SHEDDING SOME LIGHT: SCOTUS GRANTS CERT. IN LAMPS PLUS TO ANSWER QUESTION ON STATE-LAW CONTRACT INTERPRETATION AND CLASS ARBITRATION

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U.S. Consumer Financial Services / Class Action Litigation Defense Alert

In *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*, [1] the U.S. Supreme Court held that "a party may not be compelled" under the Federal Arbitration Act ("FAA") "to submit to class arbitration unless there is a contractual basis for concluding that the party *agreed* to do so." [2] The *Stolt-Nielsen* Court found that an agreement that is silent on the availability of class arbitration does not provide sufficient evidence that the parties intended to submit to class, as opposed to individual, arbitration. [3] The Court, however, left open the question of what level of specificity an agreement must contain to demonstrate the parties' consent to submit a dispute to class arbitration. [4]

Picking up where it left off in *Stolt-Nielsen*, the Supreme Court is now poised to address this question. On April 30, 2018, the Court granted a petition for writ of certiorari in *Lamps Plus, Inc. v. Varela*. [5] *Lamps Plus* presents the question of whether the FAA "forecloses a state-law interpretation of an arbitration agreement that would authorize class arbitration based solely on general language commonly used in arbitration agreements." [6] The Court will specifically consider whether the U.S. Court of Appeals for the Ninth Circuit erred by finding that the parties agreed to class arbitration solely through the application of state contractual interpretation principles, despite the agreement's silence as to class arbitration. The arbitration agreement between the parties in *Lamps Plus* did not contain a single reference to class arbitration. [7] The Ninth Circuit nevertheless inferred an agreement to arbitrate on a class basis based on standard language in the agreement and application of the concept that ambiguity in an agreement should be read against the drafter. [8]

In seeking to overturn the Ninth Circuit's decision, the petitioners contend that the Supreme Court's prior decisions prohibit the Ninth Circuit from "presum[ing] that the parties' mere silence on the issue of class-action arbitration constitutes consent to resolve their disputes in class proceedings." [9] Notwithstanding the respondent's argument that it is appropriate for courts to leverage generally applicable state-law contract principles to determine if there is a contractual basis for class arbitration, the Supreme Court decided that the question warrants its review.

BACKGROUND

Respondent Frank Varela brought a class action against his employer Lamps Plus, asserting claims related to a data breach that resulted in the release of personal information of Mr. Varela and other Lamps Plus employees. [10] Varela had signed an arbitration agreement as part of his employment contract. [11] Lamps Plus moved to compel Varela to submit his claims to individual arbitration. [12] The district court granted Lamps Plus' motion to

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compel arbitration but ordered that the arbitration should proceed on a class, rather than on an individual, basis. [13] The district court found that (1) the arbitration agreement was ambiguous as to whether it provided for class arbitration, and (2) on that basis, reasoned that it had to be interpreted against the drafter Lamps Plus and thus provided a basis to allow a class-wide arbitration. [14]

The Ninth Circuit affirmed. [15] In doing so, the Court distinguished *Stolt-Nielsen* on the grounds that silence was "more than the mere absence of language explicitly referring to class arbitration; instead, it meant absence of agreement." [16] Thus, the Court reasoned that the omission of express language calling for class arbitration does not always indicate that an arbitration agreement does not permit class proceedings. According to the Ninth Circuit, that "the Agreement does not expressly refer to class arbitration is not the 'silence' contemplated in *Stolt-Nielsen*." [17] The Ninth Circuit then turned to three provisions in the agreement that, in the panel's view, demonstrated the parties' assent to class arbitration: (1) the waiver of "any right [the employee] may have to file a lawsuit or other civil action or proceeding relating to [his or her] employment with the Company," (2) the waiver of "any right [the employee] may have to resolve employment disputes through trial by judge or jury, and (3) the "arbitration shall be in lieu of any and all lawsuits or other civil legal proceedings relating to [the employee's] employment." [18] Notably, each of these provisions is relatively standard and may be found in some form in most arbitration agreements.

ARGUMENTS

Lamps Plus petitioned the Supreme Court for review, arguing that the Ninth Circuit abandoned Supreme Court precedent by using state contract interpretation principles to manufacture a basis in the parties' arbitration agreement to support class arbitration. According to Supreme Court precedent, the differences between arbitration on an individual basis versus class arbitration are critical. [19] Because arbitration agreements typically "forgo the procedural rigor and appellate review of courts in order to realize the benefits of private dispute resolution," the FAA presumes that agreements provide for individual arbitration absent the parties' indication to the contrary. [20] Conversely, class proceedings are generally not consistent with the streamlined-procedure-based benefits of arbitration and are not "envisioned by the FAA." [21] Because of these differences, Lamps Plus argued that there must be a clear contractual provision regarding class arbitration because "courts may not 'presume' such consent." [22] The Ninth Circuit's decision, however, did exactly that, by relying solely on standard arbitration terms and contract interpretation guidelines. Lamps Plus further argued that the Ninth Circuit's conclusion created a circuit split where "other courts [] have uniformly rejected similar efforts to equate standard arbitration terms with an implicit agreement to class arbitration." [23]

Respondent, on the other hand, argued that there was no issue with the Ninth Circuit's contractual interpretation because it used the "FAA-based principle that class arbitration is permissible only if there is a contractual basis for it." [24] In their view, the Supreme Court never intended to create a "new federal common law of contracts to replace state law in determining whether such a contractual basis exists." [25] Nevertheless, the Supreme Court considered the question sufficiently pressing to warrant review on writ of certiorari. The case will be argued during the Court's October 2018 term.

CONCLUSION

The Court's decision may have broad implications for how courts interpret arbitration provisions in determining whether they provide for class arbitration procedures. Whatever the result, *Lamps Plus* exemplifies the care

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businesses should take when drafting (and re-examining) arbitration agreements. Arbitration agreements in which the parties unambiguously waive class arbitration may leave less room for courts to arrive at a different conclusion.

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[1] *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662 (2010).

[2] *Id.* at 684 (emphasis in original).

[3] *See id.* at 687.

[4] For more information on the Supreme Court's *Stolt-Nielsen* decision, see *Class Arbitration Waivers: Silence Reigns in* Stolt-Nielson, *but the Courts Have More to Say*, K&L GATES Alert (June 2010).

[5] *Lamps Plus, Inc. v. Varela*, No. 17-988, 2018 WL 398496 (U.S. Apr. 30, 2018).

[6] *Lamps Plus, Inc. v. Varela*, Petition for Writ of Certiorari, No. 17-988, at i.

[7] *Varela v. Lamps Plus, Inc.*, 701 F. App'x 670, 671 (9th Cir. 2017).

[8] *Id.*

[9] *Lamps Plus, Inc. v. Varela*, Petition for Writ of Certiorari, No. 17-988; *see also Stolt-Nielsen*, 559 U.S. at 687.

[10] *Varela*, 701 F. App'x at 671.

[11] *See id.* at 671.

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *See id.* at 672.

[16] *Id.* at 672.

[17] *Id.*

[18] *Id.* at 672–73.

[19] *Lamps Plus, Inc. v. Varela*, Petition, No. 17-988, at 11-12.

[20] *Id.* at 11 (quoting *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 348 (2011)) (internal quotations omitted).

[21] *Id.* at 12.

[22] *Id.* (citing *Stolt-Nielsen*, 559 U.S. at 685, 687).

[23] *Id.* at 4.

[24] *Lamps Plus, Inc. v. Varela*, Respondent's Brief in Opposition, No. 17-988, at 8.

[25] *Id.*

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