

Supreme Court Rejects Class Arbitration Unless Expressly Authorized

by Grant T. Collins - Friday, April 26, 2019



Yesterday, in a 5-4 decision, the Supreme Court ruled in [Lamps Plus, Inc. v. Varela](#) that the Federal Arbitration Act (“FAA”) does not permit a court to compel class arbitration when the arbitration agreement does not expressly provide for it.

Today’s decision means that employers that utilize arbitration agreements with their employees can compel individual arbitration even if the employee attempts to bring a lawsuit on behalf of a class of employees.

Employer Sued after Phishing Attack

In 2016, Lamps Plus was the victim of a computer phishing scam. The hacker convinced the company to discuss the tax information of about 1,300 company employees. After a fraudulent federal income tax return was filed in the name of respondent Frank Varela, a Lamps Plus employee, Varela filed a class action against Lamps Plus in federal court.

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—and to dismiss the suit. The arbitration agreement at issue did not “class-action waiver,” which is an express provision preventing class-wide arbitration.

Although it’s not clear from the case, Lamps Plus likely did not include a class-action waiver in its employment agreements because the National Labor Relations Board had previously concluded that such provisions violated the National Labor Relations Act. However, the

Supreme Court reversed that decision last year as we reported in [U.S. Supreme Court Upholds Arbitration Agreements For Employees](#).

Both the District Court and Ninth Circuit Court of Appeal concluded that the absence of a class-action waiver could be construed against the drafter (here, the employer) and held that the arbitration could be construed to authorize class-wide arbitration. Accordingly, the lawsuit was dismissed but class-wide arbitration was approved.

Supreme Court Finds No Consent to Class-wide Arbitration

In reversing the lower courts' rulings, the Supreme Court emphasized that class arbitration "sacrifices the principal advantage of arbitration—its informality—and makes the process slower, more costly, and more likely to generate procedural morass than final judgment."

According to the Court, silence or ambiguity is not enough to find consent to class-wide arbitration:

Neither silence nor ambiguity provides a sufficient basis for concluding that parties to an arbitration agreement agreed to undermine the central benefits of arbitration itself...[c]ourts may not infer from an ambiguous agreement that parties have consented to arbitrate on a class-wide basis.

As a result, the Court mandated that the employee pursue his claims only in an individual arbitration.

Bottom Line

The Supreme Court's decision is a clear win for employers whose arbitration agreements do not contain express class-action waivers. However, in order to compel such arbitrations, the arbitration agreement itself must of course still be enforceable. Employees continue to challenge the enforceability of arbitration agreements on a regular basis.

As a result, employers would be well-advised to have these agreements vetted regularly by counsel to ensure their enforceability.