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U.S. Supreme Court Says Agreement Must Explicitly Authorize Class Arbitration

On April 24, 2019, the U.S. Supreme Court issued its decision in *Lamps Plus, Inc. et al. v. Varela*, No. 17-988 (U.S. Apr. 24, 2019), which reversed the Ninth Circuit's decision to allow an employee's class action arbitration to move forward.

In 2016, Lamps Plus suffered a data breach as a result of a phishing scam, which compromised confidential employee tax information. One such employee, Frank Varela, filed a putative class action against Lamps Plus after a fraudulent federal income tax return was filed in his name. Relying on the arbitration agreement in Varela's employment contract, Lamps Plus sought to compel arbitration on an individual, rather than a class-wide, basis.

The federal district court rejected the individual arbitration request, authorized class arbitration, and dismissed Varela's claims. The district court noted the employment agreement covered "all disputes" arising out of Varela's employment. The Ninth Circuit Court of Appeals affirmed, holding this language indicated mutual intent to authorize class arbitration. In so holding, the Ninth Circuit distinguished *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662 (2010), which held a court may not compel class-wide arbitration when an agreement is silent on the availability of such arbitration. The Ninth Circuit reasoned that *Stolt-Nielsen* was not controlling because the agreement in question was ambiguous rather than silent on the issue of class arbitration.

In a 5-4 decision authored by Chief Justice Roberts, the Supreme Court reversed. The Court held that under the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16, an ambiguous agreement cannot provide the necessary contractual basis for concluding that the parties agreed to submit to class arbitration. The Court reasoned that arbitration is strictly a matter of consent and, like silence, ambiguity cannot provide a sufficient basis to conclude the parties agreed to class arbitration.

This decision is the latest in a line of Supreme Court decisions that have backed arbitration and helped employers avoid class actions filed by employees. Last year, the Supreme Court issued its decision in *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (2018), which blessed the inclusion of class action waivers in arbitration agreements.

Arbitration agreements should be carefully drafted and routinely updated to comply with evolving case law. If your organization is considering whether to adopt or maintain an arbitration requirement, please contact your Kutak Rock attorney or a member of our National Labor and Employment Practice. You may also visit us at www.KutakRock.com.

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