

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH
CAROLINA, SPARTANBURG DIVISION

Roger Hembree, Jr. v. Penney OpCo d/b/a JCPenney

Hembree v. Penney OpCo · No. 7:25-cv-03294-DCC · Decided February 17, 2026

SUMMARY

The United States District Court for the District of South Carolina adopted a magistrate judge’s recommendation and granted Penney OpCo’s motion to compel arbitration and stay Roger Hembree, Jr.’s employment-related claims. The court held that Hembree assented to a valid arbitration agreement, that continued employment supplied adequate consideration, and that his attempted opt-out did not follow the agreement’s prescribed procedure. The court also denied requests for discovery and a jury trial on contract formation.

CASE DETAILS

COURT	United States District Court for the District of South Carolina, Spartanburg Division
WRITING FOR THE COURT	Donald C. Coggins, Jr.
JURISDICTION	United States District Court for the District of South Carolina, Spartanburg Division
DECIDED	February 17, 2026
DOCKET	7:25-cv-03294-DCC
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff objected to a magistrate judge's Report and Recommendation recommending that Defendant's motion to stay the action and compel arbitration be granted. The district court conducted de novo review, adopted the recommendation, granted the motion to compel arbitration and stay the case, and directed the parties to submit joint status reports every 90 days.
STANDARD OF REVIEW	De novo review of portions of the magistrate judge's Report and Recommendation to which specific objections were made; clear-error review applies in the absence of a timely objection.
PRECEDENTIAL VALUE	unpublished
PARTIES	Roger Hembree, Jr. v. Penney OpCo d/b/a JCPenney

TOPICS

employment arbitration

arbitration

civil procedure

employment discrimination

retaliation

PRACTICE AREAS

employment law

arbitration

civil procedure

civil rights

QUESTIONS PRESENTED

1. Whether the parties entered into a valid arbitration agreement covering Plaintiff's employment dispute.
2. Whether continued employment supplied sufficient consideration for the arbitration agreement.
3. Whether Plaintiff assented to the arbitration agreement despite his later attempt to opt out through an improper procedure.
4. Whether Plaintiff was entitled to additional discovery concerning the arbitration agreement.
5. Whether the formation issue had to be submitted to a jury under 9 U.S.C. § 4.

HOLDINGS

1. A party seeking to compel arbitration establishes a rebuttable presumption in favor of an arbitration agreement by showing a dispute, a written agreement containing an arbitration provision covering the dispute, a relationship to interstate or foreign commerce, and the opposing party's failure, neglect, or refusal to arbitrate. Defendant satisfied those requirements, shifting the burden to Plaintiff to show that he did not agree to arbitrate.
2. Continued employment constitutes adequate consideration for an arbitration agreement, even when the agreement is presented after employment has begun.
3. Plaintiff assented to the arbitration agreement by affirmatively clicking the box indicating assent, and his later attempt to uncheck the box did not constitute a valid opt-out because he did not follow the agreement's prescribed written opt-out procedure.
4. Additional discovery and a jury trial were unwarranted because Plaintiff identified no material factual dispute concerning formation or the opt-out procedure.

KEY QUOTATIONS

"To the extent Plaintiff argues that no arbitration agreement exists due to lack of consideration, this Court has repeatedly determined that continued employment constitutes adequate consideration for arbitration agreements." (Consideration)

"Plaintiff affirmatively clicked the box indicating his assent to the arbitration agreement." (Assent to Arbitration Agreement)

"For the foregoing reasons, the motion to compel arbitration and to stay [10] is GRANTED." (Conclusion)

FACTUAL BACKGROUND

Hembree brought employment-related claims against JCPenney for race discrimination, retaliation, and defamation. During his employment, Hembree affirmatively clicked a box indicating assent to an arbitration agreement. He later attempted to avoid arbitration by unchecking the box and submitting the kiosk form, but he did not use the agreement's prescribed written opt-out form. The court found no factual dispute requiring discovery or a jury determination concerning contract formation.

PROCEDURAL HISTORY

Plaintiff brought claims for race discrimination, retaliation, and defamation. Defendant moved to stay the action and compel arbitration. Magistrate Judge Kevin F. McDonald recommended granting the motion; after Plaintiff filed objections, the district court reviewed the challenged portions de novo and adopted the recommendation.

DISPOSITION

other

CASES CITED

- Mathews v. Weber, 423 U.S. 261 (1976)
- Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005)
- Whiteside v. Teltech Corp., 940 F.2d 99, 102 (4th Cir. 1991)
- Gordon v. TBC Retail Grp., Inc., No. 2:14-CV-03365-DCN, 2016 WL 4247738, at *5 (D.S.C. Aug. 11, 2016)
- Jones v. Casablanca, No. 6:22-CV-02307-TMC, 2023 WL 4397396, at *1 (D.S.C. July 7, 2023)
- Floyd v. City of Spartanburg S.C., Civ. A. No. 7:20-cv-1305-TMC, 2022 WL 796819, at *9 (D.S.C. Mar. 16, 2022)
- Holt v. Rural Health Servs., Inc., No. CV 1:21-2802-MGL, 2024 WL 377991, at *6 (D.S.C. Feb. 1, 2024)
- United States v. George, 971 F.2d 1113, 1118 (4th Cir. 1992)
- Poole v. Incentives Unlimited, Inc., 548 S.E.2d 207, 209 (S.C. 2001)
- Fitzgerald v. Faucette, No. 9:24-CV-00908-BHH-MGB, 2024 WL 5290929, at *4 (D.S.C. Apr. 23, 2024)
- Lampo v. Amedisys Holdings, LLC, 914 S.E.2d 139, 146 (S.C. 2025)
- Sydnor v. Conseco Fin. Servicing Corp., 252 F.3d 302, 306 (4th Cir. 2001)
- Chorley Enterprises, Inc. v. Dickey's Barbecue Restaurants, Inc., 807 F.3d 553, 564 (4th Cir. 2015)