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International Arbitration Case Law

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STOLT-NIELSEN S.A. ET AL. v. ANIMALFEEDS INTERNATIONAL CORP. CASE NO. 08-1198 (130 S. CT. 1758)

Case Report by Nassim Hooshmandnia**
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Taking a contrary approach to the majority decision in *Abaclat and Others v. Argentine Republic* (formerly known as *Giovanna a Beccara and Others v. Argentine Republic*), ICSID Case No. ARB/07/5, the United States Supreme Court held that imposing class arbitration on parties whose arbitration clauses are silent on that issue is inconsistent with the United States Federal Arbitration Act.

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Digest

1. Facts of the Case

A group of shipping companies, Stolt-Nielsen, Odfjell, Jo Tankers, and Tokyo Marine Co., Ltd. (petitioners), entered into a standard maritime contract, called a charter party, with AnimalFeeds International Corp. (respondent, "AnimalFeeds") for the shipment of fish oil and other raw ingredients. The charter party included an arbitration clause requiring arbitration of disputes in New York and in conformity with the United States Federal Arbitration Act ("FAA").

In 2003, a United States Department of Justice criminal investigation uncovered petitioners' price-fixing conspiracy. AnimalFeeds brought antitrust claims against petitioners in a class action lawsuit. Other entities filed similar lawsuits as they had entered into identical standard contracts with petitioners. In one of these actions, the trial court concluded that the claims were not subject to the arbitration clause, but the U.S. Court of Appeals for the Second Circuit reversed the decision. Later, the Judicial Panel on Multidistrict Litigation – a special body within the United States federal court system that manages related litigation taking place in multiple judicial districts – consolidated AnimalFeeds' action with the other similar actions against petitioners. As a result of the consolidation and the Second Circuit reversal, AnimalFeeds and petitioners agreed that they were required to arbitrate their dispute.

In 2005, AnimalFeeds and petitioners entered into a supplemental agreement to submit the question of whether class arbitration was permitted to a three-person arbitration panel. The panel would be bound by Rules 3 to 7 of the American Arbitration Association's Supplementary Rules for Class Arbitration ("Class Rules"). Class Rule 3 – based on the Supreme Court's 2003 plurality decision[1] in *Green Tree Financial Corp. v. Bazzle* ("*Bazzle*," 539 U.S. 444) – requires an arbitrator to determine "whether the applicable arbitration clause permits the arbitration to proceed on behalf of or against a class."

The parties stipulated that the arbitration clause was "silent" on the issue of class arbitration – *i.e.*, "that no agreement had been reached on that issue."[2] After the proceeding, the arbitrators held that the arbitration clause permitted class arbitration. The panel pointed to other arbitration decisions that had interpreted

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[1] A plurality opinion is the opinion from a group of justices, in which no single opinion received the support of a majority of the court; hence it does not have the precedential value of majority opinions.

[2] Decision p. 1766.

"a wide variety of clauses in a wide variety of settings as allowing for class arbitration," although those decisions were not "exactly comparable" to the AnimalFeeds' dispute.[3] Additionally, the panel found that the petitioners' expert evidence did not demonstrate an intent to preclude class arbitration.

The proceedings were stayed while petitioners filed an application to vacate the arbitrators' award in the U.S. District Court for the Southern District of New York. The court sided with petitioners, vacating the award. It held that the decision was in "manifest disregard" of the law because the arbitrators did not perform a choice of law analysis.[4] The court concluded that if the arbitrators had engaged in such an analysis, they would have interpreted the contract based on custom and usage, as required by federal maritime law.

AnimalFeeds appealed, and the U.S. Court of Appeals for the First Circuit reversed the District Court's decision. It concluded that the arbitrators' decision was not in manifest disregard of federal maritime law because petitioners had not pointed to any authority applying a federal maritime rule of custom and usage *against* class arbitration.

Petitioners filed a writ of *certiorari* to the Supreme Court seeking judicial review. The Supreme Court granted *certoriari*, and took up the issue of whether imposing class arbitration on parties whose arbitration clauses are "silent" on that issue is consistent with the Federal Arbitration Act.

2. *Legal Issues Discussed in the Decision*

(a) Proper Rules for Determining Whether Class Arbitration Is Permitted

The Supreme Court decided that the arbitration panel exceeded its powers as it failed to identify and apply the proper rule of law that governed the dispute. According to the Court, a decision of an arbitration panel may be vacated when an "arbitrator strays from the interpretation and application of the agreement and effectively dispenses his own brand of industrial justice."[5] The Court believed that the panel grounded its decision in AnimalFeeds' assertion that class arbitration should be permitted for public policy reasons. Instead, the panel should have identified the appropriate rule of law to assess whether a "default rule" exists as to the appropriateness of class arbitration when the contract is silent on the issue.

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[3] *Id*.
[4] *Id*.
[5] *Id*. at 1767.

The Court concluded that the panel conducted no such analysis – it did not consider the applicability of the FAA, maritime law, or even New York law in determining whether class action arbitration was permitted. Moreover, where the panel relied on decisions finding "a wide variety of clauses in a wide variety of settings as allowing for class arbitration," it did not consider the underlying rules on which those decisions were based. According to the Court, the panel only considered whether there existed any reason *not* to allow class arbitration.

Additionally, the Court was not convinced that the panel engaged in a true inquiry of the parties' intent. In fact, the Court found that no such inquiry was necessary because the parties were in agreement regarding their intent – that the contract was silent on the issue of class arbitration.

In the end, the Court held that the panel "simply . . . impose[d] its own view of sound policy regarding class arbitration."[6] Thus, under section 10(b) of the FAA, the Court was compelled to either direct a rehearing by the arbitrators or decide the question that was originally presented to the arbitration panel.[7] The Court chose to decide whether the parties' agreement allows for class arbitration when it is silent on the issue.

(b) The Absence of a Standard for Determining Whether Class Arbitration Is Permitted

Before reaching the ultimate issue, the Court established that it had not determined, in *Bazzle* or any other decision, the standard to be applied in deciding whether class arbitration is permitted. The Court pointed out that the panel had falsely believed the *Bazzle* opinion controlled the resolution of the case. Indeed, the *Bazzle* decision was merely a plurality decision where no single rationale received the support of a majority. Furthermore, the Court explained that the only conclusion *Bazzle* drew was that the arbitrator, and not a court, can decide whether contracts are in fact silent on the issue of class arbitration. The plurality never opined on the issue of an appropriate standard for determining whether a contract authorizes class arbitration or whether the class arbitration at issue in *Bazzle* was appropriate.

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[6] *Id*. at 1767-68.

[7] Section 10(b) of the FAA states: "If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators."

(c) Arbitration Clause Interpretation in Light of the Federal Arbitration Act

The Court concluded that imposing class arbitration in the instant case was inconsistent with the FAA. The Court held, as it has in previous decisions, that the "primary purpose of the FAA is to ensure that private agreements to arbitrate are enforced according to their terms."[8] Thus, "courts and arbitrators must give effect to the contractual rights and expectations of the parties."[9] The Court stated that parties may decide all aspects of their arbitration agreement, including the issues to arbitrate and with whom to arbitrate.

The Court concluded that "a party may not be compelled under the FAA to submit to class arbitration unless there is a contractual basis for concluding that the party agreed to do so."[10] Even though the parties had reached no agreement on the issue of class arbitration, the panel still concluded that class arbitration was permissible under the parties' agreement – a conclusion that the Court determined is "fundamentally at war with the foundational FAA principle that arbitration is a matter of consent."[11]

(d) Differences Between Bilateral and Class Arbitration

The Court further held that an arbitration panel cannot infer that parties agree to class arbitration merely by consenting to arbitration. This is because "the differences between bilateral and class-action arbitration are too great for arbitrators to presume . . . that the parties' mere silence on the issue of class-action arbitration constitutes consent to resolve their disputes in class proceedings."[12]

The Court pointed to four "fundamental changes" caused by a shift from bilateral to class arbitration.[13] First, in class arbitration, the arbitrator decides many disputes between hundreds or thousands of parties, as opposed to a single dispute between parties to a single agreement. Second, privacy and confidentiality, which are features of bilateral arbitration, do not apply in class arbitrations under the Class Rules, "potentially frustrating the parties'

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[8] Decision p. 1773.
[9] *Id*. at 1773-74.
[10] *Id*. at 1775.
[11] *Id*.
[12] *Id*. at 1776.
[13] *Id*.

assumptions when they agreed to arbitrate."[14] Third, class arbitration binds many more parties, and even determines the rights of absent parties. Fourth, in class arbitration, the arbitrator is deciding a high-stakes proceeding akin to class-action litigation, but with much more limited judicial review.

3. *Decision*

The Supreme Court held that imposing class arbitration on parties whose arbitration clauses are silent on that issue is inconsistent with the United States Federal Arbitration Act, reversing the judgment of the U.S. Court of Appeals for the First Circuit. Because of the significant differences between bilateral and class arbitration, an arbitration panel could not conclude that parties consented to class arbitration from a simple consent to arbitrate.

4. *Dissent*

(a) Ripeness for Judicial Review

The dissent argued that the case was not ripe – not ready for judicial review – because the arbitration panel merely decided that class arbitration was permissible in the abstract. The panel's decision was rather limited as it did not determine whether AnimalFeeds' specific claims were appropriate for class arbitration, nor did it define the class. The dissent acknowledged that some lower courts have permitted judicial review of "partial awards," but "[n]o decision of this Court, until today, has ever approved immediate judicial review of an arbitrator's decision as preliminary as the 'partial award' made in this case."[15]

(b) Standard for Vacating Arbitration Panel Decision

The dissent asserted that, according to the FAA, the Court can vacate an arbitration award "only in very unusual circumstances."[16] Since the petitioners only invoked section 10(a)(4) as the basis for vacating the arbitrators' decision, the Court should have only considered "whether the arbitrators had the power, based on the parties' submissions or the arbitration agreement, to reach a certain issue, not whether the arbitrators correctly decided that issue."[17] According to

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[14] *Id*.
[15] *Id*. at 1779.
[16] *Id*. at 1780.
[17] *Id*. Section 10(a) of the Federal Arbitration Act states:

the dissent, the parties' supplemental agreement, which provided that the arbitration panel would determine the class arbitration issue, gave the panel the authority to render its decision.

The dissent disagreed that the panel only rested its decision on AnimalFeeds' public policy argument. It contended that the panel indeed considered New York law and federal maritime law, as well as decisions by other arbitration panels pursuant to the Class Rules. Regardless, the dissent contended that courts "do not sit to hear claims of factual or legal error by an arbitrator as an appellate court does in reviewing decisions of lower courts." Thus, even if the panel committed a serious error in its decision, the Court "may not disturb the arbitrators' judgment."[18]

(c) Other Criticism of the Court's Opinion

The dissent argues that the Court's decision essentially requires contractual language that can be interpreted as affirmatively authorizing class arbitration, thus barring arbitration when parties may have indeed intended to permit it. The dissent also contends that, rather than foreclosing class arbitration altogether, arbitrators can delineate a class that would adhere to the confines of the arbitration agreement. Moreover, the dissent noted that class arbitration is an effective alternative to costly adjudication, particularly where each claim is modest in value, providing plaintiffs with less incentive to bring individual claims.

(d) Limits to the Court's Decision

The dissent also presented what it believed to be two limits to the Court's decision. First, it believed that that the Court does not require an express agreement for class arbitration. Class arbitration is permitted as long as there is a contractual basis for holding that parties agreed to it. Second, the dissent contended that the Court's mention of two factors – the parties' sophistication, and that shipping companies traditionally decide which standard maritime contract to use – demonstrates that the decision does not affect contracts of

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> In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration…(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

[18] Decision p. 1782.

adhesion offered "on a take-it-or-leave-it basis" since those factors are rarely present in such contracts.[19]

[19] *Id*.