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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appellate Case No. 2025-000704
(Ct. App. Case No. 2023-001034)

Ethan Tyler Vanfossen and Corey J. Davis, on behalf of themselves and all others similarly situated,.. Petitioners,

v.

Love Chevrolet Company, ...Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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INTRODUCTION

The Petitioners ("the truck buyers") ask this Court to issue a writ of certiorari to review the Court of Appeals' opinion in Vanfossen v. Love Chevrolet Co., 2025-UP-003 (Jan. 2, 2025), which reversed the denial of the Respondent ("Love Chevrolet")'s motion to compel arbitration and remanded the case. The Court of Appeals held – contravening of the words of this court – that the category of challenge on which the trial court ruled is always for an arbitrator to decide.

The truck buyers also argued several additional sustaining grounds; however, the Court of Appeals' opinion does not indicate that any further proceedings on Love Chevrolet's motion are to occur below in order to address any of them, and the vague pronouncements of the Court of Appeals in its opinion and its order on the petition for rehearing leave the reader scratching his head about whether another hearing or order is to occur in the lower court.

The Court of Appeals' opinion both misreads recent precedent of this Court and fails to apply the principle of South Carolina appellate law that requires affirmance of a trial court decision that reached the right *result*, even if the appellate court does not agree with trial court's analysis in reaching that result.

CERTIFICATE OF COUNSEL

The Court of Appeals issued its opinion in this case on January 2, 2025. Counsel for the Petitioners certify that the petition for rehearing was served and filed on January 16, 2025. The petition for rehearing was finally ruled on by the Court of Appeals by an order filed on March 17, 2025.

Because of an injury sustained by Petitioners' primary appellate counsel, Petitioners sought and this Court issued an extension through today, May 6, 2025, of

the time to petition for a writ of certiorari. This petition for a writ of certiorari is timely served and filed on May 6, 2025.

QUESTIONS PRESENTED

1) Did the Court of Appeals err by reversing the trial court's decision to deny Love Chevrolet's motion to compel arbitration?

2) Did the Court of Appeals err in failing to affirm on the basis of any or all of the truck buyers' additional sustaining grounds?

3) Did the Court of Appeals err in reversing the trial court on an argument Love Chevrolet failed to preserve for review?

STATEMENT OF THE CASE

This case was brought before the Court of Appeals as an appeal from the denial of Love Chevrolet's motion to compel arbitration. (R. pp. 4-8.) The trial court concluded that assignment of the contract at issue meant Love Chevrolet was no longer a party to it and, therefore, could not enforce the claimed arbitration agreement. (R. p. 7.) The trial court did not rule on the other arguments that the truck buyers advanced for why Love Chevrolet's motion should be denied. (R. p. 7.)

This suit is a class action filed on February 7, 2022, brought by the truck buyers against Love Chevrolet for violation of the South Carolina Motor Vehicle Dealer's Act, S.C. Code Ann. §§ 56-15-10, *et seq.*, breach of express and implied warranties, and negligent misrepresentation, asserting those causes of action based on Love Chevrolet's widespread misrepresentation of the towing capacity of Chevrolet Silverado 1500 trucks. (R. pp. 26-40.) (The class has not yet been certified.) The crux of the complaint is that Love Chevrolet "routinely and in the regular course of its business overstates the towing capacity of the Silverados in its advertising and other

representations to its customers, upon which it intends they rely[.]" (R. p. 29, ¶ 9.) A copy of Love Chevrolet marketing material overstating the towing capacity of such a truck is an exhibit to the complaint. (R. pp. 36-40.)

Love Chevrolet answered on April 13, 2022, and claimed in its answer that "[e]ach of the Plaintiffs entered into binding arbitration agreements governed by the Federal Arbitration Act in connection with their respective transaction." (R. p. 21.) The next day, Love Chevrolet filed a motion to stay and to compel arbitration, along with an affidavit of Love Chevrolet's "executive manager and custodian of records" that attached "copies of Arbitration Agreements between each Plaintiff and Love Chevrolet Company in connection with each transaction." (R. pp. 143-48.)

Except for the dates and the buyers' names, the pre-printed arbitration agreement documents are identical and are one-page pre-printed forms, in eight-point font, authored by Love Chevrolet. (R. p. 57 ln. 1-2, pp. 147-48.)

On September 7, 2022, Love Chevrolet refiled the same motion, adding language to note that pre-motion consultation with the truck buyers' counsel had been held. (R. pp. 137-42.)

Love Chevrolet filed a memorandum in support of its motion on November 7, 2022, and the truck buyers filed a memorandum in opposition to the motion on November 9, 2022. (R pp. 111-36.) On April 17, 2023, the truck buyers refiled their memorandum, attaching one of the truck buyers' retail installment sale contract with Love Chevrolet and Love Chevrolet marketing material overstating the towing capacity of a Silverado. (R pp. 87-110.) The retail installment sale contract contains a provision in which Love Chevrolet assigned its interest in the contract to GM Financial. (R p. 109.)

The trial court heard Love Chevrolet's motion on April 17, 2023. (R pp. 41-70.) The trial court denied the motion in an order filed May 12, 2023, finding as follows:

Here, the Arbitration Agreement relied on by Love expressly states:

> "This Agreement is incorporated into and made a part of all Contract(s) as defined in this Agreement." "Contracts" as defined in the agreement refers to "any agreement(s) between you and us regarding the sale, lease, financing, service or maintenance of the vehicle." "Contracts" thus clearly includes the RISC [an abbreviation of retail installment sale contract], which Defendant Love indisputably has assigned to GM Financial. Nothing in the Arbitration Agreement reserves or carves out from the assignment a right for the Love to "hold onto" a right to arbitrate.
>
> Having thus incorporated its Arbitration Agreement into the RISC, which it then assigned away, Love has nothing left to enforce under South Carolina law. "[A] corollary to the principle that an assignee is bound by the arbitration clause in an assigned contract is that "an assignment ordinarily extinguishes the right [of the assignor] to compel arbitration." Sanders[v. Savannah Highway Auto. Co., 432 S.C. 328, 332, 852 S.E.2d 744, 746 (Ct. App. 2020),] citing HT of Highlands Ranch, Inc.[v. Hollywood Tanning Sys., Inc., 590 F. Supp. 2d 677, 684 (D.N.J. 2008), *aff'd*, 850 F.3d 344 (8th Cir. 2017)].
>
> Thus, the Court finds that having chosen to incorporate its Arbitration Agreement without reservation into the RISC, which it then assigned, its motion must be denied.
>
> The Court does not find that the Arbitration Agreement is unenforceable because it was procured by fraud, is unconscionable, or violates public policy. However, because Defendant's Motion is denied based on assignability, this Court does not address these claims any further.

(R pp. 6-7.)

On May 22, 2023, Love Chevrolet filed a motion to alter or amend. (R. pp. 75-86.) In it, Love Chevrolet advanced an argument it had not made previously, that the assigned retail installment sale contract was not "the primary contract document for the vehicle purchases" and that another, purportedly unassigned document, the "Record of Purchase," was. (R. p. 76.) Love Chevrolet also first raised there an argument that the court should not have considered the documents the truck buyers submitted with their refiled memorandum. (R. pp. 84-85.)

On the same day it filed its motion to alter or amend, Love Chevrolet also filed a motion to amend its answer and a proposed amended answer. (R. pp. 9-20, 73-74.) Submitted as exhibits to the proposed amended answer were record of purchase and vehicle trailering and towing disclaimer documents for each plaintiff, none of which had been previously presented to the court. (R. pp. 15-20.)

The trial court judge denied the motion to alter or amend by order filed June 6, 2023. (R. pp. 1-3.) Love Chevrolet's appeal followed.

In its opinion issued January 2, 2025, Vanfossen v. Love Chevrolet Co., 2025-UP-003, the Court of Appeals reversed the trial court's decision to deny Appellant ("Love Chevrolet")'s motion to compel arbitration. The Court of Appeals held that the decision of whether the claimed arbitration agreement was enforceable after Love Chevrolet's assignment of all its rights in the parties' contract was for the arbitrator as a categorical matter of law. The opinion issued in this case treats Sanders v. Savannah Hwy. Auto Co., 440 S.C. 377, 892 S.E.2d 112 (2023), as having announced a categorical rule:

> We read our supreme court's opinion in Sanders as holding that challenges pertaining to "whether [a] contract continued to exist after a certain point in time" are issues for the arbitrator to decide. Id. at 389–91, 892

> S.E.2d at 118–19. This includes a challenge as to whether the party seeking to compel arbitration assigned and thereby lost its right to compel arbitration. Id. at 391, 892 S.E.2d at 119 ("Prima Paint requires the arbitrator to decide whether [a party] retained the right to compel arbitration after assignment [of the container contract]."). Here, the circuit court found Love's right was extinguished when it assigned the financing agreements to GM Financial. Because we understand Sanders as holding this determination should have been reserved for the arbitrator, we reverse.

Vanfossen v. Love Chevrolet Co., 2025-UP-003.

The Court of Appeals also ruled that "[t]his reversal is without prejudice to the parties' other arguments for or against arbitration" and vaguely "remanded" the case, without noting what, if any, proceedings concerning the appealed matter are to be conducted on remand and whether the trial court or an unspecified arbitrator is to conduct them. Id.

ARGUMENT

Respectfully, the Court of Appeals' decision is grounded in a misapprehension of the scope and meaning of this Court's decision in Sanders. In light of the recency of that decision and some phrasing in it that is perhaps less clear than practitioners and lower courts would desire, that misapprehension is understandable. It remains, however, a misapprehension, and one that has produced an incorrect decision here.

A grant or certiorari to review this decision is warranted. Given the potential for future erroneous decisions if this misapprehension of Sanders is applied by the Court of Appeals and trial courts going forward, especially when motions to compel arbitration and those decisions' appeals are so ubiquitous, this Court should step in and correct the Court of Appeals' misapprehension. A grant of certiorari would allow this

Court to assess the Court of Appeals' reading of Sanders and to clarify whether and to what extent this Court announced such a categorical rule in Sanders.

I. Sanders does not announce the rule that the Court of Appeals stated it does and did not hold such a category of decision must always be for the arbitrator. It makes a great deal of difference what the parties' arbitration agreement says about which gateway matters, if any, are for the arbitrator.

As the truck buyers' counsel reads this Court's opinion in Sanders, this Court did not hold that there is a general rule that "challenges pertaining to 'whether [a] contract continued to exist after a certain point in time' are issues for the arbitrator to decide." Vanfossen v. Love Chevrolet Co., 2025-UP-003 (quoting Sanders, 440 S.C. at 389–91, 892 S.E.2d at 118–19).[1] This Court, rather, determined that particular enforceability question was within the scope of what was *in that case, under the language of that arbitration agreement*, delegated to the arbitrator for decision. Sanders, 440 S.C. at 380, 388-91.

The truck buyers' brief to the Court of Appeals discussed how this Court analyzed the Sanders facts and how what was delegated to the arbitrator in the instant case is materially different:

> In reversing this court's Sanders opinion, the Supreme Court did not determine this court was wrong in its reasoning about whether the parties who sought to compel arbitration retained any rights under the contract that provided for arbitration. Sanders, 440 S.C. at 379-92. **The Supreme Court just drew an important distinction between the questions of whether an agreement to arbitrate was entered into by the parties *at all* and whether the admittedly existing agreement was still *enforceable* by a party that had assigned away its rights under the agreement. Id. at 386-91.**

[1] Respectfully to the Court of Appeals, the truck buyers note that the question on which the trial judge here ruled was not a challenge to a contract's continued existence but was, rather, the question of whether a contract was enforceable by an entity that was no longer a party to it. (R. pp. 4-8.)

> **The Court decided the latter question is different from the first and can, if it has been delegated to an arbitrator by agreement, be decided by that arbitrator. Id. at 388-91. Based on the scope of the arbitration agreement at issue in Sanders, which specifically provided for the arbitrator to decide "the arbitrability of the claim or dispute[,]" id. at 380, the Supreme Court determined that the question this court had addressed in its Sanders opinion was a question for the arbitrator. Id. at 388-91.**
>
> **Here, the language in the clause delegating certain "gateway matters" to the arbitrator was different from the all-encompassing arbitrability language in Sanders and did not include delegation to the arbitrator to decide the enforceability of the supposed arbitration agreement. (R. pp. 141, 142.)** This court [the Court of Appeals]'s reasoning in Sanders, with the exception of whether the issue was one for the court or the arbitrator under the circumstances of that case, was not reversed. Sanders, 440 S.C. at 379-92. This court's Sanders decision was reversed on other grounds than whether this court's analysis of the effect of the assignment was a correct analysis. Id. at 388-91. This court's decision in Sanders about whether a party retains any rights in a contract it has assigned without qualification remains the law. See id.; Sanders, 432 S.C. 332-34.

(Final Brief of Respondents pp. 8-9 (emphasis added in bold).)

> **Here, what the arbitration agreement document states is that "[a]ll 'gateway matters' concerning the existence, applicability, and validity of this Agreement shall be resolved by the arbitrator." (R. pp. 141, 142.) One of those "gateway matters" purported to be delegated to the arbitrator is *not* the *enforceability* of the supposed arbitration agreement.** (R. pp. 141, 142.) There is not "clear and unmistakable evidence" of agreement that the *enforceability* of the arbitration agreement was to be decided by an arbitrator.

(Final Brief of Respondents p. 7 (emphasis added in bold).)

Passages from this Court's Sanders opinion support that the decision there was driven by the particular contractual language at issue and not by a rule that

enforceability challenges based on assignment are always, or even usually, the purview of an arbitrator. The Sanders opinion notes the generally applicable law is as follows:

> Under the FAA, the presumptive answer is that the court—rather than the arbitrator—resolves gateway questions of arbitrability such as whether an arbitration provision is enforceable and whether the provision applies to a particular dispute. Doctor's Assocs., Inc. v. Alemayehu, 934 F.3d 245, 250-51 (2d Cir. 2019) ; see Zabinski v. Bright Acres Assocs., 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001) ("The question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise.").

Sanders, 440 S.C. at 384 (emphasis in original).

> [T]he Supreme Court [of the United States] "has consistently held that parties may delegate threshold arbitrability questions to the arbitrator, so long as the parties' agreement does so by 'clear and unmistakable' evidence." Henry Schein, Inc. v. Archer & White Sales, Inc., ––– U.S. ––––, 139 S. Ct. 524, 530, 202 L.Ed.2d 480 (2019) (quoting First Options of Chi., Inc. v. Kaplan, 514 U.S. 938, 944, 115 S.Ct. 1920, 131 L.Ed.2d 985 (1995)).

Sanders, 440 S.C. at 384.

The conclusion of the Court's Sanders opinion further indicates that the decision in that case was the product of its particular facts – the all-encompassing delegation to the arbitrator of "the arbitrability of the claim or dispute[.]" Id. at 380. Per this Court, "[t]he Prima Paint doctrine is not the model of clarity; however, ***as applied to this case***, the doctrine requires us to hold that the arbitrator must decide the gateway question of whether Petitioners retained the right to compel arbitration after assignment of the RISC." Sanders, 440 S.C. at 392 (emphasis added).

If that were not because the Sanders parties delegated *all* arbitrability matters, including enforceability post-assignment, to the arbitrator, rather than because of a generally applicable rule about assignment-related challenges, the Sanders opinion

would be internally inconsistent. Id. at 384, 392. In the Sanders opinion, this Court observed that "the presumptive answer is that the court—rather than the arbitrator—resolves gateway questions of arbitrability such as whether an arbitration provision is enforceable[.]" Id. at 384 (emphasis in original). The facts of Sanders – that the parties delegated to the arbitrator *all* questions relating to "the arbitrability of the claim or dispute" were just such that they rebutted the generally applicable presumption. Id. at 380, 384.

In its reasoning here, the Court of Appeals has misapprehended the law. Perhaps this Court could have been clearer in Sanders about how much its decision was driven by the particular language of the particular arbitration agreement in question; however, an examination of the Sanders opinion, especially against the background of preexisting law, reveals that this Court announced no such categorical rule about enforceability challenges as the Court of Appeals interpreted. That question was for the arbitrator in Sanders because that is what the arbitration agreement provided. Sanders, 440 S.C. at 380 (agreement provided for arbitrator to decide "the arbitrability of the claim or dispute").

Here, in the case between the truck buyers and Love Chevrolet, the language at issue is materially different: "[a]ll 'gateway matters' concerning the existence, applicability, and validity" – but not the enforceability – "of this Agreement shall be resolved by the arbitrator." (R. pp. 141, 142.) The entirety of the Court of Appeals' decision in the instant case hangs upon an erroneous reading of Sanders.

II. The issue upon which the Court of Appeals reversed is not preserved for review.

As noted at oral argument in this case, Love Chevrolet (which is the appellant here) did not preserve for review the issue of whether the arbitrator, rather than the

court, should determine the effect of the assignment. The issue was raised in the initial hearing, but the trial court did not rule on it, and it was not raised in Love Chevrolet's motion under Rule 59(e), SCRCP. (R. pp. 4-8, 75-86.) To be preserved for appellate review, an argument must have been both raised to and ruled upon by the trial court. E.g., Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998). "Where a matter is not ruled on by the circuit court, the issue is not preserved for appellate review unless the complaining party moves to amend the judgment pursuant to Rule 59(e)." Vespazziani v. McAlister, 307 S.C. 411, 413, 415 S.E.2d 427, 428 (Ct. App. 1992).

The Court of Appeals allowed Love Chevrolet to win reversal without Love Chevrolet having first established that its argument was properly before the court at all. An appellant's unpreserved arguments cannot prevail on appeal. E.g., Hatfield v. Hatfield, 327 S.C. 360, 367, 489 S.E.2d 212, 216 (Ct. App. 1997).

III. No preservation of the truck buyers' arguments was required, and the Court of Appeals should have reached the additional sustaining grounds and affirmed.

In its opinion, the Court of Appeals stated that the truck buyers had failed to preserve an issue and that, "[a]ccordingly, this issue is not properly before us." Vanfossen v. Love Chevrolet Co., 2025-UP-003. The court also declined to address any of the truck buyers' other additional sustaining grounds arguments.[2]

Respectfully, there are two major misapprehensions in this area. First, there is no preservation requirement for an argument made on appeal *by a respondent*, which is what the truck buyers are here, as this is Love Chevrolet's appeal. E.g., Dreher v. S.C. Dept. Health & Environmental Control, 412 S.C. 244, 250, 772 S.E.2d 505, 508

[2] What those arguments are will be for briefing if this petition is granted. This petition seeks to address why a writ of certiorari should be granted in the first place.

(2015). All issues raised to the court by the truck buyers were before the Court of Appeals for review. Preservation is an *appellant's* requirement. Id.

Second, it is not correct that the Court of Appeals' decision on the interpretation of Sanders and its scope was dispositive of the additional sustaining grounds noted by the truck buyers. Those additional grounds were noted precisely because each of them show that there are several independent reasons why Judge Coble reached the correct *result*, regardless of how the Court of Appeals would suss out the issue upon which Judge Coble based his ruling. They reveal that there are a number of reasons why the decision to deny Love Chevrolet's motion was correct.

An appellate court may affirm the trial court for any ground appearing in the record, even if under different reasoning than that used by the trial court. Leggett v. Smith, 386 S.C. 63, 77 n. 4, 686 S.E.2d 699, 707 n. 4 (Ct. App. 2009) (noting that trial court reached right decision for reasons other than those used by appellate court). The question of reversal depends on whether the trial court was wrong for the specific, preserved reasons argued below and on appeal by the appellant. See I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716, 724 (2000). If the trial court made the right decision – regardless of how it reasoned that out – the judgment should be affirmed. Id.; Leggett, 386 S.C. at 77 n. 4.

The Court of Appeals failed to apply these principles here.

IV. Clarifying Sanders can avoid bad decisions in the future.

The decision the Court of Appeals issued here is grounded in an incorrect reading of this Court's Sanders opinion. Appeals from the grant or denial of motions to compel arbitration are brought frequently. Uniformity of decisions in this area is important. Whether Sanders announced a new categorical rule or simply applied

existing arbitration law to produce a decision dependent upon the specific facts of that case is a question whose importance extends beyond the instant case.

If this Court actually announced a categorical rule like what the Court of Appeals' opinion states, this Court has issued a self-contradictory opinion. (Contrast the Court of Appeals' reading of Sanders with the statement in Sanders that "the presumptive answer is that the court—rather than the arbitrator—resolves gateway questions of arbitrability such as whether an arbitration provision is enforceable[.]" 440 S.C. at 384 (emphasis in original).)

The truck buyers do not believe this Court issued a self-contradictory opinion. Apparently, however, there is a different view held by the Court of Appeals. As noted above, the Sanders opinion by this Court could have been more clear that the decision reached in it was fact-driven and not the product of a new categorical rule. This Court now has the opportunity to clear away the confusion and note for the benefit of all that Sanders did not change the law but, simply, applied it.

CONCLUSION

It is evident that the Court of Appeals does not understand this Court's decision or reasoning in Sanders. It is evident that the Court of Appeals failed to apply the principle that the core reckoning of an appeal is whether the trial court reached the right *result* – for any reason – not whether the trial court took the correct path to reach it.

It is also evident that, if the Court of Appeals continues to see this Court's Sanders decision as it did in the instant case, further confusion and conflict between that court's decisions and this Court's precedent will occur, muddying up the law for everyone in the ubiquitous area of arbitration. This Court can stop that from happening.

WHEREFORE, the truck buyers pray for this Court to issue a writ of certiorari to review the Court of Appeals' opinion and decision in this case.

Respectfully submitted,

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