SUPREME COURT OF THE UNITED STATES

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DIGITAL EQUIPMENT CORP. *v.* DESKTOP DIRECT, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 93–405. Argued February 22, 1994—Decided June 6, 1994

Pursuant to a settlement agreement between the parties, the District Court dismissed a trademark infringement suit that respondent Desktop Direct, Inc., had filed against petitioner Digital Equipment Corporation. Months later, it granted Desktop's motion to vacate the dismissal and rescind the agreement on the ground that Digital had misrepresented material facts during settlement negotiations. The Court of Appeals dismissed Digital's appeal for lack of jurisdiction, see 28 U. S. C. §1291, holding that the District Court order was not immediately appealable under the collateral order doctrine. Applying the three-prong test set forth in *Coopers & Lybrand* v. *Livesay,* 437 U. S. 463, it concluded that the entitlement claimed under the settlement agreement was insufficiently ``important'' to warrant immediate appeal as of right and reasoned that an alleged privately negotiated ``right not to go to trial'' was different in kind from an immunity rooted in an explicit constitutional or statutory provision or compelling public policy rationale, the denial of which has been held to be immediately appealable.

Held: A refusal to enforce a settlement agreement claimed to shelter a party from suit is not immediately appealable under §1291. Pp. 3–22.

(a) Although certain categories of prejudgment decisions justify departure from §1291's general final judgment requirement, the collateral order doctrine is a narrow exception and should never be allowed to swallow the rule. Thus, immediate appeal is confined to those decisions that are conclusive, that resolve important questions completely separate from the merits, and that would render such questions effectively unreviewable on appeal from the final judgment in

the underlying action. See *Coopers & Lybrand.* Appealability must be determined for the entire category to which a claim belongs, without regard to the chance that the litigation at hand might be speeded, or a particular injustice averted, by a prompt appellate court decision. Pp. 3–4.

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(b) Orders denying immunities are strong candidates for prompt appeal under §1291. *Abney* v. *United States,* 431 U. S. 651 (right to be free from a second trial on a criminal charge); *Mitchell* v. *Forsyth,* 472 U. S. 511 (right of government official to qualified immunity from damage suit). However, merely identifying some interest that would be ``irretrievably lost'' has never sufficed to meet the third *Cohen* requirement, see generally *Lauro Lines, s.r.l.* v. *Chasser,* 490 U. S. 495, 499, for then appellate jurisdiction would depend on a party's agility in characterizing the right asserted. Even limiting the focus to whether the interest claimed may be called a ``right not to stand trial'' would move §1291 aside too easily, since virtually any right that could be enforced appropriately by pretrial dismissal might loosely be so described. Precisely because there is no single, obviously correct way to characterize an asserted right, §1291 requires courts of appeals to view claims of a ``right not to be tried'' with skepticism. Pp. 4–11.

(c) That Digital's agreement may be read as providing for immunity from trial does not distinguish its claim from other arguable rights to be trial-free, such as an assertion of res judicata, and attaching significance to the supposed clarity of this agreement's terms would flout the admonition that availability of collateral order appeal must be determined categorically. More fundamentally, such a right by agreement does not rise to the level of importance needed for recognition under §1291. Digital errs in maintaining that ``importance'' has no place in a doctrine justified as supplying a gloss on Congress's ``final decision'' language. The third *Cohen* question, whether a right is ``adequately vindicable'' or ``effectively reviewable,'' simply cannot be answered without a judgment about the value of the interests that would be lost through rigorous application of a final judgment requirement. While there is no need to decide here that a privately conferred right could never supply the basis of a collateral order appeal, there are sound reasons for treating such rights differently from those originating in the Constitution or statutes. There is little room to gainsay the importance of the public policy embodied in constitutional or statutory provisions entitling a party to immunity from suit, but including such a provision in a private contract is barely a *prima facie* indication that the right is important to the benefitted party, let alone that its value exceeds that of other rights not embodied in agreements, or that it is ``important'' in *Cohen*'s sense, as being weightier than the policies advanced by §1291. Pp. 11–18.

(d) Even if the term ``importance'' were to be exorcised from the *Cohen* analysis altogether, Digital's rights would remain adequately vindicable on final judgment to an extent that other

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immunities are not. Freedom from trial is rarely the *sine qua non* of a negotiated settlement agreement and will rarely compare with the embarrassment and anxiety averted by a successful double jeopardy claimant or the distraction from duty avoided by qualified immunity. Moreover, unlike trial immunity claimants relying on public law, a settling party can seek relief in state court for breach of contract or may move for a sanction under Federal Rule of Civil Procedure 11 if a rescission was sought for improper purposes. In addition, Digital's insistence that the District Court applied a fundamentally wrong legal standard in vacating the dismissal order here might support a discretionary interlocutory appeal under 28 U. S. C. §1292(b). Pp. 18–21.

993 F. 2d 755, affirmed.

SOUTER, J., delivered the opinion for a unanimous Court.