Updates

Last week, the U.S. Supreme Court ruled that federal courts cannot enforce or vacate arbitration awards under Sections 9 and 10 of the Federal Arbitration Act (FAA), 9 U.S.C. § 1 *et seq.*, unless they have an independent jurisdictional basis to consider the case. An 8-1 majority in *Badgerow v. Walters* held that the FAA does not permit federal courts to "look through" an arbitration enforcement action to the subject of the underlying dispute when determining jurisdiction.[1] An action to enforce an arbitral award is, the Court reasoned, essentially a contractual interpretation case that belongs in state court, absent diversity of citizenship jurisdiction under 28 U.S.C. § 1332(a). As a result, most actions to enforce or vacate arbitration awards now must be brought in state courts.

Enforcing or Vacating Arbitration Awards Before *Badgerow*

Until now, many federal courts would "look-through" applications to enforce or vacate arbitration awards to the underlying, substantive dispute giving rise to the arbitration. If the underlying dispute presented a basis for federal jurisdiction—by involving, for example, claims under federal statutes or claims between diverse citizens—the court would adjudicate the enforcement action. Indeed, the Supreme Court has authorized federal courts to use the "look-through" approach in deciding whether they had jurisdiction to compel arbitration under Section 4 of the FAA.[2] But the Court permits "look-through" analysis in a motion to compel arbitration context because the FAA's Section 4 authorizes a party to an arbitration agreement [to] petition for an order to compel in a "United States district court which, *save for [the arbitration] agreement, would have jurisdiction*" over "the controversy between the parties."[3] In contrast, Sections 9 and 10 of the FAA, which cover actions to enforce or vacate an arbitration award, do not contain such "save for" language.

***Badgerow*'s Background**

Badgerow stemmed from arbitration of an employment dispute. Plaintiff/petitioner Denise Badgerow brought federal and state law unlawful termination claims to arbitration, as required by her employment contract. The arbitrators sided with defendants/respondents and dismissed her claims. Badgerow then sued in Louisiana state court to vacate the arbitral decision pursuant to Section 10 of the FAA. Defendants responded by removing the case to federal district court and, once there, applying to confirm the arbitral award under Section 9 of the FAA. In response, Badgerow moved that the federal court lacked jurisdiction over the parties' respective motions to vacate or confirm the award.

The district court assessed its jurisdiction under the "look-through" approach that the Supreme Court endorsed for Section 4 disputes.[4] As noted above, though, Section 4 includes specific language permitting federal courts to look through the motion to compel to the underlying dispute and exercise jurisdiction if, "save for [the arbitration] agreement, [they] would have jurisdiction." Sections 9 and 10 do not contain this "save for" language. Nevertheless, the district court applied the "look-through" approach so that "consistent jurisdictional principles" would govern all kinds of FAA applications.[5] Under that approach, the court had jurisdiction because Badgerow's underlying employment action raised federal law claims. It then granted defendants' application to confirm, and denied Badgerow's application to vacate the arbitral award. The U.S. Court of Appeals for the Fifth Circuit affirmed the district court's decision.[6]

SCOTUS Reverses Based on FAA's Plain Language

The Supreme Court disagreed based on its analysis of the FAA's text. It explained that "Sections 9 and 10 … contain none of the statutory language" permitting a "look-through" approach (such as the Section 4 "save for" clause). Consequently, the Court concluded that the FAA's text "makes Section 9 and 10 applications conform to the normal—and sensible—judicial division of labor: The applications go to state, rather than federal, courts

when they raise claims between non-diverse parties involving state law." In *Badgerow*, the motions to enforce or vacate the award presented a contractual interpretation question under state law, so the federal district court did not have jurisdiction. The Court noted that this is typical: "quarrels about legal settlements—even settlements of federal claims—typically involve only state law, like disagreements about other contracts." Because diversity of citizenship did not exist between Badgerow and her employer, SCOTUS reversed the Fifth Circuit and remanded to the trial court for further proceedings on the underlying motions to enforce or vacate the arbitration award.

Post-*Badgerow*: More Arbitration Litigation in State Courts

Going forward, actions to enforce or vacate arbitration awards will presumptively belong in state court, unless the parties are from different states and the amount in controversy exceeds $75,000, such that diversity jurisdiction exists.

Even if the underlying claims decided in arbitration involved federal law—and thus could give rise to federal question jurisdiction if they could be brought in court—*Badgerow* holds that the case to enforce an arbitral award is in essence nothing more than a breach of contract case, or an action to enforce a settlement agreement that must, absent diversity of citizenship, be brought in state court.

Endnotes

[1] *Badgerow v. Walters*, No. 20-1143, -- S. Ct. -- (U.S. Mar. 31, 2022).

[2] *See Vaden v. Discover Bank*, 556 U.S. 49 (2009).

[3] 9 U.S.C. § 4 (emphasis added).

[4] *Badgerow v. Walters*, No. CV 19-10353, 2019 WL 2611127, at *1 (E.D. La. June 26, 2019).

[5] *Id.* at *2.

[6] 975 F.3d 469 (5th Cir. 2020).

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