U.S. Courts Cannot Infer Class Arbitration from Ambiguous Arbitration Clause

The U.S. Supreme Court (the ***Supreme Court***) has been historically wary of permitting class arbitration (see previous blog post), especially in the absence of clearly defined limits or of express language permitting it in an arbitration agreement. The Supreme Court affirmed this restraint in a recent 5–4 decision, *Lamps Plus, Inc., v. Varela*, in which it held that courts cannot infer parties' consent to class arbitration from an ambiguous arbitration clause in an employment contract.

In *Lamps Plus*, decided 24 April 2019, the plaintiff Mr. Frank Varela filed class action claims in federal court in California against his employer, defendant *Lamps Plus Inc.* (***Lamps Plus***), following a data breach compromising the tax information of approximately 1,300 employees. Lamps Plus moved to dismiss the lawsuit and compel individual arbitration, per the terms of the company's standard employment contract. The District Court granted the motion to dismiss but authorized class arbitration, rather than individual arbitration. Lamps Plus appealed the order to submit to class arbitration, but the Ninth Circuit Court of Appeals (the ***Ninth Circuit***)

affirmed the order.

Before the Supreme Court, Lamps Plus argued that the Ninth Circuit's decision conflicted with the Supreme Court's 2010 holding in *Stolt-Nielson S.A. v. Animal Feeds International Corporation*. In that case, the Supreme Court held that per the Federal Arbitration Act (the ***FAA*** or the ***Act***), an agreement that is silent on the issue of class arbitration is not a sufficient contractual basis for compelling parties to submit to such arbitration. According to *Stolt-Nielson*, there must be an express agreement between the parties to arbitrate a case on a class-wide basis. According to Lamps Plus, the Ninth Circuit had wrongly applied *Stolt-Nielson* to the case at hand. In particular, the Ninth Circuit had determined that the arbitration agreement between Lamps Plus and Mr. Varela was ambiguous with regard to the permissibility of class arbitration. However, it decided to apply California state law, namely the principle of construing ambiguous contract language against the drafter (the principle of *contra proferentem*), to resolve the ambiguity in favor of Varela.

The key question before the Supreme Court was whether U.S. courts were prohibited from inferring parties' consent to class arbitration from an ambiguous agreement. Courts usually rely on state contract law when interpreting an arbitration agreement. However, the FAA preempts any state law principle that obstructs the Act's objectives, including the foundational principle that arbitration rests on consent, not coercion. The opinion, authored by Chief Justice John Roberts, relies heavily on this preemption.

In its opinion, the Supreme Court first recalled that class arbitration must be a matter of consent. It then deferred to the Ninth Circuit's finding that the agreement's terms were ambiguous, accepting without question the application of state law. However, relying on the FAA's power of preemption, the majority turned away from such deference as to the effects of that ambiguity. The Supreme Court rejected the Ninth Circuit's

application of the California law principle of *contra proferentem*. Instead it relied on the *Stolt-Nielson* precedent to hold that ambiguity, like silence, is an inadequate basis for compelling parties to submit to class arbitration. A state law principle that compels class arbitration on the basis of ambiguous language does so without the "*affirmative contractual basis*" between the parties that is necessary under the FAA: "[C]*lass arbitration, to the extent it is manufactured by* [state law] *rather than consen*[t]*, is inconsistent with the FAA,*" the Supreme Court recalled (quoting *Concepcion*). The FAA thus appears to preempt any application of state law that would compel class arbitration in the absence of express consent by the parties.

The Supreme Court further justified the FAA's preemption of state law by pointing to the "*fundamental differences*" between individual arbitration and class arbitration. The latter eliminates so many of the cost-saving and efficiency benefits of individual arbitration that it may "*wind up looking like the litigation it was meant to displace*" (quoting *Epic Systems*). Permitting class arbitration may, in fact, ultimately frustrate the aims of the FAA, by sanctioning a form of "arbitration" that lacks any resemblance to that which was intended by the Act.

Interestingly, the case at hand differs from another opinion of the Supreme Court in *Oxford Health*. In that latter case (delivered in 2013 after *Stolt-Nielson*), the Supreme Court found that if an arbitrator construes a contract as involving class arbitration, the arbitrator's decision, even if erroneous, may still stand under the narrow judicial review of arbitral awards. That issue, however, differed from the situation in *Lamps Plus* (which concerned a court's (and not an arbitrator's) interpretation of an arbitration agreement). This is probably the reason why *Oxford Health* was not discussed in the majority opinion in *Lamps Plus*.

Lamps Plus is one in a series of recent cases on class actions

and class arbitrations, many of which have been close rulings (often 5–4 decisions) and usually along party lines. This is thus an area of law that may remain subject to politicization. Rulings like *Lamps Plus* and others have garnered praise, for providing "*much-needed*" limits on class action proceedings, and criticism, for further entrenching limitations on workers' rights. *Lamps Plus* ultimately strengthens the position of employers against class arbitration, even in the absence of an express prohibition.
