

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Sep 05 2023

S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable J. C. Nicholson, Jr. Circuit Court Judge

Civil Action No. 2017-CP-10-02148
Court of Appeals Case No. 2018-000171
Supreme Court Case No. 2021-000137

Cleo Sanders.....Respondent

v.

Savannah Highway Automotive Company, a General Partnership d/b/a Rick Hendrick
Dodge Chrysler Jeep Ram, Santander Consumer USA Holdings, Inc., Isiah S. White,
Danny Anderson and Patrick Bachrodt, Jr. Defendants

Of whom, Savannah Highway Automotive Company, a General Partnership d/b/a Rick
Hendrick Dodge Chrysler Jeep Ram and Isiah S. White are the..... Petitioners/Appellants

**PETITIONERS/APPELLANTS' RETURN
TO RESPONDENT'S PETITION FOR REHEARING**

Other Party's Counsel of Record:
C. Steven Moskos, Esquire
C. Steven Moskos, PA
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
(843) 763-5297 Ofc

John T. Lay, Jr.
Jessica Waller Laffitte
GALLIVAN, WHITE & BOYD, P.A.
Post Office Box 7368
Columbia, SC 29202
(803) 779-1833

Attorney for Respondent Cleo Sanders

*Attorneys for Petitioners/Appellants
Savannah Highway Automotive Company, a
General Partnership d/b/a Rick Hendrick
Dodge Chrysler Jeep Ram and Isiah S.
White*

Pursuant to this Court’s August 14, 2023 Order, Petitioners/Appellants Savannah Highway Automotive Company, a General Partnership d/b/a Rick Hendrick Dodge Chrysler Jeep Ram and Isiah S. White (collectively hereinafter “Petitioners/Appellants”) respectfully submit this Return to the Petition for Rehearing filed by Respondent Cleo Sanders (“Sanders”).

Sanders’ Petition for Rehearing asks this Court to rescind its well-reasoned determination in Opinion No. 28168¹ that the *Prima Paint* doctrine requires the arbitrator – not the Circuit Court – to decide whether Petitioners/Appellants retained the right to compel arbitration after assignment of the arbitration provision’s “container contract.” The nature of Sanders’ contractual challenge was well-defined for this Court: Sanders admittedly challenged *neither* the validity of the arbitration provision itself *nor* whether a contract between the parties was formed and existed in the first instance (either one of which, this Court noted, might have prompted a different outcome). Rather, as Sanders himself stated, he challenged whether post-assignment “there is a contract between the parties” that *still* exists. (Petition for Rehearing, at 2 n.1 (quoting Sanders’ Response to Petition for Writ of Certiorari)). This is without question a challenge to the container contract as a whole, and it falls squarely in the arbitrator’s realm under the *Prima Paint* doctrine.

The Petition for Rehearing attempts to confuse this simple analysis with semantic quarrels that ring hollow: According to Sanders, this Court either misapprehended the nature of his challenge (which he now claims is to the arbitration provision only, despite his prior characterizations) or must disregard all of Petitioners/Appellants’ attempts to enforce the arbitration provision in the Circuit Court and on appeal because – gotcha! – they told the Circuit

¹ The Opinion, filed on July 26, 2023, is found in Howard Advance Sheet No. 29 on pages 21-36. Citations to the Opinion herein are to the corresponding pages in Howard Advance Sheet No. 29.

Court the container contract was “fully assigned.” (Petition for Rehearing at 2 (plucking out of context this phrase which Sanders inexplicably continues to highlight in his appellate filings)). This is not a phrase “at odds with the position they took before this Court” as Sanders claims (*id.*); indeed, the Opinion *quoted* this purported “gotcha” language, but in the proper context: “Petitioners acknowledged Rick Hendrick Dodge ‘fully assigned’ the RISC to Santander but claimed the arbitrator—not the circuit court—should decide the gateway question of whether the arbitration provision is enforceable.” (Howard Advance Sheet No. 29, at 23).

Equally unavailing is Sanders’ *ad hominem* attack claiming Petitioners/Appellants “hid[] from the trial judge the [survival] clause on which the decision now swings.” (Petition for Rehearing at 3). This Court’s singular mention of “survival clause” in a footnote (Howard Advance Sheet No. 29, at 25 n.5) is hardly the fulcrum “on which the decision now swings,” and regardless Petitioners/Appellants were not obligated to make any such arguments to the Circuit Court in the first instance (or on appeal) *because that is the very point*: Whether Petitioners/Appellants retained rights after assignment under the container contract and its arbitration provision – pursuant to a survival clause or for any other reason – are issues for the arbitrator to decide and not the court.²

WHEREFORE, Petitioner/Appellants urge this Honorable Court to deny Sanders’
Petition for Rehearing.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

² Sanders’ accusation of “hiding” this argument from the Circuit Court is beyond the pale. Counsel for Petitioners/Appellants referenced the survival clause in response to a question asked by one of the justices during oral argument before this Court and made clear Petitioners/Appellants’ position that retention of rights after assignment is an issue for the *arbitrator* alone to decide.

By: s/ John T. Lay, Jr.
John T. Lay, Jr.
Jessica Waller Laffitte
GALLIVAN, WHITE & BOYD, P.A.
Post Office Box 7368
Columbia, SC 29202
(803) 779-1833

*Attorneys for Petitioners/Appellants
Savannah Highway Automotive Company, a
General Partnership d/b/a Rick Hendrick
Dodge Chrysler Jeep Ram and Isiah S.
White*

September 5, 2023