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Supreme Court Sheds Light on Class Arbitrations

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The Supreme Court has further closed the window for employees to pursue class-wide claims against their employers in arbitration. In 2010 the Supreme Court ruled a court may not compel arbitration on a class-wide basis when the arbitration agreement is "silent" on the issue. *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662 (2010). Nine years later, presented with an arbitration agreement that, instead of silent, was "ambiguous" regarding the availability of class arbitration, the high court has again demonstrated its preference for individual arbitration. In *Lamps Plus, Inc. v. Varela*, Case No. 17-988 (slip opinion April 24, 2019), the Court held that ambiguity cannot provide the basis for finding consent to participate in class arbitration.

CASE BREAKDOWN

Lamps Plus, Inc. ("Lamps Plus") is the largest indoor and outdoor lighting retailer in the United States. In 2016, a hacker obtained the tax information for approximately 1,300 Lamps Plus employees and used the data to steal the employees' identities, including employee Frank Varela.

Mr. Varela filed a complaint against Lamps Plus in a California federal district court on behalf of himself and all other Lamps Plus employees whose information had been stolen. However, as a term and condition of his employment, Mr. Varela had entered into an arbitration agreement with Lamps Plus where he agreed to arbitrate "all claims or controversies ('claims'), past, present, or future that I may have against the Company." When Lamps Plus moved to compel arbitration, the district court determined the arbitration agreement was ambiguous as to whether it permitted Mr. Varela to pursue claims in arbitration on a class basis. That court then compelled arbitration but also authorized Mr. Varela to pursue his class claims in the arbitration, and the Ninth Circuit Court of Appeals affirmed.

The Supreme Court reversed the lower courts in a 5 – 4 decision on April 24, 2019, finding that *contra proferentum* (i.e. construe ambiguous documents against the drafter) and other common law doctrines of contractual interpretation were not sufficient to overcome the public policies underlying the Federal Arbitration Act ("FAA"). Those policies prohibit class arbitrations unless expressly consented to and provided for by the parties in the underlying agreement.

KEY TAKEAWAYS

1. The Supreme Court has demonstrated a clear preference for individual arbitration, and agreements to arbitrate on a class basis must be expressly authorized by the agreement. However, the best practice for employers desiring to resolve employment disputes in arbitration is to specifically address individual versus class arbitration and not leave the issue open for the Plaintiff's next creative argument.
2. Arbitration of employment disputes continues to be a hotly contested and evolving area of the law. Employers should regularly have their arbitration agreements reviewed by competent legal counsel.

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