United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
November 10, 2021
Lyle W. Cayce
Clerk

No. 21-10023

ADT, L.L.C.,

Plaintiff—Appellant,

versus

KAMALA RICHMOND; DARRYL RICHMOND,
Individually and as next friend of D.R., J.R. AND E.R., *minors*,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
No. 4:20-CV-759

Before KING, SMITH, and HAYNES, *Circuit Judges*.

JERRY E. SMITH, *Circuit Judge*:

Federal courts can enforce an arbitration agreement only if they could hear the underlying "controversy between the parties." 9 U.S.C. § 4. In *Vaden v. Discover Bank*, 556 U.S. 49 (2009), the Court told us to define that "controversy" by looking to the whole dispute, including any state-court pleadings. The question here is whether we must define the "parties" that way, too. Because the statute makes clear that we may not, we vacate the dismissal and remand.

I.

Telesforo Aviles worked for ADT, L.L.C., installing security systems in customers' homes. After a decade of service, Aviles began spying on customers using the cameras he had installed.

ADT discovered Aviles's misconduct, fired him, and reported him to the authorities. But by then, Aviles had spied on more than two hundred customers, accessing some accounts hundreds of times.

Kamala Richmond and her family are citizens of Texas. They say they were among Aviles's victims. After Aviles's conduct became known, the Richmonds sued Aviles and ADT in Texas state court on sundry state-law claims, seeking more than $1 million in damages. But the Richmonds' contract with ADT contained an arbitration clause. To enforce that clause, ADT brought this federal suit under § 4 of the Federal Arbitration Act. ADT premised jurisdiction on the complete diversity between the Richmonds and ADT, which is a citizen of Florida and Delaware.

A federal court can hear a suit to compel arbitration only if it could hear "a suit arising out of the controversy between the parties." 9 U.S.C. § 4. To define that "controversy," a federal court must "look through" the § 4 petition "to the parties' underlying substantive controversy." *Vaden*, 556 U.S. at 62. If a federal court could hear a suit arising from that "whole controversy," *id.* at 67, then that court can hear the § 4 suit, *id.* at 70.

Applying *Vaden*, the district court looked through ADT's federal suit to the Richmonds' state-court complaint, which named Aviles and ADT as defendants. From that, the court concluded that the "whole controversy" included Aviles, ADT, and the Richmonds. But those parties lacked diversity of citizenship because Aviles, like the Richmonds, is from Texas. *See* 28 U.S.C. § 1332(a)(1). On that ground, the court dismissed ADT's suit for want of diversity jurisdiction.

ADT asks us to revive its suit. ADT says that *Vaden* doesn't extend to diversity of citizenship and that every federal circuit to consider the question agrees. The Richmonds acknowledge the weight of opposing authority but contend that *Vaden* requires affirmance. Although neither side stresses § 4's text, it resolves this case.

II.

Vaden tells us to look to the "whole controversy," not just the petition to compel arbitration, to define the controversy over which the petition asserts federal jurisdiction. *See Vaden*, 556 U.S. at 67. The district court went a step further: It applied *Vaden*'s look-through test to define the "parties" to that controversy. That was error, so we vacate the dismissal and remand.

A.

Section 4 is clear: The only controversy that bears on our jurisdiction is "the controversy *between the parties*." 9 U.S.C. § 4 (emphasis added). Those "parties" are only the parties to the suit to compel arbitration.

> Section 4 empowers
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> *[a] party aggrieved* by the alleged failure, neglect, or refusal of *another to arbitrate under a written agreement for arbitration* [to] petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy *between the parties*, for an order directing that such arbitration proceed in the manner provided for in such agreement.

Id. (emphasis added). Beyond the quoted excerpt, the word "party" or "parties" appears at six other points in § 4.

At all those points, § 4 refers to one or both of two parties. The first are those who "fail[ ], neglect, or refus[e] . . . to arbitrate under a written agreement for arbitration." *Id.* The second are those whom the first aggrieve

by not submitting to arbitration. *See id.* In other words, § 4 uses "parties" to mean only the parties to the § 4 suit: those who refuse to abide their agreement to arbitrate and those whom they aggrieve by doing so. Non-parties to that suit do not matter.

Reading "parties" more broadly would make no textual sense. To take one example, if "the making of the agreement for arbitration . . . is not in issue," a court must "order . . . the parties to proceed to arbitration." *Id.* That provision applies easily to those who have agreed to arbitrate. But how could it apply to *non*parties? A court can't compel a party to arbitrate when it never agreed to. *See Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 19–20 (1983).

Vaden does not control. There, the Court explained only how we must define the § 4 "controversy." It never defined the "parties" whom § 4 describes. *Vaden*'s facts show why.

Vaden was a federal-question case. *See Vaden*, 556 U.S. at 70. And unlike diversity jurisdiction, federal-question jurisdiction turns not on the identity of the parties but on the subject matter of the controversy.[1]

Even if the *Vaden* Court could have decided who the "parties" are, it did not. *Vaden* spoke only to the word "controversy." Section 4, the Court explained, "does not invite federal courts to dream up counterfactuals when actual litigation has defined the parties' *controversy*." *Vaden*, 556 U.S. at 68 (emphasis added). "The relevant question," the majority persisted, "is whether the *whole controversy* between the parties—not just a piece broken off

[1] *Compare* 28 U.S.C. § 1331 ("The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."), *with* 28 U.S.C. § 1332(a)(1) (requiring complete diversity among the parties to sustain diversity jurisdiction).

from that controversy—is *one* over which the federal courts would have jurisdiction." *Id.* at 67 (emphasis added). The majority even framed the question presented as whether "a district court, if asked to compel arbitration pursuant to § 4, [should] 'look through' the petition and grant the requested relief if the court would have federal-question jurisdiction over *the underlying controversy*." *Id.* at 53 (emphasis added).

Although *Vaden* did not define "parties," both its language and its method support our reading. After looking to § 4's text, the Court opined that it refers only to the two parties we've identified: the party "seek[ing] arbitration pursuant to a written agreement" and the party who "resists." *Id.* at 62. And though *Vaden* drew a partial dissent, every Justice agreed that the Court's task was to interpret § 4's text.[2] We do likewise, drawing the meaning of "parties" directly from that section.

Moses H. Cone also favors our view. Moses Cone Hospital, a North Carolina citizen, had contracted with Mercury, an Alabama citizen. The contract contained an arbitration clause. Rather than arbitrate, the hospital sued Mercury and a North Carolina architect, who hadn't signed the agreement to arbitrate, in state court. Mercury then moved in federal court to compel arbitration on diversity-of-citizenship grounds. *Moses H. Cone*, 460 U.S. at 7. The federal district court stayed Mercury's suit, citing the state proceedings. *Id.*

The Court in *Moses H. Cone* considered only the appealability and

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[2] *Compare Vaden*, 556 U.S. at 52–53 (framing the question as whether § 4's text dictates the "look through" approach); *id.* at 62 ("The text of § 4 drives our conclusion" that the look-through test applies), *with id.* at 72–73 (Roberts, C.J., concurring in part and dissenting in part) ("I agree with the Court that a federal court . . . should 'look through' the dispute. . . . But look through to what? The statute provides a clear and sensible answer. . . . [But the majority's] approach is contrary to the language of § 4.").

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