

PUBLICATION

U.S. Supreme Court Curbs Class Arbitrations

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Intro

Last week, the Supreme Court may have put the final nail in the class arbitration coffin in *Lamps Plus, Inc. v. Varela*. *Lamps Plus* is the latest in a line of recent Supreme Court decisions that have whittled away the availability of class arbitration under the Federal Arbitration Act (the FAA) and made clear that an arbitration agreement must expressly *provide for* class arbitration. The Supreme Court's 5-4 decision held that under the FAA, "courts may not infer from an ambiguous agreement that parties have consented to arbitrate on a classwide basis."¹

Background

In 2016, a hacker impersonating a company employee tricked a Lamps Plus employee into disclosing the tax information of approximately 1,300 other employees. After a fraudulent income tax return was filed in the name of Lamps Plus employee Frank Varela, he filed suit against the company in Federal District Court in California on behalf of himself and a putative class of employees whose tax information had also been compromised. Relying on an arbitration provision in Varela's employment agreement, Lamps Plus moved to compel individual, rather than class, arbitration and to dismiss the lawsuit.

The District Court dismissed Varela's claims without prejudice and granted the motion to compel, however, on a classwide basis. Lamps Plus appealed, but the Ninth Circuit affirmed, finding that the arbitration agreement was ambiguous on the issue of class arbitration. The Ninth Circuit reasoned that because the arbitration did not explicitly prohibit or condone class arbitration, it was ambiguous and, under the principles of state contract interpretation law, it should therefore be construed against Lamps Plus, who drafted the agreement, and authorize class arbitration.

SCOTUS

The Supreme Court granted certiorari and on April 24, 2019, in a decision penned by Chief Justice Roberts, reversed the Ninth Circuit. Although the Supreme Court agreed that the arbitration provision was ambiguous, it held that an ambiguous arbitration agreement did not, and cannot, provide the required "contractual basis" to compel class arbitration.

According to the majority, the underlying issue is the matter of consent, or lack thereof, related to class arbitration under the FAA. The Court relied on its decision in *Stolt-Nielsen S. A. v. AnimalFeeds Int'l Corp.*, 559 U. S. 662 (2010), where it held that courts may not infer consent to compel class arbitration without an affirmative "contractual basis for concluding that the parties *agree* to do so."² Thus, the Court found that under the FAA, an arbitration agreement's silence as to the availability of class arbitration is an insufficient basis to conclude that the parties to the agreement contemplated such arbitration. Applying the same principle here, the Court held that where such language is "ambiguous," the parties similarly cannot be compelled to submit to class arbitration unless the agreement explicitly provides for it.

The Court also took into account the fundamental difference between individual arbitration and class arbitration.³ According to the majority, class arbitration is a shift from original intent of individualized arbitration envisioned by the FAA because it "sacrifices the principal advantage of arbitration" and "greatly increases risks

to defendants."⁴ The Court stated that unlike in traditional, individual arbitration, where the parties benefit from a quicker, more efficient, and cheaper process to resolve their dispute, class arbitration lacks those virtues and actually introduces new risks, costs, and poses due process issues. As a result, the Court held that ambiguity does not provide a sufficient basis to conclude that the parties to an arbitration agreement agreed to "sacrifice[] the principal advantage of arbitration."⁵

The majority opined that at issue was the interaction between state contract law addressing ambiguity and the FAA's "rule[] of fundamental importance . . . that arbitration 'is a matter of consent[.]'"⁶ Reaffirming its rule from *AT&T Mobility v. Concepcion* that state law "preempted to the extent it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives" of the FAA, the Court held that courts may not rely on state contract principles, such as the doctrine of *contra proferentem*, principles to "reshape traditional individualized arbitration by mandating classwide arbitration procedures without the parties' consent."⁷ By so holding, the Court rejected the Ninth Circuit's application of the state contract interpretation law that ambiguity in a contract should be construed against the drafter, known as the doctrine of *contra proferentem*.⁸ The Court reasoned that *contra proferentem* provides a default rule of last resort when the parties' intent cannot be discerned, rather than a process to *ascertain the intent of the parties*. As a result, the Court held that "The general *contra proferentem* rule cannot be applied to impose class arbitration in the absence of the parties' consent."⁹ Rather, the Court held that the FAA, and not state law, "provides the default rule for resolving certain ambiguities in arbitration agreements."¹⁰

Conclusion

Given the Supreme Court's recent decisions regarding class arbitration, *Lamps Plus* was only to be expected. *Lamps Plus* affirms the Supreme Court's focus on traditional, individual arbitration and essentially bars courts from ordering parties to class arbitration, unless the parties explicitly contemplate and contract for it.

¹ *Lamps Plus, Inc. v. Varela*, No. 17-988, 2019 WL 1780275 (U.S. Apr. 24, 2019) at *12.

² 2019 WL 1780275 at *8, citing *Stolt-Nielsen S. A. v. AnimalFeeds Int'l Corp.*, 559 U. S. 662, 684 (2010).

³ 2019 WL 1780275 at *8.

⁴ 2019 WL 1780275 at *5, citing *AT&T Mobility LLC v. Concepcion*, 563 U. S. 333, 348, 350 (2011).

⁵ 2019 WL 1780275 at *8, citing *Concepcion*, 563 U.S., at 348.

⁶ 2019 WL 1780275 at *7, citing *Concepcion*, 563 U.S., at 681

⁷ *Id.*

⁸ 2019 WL 1780275 at *9.

⁹ 2019 WL 1780275 at *12.

¹⁰ *Id.*