Belz v. Morgan Stanley Smith Barney: Does a Petition to Vacate an FAA-Governed Award Timely Commenced in State Court Become Time-Barred Simply Because it is Removed to Federal Court?

Part I

Belz v. Morgan Stanley Smith Barney, LLC, No. 3:13-cv-636-J-34 (MCR), slip op. (M.D. Fla. March 5, 2014), is one of those deceptively complex cases. The petitioner, successor trustee of a family trust (the ?Trustee?), timely commenced under the Florida Arbitration Code (the ?FAC?) in Florida state court a petition to vacate an arbitration award by filing it within the 90-day period allowed by state law, but did not serve it until a few days after the three-month period required to vacate an award under Section 10 of the Federal Arbitration Act (the ?FAA?) had elapsed. *Compare* Fla. Stat. §§ 682.13(2) & 682.17 *with* 9 U.S.C. §§ 6, 10 & 12.[1]. The petition requested an order vacating the award under both the FAA and the FAC, which allows service to be effected after expiration of the 90-day filing deadline. *See* Fla. Stat. §§ 682.13 & 682.17.

The respondent, a well-known securities broker-dealer (the ?Broker-Dealer?), removed the case to the United States District Court for the Middle District of Florida based on the court's diversity jurisdiction. In federal court the Broker-Dealer argued that the petition was time-barred because service was not effected within the FAA Section 12's three-month deadline. The district court agreed and dismissed the petition as time-barred.

The district court apparently thought that, once a court determines that an arbitration agreement falls within the scope of the FAA, all of its provisions?whether substantive, procedural or a combination of the two?supersede their state law counterparts if they conflict in any way with them, irrespective of whether the conflict frustrates the purposes and objectives of the FAA. The court also seems to have thought that the state of Florida could not, independently from the FAA, declare an arbitration agreement falling under the FAA to be valid, irrevocable and enforceable under Florida substantive arbitration law, and enforce that arbitration agreement through Florida's own statutory, summary procedures that are, for the most part, identical to those provided by the FAA, and, in any event, do not frustrate the purposes and objectives of the FAA.

Belz is deceptively complex because at first glance the case seems relatively straightforward: (a) the FAA applied to the arbitration agreement and award; (b) the FAA's three-month statute of limitations for vacating an award is not tolled until service is effected; (c) the court determined service was not timely under the FAA; (d) the FAC's statute of limitations, which requires only that an application for vacatur be filed within the 90-day period, did not apply because the FAA applied; and (d) therefore, the application to vacate was untimely.

But in *Belz* there was an ?elephant in the room,? albeit one well-camouflaged by its inherent complexity: federalism?a principle reflected in the text of the FAA, in the constitutionally-derived doctrine of implied preemption and in the Federal Rules of Civil Procedure. While ?federalism? is sometimes used to describe a political theory or the principles, characteristics or nature of a federal system of government (like that of Canada or the United States, where governmental power is shared among a national government and partially-self-governing regions or states), we use it in its U.S. legal sense: the constitutional and statutory allocation of power between the U.S. federal and state governments, including between the state and federal court systems.

This allocation of power both defines actual or potential conflicts between state and federal law and guides their resolution. Article VI, Section 2, of the U.S. Constitution, the Supremacy Clause, provides that the "Constitution, and the Laws of the United States ? shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. Art. IV. It expresses the straightforward principle that when applicable state law conflicts with applicable federal law, then federal law trumps?that is, ?preempts??state law.

Whether or not state and federal law conflicts to the extent that it preempts state law is not resolved in a contextual vacuum by, for example, comparing a provision of a federal statute with a state statute and determining whether they differ from one another. By its terms, Section 12's service-within-three-months requirement applies only in federal court and was never intended to apply in state court. *See* 9 U.S.C. §§ 10, 12. Thus, it cannot directly conflict with the FAC's statute of limitations unless it is applied by a federal court in lieu of Section 12 in circumstances where the federal court is supposed to apply Section 12 rather than FAC Section

682.13(2).

Had *Belz* been commenced in federal court, rather than removed to federal court, then the three-month-service-requirement would have applied. Whether it is construed to be a federally-imposed statute of limitations applicable to summary enforcement of FAA-governed awards in federal court or simply a procedural precondition to the availability of the federally-created remedy of expedited vacatur of an arbitration award in federal court, it is procedural when considered from the standpoint of the legislative competence of federal versus state governments concerning the administration of their court systems. See, e.g., *Hall Street Assoc., L.L.C. v. Mattel, Inc.*, 556 U.S. 576, 581-82, 590-92 (2008); *Howlett v. Rose*, 496 U.S. 356, 369-73 (1990); Herb. v. Pitcairn, 324 U.S. 117, 119-24 (1945); see, generally, *Sun Oil Co. v. Wortman*, 486 U.S. 717, 723-27 (1988).

Because it is a procedural requirement, and because the Federal Rules of Civil Procedure expressly contemplate its application in federal courts, application of Section 12 to actions commenced in federal courts does not violate the *Erie* doctrine. Federal courts do not violate the *Erie* doctrine by applying their own procedural rules (whether prescribed directly by Congress or indirectly through the Rules Enabling Act) to cases brought in federal court under the diversity jurisdiction. See Hanna v. Plumer, 380 U.S. 460, 473-74 (1965). The Federal Rules of Civil Procedure expressly recognize the existence of the FAA's procedural mechanisms for the enforcement of arbitration agreements and declare them applicable in federal court: ?[t]hese rules, to the extent applicable, govern proceedings under the following laws, except as these laws provide other procedures. . . . (B) 9 U.S.C., relating to arbitration. . . .? *See* Fed. R. Civ. P. 81(a)(6)(B).

But the supremacy of federal procedural requirements over their state counterparts is not absolute when a case is removed to federal court. Federal Rule of Civil Procedure 81(c)(1) states that ?these rules apply to a civil action *after* it is removed from a state court.? Fed. R. Civ. P. 81(c)(1) (emphasis added). The legal significance of events that took place *before* removal is determined by state law. See Taylor v. Bailey Tool & Mfg. Co., ___ F.3d ___, ___, No. 13-10715, slip op. at 4-5 (5th Cir. Mar. 10, 2014); Pacific Employers v. Sav-A-Lot of Winchester, 291 F.3d 392, 400-01 (6th Cir. 2002); Anderson v. Allstate Ins. Co., 630 F.2d 677, 682 (9th Cir. 1980); Freight Terminals, Inc. v. Ryder Sys., Inc., 461 F.2d 1046, 1052 (5th Cir. 1972).

Thus, the district court's decision was correct only if the Supremacy Clause of the U.S. Constitution would require Florida to apply FAA Section 12's service-within-three-month requirement to an application to vacate an FAA-governed award made in a Florida state court. But, as we will explain in more detail in Part II of this post, under preemption doctrine established by decades of U.S. Supreme Court jurisprudence, including cases concerning the FAA preemption of state law, Florida's rule does not conflict with the FAA Section 12 directly, nor does it frustrate the purposes and objectives of the FAA. See, e.g., *Volt Info. Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 477-78 (1989).

[1] References to the FAC are to a prior version based on the Uniform Arbitration Act (?UAA?) 1955. Florida recently revised the FAC based on the Revised Uniform Arbitration Act 2000 (the ?Revised UAA?), but the UAA version governed the arbitration agreement and award in this case. To review the pertinent version online, go here, type in "2011" in the "Select Year" box at the top of the page, go to to the link provided for Title XXXIX (Commercial Relations) and then to the link for Chapter 682 (Arbitration Code).