Supreme Court Issues Decision in *Vaden v. Discover Bank*

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Section 4 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 4, authorizes a district court to rule on a petition to compel arbitration if, "save for [the arbitration] agreement" at issue, the court would have jurisdiction of "a suit arising out of the controversy between the parties." On March 9, 2009, the Supreme Court held in ***Vaden v. Discover Bank*, No. 07-773** (previously discussed in the **March 17, 2008 Docket Report**) that § 4 confers jurisdiction if the underlying, substantive "controversy between the parties" arises under federal law, rejecting the contention that "the parties' discrete dispute over the arbitrability of their claims" must itself provide a jurisdictional basis for the petition. However, the Court also held that, under the well-pleaded complaint rule, the district court lacked jurisdiction over "the controversy between the parties" to this case because the only federal question in the underlying state-court lawsuit was raised in the defendant's counterclaim, not in the complaint itself.

This case began with a lawsuit by Discover Bank in Maryland state court to collect a credit card debt of Betty Vaden. Vaden responded by asserting several counterclaims, styled as class actions, which alleged that Discover Bank's demands for finance charges, interest, and late fees violated Maryland's credit laws. Discover Bank then petitioned the U.S. District Court for the District of Maryland for an order compelling arbitration of Vaden's counterclaims on the ground that those claims were completely preempted by the Federal Deposit Insurance Act, 12 U.S.C. § 1831d(a), which prescribes the interest rates that state-chartered, federally insured banks can charge. *Slip op*. 2-4. The district court granted Discover Bank's petition and the Fourth Circuit affirmed, reasoning that jurisdiction existed because Vaden's counterclaims were completely preempted and the complete preemption doctrine overrides the normal operation of the well-pleaded complaint rule. The Supreme Court then granted certiorari to resolve a conflict among the lower federal courts as to whether § 4 of the FAA permits district courts to "look through" a § 4 petition to the parties' underlying, substantive dispute to determine whether federal-question jurisdiction exists. *Slip op*. 4-5.

In an opinion by Justice Ginsburg, a five-Justice majority of the Supreme Court reversed. The Court first held that jurisdiction exists under § 4 if the district court would have jurisdiction over the underlying "substantive conflict between the parties," rejecting Vaden's argument that the only "controversy between the parties" cognizable as a basis for jurisdiction under § 4 is the parties' "discrete dispute over * * * arbitrability." *Slip op*. 11-12. The Court reasoned that its reading of the statute was the "most straightforward[]" and that Vaden's interpretation failed to account for § 4's directive that courts determine whether they would have jurisdiction "save for the [arbitration] agreement." *Slip op*. 12.

The Court next held, however, that "a party seeking to compel arbitration may gain a federal court's assistance only if, 'save for' the agreement, the *entire*, actual 'controversy between the parties,' *as they have framed it*, could be litigated in federal court." *Slip op.* 15 (emphasis added). Therefore, in this case, the district court lacked jurisdiction under § 4 because the entire controversy between the parties, as they

had litigated it, could not have been brought in federal court. *Ibid.* Specifically, the well-pleaded complaint rule precluded Discover Bank from relying on the (alleged) complete preemption of Vaden's counterclaims to establish jurisdiction. *Id.* at 8-11, 15-16. Under these circumstances, the Court held that Discover Bank could not establish jurisdiction under § 4 by severing and relying on "a discrete aspect of the whole controversy" that hypothetically could have been filed in federal court. *Id.* at 16-17. In closing, the Court noted that Discover Bank was "not left without recourse" because the FAA requires "state courts as well as federal courts * * * to honor and enforce agreements to arbitrate" and that Discover Bank "may therefore petition a Maryland court for aid in enforcing the arbitration clause of its contracts with Maryland cardholders." *Id.* at 20.

Chief Justice Roberts filed an opinion concurring in part and dissenting in part that was joined by Justices Stevens, Breyer, and Alito. The Chief Justice agreed with the majority that a district court should "look through" the petition to the underlying "substantive conflict between the parties" but argued that § 4 confers jurisdiction whenever the specific, substantive controversy that the § 4 petitioner sought to arbitrate—*not* the "whole controversy" between the parties—arises under federal law. *Slip op.* 1-2 (opinion concurring in part and dissenting in part). He therefore concluded that § 4 confers jurisdiction in this case because the specific question that Discover Bank sought to arbitrate—whether its finance charges, interest, and late fees were legal—was governed by federal law. *Ibid.*

Mayer Brown filed an amicus brief in support of the respondents.

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