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Supreme Court Hears Oral Argument in Lamps Plus Case

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On October 29, 2018, the Supreme Court heard oral argument in the case of *Lamps Plus, Inc. v. Varela*. At issue in *Lamps Plus* is what standard should be applied in determining whether parties have agreed to submit claims to class arbitration. The arbitration agreement between Lamps Plus and one of its employees did not contain an explicit waiver prohibiting arbitration of class or collective claims. The Ninth Circuit held that the arbitration agreement was ambiguous as to whether the parties agreed to submit class claims to arbitration. The Court applied a California contract-law principle that any ambiguity is to be construed against the drafter, and therefore held that the arbitration agreement permitted arbitration of the employee's class claims.

On appeal to the Supreme Court, Lamps Plus argued that the Ninth Circuit (i) improperly found an "implicit agreement to authorize class-action arbitration" in violation of the Supreme Court's prior decision in *Stolt-Nielsen*, and (ii) *Stolt-Nielsen* required an explicit agreement between the parties before they could be compelled to class arbitration. At oral argument, counsel for Lamps Plus argued that the parties must "clearly and unmistakably" agree to class arbitration for such arbitration to be compelled by a court.

Justice Kagan questioned Lamps Plus's counsel extensively regarding the language of the arbitration agreement at issue, suggesting that the language was broad enough to encompass class arbitration. For example, Justice Kagan asked that if the agreement covered "disputes, claims, or controversies" between the parties, "[w]hy wouldn't you include class disputes, claims, or controversies, unless there's some kind of special contractual interpretive rule coming in that we wouldn't apply in other contexts?"

Justice Sotomayor also expressed concern that the Supreme Court had previously been clear that state law controls the interpretation of arbitration agreements and that adopting a "clear and unmistakable" standard would be "creating a federal common law . . . something we're loathe to do in virtually every other context." Justice Kavanaugh expressed concerns regarding whether such a standard had any basis in the text of the Federal Arbitration Act (FAA).

During questioning of Varela's counsel, other Justices expressed concerns regarding whether class claims can be appropriately handled in arbitration. Chief Judge Roberts, paraphrasing Justice Jackson, stated that the "FAA is not a suicide pact. So, if the FAA says enforce the contracts according to its terms, but one of the terms, as our prior precedents say, is fundamentally inconsistent with arbitration itself, then presumably, the FAA would preclude that term." Justices Gorsuch and Alito voiced due process concerns with class arbitration, noting that potential class members could be bound by an arbitration award even though they never agreed to arbitration.

Justice Breyer separately noted that California applies a lower standard than other states to find an ambiguity in a contract which could result in an improper inference that the parties had agreed to class arbitration which is "what *Stolt-Nielsen* says you shouldn't have."

Although it is difficult to predict how the Supreme Court will rule in *Lamps Plus* based on the oral argument, the questioning suggests that the Justices may be split on what standard should be applied to determine whether parties have agreed to class arbitration and what role state and federal law should play in making that determination.

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