



The South Carolina Court of Appeals

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August 14, 2025

The Honorable Jeanette W. McBride
PO Box 2766
Columbia SC 29202-2766

REMITTITUR

Re: Ethan Tyler Vanfossen v. Love Chevrolet Company
Lower Court Case No. 2022CP4000654
Appellate Case No. 2023-001034

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

Catherine Harrison, deputy
CLERK

Enclosure

cc: Joseph Gregory Studemeyer, Esquire
David Andrew Maxfield, Esquire
Andrew Sims Radeker, Esquire
Sarah Theresa Eibling, Esquire
Blake Terence Williams, Esquire

The Supreme Court of South Carolina

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

v.

Love Chevrolet Company, Respondent.

Appellate Case No. 2025-000704

RECEIVED

Aug 13 2025

SC Court of Appeals

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY Patricia A. Howard
CLERK

Columbia, South Carolina
August 13, 2025

cc:

David Andrew Maxfield
Andrew Sims Radeker
Joseph Gregory Studemeyer
Sarah Theresa Eibling
Blake Terence Williams
The Honorable Jenny Abbott Kitchings

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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

v.

Love Chevrolet Company, Appellant.

Appellate Case No. 2023-001034

Appeal From Richland County
Daniel Coble, Circuit Court Judge

Unpublished Opinion No. 2025-UP-003
Heard December 5, 2024 – Filed January 2, 2025

REVERSED AND REMANDED

Sarah Theresa Eibling and Blake Terence Williams, both
of Nelson Mullins Riley & Scarborough, LLP, of
Columbia, and Joseph Gregory Studemeyer, of
Studemeyer Law Firm, of Irmo, all for Appellant.

David Andrew Maxfield, of Dave Maxfield, Attorney,
LLC, and Andrew Sims Radeker, of Radeker Law, P.A.,
both of Columbia, for Respondents.

PER CURIAM: Ethan Tyler Vanfossen and Corey J. Davis (collectively, Purchasers) separately bought the same model truck from Love Chevrolet Company (Love). Purchasers later sued Love alleging that Love misrepresented the truck's towing capacity, both in statements to them and in online advertisements. Love sought to compel arbitration pursuant to an arbitration agreement executed during the sales.

The circuit court denied Love's motion to compel arbitration, finding that Love's right to compel arbitration was extinguished when it assigned the financing agreements executed in the sales to GM Financial. The circuit court relied on this court's opinion in *Sanders v. Savannah Highway Automotive Company*, 432 S.C. 328, 852 S.E.2d 744 (Ct. App. 2020), which dealt with the same argument. In light of the fact that our supreme court reversed *Sanders* after the circuit court ruled in this case, 440 S.C. 377, 892 S.E.2d 112 (2023), we reverse.

"Appeal from the denial of a motion to compel arbitration is subject to de novo review." *New Hope Missionary Baptist Church v. Paragon Builders*, 379 S.C. 620, 625, 667 S.E.2d 1, 3 (Ct. App. 2008). "Nevertheless, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports the findings." *Partain v. Upstate Auto. Grp.*, 386 S.C. 488, 491, 689 S.E.2d 602, 603 (2010).

We must begin by addressing whether the case involves federal arbitration law. Purchasers argue that the Federal Arbitration Act (FAA) does not apply because these transactions supposedly did not involve interstate commerce. We respectfully reject this argument for two reasons. First, the record does not reflect that Purchasers made this argument to the circuit court. In fact, Purchasers made arguments under the FAA in response to Love's motion to compel arbitration. While the circuit court did not make an explicit ruling on whether the FAA applied, the court did reference the FAA in its order. Accordingly, this issue is not properly before us. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."); *see also Moses v. State*, 442 S.C. 263, 269, 898 S.E.2d 174, 177 (Ct. App. 2024) ("[I]t is a litigant's duty to bring to the court's attention any perceived error, and the failure to do so amounts to a waiver of the alleged error." (alteration in original) (quoting *State v. Geer*, 391 S.C. 179, 193, 705 S.E.2d 441, 448 (Ct. App. 2010))).

Second, even if this issue was preserved, Purchasers' argument cannot prevail on the merits. Precedent explains that, unless the parties have contracted otherwise, "the FAA applies . . . to any arbitration agreement regarding a transaction that *in fact*

involves interstate commerce." *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001) (emphasis added). Multiple cases recognize the sale and financing of an automobile as involving interstate commerce. *See, e.g., York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 79, 749 S.E.2d 139, 145 (Ct. App. 2013); *Masters v. KOL, Inc.*, 431 S.C. 28, 37 n.6, 846 S.E.2d 893, 897 n.6 (Ct. App. 2020).

In *Sanders*, our supreme court recognized that "we must apply the *Prima Paint* doctrine in cases governed by the FAA." 440 S.C. at 385, 892 S.E.2d at 116. In *Prima Paint*, "the [U.S.] Supreme Court adopted what has become known as the severability (or separability) doctrine: '[A]rbitration clauses as a matter of federal law are "separable" from the contracts in which they are embedded[.]'" *Id.* (second and third alterations in original) (quoting *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 402 (1967)); *see also id.* at 386, 892 S.E.2d at 116 ("Pursuant to the *Prima Paint* doctrine, the FAA requires courts to separate the validity of an arbitration clause from the validity of the contract in which it is embedded." (quoting *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 608–09, 879 S.E.2d 746, 753 (2022))). Our supreme court explained, "The takeaway from *Prima Paint* is that the scope of the challenge to a party's right to invoke arbitration is critical." *Id.* at 385, 892 S.E.2d at 116.

In practice, determining whether a particular argument is for an arbitrator or for a court to decide depends on the gateway argument the party opposing arbitration is making. Courts remain the proper forum to decide the most basic threshold issues of contract formation. *Id.* at 387–88, 892 S.E.2d at 117–18; *see also Partain*, 386 S.C. at 494, 689 S.E.2d at 605 ("After all, arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit."). The arbitrator decides challenges to the validity of the "container contract" like the argument that the parties' broader agreement is unconscionable. *Sanders*, 440 S.C. at 386, 892 S.E.2d at 116. When a party challenges the validity of the arbitration agreement alone, however, that is also a question for the court. *Id.* ("[T]he court may hear a claim that an arbitration provision is unconscionable, but the arbitrator must hear a claim that the contract as a whole is unconscionable.").

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.

We decline to address any remaining issues. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling it unnecessary for an appellate court to address remaining issues when its resolution of a prior issue is dispositive). This reversal is without prejudice to the parties' other arguments for or against arbitration.

REVERSED AND REMANDED.

THOMAS, HEWITT, and VINSON, JJ., concur.



The South Carolina Court of Appeals

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March 17, 2025

Mr. David Andrew Maxfield, Esquire
PO Box 11865
Columbia SC 29211-1865

Mr. Andrew Sims Radeker, Esquire
PO Box 6903
Columbia SC 29260

Re: Ethan Tyler Vanfossen v. Love Chevrolet Company
Appellate Case No. 2023-001034

Dear Counsel:

Enclosed is a copy of an order of the panel denying your petition for rehearing. Your petition for rehearing en banc was distributed to the judges, but it has been rejected. *See* Rule 219, SCACR.

Very truly yours,

A handwritten signature in blue ink that reads "Jenny A. Kitchings". The signature is fluid and cursive.

CLERK

cc: Joseph Gregory Studemeyer, Esquire
Sarah Theresa Eibling, Esquire
Blake Terence Williams, Esquire

The South Carolina Court of Appeals

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

v.

Love Chevrolet Company, Appellant.

Appellate Case No. 2023-001034

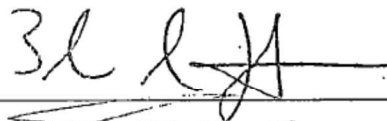
ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

As the opinion explains, the case is remanded to the circuit court without prejudice to the remaining arguments for and against the motion to compel arbitration.



J.



J.



J.

Columbia, South Carolina

cc:

FILED
Mar 17 2025

Joseph Gregory Studemeyer, Esquire
David Andrew Maxfield, Esquire
Andrew Sims Radeker, Esquire
Sarah Theresa Eibling, Esquire
Blake Terence Williams, Esquire
Jeanette W. McBride
The Honorable Daniel Coble