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Supreme Court Limits Federal Court Jurisdiction to Vacate or Confirm Arbitration Awards

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In an 8-1 decision, the United States Supreme Court recently held in *Badgerow v. Walters* that federal courts may not examine the substance of arbitration disputes to establish federal question jurisdiction under Sections 9 and 10 of the Federal Arbitration Act (the "FAA"). Not only did this decision resolve a circuit split, it, in essence, shifted more responsibility to state courts to confirm or vacate arbitration awards.

The Federal Arbitration Act and Subject Matter Jurisdiction

The FAA authorizes a party to an arbitration agreement to petition a federal court for various forms of relief. For example, under Section 4, a party may petition a court to compel arbitration, and Sections 9 and 10 provide that a party may petition a court to confirm or vacate an arbitral award. But the Supreme Court has long held that those sections do not themselves support a federal court's jurisdiction. Rather, in its 2008 decision, *Hall Street Associates, L.L.C. v. Mattel, Inc.*, the Supreme Court ruled that federal courts must have an "independent jurisdictional basis" to resolve FAA petitions. This means that an applicant seeking to vacate an arbitral award under Section 10, for example, must first identify "a grant of jurisdiction" conferring access by a federal court.

The year after *Hall Street*, the Supreme Court held that federal courts have an "independent jurisdictional basis" to decide a petition to compel arbitration under Section 4 by examining the parties' "underlying substantive controversy." *Vaden v. Discover Bank*, 556 U.S. 49 (2009). That is because Section 4's language provides that a party to an arbitration agreement may petition for an order to compel arbitration in a "United States district court which, save for [the arbitration] agreement, would have jurisdiction" over "the controversy between the parties." "The phrase 'save for the [arbitration] agreement,'" the Court stated, "indicates that the district court should assume the absence of the arbitration agreement and decide whether [the court] 'would have jurisdiction . . .' without it" by looking through the "underlying substantive controversy" between the parties. Thus, if the underlying "controversy" falls within the court's jurisdiction—for example, by presenting a federal question—then federal courts have a jurisdictional basis to rule on the Section 4 petition to compel.

But since *Vaden*, lower courts have been split over whether the same "look through" approach can establish jurisdiction when the application before the court seeks *not* to compel arbitration under Section 4, but rather seeks to confirm, vacate, or modify an arbitral award under Sections 9 and 10 of the FAA. That was the question before the Supreme Court in *Badgerow v. Walters*, 596 U.S. __ (2022).

Lower Court Rulings

Badgerow grew out of the arbitration of an employment dispute. The petitioner, who worked as a financial advisor for a firm run by the respondents, initiated an arbitration proceeding alleging wrongful termination under both state and federal law. After the arbitrators dismissed her claims, the petitioner sued in Louisiana state court to vacate the arbitral award. She alleged that fraud had tainted the arbitration proceeding.

Because the "underlying controversy"—wrongful termination under state and federal law—presented a federal question, the respondents removed the case to federal court, where they applied to confirm the arbitral award. The petitioner then sought to remand the action to state court, arguing that the federal court lacked an "independent jurisdictional basis" to confirm or vacate the award under Sections 9 and 10 because the issue before the court was *not* the federal wrongful termination claims, but rather the enforceability of the arbitral award, which is generally a state law issue.

Relying on *Vader*, the District Court for the Eastern District of Louisiana "looked through" the petition to the "underlying substantive controversy" and determined that it had subject matter jurisdiction because the underlying substantive controversy presented a federal question—wrongful termination under federal law. The District Court then determined that fraud did not taint the arbitration proceeding, granted the respondents' application to confirm, and denied the petitioner's application to vacate. The Fifth Circuit affirmed, citing *Vader* and the importance of a "principle of uniformity" that dictated using the same approach for Section 9 and 10 actions as is used for petitions to compel under Section 4.

Supreme Court Ruling

The Supreme Court disagreed. It held that *Vaden's* "look-through" approach does not apply to petitions to confirm or vacate arbitral awards under Sections 9 and 10. The Court first observed that Sections 9 and 10 contain "none of the statutory language on which *Vaden* relied . . . Indeed, Sections 9 and 10 do not mention the court's subject matter jurisdiction at all." The Court then discussed the well-settled principle of construction that "when Congress includes particular language in one section of a statute but omits it in another section of the same Act, we generally take the choice to be deliberate."

Next, the Court rejected the "more thought-provoking" policy arguments upon which the respondents—and the lower courts—relied. While the respondents "preache[d] the virtues of adopting look-through as a single, easy-to-apply jurisdictional test that will produce sensible results," the Supreme Court stressed that "even the most formidable policy arguments cannot overcome a clear statutory directive." According to the Court, "however the pros and cons shake out, Congress has made its call [and] [w]e will not impose uniformity on the statute's non-uniform jurisdictional rules." Thus, the Court determined that *Vaden's* "look through" approach "does not apply to requests to confirm or vacate arbitral awards under Sections 9 and 10 of the FAA."

Takeaway

The effect of the Supreme Court's decision is to give state courts a more "significant role" in implementing the FAA. It is possible that this outcome will cause unnecessary complexity between cases brought under Section 4 on the one hand, and under Sections 9 and 10 on the other; Section 4 cases will be adjudicated by federal district courts, while cases under Sections 9 and 10 will be up to individual states. According to eight justices, that result is appropriate and not necessarily a cause of concern, as the "FAA requires [state] courts, too, to honor arbitration agreements." Justice Breyer's dissent, however, expressly considered the implications of the majority's decision, noting that it conflicted with the "clear policy of rapid and unobstructed enforcement of arbitration agreements." Whether the impact of the *Badgerow* decision actually results in such confusion will be borne out in future, and likely state court decisions.

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