SUPREME COURT OF THE UNITED STATES

No. 02–634

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 STEVENS, concurring in the judgment and dissenting in part.

The parties agreed that South Carolina law would govern their arbitration agreement. The Supreme Court of South Carolina has held as a matter of state law that class-action arbitrations are permissible if not prohibited by the applicable arbitration agreement, and that the agreement between these parties is silent on the issue. 351 S. C. 244, 262–266, 569 S. E. 2d 349, 359–360 (2002). There is nothing in the Federal Arbitration Act that precludes either of these determinations by the Supreme Court of South Carolina. See *Volt Information Sciences, Inc.* v. *Board of Trustees of Leland Stanford Junior Univ.,* 489 U. S. 468, 475–476 (1989).

Arguably the interpretation of the parties' agreement should have been made in the first instance by the arbitrator, rather than the court. See *Howsam* v. *Dean Witter Reynolds, Inc.,* 537 U. S. 79 (2002). Because the decision to conduct a class-action arbitration was correct as a matter of law, and because petitioner has merely challenged the merits of that decision without claiming that it was made by the wrong decisionmaker, there is no need to remand the case to correct that possible error.

Accordingly, I would simply affirm the judgment of the

Supreme Court of South Carolina. Were I to adhere to my preferred disposition of the case, however, there would be no controlling judgment of the Court. In order to avoid that outcome, and because JUSTICE BREYER's opinion expresses a view of the case close to my own, I concur in the judgment. See *Screws* v. *United States,* 325 U. S. 91, 134 (1945) (Rutledge, J., concurring in result).