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Justices Say Class Arbitration Must Be Explicitly Authorized

By **Vin Gurrieri**

Law360 (April 24, 2019, 10:09 AM EDT) -- The U.S. Supreme Court on Wednesday ruled that arbitration agreements must explicitly call for class arbitration for that process to be invoked, handing lighting retailer Lamps Plus Inc. a win in its challenge of a Ninth Circuit ruling that allowed a worker's data breach class arbitration to move forward.

The justices by a 5-4 vote overturned the appellate court's decision that Lamps Plus' arbitration agreement with worker Frank Varela let him pursue class claims even though the deal was vague on the issue of class arbitration.

Lamps Plus had sought to make Varela bring his claims in individual arbitration under the high court's 2010 Stolt-Nielsen ruling, which bars class arbitration when there's no "contractual basis for concluding" that the parties agreed to it. That ruling, however, didn't address whether courts can infer that such a contractual basis exists in situations like Varela's where an agreement doesn't explicitly block class arbitration and the language is ambiguous.

In a 5-4 decision. U.S. Supreme Court justices on Wednesday ruled that arbitration agreements must explicitly call for class arbitration for that process to be invoked. (AP)

In Wednesday's ruling, which was authored by Chief Justice John Roberts, the court's conservative majority said that Stolt-Nielsen doesn't permit lower courts to make such an inference.

"Under the Federal Arbitration Act, an ambiguous agreement cannot provide the necessary contractual basis for concluding that the parties agreed to submit to class arbitration," the justices said. "Like silence, ambiguity does not provide a sufficient basis to conclude that parties to an arbitration agreement agreed to 'sacrifice the principal advantage of arbitration.' This conclusion aligns with the court's refusal to infer consent when it comes to other fundamental arbitration questions."

The dispute stems from Varela's allegations that Lamps Plus didn't adequately protect his and about 1,300 co-workers' personal data ahead of the 2016 phishing theft of their tax and income statements.

Lamps Plus persuaded a California federal judge to send Varela's suit to arbitration per the agreement

he'd signed. But the trial court judge said Varela could pursue his claims in arbitration on a classwide basis since his arbitration agreement was vague about class arbitration.

In upholding the ruling, the Ninth Circuit found that since the arbitration agreement could be read either way on the issue of whether it allows for class arbitration, California "state contract principles" require that courts' interpretation of the ambiguous language cut against the drafter of the agreement, which in this case was the retailer.

In its cert petition, Lamps Plus specifically asked the justices to consider whether the Federal Arbitration Act prohibits any interpretation of arbitration pacts under state law that allow for class arbitration based only on general language that is commonly used in such agreements.

The high court majority in Wednesday's ruling deferred to the Ninth Circuit's conclusion that the agreement between Lamps Plus and Varela was ambiguous as to whether class arbitration was an available option, and said that such a lack of clarity can't amount to the sort of "contractual basis" required under Stolt-Nielsen for class arbitration to be invoked.

The panel also noted that class arbitration is both "markedly different" from individual arbitration and "undermines the most important benefits" of the individual arbitration.

In particular, the justices highlighted the fact that individual arbitration is cheaper and quicker whereas class arbitration takes longer, costs more and is procedurally more complex.

"Consent is essential under the FAA because arbitrators wield only the authority they are given," the majority said. "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."

Moreover, the high court also took issue with the Ninth Circuit's decision to use state contract principles that call for courts to interpret ambiguous language in contracts against the drafter, a doctrine known as contra proferentem, according to Wednesday's ruling.

That rule "cannot be applied to impose class arbitration in the absence of the parties' consent," the majority said. It also rejected Varela's contention that the Ninth Circuit lacked jurisdiction over Lamps Plus' appeal as part of the ruling.

The decision comes nearly a year after the justices' seminal decision in Epic Systems Corp. v. Lewis, which blessed the practice of businesses including class actions waivers in arbitration pacts that their workers must sign.

Justice Elena Kagan wrote in dissent that while she believes that Lamps Plus' agreement "is best understood" to allow for class arbitration, the "plain vanilla" anti-drafter interpretation rule used by the California courts that heard the case allows for a classwide arbitration proceeding even if the high court majority was right to construe Lamps Plus' agreement as being ambiguous.

"Today's opinion is rooted instead in the majority's belief that class arbitration 'undermine[s] the central benefits of arbitration itself,'" Justice Kagan said. "But that policy view — of a piece with the majority's ideas about class litigation — cannot justify displacing generally applicable state law about how to interpret ambiguous contracts."

All the liberal justices signed on in full to Justice Kagan's opinion except for Justice Sonia Sotomayor, who refrained from joining one portion of it.

Justice Ruth Bader Ginsburg, joined by Justice Stephen Breyer and Justice Sotomayor, wrote a separate dissent to "emphasize ... how treacherously the court has strayed from the principle that 'arbitration is a matter of consent, not coercion,'" saying the court has in recent years "hobbled the capacity of employees and consumers to band together in a judicial or arbitral forum."

Despite what Justice Ginsburg called "recent steps to counter the court's current jurisprudence" on arbitration by some companies and states that have stopped requiring workers to arbitrate certain types of claims, the practice of mandatory individual arbitration "continues to thwart 'effective access to justice' for those encountering diverse violations of their legal rights," she wrote.

Justice Ginsburg was also the author of a pointed dissent in last year's Epic Systems case.

Justices Sotomayor and Breyer each wrote separate dissents of their own, and Justice Clarence Thomas wrote a concurring opinion.

Andrew Pincus of Mayer Brown LLP, counsel for Lamps Plus, said in a written statement Wednesday that the decision "once again made clear that lower courts may not use unjustified reasoning to circumvent the court's prior rulings — the very judicial hostility to arbitration that led Congress to enact the FAA."

"Today's decision applies the already-established principle that parties must agree to class arbitration, because it is fundamentally different from the individualized arbitration protected by the Federal Arbitration Act, and that a contract interpretation based on public policy rules, not agreement by the parties, does not suffice," he added.

Counsel for Varela was not immediately available for comment.

Lamps Plus is represented by Andrew Pincus, Archis Parasharami, Daniel Jones and Donald Falk of Mayer Brown LLP and Jeffrey Miller, Eric Kizirian, Michael Grimaldi and Brittany Sutton of Lewis Brisbois Bisgaard & Smith LLP..

Varela is represented by Michele Vercoski and Richard McCune of McCune Wright Arevalo LLP and Scott Nelson and Allison Zieve of Public Citizen.

The case is Lamps Plus Inc. et al. v. Frank Varela, case number 17-988, in the U.S. Supreme Court.

--Editing by Pamela Wilkinson and Katherine Rautenberg.

Update: This story has been updated to include more information as well as comment from Lamps Plus' attorney.