

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, RICHMOND DIVISION

Bradby v. Koetting

Civil Action No. 3:25CV26 (RCY) (E.D. Va. June 18, 2026) · No. 3:25CV26 (RCY) · Decided June 18, 2026

SUMMARY

The United States District Court for the Eastern District of Virginia denied three motions to compel individual arbitration in a putative class action arising from a tribal lending scheme. The court held that the delegation and arbitration provisions in the underlying loan agreements were unenforceable under the prospective-waiver doctrine because, in conjunction with governing-law provisions, they prospectively waived state-law remedies and potentially undefined federal-law rights.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                   |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Eastern District of Virginia, Richmond Division                                                                                                                                                                                                              |
| WRITING FOR THE COURT | Roderick C. Young                                                                                                                                                                                                                                                                                 |
| JURISDICTION          | United States District Court for the Eastern District of Virginia, Richmond Division                                                                                                                                                                                                              |
| DECIDED               | June 18, 2026                                                                                                                                                                                                                                                                                     |
| DOCKET                | 3:25CV26 (RCY)                                                                                                                                                                                                                                                                                    |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                             |
| PROCEDURAL POSTURE    | Plaintiffs brought a putative class action alleging RICO, unjust enrichment, and common-law conspiracy claims arising from a tribal lending scheme. Three groups of defendants moved to compel individual arbitration under arbitration and delegation provisions in underlying loan agreements.  |
| STANDARD OF REVIEW    | The Federal Arbitration Act governs the enforceability of arbitration agreements. A court may decide a specific challenge to a delegation clause when the plaintiff specifically objects to that clause; arbitration agreements may be invalidated on generally applicable contract-law defenses. |
| PRECEDENTIAL VALUE    | unpublished district court memorandum opinion; persuasive only                                                                                                                                                                                                                                    |
|                       |                                                                                                                                                                                                                                                                                                   |

## PARTIES

Jeffrey Bradby, et al., on behalf of themselves and all individuals similarly situated v. Dan Koetting, et al.

## TOPICS

arbitration

consumer protection

predatory lending

tribal sovereignty

civil procedure

## PRACTICE AREAS

arbitration

consumer lending

tribal lending

RICO

contracts

## QUESTIONS PRESENTED

1. Whether the defendants' arbitration and delegation provisions were enforceable under the Federal Arbitration Act.
2. Whether the governing-law and arbitration provisions prospectively waived plaintiffs' state-law substantive rights and remedies.
3. Whether the court could decide plaintiffs' specific challenges to the delegation clauses rather than refer those challenges to an arbitrator.

## HOLDINGS

1. Because plaintiffs specifically challenged the enforceability of the delegation clauses, the court could consider those challenges despite their overlap with challenges to the arbitration agreements as a whole.
2. Prospective waiver doctrine applies to contractual provisions that prospectively waive state-law substantive rights and remedies, not merely federal statutory rights.
3. The arbitration and delegation provisions in the loan agreements were unenforceable because their governing-law and arbitration terms prospectively waived plaintiffs' state-law substantive rights and remedies and thereby violated public policy.

## KEY QUOTATIONS

*“Under this doctrine, ‘an agreement that prospectively waives a party’s right to pursue statutory remedies is unenforceable as a violation of public policy.’” (Section IV.B)*

*“The Court therefore concludes that the delegation clauses and arbitration provisions described herein are unenforceable as a violation of public policy.” (Section IV.B)*

## FACTUAL BACKGROUND

The action concerns short-term, high-interest loans allegedly issued through a tribal lending scheme involving tribal lending entities and non-tribal servicing companies and their leaders. Plaintiffs were members of a nationwide class settlement in related litigation but allege that the defendants in this action were additional participants not identified until after that settlement. The loan agreements contained arbitration, delegation, AAA-rule incorporation, and governing-law provisions requiring application of tribal law and applicable federal law while excluding state substantive law.

## PROCEDURAL HISTORY

Plaintiffs filed the complaint on January 15, 2025. Three groups of defendants filed motions to compel individual arbitration, and the parties submitted opposition, reply, and supplemental-authority briefing. The court denied the motions after concluding that the arbitration and delegation provisions prospectively waived state-law substantive rights and remedies and were therefore unenforceable as contrary to public policy.

## DISPOSITION

other

## CASES CITED

- *Fitzgerald v. Wildcat*, 687 F. Supp. 3d 756 (W.D. Va. 2023)
- *Forrester v. Penn Lyon Homes, Inc.*, 553 F.3d 340, 342 (4th Cir. 2009)
- *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983)
- *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68 (2019)
- *Gibbs v. Sequoia Cap. Operations, LLC*, 966 F.3d 286, 291 (4th Cir. 2020)
- *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 68–69 (2010)
- *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639, 653 & n.5 (2022)
- *Preston v. Ferrer*, 552 U.S. 346, 359 (2008)
- *Hengle v. Treppa*, 19 F.4th 324, 334, 336, 347
- *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*, 473 U.S. 614, 637 n.19
- *Gibbs v. Haynes Invs. LLC*, 967 F.3d 332, 340 (4th Cir. 2020)
- *Hayes v. Delbert Services Corp.*, 811 F.3d 666, 676 (4th Cir. 2016)
- *Dillon v. BMO Harris Bank, N.A.*, 856 F.3d 330, 336 (4th Cir. 2017)
- *Harris v. W6LS, Inc.*, 2026 WL 1641195, at \*7 (7th Cir. June 5, 2026)
- *Bridges v. Raines*, 2025 WL 3565343, at \*4–5 (W.D.N.C. Dec. 10, 2025)
- *Franklin v. Cleo AI Inc.*, 2025 WL 1540924, at \*2 (4th Cir. May 30, 2025)
- *Arthur Andersen LLP v. Carlisle*, *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 631 (2009)