

The Supreme Court of South Carolina

Lonnie J. Davis Respondent,

v.

KB Home of South Carolina, Inc. and Jeff Meyer,
Petitioners.

Appellate Case No. 2011-199587

Lower Court Case No. 2008-CP-10-01193

ORDER

After the South Carolina Court of Appeals issued a published opinion in this case, this Court granted a writ of certiorari and issued an opinion affirming in part and vacating in part. While the opinion of this Court was intended to be published, it was mistakenly assigned a memorandum opinion number.

Accordingly, the opinion of this Court in this case shall be assigned a published opinion number and shall be published with the opinions of this Court.

 C.J.

FOR THE COURT

Columbia, South Carolina
May 8, 2014

cc: Allan R. Holmes, Esquire
Allan Riley Holmes, Jr., Esquire
D. Michael Henthorne, Esquire

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Lonnie J. Davis, Respondent,

v.

KB Home of South Carolina, Inc. and Jeff Meyer,
Petitioners.

Appellate Case No. 2011-199587

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 27386
Submitted January 8, 2014 – Filed January 29, 2014

AFFIRMED IN PART, VACATED IN PART

D. Michael Henthorne, of Littler Mendelson, PC, of
Columbia, for Petitioners.

Allan R. Holmes and Allan Riley Holmes, Jr., both of
Gibbs & Holmes, of Charleston, for Respondent.

PER CURIAM: KB Home and Jeff Meyer (collectively KB Home) seek review of the Court of Appeals' decision in *Davis v. KB Home of S.C., Inc.*, 394 S.C. 116, 713 S.E.2d 799 (Ct. App. 2011), finding the trial judge had authority to determine

the validity of an arbitration clause contained in an employment application submitted by Lonnie Davis and finding KB Home waived the right to compel arbitration. We deny the petition for a writ of certiorari as to KB Home's Question I and affirm with regard to the trial judge's authority to determine the validity of the arbitration clause. However, we grant the petition as to KB Home's Question II, dispense with further briefing, and vacate the portion of the Court of Appeals' opinion regarding waiver of the right to compel arbitration.

After properly concluding, pursuant to *Buckeye Check Cashing, Inc. v. Cardegna*,¹ that the trial judge had the authority to determine the validity of the arbitration clause contained in the employment application, the Court of Appeals went on to hold that the application, and the arbitration clause therein, were superseded and rendered invalid by the presence of a merger clause in the employment contract between KB Home and Davis. Having concluded such, it was unnecessary to address Davis' argument that KB Home waived the right to compel arbitration because a substantial length of time had passed, the parties engaged in extensive discovery, and the parties had availed themselves of the circuit court's assistance. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not address remaining issues when a decision on a prior issue is dispositive). We therefore vacate part II of the Court of Appeals' opinion addressing the issue of waiver.

AFFIRMED IN PART, VACATED IN PART.

**TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ.,
concur.**

¹ 546 U.S. 440, 444 (2006) (stating a challenge to an arbitration agreement is considered by the trial judge, whereas a challenge to the validity of the contract as a whole, and not specifically to the arbitration clause, must go to the arbitrator).