Case Name and Number: *Badgerow v. Walters*, No. 20-1143

Introduction: Today, the Supreme Court held in an 8-1 decision that federal district courts may not look to the underlying substantive dispute to determine whether there is federal jurisdiction to confirm or vacate arbitral awards under Sections 9 and 10 of the Federal Arbitration Act.

Background: The Federal Arbitration Act (FAA) authorizes a party to an arbitration agreement to petition a federal court for various types of relief—including to compel arbitration, and to confirm or vacate an arbitrator's award. But the FAA does not itself confer subject matter jurisdiction on federal courts to consider those petitions. In *Vaden v. Discover Bank*, 556 U.S. 49 (2009), the Supreme Court held that district courts should "look through" to the underlying claims to assess whether there is federal jurisdiction over a petition to compel arbitration under Section 4 of the FAA, 9 U.S.C. § 4. Under the "look through" approach, if the court would have jurisdiction over the underlying claims, it has jurisdiction to hear the petition to compel arbitration.

In *Badgerow*, the plaintiff sought to vacate an arbitrator's award rejecting employment-related claims. The plaintiff sued in Louisiana state court to vacate the arbitral award. The defendants removed the action to federal district court, and the plaintiff moved to remand the case to state court for lack of subject matter jurisdiction. The district court applied *Vaden*'s "look through" approach and held that it had jurisdiction because the plaintiff's underlying claims in arbitration included federal claims. The Fifth Circuit affirmed.

Issue: Whether federal district courts may "look through" to the underlying substantive dispute to determine whether there is federal jurisdiction to confirm or vacate arbitral awards under Sections 9 and 10 of the FAA.

Court's Holding: In an opinion written by Justice Kagan and joined by the Chief Justice and Justices Thomas, Alito, Sotomayor, Gorsuch, Kavanaugh, and Barrett, the Supreme Court held that *Vaden*'s "look through" approach does not apply to petitions to confirm or vacate arbitral awards under Sections 9 and 10 of the FAA. The Court explained that the "look through" approach applies to petitions to compel arbitration because the express language of Section 4 authorizes filing such a petition in any federal district court that, "save for" the arbitration agreement, would have jurisdiction over the controversy. Sections 9 and 10 of the FAA do not have a similar "save for" clause. Finding no other basis in the FAA for applying *Vaden*'s "look through" approach, the Court held that that approach does not apply to petitions to confirm or vacate arbitral awards under Sections 9 and 10. The most immediate practical consequence of the Court's decision is to shift many petitions to compel or vacate arbitration to state court.

Justice Breyer dissented, explaining that he would apply *Vaden*'s "look through" approach to every provision of the FAA, including Sections 9 and 10, and that the majority's contrary interpretation risks "creat[ing] unnecessary complexity and confusion."

To read the opinion, follow this link.