

insights

TYPES NOT MAPPED YET June 02, 2022 | TTR not mapped yet | Stephanie C. Fredman, Stephanie L. Milner

SCOTUS holds prejudice is not required for waiver of right to arbitrate

Procedural rules unique to evaluating arbitration agreements for purposes of determining whether a party has waived its right to arbitration are no more. In a unanimous May 23, 2022, decision, the U.S. Supreme Court struck down Eighth Circuit precedent that conditioned waiver of the right to arbitrate on a showing that one party “prejudiced the other party by its inconsistent actions.” [*Morgan v. Sundance, Inc.*](#), No. 21-328, 596 U. S. __ (2022).

The ruling settles a long-standing circuit split over how courts decide when a party has waived the right to arbitrate. The Court disagreed with the majority of appellate court decisions that a party does not waive the arbitration defense unless the opposing party shows prejudice. Accordingly, the Court struck down the lower court ruling requiring prejudice as a condition of waiver to arbitrate, vacated the Eighth Circuit opinion, and remanded the case for further proceedings focused, without regard to prejudice, on whether Sundance relinquished its right to arbitrate by actions inconsistent with that right.

The Court reasoned that requiring a showing of prejudice – a showing not required under general federal waiver law – is inconsistent with the FAA’s commitment to “place arbitration agreements upon the same footing as other contracts.” Further, the Court held that Section 6 of the FAA is a “command to apply the usual federal procedural rules,” and prohibits “custom-made” rules favoring arbitration, such as a prejudice condition for waiver.

Takeaways

The Court’s holding suggests that parties wishing to avoid waiver should seek to enforce arbitration agreements without delay. In *Morgan*, the Court reiterated that waiver “is the intentional relinquishment or abandonment of a known right.” (internal citation omitted). The most prudent approach is to file a motion to compel arbitration before taking any other actions in the lawsuit.

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