



## MCCOY v. PAN AMERICAN GROUP

2021 | Cited 0 times | W.D. Pennsylvania | June 21, 2021

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF  
PENNSYLVANIA

TAMMY MCCOY, Plaintiff, v. PAN AMERICAN GROUP, Defendant.

2:21-CV-00389-CCW

MEMORANDUM ORDER Before the Court is a Motion to Compel Arbitration and to Dismiss Complaint filed by Defendant Pan American Group, doing business as Panera Bread. ECF No. 7. Plaintiff filed the Complaint on March 24, 2021, ECF No. 1, alleging that Defendant, her former employer, discriminated against her on the basis of her Neopaganist religious beliefs, in violation of Title VII et seq., and the Pennsylvania Human Relations Act, et seq. Id. Defendant moved to dismiss the Complaint and to compel Plaintiff to submit her dispute to arbitration pursuant to an arbitration agreement that Defendant contends Plaintiff signed during her onboarding process to start working for Defendant. ECF No. 7.

Plaintiff challenges the validity of the arbitration agreement. ECF No. 10. She contends that Defendant never provided her with the arbitration agreement or the employee handbook accompanying it; rather, Plaintiff argues that her supervisor Krista Stephens signed the arbitration agreement and the employee handbook without informing Plaintiff of the existence of the documents or providing Plaintiff with an

opportunity to review them. Id. According to Plaintiff, she first became aware of the existence of the arbitration agreement and employee handbook after she filed this action. ECF No. 10 at 7;

ECF No. 10- She notes that based on the time stamp on each document (October 10, 2019 at 1:33 p.m. for the arbitration agreement and 1:36 p.m. for the employee handbook), she could not have been the individual who signed them, because as of 1:30 p.m. that day, she had already left work and was on a bus travelling home. Id. at 4; ECF No. 10-1 at ¶¶ 17 ECF No. 10-2; ECF No. 10-3 at 19.

Kirleis v. Dickie, McCamey & Chilcote, P.C., 560 F.3d 156, 160 (3d Cir. 2009) (quoting Alexander

Anthony In , 341 F.3d 256, 263 (3d Cir. 2003) and Fleetwood Enters., Inc. v. Gaskamp, 280 F.2d 1069, 1073 (5th Cir. 2002)). be deprived of a day in court, there should be an express, unequivocal Par-Knit Mills agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall



## MCCOY v. PAN AMERICAN GROUP

2021 | Cited 0 times | W.D. Pennsylvania | June 21, 2021

proceed

summarily to the tr ; see also, Egan v. Live Nation Worldwide, Inc., 764 Fed.Appx. 204 (3d Cir. 2019) (unpublished). -law principles that arbitrate. Kirleis, 560 F.3d at 160 (quoting First Options of Chic., Inc. v. Kaplan, 514 U.S. 938, 944 (1995)). Here, Pennsylvania. Under Pennsylvania law, a contract entered into without knowledge of the existence

of the offer and knowledge of the specific terms thereof is not enforceable:

It is basic contract law that there . . . must be an intended, definite, specific offer before any offer can be accepted or any enforceable contract created. On cannot suppose that another made an offer, was

willing to make an offer or intended sometime to do so. Minds for contractual obligation, must meet upon definite, specific things.

Morosetti v. La. Land & Exploration Co., 564 A.2d 151, 153 (Pa. 1989). Therefore, where the fact that the parties entered into an enforceable arbitration agreement is challenged, courts decide a motion to compel arbitration under the summary judgment standard set forth by Federal Rule of Civil Procedure 56, not the standard for a motion to dismiss under Rule 12(b)(6). See Guidotti v. Legal Helpers Debt Resolution, LLC, 716 F.3d 764, 776 (3d Cir. 2013); Davis v. Cintas Corp., 2:18-cv-01200, 2019 U.S. Dist. LEXIS 87261, at \*5 (W.D. Pa. May 23, 2019).

Here, Plaintiff presents a genuine question as to whether she was provided an opportunity to review, much less assent to the terms and conditions of the arbitration agreement and employee handbook. See ECF No. 10 at 4; ECF No. 10- 21. Therefore, whether Plaintiff and Defendant had a meeting of the minds regarding the terms and conditions of the arbitration agreement and the employee handbook cannot be determined at this stage of the litigation on a Rule 12 motion and requires further factual development in discovery. See generally, ECF No. 10; ECF No. 10-1.

and to Dismiss Complaint, ECF No. 7, is DENIED WITHOUT PREJUDICE. The parties shall proceed to limited fact discovery on the issue of arbitrability. This limited period of fact discovery shall close on August 5, 2021. Defendant shall file either a renewed Motion to Compel Arbitration under the summary judgment standard, or an answer to the Complaint, on or before August 19, 2021.

IT IS SO ORDERED.

DATED this 21st day of June, 2021.

BY THE COURT:

/s/ Christy Criswell Wiegand CHRISTY CRISWELL WIEGAND United States District Judge



## **MCCOY v. PAN AMERICAN GROUP**

2021 | Cited 0 times | W.D. Pennsylvania | June 21, 2021

cc (via ECF email notification): All Counsel of Record

