LEGAL UPDATES PUBLISHED: APRIL 30, 2019

SCOTUS: Class Arbitration Available Only Upon Explicit Agreement Between Parties

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As previously noted in this alert, the U.S. Supreme Court continues to strongly support the enforcement of individual arbitration agreements. The Supreme Court decision released on April 24, 2019, *Lamps Plus Inc. v. Varela*, is no exception. In a 5-4 decision split along party lines, the majority reversed a Ninth Circuit decision and held that courts may not infer from an ambiguous agreement that the parties have consented to arbitrate on a class-wide basis.

The facts and the Ninth Circuit Court decision

Lamps Plus inadvertently disclosed tax information in a data breach. As a result of the breach, the tax information of Frank Varela, an employee of Lamps Plus, was used to file a fraudulent federal tax return. Varela then filed a class action in the federal district court in California on behalf of himself and other employees whose information was compromised. Lamps Plus moved to dismiss the complaint and to compel bilateral arbitration under Varela's employment agreement. The district court granted the motion to compel arbitration and dismissed Varela's claims without prejudice, but rejected Lamps Plus' request for individual arbitration, instead authorizing arbitration on a class-wide basis.

On appeal by Lamps Plus, the Ninth Circuit affirmed, holding that that although the agreement did not expressly refer to class proceedings, the terms regarding class arbitration were ambiguous, and state law required that the ambiguity be construed against the drafter, Lamps Plus.

SCOTUS decision

Writing for the majority, Justice Roberts preliminarily addressed Varela's argument that the Ninth Circuit and SCOTUS lacked jurisdiction over the

appeal. According to the majority, the term "final decision" in 9 U.S.C. §16(a)(3) of the Federal Arbitration Act (FAA), which allows "an appeal from a final decision with respect to arbitration..," includes an order that compels arbitration and dismisses the underlying claims. Moreover, it did not matter that Lamps Plus had prevailed on its motion to compel arbitration because Lamps Plus "did not secure the relief it requested," i.e., individual arbitration.

Turning to the main issue, the majority accepted the Ninth Circuit finding that the agreement was ambiguous. However, the majority found the Ninth Circuit's holding inconsistent with the fundamental purpose and objective of the FAA. Citing a consistent line of cases upholding the enforceability of binary arbitration agreements, the majority noted:

Arbitration is "strictly a matter of consent" and the courts must uphold the terms of the arbitration agreement.

There is a fundamental difference between individual and class arbitration in costs, efficiency and speed.

Courts may not infer consent to participate in class arbitration absent an affirmative "contractual basis for concluding that the party *agreed* to do so."

The crux of the majority's opinion is that an ambiguous agreement cannot provide the necessary consent for compelling class arbitration. Discussing the "fundamental" and "crucial" differences between class and individual arbitration, the majority characterized class arbitration as "sacrificing" the principal advantages of arbitration such as: lower costs, greater efficiency, speed and simplicity as well as introducing due process concerns related to absent class members.

The dissents

Justice Kagan (joined by Justices Ginsburg, Breyer and Sotomayor) argues that the FAA should not federalize basic contract law, and that the majority opinion is based on a policy view that does not justify displacing generally applicable state law about interpreting ambiguous contracts. According to Justice Kagan, if the majority reads the contract as ambiguous, it should be interpreted against the drafter – Lamps Plus. In her opinion, the majority's holding, intent on prohibiting class arbitration, disregards contract principles of law and disrespects state authority to enforce its laws.

Justice Ginsburg (joined by Justices Kagan, Sotomayor and Breyer) chides the majority for their invocation of "lack of consent" to justify imposing the terms of an adhesion contract on individuals who have no bargaining power to withhold consent. She further opines that notwithstanding the actions of companies and states that have abandoned the use of mandatory arbitration agreements in some cases, mandatory individual arbitration thwarts effective access to justice in the courts and

collectively in arbitration for consumers and employees. She concludes her dissent with a call to Congress for correction of the court's interpretation of the FAA with respect to employees and consumers.

Justice Breyer also authored a dissent. He characterizes the majority's decision on the jurisdictional issue as failing to adhere to the plain language of the FAA and the intent of Congress regarding 9 U.S.C. §16 of the FAA. Specifically, Justice Breyer contends that the district court decision was an interlocutory order with an improper dismissal and was unappealable under §16(b) until the conclusion of arbitration. The majority decision enables Lamps Plus to circumvent the appellate scheme established in the FAA by securing an unlawful dismissal.

Justice Sotomayor also dissented (while also joining the dissents of Justices Ginsburg and Kagan). Sotomayor roundly criticized the line of cases holding that class arbitration is anathema to the purpose of the FAA. Rather, it's a procedural device that enables "multiple plaintiffs to aggregate claims and prevent a failure of justice." She further criticized the majority for "invading California contract law without pausing to address whether its incursion is necessary."

What this means to you

While many factors should be considered when deciding whether to use arbitration agreements and determining how to draft those agreements, after this decision, it is more clear than ever that parties who wish to limit or avoid class or collective actions can do so with a carefully worded agreement. Not only are employee class action waivers now permitted in the wake of *Epic Systems Corp. v. Lewis*, but even absent a waiver, courts will require a specific agreement to order class arbitration and will not infer from an ambiguous arbitration agreement that the parties agreed to class arbitrations.

Contact us

If you have questions about arbitration contracts or issues related to arbitration, contact Julia Farrell or your Husch Blackwell attorney.

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