

STATE OF SOUTH CAROLINA)
)
 COUNTY OF JASPER)
)
 Annalee Walsh,)
)
 Plaintiff,)
)
 v.)
)
 Boat-N-RV Megastore and)
 Ridgeland Recreational Vehicles, Inc.,)
)
 Defendants.)
 _____)

FOURTEENTH JUDICIAL CIRCUIT
 COURT OF COMMON PLEAS
 CASE NO.: 2016-CP-27-269

ORDER DENYING DEFENDANTS'
 MOTION TO COMPEL ARBITRATION

RECEIVED

JAN 20 2017

SC Court of Appeals

THIS MATTER CAME BEFORE ME on September 20, 2016, after Defendants moved to dismiss or stay the case and to compel arbitration in this matter. In her complaint, Plaintiff alleged that on or about September 13, 2015, Ms. Walsh visited Defendants' Ridgeland office and entered into negotiations with Defendants for the purchase of a recreational vehicle. The Plaintiff signed a purchase agreement with Defendants in anticipation of entering into a contract with Defendants and the Plaintiff provided a refundable deposit of One Thousand Dollars (\$1,000.00) and a down payment of Twenty Four Thousand Dollars (\$24,000.00). Included and incorporated in the written purchase agreement was a written understanding that any purchase agreement or contract to purchase an RV would be contingent upon a third party lender's willingness to finance the purchase of the vehicle.

The Plaintiff alleged that although the Defendants applied for credit, no third party lender was willing to finance the purchase of the vehicle. The Plaintiff never took possession of the vehicle and the Defendants never offered to deliver the vehicle to her. The Plaintiff alleged that she demanded that the Defendants return her deposit and down payment, and that Defendants only returned Twelve Thousand Seven Hundred Fifty Dollars (\$12,750.00) to her, after several months,

and only after an attorney became involved. Defendants have retained the remaining \$11,250.00 of the money that Plaintiff deposited in anticipation of purchasing an RV. Plaintiff pled causes of action for conversion, violations of the South Carolina Unfair Trade Practices Act, and fraud. Defendants moved to compel arbitration based upon the arbitration clause found in the sales agreement. Defendants' motion to compel arbitration is denied, and I find as follows:

I. LAW/ANALYSIS

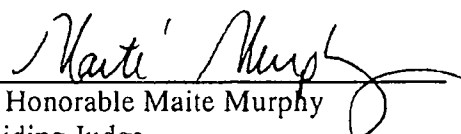
Defendants' motion to compel arbitration is denied because there was a failure of a condition precedent necessary to the enforcement of the arbitration clause. It is a basic principle of contract law that a condition precedent is an event or state that must occur for any contractual duty to exist, and it is well established in the courts of this State that "[i]f a contract contains a condition precedent, that condition must either occur or it must be excused before a party's duty to perform arises." *McGill v. Moore*, 381 S.C. 179, 188 672 S.E.2d 571, 575 (2009) (citing *Worley v. Yarborough Ford, Inc.*, 317 S.C. 2206, 210, 452 S.E.2d 622, 624 (Ct. App. 1994)).

Incorporated within and included by the sales agreement signed by the Plaintiff was a document titled "Agreement Pending Financing/Regulation Z Disclosure" which embodied an understanding between the parties that they had not yet formed or entered into a purchase agreement or contract. That agreement states "by signing below, I acknowledge that I have entered into a written agreement to purchase a boat or recreational vehicle conditioned only upon the willingness of a third party lender to finance the purchase on terms not less favorable than those set forth immediately below." That clause constitutes a condition precedent to the formation of any contract. As mentioned above, although there were efforts by Defendants to secure financing from among the third party lenders listed on the document, ultimately Defendants' failed to secure third-party financing and no third party lender was willing to finance the purchase on the terms set

forth in the agreement pending financing. Because the condition precedent to the formation of the contract was not met or excused, the arbitration clause contained in the "purchase agreement" is not enforceable because the parties never formed a contract for the purchase of an RV.

WHEREFORE, the Defendant's motion to dismiss or stay and compel arbitration in this matter is denied.

AND IT IS SO ORDERED.


The Honorable Maite Murphy
Presiding Judge

Jan. 12, 2017