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Ambiguous Arbitration Provision Prohibits Class Arbitration of Dispute

By Andrew Campbell – August 21, 2019

In a 5-4 decision, divided along ideological lines, the Supreme Court held in *Lamps Plus, Inc. v. Varela*, 587 U.S. ___ (2019), that an ambiguous arbitration provision could not be used to compel class arbitration.

In 2016, a hacker obtained the tax information of approximately 1,300 employees of petitioner Lamps Plus, Inc. Shortly thereafter, Frank Varela, a Lamps Plus employee, had a fraudulent tax return filed in his name. He filed a class action in a California district court against Lamps Plus. Lamps Plus moved to compel an individual arbitration. The district court granted the motion to compel arbitration but denied the request to treat the arbitration as an individual, rather than a class action. Lamps Plus appealed to the Ninth Circuit arguing that the trial court erred in permitting a class arbitration.

Citing *Stolt-Nielsen S.A. v. AnimalFees Int'l Corp.*, 559 U.S. 662 (2010), the Ninth Circuit observed that class arbitration may not be compelled "unless there is a contractual basis for concluding that the party *agreed* to do so." The Ninth Circuit found *Stolt-Nielsen* inapplicable, because the parties in that case stipulated that the agreement was silent as to class arbitrations. Here, there was no such stipulation. Accordingly, the Ninth Circuit reviewed the arbitration agreement and found it was ambiguous as to class arbitrations. While the agreement included provisions suggesting that the parties intended "purely binary claims," it also said that "arbitration shall be in lieu of any and all lawsuits or other civil legal proceedings relating to my employment." To resolve the ambiguity, the court applied California law and construed the ambiguity against the drafter—Lamps Plus. Thus, Varela's class arbitration was allowed to proceed. Lamps Plus appealed to the Supreme Court, which, in a 4-1-4 split (Justice Thomas concurred with the opinion of the Court), reversed the Ninth Circuit's decision.

Before addressing whether the class arbitration may proceed, the Court determined whether it had jurisdiction under §16 of the Federal Arbitration Act. Lamps Plus asserted jurisdiction under §16(a)(3), which allows for an appeal from "a final decision with respect to an arbitration that is subject to this title." The Court determined that the district court's order compelled arbitration *and* dismissed the underlying claims before it; accordingly, the order was "final" and appealable within the meaning of §16(a)(3).

On the merits, the Court's opinion accepted the Ninth Circuit's determination that the contract was ambiguous and then assessed whether a class arbitration could proceed in light of an ambiguous contract. The Court held that it could not. The FAA requires arbitration agreements to be enforced according to their terms. Further, arbitration is a matter of consent and not coercion. Relying on *Stolt-Nielsen*, the Court held that consent to a class arbitration cannot be inferred through the application of state court rules for resolving ambiguous contracts. This was because there are fundamental differences between a class arbitration and an individual arbitration. In individual arbitrations, parties forgo procedural rigor and appellate review in exchange for lower

costs, greater efficiency, and the ability to choose expert adjudicators. But, the Court found, class arbitrations lack those benefits by sacrificing informality, speed, simplicity and because they are likely to result in a procedural "morass."

Justice Thomas joined the Court's conclusion, but he wrote separately because he was "skeptical" of the Court's view that the FAA preempts state law contract interpretation principles.

Justices Ginsburg, Breyer, Sotomayor, and Kagan each wrote dissenting opinions. Justice Ginsburg joined Justice Kagan's dissent in full but wrote separately to critique recent decisions of the Court, which have hobbled the ability of consumers and employees to band together in either judicial or arbitral forums. She observed that most employees are without meaningful negotiating power and are faced with the Hobson's choice of accepting an employer's arbitration provision or not getting a job. Indeed, she found it ironic that the majority based its decision on the principle that arbitration is "strictly a matter of consent," while at the same time imposing individual arbitration on employees who certainly would not choose to proceed in that manner.

Justice Kagan's dissent made two central points. First, the agreement at issue was not ambiguous—it contemplated class arbitrations. Second, even if the arbitration agreement was ambiguous, applying state law rules of contract interpretation, including construing ambiguous contracts against the drafter, is proper. The FAA, Justice Kagan wrote, displaces state law contract law only when such law discriminates against arbitration—which was not the case here.

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