

21-328 MORGAN V. SUNDANCE, INC.

DECISION BELOW: 992 F.3d 711

LOWER COURT CASE NUMBER: 19-2435

QUESTION PRESENTED:

Waiver is the intentional relinquishment of a known right and, in the context of contracts, occurs when one party to a contract either explicitly repudiates its rights under the contract or acts in a manner inconsistent with an intention of exercising them. In the opinion below, the Eighth Circuit joined eight other federal courts of appeals and most state supreme courts in grafting an additional requirement onto the waiver analysis when the contract at issue happens to involve arbitration-requiring the party asserting waiver to show that the waiving party's inconsistent acts caused prejudice. Three other federal courts of appeal, and the supreme courts of at least four states, do not include prejudice as an essential element of proving waiver of the right to arbitrate.

The question presented is: Does the arbitration-specific requirement that the proponent of a contractual waiver defense prove prejudice violate this Court's instruction that lower courts must "place arbitration agreements on an equal footing with other contracts?" *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011).

CERT. GRANTED 11/15/2021