



Supreme Court Holds Prejudice Not Required To Show Party Waived Right to Arbitrate

***Morgan v. Sundance, Inc.*, No. 21-328**

Decided May 23, 2022

Today, the Supreme Court held 9-0 that prejudice is not required to show that a party waived the right to arbitrate.

Background:

A plaintiff filed a putative class action against her employer over the employer's pay practices. Eight months later—and after moving to dismiss, answering the complaint, asserting affirmative defenses, and participating in mediation—the defendant-employer moved pursuant to the Federal Arbitration Act (FAA) to stay the litigation and compel arbitration. The district court held that the defendant waived its right to arbitrate. The Eighth Circuit reversed, concluding that the plaintiff had failed to show it was prejudiced by the defendant-employer's delay in compelling arbitration.

Issue:

Is it necessary to show prejudice to establish the opposing party waived the right to arbitrate?

Court's Holding:

No. Because federal procedural rules typically do not require prejudice to invoke waiver, a party need not demonstrate prejudice to prove that the opposing party waived its right to arbitrate.

What It Means:

- Today's decision underscores the need for parties wishing to compel arbitration to do so early in the case to avoid the risk of waiving their right to arbitrate.
- The Court grounded its decision in the FAA, which directs courts to treat arbitration contracts in the same manner as other contracts. Given that equal-treatment principle, the Court reasoned that courts "may not devise novel rules to favor arbitration over litigation."

"[T]he FAA's 'policy favoring arbitration' does not authorize federal courts to invent special, arbitration-preferring procedural rules."

Justice Kagan,
writing for the Court

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- The Court expressly declined to decide the role state law may play in determining whether a party has relinquished its right to arbitrate through its litigation conduct. The Court also declined to decide whether losing the right to arbitrate based on a party's own conduct is best understood as involving "waiver, forfeiture, estoppel, laches, or procedural timeliness."

The Court's opinion is available [here](#).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

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