Business Litigation

International Arbitration

# US Supreme Court Issues Significant Ruling Limiting the "Look-Through" Jurisdiction of Federal Courts Under the Federal Arbitration Act

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On March 31, 2022, the US Supreme Court issued a significant decision in *Badgerow v. Walters*, No. 20-1143, ending a circuit split about when federal courts have subject matter jurisdiction to review domestic arbitration awards under the Federal Arbitration Act (FAA). In an 8-1 opinion, the Court ruled that federal courts cannot "look through" to the underlying controversy to establish subject matter jurisdiction to confirm or vacate an arbitral award under the FAA. As a result, absent diversity of citizenship, petitioners seeking to confirm or vacate domestic arbitration awards under the FAA must now bring those petitions in state court.

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The FAA governs the enforcement of most arbitration agreements in the United States. The statute dictates the standards for compelling arbitration (under Section 4) and for the confirmation or vacatur of an arbitration award (under Sections 9 and 10). But, although the FAA authorizes a party to make these petitions, the statute does not automatically authorize federal courts to hear them. This is because the FAA, unlike almost all federal statutes, does not itself confer federal subject matter jurisdiction, at least for domestic arbitration agreements. Instead, for a federal court to decide a petition under the FAA, the court must have an "independent jurisdictional basis." *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 582 (2008). (Section 2 of the FAA confers federal subject matter jurisdiction over "non-domestic arbitrations," *i.e.*, those that have at least one foreign party or a substantial international nexus.)

The issue before the Court in *Badgerow* was whether a federal court may determine its jurisdiction to confirm or vacate an arbitration award only by looking at the face of the petition for judicial review, or whether it may "look through" the petition and examine whether federal jurisdiction would exist over the underlying dispute. The Court had previously authorized look-through jurisdiction in the context of petitions to *compel* arbitration under Section 4 of the FAA, *see Vaden v. Discover Bank*, 556 U.S. 49 (2009), but a circuit split had emerged regarding whether the same approach applied to petitions to confirm or vacate under Sections 9 and 10. Whereas the Third and Seventh Circuits maintained that *Vaden* should be confined to petitions to compel under Section 4, the Second Circuit, along with the First and Fourth, applied look-through jurisdiction to other petitions brought under the FAA. This means that until now, the Second Circuit has permitted federal court access for many petitioners seeking review of arbitration awards in New York, where a significant number of the nation's arbitrations take place.

The case arose from an employment arbitration. The petitioner Denise Badgerow brought state and federal claims against her former employer for unlawful termination. After the arbitrators dismissed her claims, Badgerow filed suit in Louisiana state court to vacate the decision, arguing that fraud had taken place during the arbitration proceeding. In response, Badgerow's employer removed the action to federal district court and petitioned the court to confirm the arbitration award. Badgerow then moved to remand, arguing that the federal district court lacked the subject matter jurisdiction needed to confirm or vacate the award under Sections 9 and 10 of the FAA. The district court applied *Vaden*'s look-through approach and held that, because the underlying employment dispute involved federal-law

claims, it could therefore exercise jurisdiction over the employer's petition to review and confirm the award. The Fifth Circuit affirmed, joining the First, Second, and Fourth Circuits in extending the look-through approach to additional petitions under the FAA.

On appeal, the Supreme Court reversed. Resolving the existing circuit split, it held that the look-through approach applicable under Section 4 does not apply to petitions to confirm or vacate arbitration awards under Sections 9 and 10. Thus, jurisdiction to confirm or vacate an arbitration award must be apparent on the face of the petition itself and independent of the underlying dispute. The Court reasoned that Sections 9 and 10 "contain none of the statutory language on which *Vaden* relied" and "[m]ost notably" lacked "Section 4's 'save for' clause." Unlike Section 4, Sections 9 and 10 "do not instruct a court to imagine a world without an arbitration agreement, and to ask whether it would then have jurisdiction over the parties dispute." In fact, the Court pointed out, "Sections 9 and 10 do not mention the court's subject-matter jurisdiction at all." Applying standard principles of statutory interpretation, the Court reasoned that while "Congress could have replicated Section 4's look-through instructions in Sections 9 and 10," it did not, leading to the Court's conclusion that federal courts may determine their jurisdiction only by assessing the parties' petitions to confirm or vacate and not by looking through to the underlying controversy.

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Following *Badgerow*, parties seeking to confirm or challenge arbitration awards in federal court will need to show that a federal question exists on the face of the petition itself. In practice, parties will have to show that either (a) the arbitration agreement is "non-domestic" and thus eligible for federal jurisdiction under Section 2, (b) federal diversity jurisdiction exists over the dispute, or (c) the confirmation action receives pendent jurisdiction due to the presence of a separate and independent federal claim.

The Court's decision in *Badgerow* will likely shift a substantial number of confirmation and vacatur actions to state courts. While the FAA will remain the governing law, the shift to state court will require practitioners to follow state procedural rules and will potentially introduce questions about how *state* arbitration law can fill any gaps in the FAA itself.

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