Legal Update Article

U.S. Supreme Court: Employment Class Arbitration Must Be Expressly Addressed in Contract

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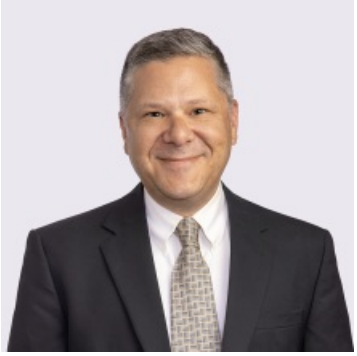

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Class action arbitration is such a departure from ordinary, bilateral arbitration of individual disputes that courts may compel class action arbitration *only* where the parties expressly declare their intention to be bound by such actions in their arbitration agreement, the U.S. Supreme Court has ruled in a 5-4 decision. ***Lamps Plus, Inc. v. Varela***, No. 17-988 (Apr. 24, 2019). The Supreme Court said, "Courts may not infer from an ambiguous agreement that parties have consented to arbitrate on a classwide basis."

Following the Supreme Court's decision, arbitration agreements must clearly and unmistakably state that the parties agree to resolve class and collective actions through arbitration. Without such a clear agreement, a party cannot be compelled to class arbitration.

"Under the Federal Arbitration Act [FAA], an ambiguous agreement cannot provide the necessary contractual basis for concluding that the parties agreed to submit to a class arbitration," the Court held. "Like silence, ambiguity does not provide a sufficient basis to conclude that parties to an arbitration agreement agreed to 'sacrifice the principal advantage of arbitration.' This conclusion aligns with the court's refusal to infer consent when it comes to other fundamental arbitration questions."

Reaffirming that arbitration is a matter of consent, the Court announced that ambiguity regarding class and collective actions must be resolved in favor of ordinary, bilateral arbitration, regardless of which party drafted the agreement.

The Court also ruled that the FAA forecloses a state-law interpretation of an arbitration agreement authorizing class action based solely on general or ambiguous language in the agreement.

Accordingly, the Court concluded that the U.S. Court of Appeals for the Ninth Circuit erred when it affirmed class action arbitration, reversing and remanding to the Ninth Circuit for further proceedings consistent with its opinion.

Background

Following a 2016 data breach of employee information at Lamps Plus, employee Frank Varela filed a putative class action lawsuit against the company in California federal court asserting statutory violations and common law claims relating to the breach. Lamps Plus moved to compel individual arbitration based on Varela's arbitration agreement with the company. The district court granted the motion, but ruled that Varela may proceed with a class action in arbitration. Lamps Plus appealed the ruling to the U.S. Court of Appeals for the Ninth Circuit.

The Ninth Circuit affirmed the district court's decision, noting that the parties' arbitration agreement did not contain an explicit waiver prohibiting arbitration of class or collective claims. It found significant that the parties had committed to using arbitration "in lieu of any

and all lawsuits or other civil legal proceedings," and that they were free to arbitrate any claims "that, in the absence of this Agreement, would have been available to the parties by law" and obtain any "award[s] or remed[ies] allowed by applicable law." The Ninth Circuit held that the arbitration agreement was ambiguous as to whether the parties agreed to submit class claims to arbitration. It then applied a California contract-law principle that any ambiguity in an agreement be construed against the drafter. The Ninth Circuit concluded the arbitration agreement permitted arbitration of Varela's class claims.

On appeal to the Supreme Court, Lamps Plus argued that the Ninth Circuit: (i) improperly held the agreement was ambiguous; (ii) improperly found an "implicit agreement to authorize class-action arbitration" in violation of the Supreme Court's decision in *Stolt-Nielsen v. AnimalFeeds International Corp.,* 559 U.S. 662 (2010); and (iii) *Stolt-Nielsen* required an explicit agreement between the parties before they could be compelled to class arbitration.

Varela responded that: (i) the appellate courts lack jurisdiction to hear the appeal because the FAA does not permit interlocutory appeals and an order compelling arbitration is not a final order; (ii) Lamps Plus lacks standing to appeal because its motion to dismiss the case was granted when the district court compelled arbitration; (iii) the Ninth Circuit correctly held that the agreement supported class action arbitration; and (iv) the FAA does not prohibit the use of state contract-law principles to interpret arbitration agreements, as long as the principles are neutral and do not treat arbitration agreements differently than other types of contracts.

Supreme Court Decision

On the preliminary matters of jurisdiction and standing, the Supreme Court held that an order that both compels arbitration and dismisses the underlying claims qualifies as a "final decision with respect to an arbitration" within the meaning of 9 U.S.C. §16(a)(3). The Court disagreed with Varela's argument that Lamps Plus had already secured the relief it requested *(i.e.,* an order dismissing the claim and compelling arbitration). The Court held the order sought individual rather than class arbitration. The shift from individual to class arbitration is a "fundamental" change, the Court noted, that "sacrifices the principal advantage of arbitration" and "greatly increases risks to defendants." Therefore, the Court ruled Lamps Plus had the "necessary personal stake" to appeal.

On the merits, the Supreme Court reversed the Ninth Circuit, holding that an ambiguous agreement cannot provide the necessary "contractual basis" for compelling class arbitration. The Court noted this conclusion follows directly from its decision in *Stolt-Nielsen.* The Court continued, "Class arbitration is not only 'markedly different' from the 'traditional individualized arbitration' contemplated by the FAA, it also undermines the most important benefits of that familiar form of arbitration. The statute therefore requires more than ambiguity to ensure that the parties actually agreed to arbitrate on a class wide basis."

The Court reiterated that the FAA imposes certain fundamental rules with regard to arbitration agreements, including that arbitration is "a matter of consent, not coercion." Relying on the reasoning in *Stolt-Nielsen,* the Court held courts may not infer consent to participate in class arbitration absent an affirmative "contractual basis for concluding that the party *agreed* to do so." The Court emphasized that silence or ambiguity is not enough, the "FAA requires more." The Court determined that the lower court's approach was flatly

inconsistent with the "foundational principle that arbitration is a matter of consent."

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The rule against coercing parties into arbitration is particularly important in the class action context. Class actions are substantively different from the ordinary, bilateral arbitration contemplated by most parties to an employment arbitration agreement. Among other things, class actions expose the employer to exponentially greater liability and risk, while eliminating the safeguard of an appeal. Class actions also purport to speak for employees who may not want to participate in the action, but nonetheless find themselves bound by an arbitration award. They also introduce complex and time-consuming litigation practices into the arbitration forum, which is intended to be faster, cheaper, and more efficient than ordinary litigation in courts.

Please contact a Jackson Lewis attorney with any questions about this case or employment arbitration agreements.

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