

No. 20-1570

IN THE
Supreme Court of the United States

HRB TAX GROUP, INC., *ET AL.*,

Petitioners,

v.

DEREK SNARR,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

RESPONDENT'S SUPPLEMENTAL BRIEF

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On September 3, 2021, petitioners HRB Tax Group, *et al.*, filed a supplemental brief informing the Court of the district court's order dismissing this action as moot and of respondent's appeal to the Ninth Circuit from that decision. HRB requested that this Court hold its petition pending resolution of that appeal. Pursuant to Rule 15.8, respondent Derek Snarr submits this supplemental brief to apprise the Court of additional developments subsequent to the filing of his appeal, which weigh against holding this petition further.

This petition challenges the Ninth Circuit's holding, on interlocutory appeal, that an arbitration agreement that purported to waive Mr. Snarr's claims for public injunctive relief was not enforceable under the California Supreme Court's holding in *McGill v. Citibank, N.A.*, 393 P.3d 85 (2017), and the Ninth Circuit's decision in *Blair v. Rent-A-Center, Inc.*, 928 F.3d 819 (2019). As the Court is aware, after the Ninth Circuit decision at issue, HRB filed a renewed motion to compel arbitration, contending that its amended arbitration terms are enforceable under *McGill* because they carve out claims for public injunctive relief for court resolution following arbitration of all other issues. The district court denied that motion, and HRB filed a second appeal. *See* Br. in Opp. 3, 11, 12, 15, 16. The Court is also aware that the district court later denied Mr. Snarr's claims for injunctive relief as moot and that he has appealed to the Ninth Circuit. *See* HRB Supp. Br. 1.

Subsequent developments demonstrate that holding this petition is unwarranted. On October 18, 2021, the Ninth Circuit granted HRB's motion to hold its appeal of the denial of its renewed motion to compel arbitration in abeyance, pending the decision in Mr.

Snarr’s appeal of the mootness ruling. The Ninth Circuit’s abeyance order provides that the docket in HRB’s appeal is “temporarily close[d] ... until there is a resolution in” Mr. Snarr’s appeal of the mootness issue. *Snarr v. HRB Tax Group, Inc.*, No. 21-16001, Order (Oct. 18, 2021).

Mr. Snarr’s opening brief in his appeal of the mootness dismissal is due February 25, 2022; HRB’s answer brief is due March 28, 2022; and Mr. Snarr’s reply brief is due April 18, 2022. Argument and decision by the Ninth Circuit will likely not occur for another several months after briefing is complete. If the court reverses the mootness dismissal, then briefing, argument, and decision of HRB’s appeal will follow, and will involve another months-long process.

Unless and until both appeals are resolved adversely to HRB, the issue posed by HRB’s petition—whether the *McGill* rule is preempted—will not be ripe for review: If HRB were to prevail in the first appeal on mootness grounds, there would remain no Article III controversy over *McGill* in this case. If HRB were to prevail in the second on its argument that Mr. Snarr must arbitrate his claims even under *McGill*, proceedings in this case would be stayed pending arbitration, and the *McGill* issue would become a matter for further consideration by the courts only after the arbitration concluded, depending on its outcome.

Under such circumstances, HRB’s suggestion that the Court hold this petition pending the outcome of proceedings now pending in the Ninth Circuit is unwarranted. Such a course would unnecessarily leave this case pending on the docket of this Court for as much as another two years. Even absent a hold of this petition, if the *McGill* issue is still outcome-

determinative in this case at the end of that time because HRB has lost in both appeals, HRB will have the opportunity, should it choose to exercise it, to raise the same issue in a petition challenging the decision in its second appeal. Accordingly, there is no reason not to deny this petition now—which HRB concedes is the ordinary disposition when a district court has entered final judgment in the petitioner’s favor on another ground.

Moreover, if the Court were to grant certiorari in another case raising the *McGill* issue in the meantime, whatever decision this Court ultimately reached on that issue would necessarily be applied by the courts below (assuming the Ninth Circuit does not affirm the mootness dismissal) without any need for a “hold” of this petition.

CONCLUSION

The Court should deny the petition for a writ of certiorari.

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