Through the Looking Glass: Courts Cannot "Look Through" Arbitration Motion to Establish Jurisdiction

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In a nearly unanimous opinion, the United States Supreme Court recently held in *Badgerow v. Walters* that a district court cannot "look through" to the underlying controversy in order to support jurisdiction to decide a motion to confirm, amend, or alter an arbitration award issued under the Federal Arbitration Act (FAA). In so ruling, the Court explicitly declined to extend its holding in *Vaden v. Discover Bank*, 556 U.S. 49 (2009). In *Vaden*, the Court found that in the context of deciding a motion to compel arbitration, the text of 9 USC § 4 of the FAA instructs federal courts to "look through" the motion to the underlying claims and controversy to ensure it has jurisdiction, even though the underlying matter is technically not before the Court. Utilizing this "look through" process, a district court has jurisdiction to rule on a motion to compel arbitration if the underlying dispute falls within its jurisdiction (e.g. raises a federal question or diversity jurisdiction exists).

In *Walters*, Justice Kagan, writing for the majority, undertook a statutory text analysis to distinguish *Vaden*. Specifically, Justice Kagan found that a "look through" analysis was appropriate in considering a motion to compel arbitration under Section 4 of the FAA because that provision specifically provided for such a remedy noting that a party to an arbitration agreement may petition a "United States district court which, save for [the arbitration] agreement, would have jurisdiction."

Conversely, sections 9 and 10 of the FAA (outlining the processes and procedures to confirm, modify, amend, or alter an arbitration award) contain none of the language found in section 4 that would permit a district court to undertake a "look through" analysis to ensure it has jurisdiction to entertain such a motion. Instead, Justice Kagan found that based upon the plain language of those provisions, courts are limited to the actual application seeking to amend, modify, or alter the arbitration award to ensure it has jurisdiction to consider the motion.

As Justice Kagan noted:

> *Those bedrock principles prevent us from pulling look-through jurisdiction out of thin air—from somehow finding, without textual support, that federal courts may use the method to resolve various state-law-based, non-diverse Section 9 and 10 applications. The look-through rule is a highly unusual one: It locates jurisdiction not in the action actually before the court, but in another controversy neither there nor ever meant to be. We*

> *recognized that rule in Vaden because careful analysis of Section 4's text showed that Congress wanted it applied to petitions brought under that provision. See 556 U. S., at 62–65. But Congress has not so directed in Sections 9 and 10. Congress has not authorized a federal court to adjudicate a Section 9 or 10 application just because the contractual dispute it presents grew out of arbitrating different claims, turning on different law, that (save for the parties' agreement) could have been brought in federal court. And because a statutory basis for look-through jurisdiction is lacking here, we cannot reach the same result as in Vaden: That would indeed be jurisdictional "expan[sion] by judicial decree."*

The Court was likewise not persuaded by the petitioner and dissent's policy arguments that a "look through" analysis would be an "easier" analysis for courts that would produce "sensible" results. As the Court noted, "[e]ven the most formidable policy arguments cannot overcome a clear statutory directive."

So what does *Walters* mean in the context of seeking to confirm, modify, or amend an arbitration award under the FAA?

First, to the extent possible, parties should ensure to include with their motion exactly what Justice Kagan suggests: language and information supporting subject-matter jurisdiction in federal court. Second, the practical effect of *Walters* is that, more often than not, motions to confirm or amend an arbitration award will have to be brought in state court. As Justice Kagan noted, the Court has long recognized that feature of the FAA; "enforcement of the Act, is left in large part to the state courts."

Third, practitioners and litigants may also have to explain how and why the FAA confers authority upon a state court to consider a motion brought under sections 9 through 11 of the FAA. In his dissent Justice Breyer raises this exact issue, noting that it is unclear whether state courts can even entertain a motion brought under sections 9 through 11 of the FAA in the first place:

> *But we cannot be sure that state courts have the same powers under the FAA that federal courts have. The FAA says nothing about state courts; it only explicitly mentions federal courts.). We have never held that the FAA provisions I have discussed apply in state courts, and at least one Member of this Court has concluded that they do not apply there. State courts have reached similar conclusions.*

Ultimately, practitioners, litigants, and courts will have to sort out the many questions left unanswered by the *Walters* opinion in order to enforce arbitration judgments.

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