UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

Jonathan Lopez v. Chase Herro

Case No. 25-cv-20405-JB · No. 25-cv-20405-JB · Decided December 2, 2025

SUMMARY

The United States District Court for the Southern District of Florida considers Defendant Chase Herro’s motion to compel arbitration or, alternatively, to dismiss Jonathan Lopez’s complaint. The court denies arbitration, holding that the “OUR POLICY” hyperlink on the Dough Finance website did not provide actual or constructive notice of the browsewrap arbitration provision. The court grants the motion to dismiss, finding that the complaint inadequately pleaded negligent misrepresentation, fraud, breach of fiduciary duty, and violations of the Florida Securities and Investor Protection Act.

CASE DETAILS

COURT	United States District Court for the Southern District of Florida
JURISDICTION	United States District Court for the Southern District of Florida
DECIDED	December 2, 2025
DOCKET	25-cv-20405-JB
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved to compel arbitration under an alleged website arbitration provision or, alternatively, to dismiss the complaint under Federal Rules of Civil Procedure 9(b) and 12(b)(6). The court denied arbitration and granted dismissal of all four counts without prejudice, allowing amendment.
STANDARD OF REVIEW	On a motion to compel arbitration, the court determines whether a valid arbitration agreement exists, whether an arbitrable issue exists, and whether the right to arbitrate was waived; contract formation is governed by state law. On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true and determines whether the complaint states a plausible claim for relief. Claims sounding in fraud, including the negligent misrepresentation, fraud, and FSIPA claims, must satisfy Rule 9(b)'s particularity requirement.
PRECEDENTIAL VALUE	unpublished district court order; persuasive authority only

TOPICS

arbitration | motions to dismiss | pleadings | civil procedure | consumer protection

PRACTICE AREAS

civil procedure | arbitration | commercial litigation | contracts | consumer protection

QUESTIONS PRESENTED

1. Whether Lopez was bound by an arbitration provision available through an inconspicuous 'OUR POLICY' hyperlink on the Dough Finance website.
2. Whether the complaint pleaded negligent misrepresentation and fraud with the particularity required by Federal Rule of Civil Procedure 9(b).
3. Whether the complaint adequately pleaded a breach of fiduciary duty, including proximate causation.
4. Whether the complaint adequately pleaded a violation of the Florida Securities and Investor Protection Act, including that the transaction was a security or investment contract under the Howey test.

HOLDINGS

1. The arbitration provision was unenforceable because the 'OUR POLICY' hyperlink did not give Lopez actual knowledge or place a reasonably prudent user on inquiry notice of terms governing the parties' relationship.
2. Counts I and III failed to satisfy Rule 9(b) and failed to state claims because the complaint did not sufficiently identify the actionable statements, reliance, intent to induce reliance, or facts showing that Herro knew or should have known the statements were false.
3. Although Lopez adequately alleged facts supporting the existence of a fiduciary relationship, Count II failed because the complaint did not adequately plead proximate causation between the alleged breach and Lopez's damages.
4. Count IV failed because the complaint did not identify with sufficient clarity the security or investment contract at issue and did not plead facts satisfying the common-enterprise and reliance-on-the-efforts-of-others elements of the Howey test.

KEY QUOTATIONS

> *"The standard is whether a user had "actual notice" or if the link to the terms and conditions are conspicuous enough to put a reasonably prudent person on notice of its terms."* (Section III)

> *"In short, the browsewrap agreement did not give Plaintiff actual or constructive notice of the arbitration provision."* (Section III)

> *"The Complaint, and Lopez's Response are unclear as to what the breach was, and how the damages that resulted from Herro's breach of fiduciary duty were a foreseeable and natural consequence of that breach."* (Section IV.B)

FACTUAL BACKGROUND

Lopez invested approximately $1 million in Ether into Dough Finance, a cryptocurrency platform created and launched by Herro. Lopez alleged that Herro represented that the platform had substantial liquidity, that his funds were secured on-chain, and that the investment was guaranteed or highly lucrative; Herro also advised Lopez on a strategy called looping. Approximately one month after the investment, a flash-loan attack caused Lopez's investment to disappear, and Dough Finance later ceased operations. Lopez alleged that Herro promised to make him whole but did not do so.

PROCEDURAL HISTORY

Lopez filed the complaint on January 27, 2025, alleging negligent misrepresentation, breach of fiduciary duty, fraud, and violation of the Florida Securities and Investor Protection Act. Herro moved to compel arbitration based on a browsewrap agreement on Dough Finance's website or, alternatively, to dismiss for pleading deficiencies. After briefing and oral argument, the court denied arbitration and dismissed the complaint without prejudice, granting Lopez ten days to amend.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand. Lopez may file an amended complaint within ten days of the December 2, 2025 order.

CASES CITED

- Mason v. Midland Funding LLC, 815 F. App'x 320, 322-23 (11th Cir. 2020)
- AT&T Technologies, Inc. v. Communications Workers of America, 475 U.S. 643, 648 (1986)
- Baptist Hospital of Miami, Inc. v. Medica Healthcare Plans, Inc., 376 F. Supp. 3d 1298, 1304-05 (S.D. Fla. 2019)
- Employees Insurance of Wausau v. Bright Metal Specialties, Inc., 251 F.3d 1316, 1322 (11th Cir. 2001)
- Taylor Group, Inc. v. Industrial Distributors International Co., 506 F. Supp. 3d 1256, 1267 (S.D. Fla. 2020), aff'd, 859 F. App'x 439 (11th Cir. 2021)
- Valiente v. StockX, Inc., 645 F. Supp. 3d 1331, 1337 (S.D. Fla. 2022)
- Arencibia v. AGA Service Co., 533 F. Supp. 3d 1180, 1190 n.3 (S.D. Fla. 2021)
- Valiente v. Nexgen Global, LLC, 2023 WL 6213583, at *7, *9, *11 (S.D. Fla. Sept. 25, 2023), aff'd sub nom., 2025 WL 3140480 (11th Cir. Nov. 10, 2025)
- Fridman v. 1-800 Contacts, Inc., 554 F. Supp. 3d 1252, 1260-64 (S.D. Fla. 2021)
- MetroPCS Communications, Inc. v. Porter, 273 So. 3d 1025, 1028-29 (Fla. 3d DCA 2018)
- Temple v. Best Rate Holdings LLC, 360 F. Supp. 3d 1289, 1305 (M.D. Fla. 2018)
- Tejon v. Zeus Networks, LLC, 725 F. Supp. 3d 1351, 1354-56 (S.D. Fla. 2024)
- Herman v. SeaWorld Parks & Entertainment, Inc., 2016 WL 7447555, at *5-6 (M.D. Fla. Aug. 26, 2016)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)

- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 556, 570 (2007)
- Brooks v. Blue Cross & Blue Shield of Florida, Inc., 116 F.3d 1364, 1369 (11th Cir. 1997)
- Ceithaml v. Celebrity Cruises, Inc., 207 F. Supp. 3d 1345, 1352-53 (S.D. Fla. 2016)
- Garfield v. NDC Health Corp., 466 F.3d 1255, 1262 (11th Cir. 2006)
- Absorbezz, L.L.C. v. Hierseman, 2020 WL 6870876, at *2 (S.D. Fla. Nov. 16, 2020)
- McGee v. JP Morgan Chase Bank, NA, 520 F. App'x 829, 831 (11th Cir. 2013)
- Simon v. Celebration Co., 883 So. 2d 826, 832 (Fla. 5th DCA 2004)
- Butler v. Yusem, 44 So. 3d 102, 105 (Fla. 2010)
- Goldstein v. Firer, 2022 WL 17343638, at *6 (S.D. Fla. Nov. 16, 2022), report and recommendation adopted, 2022 WL 17344853 (S.D. Fla. Nov. 30, 2022)
- Catano v. Capuano, 2020 WL 639406, at *12 (S.D. Fla. Feb. 11, 2020)
- Reuss v. Orlando Health, Inc., 140 F. Supp. 3d 1299, 1304 (M.D. Fla. 2015)
- Wight v. Bluman, 2021 WL 8999536, at *5 (S.D. Fla. Feb. 4, 2021)
- Arnold v. McFall, 839 F. Supp. 2d 1281, 1286 (S.D. Fla. 2011)
- S.E.C. v. W.J. Howey Co., 328 U.S. 293 (1946)
- S.E.C. v. Unique Financial Concepts, Inc., 196 F.3d 1195, 1199 (11th Cir. 1999)
- Ward v. Atlantic Security Bank, 777 So. 2d 1144, 1147 (Fla. 3d DCA 2001)