THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

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SC Court of Appeals

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.

APPELLANT'S BRIEF

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STATEMENT OF ISSUES

Ms. Walsh filed suit seeking a return of monies she owed to Boat-N-RV pursuant to the parties' sales contract for the purchase of a recreational vehicle. The sales contract contains a broadly-worded arbitration provision requiring arbitration of any dispute "arising out of or otherwise relating to the Agreement, including the making thereof." Despite the fact that the case is governed by the Federal Arbitration Act, the circuit court denied Boat-N-RV's motion to compel this case to arbitration. Did the circuit court err when it refused to enforce the parties' arbitration agreement?

STATEMENT OF THE CASE

This case arises out of a contract for the sale of a recreational vehicle that ultimately terminated when Ms. Walsh refused to provide information necessary to secure financing for her purchase. Because the sales contract contains a broad arbitration provision that indisputably covers the instant litigation, the circuit court erred when it refused to compel this matter to arbitration.

I. Ms. Walsh entered into a sales contract with Boat-N-RV to purchase a recreational vehicle, but she refused to provide information necessary to secure financing, which resulted in a partial forfeiture of her deposit.

On September 13, 2015, Boat-N-RV entered into a contract with Ms. Walsh, a resident of New Jersey, for the purchase of a used recreational vehicle. (R. p. 11; Sales Contract at 1.)[1] The contract provided that Ms. Walsh was purchasing a used 2013 Mirada motorhome for $95,000, for which she agreed to pay partially through a trade-in; partially through a $25,000 deposit (paid by check); and partially through third-party financing. (*Id.*) The contract further provided that Ms. Walsh would "tender liquidated damages in the amount of $11,250.00 or adhere to the decision of the tribunal identified on Page 2 of this Agreement"—that is, an arbitrator—in the event she canceled the sales contract or otherwise refused to take delivery of the vehicle. (*Id.*)

As part of the transaction, Boat-N-RV undertook to facilitate third-party financing for Ms. Walsh. In furtherance of this, Ms. Walsh was obligated to provide information requested by various prospective lenders. However, Ms. Walsh ultimately failed to obtain financing as a result of her refusal to provide basic information, including proof of income specifically requested by at least one lender that considered Ms. Walsh's credit application. (*See, e.g.*, R. p. 51; First

[1] Through the complaint captions Boat-N-RV Megastore and Ridgeland Recreational Vehicles, Inc., as two separate companies, they are actually a single entity. Boat-N-RV Megastore is simply the trade name, or the "doing business as" name, for Ridgeland Recreational Vehicles, Inc. Throughout this brief, they are referred to as "Boat-N-RV."

Commonwealth FCU Application Status ("We need income verification due the loan is over $30,000.00") (all capital letters in original omitted).) As a result of her refusal to supply information requested by prospective lenders, Boat-N-RV ultimately returned Ms. Walsh's deposit, less the $11,250 in liquidated damages agreed to by the parties in their sales contract. (R. p. 6; Compl. ¶ 18.)

II. Ms. Walsh brought this case because Boat-N-RV retained monies owed to it under the parties' sales contract, and Boat-N-RV moved to compel to arbitration.

On June 20, 2016, Ms. Walsh filed suit for the remainder of her deposit, alleging that Boat-N-RV's retention of the money provided by the sales contract was (1) conversion, (2) a violation of the South Carolina Unfair Trade Practices Act, and (3) fraud. (R. pp. 4–7; Compl. ¶¶ 5–31.)

On July 21, 2016, Boat-N-RV moved to compel the case to arbitration pursuant to the parties' sales agreement. (R. p. 9; Mot. to Dismiss or Compel Arbitration.) The agreement provides as follows:

> **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 the 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.

(R. p. 12; Sales Contract at 2, ¶ 10 (all capital letters, bold, and underlined in original).) The arbitration provision is also noted in two places on the front page of the contract. (*See* R. p. 11; Sales Contract at 1 (noting that liquidated damages may be decided by "the tribunal identified on Page 2 of this Agreement"); *id.* ("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.") (all capital letters and bold in original omitted; underlined in original).)

III. The circuit court declined to compel the matter to arbitration and held that no contract exists between the parties.

On September 20, 2016, the circuit court heard Boat-N-RV's motion to compel. During the hearing, Ms. Walsh argued that she never had a contract with Boat-N-RV because her failure to secure financing amounted to a failed "condition precedent" of the contract. To support her position, she presented a Regulation Z disclosure form.

In that form, Ms. Walsh agreed that her failure to cooperate with Boat-N-RV and potential lenders "may result in, among other things, the forfeiture of any cash deposit placed with Boat-N-RV." (R. p. 52; Regulation Z Disclosure Form.) She also acknowledged that the parties had entered "into a written agreement to purchase a boat or recreational vehicle," and that Boat-N-RV's obligation to deliver the vehicle was "conditioned only upon the willingness of a third-party lender to finance the purchase" for Ms. Walsh. (*Id.* (underlined in original).)

The circuit court concluded the September 20th hearing by taking the matter under advisement. On November 10, 2016, the presiding judge's law clerk emailed the parties that the motion would be denied because "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." (R. p. 50; Email from Judge Murphy's Law Clerk to All Counsel (Nov. 10, 2016).)

That same afternoon, Boat-N-RV responded to that email to correct the apparent misunderstanding that "Defendant"—that is, Boat-N-RV—had any obligation to secure financing, as that duty was borne exclusively by Ms. Walsh. (R. p. 49; Email from Counsel for Boat-N-RV to Judge Murphy's Law Clerk and Counsel for Plaintiff (Nov. 10, 2016).)

After the close of business on November 11, 2016, Ms. Walsh submitted a proposed order denying the motion to compel arbitration. (R. p. 54; Email from Counsel for Plaintiff to Judge Murphy's Law Clerk and Counsel for Boat-N-RV (Nov. 11, 2016).) The next business day, Boat-N-RV objected and pointed out that even in her proposed order, Ms. Walsh acknowledged that she entered into the very sales contract that contains the arbitration clause on which Boat-N-RV's motion is based. (R. p. 54; Email from Counsel for Boat-N-RV to Judge Murphy's Law Clerk and Counsel for Plaintiff (Nov. 14, 2016).)

Nevertheless, the circuit court denied Boat-N-RV's motion. (R. p. 1; Order.) Boat-N-RV received written notice of entry of the order on January 18, 2017, and filed its notice of appeal the next day.

STANDARD OF REVIEW

The circuit court denied Boat-N-RV's motion because, in its view, the parties did not form a contract containing an arbitration provision. Whether an agreement to arbitrate exists is a question of law. *See Tritech Elec., Inc. v. Frank M. Hall & Co.*, 343 S.C. 396, 399, 540 S.E.2d 864, 865 (Ct. App. 2000) ("The requirement to arbitrate does not arise spontaneously, but must be contractually agreed to by the parties involved. The existence of such a contract is a question of law.") (internal citations omitted). Accordingly, this Court reviews the circuit court's order *de novo* without any deference to the circuit court's ruling. *Carolina First Bank v. BADD, LLC*, 414 S.C. 289, 292, 778 S.E.2d 106, 108 (2015).

ARGUMENT

The parties indisputably entered into a sales contract—Ms. Walsh even admits this in Paragraph 7 of her complaint—and that contract indisputably contains an arbitration provision that should result in this case being compelled to arbitration. Accordingly, this Court should reverse the circuit court's ruling and compel this matter to arbitration, as discussed below.

I. The Federal Arbitration Act requires this case to be arbitrated.

Because this case involves interstate commerce—the sale of a recreational vehicle from Boat-N-RV, a South Carolina corporation, to Ms. Walsh, a New Jersey resident (R. p. 11; Sales Contract at 1)—the Federal Arbitration Act governs here. *Am. Gen. Life & Accident Ins. Co. v. Wood*, 429 F.3d 83, 87 (4th Cir. 2005). This statute embodies a "liberal federal policy favoring arbitration." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 24 (1983)).[2] Accordingly, any doubts regarding arbitrability should be resolved "in favor of arbitration." *American General Life*, 429 F.3d at 87 (quoting *Hill v. PeopleSoft USA, Inc.*, 412 F.3d 540, 543 (4th Cir. 2005)).

The parties' sales contract contains an expansive arbitration provision that requires arbitrating any dispute that "**ARIS[ES] OUT OF OR OTHERWISE RELAT[ES] TO THIS AGREEMENT**," and it also requires arbitrating any dispute about the "**MAKING**" of the contract. (R. p. 12; Sales Contract at 2, ¶ 10 (all capital letters, bold, and underlined in original).) This clause, coupled with the strong deference that the Federal Arbitration Act shows to enforcing arbitration agreements, should result in this case being compelled to arbitration.

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2 South Carolina, of course, shares this same policy in favor of enforcing arbitration agreements. *See, e.g.*, *Towles v. United Healthcare Corp.*, 338 S.C. 29, 34, 524 S.E.2d 839, 842 (Ct. App. 1999) ("Both federal and state policy favor arbitrating disputes.").

A. Ms. Walsh's claims "arise out of" or "relate to" the parties' sales contract.

There is no reasonable dispute that Ms. Walsh's claims fall within the arbitration provision's broad scope. Each of Ms. Walsh's claims is based on her mistaken allegation that Boat-N-RV is wrongfully withholding a portion of her "deposit and down payment," which she provided pursuant to the sales contract, but later forfeited under the sales contract when she refused to cooperate with the financing process. (*See* R. pp. 6–7; Compl. ¶ 19 (Conversion), ¶ 21 (S.C. Unfair Trade Practices Act), ¶ 27 (Fraud).)

Though she has attempted to restyle a breach-of-contract claim as a series of torts, Ms. Walsh cannot avoid the scope of the parties' arbitration agreement, which applies to any dispute "arising out of or otherwise relating to" the sales contract. *See, e.g.*, *Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 5–9, 791 S.E.2d 128, 130–32 (2016) (enforcing an 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, 109–12, 739 S.E.2d 209, 213–15 (2013) (holding that "[a] clause which provides for arbitration of all disputes 'arising out of or relating to' the contract is construed broadly" and enforcing such an arbitration provision to cover a series of tort claims that bore a significant relationship to the parties' contract).

Because Ms. Walsh's claims here all seek to recover money that she tendered to Boat-N-RV pursuant to the sales contract, and that is rightly due to Boat-N-RV under that same contract, the claims alleged in this case unquestionably fall within the scope of the parties' arbitration clause. Ms. Walsh has never argued to the contrary.

B. The parties specifically agreed that they would arbitrate any dispute about the "making" of their sales contract.

Nor does Ms. Walsh's attack on the formation of the parties' contract form a basis to bypass arbitration. The arbitration provision here expressly states that any dispute about the "making" of the sales agreement is to be resolved through binding arbitration. (R. p. 12; Sales Contract at 2, ¶ 10 (all capital letters, bold, and underlined omitted).)

The United States Supreme Court has been clear that an arbitration agreement that delegates such threshold questions to an arbitrator for resolution is enforceable. *See, e.g.*, *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 68–69 (2010) ("We have recognized that parties can agree to arbitrate 'gateway' questions of 'arbitrability,' such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy."). This is consistent with the plain language of Section 2 of the Federal Arbitration Act. *See* 9 U.S.C. § 2 (providing that "[a] written provision" in any contract involving interstate commerce "to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . ***shall be valid, irrevocable, and enforceable***, save upon such grounds as exist at law or in equity for the revocation of any contract") (emphasis added).

Under *Rent-A-Center* and its progeny, the only way for Ms. Walsh to avoid the parties' arbitration clause here would have been to lodge an attack on the arbitration provision specifically, rather than the parties' sales agreement as a whole. *See, e.g.*, *Rent-A-Center*, 561 U.S. at 70 ("Thus, a party's challenge to another provision of the contract, or to the contract as a whole, does not prevent a court from enforcing a specific agreement to arbitrate."). She has made no such argument, nor can she legitimately do so now, as Ms. Walsh specifically conceded in Paragraph 7 of the complaint that she signed the sales contract that contains the arbitration provision. *See Charleston County Sch. Dist. v. Laidlaw Transit, Inc.*, 348 S.C. 420, 425, 559

S.E.2d 362, 364 (Ct. App. 2001) ("Any allegations, statements, or admissions contained in a pleading are conclusive against the pleader, and a party cannot subsequently take a contrary or inconsistent position.").

The circuit court properly recognized that Ms. Walsh agreed to the written contract that contains the arbitration provision. (R. p. 1; Order at 1 (stating that Ms. Walsh "signed a purchase agreement with Defendants").) The circuit court erred, however, when it ignored the arbitration provision's plain language and the *Rent-A-Center* line of case law, which provides that even the contract-formation issue that Ms. Walsh has raised falls within the scope of the parties' arbitration agreement and, accordingly, must be resolved through binding arbitration. As a result, the Court should reverse the circuit court's ruling and compel this case to arbitration.

II. The Regulation Z disclosure form does not somehow exempt this case from arbitration or otherwise undo the parties' sales contract.

In addition to setting aside an unambiguous line of authority that requires arbitration here, the circuit court misunderstood the parties' contract as creating a condition precedent to ***contract formation***, rather than as creating a condition precedent to ***contract performance***, because the parties agreed that Boat-N-RV would not deliver the vehicle to Ms. Walsh until she secured appropriate financing. The sole basis of the circuit court's ruling is a Regulation Z disclosure form, but that document does not support denial of arbitration for a variety of reasons.

A. The Regulation Z disclosure form is improper parol evidence that cannot be used to vary the terms of the parties' sales contract.

The circuit court erred first by stating that the parties' sales contract "[i]ncorporated" and "included" the Regulation Z disclosure form, and by stating that the terms of that disclosure form established a "condition precedent to the formation of any contract." (R. p. 2; Order at 2.) This is simply not true.

The sales contract contains a merger and integration clause that specifically precludes the circuit court's ruling:

> **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.

(R. p. 12; Sales Contract at 2, ¶ 15.)

Accordingly, the parol evidence rule prevents Ms. Walsh from attempting to add unwritten "conditions precedent" to the parties' sales contract through a different document. *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.").[3] Because the circuit court's ruling was singularly based on a document that was inadmissible parol evidence, its decision should be reversed.

B. The circuit court misunderstood what the Regulation Z disclosure form actually was.

The circuit court compounded its error by misunderstanding the impact of that inadmissible parol evidence. In the circuit court's view, a statement within the Regulation Z

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[3] The parties agreed that Tennessee law would govern their contract. (R. p. 12; Sales Contract at 2, ¶ 9.) 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. *See Airline Constr., Inc. v. Barr*, 807 S.W.2d 247, 259 (Tenn. Ct. App. 1990) ("Under the parol evidence rule parol evidence is inadmissible to contradict, vary, or alter a written contract where the written instrument is valid, complete, and unambiguous, absent fraud or mistake or any claim or allegation thereof.").

disclosure form that Boat-N-RV's obligation to deliver a vehicle to Ms. Walsh was "conditioned only upon the willingness of a third-party lender to finance the purchase" on certain terms amounted to a "condition precedent to the formation of any contract." (R. p. 2; Order at 2 (emphasis in original).) The circuit court's conclusion fundamentally misunderstands what a Regulation Z disclosure is, ignores the plain language of the disclosure form itself, and disregards the distinction between a condition precedent to contract performance and a condition precedent to contract formation.

1. The disclosure form is compelled by federal regulation and is not a part of the parties' contract.

Regulation Z is a federal regulation promulgated by the Board of Governors of the Federal Reserve System under the authority of the Truth in Lending Act. *See* 12 C.F.R. § 226.1(a) ("This regulation, known as Regulation Z, is issued by the Board of Governors of the Federal Reserve System to implement the federal Trust in Lending Act, which is contained in title I of the Consumer Credit Protection Act, as amended."). This regulation compels certain disclosures to consumers when they are attempting to secure financing. *See generally* 12 C.F.R. pt. 226 *et seq.* (outlining various disclosures to be made and procedures to be followed in consumer credit transactions). The disclosure form in this case is neither incorporated into nor a "condition precedent" of the parties' contract, as the circuit court found, but instead is only a set of disclosures required federal regulation.

2. The disclosure form expressly acknowledges that the parties have entered into a sales contract.

Moreover, the Regulation Z disclosure form here expressly acknowledges that the parties have "entered into a written agreement to purchase" a vehicle from Boat-N-RV. (R. p. 52; Regulation Z Disclosure Form.) The disclosure form cannot possibly create a "condition

precedent" to contract formation when, on its face, the form acknowledges that a contract already exists and has already been formed. Instead, the disclosure form simply acknowledges a point that is already imbedded into the sales contract: Boat-N-RV's performance under the sales contract and delivery of the vehicle to Ms. Walsh is conditioned on her securing financing and actually paying for the vehicle. (*Compare id.* (stating that performance of the sales contract is "conditioned only upon the willingness of a third-party lender ***to finance the purchase***") (emphasis added); *with* R. p. 12; Sales Contract at 2, ¶ 1 ("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.") (emphasis added).)

3. The so-called "condition precedent" was one of performance, not of contract formation.

Finally, the circuit court erred by disregarding the distinction between a condition precedent to ***performing*** a contract—which is a condition that, when performed, triggers additional obligations under the contract—and a condition precedent to ***forming*** a contract—the failure of which results in no contract existing in the first place. But courts agree that this is a critical distinction. *See, e.g.*, *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 339 n.2, 611 S.E.2d 485, 487 n.2 (2005) ("Respondent relies on *Wahl v. Hutto*, 249 S.C. 500, 155 S.E.2d 1 (1967), for this principle. *Wahl* is not implicated, because it involved a condition precedent to the formation of a contract, not its performance."); *see also Westlake Petrochemicals, LLC v. United Polychem, Inc.*, 688 F.3d 232, 240 (5th Cir. 2012) ("[T]he record makes clear that the condition of obtaining acceptable credit was at most a condition precedent to ***performance***, not to the formation of the contract.") (emphasis supplied by the *Westlake* court); *Mercury Dev., LLC v. Motel Sleepers, Inc.*, Case No. 11-147-GFVT, 2013 U.S. Dist. LEXIS 137370, at *8 (E.D. Ky. Sept. 25, 2013) ("[T]he requirement that MSI obtain financing was a condition precedent to

contract ***performance*** rather than to contract ***formation***.") (emphasis supplied by the *Mercury Development* court); *Weiss v. Nw. Broad., Inc.*, 140 F. Supp. 2d 336, 344 (D. Del. 2001) ("[T]he court finds that the Financing Agreement contained a condition precedent to performance and not a condition to formation of the contract.").

In fact, this distinction is dispositive here, as there cannot be any legitimate dispute that the parties actually formed their sales contract:

- The parties unambiguously agreed on the vehicle that Ms. Walsh was purchasing, the price she was paying, the "as-is" nature of the purchased vehicle, the vehicle she was trading in, the credit she was receiving for her trade-in, the cash she was depositing with Boat-N-RV, and the amount of financing that she was seeking to satisfy the remainder of the purchase price. (R. p. 11; Sales Contract at 1.)

- Ms. Walsh concedes that she signed the sales contract. (R. p. 5; Compl. ¶ 7.)

- Ms. Walsh concedes that she gave Boat-N-RV a $25,000 down payment and deposit, just as required by the sales contract. (R. p. 5; Compl. ¶ 8; R. p. 11; Sales Contract at 1.)

- Ms. Walsh concedes that Boat-N-RV has returned to the deposit to her, less the amount identified in the sales contract that Boat-N-RV would be entitled to keep. (R. p. 6; Compl. ¶ 18; R. p. 11; Sales Contract at 1.) This forfeiture-of-deposit provision is also discussed in the Regulation Z disclosure form. (R. p. 52; Regulation Z Disclosure Form.)

- When signing the Regulation Z disclosure, Ms. Walsh acknowledged that she had entered into a sales contract with Boat-N-RV. (R. p. 52; Regulation Z Disclosure Form.)

None of these materials suggests that a contract does not exist unless another future event occurs. Instead, the sole document upon which the circuit court based its ruling—again, a disclosure form required by federal law—specifically acknowledges that the sales contract is in place.[4] Because the circuit court misapprehended the requirement that Ms. Walsh secure

[4] As discussed above in Section I, this entire issue is one properly resolved by the arbitrator, rather than the Court, as it speaks to the "making" of the parties' sales contract, which they agreed would be resolved through arbitration. *Rent-A-Center*, 561 U.S. at 68–70.

financing as a condition precedent to contract formation, rather than simply as a condition precedent to Boat-N-RV completing its performance under the contract, the Court should reverse the circuit court's ruling, enforce the parties' arbitration provision, and compel this dispute to arbitration.

CONCLUSION

The parties unambiguously agreed to arbitrate this dispute, including Ms. Walsh's position regarding the "making" of their contract. The arbitration provision is broadly-worded and clear in its terms, and Ms. Walsh even concedes in her pleadings that she signed the sales contract containing the arbitration provision. Because the Federal Arbitration Act leaves no doubt that arbitration is required here, Boat-N-RV respectfully requests that this Court reverse the circuit court's order and compel this matter to arbitration.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

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