

Keep the Light On: U.S. Supreme Court Holds that Clear Consent is Required for Classwide Arbitration in *Lamps Plus, Inc. v. Varela*

April 30, 2019 | Nora Udell

We have good news from the U.S. Supreme Court for creditors who use arbitration agreements. On April 24, 2019, in *Lamps Plus v. Varela*,^[1] the Supreme Court held in a 5-4 decision that courts may no longer infer from an ambiguous agreement that parties have agreed to classwide arbitration. Rather, there must be clear consent to arbitration on a classwide basis.

The Path to the Supreme Court

The case arose out of a data breach at Lamps Plus that exposed 1,300 employees' tax information to a hacker. After a fraudulent tax return was filed in the name of Frank Varela, a Lamps Plus employee, Varela brought a class action against Lamps Plus on behalf of himself and others similarly situated. Lamps Plus moved to compel individual arbitration under the arbitration agreement in Varela's employment contract. The district court split the difference - it ordered the case to arbitration, but it also authorized classwide arbitration. Lamps Plus appealed to the U.S. Court of Appeals for the Ninth Circuit.

In its decision, the Ninth Circuit discussed a prior U.S. Supreme Court case, *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*,^[2] in which the Supreme Court held that classwide arbitration cannot be compelled when an arbitration agreement is "silent" on the availability of classwide arbitration. However, in *Lamps Plus*, the Ninth Circuit found that the arbitration agreement was ambiguous on the topic of class arbitration - not silent. Because of the difference between a silent contract and an ambiguous contract, the Ninth Circuit did not follow the rule from *Stolt-Nielsen*. Instead, the Ninth Circuit construed the contract term against the drafter of the contract, Lamps Plus, under a California rule of contract interpretation. This is a standard contract interpretation rule that exists in many states. Accordingly, the Ninth Circuit adopted Varela's interpretation of the arbitration agreement and agreed with the district court's order authorizing classwide arbitration.

The Supreme Court's Decision

After resolving a jurisdictional issue under the Federal Arbitration Act ("FAA"), Justice Roberts explained that "arbitration is strictly a matter of consent." Consent is essential because arbitrators have only the authority that they are given by the parties. Individual arbitration, as contemplated by the FAA, allows parties to take advantage of the benefits of private dispute resolution, e.g. lower costs, greater efficiency and speed, and the ability to choose expert arbitrators to resolve specialized disputes. In contrast, classwide arbitration lacks all of those benefits and makes the dispute resolution process slower, costlier, and more procedurally complex. It also raises due process concerns about adjudicating the rights of absent class members. Because of these essential differences, the Court explained that

consent to classwide arbitration cannot be inferred from ambiguity in an agreement consenting to individual arbitration.

Furthermore, because the touchstone of an arbitration agreement is consent, the Court also held that California's rule that ambiguity in a contract must be construed against the drafter could not be applied to impose class arbitration in the absence of the parties' consent. The general applicability of the California rule could not save it from preemption under the FAA because the rule's effect was to force a party into classwide arbitration, without the party's consent. In other words, the court cannot use a contract interpretation rule to infer that a contract-drafter has consented to arbitration on a classwide basis.

The Bottom Line

The case is good for creditors with consumer-facing arbitration agreements. Now, under *Stolt-Nielsen* and *Lamps Plus*, courts cannot compel classwide arbitration when an agreement is silent or ambiguous as to its availability. Nevertheless, in an effort to avoid paying attorneys to take a case to the Supreme Court, arbitration agreements in consumer credit contracts should be reviewed regularly by counsel to ensure that they remain compliant and enforceable.

[1] No. 17-988, --- S.Ct. --- (2019).

[2] 130 S. Ct. 1758 (2010).

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410.684.3200

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