WILL v. HALLOCK

Supreme Court of the United States, 2006.
___ U.S. ___, 126 SCt 952.

Professor's Note: The appellate case selection of the casebook is "ok," but unnecessarily challenging–and boring. This will be the first of two cases in the appeals portion of the course where I have substituted recent cases, which IMHO do a much better job of helping you appreciate the importance of appellate review prior to judgment. A trial practitioner must be aware of this option to properly serve the interests of the client–*e.g.*, when a judge rules that your client has to turn over documents, during the discovery phase, which you believe to be privileged from disclosure.

Court's Opinion: JUSTICE SOUTER delivered the opinion of the Court.

The authority of the Courts of Appeals to review "all final decisions of the district courts," 28 U.S.C. § 1291, includes appellate jurisdiction over "a narrow class of decisions that do not terminate the litigation," but are sufficiently important and collateral to the merits that they should "nonetheless be treated as final". The issue here is whether a refusal to apply the judgment bar of the Federal Tort Claims Act [FTCA] is open to collateral appeal. We hold it is not.

I

The complaint alleges that Susan Hallock owned a computer software business that she and her husband, Richard, operated from home. After information about Richard Hallock's credit card was stolen and used to pay the subscription fee for a child pornography Web site, agents of the United States Customs Service, investigating the Web site, traced the payment to Richard Hallock's card and got a warrant to search the Hallocks' residence. With that authority, they seized the Hallocks' computer equipment, software, and disk drives. No criminal charges were ever brought, but the Government's actions produced a different disaster. When the computer equipment was returned, several of the disk drives were damaged, all of the stored data (including trade secrets and account files) were lost, and the Hallocks were forced out of business.

In July 2002, Susan Hallock and her company brought an action against the United States [employer, not employees] under the Federal Tort Claims Act, invoking the waiver of sovereign immunity, and alleging negligence by the customs agents in executing the search. The merits of the claim were never addressed, for the District Court granted the Government's motion to dismiss, holding that the agents' activities occurred in the course of detaining goods and thus fell within an exception to the Act's waiver of sovereign immunity.

While the suit against the Government was still pending, Susan Hallock filed this action against the individual agents under *Bivens v. Six Unknown Fed. Narcotics Agents,* 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971) [Federal Question jurisdiction arising directly under the Constitution's 4th Amendment search and seizure provision–in the absence of what was then an applicable federal statute], alleging in her complaint that the agents had damaged her computers and thus deprived her of property including business income in violation of the Due Process Clause of the Fifth Amendment. After the District Court dismissed the first suit against the

Government, the agents moved for judgment in the *Bivens* action, citing the judgment bar of the Tort Claims Act, that "the judgment in an action under 1346(b) of this title shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the government whose act or omission gave rise to the claim."

The District Court denied the motion, holding that dismissal of the action against the Government under the Tort Claims Act was solely on a procedural ground, and thus failed to raise the judgment bar. The Court of Appeals for the Second Circuit affirmed, after first finding [that appeals court had] jurisdiction under the collateral order doctrine. We granted certiorari to consider the [FTCA] judgment bar, but now vacate for want of appellate jurisdiction on the part of the Court of Appeals.

II

The collateral order doctrine, identified with *Cohen v. Beneficial Industrial Loan Corp.,* 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed. 1528 (1949), is "best understood not as an exception to the 'final decision' rule laid down by Congress in § 1291, but as a 'practical construction' of it." Whereas 28 U.S.C. § 1291 "gives courts of appeals jurisdiction over 'all final decisions' of district courts" that are not directly appealable to us, the collateral order doctrine accommodates a "small class" of rulings, not concluding the litigation, but conclusively resolving "claims of right separable from, and collateral to, rights asserted in the action" * * * . The claims are "too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated."

The requirements for collateral order appeal have been distilled down to three conditions: that an order " '[1] conclusively determine the disputed question, [2] resolve an important issue completely separate from the merits of the action, and [3] be effectively unreviewable on appeal from a final judgment.' ". The conditions are "stringent," and unless they are kept so, the underlying doctrine will overpower the substantial finality interests §1291 is meant to further: judicial efficiency, for example, and the "sensible policy 'of avoid[ing] the obstruction to just claims that would come from permitting the harassment and cost of a succession of separate appeals from the various rulings to which a litigation may give rise.' "

Accordingly, we have not mentioned applying the collateral order doctrine recently without emphasizing its modest scope. ("[T]he 'narrow' exception should stay that way and never be allowed to swallow the general rule that a party is entitled to a single appeal, to be deferred until final judgment has been entered ..." (citation omitted)). And we have meant what we have said; although the Court has been asked many times to expand the "small class" of collaterally appealable orders, we have instead kept it narrow and selective in its membership.

A

Prior cases mark the line between rulings within the class and those outside. On the immediately appealable side are orders rejecting absolute immunity, and qualified immunity. A State has the benefit of the doctrine to appeal a decision denying its claim to Eleventh Amendment immunity, and a criminal defendant may collaterally appeal an adverse ruling on a defense of double jeopardy.

The examples admittedly raise the lawyer's temptation to generalize. In each case, the collaterally appealing party was vindicating or claiming a right to avoid trial, in satisfaction of

the third condition: unless the order to stand trial was immediately appealable, the right would be effectively lost. Those seeking immediate appeal therefore naturally argue that any order denying a claim of right to prevail without trial satisfies the third condition. But this generalization is too easy to be sound and, if accepted, would leave the final order requirement of § 1291 in tatters. We faced this prospect in * * * an appeal from an order rescinding a settlement agreement. Petitioner asserted a " 'right not to stand trial' requiring protection by way of immediate appeal," analogizing the rescission to a denial of immunity.   We said no, however, lest "every right that could be enforced appropriately by pretrial dismissal [be] loosely ... described as conferring a 'right not to stand trial.' " Otherwise, "almost every pretrial or trial order might be called 'effectively unreviewable' in the sense that relief from error can never extend to rewriting history."

> Allowing immediate appeals to vindicate every such right would move § 1291 aside for claims that the district court lacks personal jurisdiction, that the statute of limitations has run, that the movant has been denied his Sixth Amendment right to a speedy trial, that an action is barred on claim preclusion principles, that no material fact is in dispute and the moving party is entitled to judgment as a matter of law, or merely that the complaint fails to state a claim. Such motions can be made in virtually every case.

B

Since only some orders denying an asserted right to avoid the burdens of trial qualify, then, as orders that cannot be reviewed "effectively" after a conventional final judgment, the cases have to be combed for some further characteristic that merits appealability under *Cohen;* and as *Digital Equipment* explained, that something further boils down to "a judgment about the value of the interests that would be lost through rigorous application of a final judgment requirement."

* * *

In each case, some particular value of a high order was marshaled in support of the interest in avoiding trial: honoring the separation of powers, preserving the efficiency of government and the initiative of its officials, respecting a State's dignitary interests, and mitigating the government's advantage over the individual. That is, it is not mere avoidance of a trial, but avoidance of a trial that would imperil a substantial public interest, that counts when asking whether an order is "effectively" unreviewable if review is to be left until later.

Does the claim of the customs agents in this case serve such a weighty public objective that the judgment bar should be treated as an immunity demanding the protection of a collateral order appeal? One can argue, of course, that if the *Bivens* action goes to trial the efficiency of Government will be compromised and the officials burdened and distracted, as in the qualified immunity case: if qualified immunity gets *Cohen* treatment, so should the judgment bar to further litigation in the aftermath of the Government's success under the Tort Claims Act. But the cases are different. Qualified immunity is not the law simply to save trouble for the Government and its employees; it is recognized because the burden of trial is unjustified in the face of a colorable claim that the law on point was not clear when the official took action, and the action was reasonable in light of the law as it was. The nub of qualified immunity is the need to induce

officials to show reasonable initiative when the relevant law is not "clearly established," a quick resolution of a qualified immunity claim is essential.

There is, however, no such public interest at stake simply because the judgment bar is said to be applicable. It is not the preservation of initiative but the avoidance of litigation for its own sake that supports the judgment bar, and if simply abbreviating litigation troublesome to Government employees were important enough for *Cohen* treatment, collateral order appeal would be a matter of right whenever the government lost a motion to dismiss under the Tort Claims Act, or a federal officer lost one on a *Bivens* action, or a state official was in that position in a case under 42 U.S.C. § 1983 * * * . In effect, 28 U.S.C. § 1291 would fade out whenever the government or an official lost an early round that could have stopped the fight.

* * *

The judgment bar at issue in this case has no claim to greater importance than the typical defense of claim preclusion; and we hold true to form in deciding what *Digital Equipment* implied, that an order rejecting the defense of judgment bar under 28 U.S.C. § 2676 cries for no immediate appeal of right as a collateral order.

We vacate the judgment of the Court of Appeals and remand with instructions to dismiss the appeal for lack of jurisdiction.

Notes & Questions:

1. Does trial court subject matter jurisdiction play a role in the analysis of appeability?
2. What is the primary distinguishing feature of the collateral order doctrine's basis for appealability? Are there other elements?
3. On what policy factors should appealability depend?
4. Did the Supreme Court correctly determine that the "*Cohen*" basis for appeal should be "narrowly construed?"