Class Action Monitor

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The Supreme Court Rules on *Lamps Plus, Inc. v. Varela*

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On April 24, 2019, in *Lamps Plus, Inc. v. Varela*, the Supreme Court held in a 5-4 decision that arbitration agreements must expressly provide by their terms for class arbitration, rejecting prior decisions suggesting that class treatment could be inferred from ambiguous language.

Background

Lamps Plus inadvertently released approximately 1,300 employees' personal identifying tax information in response to a phishing scam. After a fraudulent federal income tax return was filed in Lamps Plus employee Frank Varela's name, Varela filed a putative class action asserting claims for negligence, breach of implied contract, violation of the California Consumer Records Act, violation of the California Unfair Competition Law, invasion of privacy, and negligent violation of the Fair Credit Reporting Act.[1] Varela had signed an arbitration agreement as a condition of his employment that incorporated standard language commonly used in arbitration agreements, including a waiver of a right to file suit against Lamps Plus and agreement to arbitrate in lieu of civil proceedings. Notably, the arbitration agreement did not expressly reference class arbitration.[2] In response to Varela's suit, Lamps Plus moved to compel arbitration pursuant to the arbitration agreement.

Lower Courts' Rulings

The district court granted Lamps Plus's motion to compel arbitration but ordered that the arbitration should proceed on a class, rather than individual, basis.[3] The Court reasoned that the standard terms in the agreement were "at least ambiguous as to class claims" and construed the agreement against the drafter, Lamps Plus, pursuant to California contract law.[4]

The Ninth Circuit affirmed.[5] It reasoned that, although the Supreme Court ruled in *Stolt-Nielsen, S.A. v. Animal Feeds Int'l Corp.* that "a party may not be compelled under the FAA to submit to class arbitration unless there is a contractual basis for concluding that the party agreed to do so,"[6] "the mere absence of language explicitly referring to class arbitration" does not always mean that an arbitration agreement prohibits class proceedings.[7]

The Supreme Court granted certiorari as to whether the parties agreed to class arbitration solely through the application of state law contractual interpretation principles despite the arbitration agreement's silence as to class arbitration.[8]

The Supreme Court's Decision

In a 5-4 decision along ideological lines, the Supreme Court reversed and remanded, holding that courts may not infer consent to arbitrate on a class-wide basis from an ambiguous agreement. Chief Justice Roberts delivered the Court's opinion, which reasoned that arbitration is rooted in consent[9] and, given the vast differences between class and individual arbitration,[10] consent to class arbitration must be explicit. The Supreme Court analogized to *Stolt-Nielsen* and concluded that, like silence, ambiguity is insufficient to infer that the contracting parties intended to sacrifice the central benefits of arbitration itself (with which class arbitration is inconsistent). It reasoned that the canon of construction requiring that ambiguity be construed against the drafter is based on public policy considerations, rather than divining the intent of the contracting parties, and that it applies only if the parties' intent cannot be ascertained.[11] Chief Justice Roberts concluded by emphasizing the Federal Arbitration Act's rule that an arbitration agreement must be resolved in favor of arbitration.[12]

Conclusion

The Supreme Court's decision in *Lamps Plus* applies and extends *Stolt-Nielsen*'s holding that a court may not order class arbitration unless there is a "contractual basis" to conclude that the parties agreed to do so and may not "presume" such consent from "mere silence." Pursuant to *Lamps Plus*, state law doctrines, such as California's rule of construing ambiguity against the drafter, are not sufficient evidence of the contracting parties' intent to arbitrate on a class-wide basis. While we recommend that our clients include clear and express class action waivers in employment agreements, *Lamps Plus* provides a powerful weapon for fighting class arbitration even absent a clear class action waiver.

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[1] *Varela v. Lamps Plus, Inc.*, No. CV 16-577-DMG (KSX), 2016 WL 9110161, at *1-2 (C.D. Cal. July 7, 2016), *aff'd*, 701 F. App'x 670 (9th Cir. 2017), *rev'd and remanded*, No. 17-988, 2019 WL 1780275 (U.S. Apr. 24, 2019).

[2] *Varela v. Lamps Plus, Inc.*, 701 F. App'x 670, 672 (9th Cir. 2017), *rev'd and remanded*, No. 17-988, 2019 WL 1780275 (U.S. Apr. 24, 2019).

[3] *Varela*, 2016 WL 9110161, at *7.

[4] *Id*.

[5] *Varela*, 701 F. App'x at 673.

[6] *Id*. at 673; *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 685, 687, 130 S. Ct. 1758, 176 L.Ed.2d 605 (2010).

[7] *Varela*, 701 F. App'x at 672-73.

[8] *Lamps Plus, Inc. v. Varela*, No. 17-988, 2018 WL 3374999, at *i (U.S. 2018) (question presented by Petitioner Lamps Plus is "[w]hether the Federal Arbitration Act forecloses a state-law interpretation of an arbitration agreement that would authorize class arbitration based solely on general language commonly used in arbitration agreements.").

[9] *Lamps Plus, Inc. v. Varela*, No. 17-988, 2019 WL 1780275, at *5 (U.S. Apr. 24, 2019) ("Consent is essential under the FAA because arbitrators wield only the authority they are given.").

[10] *See id*. at *5 (noting individual arbitration "'forgo[es] the procedural rigor and appellate review'" to achieve "the benefits of private dispute resolution," which include lower costs, greater efficiency and speed, and choice over adjudicators, and commenting that class arbitration "'sacrifices the principal advantage of individual arbitration,'" including informality, speed, cost, and evading procedural morass) (internal citations omitted).

[11] *See id*. at *6 (noting the rule applies only as a "last resort" and is heavily based on public policy factors and equitable considerations).

[12] *Id.* at 8.

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