LOOK AT ME, NOT THROUGH ME: SUPREME COURT LIMITS FEDERAL JURISDICTION FOR POST-ARBITRATION AWARD PETITIONS

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On 31 March 2022, the United States Supreme Court in *Badgerow v. Walters* limited federal subject matter jurisdiction over post-arbitration award petitions under the Federal Arbitration Act (FAA) §§ 9 and 10. After years of widening disagreement between circuit courts regarding when a federal court may exercise jurisdiction to confirm or vacate an award, the Supreme Court weighed in and held that federal courts may only exercise jurisdiction to confirm or vacate an award if the face of the application supports diversity or federal-question jurisdiction. One of the implications of this ruling is that many more post-arbitration proceedings to confirm or vacate an arbitration award may be channeled into state courts.

BACKDROP: FAA SECTIONS AT ISSUE

Section 4 states that a party seeking to compel arbitration can file suit in any court that, "save for" the arbitration agreement, would have federal jurisdiction over the underlying dispute.[1]

Section 9 provides that parties may apply to confirm an arbitration award in the United States court "in and for the district" where the award was made.[2]

Section 10 provides that parties may apply to vacate an arbitration award in the United States court "in and for the district" where the award was made.[3]

PRELUDE: *VADEN*

In its 2009 decision in *Vaden v. Discover Bank*, the Supreme Court found that federal-question jurisdiction could exist under a "look-through" approach in a § 4 petition to compel arbitration.[4] In that case, two questions were presented: (1) whether a district court, when asked to compel arbitration, should "look through" the petition and compel arbitration if the court originally would have had federal jurisdiction; and (2) if so, may the court exercise jurisdiction over the § 4 petition when the original complaint rests on state law but the counterclaim rests on federal law?

The Supreme Court answered the first question affirmatively. In doing so, it emphasized that a "federal court may 'look through' a § 4 petition to determine whether it is predicated on an action that 'arises under' federal law; in keeping with the well-pleaded complaint rule."[5] However, the Court found that the district court could not exercise jurisdiction over the petition presented in that case, because the complaint was "entirely state-based" and "federal-court jurisdiction cannot be invoked on the basis of a defense or counterclaim."[6]

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Since *Vaden*, circuit courts have been divided over whether the "look-through" approach also applies to applications to confirm or vacate awards under FAA §§ 9 and 10. For example, the Fifth Circuit acknowledged the circuit split in *Quezada v. Bechtel OG & C Constr. Servs., Inc.*, noting that the Third and Seventh Circuits decline to apply the look-through approach for confirmation, vacatur, or modification of arbitration awards, but the First, Second, and Fourth Circuits permit the look-through approach.[7]

Ultimately, a divided Fifth-Circuit panel in *Quezada* agreed with the majority and held that the *Vaden* look-through approach applies to applications to confirm or vacate arbitration awards.

OPENING ACTS: *BADGEROW V. WALTERS* IN THE LOWER COURTS

Badgerow v. Walters followed, implicating the Supreme Court's *Vaden* decision and the Fifth Circuit's *Quezada* decision on the issue of whether a federal court has subject-matter jurisdiction to review an application to confirm or vacate an arbitration award when the underlying dispute presents a federal question.

The plaintiff in *Badgerow* initiated arbitration against her former employer's principals, alleging violation of federal employment law. The arbitration panel dismissed all of her claims, so she filed an action in state court to vacate the arbitration award. The defendants removed the action to the United States District Court for the Eastern District of Louisiana and filed a motion to confirm the award. Plaintiff moved for remand to state court, arguing that the district court did not have jurisdiction over the award; however, the district court denied remand and granted defendant's motion to confirm the award.[8]

On appeal, the Fifth Circuit held that it was bound by its precedent in Quezada and applied the look-through approach.[9] The Fifth Circuit thus affirmed the district court's decision to exercise jurisdiction over the dispute.

Plaintiff filed a petition for writ of certiorari, which the Supreme Court granted on 17 May 2021.[10]

FEATURE: THE SUPREME COURT'S DECISION

In an 8-1 decision,[11] the Supreme Court reversed and remanded the case, holding that FAA §§ 9 and 10 lack § 4's "distinctive language directing a look-through" approach. Thus, without statutory language directing otherwise, "a court may look only to the application actually submitted to it in assessing its jurisdiction."[12] Noting that Congress could have replicated § 4's look-through language in §§ 9 and 10 but chose not to, the Court held that a federal court only has jurisdiction over an application to confirm or vacate an arbitration award when the face of the application demonstrates diversity or federal-question jurisdiction.

Applying the new rule to the facts of plaintiff's appeal, the Court explained that the parties were not contesting the federal employment dispute at this stage; rather, the parties were contesting enforcement of the arbitration award. Therefore, the Court held that federal jurisdiction was not appropriate because enforcement of the award, which was "no more than a contractual resolution of the parties' dispute," did not amount to federal-question jurisdiction and the parties were not diverse.

SOUVENIR: THE KEY TAKEAWAYS

Following the Supreme Court's decision in *Badgerow* limiting federal subject matter jurisdiction over arbitration awards, counsel and parties seeking to confirm or vacate arbitration awards must analyze whether their

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application, on its face, supports an independent basis for federal subject-matter jurisdiction if they wish to bring their application in federal court. Without the "look-through" approach for §§ 9 and 10 petitions, and in particular where the parties to arbitration provisions are citizens of the same state (and thus lack diversity jurisdiction), state courts will more likely be the primary venue for post-award petitions.

FOOTNOTES

[1] 9 U.S.C. § 4.

[2] 9 U.S.C. § 9.

[3] 9 U.S.C. § 10.

[4] *Vaden v. Discover Bank*, 129 S. Ct. 1262, 1268 (2009) ("A federal court may 'look through' a § 4 petition and order arbitration if," notwithstanding the arbitration agreement, "the court would have jurisdiction over 'the [substantive] controversy between the parties.'" (citations omitted)).

[5] *Id*. at 1273.

[6] *Id*. at 1269.

[7] *Quezada v. Bechtel OG & C Constr. Servs., Inc.*, 946 F.3d 837, 841 (5th Cir. 2020) ("After *Vaden*, a circuit split developed regarding whether the same look-through approach also applies to applications to confirm an arbitration award under section 9, to vacate under section 10, or to modify under section 11.").

[8] *Badgerow v. Walters*, --- S. Ct. ----, 2022 WL 959675, at *3 (2022).

[9] *Badgerow v. Walters*, 975 F.3d 469, 472–74 (5th Cir. 2020).

[10] *Badgerow v. Walters*, 141 S. Ct. 2620 (2021).

[11] Justice Breyer in dissent wrote that although the Court's decision "may be consistent with the statute's text," practical application would create curious consequences, artificial distinctions, and results that are "overly complex and impractical." *Badgerow*, 2022 WL 959675, at *10 (Breyer, J., dissenting).

[12] *Badgerow*, 2022 WL 959675, at *3.

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