

CLIENT ALERT

## Supreme Court Rules that an Ambiguous Arbitration Agreement Does Not Provide a Basis for Class Arbitration

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Continuing a long string of decisions favoring strict enforcement of arbitration clauses, the Supreme Court has held that ambiguity in an arbitration clause does not open the door for a plaintiff to force an arbitration to proceed on a class-wide basis. The Court's decision in *Lamps Plus, Inc. v. Varela*, No. 17-988, underscores yet again that the Court will not allow common-law contract principles to trump provisions of the Federal Arbitration Act.

In *Lamps Plus*, Frank Varela filed a class action complaint, asserting negligence and other claims against his employer after a hacker obtained unauthorized access to copies of certain employees' and former employees' W-2 income and tax withholding statements. Approximately 1,300 employees were allegedly affected, including Varela.

In response to Varela's complaint, Lamps Plus filed a motion to compel arbitration, asserting that Varela signed an agreement to arbitrate any claims arising from his employment. In reliance on the Supreme Court's 2010 ruling in *Stolt-Nielsen v. Animal Feeds Int'l Corp.*, Lamps Plus also asked the court to require the arbitration to be on an individual basis, noting that the parties' arbitration agreement did not mention class arbitration. In *Stolt-Nielsen*, the U.S. Supreme Court had relied on the Federal Arbitration Act to hold that parties could not be compelled to submit their disputes to class arbitration if the arbitration agreement was "silent" on the class arbitration issue.

The district court granted Lamps Plus's motion to compel arbitration but denied the motion to compel arbitration on an individual basis. The court reasoned that, unlike the parties in *Stolt-Nielsen*, neither Varela nor Lamp Plus ever agreed to waive class arbitration. The court also pointed out that, although the parties' arbitration agreement did not mention class arbitration, the agreement did state that "all claims" arising in connection with Varela's employment shall be arbitrated. The court found the "all claims" phrase ambiguous and relied on state law contract principles to construe the agreement against the drafter—Lamps Plus—and thus to require Lamps Plus to proceed with the arbitration on a class-wide basis.

The Ninth Circuit affirmed the district court's ruling, disagreeing with the Third, Fifth, and Sixth Circuits—all of which have held that an arbitration clause does not authorize class-wide arbitration if it fails to mention or clearly reflect the parties' consent.

The Supreme Court reversed. In a 5-4 decision, the Court concluded that an ambiguous agreement cannot provide the necessary contractual basis for concluding that the parties agreed to submit to class arbitration. The Court explained that the state law principle—which counsels that contractual ambiguities should be construed against the

drafter—is a default rule based on public policy considerations, not a rule of interpretation that seeks to determine the intent of the parties. Applying such a principle in an arbitration case, the Court explained, would be inconsistent with the foundational principle reflected in the Federal Arbitration Act—namely, that “arbitration is strictly a matter of consent.”

Justices Ginsburg, Kagan, Sotomayor, and Breyer all wrote dissenting opinions. Justice Ginsburg expressed a view that in recent years, the Supreme Court “has strayed from the principle that arbitration is a matter of consent, not coercion.” She wrote that the Court has instead used the Federal Arbitration Act “to deny to employees and consumers ‘effective relief against powerful economic entities’” and “to justify imposing individual arbitration on employees who surely would not choose to proceed solo.”

For parties who favor arbitration, the *Lamps Plus* decision is a welcome development, though not surprising. It is part of a long line of decisions in which the Court has made clear that it takes the provisions of the Federal Arbitration Act quite seriously. Requiring a clear expression of consent to arbitration is particularly important in the class context, where the protections of the Federal Rules of Civil Procedure (and appeal rights) are particularly important. Silence or ambiguity is simply not enough.

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