreme Court, does not eliminate its practical effects. *See* Ans. at 4 n.3. Where a party does not dispute the validity of the arbitration provision, but contends that unrelated provisions of the contract are unenforceable—such as the usurious finance charge at issue in *Buckeye Check Cashing*, 546 U.S. at 444, or the unconscionable "outrageously low wages" used as an example in *Rent-a-Center*, 561 U.S. at 71—the severability doctrine means that the challenge to those types of provisions goes to the arbitrator. *Coinbase* merely held that where, as here, the specific challenge is identical to the challenge to the larger agreement, the specific challenge requirement is satisfied.

CONCLUSION

For the foregoing reasons and those stated in the Petition, this Court should grant review.

[6] Here, as explained in the Petition, the severability doctrine makes little sense where the argument is that the requirements for the agreement, including its arbitration clause, to go into effect have not been met, and so there is no agreement to sever at all. *See* Pet. at 7-8.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Petition for Certiorari was mailed April 17, 2026, via U.S. Mail to:

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