THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM JASPER COUNTY
Court of Common Pleas

The Honorable Maité Murphy
Circuit Court Judge

Court of Appeals Opinion No. 2019-UP-103
Court of Appeals 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 ..... Petitioner.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Annalee Walsh, Respondent,

v.

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

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

Appellate Case No. 2017-000120

Appeal From Jasper County
Maite Murphy, Circuit Court Judge

Unpublished Opinion No. 2019-UP-103
Submitted February 1, 2019 – Filed March 13, 2019

AFFIRMED

Matthew Todd Carroll, of Womble Bond Dickinson (US) LLP, of Columbia, for Appellant.

Darrell T. Johnson, Jr., of Law Offices of Darrell Thomas Johnson, Jr. LLC, and Joshua Reece Fester, both of Hardeeville, for Respondent.

PER CURIAM: Ridgeland Recreational Vehicles, Inc., d/b/a Boat-N-RV Megastore (Boat-N-RV) appeals the circuit court's order denying its motion to compel arbitration. On appeal, Boat-N-RV argues the circuit court erred by: (1) denying its motion to compel arbitration; (2) considering the "Agreement Pending Financing/Regulation Z Disclosure Form" (the financing form) as part of the contract because it was improper parol evidence; and (3) finding the purchase agreement was conditioned upon the willingness of a third party to finance the purchase. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to Boat-N-RV's argument that the circuit court erred by denying its motion to compel arbitration: *Chassereau v. Global-Sun Pools, Inc.*, 363 S.C. 628, 631, 611 S.E.2d 305, 307 (Ct. App. 2005) ("The question whether a claim is subject to arbitration is a matter for judicial determination, unless the parties have provided otherwise."); *id.* ("Appeal from the denial of a motion to compel arbitration is subject to de novo review."); *New Hope Missionary Baptist Church v. Paragon Builders*, 379 S.C. 620, 625, 667 S.E.2d 1, 3 (Ct. App. 2008) ("Nevertheless, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports the findings."); *Chassereau*, 363 S.C. at 632, 611 S.E.2d at 307 ("Arbitration is a matter of contract, and a party cannot be required to submit to arbitration any dispute that the party has not agreed to submit.").

2. As to Boat-N-RV's argument the circuit court erred by considering the financing form as part of the contract because it was improper parol evidence: *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) ("[A]n issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [circuit court] to be preserved for appellate review." (quoting *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998))); *Burke v. AnMed Health*, 393 S.C. 48, 54, 710 S.E.2d 84, 87 (Ct. App. 2011) ("A contemporaneous objection is typically required to preserve issues for appellate review."); *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (finding if an issue is raised but not ruled upon, the party who raised the issue must file a Rule 59(e), SCRCP, motion to preserve the issue for appellate review).

3. As to Boat-N-RV's argument that the circuit court erred by finding the purchase agreement was conditioned upon the willingness of a third party to finance the purchase: *Worley v. Yarborough Ford, Inc.*, 317 S.C. 206, 210, 452 S.E.2d 622, 624 (Ct. App. 1994) (stating a condition precedent is "any fact other than the lapse of time, which, unless excused, must exist or occur before a duty of immediate

performance arises"); *McGill v. Moore*, 381 S.C. 179, 187, 672 S.E.2d 571, 575 (2009) ("If a contract contains a condition precedent, that condition must either occur or it must be excused before a party's duty to perform arises.").

AFFIRMED.[1]

LOCKEMY, C.J., and SHORT and MCDONALD, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

The South Carolina Court of Appeals

Annalee Walsh, Respondent,

v.

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

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

Appellate Case No. 2017-000120

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

_____ C.J.

_____ J.

_____ J.

Columbia, South Carolina

cc:

FILED
June 5, 2019

Matthew Todd Carroll, Esquire
Joshua Reece Fester, Esquire
Darrell T. Johnson, Jr., Esquire
The Honorable Maite Murphy

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
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Annalee Walsh..... Respondent,

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

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

PETITION FOR REHEARING

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INTRODUCTION

This case is controlled by the Federal Arbitration Act. Under that federal statute, there can be no room for disagreement: the parties' dispute must be compelled to arbitration pursuant to their unambiguous, comprehensive, and undisputed arbitration agreement.

Unfortunately, this Court's summary decision does not acknowledge or address this threshold, dispositive issue. Respectfully, the Court's order is contrary to an unbroken line of Supreme Court precedent that requires enforcing arbitration agreements when, as here, the party opposing arbitration challenges the enforceability of the whole contract in which the arbitration agreement appears. Though the summary decision does not address this threshold issue, it actually cites a prior opinion of this Court—*New Hope Missionary Baptist Church v. Paragon Builders*, 379 S.C. 620, 667 S.E.2d 1 (Ct. App. 2008), cited in Paragraph 1 of the summary decision with respect to the standard of review—that unequivocally stands for the proposition that arbitration is required under facts that are virtually identical to those presented here.

Accordingly, Boat-N-RV respectfully petitions for rehearing of this matter pursuant to Rule 221(a), SCACR, so that the Court can reconsider its ruling in light of controlling case law, including authorities cited in the summary opinion itself.

ARGUMENT

I. The Court's summary order overlooked the threshold issue of this appeal: enforcement of the parties' arbitration agreement under the Federal Arbitration Act, which is required by well-established Supreme Court precedent.

The Court's per curiam opinion only identifies three issues in this appeal: the standard of review, whether a parol-evidence objection was preserved, and a general statement of the law regarding conditions precedent. (Summary Order ¶¶ 1–3.) While Boat-N-RV respectfully disagrees with the Court's summary disposition of those issues and addresses them below in

turn, the chief error in the Court's order was the failure to address the threshold issue that governs this case: whether the Federal Arbitration Act requires arbitration here despite Ms. Walsh's argument that the parties' sales contract was conditioned on her securing third-party financing. Indisputably, it does.

There is no dispute that the parties' transaction involved interstate commerce, as Ms. Walsh is a New Jersey resident purchasing a recreational vehicle from Boat-N-RV, a South Carolina corporation. (R. p. 11, Sales Contract at 1.) Accordingly, the Federal Arbitration Act governs this appeal. *Am. Gen. Life & Accident Ins. Co. v. Wood*, 429 F.3d 83, 87 (4th Cir. 2005).

There is also no dispute that the parties entered into an ***arbitration agreement***; Ms. Walsh even concedes in the complaint that she signed the sales contract containing that agreement. (R. p. 5; Compl. ¶ 7; R. pp. 11–12; Sales Contract.) The arbitration agreement reads 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 presence of interstate commerce and the parties' arbitration agreement are the only two facts that matter regarding the sole issue on appeal, and any argument regarding a so-called "condition precedent" for the sales contract as a whole is irrelevant as a matter of law.

Beginning with *Prima Paint Corp. v. Flood & Conklin Manufacturing Co.*, 388 U.S. 395, 404 (1967); carrying through *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 449 (2006), and *Preston v. Ferrer*, 552 U.S. 346, 354 (2008); and recently reiterated again in *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 69–70 (2010), the United States Supreme Court has been clear that the presence of an arbitration agreement must be enforced regardless of challenges, such as the one that Ms. Walsh has made here, to the whole contract in which the arbitration agreement is contained. As the *Buckeye Check Cashing* Court stated: "We reaffirm today that, regardless of whether the challenge is brought in federal or state court, a challenge to the validity of the contract as a whole, and not specifically to the arbitration clause, must go to the arbitrator." 546 U.S. at 449. And as the *Rent-A-Center* Court summarized this line of cases: "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." 561 U.S. at 70.

The South Carolina Supreme Court has recognized this exact same distinction between attacks on a contract as a whole and attacks on an arbitration provision specifically. Like the United States Supreme Court, it has repeatedly held that an attack on the whole contract, such as Ms. Walsh's argument here, cannot avoid an arbitration agreement. *See, e.g.*, *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 540, 542 S.E.2d 360, 364 (2001) ("Under the [Federal Arbitration Act], an arbitration clause is separable from the contract in which it is embedded and the issue of its validity is distinct from the substantive validity of the contract as a whole."); *Jackson Mills v. BT Capital Corp.*, 312 S.C. 400, 403–04, 440 S.E.2d 877, 879 (1994) ("However, it is only when

a party has valid grounds upon which to challenge the arbitration clause itself that arbitration may be avoided."); *S.C. Pub. Serv. Auth. v. Great W. Coal, Inc.*, 312 S.C. 559, 562–63, 437 S.E.2d 22, 24 (1993) (adopting the *Prima Paint* analysis and holding that a party must make an "independent challenge to the arbitration clause," rather than dispute the contract as a whole, in order to avoid arbitration).

The trial court's holding reflects exactly the opposite of what *Rent-A-Center* and other controlling Supreme Court decisions require. In the order on appeal, Judge Murphy declined to enforce the parties' arbitration agreement "because the parties never formed a contract for the purchase of an RV." (R. p. 3; Trial Order at 3.) However, because a challenge to the contract as a whole cannot "prevent a court from enforcing a specific agreement to arbitrate," *Rent-A-Center*, 561 U.S. at 69–70, the trial court's decision was incorrect as a matter of law under the Federal Arbitration Act.

The ***only*** way that Ms. Walsh can bypass this unbroken line of Supreme Court precedent is to argue that the arbitration agreement itself somehow contains a "condition precedent." She has made no such argument here, nor would one make sense in any event. The plain language of the arbitration agreement forecloses such an argument, as it requires issues regarding "the making" of the parties' contract to be arbitrated. *See, e.g.*, *id.* at 68–69 ("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.").

Moreover, this Court has previously acknowledged this exact line of authority when enforcing an arbitration agreement within a contract that one party claimed was never entered. In *New Hope Missionary Baptist Church v. Paragon Builders*, 379 S.C. 620, 667 S.E.2d 1 (Ct. App. 2008), this Court held that arbitration was required in a dispute regarding the return of a deposit

(just like in this case) where the plaintiff alleged that it never entered into the contract containing the arbitration agreement (also just like in this case). As the Court recited: "[T]he Church argues it has numerous grounds on which ***the Contract*** is invalid and that 'the Contract simply does not exist as a Contract' in part because of Rose's inability to bind the Church." *Id.* at 629, 667 S.E.2d at 5 (emphasis supplied by the Court). The Court rejected those arguments against enforcing the arbitration agreement and recognized that "precedent forces a distinction to be drawn between disputes in which a party challenges the arbitration agreement itself and disputes in which only the overall contract is challenged." *Id.* at 631, 667 S.E.2d at 6. Because the plaintiff in that case did not challenge the arbitration agreement specifically, arbitration was required. *Id.* at 629–31, 667 S.E.2d at 5–6.

In its summary order, this Court actually cited *New Hope Missionary Baptist Church* for the proposition that "a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports the findings." (Summary Order ¶ 1.) But the Court's failure to compel arbitration here is squarely opposite of the outcome required by *New Hope Missionary Baptist Church*, *Rent-A-Center,* and the myriad other authorities cited above.

The summary order does not acknowledge or address the fundamental issue that is dispositive of the entire appeal, making it proper for rehearing under Rule 221(a), SCACR. Respectfully, Boat-N-RV requests that the Court grant this petition, reconsider its earlier order, reverse the trial court's decision, and compel this matter to arbitration consistent with the parties' unambiguous arbitration agreement and controlling case law.

II. Respectfully, the Court's analyses of the issues addressed its summary order are either incomplete or incorrect.

The Court should grant this Petition because the summary order overlooked the dispositive issue of this appeal. Moreover, of the issues that were addressed in the order, Boat-N-RV respectfully submits that the Court's analyses were incomplete or inconsistent with the record, as explained below.

A. The trial court's ruling is not entitled to any deference.

In Paragraph 1 of the summary order, the Court recited cases regarding the standard for reviewing the denial of a motion to compel arbitration. Among those is a citation—notably, to *New Hope Missionary Baptist Church*, which reaches the opposite conclusion than the Court's summary order—that reversal of a factual finding is not warranted if there is any evidence to support the finding. (Summary Order ¶ 1.) This deference is not warranted here because there is no factual finding that could support the denial of arbitration in this case.

As discussed above, the only issue relevant to the question of arbitrability is whether the parties entered into an arbitration agreement. The trial court did not make any "factual findings" on this point. Instead, Judge Murphy only stated (without a trial or any testimony) that the parties' sales contract ***as a whole*** was conditioned on financing. (R. pp. 2–3; Trial Order at 2–3.) But such a statement regarding the contract ***as a whole*** does not inform the issue of arbitrability; this is the very holding of *New Hope Missionary Baptist Church*, the case cited by the Court in support of this paragraph in is summary order.

Accordingly, the trial court's statement of fact regarding the parties' contract as a whole is not entitled to any deference at all. Boat-N-RV respectfully requests that the Court reconsider Paragraph 1 of its summary order to make the outcome of this case consistent with *New Hope*

Missionary Baptist Church, as well as *Rent-A-Center* and all of the other authorities cited in Section I of this Petition regarding enforcement of the Federal Arbitration Act.

B. Boat-N-RV preserved its argument to the Regulation Z disclosure form by objecting to the trial court's consideration of it, but the trial court rejected the objection and considered that document when making its ruling.

In Paragraph 2 of the summary order, the Court recited cases regarding issue preservation principles with respect to the question of whether a Regulation Z disclosure form amounted to inadmissible parol evidence. (Summary Order ¶ 2.) Respectfully, Boat-N-RV believes that issue was properly preserved for appellate review.

Boat-N-RV specifically objected to the trial court's consideration of that disclosure form. (R. pp. 15–16; Boat-N-RV's Memorandum in Support of Motion to Compel Arbitration at 3–4.) The trial court overruled that objection and considered the objected-to document when making its ruling. (R. p. 2; Trial Order at 2.) There is nothing more required to preserve the issue for this Court's review, and the Court should reconsider Paragraph 2 of its summary order accordingly.

C. The authorities cited regarding the final appellate issue expressly support Boat-N-RV's position, not affirmance of the trial court's ruling.

In the summary order's final paragraph, the Court cited two cases regarding Boat-N-RV's argument that the Regulation Z disclosure form did not create a condition precedent to contract ***formation***, as Ms. Walsh argues and the trial court found, but at most created a condition precedent to contract ***performance***.

Both of the cases cited in the Court's summary order squarely support Boat-N-RV's argument, as demonstrated by the Court's own parentheticals cited in the summary order. The Court's parentheticals are reproduced below with emphasis added:

- *Worley v. Yarborough Ford, Inc.*, 317 S.C. 206, 210, 452 S.E.2d 622, 624 (Ct. App. 1994) (stating a condition precedent is "any fact other than the lapse of time, which, unless excused, must exist or occur before a duty of immediate ***performance*** arises") (emphasis added); and

- *McGill v. Moore*, 381 S.C. 179, 187, 672 S.E.2d 571, 575 (2009) ("If a contract contains a condition precedent, that condition must either occur or it must be excused before a party's duty to ***perform*** arises.") (emphasis added).

This is exactly Boat-N-RV's point. To the extent that a Regulation Z disclosure form could ever create a so-called condition precedent, it could only create a condition precedent to ultimate ***performance*** of the parties' sales agreement: if Ms. Walsh did not get third-party financing to fully pay for her vehicle, then Boat-N-RV's performance of delivering the vehicle to her with good title is excused. But that has nothing to do with a condition precedent to contract ***formation***, and the authorities cited in the Court's summary order confirm Boat-N-RV's argument on this issue and make clear that reversal, rather than affirmance, is required.[1] As such, Boat-N-RV respectfully requests that the Court reconsider Paragraph 3 of its summary order.

CONCLUSION

The outcome of this case should be dictated by clear, well-established law regarding enforcement of the Federal Arbitration Act. Respectfully, because the Court overlooked or misapprehended those authorities—including the very authorities that the Court cited in its summary order—Boat-N-RV requests that it rehear and reconsider its decision in this case, enforce the parties' arbitration agreement according to its plain language, and reverse the trial court's order denying Boat-N-RV's motion to compel arbitration.

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[1] Again, this issue is a secondary one, as there has never been an argument that the Regulation Z disclosure form created any kind of condition precedent with respect to the parties' arbitration agreement. In the absence of an attack on the specific arbitration agreement, any discussion of conditions precedent regarding the sales contract as a whole is irrelevant, as Boat-N-RV noted on Pages 7 and 8 of its reply appellate brief.

Respectfully submitted,

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March 28, 2019

PROOF OF SERVICE

I, the undersigned Office Manager 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: Petition for Rehearing

Parties Served:

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March 28, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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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

[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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Columbia, South Carolina
September 25, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC 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.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This case essentially arises out of the Defendants'-Appellants' (hereinafter, "Defendants") wrongful retention of money that Plaintiff-Respondent (hereinafter, "Ms. Walsh") placed in trust with Defendants in anticipation of purchasing a recreational vehicle from Defendants. Defendants moved to compel arbitration pursuant to an arbitration clause found in a document referred to as a "purchase agreement." The Circuit Court properly held that the arbitration clause found in that document was not enforceable because there was no contract for the purchase of the subject vehicle, due to a failure of a condition precedent. Defendants filed a Notice of Appeal on January 18, 2017. It is undisputed that the vehicle has never been tendered or delivered to Plaintiff, nor was the trade-in vehicle ever tendered, delivered, or demanded.

FACTS

On or about September 13, 2015, Ms. Walsh visited Defendants' retail location in Ridgeland, South Carolina, near highway I-95. Ms. Walsh entered negotiations with agents or employees of Defendants for the purchase of a recreational vehicle and on that date also signed a document referred to as a "purchase agreement." The purchase agreement contained terms of a prospective contract for the purchase of a 2013 Mirada recreational vehicle for $95,000, paid partially through a trade-in. (R. p. 11). The purchase agreement also contained an arbitration clause and liquidated damages clause, providing for damages to the extent of Eleven Thousand Two Hundred Fifty Dollars ($11,250.00) or in the alternative submit to arbitration, in the event that Ms. Walsh canceled a contract with Defendants. (R. p. 11-12). In anticipation of forming a

contract for the purchase of the vehicle, Ms. Walsh provided a One Thousand ($1000.00) Dollar refundable deposit (paid by credit card), and a check for Twenty-Four Thousand ($24,000.00) Dollars. (R. p. 5, ¶¶ 8, 15). Included and incorporated into the written purchase agreement was an understanding that any purchase agreement or contract to purchase the vehicle would be conditioned upon securing third-party financing. A document signed contemporaneously with and incorporated into the purchase agreement, which is identified as the "Agreement Pending Financing/Regulation Z Disclosure," provides as follows: "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." (R. p. 38).

Ultimately, although Defendants applied for credit, no third-party financing was secured on the terms no less favorable than those listed in the Agreement. In fact, Ms. Walsh received notices from several creditors denying Defendants' credit applications. (R. pp. 39 – 43). Ms. Walsh subsequently demanded that Defendants return her deposit and down payment. Defendants refunded One Thousand ($1,000.00) Dollar deposit to her credit card, and sent a check for Twelve Thousand Seven Hundred Fifty ($12,750.00) Dollars, after several months, several demands by Ms. Walsh, and only after an attorney became involved. Defendants refused to return the remaining $11,250.00 of the money that Defendants held in trust, pending the formation of the sale contract. (R. p. 6, ¶¶ 18, 19).

STANDARD OF REVIEW

The Circuit Court denied Defendants' Motion to Dismiss or Compel Arbitration, holding that there was no enforceable arbitration clause, because the parties did not form a contract. Because the existence of a contract is a question of law, the determination of whether a claim is

subject to arbitration is subject to de novo review. *Aiken v. World Fin. Corp.*, 373 S.C. 144, 148, 644 S.E.2d 705 (2007) (citing *Wellman, Inc. v. Square D Co.*, 366 S.C. 61, 67, 620 S.E.2d 86, 89 (Ct. App. 2005)). However, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports the findings. *Id* (citing *Thornton v. Trident Med. Ctr., L.L.C.*, 357 S.C. 91, 94, 592 S.E.2d 50, 51 (Ct. App. 2003)).

ARGUMENTS

I. THE CIRCUIT COURT PROPERLY REFUSED TO ENFORCE AN ABRITRATION CLAUSE FOUND IN THE TERMS OF A PROSPECTIVE PURCHASE AGREEMENT, BECAUSE A CONTRACT WAS NEVER FORMED DUE TO FAILURE OF A CONDITION PRECEDENT.

Ms. Walsh never entered a contract with Defendants for the purchase of their recreational vehicle. A condition precedent to the formation of the contract existed, which did not occur. Because there is no contract, Ms. Walsh cannot be bound by any other terms of the purchase agreement, and there is no agreement to arbitrate any claims arising out of the non-existent contract.

Admittedly, and as pled in her complaint, Ms. Walsh signed a document referred to as "purchase agreement" with Defendants in anticipation of forming a contract for the purchase of a recreational vehicle in September of 2015. However, the parties understood and agreed that as condition precedent to the formation of the contract for the purchase of the vehicle, a third-party lender must have been willing to finance the purchase. This understanding is written in the terms of the purchase agreement and found in the Agreement Pending Financing/Regulation Z Disclosure. The plain language of this document, signed contemporaneously with the purchase agreement is that Ms. Walsh acknowledges entering "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 that those set forth immediately below." (R. p. 38). The Court

properly found as fact that "no third-party lender was willing to finance the purchase on the terms set forth in the agreement pending financing." (R. pp. 2 – 3) The Court also properly concluded that because this condition precedent was never met, there was no contract, and there was no enforceable arbitration agreement. (R. p. 3).

A. The Agreement Pending Financing/Regulation Z disclosure form is part of the "purchase agreement," and contains terms essential to any contract for sale and any consumer credit transaction.

The assertion of Defendants in their initial brief that the Agreement Pending Financing/Regulation Z Disclosure is "improper parol evidence" is without merit and has no basis in fact or law. In support of their claim, Defendants point to what they describe as a "merger and integration clause" on the back page of their purchase agreement stating that the front and back page of the purchase agreement contains the full and final expression of the agreement reached between the parties. However, Defendants are estopped from arguing that the Agreement Pending Financing/Regulation Z Disclosure is parol evidence because such disclosures are required by federal law and comprise essential terms to the formation of a contract. Although that document goes beyond Regulation Z in making the contract a pending agreement, Defendants are further estopped from taking this position because they did not deliver the vehicle. If the addendum relevant to financing were not a part of the arrangement, Defendant should have delivered the vehicle to Plaintiff.

Regulation Z "is issued by the Board of Governors of the Federal Reserve System to implement the federal Truth in Lending Act, which is contained in title I of the Consumer Credit Protection Act, as amended." 12 C.F.R. § 226.1(a). The regulation applies when (1) credit is offered or extended to consumers; (2) the offering or extension of credit is done regularly; (3) the credit is subject to a finance charge or is payable by a written agreement in more than four

installments; and (4) the credit is for personal, family, or household purposes. 12 C.F.R. § 226.1(b). In a closed-end credit transaction, Regulation Z requires that the amount financed, an itemization of the amount financed, finance charges, the annual percentage rate, payment schedule, and the total of payments, among other terms, must be disclosed to the consumer. 12 C.F.R. § 226.18. Because the purchase of the recreational vehicle would be a closed-end consumer credit transaction and an installment sale contract, the Agreement Pending Financing/Regulation Z Disclosure was required by Regulation Z as part of any contract for the sale of the vehicle, without which the transaction would have been illegal. That document, which is part of any prospective contract for an installment sale or consumer credit transaction, explicitly states that the entering of the written agreement is conditioned only upon the willingness of a third-party lender to finance the purchase. The Circuit Court found, and the Defendants admit, that no third-party lender offered to extend credit for the financing of the vehicle. Therefore, the Circuit Court's conclusion that there was no contract and no enforceable arbitration agreement was proper, and reasonably based upon the pleadings, the facts as pled, and Defendants' admissions.

Moreover, as further evidence of the absence of a contract, there was no meeting of the minds, because the terms of the loan were ultimately never specified, as no third-party lender offered credit in the transaction. Ms. Walsh could not have entered a contract to purchase a recreational vehicle on an installment sale basis, without having agreed to the terms of the credit offered by a potential third-party lender, or Defendants.

B. The Circuit Court correctly held that the arbitration clause found in the "purchase agreement" was not enforceable as the plain language of the Agreement Pending Financing/Regulation Z Disclosure creates a condition precedent to the formation of any contract.

In addition to the assertion that the Agreement Pending Financing/Regulation Z is somehow not part of the terms of the proposed agreement because it is compelled by federal

regulations, Defendants also argue that the Court erred in finding that the Agreement Pending Financing created a condition precedent to performance, but not a condition precedent to formation of the contract. A condition precedent to formation is one that must occur for a contract to exist. See *Wahl v. Hutto,* 249 S.C. 500, 155 S.E.2d 1 (1967). In *Wahl*, the Supreme Court of South Carolina held that an executed bond for title was an agreement to make title in the future upon the performance of certain conditions, that it did not constitute a sale, and there was no binding contract for sale when the condition precedent of securing adequate financing was an express condition of purchase. A plain reading of the Agreement Pending Financing indicates that Ms. Walsh did not enter the written agreement if a third party-lender was not willing to finance what, at that time, was only a potential and contemplated purchase of a recreation vehicle. This document reads as follows: "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." (R. p. 38). The terms of the Agreement Pending Financing made clear that the entire agreement, and thus, the formation of the contract, was conditioned upon securing financing from a third-party lender. This is further supported by language on page 2 of the purchase agreement which states that "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). (R. p. 12, ¶ 1). Therefore, much like in *Wahl*, there was no transfer of title and there was no complete purchase agreement, for failure of the condition precedent of securing financing. While Defendants cherry-pick and emphasize certain language in the Agreement Pending Financing in their brief, the Court properly held that there was no contract or agreement, based on a plain reading of this agreement.

Defendants further suggest in their initial brief that securing financing was a condition precedent to performance and that the parties agreed that "Boat-N-RV would not deliver the vehicle to Ms. Walsh until she secured appropriate financing." This also has no basis in fact or in the text of the documents before the Circuit Court before that court's ruling. At no point in the purchase agreement or the Agreement Pending Financing do the documents state or otherwise imply that securing financing was a condition precedent ***only*** to performance of Boat-N-RV performance or delivery of the vehicle. Moreover, neither the purchase agreement nor Agreement Pending Financing state that Ms. Walsh was ultimately responsible for securing financing for the purchase. In fact, the Agreement Pending Financing indicates that Defendants were to undertake to secure a third-party lender to finance the purchase and that Ms. Walsh was authorizing the Defendants to submit her credit to "any of its partner lenders identified" in the document. (R. p. 38). Prior to the Circuit Court's ruling Ms. Walsh submitted notifications that she received from five of Defendants' "partner lenders" declining financing of the potential purchase. While it is Ms. Walsh's position that the condition precedent to the formation of the contract was not ultimately fulfilled, regardless of which party bore the duty to secure third-party financing, the written terms of the prospective contract clearly demonstrate an understanding that Boat-N-RV was to search for and attempt to secure this financing, before a contract could come into existence.

Additionally, Defendants cite *dicta* from other jurisdictions in support of their argument that the willingness of a third-party lender to extend credit to Ms. Walsh for her potential purchase was a condition precedent to performance and not a condition precedent to the formation of the contract. The holdings in the cases cited by Defendants are not germane to the present case, as those cases involved arms-length business transactions between sophisticated parties, which did not trigger Regulation Z, promulgated under the Truth in Lending Act for personal consumer

transactions. Whereas, Defendants in the present case were compelled under Regulation Z to provide the terms of credit under any installment sale agreement. While they were not compelled by Regulation Z to state that the agreement was "pending[1]," in doing so, Defendants verified that there was no contract until there was financing.

II. THE FEDERAL ARBITRATION ACT DOES NOT APPLY SUCH THAT THE PRESENT CASE SHOULD BE COMPELLED TO ARBITRATION.

Although the Federal Arbitration Act may well apply to an agreement between Ms. Walsh and Defendants to arbitrate if a contract to purchase a vehicle from Defendants had been formed, the Federal Arbitration Act does not compel her to arbitration because there was no agreement to purchase a vehicle for failure of the condition precedent to the formation of the contract. Because there is no contract between the parties, the arbitration clause found in the terms of the proposed contract could not be enforced by the Court, pursuant to the Federal Arbitration Act.

The arbitration clause found in the "purchase agreement" states as follows:

> 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 INLCUDING THE MAKING THEREOF, SHALL BE RESOLVED THOUGH (sic) BINDING ARBITRATION, WITH THE SEAT OF SUCH ARBITRATION TO BE TO BE LOCATED IN KNOX COUNTY, TENNESEE, TO THE EXCLUSION OF ALL OTHER LOCALES . . .**

(R. p. 12, ¶ 10).

The arbitration clause states that the purchase and sale of the Vehicle(s) described on the first page of the agreement is an act of interstate commerce. However, as discussed thoroughly above, there

[1] The term Pending is defined as "Begun, but not yet completed; during; before the conclusion of; prior the completion of; unsettled; undetermined; in process of settlement or adjustment. *Pending*, Black's Law Dictionary (4th Ed. 1968).

was no purchase or sale of the vehicle, which would constitute interstate commerce, and there is no agreement to arbitrate, exclusive of any agreement for the purchase or sale of the vehicle.

Defendants argue that because the arbitration clause refers to the "making" of the contract, the parties agreed to arbitrate whether or not the parties had formed a contract. In support of this contention, Defendants cite *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63 (2010), in which the U.S. Supreme Court recognized that "gateway" questions of arbitrability could be compelled to arbitration. However, the "making" of any agreement refers to negotiation of the terms, not the construction of the contract. Whether there was a contract or an agreement to arbitrate in the first right is question of law properly decided by the Circuit Court, and not contained in the arbitration agreement. Therefore, assuming *arguendo* there was an agreement to arbitrate separate from the purchase or sale of the vehicle, which Ms. Walsh fervently disputes, the arbitration clause does not extend to whether a contract exists; rather, it would only apply to disputes about negotiation or interpretation of the terms of a contract. Moreover, in *Rent-A-Center*, the issue before the Court was whether the threshold issue of enforcement of the arbitration clause (whether the arbitration clause was conscionable) could be compelled to arbitration, not whether there was a contract or agreement to arbitrate existed at all. Accordingly, the Circuit Court correctly held that the present case could not be compelled to arbitration because the question of whether there was a contract was a question of law, and this conclusion was reasonably based upon the evidence before the Circuit Court.

III. DEFENDANTS DID NOT MOVE THE CIRCUIT COURT TO ALTER OR AMEND ITS JUDGMENT PURSUANT TO SCRCP RULE 59, AND IN THEIR OMMISSION, DEFENDANTS FAILED TO PRESERVE THEIR ARGUMENTS FOR APPEAL.

The bulk of Defendants arguments on appeal are not properly before this Court or are based upon facts that were not preserved for argument on appeal, because Defendants failed to move to

alter or amend the Circuit Court's Order, pursuant to SCRCP Rule 59. Accordingly, any arguments or evidence not properly preserved for appeal should not be considered by this Court in rendering its decision.

A. The scope of this Court's Review is limited only to the issues addressed by the Circuit Court in its Order Denying Defendants' Motion to Compel Arbitration.

On the date of the hearing, Defendants submitted a Memorandum in Support of Motion to Compel Arbitration, in which Defendants argued broadly that the case implicates the Federal Arbitration Act because it involved the sale of a "vehicle to a New Jersey resident from a South Carolina-based business." (R. p. 14, ln. 6). Defendants also generally argued that based upon the language of the arbitration clause, the Circuit Court should submit the matter to arbitration. In support of their Motion to Compel Arbitration, Defendants submitted Orders in two other cases in which they were defendants, wherein the 14th Circuit Court of Common Pleas compelled arbitration based upon the same or substantially similar arbitration clause. Notably, however, both cases involved complaints alleging breach of contract after the Plaintiffs had already purchased and took possession of vehicles from Boat-N-RV. (R. pp. 22-34).

In response to Ms. Walsh's argument at the hearing and in her Memorandum in Opposition to Motion to Compel, Defendants submitted their Reply in Support of Motion to Compel Arbitration, dated September 26, 2016. Defendants' Reply commences with the absurd statement that Ms. Walsh's counsel had not provided to Defendants a copy of the Agreement Pending Financing/Regulation Z, a document in Defendants' possession that was signed contemporaneously with and integrated into any prospective agreement, which Defendants happened to conveniently leave out of the materials that they presented to the Court in support of their Motion. (R. p. 34, ln. 8 – 13). In their Reply, Defendants erroneously represented to the Court

that the Agreement Pending Financing states that there is "an acknowledgement that the parties have entered into a contract to purchase a vehicle," when the document reads that any written agreement is "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." (R. p. 44, ln. 14 – 15; R. p. 38). Although it is clear from the language of the Agreement Pending Financing that Defendants were to secure the financing through a third-party "partner lender," Defendants asserted in their Reply that Ms. Walsh had obligations to secure financing. *Id.* Defendants further stated, but the Circuit Court did not find, that Plaintiff somehow failed to "cooperat[e] with potential lenders to secure financing" and argued that this did not eliminate the contract. (R. p. 45, ln 8).

On November 10, 2017, Judge Murphy's law clerk sent an email stating that after "taking the matter under advisement and considering the pleadings, memorandum, and arguments" the Court was denying Defendants' Motion to Compel Arbitration. (R. p. 50). On that same date, counsel for Defendants emailed the Honorable Maité Murphy through her law clerk to express his disagreement with the Court in its decision to deny the Motion. In this informal communication, counsel for Defendants argued that Ms. Walsh was actually responsible for securing financing and that she failed to cooperate with Defendants in their efforts to secure a third-party lender. In support of this assertion, Defendants attached a PDF document to the email, which contained what Defendants purport to be an electronic statement from a potential creditor with some handwritten notes, not identified or authenticated by Defendants, and a copy of the Agreement Pending Financing/Regulation Z, which appears to include handwritten editions of the terms originally set forth and compulsorily disclosed pursuant to Regulation Z. (R. pp. 51, 52). After Ms. Walsh submitted a proposed order pursuant to the Court's instructions, counsel for Defendants sent yet another email to Judge Murphy's chambers objecting to the order, arguing again that the Court

erred in denying the motion and asking that the Court permit discovery on the facts surrounding the arbitrability of the case. (R. p. 54). Defendants' informal arguments and objections via email were later filed with the Court as "Objections to Proposed Order Regarding Motion to Compel Arbitration," dated November 14, 2016. (R. pp. 46 – 55). Ultimately, however, Defendants neither moved to alter or amend the Court's judgment pursuant to SCRCP Rule 59, nor did they attempt to reopen the record to submit this evidence to the Court. Instead, Defendants filed a Notice of Appeal on January 19, 2017.

South Carolina appellate practice rules provide that this Court "may affirm any ruling, order, or judgment upon any ground(s) appearing in the Record on Appeal." SCACR Rule 220(c). A respondent's brief may also "contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c)." SCACR Rule 208(b)(2). In contrast, different preservation rules apply to an appellant. The appellant, by way of a motion to alter or amend judgment pursuant to Rule 59, "must first try to convince the lower court it . . . has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred." *I'On, L.L.C. v. Town of Mt. Pleasant*338 S.C. 406, 422, 526 S.E.2d 724 (2000). This principle is based upon the "long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments." *Id.* (citing *Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427 (1995)). Moreover, if the appellant raised an issue and the court failed to rule upon it, the appellant must file a motion to alter or amend the decision in order to preserve the issue for appellate review. *Id.*

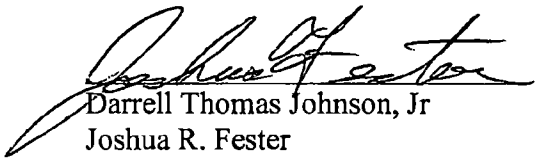
Because the Defendants failed to move to alter or amend the decision of Circuit Court, this Court's review of the Circuit Court's decision is limited only to the issues found in the Order. In

its Order, the Circuit Court found that a third-party lender's willingness to finance the purchase of the RV was a condition precedent to the formation contract and that the arbitration agreement was not enforceable because there was no meeting of the minds and no contract to purchase an RV. Any arguments found in any of the memoranda or informal communications with the Circuit Court via email, besides argument about these issues, should not be considered by this Court. Accordingly, the following arguments by Defendants are not properly preserved for this Court's review: the Agreement Pending Financing is parol evidence that should be disregarded; that the terms of the Agreement Pending Financing constituted a condition precedent to performance rather than to formation of a contract; that Ms. Walsh was responsible for securing financing for the potential purchase and failed to do so; that the arbitration agreement existed independent of the formation of a contract and applied to the question of whether or not a contract existed; and that the Federal Arbitration Act applies and requires that the Circuit Court compel arbitration pursuant to the arbitration clause. Moreover, the appellate preservation rules do not extend to informal communications with the Court after a Court's ruling, and, unfortunately for Defendants, emails to the Court's chambers are no substitute for a motion to alter or amend, pursuant to Rule 59. Therefore, the arguments and additional information found in those emails sent to the Circuit Court's chambers, and later memorialized by Defendants' Objections to Proposed Order Regarding Motion to Compel Arbitration, are improper for this Court's consideration. Consideration of these "objections," particularly, would be contrary to long-established rules of issue preservation and would be manifestly unfair to Ms. Walsh, who did not have the opportunity to address the issues which were discussed by Defendants.

CONCLUSION

For the reasons stated above, this Court should Affirm the judgment of the Circuit Court.

Respectfully Submitted,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC 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.

APPELLANT'S REPLY BRIEF

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INTRODUCTION

Ms. Walsh's opposition to Boat-N-RV's appellate arguments is entirely detached from reality. In her complaint, Ms. Walsh admits that she signed the very sales contract that contains the parties' arbitration agreement. (R. p. 5; Compl. ¶ 7.) That arbitration agreement is found on Page 2 of the sales contract—the same page that begins by confirming that "Buyer [*i.e.* Ms. Walsh] has entered into this Agreement" to purchase a recreational vehicle from Boat-N-RV. (R. p. 12; Sales Contract at 2.) Likewise, the relief Ms. Walsh seeks through her complaint is to recover money that she deposited with Boat-N-RV ***pursuant to the contract*** but later forfeited due to her own breach.

Yet at both the trial level and on appeal, Ms. Walsh insists that the parties never entered into a contract, and she does so only to avoid the parties' arbitration agreement. As explained in Boat-N-RV's opening brief, this is an illusory argument that courts have rejected time after time, and Ms. Walsh has not provided a single authority to rehabilitate her empty position. The Court should reject Ms. Walsh's posturing and reverse the circuit court's denial of Boat-N-RV's motion to compel arbitration.

ARGUMENT

I. Boat-N-RV has properly preserved the question of arbitrability for appellate review.

Exposing the weakness of her position, Ms. Walsh tries to avoid dealing with the issues of this appeal by arguing at length that they have not been preserved for review. (Return Br. at 10–14.) The sole basis for her position is that Boat-N-RV did not file a Rule 59 motion after the circuit court denied its motion to compel arbitration. Ms. Walsh's procedural argument, however, is based on a fundamental misunderstanding of preservation principles.

This Court has appellate jurisdiction to address errors that appear in an order on appeal that were timely and sufficiently raised by the appellant at the trial level. *S.C. DOT v. First Carolina Corp.*, 372 S.C. 295, 301–02, 641 S.E.2d 903, 907 (2007). A Rule 59 motion is only required when a party makes an argument that is not ruled upon in a circuit court's initial order. *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

That is not the case here. The issue on appeal—whether this matter is subject to arbitration—was the sole question presented to the circuit court. Boat-N-RV explained to the circuit court that this case is subject to arbitration because:

- The parties' sales contract contains a broad arbitration agreement, and their transaction is governed by the Federal Arbitration Act (R. pp. 13–15; Memorandum in Support of Motion to Compel Arbitration at 1–3);
- Ms. Walsh concedes in her complaint that she signed the sales contract (R. p. 15; *id.* at 3);
- The Regulation Z Disclosure Form is inadmissible parol evidence (R. pp. 15–16; *id.* at 3–4);
- Any dispute about the making of the parties' contract falls within the scope of the arbitration agreement (R. p. 16; *id.* at 4); and
- There is no "condition precedent" to actually making the sales contract, but instead Ms. Walsh breached her own obligations under the contract (R. pp. 46–55; Objections to Proposed Order).[1]

The circuit court disagreed with Boat-N-RV's arguments, held that no contract existed between the parties, and refused to compel this matter to arbitration. (R. p. 1; Order.) Nothing more was required for Boat-N-RV to preserve the question of arbitrability for this Court's review. Accordingly, the Court should reject Ms. Walsh's baseless procedural objections to this appeal.

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[1] Boat-N-RV filed the objections that it previously emailed to the presiding judge's law clerk and opposing counsel two months before entry of the order on appeal. (R. p. 46.) Accordingly, Ms. Walsh's repeated suggestion that arguments included in those emails are not part of the record and cannot be considered on appeal is just not true.

II. Ms. Walsh has not identified any authority to rebut Boat-N-RV's appellate position or to support her own arguments.

Ms. Walsh's substantive arguments are similarly empty. In Boat-N-RV's opening brief, it argued that the transaction involved interstate commerce sufficient to trigger the Federal Arbitration Act, and the arbitration agreement itself was broad enough to cover both the claims alleged in Ms. Walsh's complaint and her newfound challenge to the contract's making. (Boat-N-RV's Opening Br. at 6–9.) It then argued that a Regulation Z Disclosure Form cannot undo the plain language of the arbitration agreement. (*Id.* at 9–14.)

In response, Ms. Walsh flips the order of the arguments. First, she argues that the Regulation Z Disclosure Form somehow created an unsatisfied condition precedent to the formation of the parties' sales contract—even though that disclosure form expressly confirms that the parties "have entered" into a contract for a recreational vehicle. (Return Br. at 3–8.) She then argues that the parties' agreement to delegate gateway issues to an arbitrator should be artificially limited to disputes about the "negotiation" of their contract. (*Id.* at 8–10.) Ms. Walsh is wrong in every respect.

A. Courts have repeatedly rejected Ms. Walsh's argument that a financing condition implicates contract formation, rather than contract performance.

There is no dispute that the parties signed a sales agreement for the purchase of a recreational vehicle; Ms. Walsh concedes this in her complaint. (R. p. 5; Compl. ¶ 7.) The sales agreement confirms that the parties have entered into a contract: "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')." (R. p. 12; Sales Contract at 2 (emphasis added).)

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

And Ms. Walsh concedes that Boat-N-RV has returned that deposit to her, less the amount that it is entitled to keep ***pursuant to the parties' sales contract***. (R. p. 6; Compl. ¶ 18; R. p. 11; Sales Contract at 1.)

Despite all of this, including her own partial performance, Ms. Walsh insists that the parties never entered any contract—and therefore attempts to bypass the parties' unambiguous arbitration provision—because she never got a loan to pay Boat-N-RV the remaining balance owed on the unit. The Court should reject such illusory posturing.

Courts around the country have held that a financing provision within a contract amounts to a condition precedent to contract performance, not to formation. *See generally Westlake Petrochemicals, LLC v. United Polychem, Inc.*, 688 F.3d 232, 240 (5th Cir. 2012); *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); *Weiss v. Nw. Broad., Inc.*, 140 F. Supp. 2d 336, 344 (D. Del. 2001).[2]

The lone case that Ms. Walsh cites in response to this body of authority is *Wahl v. Hutto*, 249 S.C. 500, 155 S.E.2d 1 (1967). Simply put, that case has nothing to do with the issue presented here.

In *Wahl*, a property owner and a prospective buyer drew up a sales contract with the understanding that the sole purpose of that writing was to help the potential buyer get a loan. *See id.* at 504, 155 S.E.2d at 3 (explaining that both the potential seller and potential buyer testified that the purpose of creating a purported written contract was solely to facilitate a potential loan, and that no contract actually existed between them). The potential sale ultimately fell through,

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[2] Boat-N-RV cited these cases on Pages 12 and 13 of its opening brief. In response, Ms. Walsh first states that the contract performance-versus-formation distinction highlighted in these cases was only discussed in *dicta*—which is a total mischaracterization of these authorities. (Return Br. at 8.) Ms. Walsh then claims that these cases "are not germane" because they involved "arms-length business transactions between sophisticated parties"—which is an observation that is irrelevant to the distinction between contract performance and contract formation. (*Id.*)

but a real estate broker—who was not even a party to the nonexistent sales contract—nevertheless demanded a sales commission pursuant to a separate brokerage agreement. *Id.* at 504, 155 S.E.2d at 3. The Supreme Court held that because the brokerage agreement was conditioned on a sale occurring but no sale took place, the broker was "not entitled to recover commissions for a sale." *Id.* at 506, 155 S.E.2d at 4.

Wahl bears no resemblance to this case, and South Carolina courts have been quick to cabin *Wahl* to its peculiar facts. For instance, in *Champion v. Whaley*, 280 S.C. 116, 122–23, 311 S.E.2d 404, 407–08 (Ct. App. 1984), a realtor brought a prospective buyer to a seller that he represented. The prospective buyer and seller entered into a sales contract "conditioned on [the buyer] obtaining a 100% loan from Farmers Home Administration." *Id.* at 118, 311 S.E.2d at 405. While that buyer was seeking her loan, the seller sold the house to a different buyer. *Id.* at 118–19, 311 S.E.2d at 405. The realtor then sued for his commission.

Just as Ms. Walsh does here, the seller in *Champion* argued that no contract existed and cited *Wahl* as authority. *Id.* at 123, 311 S.E.2d at 408. This Court readily rejected that argument based on *Wahl*'s unique facts. Instead, it held that the financing condition in the *Champion* contract was a condition of contract performance, not of formation, and that the seller could not rely on his own breach to avoid paying the realtor's commission. It explained:

> The trial judge also erred in holding the Sellers were not bound to pay the commission because negotiations were not complete between Bell [*i.e.*, the initial buyer] and the Sellers. Bell and the Sellers signed a contract of sale on December 7, 1979. At that point nothing was left to negotiate. The parties had reached a final bargain. A valid executory contract had been made, complete in all its essential terms. Only performance remained. While Bell's duty of performance was qualified by the condition that she obtain a 100% FmHA loan, the existence and validity of the contract did not depend upon the happening of the condition.

Id. at 122, 311 S.E.2d at 407–08.

These are precisely the same circumstances that are presented here. Boat-N-RV and Ms. Walsh signed a sales contract that memorialized a meeting of the parties' minds with respect to all essential terms, including *inter alia*: (a) the recreational vehicle Ms. Walsh was purchasing, (b) the purchase price, (c) the "as-is" nature of the unit she was purchasing, (d) the vehicle she was trading in, (e) the credit she was receiving for her trade-in, (f) the money she was depositing with Boat-N-RV, (g) the amount of her deposit that she would forfeit if she canceled the contract, and (h) the amount of financing she would secure to fulfill the remainder of the purchase price. (R. p. 11; Sales Contract at 1.)[3] In the *Champion* Court's words: "At that point nothing was left to negotiate. The parties had reached a final bargain." 280 S.C. at 122, 311 S.E.2d at 407.

All that remained was for the parties to perform their respective obligations: Ms. Walsh had to finish paying for the vehicle, after which Boat-N-RV would deliver it to her with good title.[4] And Ms. Walsh even began her performance, as she admits that she gave Boat-N-RV the down payment due under the contract. (R. p. 5; Compl. ¶ 8.)

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[3] In her return brief, Ms. Walsh suggests that the sales contract remained unsettled because "the terms of the loan were ultimately never specified." (Return Br. at 5.) This is misleading at best. The terms of Ms. Walsh's contract with Boat-N-RV were final and agreed-upon. Any loan that she would have gotten to finish paying for the vehicle would have been the subject of a separate agreement between Ms. Walsh and a third-party lender. The fact that Ms. Walsh did not enter into a different contract with a different entity has no bearing on whether she and Boat-N-RV had a meeting of the minds with respect to their transaction.

[4] Indeed, because Ms. Walsh had already entered into a contract and was obligated to finish paying for the vehicle, the Regulation Z Disclosure Form required her to attest: "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." (R. p. 52; Regulation Z Disclosure Form (emphasis in original).) The "condition" was Ms. Walsh's obligation to pay Boat-N-RV for the vehicle; her failure to meet that "condition" prompted Boat-N-RV to return only a portion of her deposit, just as the parties agreed in their sales contract. (R. p. 11; Sales Contract at 1.) The Regulation Z Disclosure Form even concludes by reinforcing that Ms. Walsh's failure to uphold her part of the bargain could result in "the forfeiture of any cash

Though she never got a loan to pay the balance due for the vehicle, that failure only relieved Boat-N-RV from its obligation to actually give her the coach; it did not mean, as Ms. Walsh argues and the circuit court incorrectly held, that the parties' contract never existed in the first place. *See Champion*, 280 S.C. at 122, 311 S.E.2d at 408 ("The fact that no duty of performance can arise until the happening of a condition does not make the existence of the contract depend upon its happening, unless the parties so intend [such as in *Wahl*]."). The Court should reverse the circuit court's ruling accordingly.

B. The Court does not need to reach the contract formation-versus-contract performance question because the parties agreed that all disputes about the "making" of their contract would be resolved by an arbitrator.

As explained in Boat-N-RV's opening brief, the Court does not even need to reach the "condition precedent" question because the parties indisputably agreed that any issue regarding the "making" of their sales contract would be subject to arbitration.[5] The sales contract—again, Ms. Walsh concedes in her complaint that she signed this agreement and began her performance under it—specifically assigns gateway questions regarding the parties' sales contract to an arbitrator for resolution. (*See* R. p. 12; Sales Contract at 2 (providing that any dispute "relating to this agreement, including the making thereof, shall be resolved through binding arbitration") (all capitals, bold, and underlined in original omitted).)

When the parties agree that such gateway questions are to be resolved by an arbitrator, the court's role is limited to sending the matter to arbitration. *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

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deposit placed with Boat-N-RV" pursuant to the sales contract. (R. p. 52; Regulation Z Disclosure Form.) There is simply no way that the parties do not have a contract here.

[5] In her return brief, Ms. Walsh does not provide any rebuttal to Boat-N-RV's argument that the claims she has asserted in this litigation fall within the arbitration agreement's scope, which applies to "any claim or controversy arising out of or otherwise relating to" the sales contract. (R. p. 12; Sales Contract at 2 (all capitals, bold, and underlined in original omitted).)

'gateway' questions of 'arbitrability,' such as ***whether the parties have agreed to arbitrate*** or whether their agreement covers a particular controversy.") (emphasis added). The only exception to this rule is when a party challenges the arbitration agreement itself, rather than the contract as a whole. *See id.* 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.").

Because Ms. Walsh's attempt to avoid arbitration is based on her challenge to the parties' sales contract as a whole, rather than a specific challenge to the arbitration agreement, her efforts to end-run the arbitration agreement should fail, and this case should be stayed so that an arbitrator can address all of the issues presented in Ms. Walsh's complaint.

Nowhere in her return brief does Ms. Walsh address this error in the circuit court's ruling or even respond to Boat-N-RV's argument. Instead, she claims that the phrase "making thereof" in the arbitration agreement is limited only "to negotiation of the terms, not the construction of the contract." (Return Br. at 9.) She does not offer any authority or support for her cramped reading of the contract. The absence of any support for Ms. Walsh's position is no surprise, as the "making thereof" language in the parties' arbitration provision tracks the Federal Arbitration Act's own language with respect to all gateway issues.

Section 4 of the Federal Arbitration Act requires a court to send a case to arbitration "upon being satisfied that the ***making of*** the agreement for arbitration" is not in issue. 9 U.S.C. § 4 (emphasis added). As noted above, the Supreme Court has been clear that even this question—that is, the "making of" an arbitration agreement—can be resolved by an arbitrator if an arbitration agreement so provides. *Rent-A-Center*, 561 U.S. at 68–69. Because the parties' arbitration agreement here delegates to the arbitrator the same "making of" jurisdiction to resolve gateway issues that would otherwise be reserved to the court under the Federal Arbitration Act,

the Court should reject Ms. Walsh's artificial limitation of the parties' arbitration provision, and it should reverse the circuit court's denial of Boat-N-RV's motion to compel arbitration.

Such an outcome would be consistent with the plain language of the arbitration agreement, the Supreme Court's guidelines for enforcing such provisions, and the strong presumptions favoring arbitration. *See, e.g., Am. Recovery Corp. v. Computerized Thermal Imaging*, 96 F.3d 88, 92 (4th Cir. 1996) ("Thus, we may not deny a party's request to arbitrate an issue 'unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.'" (quoting *United Steelworkers of Am. v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 582–83 (1960))).

CONCLUSION

Ms. Walsh concedes in her complaint that she signed the parties' sales contract. She also concedes in her complaint that she began, but did not complete, her performance under the contract. Importantly, Ms. Walsh does not dispute that the sales contract contains a broad arbitration provision that applies to her claims in this case—which are to recover a portion of a deposit that she made pursuant to the parties' contract, and that Boat-N-RV is entitled to keep pursuant to the contract.

In short, Ms. Walsh's suggestion that no contract actually exists between the parties is baseless. So, too, is her argument that the parties' agreement to arbitrate any dispute about the "making" of their contract is limited only to disputes about their "negotiations." Accordingly, the Court should reject her posturing, reverse the circuit court's ruling, and enforce the parties' arbitration agreement according to its plain language.

Respectfully submitted,

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

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By:_____

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September 25, 2017

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

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Annalee Walsh..... Respondent,

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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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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.

Maite' Murphy

The Honorable Maite Murphy
Presiding Judge

Jan. 12, 2017

STATE OF SOUTH CAROLINA	)	FOURTEENTH JUDICIAL CIRCUIT
	)	COURT OF COMMON PLEAS
COUNTY OF JASPER	)	CASE NO.: 2016-CP-27-269
	)	
Annalee Walsh,	)	
	)	
Plaintiff,	)	
	)	COMPLAINT
Vs.	)	(Jury Trial Demanded)
	)	
Boat-N-RV Megastore and Ridgeland Recreational Vehicles, Inc.,	)	
	)	
Defendants.	)	

2016 JUN 20 PM 1:25
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.

Warren Paul Johnson
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Attorney for Plaintiff

June 17, 2016

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

Defendant[1] 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

[1] 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 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	NEW/USED/DEMO	MAKE	MODEL	SERIES
2013	NEW ☐ USED ☒ DEMO ☐	MIRADA	35DL	

TYPE	COLOR	TRIM	MILEAGE	VIN
				1F66F5DY4C0A05943

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: _____

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

Year	Mileage	Make	Model	Color
2011		OPEN	340FLR	

Plate No.	Exp. Date	VIN

Trade in is clear of all liens except: Amt. Owed $ N/A

LESS TRADE-IN CREDIT	(-)	22850.00			
DISCOUNT	(-)	5002.00			
CASH PRICE	(+)	67148.00			

TAXES AND OTHER FEES

SALES TAX	4728.01			
DOC FEE	395.00			
Title Certificate	15.00			
Tag and Registration	30.00			
INSPECTION FEE	N/A			
TOTAL CASH PRICE	72316.01			
REBATE IF APPLICABLE	N/A			
LESS CASH SUBMITTED WITH ORDER	N/A			
PLUS BALANCE OWING ON TRADE-IN	N/A			
AMOUNT FINANCED	47316.01			
CASH ON DELIVERY	25000.00			

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.

Initials _____ Initials _____

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: _____ Date: 9/13/2015

Co-Buyer's Signature: _____ Date: _____

Seller Approved By: _____ 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 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 THOUGH 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	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	FOURTEENTH JUDICIAL CIRCUIT
Annalee Walsh,	)	Civil Action No. 2016-CP-27-269
Plaintiff,	)	
vs.	)	MEMORANDUM IN SUPPORT OF MOTION TO COMPEL ARBITRATION
Boat-N-RV Megastore and Ridgeland Recreational Vehicles, Inc.,	)	
Defendants.	)	

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.").[1]

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.

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[1] 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 29936

☐ Boat-N-RV Supercenter
2475 Westel Road
Rockwood, TN 37854

☐ 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	NEW	USED	DEMO	MAKE	MODEL	SERIES
2013	☐	☒	☐	MIRADA	35DL	

TYPE	COLOR	TRIM	MILEAGE	VIN
				1F66F5DY4C0A05943

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:

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

Year	Mileage	Make	Model	Color
2011		OPEN	340FLR	

Plate No.	Exp. Date	VIN

Trade in is clear of all liens except: | Amt. Owed $ N/A

LESS TRADE-IN CREDIT	(-)	22850.00
DISCOUNT	(-)	5002.00
CASH PRICE	(+)	67148.00

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.

Initials Initials

SALES TAX	4728.01
DOC FEE	395.00
Title Certificate	15.00
Tag and Registration	30.00
INSPECTION FEE	N/A
TOTAL CASH PRICE	72316.01
REBATE IF APPLICABLE	N/A
LESS CASH SUBMITTED WITH ORDER	N/A
PLUS BALANCE OWING ON TRADE-IN	N/A
AMOUNT FINANCED	47316.01
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: Date: 9/13/2015

Co-Buyer's Signature: Date:

Seller Approved By: 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 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 THOUGH 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	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	Civil Action No. 2012-CP-27-493
Michael and Melinda Hafeman, Plaintiffs, vs. Forest River, Inc., a corporation, Ridgeland Realty, LLC, d/b/a Boat N RV Mega Store, Defendants.	)	ORDER

Before the Court is a Motion to Compel Arbitration filed by Defendant Boat-N-RV Mega Store.[1] 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.)

[1] The caption misidentifies Boat-N-RV as the business name of Ridgeland Realty, LLC, rather than of Ridgeland Recreational Vehicles, Inc.

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)

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	Civil Action No. 2012-CP-27-0097
Richard Miller and Donna Miller, Plaintiffs, vs. Ridgeland Recreational Vehicles, Inc. D/B/A Boat N RV Mega Store, Defendant.	ORDER

Before the Court is the Defendant Ridgeland Recreational Vehicles, Inc. d/b/a Boat N RV Mega Store's Motion to Compel Arbitration. The motion is based on an arbitration agreement in the parties' contract on which this litigation is based. For the reasons discussed below, the Court grants the motion and compels this case to arbitration.

BACKGROUND

This case arises out of the Plaintiffs' purchase of a recreational vehicle from Boat N RV's facility in Ridgeland, South Carolina. According to the complaint, the Plaintiffs purchased their vehicle from Boat N RV in August 2007. (Compl. ¶ 6.) In conjunction with that purchase, they allege that they purchased certain warranties on the vehicle. (Id. ¶¶ 6–8.) The Plaintiffs allege that in July 2011, they had a "tire blow-out" while travelling out-of-state in the vehicle. (Id. ¶ 9.) They allege when they contacted an unidentified "road hazard company" about the tire, a representative told the Plaintiffs that their tire was not covered under any warranty the Plaintiffs had with that company. (Id.) The Plaintiffs allege that they spent five hours waiting for the tire to be repaired, and that they paid $500.00 to repair their tire. (Id.)

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 involvement 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 involveme 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	)	FOURTEENTH JUDICIAL CIRCUIT
	)	COURT OF COMMON PLEAS
COUNTY OF JASPER	)	CASE NO.: 2016-CP-27-269
	)	
Annalee Walsh,	)	
	)	
Plaintiff,	)	
	)	Memorandum in Opposition to Defendant's Motion to Compel Arbitration
Vs.	)	
	)	
Boat-N-RV Megastore and Ridgeland Recreational Vehicles, Inc.,	)	
	)	
Defendants.	)	

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

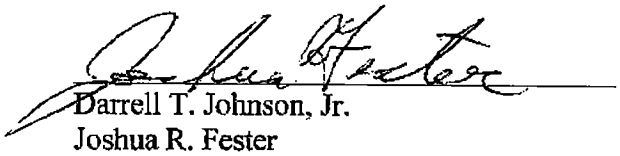
Ms. Walsh never entered into a contract to purchase an RV from Boat-N-RV. The "Agreement Pending Financing/Regulation Z Disclosure" embodied an understanding between the parties that they had not yet formed a contract or entered into a purchase agreement. That agreement states "by signing below, I acknowledge 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

Boat N RV
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

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.

Purchaser — 9/13/15 Date

Co-Purchaser — Date

Community & Southern Bank
4800 Ashford Dunwoody Rd, Suite 25
Atlanta, GA 30338
RETURN SERVICE REQUESTED

000102

Community & Southern Bank

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

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

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

Name	Trans Union Consumer Relations		
Address	2 Baldwin Place P.O. Box 1000 Chester, PA 19022		
Toll Free Telephone	800.888.4213		
Web Address	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
Address: 3151 Parisa Drive
Paducah, KY 42002
Telephone: 618-997-2760

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 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: FDIC, Consumer Response Center, 1100 Walnut St, Box #11, Kansas City MO 64106

American Heritage
FEDERAL CREDIT UNION

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

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.**

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

[X] 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

Heritage Trust Federal Credit Union

200 Marymeade Drive Summerville, South Carolina 29483
Phone: 843-832-2600 Toll-Free Phone: 800-845-5550 Fax: 843-832-2756

NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS

OCT 0 8 2015

Statement of Credit Denial, Termination, or Change

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 N RV 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.	)	

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.	)	OBJECTIONS TO PROPOSED ORDER REGARDING MOTION TO COMPEL ARBITRATION
Boat-N-RV Megastore and Ridgeland 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

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

T 803 454 7730| F 803 381 9130| todd.carroll@wcsr.com
Firm Website | My Bio| VCard

From: Murphy, Maite Law Clerk (Luke Allen) [mailto:mmurphylc@sccourts.org]
Sent: Thursday, November 10, 2016 9:41 AM
To: 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

DT ID: 461001 - Tilden Recreational Vehicles - Lender ID:IND0000980

First Commonwealth FCU Application Status

First Commonwealth

Customer Information	
Applicant Name:	Walsh, Amilee
APS #:	87999
Status:	Pending ?
eContract Status:	Ineligible

Vehicle Information	
NU/D-Year:	Used 2013
Make:	MIRADA
Model:	35
Trim:	
VIN #:	
Mileage	29998

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

Comments To Credit Analyst	
9/15/2015 12:46:51 PM	SENT

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

Analyst Information			
Name:	Georgette Youwakim	Fax:	(610)807-3038
Phone Number:	(610)821-2400 Ext: 6774	Lender Cust. Service Number:	(610)821-2400 Ext: 6774

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.

AGREEMENT PENDING FINANCING/ REGULATION Z DISCLOSURE

Svr < 13,545

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 PA store)

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 → 120	565.19 → 651.51	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 (1st.
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**

Exhibit B

November 14, 2016 Correspondence

Carroll, Todd

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
Firm Website | My Bio | VCard

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

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

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

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

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

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

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

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

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

THE COURT: I do.

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

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

THE COURT: Yes, sir.

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

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

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

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

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

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

THE COURT: Mr. Fester.

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

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

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

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

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

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

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

THE COURT: Anything further, counselor?

MR. CARROLL: Yes, ma'am, Your Honor. First, I'm not sure that I have ever seen the document that was just handed up. I didn't get it in advance. I didn't really get a chance to look at it. But regardless of what it says, Your Honor, the contract that the parties entered into, which began this complaint, the complaint alleges that Ms. Walsh signed this sales agreement.

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

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

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

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

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

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

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

MR. FESTER: Thank you, Your Honor.

MR. CARROLL: Thank you, Your Honor.

THE COURT: Have a good day.

(Whereupon, the hearing adjourned.)

CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF JASPER:

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

DATED this 28th day of March, 2016.

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

82244

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

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

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

PROOF OF SERVICE

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
www.wcsr.com

Direct Dial: 803-454-7730
Direct Fax: 803-381-9130
E-mail: Todd.Carroll@wcsr.com

January 19, 2017

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

WOMBLE CARLYLE SANDRIDGE & RICE
A LIMITED LIABILITY PARTNERSHIP

1727 Hampton Street
Columbia, SC 29201

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www.wcsr.com

Direct Dial: 803-454-7730
Direct Fax: 803-381-9130
E-mail: Todd.Carroll@wcsr.com

January 19, 2017

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.
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

M. Todd Carroll
South Carolina Bar 74000
todd.carroll@wcsr.com
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
(803) 454-6504

Attorneys for Appellant

Columbia, South Carolina
September 15, 2017

PROOF OF SERVICE

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: Record on Appeal

Parties Served:

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

Attorneys for Respondent

Edwin T. Mathis

September 15, 2017

PROOF OF SERVICE

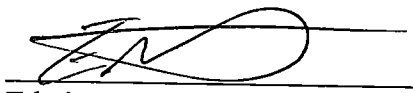
I, the undersigned Legal Assistant of the law offices of Womble Bond Dickinson (US) LLP, Attorneys for Petitioner, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) specified below by mailing a copy of the same, postage prepaid, to the following address(es):

Pleading: Appendix to Petition for Writ of Certiorari

Parties Served:

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

Attorneys for Respondent



Edwin T. Mathis

July 3, 2019