Supreme Court Alert: A Divided Court Holds that Under the Federal Arbitration Act an Ambiguous Agreement Cannot Provide a Basis for Compelling Class Arbitration

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On April 24, 2019, in a 5-4 vote, the Supreme Court in *Lamps Plus, Inc. v. Varela* held that under the Federal Arbitration Act (the "FAA"), an ambiguous agreement cannot provide the necessary contractual basis for compelling class arbitration. This decision extends the Court's 2010 *Stolt-Nielsen* opinion, where the Court held that arbitration could not be compelled on a class-wide basis when an arbitration agreement is silent on the issue, and reflects the Court's continued reluctance to allow class arbitrations unless specifically articulated in the arbitration agreement.

In 2016, Lamps Plus was the victim of a phishing attack, which resulted in the improper dissemination of employee data.[1] One of the employees and alleged victims of the phishing attack, Frank Varela, filed a class action lawsuit on behalf of himself and fellow employees in federal court in California, and Lamps Plus moved to compel individual arbitration of Varela's claim.[2] The district court granted Lamps Plus's motion to compel arbitration pursuant to an arbitration agreement Varela entered into as a condition of his employment, but it also allowed Varela to proceed in the arbitration on a class basis.[3]

Lamps Plus appealed that order to the Ninth Circuit, arguing that the arbitration agreement only allowed for individual arbitration. The Court of Appeals disagreed. It concluded that the arbitration agreement was ambiguous on the issue of class arbitration,[4] and that because California contract law principles require that any ambiguity be resolved against the drafter—which in this case was Lamps Plus—there was a contractual basis for class arbitration and affirmed the district court's ruling.[5] Lamps Plus appealed this decision to the Supreme Court.

A divided Supreme Court reversed. It held that California's state law contract principle "cannot be applied to impose class arbitration in the absence of the parties' consent"[6] and that

[1] *Lamps Plus, Inc. v. Varela*, No. 17-988, 2019 WL 1780275, at *2 (U.S. Apr. 24, 2019).

[2] *Id*.

[3] *Id*.

[4] *Id*. at *2-3.

[5] *Id*.

[6] *Id*. at *7.

under the FAA, ambiguity in an arbitration agreement cannot be interpreted to infer consent to class arbitration. Chief Justice Roberts, writing for the majority, explained that "[n]either silence nor ambiguity provides a sufficient basis for concluding that parties to an arbitration agreement agreed to undermine the central benefits of arbitration itself,"[7] which, according to the Court, is the "traditional individualized arbitration envisioned by the FAA."[8] Justice Roberts explained that the Court's holding was controlled by its prior holding in *Stolt-Nielsen*, wherein the Court held "that courts may not infer consent to participate in class arbitration absent an affirmative 'contractual basis for concluding that the party agreed to do so.'"[9]

The Court accepted the Ninth Circuit's determination that the agreement was ambiguous as to whether it permitted class arbitration.[10] It concluded, however, that such an ambiguous agreement cannot provide the "necessary contractual basis for compelling class arbitration."[11] And that California's default contract interpretation rule—which resolves ambiguity against the drafter—was inconsistent with the FAA and thus preempted, which in the Court's view provided "the default rule for resolving ambiguity" in the case presented.[12]

In reaching its holding, the Court focused on the bedrock principle that "arbitration is strictly a matter of consent,"[13] and recognized the "fundamental" and "crucial" differences between class arbitration and the individualized form of arbitration contemplated by the FAA.[14] It explained that "[i]n individual arbitration, 'parties forgo the procedural rigor and appellate review of the courts in order to realize the benefits of private dispute resolution: lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes.'"[15] Benefits that, according to the Court, class arbitration "lacks."[16]

Justice Kagan, writing the principal dissenting opinion, disputed the majority's findings that the agreement was ambiguous and that the FAA preempted state law under these circumstances. She argued that the agreement was clear: the parties agreed to arbitrate "any and all disputes, claims, or controversies," phrasing, which in her view, was "broad enough to cover both individual and class actions."[17] In addition, she argued that even if the language was

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[7] *Lamps Plus*, at *6.

[8] *Id.* at *2 (quoting *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1623 (2018)) (internal quotation marks omitted).

[9] *Id*. at *6 (quoting *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 684 (2010)).

[10] *Id*. at *4.

[11] *Id*. at *4 (quoting *Stolt-Nielsen*, 559 U.S. at 684) (internal quotation marks omitted).

[12] *Id*. at *8.

[13] *Lamps Plus*, at *5 (quoting *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 299 (2010)).

[14] *Id*. at *5-6.

[15] *Id*.

[16] *Id*.

[17] *Lamps Plus*, at *16-17 (Kagan, J., dissenting).

ambiguous "the FAA contemplates that such a state contract rule [construing ambiguities against the drafter] will control the interpretation of arbitration agreements."[18] And that the FAA "does not empower a court to halt the operation of such a garden-variety principle of state law."[19]

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Chief Justice Roberts' majority opinion was joined by Justices Thomas, Alito, Gorsuch, and Kavanaugh. Justice Thomas also filed a concurring opinion. Justices Ginsburg, Breyer, Sotomayor, and Kagan dissented.

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[18] *Id*. at *18.

[19] *Id*. at *20.