

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
NEW YORK

Hawke v. ADK Aquatics LLC a/k/a Adirondack Water Sports a/k/a
Lake Placid Water Sports, and Wesley Canny

No. 8:25-cv-00441 (BKS/DJS) (N.D.N.Y. Feb. 26, 2026) · No. 8:25-cv-00441 (BKS/DJS) · Decided February
26, 2026

SUMMARY

The United States District Court for the Northern District of New York considers Defendants’ motion to dismiss and compel arbitration in a negligence action arising from a water-skiing injury. The court concludes that the motion cannot be resolved on the existing evidentiary record because Defendants did not submit admissible evidence concerning execution of the arbitration agreement, and therefore denies the motion without prejudice while addressing the parties’ legal arguments for guidance.

CASE DETAILS

COURT	United States District Court for the Northern District of New York
WRITING FOR THE COURT	Brenda K. Sannes
JURISDICTION	United States District Court for the Northern District of New York
DECIDED	February 26, 2026
DOCKET	8:25-cv-00441 (BKS/DJS)
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved to dismiss the complaint and compel arbitration. The court treated the motion as a motion to compel arbitration because defendants expressly requested an order compelling arbitration.
STANDARD OF REVIEW	A motion to compel arbitration is evaluated under a standard similar to summary judgment. The court considers relevant, admissible evidence, draws reasonable inferences in favor of the nonmoving party, and determines whether a genuine factual dispute exists concerning the making of an arbitration agreement. The party seeking arbitration bears the initial burden of showing that an agreement to arbitrate was made.
PRECEDENTIAL VALUE	nonprecedential district court memorandum decision

TOPICS

arbitration

summary judgment

evidence

motions to dismiss

negligence

PRACTICE AREAS

arbitration

civil procedure

contracts

negligence

evidence

QUESTIONS PRESENTED

1. Whether defendants' motion to dismiss and compel arbitration should be treated as a motion to compel arbitration.
2. Whether the court could resolve the motion to compel arbitration on the evidentiary record submitted by the parties.
3. Whether the court or an arbitrator should decide the formation of an arbitration agreement.
4. Whether the written agreement's arbitration provision appeared sufficiently clear and conspicuous to support inquiry notice and manifestation of assent under New York law.
5. Whether challenges to the enforceability of the arbitration provision, including duress and incapacity, were adequately directed specifically to the arbitration agreement rather than the contract as a whole.

HOLDINGS

1. When a movant expressly seeks an order compelling arbitration, a motion styled in part as a motion to dismiss may be treated as a motion to compel arbitration.
2. The court may not resolve a motion to compel arbitration on unsworn declarations that are not subscribed as true under penalty of perjury, and the proponent must submit admissible evidence concerning execution when formation is disputed.
3. The court, not the arbitrator, must decide whether the parties formed an agreement to arbitrate in the first place.
4. Under New York law, a person may assent to an arbitration agreement through conduct when the terms were presented clearly and conspicuously enough to provide inquiry notice; failure to read the agreement alone does not defeat formation.
5. The motion to dismiss and compel arbitration was denied without prejudice because the parties had not supplied an adequate evidentiary record or sufficiently developed briefing for the court to rule.

KEY QUOTATIONS

“Because the FAA “does not require parties to arbitrate when they have not agreed to do so,”” (Section III)

“On a motion to compel arbitration, the Court applies a “standard similar to that applicable for a motion for summary judgment.”” (Section IV)

“Without the subscription required by § 1746, the Court declines to consider the unsworn declarations for purposes of this motion” (Section V.A)

“Defendants’ motion to dismiss and compel arbitration (Dkt. No. 12) is DENIED, without prejudice” (Section VI)

FACTUAL BACKGROUND

Plaintiff alleges that she was injured while waterskiing with equipment provided by ADK Aquatics and on a boat operated by defendants. Defendants submitted a written release and binding arbitration agreement dated August 7, 2024, but did not submit an affidavit concerning its execution. Plaintiff and her husband submitted unsworn declarations stating that an employee asked them to sign the form after Plaintiff was injured and wanted to leave for medical treatment. The court declined to consider those declarations because they were not sworn or subscribed under penalty of perjury.

PROCEDURAL HISTORY

Plaintiff filed a diversity action alleging negligence and negligent hiring, supervision, and retention arising from a waterskiing injury. After the parties disputed the basis for subject-matter jurisdiction, they submitted a joint status report agreeing that diversity jurisdiction existed under 28 U.S.C. § 1332. Defendants moved to dismiss and compel arbitration based on a purported signed arbitration agreement. The court denied the motion without prejudice because the evidentiary record and briefing were insufficient to resolve it and authorized defendants to renew the motion within thirty days.

DISPOSITION

other

CASES CITED

- *Zachman v. Hudson Valley Federal Credit Union*, 49 F.4th 95 (2d Cir. 2022)
- *Nicosia v. Amazon.com, Inc.*, 834 F.3d 220 (2d Cir. 2016)
- *AT&T Mobility LLC v. Concepcion*, *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011)
- *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1 (1983)
- *Schnabel v. Trilegiant Corp.*, 697 F.3d 110 (2d Cir. 2012)
- *Meyer v. Uber Technologies, Inc.*, 868 F.3d 66 (2d Cir. 2017)
- *Barrows v. Brinker Restaurant Corp.*, 36 F.4th 45 (2d Cir. 2022)
- *Doctor's Associates, Inc. v. Alemayehu*, 934 F.3d 245 (2d Cir. 2019)
- *Granite Rock Co. v. International Brotherhood of Teamsters*, 561 U.S. 287 (2010)
- *AT&T Technologies, Inc. v. Communications Workers of America*, 475 U.S. 643 (1986)
- *Nicosia v. Amazon.com, Inc.*, 834 F.3d 220 (2d Cir. 2016)
- *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995)
- *Republic of Ecuador v. Chevron Corp.*, 638 F.3d 384 (2d Cir. 2011)
- *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006)
- *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63 (2010)

- Melendez v. Ethical Culture Fieldston School, 789 F. Supp. 3d 316 (S.D.N.Y. 2025)
- Starke v. SquareTrade, Inc., 913 F.3d 279 (2d Cir. 2019)
- Hu v. Whaleco, Inc., 779 F. Supp. 3d 265 (E.D.N.Y. 2024)
- Register.com, Inc. v. Verio, Inc., 356 F.3d 393 (2d Cir. 2004)
- Prima Paint Corp. v. Flood & Conklin Manufacturing Co., 388 U.S. 395 (1967)
- Coinbase v. Suski, 602 U.S. 143 (2024)
- Mahant v. Lehman Bros., 2000 WL 1738399 (S.D.N.Y. Nov. 22, 2000)
- Eisen v. Venulum Ltd., 244 F. Supp. 3d 324 (W.D.N.Y. 2017)

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