

Opinion of BREYER, J.

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## SUPREME COURT OF THE UNITED STATES

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No. 02–634

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GREEN TREE FINANCIAL CORP., NKA CONSECO  
FINANCE CORP., PETITIONER *v.* LYNN W.  
BAZZLE, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH  
CAROLINA

[June 23, 2003]

JUSTICE BREYER announced the judgment of the Court and delivered an opinion, in which JUSTICE SCALIA, JUSTICE SOUTER, and JUSTICE GINSBURG join.

This case concerns contracts between a commercial lender and its customers, each of which contains a clause providing for arbitration of all contract-related disputes. The Supreme Court of South Carolina held (1) that the arbitration clauses are silent as to whether arbitration might take the form of class arbitration, and (2) that, in that circumstance, South Carolina law interprets the contracts as permitting class arbitration. 351 S. C. 244, 569 S. E. 2d 349 (2002). We granted certiorari to determine whether this holding is consistent with the Federal Arbitration Act, 9 U. S. C. §1 *et seq.*

We are faced at the outset with a problem concerning the contracts' silence. Are the contracts in fact silent, or do they forbid class arbitration as petitioner Green Tree Financial Corp. contends? Given the South Carolina Supreme Court's holding, it is important to resolve that question. But we cannot do so, not simply because it is a matter of state law, but also because it is a matter for the

Opinion of BREYER, J.

arbitrator to decide. Because the record suggests that the parties have not yet received an arbitrator's decision on that question of contract interpretation, we vacate the judgment of the South Carolina Supreme Court and remand the case so that this question may be resolved in arbitration.

## I

In 1995, respondents Lynn and Burt Bazzle secured a home improvement loan from petitioner Green Tree. The Bazzles and Green Tree entered into a contract, governed by South Carolina law, which included the following arbitration clause:

“ARBITRATION—All disputes, claims, or controversies arising from or relating to this contract or the relationships which result from this contract . . . *shall be resolved by binding arbitration by one arbitrator selected by us with consent of you.* This arbitration contract is made pursuant to a transaction in interstate commerce, and shall be governed by the Federal Arbitration Act at 9 U. S. C. section 1. . . . THE PARTIES VOLUNTARILY AND KNOWINGLY WAIVE ANY RIGHT THEY HAVE TO A JURY TRIAL, EITHER PURSUANT TO ARBITRATION UNDER THIS CLAUSE OR PURSUANT TO COURT ACTION BY US (AS PROVIDED HEREIN). . . . The parties agree and understand that the arbitrator shall have all powers provided by the law and the contract. These powers shall include all legal and equitable remedies, including, but not limited to, money damages, declaratory relief, and injunctive relief.” App. 34 (emphasis added, capitalization in original).

Respondents Daniel Lackey and George and Florine Buggs entered into loan contracts and security agreements for the purchase of mobile homes with Green Tree. These

## Opinion of BREYER, J.

agreements contained arbitration clauses that were, in all relevant respects, identical to the Bazzles' arbitration clause. (Their contracts substitute the word "you" with the word "Buyer[s]" in the italicized phrase.) 351 S. C., at 264, n. 18, 569 S. E. 2d, at 359, n. 18 (emphasis deleted).

At the time of the loan transactions, Green Tree apparently failed to provide these customers with a legally required form that would have told them that they had a right to name their own lawyers and insurance agents and would have provided space for them to write in those names. See S. C. Code Ann. §37-10-102 (West 2002). The two sets of customers before us now as respondents each filed separate actions in South Carolina state courts, complaining that this failure violated South Carolina law and seeking damages.

In April 1997, the Bazzles asked the court to certify their claims as a class action. Green Tree sought to stay the court proceedings and compel arbitration. On January 5, 1998, the court both (1) certified a class action and (2) entered an order compelling arbitration. App. 7. Green Tree then selected an arbitrator with the Bazzles' consent. And the arbitrator, administering the proceeding as a class arbitration, eventually awarded the class \$10,935,000 in statutory damages, along with attorney's fees. The trial court confirmed the award, App. to Pet. for Cert. 27a-35a, and Green Tree appealed to the South Carolina Court of Appeals claiming, among other things, that class arbitration was legally impermissible.

Lackey and the Buggses had earlier begun a similar court proceeding in which they, too, sought class certification. Green Tree moved to compel arbitration. The trial court initially denied the motion, finding the arbitration agreement unenforceable, but Green Tree pursued an interlocutory appeal and the State Court of Appeals reversed. *Lackey v. Green Tree Financial Corp.*, 330 S. C. 388, 498 S. E. 2d 898 (1998). The parties then chose an arbitrator, indeed the same arbitrator who was subse-

Opinion of BREYER, J.

quently selected to arbitrate the Bazzles' dispute.

In December 1998, the arbitrator certified a class in arbitration. App. 18. The arbitrator proceeded to hear the matter, ultimately ruled in favor of the class, and awarded the class \$9,200,000 in statutory damages in addition to attorney's fees. The trial court confirmed the award. App. to Pet. for Cert. 36a–54a. Green Tree appealed to the South Carolina Court of Appeals claiming, among other things, that class arbitration was legally impermissible.

The South Carolina Supreme Court withdrew both cases from the Court of Appeals, assumed jurisdiction, and consolidated the proceedings. 351 S. C., at 249, 569 S. E. 2d, at 351. That court then held that the contracts were silent in respect to class arbitration, that they consequently authorized class arbitration, and that arbitration had properly taken that form. We granted certiorari to consider whether that holding is consistent with the Federal Arbitration Act.

## II

The South Carolina Supreme Court's determination that the contracts are silent in respect to class arbitration raises a preliminary question. Green Tree argued there, as it argues here, that the contracts are not silent—that they forbid class arbitration. And we must deal with that argument at the outset, for if it is right, then the South Carolina court's holding is flawed on its own terms; that court neither said nor implied that it would have authorized class arbitration had the parties' arbitration agreement forbidden it.

Whether Green Tree is right about the contracts themselves presents a disputed issue of contract interpretation. THE CHIEF JUSTICE believes that Green Tree is right; indeed, that Green Tree is so clearly right that we should ignore the fact that state law, not federal law, normally governs such matters, see *post*, at 1 (STEVENS, J., concur-

## Opinion of BREYER, J.

ring in judgment and dissenting in part), and reverse the South Carolina Supreme Court outright, see *post*, at 4–6 (REHNQUIST, C. J., dissenting). THE CHIEF JUSTICE points out that the contracts say that disputes “shall be resolved . . . by one arbitrator selected by us [Green Tree] with consent of you [Green Tree’s customer].” App. to Pet. for Cert. 110a. See *post*, at 4–5. And it finds that class arbitration is clearly inconsistent with this requirement. After all, class arbitration involves an arbitration, not simply between Green Tree and a *named customer*, but also between Green Tree and *other* (represented) customers, all taking place before the arbitrator chosen to arbitrate the initial, *named customer’s* dispute.

We do not believe, however, that the contracts’ language is as clear as THE CHIEF JUSTICE believes. The class arbitrator *was* “selected by” Green Tree “with consent of” Green Tree’s customers, the named plaintiffs. And insofar as the other class members agreed to proceed in class arbitration, they consented as well.

Of course, Green Tree did *not* independently select *this* arbitrator to arbitrate its disputes with the *other* class members. But whether the contracts contain this additional requirement is a question that the literal terms of the contracts do not decide. The contracts simply say (I) “selected by us [Green Tree].” And that is literally what occurred. The contracts do not say (II) “selected by us [Green Tree] to arbitrate this dispute and no other (even identical) dispute with another customer.” The question whether (I) in fact implicitly means (II) is the question at issue: Do the contracts forbid class arbitration? Given the broad authority the contracts elsewhere bestow upon the arbitrator, see, *e.g.*, App. to Pet. for Cert. 110a (the contracts grant to the arbitrator “all powers,” including certain equitable powers “provided by the law and the contract”), the answer to this question is not completely obvious.

## Opinion of BREYER, J.

At the same time, we cannot automatically accept the South Carolina Supreme Court's resolution of this contract-interpretation question. Under the terms of the parties' contracts, the question—whether the agreement forbids class arbitration—is for the arbitrator to decide. The parties agreed to submit to the arbitrator “[a]ll disputes, claims, or controversies arising from or relating to this contract or the relationships which result from this contract.” *Ibid.* (emphasis added). And the dispute about what the arbitration contract in each case means (*i.e.*, whether it forbids the use of class arbitration procedures) is a dispute “relating to this contract” and the resulting “relationships.” Hence the parties seem to have agreed that an arbitrator, not a judge, would answer the relevant question. See *First Options of Chicago, Inc. v. Kaplan*, 514 U. S. 938, 943 (1995) (arbitration is a “matter of contract”). And if there is doubt about that matter—about the “scope of arbitrable issues”—we should resolve that doubt “in favor of arbitration.” *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614, 626 (1985).

In certain limited circumstances, courts assume that the parties intended courts, not arbitrators, to decide a particular arbitration-related matter (in the absence of “clea[r] and unmistakabl[e]” evidence to the contrary). *AT&T Technologies, Inc. v. Communications Workers*, 475 U. S. 643, 649 (1986). These limited instances typically involve matters of a kind that “contracting parties would likely have expected a court” to decide. *Howsam v. Dean Witter Reynolds, Inc.*, 537 U. S. 79, 83 (2002). They include certain gateway matters, such as whether the parties have a valid arbitration agreement at all or whether a concededly binding arbitration clause applies to a certain type of controversy. See generally *Howsam, supra*. See also *John Wiley & Sons, Inc. v. Livingston*, 376 U. S. 543, 546–547 (1964) (whether an arbitration agreement survives a corporate merger); *AT&T, supra*, at 651–652

## Opinion of BREYER, J.

(whether a labor-management layoff controversy falls within the scope of an arbitration clause).

The question here—whether the contracts forbid class arbitration—does not fall into this narrow exception. It concerns neither the validity of the arbitration clause nor its applicability to the underlying dispute between the parties. Unlike *First Options*, the question is not whether the parties wanted a judge or an arbitrator to decide *whether they agreed to arbitrate a matter*. 514 U. S., at 942–945. Rather the relevant question here is what *kind of arbitration proceeding* the parties agreed to. That question does not concern a state statute or judicial procedures, cf. *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U. S. 468, 474–476 (1989). It concerns contract interpretation and arbitration procedures. Arbitrators are well situated to answer that question. Given these considerations, along with the arbitration contracts’ sweeping language concerning the scope of the questions committed to arbitration, this matter of contract interpretation should be for the arbitrator, not the courts, to decide. Cf. *Howsam, supra*, at 83 (finding for roughly similar reasons that the arbitrator should determine a certain procedural “gateway matter”).

## III

With respect to this underlying question—whether the arbitration contracts forbid class arbitration—the parties have not yet obtained the arbitration decision that their contracts foresee. As far as concerns the *Bazzle* plaintiffs, the South Carolina Supreme Court wrote that the “trial court” issued “an order granting class certification” and the arbitrator subsequently “administered” class arbitration proceedings “without further involvement of the trial court.” 351 S. C., at 250–251, 569 S. E. 2d, at 352. Green Tree adds that “the class arbitration was imposed on the parties and the arbitrator by the South Carolina trial

## Opinion of BREYER, J.

court.” Brief for Petitioner 30. Respondents now deny that this was so, Brief for Respondents 13, but we can find no convincing record support for that denial.

As far as concerns the *Lackey* plaintiffs, what happened in arbitration is less clear. On the one hand, the *Lackey* arbitrator (the same individual who later arbitrated the *Bazzle* dispute) wrote: “I determined that a class action should proceed in arbitration based upon *my* careful review of the broadly drafted arbitration clause prepared by Green Tree.” App. to Pet. for Cert. 84a (emphasis added). And respondents suggested at oral argument that the arbitrator’s decision was independently made. Tr. of Oral Arg. 39.

On the other hand, the *Lackey* arbitrator decided this question after the South Carolina trial court had determined that the identical contract in the *Bazzle* case authorized class arbitration procedures. And there is no question that the arbitrator was aware of the *Bazzle* decision, since the *Lackey* plaintiffs had argued to the arbitrator that it should impose class arbitration procedures in part because the state trial court in *Bazzle* had done so. Record on Appeal 516–518. In the court proceedings below (where Green Tree took the opposite position), the *Lackey* plaintiffs maintained that “to the extent” the arbitrator decided that the contracts permitted class procedures (in the *Lackey* case or the *Bazzle* case), “it was a reaffirmation and/or adoption of [the *Bazzle* c]ourt’s prior determination.” Record on Appeal 1708, n. 2. See also App. 31–32, n. 2.

On balance, there is at least a strong likelihood in *Lackey* as well as in *Bazzle* that the arbitrator’s decision reflected a court’s interpretation of the contracts rather than an arbitrator’s interpretation. That being so, we remand the case so that the arbitrator may decide the question of contract interpretation—thereby enforcing the parties’ arbitration agreements according to their terms. 9

Opinion of BREYER, J.

U. S. C. §2; *Volt, supra*, at 478–479.

The judgment of the South Carolina Supreme Court is vacated, and the case is remanded for further proceedings.

*So ordered.*