

SCOTUS Makes It Clear: An Ambiguous Arbitration Agreement Does Not Give Rise to Class Arbitration

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In a significant decision regarding the Federal Arbitration Act (FAA), the Supreme Court of the United States recently emphasized once again that class-wide arbitration is not allowed unless the parties to an arbitration agreement explicitly and unambiguously consented to it. Previously, the Supreme Court in *Stolt-Nielsen S.A. v. Animal Feeds Int'l Corp* held that when an arbitration agreement is silent on the issue of class-wide arbitration, a court cannot compel it. 559 U.S. 662 (2010). Now, the Supreme Court has taken that reasoning a step further. In its April 2019 decision in *Lamps Plus, Inc. v. Frank Varela*, No. 17-988, 2019 WL 1780275, the court held that even an arbitration agreement that is ambiguous on the availability of class-wide arbitration not sufficient under the FAA to permit class arbitration.

Lamps Plus was originally decided in the United States District Court for the Central District of California. The plaintiff, Frank Varela, an employee of Lamps Plus, filed a putative class action against his employer on behalf of approximately 1,300 employees whose confidential tax information had been compromised after a digital security breach. Lamps Plus sought to compel individual arbitration of the dispute with Varela and dismiss the case, relying on Varela's employment contract, which contained an arbitration provision. The district court agreed to dismiss Varela's claims, but, instead of the individual arbitration Lamps Plus had requested, the court compelled the parties to class-wide arbitration.

Lamps Plus appealed, and the Ninth Circuit affirmed the district court, distinguishing *Stolt-Nielsen* because, unlike in that case, in *Lamps Plus* the arbitration agreement was not *silent* on the issue of class arbitration, although it was ambiguous. The Supreme Court disagreed with the Ninth Circuit's reasoning, and in a 5-4 decision, reversed and held that the ambiguity in the arbitration agreement could not be construed as permitting class arbitration.

In its decision, the Supreme Court centered on "the foundational principle" of arbitration: consent. The Court also emphasized the "fundamental" difference between class-wide arbitration and the bilateral form of arbitration contemplated by the FAA, and reasoned that class arbitration forfeits the principal advantages of bilateral arbitration. The Court reasoned that, given the risks posed by class arbitration, and the lack of certain protections otherwise available in traditional litigation,

unambiguous consent is necessary, and class arbitration may not proceed without it. Accordingly, the Supreme 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.’” Silence is not enough, and “[l]ike silence,” the court held, “ambiguity does not provide sufficient basis to conclude” that the parties consented to class arbitration.

In reaching this conclusion, the court also held that the consent-focused principles of arbitration under the FAA are inconsistent with, and superior to, the practice followed under California law (and the law of many jurisdictions) of interpreting a contract against the drafter.

This decision is beneficial to commercial entities, who are typically the drafters of consumer and employment contracts that contain provisions mandating arbitration of any disputes arising under the contract. There has been an uptick in recent years of plaintiffs attempting to sidestep the benefits arbitration affords to defendants by pursuing class-wide arbitration, despite there being no explicit consent in an agreement to class arbitration. The Supreme Court’s conclusion in *Lamps Plus* provides additional assurances that commercial entities can include bilateral arbitration provisions in their contractual agreements while mitigating the risks presented by class-wide arbitration. The Court’s decision also placed some doubt on the viability of the traditional “interpret against the drafter” rule of contract interpretation, opting instead to prioritize the importance of consent and the parties’ original intent.

Though the Supreme Court’s focus in *Lamps Plus* was on arbitration agreements specifically, its reasoning has the potential to expand beyond arbitration into the world of contract interpretation more generally.

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