

MONICA OAKLEY, INDIVIDUALLY AND : IN THE SUPERIOR COURT OF
ON BEHALF OF ALL OTHERS : PENNSYLVANIA
SIMILARLY SITUATED :

v. :

FLOATME CORP., :

Appellant :

No. 1318 WDA 2025

Appeal from the Order Entered September 16, 2025
In the Court of Common Pleas of Washington County Civil Division at
No(s): CV-24-01405

BEFORE: PANELLA, P.J.E., KING, J., and LANE, J.

OPINION BY KING, J.:

FILED: OCTOBER 1, 2026

Appellant, FloatMe Corp. ("FloatMe"), appeals from the order entered in the Washington County Court of Common Pleas, which overruled its preliminary objections seeking to compel arbitration with Appellee, Monica Oakley, individually and on behalf of others similarly situated. We affirm.

The relevant facts and procedural history are as follows. FloatMe is a Texas-based technology company that makes loans or cash advances to Pennsylvania consumers over the internet. On March 6, 2024, Appellee filed a class action complaint against FloatMe. Appellee alleged that "FloatMe advertises its cash advance product as [a] no interest and free credit product." (Complaint, filed 3/6/24, at ¶36). Appellee insisted, however, that "FloatMe's cash advances have significant costs," and the "APRs associated [with] these cash advances are similar to the APRs associated with payday loans." (*Id.* at

¶37, ¶42).

On June 5, 2024, FloatMe filed preliminary objections in the nature of a motion to compel arbitration. FloatMe explained that Appellee “was required to sign up via FloatMe’s mobile application (“App”)” before she could obtain a cash advance. (Preliminary Objections, filed 6/5/24, at ¶7). FloatMe asserted that the “App prompts the user to answer several questions and requests certain information.” (*Id.* at ¶8). One of the prompts on the App provides: “By continuing, you agree to FloatMe’s Terms of Service and Privacy Policy.” (*Id.* at ¶12). FloatMe maintained that the “‘Terms of Service’ button is clickable and directs the user to an online format of the Terms and Conditions.” (*Id.* at ¶16). “If a user clicks on the phrase Terms and Conditions (“T&Cs”), ... [t]he T&Cs clearly indicate that the Agreement contains an arbitration provision and class action waiver.” (*Id.* at ¶20, ¶21).

Appellee filed her first amended class action complaint on July 19, 2024. Regarding arbitration, Appellee claimed that the App’s “lengthy sign-up process” included “at least sixteen screens” for a consumer to navigate before they may obtain a cash advance. (First Amended Complaint, filed 7/19/24, at ¶50, ¶51). “At no point in this process does FloatMe mention arbitration, or the waiver of any constitutional rights.” (*Id.* at ¶72). Appellee also complained that “the only hyperlinked terms that are associated with cash advances are the ‘payment authorization’ terms, which do not include an arbitration clause.” (*Id.* at ¶73). Appellee concluded that this type of sign-

up process “is not sufficient to bind users to arbitration or waive any other constitutional right under Pennsylvania law or any generally applicable contract principles.” (*Id.* at ¶75).

FloatMe filed preliminary objections to the first amended complaint on August 7, 2024. Again, FloatMe argued that the parties had executed a valid, enforceable agreement mandating that Appellee submit her claims to arbitration. On August 30, 2024, Appellee filed a response, as well as a memorandum of law in opposition to FloatMe’s preliminary objections. Appellee continued to argue that “[t]he only agreement that is spatially and temporally coupled with using FloatMe’s app, and obtaining a cash advance, is a ‘payment authorization’ contract, which does not include an arbitration clause.” (Memorandum of Law, filed 8/30/24, at 2). Moreover, Appellee posited that “FloatMe’s evidence in support of its preliminary objections is deficient because there is no evidence to prove FloatMe ever gave [Appellee] notice that she was agreeing to an arbitration contract....” (*Id.* at 5). Following argument on the preliminary objections, the court entered an order providing the parties with ninety (90) days to conduct depositions and supplement the record. The parties subsequently agreed to extend the deadline to January 31, 2025.

In light of the evidence obtained through depositions, FloatMe filed amended preliminary objections on April 4, 2025. The amended preliminary objections cited the deposition and affidavit of Joshua Sanchez, FloatMe’s

Chief Executive Officer (“CEO”). FloatMe relied upon Mr. Sanchez’s deposition and affidavit to reiterate that Appellee agreed to an arbitration clause through the sign-up process for the App:

At the bottom of the screen requesting [Appellee’s] name, email, and password, right above the button to continue, it provided as follows: “By tapping Continue, I agree to FloatMe’s **Privacy Policy** and **Terms and Conditions**.” ...

The words “Terms and Conditions” ... and “Privacy Policy” are bolded and appear in a distinctive hot pink color.

* * *

The bolded phrase “**Terms and Conditions**” is a hyperlink, and if a user clicks that phrase, they will be directed to a webpage displaying FloatMe’s T&Cs.

(Amended Preliminary Objections, filed 4/4/25, at ¶¶11-12, ¶18) (emphasis in original) (record citations omitted). FloatMe added that the T&Cs “are explicit about the parties’ agreement to arbitrate.” (*Id.* at ¶24).

Appellee filed a response to the amended preliminary objections on April 24, 2025. Appellee did “not remember seeing a notice concerning the ‘Terms and Conditions,’ or seeing that phrase displayed in pink font.” (Response, filed 4/24/25, at ¶18). Appellee also complained that the T&Cs were “not ‘explicit’ about any alleged agreement to arbitrate,” and “she was not aware of an arbitration provision.” (*Id.* at ¶24, ¶34).

Following oral argument, the court overruled FloatMe’s preliminary objections by opinion and order filed on September 16, 2025. FloatMe timely filed a notice of appeal on October 14, 2025. The court did not order FloatMe

to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal, and none was filed. On October 15, 2025, FloatMe filed a motion for stay pending appeal, which the court granted.¹

FloatMe raises one issue on appeal:

Did the trial court err in overruling the preliminary objections to compel arbitration where [Appellee] entered into an enforceable agreement to arbitrate contained in FloatMe's [T&Cs], and [Appellee's] claims fall within the scope of the arbitration provision?

(FloatMe's Brief at 6).

Preliminarily, we address the issue of whether the trial court's order is immediately appealable.

An order overruling preliminary objections that seek to compel arbitration is an interlocutory order appealable as of right under 42 Pa.C.S. § 7320(a)(1) and Pa.R.A.P. 311(a)(8). Alternative dispute resolution agreements that merely include arbitration as only one of a number of possible methods of resolving disputes are not arbitration agreements, and denial of enforcement of such dispute resolution agreements is not appealable as of right. Where the parties' agreement requires arbitration, however, the denial of enforcement is appealable as of right even though the parties' agreement includes some pre-arbitration settlement procedures.

McCrossin v. Comcast Spectacor, LLC, 311 A.3d 1115, 1121 (Pa.Super.

¹ On August 4, 2026, Appellee filed an application asking this Court to accept supplemental authority. Specifically, Appellee attached this Court's recent decision in ***Miller v. Festival Fun Parks, LLC***, 2026 WL 2199005 (Pa.Super. July 30, 2026) (unpublished memorandum), claiming it "is directly relevant to the arguments raised in this appeal, including the applicable standard for compelling arbitration." (Application, filed 8/4/26, at 1). By order filed August 5, 2026, we granted Appellee's application. We discuss ***Miller infra***.

2024), *appeal denied*, ___ Pa. ___, 329 A.3d 582 (2024).

Instantly, the dispute resolution provision at issue is plainly an arbitration agreement. (**See** Amended Affidavit of Mr. Sanchez in Support of Preliminary Objections, filed 2/6/25, at Exhibit 2, ¶¶26-26.11). Thus, the court's order overruling FloatMe's preliminary objections is appealable as of right, and the appeal is properly before this Court. **See McCrossin, supra**. **See also** Pa.R.A.P. 311(a)(8); 42 Pa.C.S.A. § 7320(a)(1).

On appeal, FloatMe contends that it presented sufficient, unrefuted evidence of an arbitration agreement. FloatMe asserts that Appellee "voluntarily signed up for FloatMe's app, agreed to its T&C[s], and, though she had an opportunity to opt out of the agreement to arbitrate, she chose not to do so." (FloatMe's Brief at 27). FloatMe relies on the deposition and affidavit from its CEO, Mr. Sanchez, to establish that Appellee agreed to FloatMe's T&Cs and arbitration agreement during the onboarding process for the App:

Early on in the process, one such screen would advise the customer that if they continued, which they would accomplish by pressing the button "Continue," they would be agreeing to FloatMe's T&C[s]. On this same screen, a user could click the phrase "Terms and Conditions," and FloatMe's operative T&C[s] would be displayed. Those terms contained the arbitration provision and the class action waiver.

(**Id.** at 28) (record citations omitted).

Citing state contract law, FloatMe avers that "an agreement to arbitrate exists where notice of the arbitration provision was reasonably conspicuous

and manifestation of assent is unambiguous as a matter of law.” (*Id.* at 45). FloatMe claims that it provided reasonably conspicuous notice of the arbitration provision where “multiple visual elements” of the App “draw attention to and highlight a conspicuously displayed hyperlink that provides users with its T&C[s].” (*Id.* at 51). FloatMe emphasizes that the hyperlink to the T&Cs was “bolded, in a distinct pink font, and set against a dark background, drawing attention to it.” (*Id.* at 52). Further, the App advised “that by ‘tapping Continue’ [Appellee] would be agreeing to the T&C[s].” (*Id.*) FloatMe maintains that Appellee completed this sign-up process, thereby assenting to the arbitration provision.

FloatMe also suggests that the trial court did not apply ordinary contract principles in denying its motion to compel arbitration. As such, FloatMe argues that the trial court violated the Federal Arbitration Act (“FAA”)² by imposing “a special, stricter rule for arbitration provisions, which makes enforcement of them (but no other contractual provision) considerably more difficult.” (*Id.* at 54). Among other cases, FloatMe cites ***Kindred Nursing Centers Ltd. Partnership v. Clark***, 581 U.S. 246, 137 S.Ct. 1421, 197 L.Ed.2d 806 (2017), for the proposition that “freely bargained-for arbitration and class action waiver provisions cannot be selected for worse treatment based on a uniquely rigorous burden of proof that does not apply to other contractual

² 9 U.S.C.A. § 1 *et seq.*

provisions.” (*Id.* at 58).

In sum, FloatMe maintains that the allegations in Appellee’s complaint fall within the scope of the arbitration provision, and FloatMe presented unrefuted evidence of the binding nature of the arbitration provision. FloatMe concludes that this Court must “reverse the trial court’s denial of FloatMe’s preliminary objections seeking to compel arbitration and direct the trial court to enter an order compelling individual arbitration of [Appellee’s] claims.” (*Id.* at 64). We disagree.

“[O]ur review of a claim that the trial court improperly denied preliminary objections in the nature of a petition to compel arbitration is limited to determining whether the trial court’s findings are supported by substantial evidence and whether the trial court abused its discretion in denying the petition.” **Cook v. Philadelphia Federal Credit Union**, 353 A.3d 803, 809 (Pa.Super. 2026). “Whether an agreement to arbitrate disputes exists is a question of law.” **Neuhard v. Travelers Ins. Co.**, 831 A.2d 602, 604 (Pa.Super. 2003) (citation omitted).

Section 2 of the FAA provides that a “written provision in ... a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction ... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract....” 9 U.S.C.A. § 2. Nevertheless, this Court has previously addressed the relationship between the FAA and

Pennsylvania law as follows:

Pennsylvania has a well-established public policy that favors arbitration, and this policy aligns with the federal approach expressed in the [FAA]. The fundamental purpose of the FAA is to relieve the parties from expensive litigation and to help ease the current congestion of court calendars. Its passage was a congressional declaration of a liberal federal policy favoring arbitration agreements.

This policy, however, was not intended to render arbitration agreements more enforceable than other contracts, and the FAA had not been designed to preempt all state law related to arbitration. Rather, when addressing the specific issue of whether there is a valid agreement to arbitrate, courts generally should apply ordinary state-law principles that govern the formation of contracts, but in doing so, must give due regard to the federal policy favoring arbitration.

Duffy v. Tatum, 354 A.3d 14, 20-21 (Pa.Super. 2026) (quoting **Pisano v. Extendicare Homes, Inc.**, 77 A.3d 651, 660-61 (Pa.Super. 2013)).

This Court has established a two-step test to determine whether arbitration should be compelled: “The first determination is whether a valid agreement to arbitrate exists. The second determination is whether the dispute is within the scope of the agreement.” **Id.** at 20 (quoting **Smay v. E.R. Stuebner, Inc.**, 864 A.2d 1266, 1270 (Pa.Super. 2004)). In discussing the elements of a valid agreement, this Court has stated:

We find that it is imperative that ... a person be fully informed of their constitutional right to a jury trial and the effect of waiving that right. Certainly, ... it is essential that the waiver be clearly described and evident that the person waiving that right understand the right they are giving up by agreeing to the contract.

Mindful of this, we stress that, in today’s day and age, online users are pressured on a daily basis to form contracts with

companies through their computer or smart phone. These contracts cover a wide spectrum from long-term binding contracts such as mortgage loans to consumer sales, to registration for food delivery or ride share services. These different Internet products lead to different expectations and applications of legal doctrine. Certain corporations use these online contracts with veiled terms to bind unsophisticated, uninformed, and unsuspecting customers to arbitration agreements from the convenience of their couch.

Basically, the elements of a valid contract in Pennsylvania are an offer, acceptance, consideration or mutual meeting of the minds. **There must be a meeting of the minds; the very essence of an agreement is that the parties mutually assent to the same thing.** Whether particular conduct expresses an offer and acceptance must be determined on the basis of what a reasonable person in the position of the parties would be led to understand by such conduct under all of the surrounding circumstances.

Id. at 23 (internal citations and quotation remarks omitted) (emphasis added).

In ***Duffy***, the plaintiff used a web browser on his computer to access the defendant corporation's website. On the website, plaintiff clicked "Book a Dolly" and selected various moving services. The website then required the plaintiff to check a box labeled: "By checking this box I accept the Dolly Terms of Service" before the plaintiff could register and complete his purchase. The phrase "Dolly Terms of Service" was an underlined hyperlink to the defendant's full T&Cs. If the plaintiff clicked on the hyperlink, the defendant's T&Cs would appear in a new web browser window. The defendant's T&Cs included an arbitration provision. Nevertheless, the defendant's website did not require the plaintiff to click the underlined hyperlink to register and make

purchases. The defendant's website also did not require the plaintiff to scroll to the bottom of the T&Cs to register and purchase services. Importantly, the defendant's website and application screen did not explicitly state that the consumer was waiving his right to a jury trial when he agreed to the terms of service.

The plaintiff later filed a civil action against the defendant corporation alleging that he suffered injuries during the performance of the moving services. The defendant filed preliminary objections to the complaint claiming that the parties had agreed to mediation and arbitration. The trial court overruled the preliminary objections.

On appeal, this Court observed that the case involved "an overarching question of whether a person should be deprived of their constitutional right to a jury trial when they ostensibly enter into an arbitration agreement through hyperlinked terms of service on a website that the person never clicked on, viewed, or read." *Id.* at 20. This Court then identified four types of "online consumer contracts," which may bind a party:

"Browsewrap" exists where the online host dictates that assent is given merely by using the site. "Clickwrap" refers to the assent process by which a user must click "I agree," but not necessarily view the contract to which [he or] she is assenting. "Scrollwrap" requires users to physically scroll through an internet agreement and click on a separate "I agree" button in order to assent to the terms and conditions of the host website. "Sign-in wrap" couples assent to the terms of a website with signing up for the use of the site's services.

Of these four online contract types, only a scrollwrap

agreement requires a user actually to view (albeit not necessarily read) the terms of the online contract before manifesting assent. Courts have consistently found scrollwrap agreements enforceable because they present the consumer with a realistic opportunity to review the terms of the contract and they require a physical manifestation of assent.

Id. at 23-24. The Court noted that the agreement at issue was

a combination of sign-in wrap and clickwrap as [the defendant's] website did not require [the plaintiff] to scroll through the terms by clicking agree. However, [the plaintiff] could not proceed with the sign-up process without clicking a box that stated "By checking this box I accept the Dolly Terms of Service" and thereby binding himself to the waiver of jury trial in the event of a dispute.

Id. at 24.

Ultimately, this Court emphasized the need to protect the individual's right to a jury trial:

We therefore find a strict burden of proof is necessary to demonstrate a person's unambiguous manifestation of assent to arbitration. This requires: (1) explicitly stating on the registration website and application screens that a consumer is waiving their right to a jury trial when the person agrees to the seller's terms of service and the registration cannot be completed until the person is fully informed of that waiver; and (2) when the agreements are available for viewing after a user has clicked on a hyperlink, the waiver should not be hidden in the middle of the document but should appear prominently in bold, capitalized text.

Id. Based upon the foregoing, the Court concluded that the hyperlinked T&Cs on the defendant's website did not pass muster, and the plaintiff "was never informed in an explicit and upfront manner that he was waiving his constitutional right to seek damages through a jury trial." ***Id.*** at 25.

Following **Duffy**, we have applied its holding to other disputes involving arbitration provisions placed within online consumer agreements. **See Miller, supra** (evaluating agreement that was combination of sign-in wrap and clickwrap; appellee could not complete purchase process without clicking certain boxes; boxes did not state that appellee waived right to jury trial by accepting T&Cs; boxes did not require appellee to click on hyperlink providing T&Cs; arbitration provision was not prominently featured in T&Cs; since agreement did not both conspicuously inform appellee of right to jury trial and that he was waiving this right, appellee did not knowingly consent to arbitration).³ **See also Pierce v. Empower Finance Inc.**, 359 A.3d 1 (Pa.Super. 2026) (explaining application screens did explicitly state that user was waiving right to jury trial by agreeing to appellant's T&Cs, or that registration process could not be completed until consumer is fully informed of waiver).

Instantly, the registration process for FloatMe's App did not require users to view the T&Cs before continuing with the registration. As FloatMe acknowledges in its brief:

The [trial] court immediately got off on the wrong foot when it characterized the agreement as a "browsewrap" agreement.... That, however, mischaracterizes FloatMe's sign-up process—which did not state that the user was consenting to terms and conditions simply by using the website, but instead **required the user to affirmatively**

³ **See** Pa.R.A.P. 126(b) (stating we may rely on unpublished decisions of this Court filed after May 1, 2019 for their persuasive value).

click “Continue” on condition that doing so would operate as a consent to the hyperlinked T&C[s] noted on the same screen.

(FloatMe’s Brief at 53-54) (emphasis added). Thus, FloatMe’s App advanced a combination of sign-in wrap and clickwrap agreement, as the App did not require the user to scroll through the terms by clicking agree. ***See Duffy, supra.***

Moreover, the affidavit from Mr. Sanchez included a copy of FloatMe’s T&Cs. Mr. Sanchez explained: “A true and accurate copy of FloatMe’s T&Cs that a user would have seen on March 8, 2023, had they clicked the ‘Terms and Conditions’ hyperlink within the sign-up screens, is attached hereto as Exhibit 2 and was produced in discovery....” (Amended Affidavit of Mr. Sanchez in Support of Preliminary Objections at ¶17). The T&Cs span twenty-seven (27) pages. The following arbitration provision appears on the twenty-first page:

26. DISPUTE RESOLUTION BY BINDING ARBITRATION

YOU HAVE READ THIS PROVISION CAREFULLY AND UNDERSTAND THAT IT LIMITS YOUR RIGHTS IN THE EVENT OF A DISPUTE BETWEEN YOU AND US. YOU UNDERSTAND THAT YOU HAVE THE RIGHT TO REJECT THIS PROVISION AS PROVIDED IN SECTION 23.3 BELOW.

26.1 Election to Arbitrate

You and FloatMe agree that the sole and exclusive forum and remedy for resolution of a Claim be final and binding arbitration pursuant to this Section 23 (the "Arbitration Provision"), unless you opt out as provided in Section 23.3 below. As used in this Arbitration Provision, "Claim" shall include any past, present, or future claim, dispute, or controversy involving you (or persons claiming through or connected with you), on the one hand, and us on the other hand, relating to or arising out of this Agreement, and/or the activities or relationships that involve, lead to, or result from this Agreement, including (except to the extent provided otherwise in the last sentence of Section 23.8 below) the validity or enforceability of this Arbitration Provision, any part thereof, or the entire Agreement. Claims are subject to arbitration regardless of whether they arise from contract; tort (intentional or otherwise); a constitution, statute, common law, or principles of equity; or otherwise. Claims include matters arising as initial claims, counter-claims, cross-claims, third-party claims, or otherwise.

Please note that you may continue to assert Claims in small claims court, if your Claims qualify and so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis. The scope of this Arbitration Provision is to be given the broadest possible interpretation that is enforceable.

(Amended Affidavit of Mr. Sanchez in Support of Preliminary Objections at Exhibit 2, ¶¶26-26.1). Subsequent paragraphs address the applicability of the FAA, opting out of arbitration, and arbitration procedures and fees. (***See id.***

at ¶¶26.2-26.10). Later, the twenty-fifth page of the T&Cs includes the following waiver:

26.11 WAIVER OF RIGHT TO LITIGATE.

THE PARTIES ACKNOWLEDGE THAT THEY HAVE A RIGHT TO LITIGATE CLAIMS THROUGH A COURT BEFORE A JUDGE OR JURY, BUT WILL NOT HAVE THAT RIGHT IF ANY PARTY ELECTS ARBITRATION PURSUANT TO THIS ARBITRATION PROVISION. THE PARTIES HEREBY KNOWINGLY AND VOLUNTARILY WAIVE THEIR RIGHTS TO LITIGATE SUCH CLAIMS IN A COURT BEFORE A JUDGE OR JURY UPON ELECTION OF ARBITRATION BY ANY PARTY.

(*Id.* at ¶26.11).

Contrary to the requirements of the relevant case law, FloatMe’s T&Cs allowed Appellee to complete her registration without being fully informed of the rights she was waiving. Moreover, if Appellee had clicked the hyperlink to view the T&Cs, the waiver was buried towards the end of the prolix document. As a result, the parties’ agreement did not conspicuously inform Appellee of her rights. ***See Duffy, supra.***

To the extent that FloatMe relies on ***Kindred Nursing Centers, supra*** for the proposition that the trial court applied a “uniquely rigorous burden of proof” for the current arbitration provision, we find guidance from this Court’s recent decision in ***Miller***:

[The rule announced in ***Duffy*** and ***Pierce***] does not violate the FAA because it merely places arbitration agreements on “equal footing” with other types of agreements that must be certain that the waiver of a constitutional right is both informed and knowing; as in, agreements to permit confession of judgment in civil cases and agreements by

criminal defendants to waive their right to trial by jury.

* * *

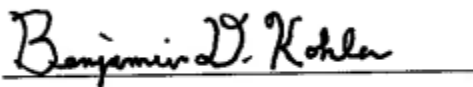
Thus, our treatment of arbitration provisions in ... **Duffy** and **Pierce** do not discriminate against arbitration agreements; they merely impose the same burden and consequent protection that already govern agreements in other areas of Pennsylvania law where a constitutional right is being waived.

Miller, supra at *12, *13.

Based upon the foregoing, Appellee did not unambiguously manifest her assent to the terms of FloatMe's arbitration agreement. **See Duffy, supra**. Because there was no mutual assent, a valid agreement did not exist. **Id.** Thus, the trial court did not abuse its discretion in overruling FloatMe's preliminary objections seeking to compel arbitration. **See Cook, supra**. Accordingly, we affirm, albeit on other grounds.⁴

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 10/1/2026

⁴ **See Lynn v. Nationwide Ins. Co.**, 70 A.3d 814, 823 (Pa.Super. 2013) (stating appellate court may affirm trial court's ruling on any basis supported by record on appeal).