

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM JASPER COUNTY  
Court of Common Pleas

The Honorable Maité Murphy  
Circuit Court Judge

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Appellate Case No. 2017-000120  
Circuit Court Case No. 2016-CP-27-269

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Annalee Walsh..... Respondent,

v.

Boat-N-RV Megastore and Ridgeland Recreational Vehicles, Inc., .... Defendants.

of whom

Ridgeland Recreational Vehicles, Inc., d/b/a Boat-N-RV Megastore  
is the..... Appellant.

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RECORD ON APPEAL

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September 15, 2017

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SC Court of Appeals

**INDEX**

**Orders**

Order Denying Defendants' Motion to Compel Arbitration (Jan. 12, 2017).....001

**Pleadings**

Complaint (June 17, 2016).....004

**Motions and Related Filings**

Motion to Dismiss or Compel Arbitration (July 21, 2016), and accompanying exhibit:.....009

- Sales Contract (Sept. 13, 2015) .....011

Memorandum in Support of Motion to Compel Arbitration (Sept. 20, 2016), and accompanying exhibits: .....013

- Order in *Hafeman v. Forest River, Inc.*, Case No. 2012-CP-27-493 (S.C. Ct. C.P. Feb. 26, 2013); and .....022

- Order in *Miller v. Ridgeland Recreational Vehicles, Inc.*, Case No. 2012-CP-27-97 (S.C. Ct. C.P. Aug. 14, 2012) .....033

Memorandum in Opposition to Defendants' Motion to Compel Arbitration (Oct. 28, 2016) and accompanying exhibits: .....035

- Agreement Pending Financing/Regulation Z Disclosure (Sept. 13, 2015) .....038
- Five pages of letters and notices from various third-party lenders denying applications of credit (Sept. 4, 2015-Oct. 2, 2015) .....039

Reply in Support of Motion to Compel Arbitration (Sept. 26, 2016) .....044

Objections to Proposed Order Regarding Motion to Compel Arbitration (Nov. 14, 2016), and accompanying attachments:.....046

- Email correspondence exchanged among counsel and Judge Murphy's chambers (Nov. 10, 2016); and .....049
- Email correspondence exchanged among counsel and Judge Murphy's chambers (Nov. 14, 2016) .....054

**Transcripts**

Hearing Transcript (Sept. 20, 2016) .....056

**Other Materials**

Notice of Appeal (Jan. 19, 2017) .....068

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

**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

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

FOURTEENTH JUDICIAL CIRCUIT  
 COURT OF COMMON PLEAS  
 CASE NO.: 2016-CP-27- 268

COMPLAINT  
 (Jury Trial Demanded)

2016 JUN 20 PM 1:26  
 CLERK OF COURT  
 JASPER COUNTY SC

The Plaintiff, complaining of the Defendants above named would allege and show unto this Honorable Court as follows:

1. The Plaintiff is a resident of New Jersey;
2. Upon information and belief, the Defendant Boat-N-RV Megastore is a corporation organized and existing under the laws of a foreign state, and operates a retail location in Jasper County, South Carolina;
3. Defendant Ridgeland Recreational Vehicles, Inc., is an entity organized and existing under the laws of South Carolina and operates a retail location in Jasper County;
4. This Court has personal jurisdiction over the Defendants and venue is proper in the Court of Common Pleas for Jasper County;

**FOR A FIRST CAUSE OF ACTION**  
**(Conversion)**

5. On or about September 15, 2015, Ms. Walsh visited Defendants' Ridgeland, South Carolina retail location;
6. While visiting the Defendants' retail location, Ms. Walsh entered into negotiations with Defendants for the purchase of a recreational vehicle;

7. Ms. Walsh signed a purchase agreement with Defendants that was conditioned upon Defendants' securing third-party financing;

8. In anticipation of entering into a purchase agreement and contract with the Defendants, Ms. Walsh provided Defendants a refundable deposit of One Thousand Dollars (\$1,000.00) and a down payment of Twenty Four Thousand Dollars (\$24,000.00).

9. Defendants were to hold Ms. Walsh's refundable deposit and down payment in escrow until third-party financing was secured;

10. Though Defendants submitted loan applications with several third-party lenders, they were unable to secure third-party financing of the recreational vehicle for Ms. Walsh's purchase;

11. Securing third-party financing for Ms. Walsh's purchase of the vehicle was a condition precedent to the contract;

12. Because Defendants failed to secure third-party financing, Ms. Walsh never entered into a contract with the Defendants;

13. After Defendants were unable to secure third-party financing for Ms. Walsh's purchase of the recreational vehicle, Ms. Walsh demanded the return of her deposit and down payment, on or about late September 2015;

14. In spite of Ms. Walsh's demands, Defendants refused to return the refundable deposit or the down payment Ms. Walsh provided, although there was no contract between the parties;

15. Defendants intended to and did, in fact, convert the entire sum of Ms. Walsh's deposit and down payment in the amount of \$25,000.00 to their own use, and did so expressly against Ms. Walsh's will;

16. Ms. Walsh was forced to seek legal counsel and pursue legal action against the Defendants for wrongfully converting her money to their use;

17. It was not until after Ms. Walsh sought legal counsel that Defendants agreed to return her deposit and a portion of her down payment;

18. On or about April 15, 2016, Defendants returned Ms. Walsh's deposit of \$1,000.00 and in May 2016, Defendants remitted to Ms. Walsh a check for only \$12,750.00 of her \$24,000.00 down payment;

19. In addition to wrongfully converting the entirety of Ms. Walsh's deposit and down payment, returning only part of it in April 2015, Defendants continue to withhold from Ms. Walsh the remaining \$11,250.00 of her deposit, wrongfully converting it to their own use;

**FOR A SECOND CAUSE OF ACTION**  
**South Carolina Unfair Trade Practices Act**

20. Plaintiff reaffirms and reiterates all of the above allegations as if fully repeated and incorporated verbatim herein;

21. The conduct of Defendants in retaining Ms. Walsh's deposit and down payment, which were to be held in escrow in anticipation of entering into a contract that was never formed, constitutes unfair and deceptive acts or practices in trade and commerce as defined by the South Carolina Unfair Trade Practices Act, S.C. Code Ann. 39-5-10, et. seq.;

22. The conduct of Defendants is capable of repetition and has an adverse impact on the public;

23. Defendants knew or should have known that their conduct was in violation of the South Carolina Unfair Trade Practices Act;

24. Defendants violations of the South Carolina Unfair Trade Practices Act are the direct and proximate cause of Ms. Walsh's damages;

25. Ms. Walsh is informed and believes that she is entitled to three times her actual damages together with costs and attorney's fees;

**FOR A THIRD CAUSE OF ACTION**  
**Fraud**

26. Plaintiff reaffirms and reiterates all of the above allegations as if fully repeated and incorporated verbatim herein;

27. Defendants represented to Ms. Walsh that they would hold her deposit and down payment, amounting to \$25,000.00, in escrow in anticipation of entering into a sales contract for the sale of the recreational vehicle upon securing third-party financing;

28. Defendants' representation were false, as they never intended to return her deposit or down payment if the parties did not enter into a contract;

29. Defendants' false representation was material because it induced Ms. Walsh to enter the transaction, and Defendants intended that their false representation be acted upon by Ms. Walsh;

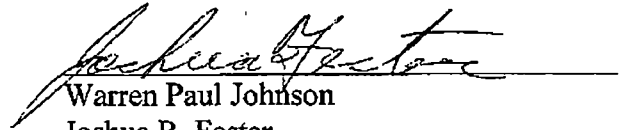
30. Ms. Walsh was not aware of Defendants false representations or unfair dealings and had a right to rely on their representations, with no reason to believe that Defendants were not acting in good faith;

31. Defendants' false representations were direct and proximate cause of her damages;

**WHEREFORE**, Plaintiff prays that the court award judgment against the Defendants in an appropriate amount of actual and punitive damages; Plaintiff also requests an award of treble damages pursuant to the South Carolina Unfair Trade Practices Act, along with costs and attorneys' fees, and for such other and further relief as the Court may deem just and proper.

[Signature block follows]

LAW OFFICE OF  
DARRELL THOMAS JOHNSON, JR.

A handwritten signature in black ink, appearing to read "Warren Paul Johnson", is written over a horizontal line.

Warren Paul Johnson  
Joshua R. Fester  
Post Office Box 1125  
Hardeeville, South Carolina 29927  
843-784-2142  
843-784-5770 (facsimile)  
Attorney for Plaintiff

June 17, 2016

**FILED**

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF JASPER ) FOURTEENTH JUDICIAL CIRCUIT

2016 JUL 25 AM 9:10

Civil Action No. 2016-CP-27-269

Annalee Walsh,

CLERK OF COURT  
JASPER COUNTY

Plaintiff, )

vs. )

MOTION TO DISMISS OR COMPEL  
ARBITRATION

Boat-N-RV Megastore and Ridgeland  
Recreational Vehicles, Inc., )

Defendants. )

Defendant<sup>1</sup> respectfully moves the Court for an order dismissing or staying this case and compelling this matter to arbitration. This motion is based on the parties' contract, a copy of which is attached as Exhibit A, as well as the Federal Arbitration Act and the laws of the State of Tennessee. Specifically, the contract unambiguously states that when, as here, a claim arises out of the parties' contract, it is subject to arbitration.

This Motion shall be supported by written memoranda, arguments of counsel, and all other oral and written submissions permitted by the Court.

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: 

M. Todd Carroll  
S.C. Bar No. 74000  
1727 Hampton Street  
Columbia, SC 29201  
(803) 454-6504

Attorneys for Defendant Boat-N-RV Megastore and  
Ridgeland Recreational Vehicles, Inc.

July 21, 2016  
Columbia, South Carolina

<sup>1</sup> Defendant is miscaptioned as being two separate entities. In fact, it should be identified as "Ridgeland Recreational Vehicles, Inc. d/b/a Boat-N-RV Megastore."

# Exhibit A

- Boat-N-RV Warehouse 12634 Route 9W W. Coxsackie, NY 12192
  Boat-N-RV Superstore 20 Industrial Drive Hamburg, PA 19526
  Boat-N-RV Megastore 401 Sycamore Drive Ridgeland, SC 29936
  Boat-N-RV Supercenter 2475 Westel Road Rockwood, TN 37854
  Boat-N-RV Outlet 1501 Falder Street Americus, GA 31709

Buyer(s): ANNALEE WALSH	Salesperson: TIMOTHY LOGWOOD	Date: 9/13/2015
Street: 68 PLEASANT VALLEY RD.	Home:	Business:
City: WASHINGTON ST NJ	Zip: 07882	Stock No: S4332A

**THE TRANSACTION**

I ORDER AND AGREE TO PURCHASE FROM YOU, ON THE TERMS CONTAINED ON BOTH SIDES OF THIS AGREEMENT, THE FOLLOWING VEHICLE.  
(Read Opposing Side)

THE VEHICLE							
YEAR	2013	NEW	<input type="checkbox"/>	USED	<input checked="" type="checkbox"/>	DEMO	<input type="checkbox"/>
MAKE	MIRADA	MODEL	35DL	SERIES			
TYPE	COLOR	TRIM	MILEAGE	VIN	1F66F5DY4COA05943		

If you cancel this Purchase Agreement or otherwise refuse to take delivery of the Vehicle identified below, unless otherwise prohibited by law, you agree that you shall tender liquidated damages in the amount of \$ 11250.00 or adhere to the decision of the tribunal identified on Page 2 of this Agreement.

INSURANCE AGAINST LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGES TO OTHERS IS NOT INCLUDED IN THIS TRANSACTION. IT IS MUTUALLY UNDERSTOOD THAT THIS AGREEMENT IS SUBJECT TO NECESSARY CORRECTION(S) AND/OR ADJUSTMENT(S) CONCERNING CHANGES IN NET PAY OFF ON TRADE-IN TO BE MADE AT THE TIME OF SETTLEMENT.

Buyer's Signature: 

**FACTORY WARRANTY ONLY.** The manufacturer's warranty constitutes the only warranty sold with this Vehicle. The Seller hereby expressly disclaims ALL warranties, whether express or implied, including any warranty of merchantability or fitness for a particular purpose and the Seller neither assumes nor authorizes any other person to assume for it any liability in connection with this sale.

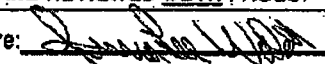
**AS-IS.** THIS MOTOR VEHICLE IS SOLD "AS IS" WITH ABSOLUTELY NO EXPRESS OR IMPLIED WARRANTY. YOU, THE BUYER, WILL BEAR THE ENTIRE EXPENSE OF REPLACING OR CORRECTING ANY DEFECT(S) THAT PRESENTLY EXISTS OR THAT MAY HEREAFTER APPEAR IN THE VEHICLE.

THE PRICE			
FORD ENGINE	N/A	Vehicle Price	95000.00
AM/FM/CASSETTE STEREO	N/A	Freight	N/A
JACK KNIFE SOFA	N/A	Prep	N/A
BOOTH DINNETTE	N/A	Options	N/A
DOUBLE SINK	N/A		N/A
OVEN	N/A		N/A
3 BURNER RANGE	N/A		N/A
MICROWAVE	N/A		N/A
REFRIDGE	N/A		N/A
UNIT A/C	N/A		N/A
OPTIONS TOTAL	N/A	<b>TOTAL</b>	95000.00

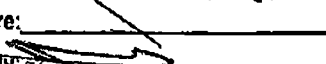
THE TRADE IN						
Year	Mileage	Make	Model	Color	LESS TRADE-IN CREDIT (-)	22850.00
2011		OPEN	340FLR			
Plate No.	Exp. Date	VIN			DISCOUNT (-)	5002.00
Trade in is clear of all liens except:			Amt. Owed \$		CASH PRICE (+)	67148.00
			N/A			

TAXES AND OTHER FEES		
REQUIRED DISCLOSURE FOR PENNSYLVANIA CONTRACTS ONLY		
IF YOU (DEALER) AGREE TO ASSIST ME (BUYER) IN OBTAINING FINANCING FOR ANY PART OF THE PURCHASE PRICE, THIS AGREEMENT SHALL NOT BE BINDING UPON YOU OR ME UNTIL ALL OF THE CREDIT TERMS ARE PRESENTED TO ME IN ACCORDANCE WITH REGULATION Z (TRUTH IN LENDING) AND ARE ACCEPTED BY ME. IF I DO NOT ACCEPT THE TERMS WHEN PRESENTED, I MAY CANCEL THIS ORDER AND MY DEPOSIT WILL BE REFUNDED. FURTHERMORE, THIS PURCHASE AGREEMENT SHALL NOT BE BINDING UPON YOU UNTIL SUCH TIME AS I AM APPROVED FOR FINANCING BY A THIRD PARTY LENDER.		
SALES TAX	4728.01	
DOC FEE	395.00	
Title Certificate	15.00	
Tag and Registration	30.00	
INSPECTION FEE	N/A	
<b>TOTAL CASH PRICE</b>	<b>72316.01</b>	
REBATE IF APPLICABLE	N/A	
LESS CASH SUBMITTED WITH ORDER	N/A	
PLUS BALANCE OWING ON TRADE-IN	N/A	
<b>AMOUNT FINANCED</b>	<b>47316.01</b>	
CASH ON DELIVERY	25000.00	

**NOTICE: THERE ARE IMPORTANT TERMS AND CONDITIONS ON PAGE 2 OF THIS AGREEMENT, INCLUDING A PROVISION WHICH MAY REQUIRE ANY DISPUTE BETWEEN BUYER(S) AND SELLER BE RESOLVED THROUGH BINDING ARBITRATION. SIGN BELOW ONLY AFTER YOU HAVE RECEIVED AND REVIEWED BOTH PAGES.**

Buyer's Signature: 

Co-Buyer's Signature: \_\_\_\_\_

Seller Approved By: 

Date: 9/13/2015

Date: \_\_\_\_\_

Date: 9/13/13

THE AMOUNT INDICATED ON THIS SALES CONTRACT OR LEASE AGREEMENT FOR REGISTRATION, TITLE FEES, AND/OR TAXES IS AN ESTIMATE. IN SOME INSTANCES, IT MAY EXCEED THE ACTUAL TAX/FEE DUE TO THE COMMISSIONER OF MOTOR VEHICLES (OR OTHER AUTHORITY). THE DEALER WILL AUTOMATICALLY, AND WITHIN 60 DAYS OF SECURING SUCH REGISTRATION AND TITLE, REFUND ANY AMOUNT OVERPAID FOR SUCH FEES. (Rev. 2014-09)

## PAGE 2: ADDITIONAL TERMS OF AGREEMENT

Buyer has entered into this Agreement with the Boat-N-RV dealership identified in the box checked on the top of Page 1 of this Agreement (the "Seller"). It is understood and agreed by Buyer and Seller that the purchase appearing on Page 1 of this Agreement is subject to the following additional terms:

- 1. Transfer of Title.** Seller shall retain the title(s) to the Vehicle(s) shown on Page 1 of this Agreement until the purchase price has been fully paid and Buyer has executed all required documents of transfer.
- 2. Taxes and Fees.** Buyer agrees to assume and to pay, unless prohibited by law, any and all taxes and fees assessed by any governmental agency, other than income taxes, incidental to the purchase documented in this Agreement. This includes any sales and/or transfer taxes, as well as any taxes assessed on an *ad valorem* basis at registration, whether or not shown on Page 1 of this Agreement. Any amount collected for taxes as shown on the front of this Agreement is an estimate calculated to the best of Seller's ability. In the event of any discrepancy, Buyer agrees to immediately tender any additional tax due and Seller agrees to refund any extra tax collected.
- 3. Failure to Take Delivery.** If Buyer fails or otherwise refuses to take delivery of the Vehicle within five (5) days after Buyer has been notified that it is ready, Buyer understands that any deposit Buyer has given to Seller will be retained to offset Seller's damages. In addition, Buyer will be responsible to Seller for any other damages, including, without limitation, lost profit which Seller may incur as a result of Buyer's failure to perform under the terms of this Agreement. At Seller's sole and exclusive discretion, Seller's damages hereunder shall be determined by the decision of the tribunal identified below; or Seller may retain the amount shown on the face of this Agreement which the Parties agree is a reasonable estimate of Seller's damages in the event of Buyer's breach. Further, if Buyer has delivered a Trade-In vehicle to Seller, and this Agreement is subsequently cancelled by Buyer, the Trade-In vehicle shall be returned to Buyer after payment by Buyer of a reasonable charge for storage and any repairs performed by Seller, if any. If Seller has already sold the Trade-In vehicle, the proceeds received from said sale, less a commission equal to 15% of the gross cash price, and less any expense incurred by Seller, including, without limitation, (a) satisfaction of any lien(s) on the Trade-In, (b) storage, (c) interest, if any, (d) insurance, (e) repairs/re-conditioning, or (f) advertising the trade-in vehicle for sale, shall be returned to Buyer.
- 4. Manufacturer Changes.** If this is an order for a new Vehicle, Buyer agrees that the manufacturer has the right to make any model, design, parts, or accessory changes it sees fit to the Vehicle, its chassis, accessories, or parts without notice to either Party. These changes shall not affect the Vehicle ordered under this Agreement; nor may Buyer require Seller or manufacturer to include these changes in his or her order. Buyer agrees that Seller shall have no duty whatsoever except to deliver the Vehicle to Buyer.
- 5. Delay in Delivery.** Buyer understands that Seller shall not be liable for delays caused by the manufacturer, accidents, sureties, fires or other causes beyond Seller's control. Further, if the manufacturer refuses to accept the Buyer's order or later fails to deliver the Vehicle after accepting the same, upon Seller's prompt notification and refund of Buyer's deposit, this Agreement shall be deemed null and void, and neither party shall have any additional liability hereunder.
- 6. Trade-In.** Buyer shall deliver to the Seller's premises his or her used boat, motor vehicle, travel trailer, fifth wheel or motor home (hereinafter the "Trade-In") along with all instruments of title. Upon delivery of the Trade-In, Buyer shall provide Seller with satisfactory proof of ownership, sign a Bill of Sale to Seller and, if necessary, a mileage certification statement. Buyer unconditionally warrants and guarantees: (a) the Trade-In is his or her property and that Buyer has the authority to transfer ownership thereof; (b) that there are no liens on the Trade-In, except for those shown on the face of this Agreement; (c) that the Trade-In has neither a welded nor bent frame and that the motor block is not cracked, welded or repaired; (d) that the vehicle has not been flood damaged or declared a total loss for insurance purposes; (e) that emission control devices have not been altered and/or removed, and nothing has been removed from the trade, including all seat belts; (f) the engine and transmission have not been tampered with to pass inspection; (g) the Trade-In is "road worthy" or "sea worthy" on the day the Trade-In is delivered to the Seller; and, (h) all accessories and equipment are in good working order. Buyer further warrants that the Trade-In is not a branded vehicle, i.e., the certificate of title (or equivalent) does not contain any of the following brands: (i) Reconstructed/Rebuilt, (ii) Non-USA-STD, (iii) Exceeds Mechanical Limits, (iv) Not Actual Mileage, or (v) Warranty Non-Conforming. If there is a breach of any of the foregoing warranties, or a lien or other claim which is not disclosed on Page 1 of this Agreement, Seller shall have the option of (a) paying the claim and seeking immediate reimbursement from Buyer, (b) adding the amount of the claim to the purchase price established on Page 1 of this Agreement; or (c) seeking damages for said breach of warranty from Buyer.
- 7. Registration.** If the Trade-In is not licensed and registered in the state where Seller is located, Buyer shall immediately register and license the Trade-In in said state. If Buyer refuses and Seller incurs any expense in connection with the licensing and registration of the Trade-In (including any unpaid sales or other tax obligation of Buyer), Seller may advance such expenses and increase the purchase price by the amount of such expense.
- 8. Re-Appraisal.** Seller shall have the right to re-appraise the Trade-In if it is not delivered into Seller's possession at the time of the initial appraisal. A re-appraisal shall be made by Seller if there appears to be any change in the Trade-In's general physical condition or its furnishings and/or accessories. In the event the re-appraisal differs from the original appraisal, the Trade-In allowance shall be based on the re-appraisal and the amount due for the purchase price shall be adjusted accordingly.
- 9. Applicable Law, Special Damages, and Limitations Period.** Except as limited by Paragraph 10 below, and without regard to the application of any conflict of laws principles, this Agreement, the Parties' course of dealing, and any claims arising out of or relating to this Agreement, shall be governed by and in accordance with the laws of the State of Tennessee, including, without limitation, the Uniform Commercial Code as adopted in that State. In addition, in no event shall Seller be liable to Buyer for any special, incidental, or consequential damages of any kind or character arising out of the sale or use of the Vehicle described herein, including, without limitation, lost profits, loss of use, etc. whether such damages are based in contract, tort, strict liability or otherwise. The Parties further agree that, as between Buyer and Seller, **ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATING TO THE PURCHASE AND SALE OF THE VEHICLE(S) AND/OR EQUIPMENT DESCRIBED ON PAGE 1 OF THIS AGREEMENT SHALL BE BROUGHT WITHIN ONE (1) YEAR OF THE DATE ON WHICH BUYER TAKES DELIVERY OF SAID VEHICLE(S) OR BE FOREVER BARRED.**
- 10. Binding Arbitration.** The Parties agree that the purchase and sale of the Vehicle(s) described on Page 1 of this Agreement is an act of interstate commerce implicating the Federal Arbitration Act to the exclusion of any and all State arbitration acts. Except and only as limited by the final sentence of this numbered Paragraph, **THE PARTIES FURTHER AGREE THAT ANY CLAIM OR CONTROVERSY ARISING OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT, INCLUDING THE MAKING THEREOF, SHALL BE RESOLVED THROUGH BINDING ARBITRATION, WITH THE SEAT OF SUCH ARBITRATION TO BE LOCATED IN KNOX COUNTY, TENNESSEE, TO THE EXCLUSION OF ALL OTHER LOCALES.** The discovery rules contained in the Fed. Rules of Civil Procedure, as well as the Fed. Rules of Evidence, shall apply in any proceeding brought pursuant to this Paragraph. In the event the dispute resolution terms of any retail installment contract entered into by the Parties shall differ from this Paragraph, as between Buyer and Seller the terms of this Agreement shall control. Notwithstanding the foregoing, either Party may bring an action within the jurisdictional limit of the small claims (or equivalent) court serving the territory where this Agreement was executed.
- 11. Right to Sell Trade-In.** If Buyer has delivered a Trade-In to Seller and then fails to complete his or her purchase within the time period set forth in Paragraph 3, Buyer authorizes Seller to sell the Trade-In at a private or public sale and deduct from the proceeds delivered to Buyer an amount equivalent to the losses and expenses incurred by Seller in connection with Buyer's failure to complete the purchase documented in this Agreement.
- 12. Disclaimer of Warranties.** Except to the extent required by law, **SELLER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. ALL WARRANTIES COVERING THE VEHICLE(S) AND/OR EQUIPMENT REFERENCED ON THE FRONT PAGE (OR PAGE 1) OF THIS AGREEMENT, IF ANY, ARE MADE BY THE MANUFACTURER THEREOF.**
- 13. Buyer's Inspection.** Unless the Vehicle shown on Page 1 is an ordered unit, Buyer states that he or she has inspected and examined the Vehicle which is the subject of this Agreement and has independently determined that the Vehicle (a) is of satisfactory quality, (b) is suitable for the purpose for which it is purchased and (c) that Buyer has not relied upon any statement or representation of Seller in making such determination.
- 14. As-Is Condition.** Except as may be limited by applicable law, used boats, travel trailers, fifth-wheels, motors homes, ATVs, and UTVs (collectively "RVs") are sold strictly on an "AS-IS" basis. If this transaction involves a used RV, Buyer affirms that he or she has thoroughly inspected and examined the used RV, including any of its equipment and accessories, and has found them to be in safe, satisfactory condition, or otherwise in good working order.
- 15. Final Agreement/Severability.** This document contains full and final expression of the agreement reached between the Parties concerning the Vehicle(s) referenced on Page 1. No other representations, inducements or promises (whether verbal, written, electronic or otherwise) have been made which are not set forth in this Agreement. In the event that any provision of this Agreement shall be declared invalid or unenforceable, such a pronouncement shall not affect any other provision(s) of this Agreement.

STATE OF SOUTH CAROLINA )

COUNTY OF JASPER )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

Annalee Walsh, )

Plaintiff, )

vs. )

Boat-N-RV Megastore and Ridgeland  
Recreational Vehicles, Inc., )

Defendants. )

Civil Action No. 2016-CP-27-269

MEMORANDUM IN SUPPORT OF  
MOTION TO COMPEL  
ARBITRATION

FILED  
2016 SEP 29 AM 9:31  
JASPER COUNTY

BACKGROUND

The parties entered into a sales contract for Ms. Walsh to purchase a used recreational vehicle from Boat-N-RV. She paid a deposit for the vehicle but then attempted to cancel the parties' contract—a decision that, according to the contract's plain language, triggered a liquidated damages sum of \$11,250 to Boat-N-RV. (Sales Agreement at 1 (copy attached as Exhibit A).)

Instead of honoring the parties' agreement, Ms. Walsh has filed suit, asserting claims of conversion, a violation of the South Carolina Unfair Trade Practices Act, and fraud, all of which arise out of the parties' transaction. But the contract also unambiguously provides that they will submit to binding arbitration "any claim or controversy arising out of or otherwise relating to" their contract, "including the making thereof." (*Id.* ¶ 10, at 2.) Accordingly, the Court should grant Boat-N-RV's motion and compel this matter to arbitration.

ARGUMENT

This motion is governed by the Federal Arbitration Act, which provides that arbitration is appropriate when the parties entered into a written agreement that contains an arbitration

provision covering the instant dispute, and the transaction underlying the agreement involves interstate commerce. *Am. Gen. Life & Accident Ins. Co. v. Wood*, 429 F.3d 83, 87 (4th Cir. 2005). This statute is to be liberally enforced, and any doubt should be resolved in favor of arbitration. *Id.*

Here, there is no dispute that this case involves interstate commerce, as it involves the sale of a recreational vehicle to a New Jersey resident from a South Carolina-based business. The parties even agreed that their transaction “is an act of interstate commerce implicating the Federal Arbitration Act to the exclusion of any and all State arbitration acts.” (Sales Agreement ¶ 10, at 2.)

Likewise, Ms. Walsh’s claims fall within the broad scope of the arbitration agreement, which provides:

**THE PARTIES FURTHER AGREE THAT ANY CLAIM OR CONTROVERSY ARISING OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT, INCLUDING THE MAKING THEREOF, SHALL BE RESOLVED THROUGH BINDING ARBITRATION, WITH THE SEAT OF SUCH ARBITRATION TO BE LOCATED IN KNOX COUNTY, TENNESSEE, TO THE EXCLUSION OF ALL OTHER LOCALES.**

(*Id.* (all capitals, bold, and underlined in original).) In Paragraph 7 of the Complaint, Ms. Walsh confirms that she signed the sales contract. In Paragraph 8, she confirms that she provided to Boat-N-RV a down payment on the contract. And in Paragraphs 14 through 19, she makes clear that Boat-N-RV has continued to withhold a portion of her “down payment” under the contract.

These factual allegations form the basis of each of her claims, and they all “arise out of” or “relate to” the parties’ contract. Accordingly, the fact that Ms. Walsh has attempted to masquerade her claims as torts cannot exempt them from arbitration. *See, e.g., Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, Op. No. , 2016 S.C. LEXIS 227, at \*3–

12 (S.C. Sup. Ct. Aug. 17, 2016) (enforcing arbitration agreement in a homebuilder's warranty when the buyers had alleged claims for unfair trade practices, negligent misrepresentation, negligence, gross negligence, fraud, and two contract-based claims, and the contract required arbitration of any claims "arising out of or relating in any manner to any purchase agreement" involving the home); *Landers v. FDIC*, 402 S.C. 100, 109–10, 739 S.E.2d 209, 213–14 (2013) (explaining that "[a] clause which provides for arbitration of all disputes 'arising out of or relating to' the contract is construed broadly" and noting that tort claims that have a "significant relationship" to a contract are within the scope of such an arbitration provision (quoting *J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A.*, 863 F.2d 315, 321 (4th Cir. 1988))).

Nor can Ms. Walsh avoid arbitration by pretending that the parties never entered into a contract. This is so for several reasons.

First, Paragraph 7 of the Complaint expressly acknowledges that Ms. Walsh "signed a purchase agreement" with Boat-N-RV to purchase a vehicle.

Second, the agreement's arbitration clause is unambiguous, and the contract further contains a merger clause:

This document contains full and final expression of the agreement reached between the Parties concerning the Vehicle(s) referenced on Page 1. No other representations, inducements or promises (whether verbal, written, electronic or otherwise) have been made which are not set forth in this Agreement.

(Sales Agreement ¶ 15, at 2.) Accordingly, the parol evidence rule prevents her from attempting to add unwritten "conditions" to the parties' contract. *See, e.g., McGill v. Moore*, 381 S.C. 179, 188, 672 S.E.2d 571, 576 (2009) ("The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary or explain the

written instrument. Where a written instrument is unambiguous, parol evidence is inadmissible to ascertain the true intent and meaning of the parties.”<sup>1</sup>

Third and finally, the arbitration agreement expressly states that any dispute regarding the making of the contract shall be submitted to binding arbitration. (Sales Agreement ¶ 10, at 2.) As such, the contract evidences the parties’ “clear and unmistakable” intention for an arbitrator to resolve any potential challenge here. *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 69 n.1 (2010) (quoting *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944 (1995) (internal brackets omitted)).

Accordingly, the Court should grant this motion and compel this matter to arbitration, just as it has previously done several times when presented with substantially similar arbitration provisions in Boat-N-RV contracts. *E.g., Hafeman v. Forest River, Inc.*, Case No. 2012-CP-27-493 (S.C. Ct. C.P. Feb. 26, 2013) (copy attached as Exhibit B); *Miller v. Ridgeland Recreational Vehicles, Inc.*, Case No. 2012-CP-27-97 (S.C. Ct. C.P. Aug. 14, 2012) (copy attached as Exhibit C).

### CONCLUSION

The parties unambiguously agreed to arbitrate this dispute, which indisputably arises out of a transaction involving interstate commerce. Accordingly, Boat-N-RV respectfully moves for an order staying this case and compelling it to arbitration.

---

<sup>1</sup> The parties agreed that Tennessee law would govern their contract. (Sales Agreement ¶ 9, at 2.) That state’s law is in accord with South Carolina’s with respect to the inadmissibility of parol evidence to vary the terms of an unambiguous contract. *Price v. Oxford Graduate Sch., Inc.*, Case No. E2013-02467-COA-R3-CV, 2014 Tenn. App. LEXIS 439, at \*5–6 (Tenn. Ct. App. July 30, 2014).

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By:   
\_\_\_\_\_

M. Todd Carroll  
S.C. Bar No. 74000  
1727 Hampton Street  
Columbia, South Carolina 29201  
(803) 454-6504

*Attorneys for Defendant Boat-N-RV Megastore*

September 20, 2016  
Columbia, South Carolina

Exhibit A

Sales Agreement

- Boat-N-RV Warehouse 12634 Route 9W W. Coxsackie, NY 12192
  Boat-N-RV Superstore 20 Industrial Drive Hamburg, PA 19526
  Boat-N-RV Megastore 401 Sycamore Drive Ridgeland, SC 29336
  Boat-N-RV Supercenter 2475 Westall Road Rockwood, TN 37864
  Boat-N-RV Outlet 1501 Felder Street Americus, GA 31709

Buyer(s): ANNALEE WALSH Salesperson: TIMOTHY LOGWOOD Date: 9/13/2015  
 Street: 68 PLEASANT VALLEY RD. Home: Business:  
 City: WASHINGTON ST NJ Zip: 07882 Stock No: S4332A

**THE TRANSACTION**  
 I ORDER AND AGREE TO PURCHASE FROM YOU, ON THE TERMS CONTAINED ON BOTH SIDES OF THIS AGREEMENT, THE FOLLOWING VEHICLE.  
 (Read Opposing Side)

**THE VEHICLE**  
 YEAR 2013 NEW  USED  DEMO   
 MAKE MIRADA MODEL 35DL SERIES  
 TYPE COLOR TRIM MILEAGE VIN 1F66F5DY4COA05943

If You cancel this Purchase Agreement or otherwise refuse to take delivery of the Vehicle identified below, unless otherwise prohibited by law, you agree that you shall tender liquidated damages in the amount of \$ 11250.00 or adhere to the decision of the tribunal identified on Page 2 of this Agreement.  
 Buyer's Signature: *[Signature]*

INSURANCE AGAINST LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGES TO OTHERS IS NOT INCLUDED IN THIS TRANSACTION. IT IS MUTUALLY UNDERSTOOD THAT THIS AGREEMENT IS SUBJECT TO NECESSARY CORRECTION(S) AND/OR ADJUSTMENT(S) CONCERNING CHANGES IN NET PAY OFF ON TRADE-IN TO BE MADE AT THE TIME OF SETTLEMENT.

FACTORY WARRANTY ONLY. The manufacturer's warranty constitutes the only warranty sold with this vehicle. The Seller hereby expressly disclaims ALL warranties, whether express or implied, including any warranty of merchantability or fitness for a particular purpose, and the Seller neither assumes nor authorizes any other person to assume for it any liability in connection with this sale.

AS-IS. THIS MOTOR VEHICLE IS SOLD "AS IS" WITH ABSOLUTELY NO EXPRESS OR IMPLIED WARRANTY. YOU, THE BUYER, WILL BEAR THE ENTIRE EXPENSE OF REPLACING OR CORRECTING ANY DEFECT(S) THAT PRESENTLY EXISTS OR THAT MAY HEREAFTER APPEAR IN THE VEHICLE.

**THE PRICE**

FORD ENGINE	N/A	Vehicle Price	95000.00
AM/FM/CASSETTE STEREO	N/A	Freight	N/A
JACK KNIFE SOFA	N/A	Prep	N/A
BOOTH DINNETTE	N/A	Options	N/A
DOUBLE SINK	N/A		N/A
OVEN	N/A		N/A
3 BURNER RANGE	N/A		N/A
MICROWAVE	N/A		N/A
REFRIDGE	N/A		N/A
UNIT A/C	N/A		N/A
OPTIONS TOTAL	N/A	TOTAL	95000.00

**THE TRADE IN**

DESCRIPTION OF TRADE IN					LESS TRADE-IN CREDIT		
Year	Mileage	Make	Model	Color	(-)		
2011		OPEN	340FLR		22850.00		
Plate No.	Exp. Date	VIN			DISCOUNT (-)	5002.00	
Trade in is clear of all liens except:			Amt. Owed \$		CASH PRICE (+)	67148.00	
			N/A				

**TAXES AND OTHER FEES**

<b>REQUIRED DISCLOSURE FOR PENNSYLVANIA CONTRACTS ONLY</b>		SALES TAX	4728.01		
IF YOU (DEALER) AGREE TO ASSIST ME (BUYER) IN OBTAINING FINANCING FOR ANY PART OF THE PURCHASE PRICE, THIS AGREEMENT SHALL NOT BE BINDING UPON YOU OR ME UNTIL ALL OF THE CREDIT TERMS ARE PRESENTED TO ME IN ACCORDANCE WITH REGULATION Z (TRUTH IN LENDING) AND ARE ACCEPTED BY ME. IF I DO NOT ACCEPT THE TERMS WHEN PRESENTED, I MAY CANCEL THIS ORDER AND MY DEPOSIT WILL BE REFUNDED. FURTHERMORE, THIS PURCHASE AGREEMENT SHALL NOT BE BINDING UPON YOU UNTIL SUCH TIME AS I AM APPROVED FOR FINANCING BY A THIRD PARTY LENDER.		DOC FEE	395.00		
		Title Certificate	15.00		
		Tag and Registration	30.00		
		INSPECTION FEE	N/A		
		TOTAL CASH PRICE	72316.01		
NOTICE: THERE ARE IMPORTANT TERMS AND CONDITIONS ON PAGE 2 OF THIS AGREEMENT, INCLUDING A PROVISION WHICH MAY REQUIRE ANY DISPUTE BETWEEN BUYER(S) AND SELLER BE RESOLVED THROUGH BINDING ARBITRATION. SIGN BELOW ONLY AFTER YOU HAVE RECEIVED AND REVIEWED BOTH PAGES.		REBATE IF APPLICABLE	N/A		
Initials: _____ Trade: _____		LESS CASH SUBMITTED WITH ORDER	N/A		
		PLUS BALANCE OWING ON TRADE-IN	N/A		
		AMOUNT FINANCED	47316.01		
		CASH ON DELIVERY	25000.00		

Buyer's Signature: *[Signature]* Date: 9/13/2015  
 Co-Buyer's Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Seller Approved By: *[Signature]* Date: 9/13/15

THE AMOUNT INDICATED ON THIS SALES CONTRACT OR LEASE AGREEMENT FOR REGISTRATION, TITLE FEES, AND/OR TAXES IS AN ESTIMATE. IN SOME INSTANCES, IT MAY EXCEED THE ACTUAL TAX FEES DUE TO THE COMMISSIONER OF MOTOR VEHICLES (OR OTHER AUTHORITY). THE DEALER WILL AUTOMATICALLY, AND WITHIN 90 DAYS OF SECURING SUCH REGISTRATION AND TITLE, REFUND ANY AMOUNT OVERPAID FOR SUCH FEES. (Rev. 2014-09)

## PAGE 2: ADDITIONAL TERMS OF AGREEMENT

Buyer has entered into this Agreement with the Boat-N-RV dealership identified in the box checked on the top of Page 1 of this Agreement (the "Seller"). It is understood and agreed by Buyer and Seller that the purchase appearing on Page 1 of this Agreement is subject to the following additional terms:

- 1. Transfer of Title.** Seller shall retain the title(s) to the Vehicle(s) shown on Page 1 of this Agreement until the purchase price has been fully paid and Buyer has executed all required documents of transfer.
- 2. Taxes and Fees.** Buyer agrees to assume and to pay, unless prohibited by law, any and all taxes and fees assessed by any governmental agency, other than income taxes, incidental to the purchase documented in this Agreement. This includes any sales and/or transfer taxes, as well as any taxes assessed on an *ad valorem* basis at registration, whether or not shown on Page 1 of this Agreement. Any amount collected for taxes as shown on the front of this Agreement is an estimate calculated to the best of Seller's ability. In the event of any discrepancy, Buyer agrees to immediately tender any additional tax due and Seller agrees to refund any extra tax collected.
- 3. Failure to Take Delivery.** If Buyer fails or otherwise refuses to take delivery of the Vehicle within five (5) days after Buyer has been notified that it is ready, Buyer understands that any deposit Buyer has given to Seller will be retained to offset Seller's damages. In addition, Buyer will be responsible to Seller for any other damages, including, without limitation, lost profit which Seller may incur as a result of Buyer's failure to perform under the terms of this Agreement. At Seller's sole and exclusive discretion, Seller's damages hereunder shall be determined by the tribunal identified below, or Seller may retain the amount shown on the face of this Agreement which the Parties agree is a reasonable estimate of Seller's damages in the event of Buyer's breach. Further, if Buyer has delivered a Trade-In vehicle to Seller, and this Agreement is subsequently cancelled by Buyer, the Trade-In vehicle shall be returned to Buyer after payment by Buyer of a reasonable charge for storage and any repairs performed by Seller, if any. If Seller has already sold the Trade-In vehicle, the proceeds received from said sale, less a commission equal to 15% of the gross cash price, and less any expense incurred by Seller, including, without limitation, (a) satisfaction of any lien(s) on the Trade-In, (b) storage, (c) interest, if any, (d) insurance, (e) repairs/re-conditioning, or (f) advertising the trade-in vehicle for sale, shall be returned to Buyer.
- 4. Manufacturer Changes.** If this is an order for a new Vehicle, Buyer agrees that the manufacturer has the right to make any model, design, parts, or accessory changes it sees fit to the Vehicle, its chassis, accessories, or parts without notice to either Party. These changes shall not affect the Vehicle ordered under this Agreement; nor may Buyer require Seller or manufacturer to include these changes in his or her order. Buyer agrees that Seller shall have no duty whatsoever except to deliver the Vehicle to Buyer.
- 5. Delay in Delivery.** Buyer understands that Seller shall not be liable for delays caused by the manufacturer, accidents, sureties, fires or other causes beyond Seller's control. Further, if the manufacturer refuses to accept the Buyer's order or later fails to deliver the Vehicle after accepting the same, upon Seller's prompt notification and refund of Buyer's deposit, this Agreement shall be deemed null and void, and neither party shall have any additional liability hereunder.
- 6. Trade-In.** Buyer shall deliver to the Seller's premises his or her used boat, motor vehicle, travel trailer, fifth wheel or motor home (hereinafter the "Trade-In") along with all instruments of title. Upon delivery of the Trade-In, Buyer shall provide Seller with satisfactory proof of ownership, sign a Bill of Sale to Seller and, if necessary, a mileage certification statement. Buyer unconditionally warrants and guarantees: (a) the Trade-In is his or her property and that Buyer has the authority to transfer ownership thereof; (b) that there are no liens on the Trade-In, except for those shown on the face of this Agreement; (c) that the Trade-In has neither a welded nor bent frame and that the motor block is not cracked, welded or repaired; (d) that the vehicle has not been flood damaged or declared a total loss for insurance purposes; (e) that emission control devices have not been altered and/or removed, and nothing has been removed from the trade, including all seat belts; (f) the engine and transmission have not been tampered with to pass inspection; (g) the Trade-In is "road worthy" or "sea worthy" on the day the Trade-In is delivered to the Seller; and, (h) all accessories and equipment are in good working order. Buyer further warrants that the Trade-In is not a branded vehicle, i.e., the certificate of title (or equivalent) does not contain any of the following brands: (i) Reconstructed/Rebuilt, (ii) Non-USA-STD, (iii) Exceeds Mechanical Limits, (iv) Not Actual Mileage, or (v) Warranty Non-Conforming. If there is a breach of any of the foregoing warranties, or a lien or other claim which is not disclosed on Page 1 of this Agreement, Seller shall have the option of (a) paying the claim and seeking immediate reimbursement from Buyer, (b) adding the amount of the claim to the purchase price established on Page 1 of this Agreement; or (c) seeking damages for said breach of warranty from Buyer.
- 7. Registration.** If the Trade-In is not licensed and registered in the state where Seller is located, Buyer shall immediately register and license the Trade-In in said state. If Buyer refuses and Seller incurs any expense in connection with the licensing and registration of the Trade-In (including any unpaid sales or other tax obligation of Buyer), Seller may advance such expenses and increase the purchase price by the amount of such expense.
- 8. Re-Appraisal.** Seller shall have the right to re-appraise the Trade-In if it is not delivered into Seller's possession at the time of the initial appraisal. A re-appraisal shall be made by Seller if there appears to be any change in the Trade-In's general physical condition or its furnishings and/or accessories. In the event the re-appraisal differs from the original appraisal, the Trade-In allowance shall be based on the re-appraisal and the amount due for the purchase price shall be adjusted accordingly.
- 9. Applicable Law, Special Damages, and Limitations Period.** Except as limited by Paragraph 10 below, and without regard to the application of any conflict of laws principles, this Agreement, the Parties' course of dealing, and any claims arising out of or relating to this Agreement, shall be governed by and in accordance with the laws of the State of Tennessee, including, without limitation, the Uniform Commercial Code as adopted in that State. In addition, in no event shall Seller be liable to Buyer for any special, incidental, or consequential damages of any kind or character arising out of the sale or use of the Vehicle described herein, including, without limitation, lost profits, loss of use, etc. whether such damages are based in contract, tort, strict liability or otherwise. The Parties further agree that, as between Buyer and Seller, **ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATING TO THE PURCHASE AND SALE OF THE VEHICLE(S) AND/OR EQUIPMENT DESCRIBED ON PAGE 1 OF THIS AGREEMENT SHALL BE BROUGHT WITHIN ONE (1) YEAR OF THE DATE ON WHICH BUYER TAKES DELIVERY OF SAID VEHICLE(S) OR BE FOREVER BARRED.**
- 10. Binding Arbitration.** The Parties agree that the purchase and sale of the Vehicle(s) described on Page 1 of this Agreement is an act of interstate commerce implicating the Federal Arbitration Act to the exclusion of any and all State arbitration acts. Except and only as limited by the final sentence of this numbered Paragraph, **THE PARTIES FURTHER AGREE THAT ANY CLAIM OR CONTROVERSY ARISING OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT, INCLUDING THE MAKING THEREOF, SHALL BE RESOLVED THROUGH BINDING ARBITRATION, WITH THE SEAT OF SUCH ARBITRATION TO BE LOCATED IN KNOX COUNTY, TENNESSEE, TO THE EXCLUSION OF ALL OTHER LOCALES.** The discovery rules contained in the Fed. Rules of Civil Procedure, as well as the Fed. Rules of Evidence, shall apply in any proceeding brought pursuant to this Paragraph. In the event the dispute resolution terms of any retail installment contract entered into by the Parties shall differ from this Paragraph, as between Buyer and Seller the terms of this Agreement shall control. Notwithstanding the foregoing, either Party may bring an action within the jurisdictional limit of the small claims (or equivalent) court serving the territory where this Agreement was executed.
- 11. Right to Sell Trade-In.** If Buyer has delivered a Trade-In to Seller and then fails to complete his or her purchase within the time period set forth in Paragraph 3, Buyer authorizes Seller to sell the Trade-In at a private or public sale and deduct from the proceeds delivered to Buyer an amount equivalent to the losses and expenses incurred by Seller in connection with Buyer's failure to complete the purchase documented in this Agreement.
- 12. Disclaimer of Warranties.** Except to the extent required by law, **SELLER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. ALL WARRANTIES COVERING THE VEHICLE(S) AND/OR EQUIPMENT REFERENCED ON THE FRONT PAGE (OR PAGE 1) OF THIS AGREEMENT, IF ANY, ARE MADE BY THE MANUFACTURER THEREOF.**
- 13. Buyer's Inspection.** Unless the Vehicle shown on Page 1 is an ordered unit, Buyer states that he or she has inspected and examined the Vehicle which is the subject of this Agreement and has independently determined that the Vehicle (a) is of satisfactory quality, (b) is suitable for the purpose for which it is purchased and (c) that Buyer has not relied upon any statement or representation of Seller in making such determination.
- 14. As-Is Condition.** Except as may be limited by applicable law, used boats, travel trailers, fifth-wheels, motors homes, ATVs, and UTVs (collectively "RVs") are sold strictly on an "AS-IS" basis. If this transaction involves a used RV, Buyer affirms that he or she has thoroughly inspected and examined the used RV, including any of its equipment and accessories, and has found them to be in safe, satisfactory condition, or otherwise in good working order.
- 15. Final Agreement/Severability.** This document contains full and final expression of the agreement reached between the Parties concerning the Vehicle(s) referenced on Page 1. No other representations, inducements or promises (whether verbal, written, electronic or otherwise) have been made which are not set forth in this Agreement. In the event that any provision of this Agreement shall be declared invalid or unenforceable, such a pronouncement shall not affect any other provision(s) of this Agreement.

Exhibit B

Order Compelling Arbitration in *Hafeman v. Forest River, Inc.*, Case No. 2012-CP-27-493 (S.C. Ct. C.P. Feb. 26, 2013)

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

Michael and Melinda Hafeman,

Plaintiffs,

vs.

Forest River, Inc., a corporation,  
Ridgeland Realty, LLC, d/b/a Boat N  
RV Mega Store,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-27-493

**ORDER**

2013 MAR -1 AM 9:27  
CLERK OF COURT  
JASPER COUNTY SC

Before the Court is a Motion to Compel Arbitration filed by Defendant Boat-N-RV Mega Store.<sup>1</sup> The motion is based on an arbitration agreement in the parties' contract on which the Plaintiffs' claims against Boat-N-RV are based. For the reasons discussed below, the Court grants the motion and compels the Plaintiffs' dispute with Boat-N-RV to arbitration.

**BACKGROUND**

This case arises out of the Plaintiffs' purchase of a 2012 Brookstone Fifth Wheel trailer from Boat-N-RV's facility in Ridgeland, South Carolina, in the Fall of 2011. The Plaintiffs allege that their trailer was supposed to match certain specifications so that they could use it "as their residence" while they "travel throughout the country delivering electrical contracting services." (Compl. ¶ 11.) However, the Plaintiffs allege that upon delivery, they found that the trailer contained various "defects" that have not been corrected despite assurances that they would be remedied. (Id. ¶¶ 9-13, 16.)

<sup>1</sup> The caption misidentifies Boat-N-RV as the business name of Ridgeland Realty, LLC, rather than of Ridgeland Recreational Vehicles, Inc.

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From that transaction, the Plaintiffs filed suit against both the trailer's manufacturer and Boat-N-RV. They seek damages for an alleged breach of contract and an alleged violation of the South Carolina Unfair Trade Practices Act. (Id. ¶¶ 17–19.)

In response to the complaint, Boat-N-RV filed a motion to compel this matter to arbitration pursuant to the Federal Arbitration Act or, alternatively, pursuant to the New York Arbitration Act. On February 1, 2013, the Court held a hearing on Boat-N-RV's motion, at which all parties were represented by counsel. Both Boat-N-RV and the Plaintiffs filed an affidavit regarding the motion. Boat-N-RV also presented live testimony from a witness regarding the transaction at issue in the case.

Following the February 1st hearing, both Boat-N-RV and the Plaintiffs submitted additional memoranda regarding the arbitrability of the case. Additionally, the Plaintiffs submitted a second affidavit from Ms. Hafeman. After fully considering all written and oral submissions of the parties, including all affidavits, exhibits, testimony, and memoranda, as well as the law governing this issue, the Court grants Boat N RV's motion.

#### DISCUSSION

Boat-N-RV has moved to compel this matter to arbitration pursuant to the following provision, which appears as Section 9 of the parties' contract:

Applicable Law/Arbitration: This agreement shall be governed by the laws of the State of New York and the Uniform Commercial Code as adopted in that state. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its commercial arbitration rules, and judgment on the award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof.

Boat-N-RV argues that this case should be compelled to arbitration under either the Federal Arbitration Act or, if the Court finds that statute to be inapplicable, the New York Arbitration Act. The Court finds that arbitration of this case is required under either law.

**I. Federal Arbitration Act**

The Federal Arbitration Act establishes a “strong federal policy favoring arbitration.” Patten Grading & Paving, Inc. v. Skanska USA Bldg., Inc., 380 F.3d 200, 204 (4th Cir. 2004). Consistent with this overarching policy, courts are to treat arbitration provisions in contracts that “involv[e interstate] commerce” as “valid, irrevocable, and enforceable.” 9 U.S.C. § 2. In this context, interstate commerce is to be construed broadly in recognition of Congress’s intent to “utilize its powers to regulate interstate commerce to its full extent” when passing the Federal Arbitration Act. Bradley v. Brentwood Homes, Inc., 398 S.C. 447, 454, 730 S.E.2d 312, 316 (2012) (quoting Blanton v. Stathos, 351 S.C. 534, 540, 570 S.E.2d 565, 568 (Ct. App. 2002)). When a suit is pending before a court that falls within the scope of an arbitration agreement, the Court “shall on application of one of the parties” stay the case and compel it to arbitration. 9 U.S.C. §§ 3–4.

Boat-N-RV argues that the Federal Arbitration Act governs the arbitrability of this matter because the transaction at issue involves interstate commerce. The Plaintiffs, on the other hand, argue that this matter does not involve interstate commerce, rendering the Federal Arbitration Act inapplicable. The Court finds that the transaction in dispute involves interstate commerce, and the Federal Arbitration Act controls.

The record before the Court contains several indicia of interstate commerce. Evidence shows that the vehicle at issue in this case was manufactured for the Plaintiffs

in Indiana. (Aff. Humphreys ¶¶ 5–6 (Dec. 27, 2012); Aff. Hafeman ¶ 3 (Feb. 7, 2013).) It was delivered to Boat-N-RV’s Ridgeland dealership from Indiana for the Plaintiffs. (Aff. Humphreys ¶ 7; Aff. Hafeman ¶ 4.) Many of the modifications made to the vehicle about which the Plaintiffs are now complaining were completed in Indiana. (Humphreys’ Live Testimony; Aff. Hafeman ¶ 10.) The warranties on which the Plaintiffs appear to base their complaint were provided by and serviced by out-of-state companies, including the trailer’s manufacturer. (Aff. Humphreys ¶ 8.) At the time of the transaction, the Plaintiffs lived in Florida. (Sales Agreement at 1.) And the Plaintiffs expressly allege that they purchased the trailer so that they could “travel throughout the country delivering electrical contracting services.” (Compl. ¶ 11.)

Considered individually or collectively, these factors indicate that interstate commerce lies at the heart of the transaction between the Plaintiffs and Boat-N-RV. Therefore, the Federal Arbitration Act governs this matter.

In opposing this conclusion, the Plaintiffs cite Bradley as standing for the proposition that this transaction involved strictly intrastate commerce. The Court disagrees with the Plaintiffs’ reading of that case. In Bradley, the plaintiff complained about defects in a house, and the seller moved to compel that dispute to arbitration. The Supreme Court held that the sale of the house did not involve interstate commerce, and its holding was rooted in the “historical intrastate character of real estate transactions.” Id. at 456, 730 S.E.2d at 316. Indeed, the Bradley Court repeatedly cited the fact that the transaction there involved real estate as the basis of its decision. See, e.g., 398 S.C. at 456, 730 S.E.2d at 317 (“This Court has continued to adhere to the view that the development of real estate is an inherently intrastate transaction.”); id. at 458, 730 S.E.2d

at 318 (stating that “none of the factors relied upon to establish the involvement of interstate commerce negate the intrastate nature of the sale and purchase of residential real estate”); *id.* at 459, 730 S.E.2d at 318 (concluding that “we find the FAA does not apply as these types of transactions have historically been deemed to involve intrastate commerce”).

Unlike Bradley, the instant case does not involve real estate. Instead, it involves the purchase of a vehicle (built in Indiana, repaired in Indiana, and warranted by companies in Indiana and Illinois) by the Plaintiffs (Floridians) from a dealership in Ridgeland so that they could “travel throughout the country.” The transaction underlying this case unquestionably involves interstate commerce.

Because the Federal Arbitration Act governs this matter, the Court must enforce the parties’ arbitration agreement according to its plain terms. 9 U.S.C. § 3. Accordingly, the Court grants Boat-N-RV’s motion, stays this matter as to the Plaintiffs’ claims against Boat-N-RV, and compels the parties to arbitrate their dispute pursuant to the terms of their agreement.

## II. New York Arbitration Act

Even if the underlying transaction did not involve interstate commerce, the Court finds that arbitration would still be required. In addition to an arbitration provision, Section 9 of the parties’ contract contains a choice-of-law clause that selects New York law to govern their relationship. South Carolina courts generally honor such contractual provisions, and no party has objected to the application of New York law here. See, e.g., Nucor Corp. v. Bell, 482 F. Supp. 2d 714, 728 (D.S.C. 2007) (“Generally, under South

Carolina choice of law principles, if the parties to a contract specify the law under which the contract shall be governed, the court will honor this choice of law.”).

New York, like South Carolina and Congress, strongly favors enforcing arbitration agreements. See, e.g., Brady v. Williams Capital Group, L.P., 928 N.E.2d 383, 387 (N.Y. 2010) (reiterating New York’s “strong state policy favoring arbitration agreements”). The New York Arbitration Act directs the Court to enforce the parties’ arbitration agreement according to its plain terms. Section 7503(a) of the New York Civil Practice Law provides as follows: “Where there is no substantial question whether a valid agreement was made or complied with, and the claim sought to be arbitrated is not barred by limitation under subdivision (b) of section 7502 [which is inapplicable here, and was never raised by the Plaintiffs in any event], the court shall direct the parties to arbitrate.” Accordingly, the Court finds that this case must be compelled to arbitration pursuant to the New York Arbitration Act as well.

In their “Reply to Motion to Compel Arbitration,” the Plaintiffs concede that New York law governs their relationship with Boat-N-RV. However, the Plaintiffs argue that Section 399-c of the New York General Business Law invalidates the parties’ arbitration provision. The Court disagrees.

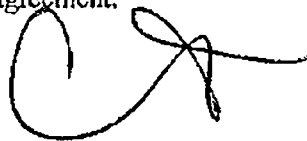
That statute addresses arbitration provisions in contracts for “consumer goods,” which are statutorily defined as products purchased “by a consumer.” N.Y. Gen. Bus. Law § 399-c(1)(b). But under this law, a “consumer” is defined only to include “a natural person residing in this state [i.e. New York].” Id. § 399-c(1)(a). Because the Plaintiffs do not reside in New York, this statute is facially inapplicable to them and to this transaction.

In fact, this same statute specifically provides that the instant arbitration clause is enforceable, as these Plaintiffs are not "consumers" under New York law: "Nothing contained herein shall be construed to prohibit a non-consumer party [*i.e.* anyone who does not reside in New York] from incorporating a provision within such contract that such non-consumer party agrees that the decision of the arbitrator or panel of arbitrators shall be final in its application to such non-consumer party and not subject to court review." *Id.* § 399-c(2)(a). The Court, therefore, rejects the Plaintiffs' reliance on this statute and enforces the parties' arbitration agreement pursuant to the New York Arbitration Act.

#### CONCLUSION

For the reasons stated above, the Court grants Boat-N-RV's motion to compel this matter to arbitration. Accordingly, this matter shall be stayed with respect to the Plaintiffs' claims against Boat-N-RV, and the parties are directed to arbitrate their dispute consistent with the terms of their arbitration agreement.

AND IT IS SO ORDERED.



---

The Honorable Carmen T. Mullen  
Chief Administrative Judge  
Fourteenth Judicial Circuit

2-26, 2013  
Ridgeland, South Carolina

Exhibit C

Order Compelling Arbitration in *Miller v. Ridgeland Recreational Vehicles, Inc.*, Case No. 2012-CP-27-97 (S.C. Ct. C.P. Aug. 14, 2012)



Subsequently, the Plaintiffs allege that they contacted Boat N RV and attempted to return the vehicle to Boat N RV in exchange for a full refund. (Id. ¶ 10.) When Boat N RV declined, the Plaintiffs filed this lawsuit and alleged the following claims: (1) breach of contract, (2) breach of contract accompanied by a fraudulent act, (3) constructive fraud, (4) fraud, (5) negligence, (6) negligent misrepresentation, and (7) a violation of the South Carolina Unfair Trade Practices Act.

In response to the complaint, Boat N RV filed a motion to compel this matter to arbitration pursuant to the Federal Arbitration Act or, alternatively, pursuant to the New York Arbitration Act. The Plaintiffs filed a brief in opposition to that motion. On June 13, 2012, the Court held a hearing on Boat N RV's motion. All parties were represented by counsel. Boat N RV presented live testimony from a witness regarding the transaction at issue in the case, and the Plaintiffs had an opportunity to cross-examine that witness. The Court also examined the witness. After considering all written and oral submissions of the parties, as well as the law addressing this issue, the Court grants Boat N RV's motion.

#### DISCUSSION

Boat N RV has moved to compel this matter to arbitration pursuant to the following provision, which appears as Section 9 of the parties' contract:

Applicable Law/Arbitration: This agreement shall be governed by the laws of the State of New York and the Uniform Commercial Code as adopted in that state. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its commercial arbitration rules, and judgment on the award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof.

Boat N RV argues that this case should be compelled to arbitration under either the Federal Arbitration Act or, if the Court finds that statute to be inapplicable, the New York Arbitration Act. The Court finds that arbitration of this case is required under the FAA and therefore does not look to applicability of the New York Arbitration Act.

**I. Federal Arbitration Act**

The Federal Arbitration Act establishes a “strong federal policy favoring arbitration.” Patten Grading & Paving, Inc. v. Skanska USA Bldg., Inc., 380 F.3d 200, 204 (4th Cir. 2004). Consistent with this overarching policy, courts are to treat arbitration provisions in contracts that “involv[e interstate] commerce” as “valid, irrevocable, and enforceable.” 9 U.S.C. § 2. In this context, interstate commerce is to be construed broadly in recognition of Congress’s intent to “utilize its powers to regulate interstate commerce to its full extent” when passing the Federal Arbitration Act. Bradley v. Brentwood Homes, Inc., Op. No. 27413, 2012 S.C. LEXIS 137, at \*10 (S.C. Sup. Ct. filed July 11, 2012) (Shearouse Adv. Sh. No. 23) (quoting Blanton v. Stathos, 351 S.C. 534, 540, 570 S.E.2d 565, 568 (Ct. App. 2002)). When a suit is pending before a court that falls within the scope of an arbitration agreement, the Court “shall on application of one of the parties” stay the case and compel it to arbitration. 9 U.S.C. §§ 3–4.

Boat N RV argues that the Federal Arbitration Act governs the arbitrability of this matter because the transaction at issue involves interstate commerce. The Plaintiffs, on the other hand, argue that this matter does not involve interstate commerce, rendering the Federal Arbitration Act inapplicable. The Court finds that the transaction in dispute involves interstate commerce, and the Federal Arbitration Act controls.

Uncontroverted evidence shows that the vehicle at issue in this case was manufactured in Indiana. It was delivered to Boat N RV's Ridgeland dealership from Indiana. The Plaintiffs used the vehicle for interstate travel. The warranties on which the Plaintiffs base their complaint were both provided out of and serviced out of Indiana and Illinois. Therefore, the Federal Arbitration Act governs this matter.

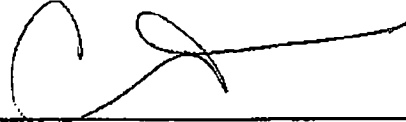
The Plaintiffs cite Timms v. Greene, 310 S.C. 469, 427 S.E.2d 642 (1993), in support of their argument that this transaction does not involve interstate commerce. That case, however, is fundamentally distinguishable. In Timms, the contract at issue involved only the provision of "patient-residential services" between a nursing home and a resident. Id. at 472-73, 427 S.E.2d at 644. Because those healthcare services, by their very nature, were provided to the patient only in South Carolina, that contract did not involve interstate commerce. Id. By contrast, the contract here involves the purchase of a vehicle that was manufactured out of state, was delivered to South Carolina from Indiana, was used for interstate travel, and was warranted under at least two different policies that originated and were serviced outside of South Carolina. Timms, therefore, has no applicability to this case.

Because the Federal Arbitration Act governs this matter, the Court must enforce the parties' arbitration agreement according to its plain terms. 9 U.S.C. § 3. Accordingly, the Court grants Boat N RV's motion, stays this matter, and compels the parties to arbitrate their dispute pursuant to the terms of their agreement.

**CONCLUSION**

For the reasons stated above, the Court grants Boat N RV's motion to compel this matter to arbitration. This matter shall be stayed accordingly.

AND IT IS SO ORDERED.



---

The Honorable Carmen T. Mullen  
Chief Administrative Judge  
Fourteenth Judicial Circuit

8/14/12  

---

Ridgeland, South Carolina

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

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

Memorandum in Opposition to Defendant's  
 Motion to Compel Arbitration

OCT 26 PM 1:41  
 2016

FILED

Plaintiff, Annalee Walsh (hereinafter, "Ms. Walsh") hereby submits her Memorandum in Opposition to Defendant's Motion to Compel Arbitration and would represent to the Court as follows:

I. Introduction

On or about September 15, 2015, Ms. Walsh visited Defendants' Ridgeland and entered into negotiations with Defendants for the purchase of a recreational vehicle. Ms. Walsh signed a purchase agreement with Defendants and in anticipation of entering into a contract with the Defendants, Ms. Walsh 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 an 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. Though the Defendants applied for credit, no third party lender was willing to finance Ms. Walsh's purchase of the vehicle. Ms. Walsh never took possession of the vehicle and the Defendants never offered to deliver the vehicle to Ms. Walsh. Ms. Walsh demanded that the Defendants return her deposit and down payment. Defendants only returned

Twelve Thousand Seven Hundred Fifty Dollars (\$12,750.00) to Ms. Walsh, after several months, several demands by Ms. Walsh, and only after an attorney became involved. Currently Defendants are in possession of \$11,250.00 of the money that Ms. Walsh deposited in anticipation of purchasing an RV, and they have refused to return it, although the parties never entered into a contract for the sale of the RV.

## II. Argument

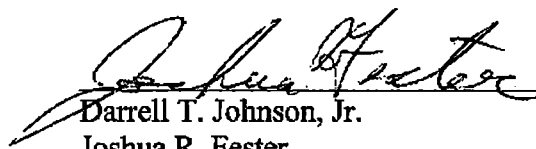
Ms. Walsh never entered into a contract to purchase an RV from Boat-N-RV. The "Agreement Pending Financing/Regulation Z Disclosure" embodied an understanding between the parties that they had not yet formed a contract or entered into a purchase agreement. That agreement states "by signing below, I acknowledge 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." (Exhibit A). That document was incorporated as part of any written purchase agreement signed by Ms. Walsh, and that agreement constitutes a condition precedent to the formation of any contract. As mentioned above, the Defendants attempted to secure financing from a third party lender, but failed to do so. In fact, Defendants applied for financing for the purchase of the vehicle with at least 10 different lenders, all of whom denied applications for credit. (Exhibit B). 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)). Because the condition precedent was not met or excused, the parties never formed a

contract for the purchase of the RV. The arbitration clause contained in the written "purchase agreement" is, therefore, not enforceable because the parties never formed a contract and there was no purchase agreement. The Federal Arbitration Act is also not implicated in the present case because there was no sale and no act of interstate commerce.

In addition, the enforcement of an arbitration clause and the liquidated damages clauses in this written purchase agreement would be unconscionable. Defendants are essentially asking the Court to allow them to keep \$11,250.00 of Ms. Walsh's deposit, which she made in good faith and in anticipation of forming a contract, simply for shopping her credit, something any reputable automobile dealer would perform free of charge. The Defendants are also asking the Court to compel the Plaintiff to arbitration in a forum far from her home and hundreds of miles from where she negotiated a potential purchase with Defendants at their store in Ridgeland, South Carolina, which would significantly burden her access to justice.

WHEREFORE, the Plaintiff respectfully requests that the Court deny Defendants' Motion to Compel Arbitration as there is no enforceable arbitration agreement between the parties.

LAW OFFICE OF  
DARRELL THOMAS JOHNSON, JR.



Darrell T. Johnson, Jr.  
Joshua R. Fester  
Post Office Box 1125  
Hardeeville, South Carolina 29927  
843-784-2142  
843-784-5770 (facsimile)  
Attorney for Plaintiff

September 21, 2016

15-CP-269



Making Boating & Camping Fun!

- Boat-N-RV Warehouse, W. Coxsack, New York
- Boat-N-RV Superstore, Hamburg, Pennsylvania
- Boat-N-RV Supercenter, Rockwood, Tennessee

- Boat-N-RV Megastore, Ridgeland, South Carolina
- Boat-N-RV Outlet/Liquidators, Americus, Georgia
- Boat-N-RV World, Salisbury, North Carolina

Shop Us Anytime at: <http://www.boatnrv.com>

1-888-BOATNRV

### AGREEMENT PENDING FINANCING/ REGULATION Z DISCLOSURE

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.

Amount Financed (\$)	Annual Interest Rate (%)	Loan Term (Months)	Regular Monthly Payment (\$)	Total of All Payments (\$)	Total Cost of Credit (\$)
47316.01	9.99 000	144	565.19	81387.36	34071.35


Unless specific lenders have been circled or highlighted below (thereby limiting the scope of your credit submission), you hereby authorize Boat-N-RV to submit your credit information to any of its partner lenders identified below. If you have circled or highlighted any of the lenders below, then we have agreed to limit your credit submission to only those lenders so identified.

- Ally Bank
- American Heritage
- Bank of America
- Bank of the West
- Banterra
- Belco Community CU
- Community & Southern Bank
- Community Bank
- Community Resource FCU
- Farm Bureau Bank
- First Commonwealth FCU
- First National Bank of Penn.

- Fort Knox Federal Credit Union
- Fulton Bank
- Georgia Heritage FCU
- Georgia's Own FCU
- GEO Vista FCU
- Heritage Trust FCU
- Intercoastal Financial Group, Inc.
- M&T Bank
- Marine One
- Medallion Bank
- Merrick Bank
- Mid-Hudson Valley Credit Union

- ORNL FCU
- Pen Air FCU
- Regional Finance
- Sebrite Corporation
- SEFCU
- South Carolina FCU
- South East Financial
- South State Bank
- Susquehanna Bank
- US Bank, N.A.
- Y-12 FCU

Although it is not necessarily likely, I understand that, depending upon the complexity of my credit situation, credit approval may take some time. I agree to cooperate with Boat-N-RV and its third-party lenders in connection with the approval of the above stated credit terms by providing any and all additional information as may be requested from time to time. I understand that failure to cooperate with Boat-N-RV and/or its third-party lenders in this process may result in, among other things, the forfeiture of any cash deposit placed with Boat-N-RV.

 \_\_\_\_\_ 9/13/15  
Purchaser Date

\_\_\_\_\_  
Co-Purchaser Date



09/14/2015



57528-24A\* 11  
ANNALEE WALSH  
68 PLEASANT VALLEY ROAD  
WASHINGTON, NJ 07882-4364

Description of Account, Transaction, or Requested Credit: RV Indirect.

Dear: ANNALEE WALSH

Thank you for your recent application. Your request for \$47,316.00 was carefully considered, and we regret that we are unable to approve your application at this time, for the following reason(s):

Derogatory public record or collection filed, Level of delinquency on accounts

#### Disclosure of Use of Information Obtained From an Outside Source

Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency did not make the decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

Equifax Information Services, LLC P.O. Box 740241 Atlanta, GA 30374-0241 (800) 685-1111 [www.equifax.com](http://www.equifax.com)

#### Information About Your Credit Score

We also obtained your credit score from this consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score: 666

Date: 09/14/2015

Scores Range from a low of 300 to a high of 850.

Key factors that adversely affected your credit score:

Derogatory public record or collection filed

Length of time accounts have been established

Proportion of loan balances to loan amounts is too high

Time since delinquency is too recent or unknown

Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

If you have any questions regarding this notice, you should contact:

Community & Southern Bank  
4800 Ashford Dunwoody Rd, Suite 250  
Atlanta GA 30338

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is Federal Trade Commission Equal Credit Opportunity, Washington, DC 20580.

# Statement of Credit Denial, Termination or Change

<b>Applicant</b>	<b>Dealer</b>	<b>Lender</b>	<b>Date</b>
	Cross Timbers Boat Sales 12301 CrossTimbers Dr Sperry, OK 74073	Banterra Bank 3151 Parisa Drive Paducah, KY 42002	9/14/2015
			<b>Application Number</b>
			2137915

**Annalee Walsh**  
68 Pleasant Valley Rd  
Washington, NJ 07882

"You" means Applicant.

"We" means Lender.

**Description of Action Taken. Denial**

**Description of Account, Transaction or Requested Credit. Credit**

**Principal reasons for credit denial, termination or other action taken concerning credit**

Unacceptable Credit File for Amount Requested

**Disclosure of use of information obtained from an outside source**

Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency or agencies listed below. You have a right under the *Fair Credit Reporting Act* to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

<b>Name</b>	Trans Union Consumer Relations		
<b>Address</b>	2 Baldwin Place P.O. Box 1000 Chester, PA 19022		
<b>Toll Free Telephone</b>	800.888.4213		
<b>Web Address</b>	www.transunion.com/myoptions		

We also obtained your credit score from the credit reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your credit report. Your credit score can change, depending on how the information in your credit report changes.

- Your credit score: 654
- Date: 9/14/2015
- Scores range from a low of 336 to a high of 850
- Key factors that adversely affected your credit score:
  - Serious delinquency, and public record or collection filed
  - Time since delinquency is too recent or unknown
  - Length of time since derogatory public record or collection is too short
  - Too many inquiries last 12 months
  - Inquiries impacted the credit score

If you have any questions regarding your credit score, you should contact Trans Union at their address or telephone number above.

Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the *Fair Credit Reporting Act*, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

**Questions**

If you have any questions regarding this notice, you should contact:

Creditor's Name: Banterra Bank  
Telephone: 618-897-2760

Address: 3151 Parisa Drive  
Paducah, KY 42002

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into binding contracts); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is: FDIC, Consumer Response Center, 1100 Walnut St, Box #11, Kansas City MO 64106



Annlee Walsh  
68 Pleasant Valley  
Washington, NJ 07882

9/15/2015

Dear Annlee Walsh,

Thank you for your recent application for an RV in the amount of \$70,048.00. Your request for credit was carefully considered, and we regret to inform you that we are unable to approve your application at this time. The principal reason(s) for our decision are indicated in the attached notice.

You may learn more about the information they have concerning you by contacting them directly. Credit Bureau Agency referral and information obtained from;

Experian Inc.  
National Consumer Assistance Center  
P.O. Box 2002  
Allen, TX 75013-0036  
(888) 397-3742  
[www.experian.com/reportaccess](http://www.experian.com/reportaccess)

We thank you for the opportunity to consider your request. If you have any questions please feel free to contact your credit union and talk to one of our service representatives in the branch or on the phone at (215-969-0777) option 4.

Sincerely,

Lending Department

App ID#: 130139

Account #:

# Susquehanna

A Division of Branch Banking and Trust Company

1570 Manheim Pike | PO Box 3300 | Lancaster, PA 17604-3300

Applicant of:

Date: September 15, 2015

ANNLEE WALSH  
68 PLEASANT VALLEY, Unit RD  
WASHINGTON, NJ 07882

requesting credit as follows: (describe) \$47,316.00 for 180 months for a 2013 MIRADA 35  
from Boat N RV Superstores

We regret that your recent credit application cannot be granted at this time and has been declined.

Principal reason(s) for credit denial, termination, or other action taken concerning credit. **This section must be completed in all instances.**

- |   |  |
|---|--|
| <input type="checkbox"/> Credit application incomplete                      | <input type="checkbox"/> Temporary residence   |
| <input type="checkbox"/> Insufficient number of credit references provided  | <input type="checkbox"/> Unable to verify residence  |
| <input type="checkbox"/> Unacceptable type of credit references provided    | <input type="checkbox"/> No credit file  |
| <input type="checkbox"/> Unable to verify credit references                 | <input checked="" type="checkbox"/> Limited credit experience  |
| <input type="checkbox"/> Temporary or irregular employment                  | <input type="checkbox"/> Poor credit performance with us   |
| <input type="checkbox"/> Unable to verify employment                        | <input checked="" type="checkbox"/> Delinquent past or present obligations with others                                 |
| <input type="checkbox"/> Length of employment                               | <input checked="" type="checkbox"/> Garnishment, attachment, foreclosure, repossession, collection action, or judgment |
| <input type="checkbox"/> Income insufficient for amount of credit requested | <input type="checkbox"/> Bankruptcy  |
| <input type="checkbox"/> Excessive obligations in relation to income        | <input type="checkbox"/> Number of recent inquiries on credit bureau report  |
| <input type="checkbox"/> Unable to verify income                            | <input type="checkbox"/> Value or type of collateral not sufficient  |
| <input type="checkbox"/> Length of residence                                | <input type="checkbox"/> We do not grant credit to any applicant on the terms and conditions you request.              |
| <input type="checkbox"/> Other, specify:                                    |  |

## DISCLOSURE OF USE OF INFORMATION OBTAINED FROM AN OUTSIDE SOURCE

This section should be completed if the credit decision was based in whole or in part on information that has been obtained from an outside source.

- Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

TransUnion - Consumer Relations 2 Baldwin Place P.O. Box 1000 Chester, PA 19022 (800) 888-4213 [www.transunion.com/myoptions](http://www.transunion.com/myoptions)

NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS

Statement of Credit Denial, Termination, or Change

OCT 08 2015

Annalee Walsh  
68 Pleasant Valley Road  
Washington, NJ 07882

Date: 10/02/2015

RE: Loan Application 56039

Description of Account, Transaction, or Requested Credit: Camper \$47,316.00 Boat NRV Mega Store requested on 09/14/2015  
Description of Adverse Action Taken: REFUSAL TO GRANT LOAN

**PART I -- PRINCIPAL REASON(S) FOR CREDIT DENIAL, TERMINATIONS OR OTHER ACTION TAKEN CONCERNING CREDIT.**

This Section must be completed in all instances.

- Limited Credit Experience
- Delinquent past or present credit obligations with Others
- Not eligible for membership in this credit union

**PART II - DISCLOSURE of USE of INFORMATION OBTAINED FROM AN OUTSIDE SOURCE.**

This Section should be completed if the credit decision was based in whole or in part on information that has been obtained from an outside source.

Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to provide specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than sixty days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

Consumer Reporting Agency: Equifax Credit Information Services  
Street Address: - 5505 Peachtree Dunwoody Rd PO Box 74024  
City, State, Zip: Atlanta, GA 30374-0241 Telephone: 800-685-1111

We also obtained your credit score from this consumer reporting agency and used it in making our credit decision. Your credit score reflects the information in your credit report. Your credit score can change, depending on how the information in your credit report changes.

Your Credit Score: 669 Date: 09/14/2015 Scores Range from a low of 250 to a high of 900

Key factors that adversely affected your credit score:

- 1) Serious delinquency, and derogatory public record or collection filed
- 2) Length of time accounts have been established
- 3) Time since delinquency is too recent or unknown
- 4) Number of accounts with delinquency

If you have any questions regarding this notice, you should contact Heritage Trust Federal Credit Union. Contact information is listed at the top of this form.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

The federal agency that administers compliance with the law concerning this lender is:

Region II(Capital) NCUA  
1775 Duke ST  
Alexandria, VA 22314-3437

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
 COUNTY OF JASPER ) FOURTEENTH JUDICIAL CIRCUIT

Annalee Walsh, ) Civil Action No. 2016-CP-27-269  
 )

Plaintiff, )

vs. )

REPLY IN SUPPORT OF MOTION TO  
COMPEL ARBITRATION

Boat-N-RV Megastore and Ridgeland  
 Recreational Vehicles, Inc., )

Defendants. )

CLERK OF COURT  
 JASPER COUNTY

2016 SEP 29 AM 9:28

FILED

Boat-N-RV moved to compel this matter to arbitration pursuant to the parties' unambiguous arbitration agreement, which is contained in a contract that Plaintiff herself acknowledges in Paragraph 7 of the complaint. The Court heard oral arguments on this motion on September 20, 2016, during which Plaintiff suggested that the parties never actually entered into any contract. In this regard, Plaintiff's counsel handed up a copy of a Regulation Z Disclosure that described Plaintiff's obligations to secure financing in order to acquire her new vehicle.

Plaintiff's counsel did not provide a copy of this document to Boat-N-RV before or during the September 20th hearing, but afterwards filed an opposition memorandum to Boat-N-RV's motion that included a copy of the Regulation Z Disclosure. After being given an opportunity to review the exhibit upon which Plaintiff bases her opposition, Boat-N-RV respectfully submits this simple reply: The Regulation Z Disclosure makes clear that the parties have indeed entered into a contractual agreement.

After opening with an acknowledgment that the parties have entered to a contract to purchase a vehicle, the last sentence of the Disclosure states as follows: "I understand that failure

to cooperate with Boat-N-RV and/or its third-party lenders in this [financing] process may result in, among other things, the forfeiture of any cash deposit placed with Boat-N-RV." This is entirely consistent with the Sales Agreement, which provides on both the first page—in the same box containing Plaintiff's first signature—and again in Paragraph 3 on the second page that Plaintiff will forfeit a portion of her deposit in the event the sale is cancelled.

In short, there cannot be any legitimate dispute that the parties entered into a contract that contained an arbitration agreement. While the ultimate performance of the contract was conditioned on Plaintiff cooperating with potential lenders to secure financing, her failure to do so does not somehow eliminate the contract's existence or erase the arbitration agreement. To the contrary, the Regulation Z Disclosure reinforces the very contractual penalty upon which Plaintiff's entire complaint is based.

Because Plaintiff indisputably agreed to arbitrate "any claim or controversy arising out of or otherwise relating to" the parties' contract, "including the making thereof," the Court should grant Boat-N-RV's motion and compel this matter to arbitration. (Sales Agreement ¶ 10, at 2 (all capital letters, bold, and underline omitted).)

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: 

M. Todd Carroll  
S.C. Bar No. 74000  
1727 Hampton Street  
Columbia, South Carolina 29201  
(803) 454-6504

*Attorneys for Defendant Boat-N-RV Megastore*

September 26, 2016  
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	FOURTEENTH JUDICIAL CIRCUIT
 	)	
Annalee Walsh,	)	Civil Action No. 2016-CP-27-269
	)	
Plaintiff,	)	
	)	
vs.	)	<u>OBJECTIONS TO PROPOSED ORDER</u>
	)	<u>REGARDING MOTION TO COMPEL</u>
Boat-N-RV Megastore and Ridgeland	)	<u>ARBITRATION</u>
Recreational Vehicles, Inc.,	)	
	)	
Defendants.	)	
	)	

Defendant has moved to compel this matter to arbitration pursuant to an unambiguous arbitration agreement in the parties' contract. Plaintiff has submitted for the Court's consideration a proposed order denying that motion. Attached hereto is correspondence that Defendant has submitted to the Court via electronic mail objecting to that proposed order and to the reasoning underlying it.

For the reasons explained in Defendant's prior submissions, as well as those outlined in the attached correspondence, this case should be compelled to arbitration pursuant to the plain language of the parties' arbitration agreement. Alternatively, the Court should grant the parties an opportunity to conduct limited discovery on facts that speak to the arbitrability of this matter and then conduct an evidentiary hearing on the issue of arbitrability.

*SIGNATURE PAGE ATTACHED*

FILED  
 2016 NOV 17 AM 10:24  
 CLERK OF COURT  
 JASPER COUNTY

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: 

M. Todd Carroll  
S.C. Bar No. 74000  
1727 Hampton Street  
Columbia, South Carolina 29201  
(803) 454-6504

*Attorneys for Defendant Boat-N-RV Megastore*

November 14, 2016  
Columbia, South Carolina

Exhibit A

November 10, 2016 Correspondence

## Carroll, Todd

---

**From:** Carroll, Todd  
**Sent:** Thursday, November 10, 2016 3:56 PM  
**To:** 'Murphy, Maite Law Clerk (Luke Allen)'; jfester@johnsonslawoffice.com  
**Subject:** RE: Annalee Walsh v. Boat-N-RV Megastore (2016CP2700269)  
**Attachments:** Walsh Credit Issues.pdf

Luke,

Thank you for your email below. Respectfully, I'm concerned by the sentence that reads: "The Court finds that the Defendant's failure to meet the condition precedent of securing a third-party lender excuses the Plaintiff from submitting to arbitration under the contract."

As an initial matter, the parties' contract specifically says that any questions about the making of the contract must be resolved in arbitration, and there is no dispute that Ms. Walsh signed that sales agreement and that the parties had a meeting of the minds regarding contractual term. We do not believe that the Court can properly refuse to compel arbitration based on an issue that the parties unambiguously agreed would be resolved through arbitration.

Moreover, Boat-N-RV did not have any contractual duty to locate a lender for Ms. Walsh's purchase, and I don't recall there being any dispute or even discussion on this point. Just as in every sales transaction, Ms. Walsh (the buyer) was responsible for securing financing to purchase her vehicle. Boat-N-RV was willing to help facilitate those efforts by transmitting Ms. Walsh's information to various potential lenders—as explained in the disclosure form that Mr. Fester handed up at our hearing—but the supposed "condition precedent" was not one that Boat-N-RV could ever have met, as the responsibility for actually getting financing fell to Ms. Walsh alone. And in this case, Boat-N-RV attempted to help Ms. Walsh find a lender, but she refused to furnish proof-of-income information necessary to get lenders to extend her credit (as reflected in the attached PDF).

We are afraid that Judge Murphy may have misunderstood the circumstances, or that her ruling is based on incorrect assumptions about the facts. We are not aware of any precedent under which a buyer can refuse to fulfill her end of a bargain, but then rely on her own failure to argue that no contract existed in the first place and, therefore, avoid the unambiguous terms of the agreement.

In light of this, if Her Honor is not inclined to grant Boat-N-RV's motion and send this to arbitration, we think that the correct procedural course would be to permit discovery on the issues related to the arbitrability of the dispute, and then issue a ruling after an evidentiary hearing, as directed by the Federal Arbitration Act, 9 U.S.C. § 4.

Thank you for the Court's consideration of these issues and of the parties' respective positions. If we can provide anything additional to Her Honor, please do not hesitate to call on us.

Best regards,

Todd

**TODD CARROLL**  
ATTORNEY AT LAW

**WOMBLE CARLYLE SANDRIDGE & RICE, LLP**  
1727 Hampton Street | Columbia, SC 29201

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**From:** Murphy, Maite Law Clerk (Luke Allen) [<mailto:mmurphy1c@sccourts.org>]  
**Sent:** Thursday, November 10, 2016 9:41 AM  
**To:** [jfester@johnsonslawoffice.com](mailto:jfester@johnsonslawoffice.com); Carroll, Todd  
**Subject:** Annalee Walsh v. Boat-N-RV Megastore (2016CP2700269)

Good afternoon.

Defendant's Motion to Compel Arbitration came before Judge Murphy in Jasper County on September 20th. After taking the matter under advisement and considering the pleadings, memorandum, and arguments, the Court is denying Defendant's Motion to Compel Arbitration. The Court finds that the Defendant's failure to meet the condition precedent of securing a third-party lender excuses the Plaintiff from submitting to arbitration under the contract. Accordingly, Defendant's Motion is respectfully denied.

Mr. Fester, please submit a proposed Order, along with a return envelope, to chambers within 10 business days. The executed Order will be returned to you to have filed with the Clerk's office.

Thank you,

Luke M. Allen  
Law Clerk to the Hon. Maité Murphy  
P.O. Box 802  
5200 E. Jim Bilton Blvd.  
St. George, SC 29477  
Office: (843) 832-0391

~~~~ CONFIDENTIALITY NOTICE ~~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

DT ID: 481001 - Tilden Recreational Vehicles - Lender ID:IND0000980

First Commonwealth FCU Application Status



| Customer Information |               |
|----------------------|---------------|
| Applicant Name:      | Walsh, Anissa |
| APS #:               | 87988         |
| Status:              | Pending ?     |
| eContract Status:    | Ineligible    |

| Financing Information            |             |
|----------------------------------|-------------|
| Requested Product:               | Retail      |
| Amount Requested:<br>(incl TT&L) | \$47,316.00 |
| Term:                            | 120         |
| Acquisition Fee:                 |             |
| Estimated Buy Rate:              | 0.00%       |
| Tier Level:                      |             |
| Fico Score:                      | 681         |
| LTV Ratio:                       | 0           |

| Vehicle Information |           |
|---------------------|-----------|
| NAVD-Year:          | Used 2013 |
| Make:               | MIRADA    |
| Model:              | 35        |
| Trim:               |           |
| VIN #:              |           |
| Mileage:            | 28698     |

| Comments To Credit Analyst |      |
|----------------------------|------|
| 9/15/2015 12:48:51 PM      | SENT |

| Comments From Credit Analyst |                                                                                     |
|------------------------------|-------------------------------------------------------------------------------------|
| 9/15/2015 12:24:38 PM        | Takatech, Erik: Please send bookout sheet at your earliest convenience...thank you! |
| 9/15/2015 12:52:16 PM        | Youwskim, Georgette: WE NEED INCOME VERIFICATION DUE THE LOAN IS OVER \$30,000.00   |

| Analyst Information |                         |                              |                         |
|---------------------|-------------------------|------------------------------|-------------------------|
| Name:               | Georgette Youwskim      | Fax:                         | (610)807-3038           |
| Phone Number:       | (610)821-2400 Ext: 8774 | Lender Cust. Service Number: | (610)821-2400 Ext: 8774 |

- [Copy This Application](#)
- [Sign Application](#)
- [Comments To Credit Analyst](#)
- [Submit To Other Lenders](#)
- [Create Dealer Participation Cert. Form](#)

*This is the only Pending approval.  
It is based on approval of income  
that we can't get per Michael Cook.*



Making Boating & Camping Fun!

- Boat-N-RV Warehouse, W. Coxsackie, New York
- Boat-N-RV Superstore, Hamburg, Pennsylvania
- Boat-N-RV Supercenter, Rockwood, Tennessee

Shop Us Anytime at: <http://www.boatnrv.com>

- Boat-N-RV Megastore, Ridgeland, South Carolina
- Boat-N-RV Outlet/Liquidators, Americus, Georgia
- Boat-N-RV World, Salisbury, North Carolina

1-888-BOATNRV

AGREEMENT PENDING FINANCING/  
REGULATION Z DISCLOSURE

SN 213,545

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.

Need POI (Going through Pastor)

| Amount Financed (\$) | Annual Interest Rate (%) | Loan Term (Months) | Regular Monthly Payment (\$) | Total of All Payments (\$) | Total Cost of Credit (\$) |
|----------------------|--------------------------|--------------------|------------------------------|----------------------------|---------------------------|
| 47316.01             | 9.99 000                 | 144<br>120         | 566.19<br>491.51             | 81387.36                   | 34071.35                  |

Unless specific lenders have been circled or highlighted below (thereby limiting the scope of your credit submission), you hereby authorize Boat-N-RV to submit your credit information to any of its partner lenders identified below. If you have circled or highlighted any of the lenders below, then we have agreed to limit your credit submission to only those lenders so identified.

- Ally Bank
- American Heritage
- Bank of America
- Bank of the West
- Banterra
- Belco Community CU
- Community & Southern Bank
- Community Bank
- Community Resource FCU
- Farm Bureau Bank
- First Commonwealth FCU
- First National Bank of Penn.

- Fort Knox Federal Credit Union
- Fulton Bank
- Georgia Heritage FCU
- Georgia's Own FCU
- GEO Vista FCU
- Heritage Trust FCU
- Intercoastal Financial Group, Inc.
- M&T Bank
- Marine One
- Medallion Bank
- Merrick Bank
- Mid-Hudson Valley Credit Union

- ORNL FCU
- Pen Air FCU
- Regional Finance
- Sebrite Corporation
- SEFCU
- South Carolina FCU
- South East Financial
- South State Bank
- Susquehanna Bank
- US Bank, N.A.
- Y-12 FCU

Although it is not necessarily likely, I understand that, depending upon the complexity of my credit situation, credit approval may take some time. I agree to cooperate with Boat-N-RV and its third-party lenders in connection with the approval of the above stated credit terms by providing any and all additional information as may be requested from time to time. I understand that failure to cooperate with Boat-N-RV and/or its third-party lenders in this process may result in, among other things, the forfeiture of any cash deposit placed with Boat-N-RV.

[Signature] 9/13/15  
Purchaser Date

\_\_\_\_\_  
Co-Purchaser Date

Exhibit B

November 14, 2016 Correspondence

## **Carroll, Todd**

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**From:** Carroll, Todd  
**Sent:** Monday, November 14, 2016 9:11 AM  
**To:** 'Murphy, Maite Law Clerk (Luke Allen)'  
**Cc:** Theresa Costlow; 'Josh Fester'  
**Subject:** RE: Walsh v. Boat-N-RV

Mr. Allen,

As discussed in my correspondence of November 10, 2016, we object to the proposed order that Mr. Fester transmitted on Friday evening because it assigns factual findings to Judge Murphy that are plainly inconsistent with the facts of this matter. When there is a disagreement as to the facts that speak to the arbitrability of a case, the proper procedure under the Federal Arbitration Act is for the Court to permit discovery on those facts, and then hold an evidentiary hearing, neither of which have happened here. 9 U.S.C. § 4.

Respectfully, because the arbitration clause unambiguously states that any disagreement about the formation of the contract is itself subject to arbitration, and there is no dispute that the parties actually entered into the Sales Agreement containing the arbitration provision—a point that Mr. Fester concedes even in his proposed order—we do not believe that there is even a need for such discovery and hearing because the arbitrability of the case is apparent from the contract's plain language. But if Her Honor is disinclined to agree with that argument, then we believe that the discovery/hearing process prescribed by the FAA is necessary before an order such as that proposed by Mr. Fester can even be considered.

We appreciate the Court's consideration of the parties' respective positions. If we can provide any additional materials or information, please do not hesitate to call on us. If Her Honor would like for us to prepare a competing proposed order that articulates these arguments, please let us know that as well, and we will be pleased to do so. Best regards,

Todd

**TODD CARROLL**  
ATTORNEY AT LAW

**WOMBLE CARLYLE SANDRIDGE & RICE, LLP**  
1727 Hampton Street | Columbia, SC 29201  
T 803 454 7730 | F 803 381 9130 | [todd.carroll@wcsr.com](mailto:todd.carroll@wcsr.com)  
[Firm Website](#) | [My Bio](#) | [VCard](#)

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**From:** Josh Fester [<mailto:jfester@johnsonslawoffice.com>]  
**Sent:** Friday, November 11, 2016 6:12 PM  
**To:** 'Murphy, Maite Law Clerk (Luke Allen)'; Carroll, Todd  
**Cc:** Theresa Costlow  
**Subject:** Walsh v. Boat-N-RV

Dear Judge Murphy and Mr. Allen,

Pursuant to your instructions, I have drafted a proposed order denying Defendants' motion to compel arbitration. I have attached it to this email for your convenience, and I will be sending a copy by mail for your signature.

Thank you for your attention in this matter. By copy of opposing counsel, I am informing him of this communication.

Kind Regards,

Joshua R. Fester  
Law Office of Darrell Thomas Johnson, Jr.  
P.O. Box 1125  
Hardeeville, SC 29927  
Tel: (843) 784-2142  
Fax: (843) 784-5770

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In the Court of Common Pleas  
State of South Carolina  
County of Jasper

Case No. 2016-CP-27-269

Annalee Walsh,  
Plaintiff,

vs.

Boat-N-RV Megastore and  
Ridgeland Recreational Vehicles, Inc,  
Defendants.

**TRANSCRIPT OF HEARING**

September 20, 2016

Ridgeland, South Carolina

BEFORE:

**The Honorable Maite Murphy**

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**APPEARANCES**

REPRESENTING THE DEFENDANTS:

M. Todd Carroll, Esquire  
1727 Hampton Street  
Columbia, SC 29201

REPRESENTING THE PLAINTIFF:

Joshua Reece Fester, Esquire  
300 Main Street  
Post Office Box 1125  
Hardeeville, SC 29927

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PROCEEDINGS

THE COURT: Good morning.

MR. CARROLL: Good morning, Your Honor.

THE COURT: Whose motion do we have here?

MR. CARROLL: It is my motion, Your Honor. Your Honor, my name is Todd Carroll. I'm here on behalf of Boat-N-RV. Before we get into my motion, may I relay a short message about motion number 14 and 15 on the roster?

My colleagues represent the defendants in those -- in that case, and I was a little surprised that no one showed up. I sent them a quick email to say, Hey, what is going on? And they informed me those motions, 14 and 15, are actually pending in magistrate's court. So, they can come off of today's roster.

THE COURT: Okay.

THE COURT: All right. Mr. Carroll, you may proceed.

MR. CARROLL: Thank you, Your Honor. May it please the Court. This motion is a Motion to Compel Arbitration. The -- I hope this is a pretty straightforward motion, Your Honor. The case is -- it arises out of a sales contract between my client, which is a RV dealer located

1 here in Ridgeland. And Ms. Walsh, the  
2 Plaintiff, was the customer. She's from New  
3 Jersey.

4 She came to our store, saw a used vehicle  
5 that she wanted to purchase. The parties  
6 entered into a contract. She made her down  
7 payment, and ultimately the deal fell through  
8 and my client gave her back a portion of her  
9 down payment consistent with the terms of the  
10 contract. She's filed this lawsuit claiming  
11 conversion, a breach of the unfair -- or pardon  
12 me, a violation of the Unfair Trade Practices  
13 Act and fraud.

14 They all arise out of this transaction  
15 that I have described. We move to compel,  
16 under the Federal Arbitration Act, which  
17 requires my client to show, I guess, show two  
18 things. Number one, is there interstate  
19 commerce involved. And the here the answer is,  
20 obviously, yes. My client is a South Carolina  
21 based dealer and the Plaintiff is from New  
22 Jersey, so interstate commerce, no problem.

23 The second thing that my client has to  
24 show is, did the parties actually agree to  
25 arbitrate these issues. And indeed they did.

1 We have attached a copy of our sales contract  
2 to our motion. Does Your Honor have the --

3 THE COURT: I do.

4 MR. CARROLL: Okay, it is paragraph ten on  
5 the second page. It just says, Binding  
6 arbitration. The parties agree to arbitrate  
7 any claim that arises out of or otherwise  
8 relates to this agreement including the making  
9 thereof.

10 So, because all of the claimant's claims,  
11 even though they are couched as tort claims and  
12 state tort violation, that doesn't get them  
13 around the arbitration clause. We have -- you  
14 know what, Your Honor, let me hand up a short  
15 memorandum, if I may.

16 THE COURT: Yes, sir.

17 MR. CARROLL: I provided Mr. Fester a copy  
18 of this this morning. And I apologize for not  
19 getting it to the Court in advance. I think  
20 that we have had a little communication problem  
21 and got our schedules out of whack with the  
22 threat of hurricane, so I didn't realize that  
23 we had this hearing until the end of last week.  
24 So, I apologize in being tardy in getting this  
25 to you, Your Honor.

1           But in our memo we have cited a couple of  
2 cases from our State Supreme Court. At the  
3 bottom of Page 2 and the top of Page 3 where  
4 our State Supreme Court is interpreting the  
5 Federal Arbitration Act has looked at similar  
6 language and arbitration provisions. This  
7 whole notion of arising out of or relating to,  
8 enough said. Yes.

9           You know, we look to see if the  
10 allegations of the complaint have a significant  
11 relationship with the contract. And if they  
12 do, then even if you are calling your claims  
13 tort claims, they are still within the  
14 boundaries of the arbitration. And that is  
15 exactly what we have got here. If you look at  
16 the complaint, in paragraph seven, Ms. Walsh  
17 concedes that yes, indeed, I signed a sales  
18 agreement. And then she goes on to kind of  
19 detail the exact factual sequence that I have  
20 just explained to you.

21           So I don't think that there's any  
22 legitimate dispute that Ms. Walsh signed this  
23 contract, that there's interstate commerce  
24 involved and that the claims are easily within  
25 the boundaries of the arbitration provision.

1 So on that basis, Your Honor, we respectfully  
2 ask that you would stay this matter, compel  
3 arbitration. And we have attached as exhibits  
4 B and C to the memo that we have passed up  
5 copies of orders that Judge Mullen has  
6 previously entered enforcing virtually the  
7 same -- same language in our -- in my client's  
8 sales contract.

9 If I may put one quick thing on the  
10 record. The case is captioned with two  
11 defendants, Boat-N-RV Megastore and Ridgeland  
12 Recreational Vehicles, Incorporated. They are  
13 actually the same entity. They are both RV  
14 Megastore, it is just the d/b/a name, Ridgeland  
15 Recreational Vehicles, Incorporated. So, I  
16 didn't want the record to be unclear. I'm here  
17 on behalf of the Defendant, which is both  
18 Defendants. So, thank you, Your Honor.

19 THE COURT: Mr. Fester.

20 MR. FESTER: Your Honor, and I guess the  
21 difference between this case and the one cited  
22 in his memo is that there is a contract here.  
23 The contract did not -- was not formed. I have  
24 a copy here on -- of the Regulation Z  
25 disclosure, which I don't believe was included

1 in that contract agreement. But this contract  
2 is conditioned only upon securing third party  
3 financing. In this case, they did not secure  
4 third party financing. That is clearly a  
5 condition precedent to that contract. There is  
6 no contract.

7 So, the arbitration agreement and the  
8 liquidated damages clause here can't been  
9 enforced if there's no contract.

10 THE COURT: What about this, this portion  
11 of it where it has the arbitration language on  
12 this page?

13 MR. FESTER: Yes, Your Honor. And I would  
14 argue that that is -- that is a part of a  
15 purchase agreement. But the purchase agreement  
16 contract is clearly contingent upon them  
17 forming a contract. Additionally, Your Honor,  
18 I would also argue that -- what happened is,  
19 the deal never went through. They never  
20 secured third party financing for my client.  
21 She was never in possession of the RV.

22 Essentially they charged her \$11,250 to  
23 shop her credit. And that is -- even if there  
24 were a contract, it is clearly unconscionable  
25 in this case. So, I guess it is our position

1           that there is no contract. The arbitration  
2           agreement isn't enforceable. And if I may,  
3           just one other thing. That is -- you know,  
4           question of fact as to whether there's a  
5           contract, whether it's been breached, who  
6           breached it. I mean, that is more appropriate  
7           for trial or summary judgment motion, not a  
8           12(b)6 or a Motion to Compel arbitration.

9           THE COURT: Anything further, counselor?

10          MR. CARROLL: Yes, ma'am, Your Honor.

11          First, I'm not sure that I have ever seen the  
12          document that was just handed up. I didn't get  
13          it in advance. I didn't really get a chance to  
14          look at it. But regardless of what it says,  
15          Your Honor, the contract that the parties  
16          entered into, which began this complaint, the  
17          complaint alleges that Ms. Walsh signed this  
18          sales agreement.

19          This isn't -- this isn't a claim of  
20          forgery or like some of the other cases Your  
21          Honor heard this morning where somebody comes  
22          in and says, Well, gee, I never signed that.  
23          She puts in her complaint that she signed this.  
24          And this sales contract says that any claim  
25          arising out of or relating to, including the

1 making of this contract, is subject to binding  
2 arbitration. There's U.S. Supreme Court  
3 authority with respect to the -- how the FAA is  
4 to be enforced in this exact situation. And it  
5 says, Hey, look, if there's a clear and  
6 unmistakable intent that the questions of  
7 contract formation be sent to the arbitrator,  
8 then you have to send those to the arbitrator  
9 as well.

10 And we cite that authority in our memo as  
11 well, Your Honor. So, Mr. Fester is welcome to  
12 make these arguments of breach of contract or  
13 unconscionability or whatever to an arbitrator,  
14 but that is the appropriate forum for this case  
15 to be heard. And with that, Your Honor, we  
16 respectfully move to compel arbitration.

17 THE COURT: Thank you, gentlemen.  
18 Mr. Fester.

19 MR. FESTER: Your Honor, I guess, he said  
20 himself, we -- we pled that we signed -- our  
21 client had signed the purchase agreement. That  
22 is not the same as forming a contract, and is  
23 clearly regulation Z. And I apologize I didn't  
24 have more copies. I presumed that something  
25 that he signed, or that our client signed with

1           defendants he would have a copy of. That is  
2           clearly a condition precedent to forming the  
3           contract, that that clause stated -- you know,  
4           including the forming of a contract, there is  
5           no contract if that is -- that condition  
6           precedent never took place.

7           THE COURT: I will take a look at the  
8           contract and let you know.

9           MR. FESTER: Thank you, Your Honor.

10          MR. CARROLL: Thank you, Your Honor.

11          THE COURT: Have a good day.

12          (Whereupon, the hearing adjourned.)

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1 CERTIFICATE

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3 STATE OF SOUTH CAROLINA:

4 COUNTY OF JASPER:

5 I, MONA L. MANLEY, Court Reporter, certify that I was  
6 authorized to and did stenographically report the foregoing  
7 proceedings and that the transcript is a true and complete  
8 record of my stenographic notes.

9 DATED this 28th day of March, 2016.

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MONA L. MANLEY  
Official South Carolina Court Reporter  
14th Circuit  
(850) 893-6662  
mmanley@sccourts.org

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27

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM JASPER COUNTY  
Court of Common Pleas

The Honorable Maité Murphy, Circuit Court Judge

**RECEIVED**

Appellate Case No. 2017-  
Circuit Court Case No. 2016-CP-27-269

JAN 19 2017  
**SC Court of Appeals**


Annalee Walsh,..... Respondent,  
v.  
Boat-N-RV Megastore and Ridgeland Recreational Vehicles, Inc., ..... Appellant.

NOTICE OF APPEAL

Please take notice that Ridgeland Recreational Vehicles, Inc. d/b/a Boat-N-RV Megastore (miscaptioned as "Boat-N-RV Megastore and Ridgeland Recreational Vehicles, Inc.") appeals the order of the Honorable Maite Murphy dated January 12, 2017, a copy of which is enclosed. Appellant received written notice of entry of this order on January 18, 2017.

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By:   
M. Todd Carroll  
South Carolina Bar 74000  
todd.carroll@wcsr.com  
1727 Hampton Street  
Columbia, South Carolina 29201  
(803) 454-6504

Attorneys for Appellant

Columbia, South Carolina  
January 19, 2017

**RECEIVED**

JAN 20 2017  
**SC Court of Appeals**

Other Counsel of Record:

Joshua R. Fester  
Law Office of Darrell Thomas Johnson, Jr.  
Post Office Box 1125  
Hardeeville, South Carolina 29927  
(843) 784-2142

**RECEIVED**

JAN 20 2017

**SC Court of Appeals**

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PROOF OF SERVICE

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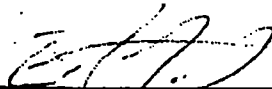
I, the undersigned Legal Secretary of the law offices of Womble Carlyle Sandridge & Rice LLP, Attorneys for Appellant, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) specified below by mailing a copy of the same, postage prepaid, to the following address(es):

Pleading: Notice of Appeal

Parties Served: Joshua R. Fester  
Law Office of Darrell Thomas Johnson, Jr.  
Post Office Box 1125  
Hardeeville, South Carolina 29927

*Attorney for Respondent*

The Honorable Margaret Bostick  
Jasper County Clerk of Court  
Post Office Box 248  
Ridgeland, South Carolina 29936-0248  
*Via Electronic Filing*



---

Edwin T. Mathis

January 19, 2017

**WOMBLE  
CARLYLE  
SANDRIDGE  
& RICE**  
A LIMITED LIABILITY  
PARTNERSHIP

1727 Hampton Street  
Columbia, SC 29201

Telephone: (803) 454-6504  
Fax: (803) 454-6509  
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Direct Dial: 803-454-7730  
Direct Fax: 803-381-9130  
E-mail: Todd.Carroll@wcsr.com

January 19, 2017

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JAN 20 2017

**SC Court of Appeals**

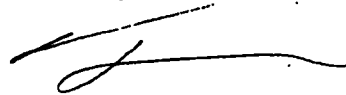
Mona L. Manley  
P.O. Box 4516  
Beaufort, SC 29903-4516

Re: Annalee Walsh v. Boat-N-RV Megastore and Ridgeland Recreational Vehicles, Inc.  
Civil Action No. 2016-CP-27-269

Dear Ms. Manley:

We would like to obtain a copy of the transcript of the hearing held on September 20, 2016, in the matter cited above before the Honorable Maite Murphy in Jasper County. Our records indicate that you were the court reporter transcribing those proceedings. Please contact us with the cost, and we will be glad to provide a check.

Very truly yours,



M. Todd Carroll

cc: Joshua R. Fester  
The Honorable Jenny Abbott Kitchings  
SC Court Administration

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January 19, 2017

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

**RECEIVED**

JAN 20 2017

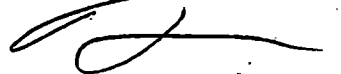
SC Court of Appeals

Re: Annalee Walsh v. Boat-N-RV Megastore and Ridgeland Recreational Vehicles, Inc.  
Civil Action No. 2016-CP-27-269

Dear Ms. Kitchings:

Enclosed for filing please find Boat-N-RV Megastore's Notice of Appeal for the matter cited above, along with a copy of the order that is being appealed, a letter to the court reporter requesting a transcript of the circuit court proceedings, and a check for our filing fee. Kindly file the originals and return a clocked copy in the enclosed envelope.

Very truly yours,



M. Todd Carroll

Enclosures

cc: Joshua R. Fester

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM JASPER COUNTY  
Court of Common Pleas

The Honorable Maité Murphy  
Circuit Court Judge

Appellate Case No. 2017-000120  
Circuit Court Case No. 2016-CP-27-269

Annalee Walsh..... Respondent,

v.

Boat-N-RV Megastore and Ridgeland Recreational Vehicles, Inc., .... Defendants.

of whom

Ridgeland Recreational Vehicles, Inc., d/b/a Boat-N-RV Megastore  
is the..... Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material  
proposed to be included by any of the parties and not any other material.

WOMBLE CARLYLE SANDRIDGE & RICE, LLP



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1221 Main Street, Suite 1600  
Columbia, South Carolina 29201  
(803) 454-6504

Attorneys for Appellant

Columbia, South Carolina  
September 15, 2017

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SC Court of Appeals