

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

Opinion No. 2019-UP-103
Appellate Case No. 2017-000120
Circuit Court Case No. 2016-CP-27-269

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APR 04 2019

SC Court of Appeals

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 OPPOSITION TO RESPONDENT'S MOTION FOR COSTS

Boat-N-RV respectfully opposes the Respondent's motion for costs on appeal because the appeal has not yet concluded. Boat-N-RV timely filed a Petition for Rehearing on March 28, 2019, in which it pointed out both that the Court failed to address the threshold issue of this appeal, *see Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 69–70 (2010) (holding that in order to bypass an arbitration agreement, a party must challenge that specific agreement itself, rather than challenging the entire contract in which the arbitration agreement is contained, and reiterating that a dispute regarding the formation of the arbitration agreement can be compelled to arbitration as well); and that the cases cited in the Court's summary opinion actually stand for the proposition that the parties' arbitration agreement must be enforced here, *see New Hope Missionary Baptist Church v. Paragon Builders*, 379 S.C. 620, 629–31, 667 S.E.2d 1, 5–6 (Ct. App. 2008)

(enforcing an arbitration agreement despite the plaintiff's argument that it never entered into the contract in which the arbitration agreement was contained, which is the exact situation presented in this case).¹

Because Boat-N-RV timely filed a petition for rehearing, the appeal remains pending, and no remittitur has been issued to the circuit court. *See Harleystville Mut. Ins. Co. v. State*, 401 S.C. 15, 23 n.2, 736 S.E.2d 651, 655 n.2 (2012) (“An opinion of an appellate court is not final until the remittitur is filed in the lower court. The timely filing of a petition for rehearing stays the sending of the remittitur, thereby depriving the decision of finality.”). A motion for appellate costs cannot come before an appeal is final, and in fact is not ripe until a remittitur has been issued. *See* Rule 222(d), SCACR (indicating that a motion for costs must be filed within fifteen days “of the issuance of the remittitur”). Accordingly, Respondent’s motion is premature, and should be denied.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: 

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Attorneys for Appellant

Columbia, South Carolina
April 2, 2019

¹ The Court cited *New Hope* in Paragraph 1 of the summary order with respect to the standard of review applicable to this case. That case, however, leaves no doubt that reversal is required here.

PROOF OF SERVICE

I, the undersigned Legal Assistant of the law offices of Womble Bond Dickinson (US) 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: Appellant's Opposition to Respondent's Motion for Costs

Parties Served:


Joshua R. Fester
Law Office of Darrell Thomas Johnson, Jr.
Post Office Box 1125
Hardeeville, SC 29927

Attorneys for Respondent

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SC Court of Appeals



Edwin T. Mathis

April 2, 2019



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April 2, 2019

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SC Court of Appeals

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

Re: Annalee Walsh v. Boat-N-RV Megastore and Ridgeland Recreational Vehicles, Inc.
Appellate Case No. 2017-000120

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of Appellant's Opposition to Respondent's Motion for Costs. Please return a clocked copy in the envelope provided. If we can provide the Court with any additional materials or information, please do not hesitate to call on us.

With kind regards, I remain

Very truly yours,

A handwritten signature in black ink, appearing to be "M. Todd Carroll", written over a horizontal line.



M. Todd Carroll

Enclosures
MTC/tm

cc: Joshua R. Fester



Womble Bond Dickinson (US) LLP
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<p>Womble Bond Dickinson (US) LLP 1221 Main Street, Suite 1600 Columbia SC 29201</p> <p style="text-align: right; border: 1px solid black; padding: 2px;">C076</p> <p>SHIP TO: The Honorable Jenny Abbott Kitchings South Carolina Court of Appeals Clerk of Court 1220 Senate Street Columbia SC 29201-3769</p> 	
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