U.S. Supreme Court Declines to Mandate Class Arbitration in Its Decision, *Lamps Plus, Inc. v. Varela*

By Anthony M. DiLeo

The United States Supreme Court on April 24, 2019, once again issued an opinion with regard to class arbitration and declined to compel a party to submit to class arbitration in the absence of an affirmative contractual basis to conclude that the parties intended to do so. This ruling in *Lamps Plus, Inc. v. Varela*[1] follows and is an extension of the Court's prior decisions in *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*, 559 U.S. 662 (2010), where the arbitration agreement was "silent" on the issue of class arbitration; *AT&T Mobility, L.L.C. v. Concepcion*, 563 U.S. 333 (2011),[2] where the Court upheld a mandatory arbitration agreement in a consumer contract barring customers from bringing class actions; and *Epic Systems Corp. v. Lewis*, 138 S.Ct. 1612 (2018),[3] from the last term in which the Court confirmed the enforceability of class action waivers in arbitration agreements. Stated otherwise, the Court's holding is that an arbitration agreement that is ambiguous as to class arbitration is insufficient to provide the necessary contractual intent for class arbitration.[4]

In *Lamps Plus, Inc. v. Varela*, the Court issued six separate opinions in reaching a 5-4 ruling declining to order class arbitration.[5] In this case, Frank Varela filed a putative class action against his employer, Lamps Plus, Inc. The suit arose following a 2016 data breach where a hacker impersonated a company official and tricked a Lamps Plus employee into releasing the tax information of roughly 1,300 employees, including Varela's. After learning of the breach and the subsequent filing of a fraudulent federal income tax return in his name, Varela filed a class action against Lamps Plus in a California federal district court. However, at the start of his employment, Varela had signed an employment contract containing an arbitration clause which stated that Varela consented that "arbitration shall be in lieu of any and all lawsuits or other civil legal proceedings relating to my employment."[6]

In the federal district court, Lamps Plus moved both to compel arbitration and to dismiss Varela's claims. Lamps Plus additionally contended that arbitration should be compelled on an individu-

al, rather than a class-wide, basis because there was no contractual basis for finding that the parties intended to submit to class-wide arbitration.[7] Varela, however, argued that the motion to compel arbitration should be denied either because the data breach was outside the scope of the employment relationship and, therefore, outside the scope of the arbitration agreement, or because the arbitration agreement itself was unconscionable.[8]

Moreover, Varela asserted that, should the arbitration agreement be found both valid and applicable, the court should compel class-wide, rather than individual, arbitration because the agreement did not waive class-wide arbitration. Varela argued that the language providing that "all claims" be submitted to arbitration was broad enough to include class claims, or alternatively, was ambiguous enough to trigger the principle of *contra proferentem*.[9] The district court accepted Varela's argument, finding that because the language of the arbitration agreement was at least ambiguous with regard to class claims, and because the principle of *contra proferentem* dictates that ambiguities within a contract should be construed against its drafter, the ambiguity should be construed against Lamps Plus.[10] Therefore, the district court compelled arbitration on a class-wide basis and the U.S. 9th Circuit Court of Appeals affirmed.[11]

The U.S. Supreme Court granted certiorari to determine whether the Federal Arbitration Act (FAA) bars an order compelling class arbitration when an agreement is "ambiguous" as to its availability.[12] In a 5-4 opinion authored by Chief Justice Roberts, the Court held that an ambiguous agreement fails to "provide the necessary 'contractual basis' for compelling class arbitration."[13] Extending its prior holding in *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*, the Court reasoned that because class arbitration fundamentally differs from bilateral arbitration and sacrifices its principal advantages, more than ambiguity is required to ensure the parties consented to class-wide arbitration.[14] Emphasizing the fundamental principle that "[a]rbitration is strictly a matter of consent,"[15] the Court rejected the 9th Circuit's application of *contra proferentem* to construe the arbitration agreement against Lamps Plus.[16] The Court reasoned that because "*contra proferentem* seeks a result other than the intent of the parties," it cannot be used to compel class arbitration in the absence of consent.[17] The Court reversed the judgment of the lower courts and remanded the case to the 9th Circuit to compel bilateral individual arbitration in lieu of class arbitration.[18]

In formulating its holding, the Court recited its precedent in *Stolt-Nielsen*, wherein the Court held that a court cannot compel class arbitration of an arbitration agreement that is silent on that matter.[19] The Court reiterated the reasons for its holding in *Stolt-Nielsen*, emphasizing that class arbitration forgoes many of the benefits, such as greater efficiency and lower costs, associated with bilateral arbitration and, as stated in *Stolt-Nielsen*, implicates "serious due process concerns by adjudicating the rights of absent members of the plaintiff class" with only limited judicial review.[20] In that case, the Court reasoned that due to the "crucial differences" between class and bilateral arbitration, there is "reason to doubt" that parties have consented to class-wide arbitration, and courts, therefore, cannot infer such consent "absent an affirmative 'contractual basis for concluding that the party *agreed* to do so.'"[21] Ruling that *Stolt-Nielsen* is controlling, the Court concluded that "[l]ike silence, ambiguity does not provide a sufficient basis to conclude that parties to an arbitration agreement agreed to 'sacrifice [ ] the principal advantage of arbitration.'"[22] Remarking upon the relationship of this conclusion to past decisions regarding arbitration, the Court noted that its conclusion here "aligns with [the Court's] refusal to infer consent when it comes to other fundamental arbitration questions," such as whether parties have authorized arbitrators to resolve gateway questions.[23]

The Court noted too that the FAA preempts state law where principles of state law stand as an obstacle to accomplishing the full purposes of the FAA.[24] Repeating its axiom that arbitration is a matter of consent, the Court reasoned that because *contra proferentem* is a rule of construction, it must give way to the FAA's fundamental emphasis upon the consent of the parties, citing its prior conclusion in *AT&T Mobility, L.L.C. v. Concepcion*.[25]

The majority opinion prompted separate dissents from Justices Ginsburg, Breyer, Sotomayor and Kagan. In her dissent, Justice Ginsburg emphasized that the FAA was intended to allow parties with roughly equal bargaining power to arbitrate commercial disputes, not to govern contracts of adhesion.[26] Justice Ginsburg criticized the majority's consent-focused reasoning as ironic because it "impos[ed] individual arbitration on employees who surely would not choose to proceed solo."[27]

Joining Justice Ginsburg's dissent in full, Justice Sotomayor wrote separately to challenge the proposition established over the past decade of the Court's precedents that the "'shift from bilateral arbitration to class-action arbitration' imposes such 'fundamental changes,' that class-action arbitration 'is not arbitration as envisioned by the' Federal Arbitration Act (FAA)."[28] Justice Sotomayor further categorized class actions as merely a "procedural device" to which an employee "should not be expected to realize that she is giving up access" by signing an arbitration agreement.[29]

Joined in full by Justices Ginsburg and Breyer and in part by Justice Sotomayor, Justice Kagan emphasized in her dissent her belief that the language of the contract was comprehensive in scope and unambiguously included class arbitration.[30] Justice Kagan concluded that even if the contract was ambiguous, the even-handed principle of *contra proferentem* would dictate the same result — authorizing class arbitration.[31] However, the majority opinion advises that this is "far from the watershed Justice Kagan claims it to be. Rather, it is consistent with a long line of cases holding that the FAA provides the default rule for resolving certain ambiguities in arbitration agreements. For example, we have repeatedly held that ambiguities about the scope of an arbitration agreement must be resolved in favor of arbitration."[32]

The Supreme Court's holding in this case can be seen as a marked extension of its decision in *Stolt-Nielsen* nearly a decade ago, holding that a contract that

is silent on the issue of class arbitration cannot provide the necessary basis for compelling class arbitration. There, the Court reasoned that due to the fundamental importance of consent in arbitration, the FAA required more than silence to support an order compelling class arbitration. Here, the Court has clarified further that an ambiguous agreement does not qualify for class arbitration.

Despite the Court's several rulings restricting the availability of class arbitration, the Court has, however, in recent years consistently issued decisions in support of arbitration, such as *Buckeye Check Cashing, Inc. v. Cardegna;*[33] *Oxford Health Plans, L.L.C. v. Sutter;*[34] *Rent-A-Center, West v. Jackson;*[35] and *Hall Street Associates, L.L.C. v. Mattel, Inc.*.[36] Other appellate courts have approved of arbitration of matters in newer arenas, such as of an ERISA retirement plan.[37]

FOOTNOTES

1. 139 S.Ct. 1407 (2019).

2. Customers of AT&T brought a class action lawsuit against the telecommunications company alleging a relatively small fraud — the company was charging sales tax on the retail value of allegedly "free" phones. AT&T moved to compel arbitration, which would effectively bar the action based on the contract's no-class action clause. California had a conflicting law that provided that arbitration clauses were only enforceable if they allowed for class actions. In a 5-4 ruling, the Court upheld the mandatory arbitration clause in the AT&T consumer contracts barring customers from bringing class actions, even though this effectively negated relief for consumers bringing claims for small amounts. The Court's holding also signified that the Federal Arbitration Act (FAA) preempted any state law that ran contrary to the objectives of the FAA.

3. Epic, a software company, had an arbitration agreement in its employee contracts that required individualized arbitration for any employment-based dispute. The clause also waived the employees' right to participate in or benefit from class or collective proceedings. An employee sued Epic in federal court under the Fair Labor Standards Act as a representative of a class, and Epic moved to dismiss the complaint. The district court held that the arbitration clause was unenforceable because it violated the employees' right to engage in "concerted activities" under the National Labor Relations Act (NLRA). The 7th Circuit affirmed, and the Court granted certiorari to determine whether such a clause violated the NLRA. The Court held 5-4 that arbitration agreements in employment contracts requiring individualized proceedings were enforceable and were not a violation of the NLRA.

4. The Louisiana Supreme Court has ruled that Louisiana courts are governed by these decisions. Aguillard v. Auction Management Corp., 908 So.2d 1, 40 (La. 2005), superseded by La. C.C.P. art. 2083, as amended by 2005 La. Acts, No. 205 § 1, effective Jan. 1, 2006, with respect to the right to interlocutory appeal (adopting the Supreme Court's interpretation of federal arbitration law and holding that a "strong presumption of arbitrability" exists in Louisiana). The Louisiana Binding Arbitration Law, La. R.S. 9:4201, largely tracks the language of the FAA.

5. The six separate opinions are the majority by Chief Justice Roberts, a concurring opinion by Justice Thomas, and four separate dissents by Justices Ginsburg, Breyer, Sotomayor and Kagan.

6. Lamps Plus, 139 S.Ct. at 1413.

7. Varela v. Lamps Plus, Inc., No. CV 16-577-DMG (KSX), 2016 WL 9110161, at *1, *6 (C.D. Cal. July 7, 2016), *aff'd*, 701 F. App'x 670 (9 Cir. 2017), *rev'd and remanded*, 139 S.Ct. 1407, 203 L.Ed. 2d 636 (2019), and *vacated*, 771 F. App'x 418 (9 Cir. 2019), *and rev'd and remanded*, 71 F. Ap'x 418 (9 Cir. 2019).

8. *Id.* at *3.

9. *Id. Contra proferentem* is defined as "[t]he doctrine that, in the interpretation of documents, ambiguities are to be construed unfavorably to the drafter." *Black's Law Dictionary* (11th ed. 2019).

10. *Id.* at *7.

11. *See*, Varela v. Lamps Plus, Inc., 701 F. App'x 670, 672 (9 Cir. 2017), *cert. granted*, 138 S.Ct. 1697, 200 L.Ed. 2d 948 (2018), and *rev'd and remanded*, 139 S.Ct. 1407, 203 L.Ed. 2d 636 (2019), and *vacated*, 771 F. App'x 418 (9 Cir. 2019).

12. Lamps Plus, 139 S.Ct. at 1412.

13. *Id.* at 1415 (*quoting* Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 559 U.S. 662, 684, (2010)).

14. *Id.* (The majority stated that its ruling here is "a conclusion that follows directly from our decision in *Stolt-Nielsen*.")

15. *Id.* (*quoting* Granite Rock Co. v. Teamsters, 561 U.S. 287, 299 (2010)) (alteration in original).

16. *Id.* at 1417.

17. *Id.* at 1417-18.

18. *Id.* at 1419.

19. *Id.*at 1415.

20. *Id.* at 1416.

21. *Id.* (*quoting* Stolt-Nielsen, 559 U.S. at 687 (emphasis in original)).

22. *Id.* (*quoting* AT&T Mobility, L.L.C. v. Concepcion, 563 U.S. 333, 348, 131 S.Ct. 1740 (2011)).

23. *Id.* at 1416-17 (*citing* Green Tree Financial Corp. v. Bazzle, 539 U.S. 444, 452, 123 S.Ct. 2402, 156 L.Ed. 2d 414 (2003)).

24. *Id.* at 1415.

25. *Id.* at 1417-18 (*citing* Concepcion, 563 U.S. at 348).

26. Lamps Plus, 139 S.Ct. at 1420 (Ginsburg, J., dissenting).

27. *Id.* at 1421.

28. *Id.* at 1427 (Sotomayor, J., dissenting).

29. *Id.*

30. *Id.* at 1428-30 (Kagan, J., dissenting).

31. *Id.* at 1430.

32. *Id.* at 1418-19 (internal citations omitted).

33. 546 U.S. 440 (2006). There, the plaintiff claimed that a loan contract was illegal and that, as a result, the arbitration clause was unenforceable. The Court granted certiorari to determine whether, under the FAA, a party to a contract can avoid arbitration by claiming that the overall contract is illegal. The Court held that unless an arbitration clause is itself directly and independently challenged as unenforceable, the validity of the contract as a whole is a matter for the arbitrator, rather than the courts, to decide.

34. 569 U.S. 564 (2013). In that case, a primary care doctor contracted with a care network; the doctor initiated a class action, on behalf of himself and other medical providers. The contract contained an arbitration clause which stated that "[n]o civil action concerning any dispute arising under this Agreement shall be instituted before any court." The parties agreed that the arbitrator had the authority to interpret the arbitration provision. The arbitrator concluded that the clause encompassed any action, including class actions. The defendant moved to vacate that decision, arguing that the arbitrator had exceeded his authority. The Court held unanimously that an arbitrator does not exceed his authority by deciding that the parties agreed to class arbitration based on general contractual language requiring arbitration of any dispute. More broadly, the Court signaled that, under the FAA, a court cannot overrule an arbitrator even if the arbitrator's interpretation was likely erroneous.

35. 561 U.S. 63 (2010).

36. 552 U.S. 576 (2008). There, toy manufacturer Mattel was sued by its landlord, Hall Street Associates. The arbitration agreement contained a provision stating that "if the arbitrator's conclusions of law are erroneous," a district court had the authority to overturn the arbitrator's decision. This provision would grant a court considerable authority over an arbitrator's ruling that was not granted by the FAA. The FAA only provides for narrow circumstances in which a court can override an arbitration decision. The Supreme Court invalidated the contractual provision at issue, holding that the FAA's restrictions on review are exclusive and not susceptible to contractual expansion or modification by the parties to an agreement.

37. Dorman v Charles Schwab Corp., No. 18-15281 (9 Cir. Aug. 20, 2019), where the court reversed its 1984 ruling that ERISA disputes are not arbitrable.

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