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.

PETITION FOR WRIT OF CERTIORARI

WOMBLE BOND DICKINSON (US) LLP

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

Attorneys for Petitioner Boat-N-RV Megastore

Columbia, South Carolina
July 3, 2019

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

CERTIFICATION OF COUNSEL 1

QUESTIONS PRESENTED FOR REVIEW 2

STATEMENT OF THE CASE 3

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 under the sales contract. 3

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. 4

III. The circuit court declined to compel the matter to arbitration and held that no contract exists between the parties. 5

IV. The Court of Appeals issued a summary decision affirming the circuit court's ruling, but it actually cited authority making clear that reversal is required. 6

ARGUMENT 7

I. The Court of Appeals's decision is squarely inconsistent with numerous decisions of the United States and South Carolina Supreme Courts regarding enforcement of the Federal Arbitration Act. 7

II. The remaining issues decided by the Court of Appeals are also contrary to well-established law. 10

A. This Court has long held that an issue must be timely raised and ruled on in order for an issue to be preserved for appellate review, which happened here. 10

B. Because the parties already began performing under the sales contract, there is no way the contract was "never formed," as the circuit court held. 11

CONCLUSION 13

TABLE OF AUTHORITIES

Cases

Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440 (2006) 8
Champion v. Whaley, 280 S.C. 116, 311 S.E.2d 404 (Ct. App. 1984) 12
Henry Schein, Inc. v. Archer & White Sales, Inc., 139 S. Ct. 524 (2019) 8
Housing Authority of Columbia v. Cornerstone Housing, LLC, 356 S.C. 328, 588 S.E.2d 617 (Ct. App. 2003) 9
Jackson Mills v. BT Capital Corp., 312 S.C. 400, 440 S.E.2d 877 (1994) 9
McGill v. Moore, 381 S.C. 179, 672 S.E.2d 571 (2009) 13
Mercury Dev., LLC v. Motel Sleepers, Inc., Case No. 11-147-GFVT, 2013 U.S. Dist. LEXIS 137370 (E.D. Ky. Sept. 25, 2013) 12
Munoz v. Green Tree Financial Corp., 343 S.C. 531, 542 S.E.2d 360 (2001) 9
New Hope Missionary Baptist Church v. Paragon Builders, 379 S.C. 620, 667 S.E.2d 1 (Ct. App. 2008) 6, 9
New Prime Inc. v. Oliveira, 139 S. Ct. 532 (2019) 8
One Belle Hall Property Owners Association v. Trammell Crow Residential Co., 418 S.C. 51, 791 S.E.2d 286 (Ct. App. 2016) 9
Preston v. Ferrer, 552 U.S. 346 (2008) 8
Prima Paint Corp. v. Flood & Conklin Manufacturing Co., 388 U.S. 395 (1967) 7, 8
Rent-A-Center, W., Inc. v. Jackson, 561 U.S. 63 (2010) 8
S.C. Pub. Serv. Auth. v. Great W. Coal, Inc., 312 S.C. 559, 437 S.E.2d 22 (1993) 8, 9
Smith v. D.R. Horton, Inc., 417 S.C. 42, 790 S.E.2d 1 (2016) 9
Westlake Petrochemicals, LLC v. United Polychem, Inc., 688 F.3d 232 (5th Cir. 2012) 12
Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998) 11
Worley v. Yarborough Ford, Inc., 317 S.C. 206, 452 S.E.2d 622 (Ct. App. 1994) 12

Rules

Rule 242(b), SCACR 7

CERTIFICATION OF COUNSEL

Counsel for Boat-N-RV Megastore certifies that it filed a petition for rehearing with the South Carolina Court of Appeals on March 28, 2019. (Appx. 6.) The Court of Appeals ruled on that petition on June 5, 2019. (Appx. 4.)

QUESTIONS PRESENTED FOR REVIEW

This case involves the Court of Appeals ignoring over a half-century of established case law from the United States Supreme Court regarding enforcement of the Federal Arbitration Act, as well as several decisions of this Court reiterating those same principles. Because it marks an inexplicable departure from numerous controlling cases regarding a federal statute, the Court of Appeals's decision should not be allowed to stand. This issue and others are presented below:

1. **Enforcing Arbitration Agreements Under the FAA:** Ms. Walsh objected to Boat-N-RV's motion to compel arbitration by arguing that the parties' sales contract generally was unenforceable; she made no objection regarding the parties' arbitration agreement specifically. Both the United States Supreme Court and this Court have repeatedly held that arbitration is required under these circumstances. Despite long-established case law on the issue, the Court of Appeals issued a summary opinion denying arbitration here. Did the Court of Appeals err in not enforcing the parties' arbitration agreement?

2. **Issue Preservation:** The circuit court determined that the parties' sales contract contained an unsatisfied condition precedent because of a single phrase found in a separate document, which contained financing disclosures that are required by federal regulation. Boat-N-RV timely objected to that separate document as inadmissible parol evidence, but the circuit court considered it anyway. When Boat-N-RV challenged that decision on appeal, the Court of Appeals held that the issue was not preserved. Was the Court of Appeals correct?

3. **Condition Precedent:** As alleged in the complaint, the parties entered into a sales contract, and they began performing their respective duties under that contract. However, the Court of Appeals held that the sales contract contained an unfulfilled condition precedent to ***contract formation***, rather than ***contract performance***. Was that ruling in error?

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 a portion of the sales price. Because the parties entered a broad arbitration agreement that indisputably covers the instant litigation, both the circuit court and the Court of Appeals erred when they 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 under the sales contract.

On September 13, 2015, Boat-N-RV, a South Carolina corporation, entered into a contract with Ms. Walsh, a resident of New Jersey, for the purchase of a used recreational vehicle. (Appx. 80; 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, which she paid by check; with the remainder paid 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 attempted to facilitate third-party financing for Ms. Walsh, which required her to provide to Boat-N-RV information requested by various prospective lenders. However, Ms. Walsh refused to provide basic information, including proof of income specifically requested by at least one lender that considered Ms. Walsh's credit

[1] Thhough 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 petition and other filings, it is referred to as "Boat-N-RV."

application. (*See, e.g.*, Appx. 120; First Commonwealth FCU Application Status ("We need income verification due the loan is over $30,000.00.") (all capital letters in original omitted).) Because of her refusal to supply necessary information, 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. (Appx. 75; 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 as agreed under the sales contract was (1) conversion, (2) a violation of the Unfair Trade Practices Act, and (3) fraud. (Appx. 73–76; Compl. ¶¶ 5–31.)

Boat-N-RV promptly moved to compel the case to arbitration pursuant to an arbitration agreement contained in the sales contract. (Appx. 78; Mot. to Dismiss or Compel Arbitration.) The parties' arbitration 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.

(Appx. 81; Sales Contract at 2, ¶ 10 (all capital letters, bold, and underlined in original).)

The arbitration agreement is also noted in two places on the front page of the sales contract. (*See* Appx. 80; 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. (*E.g.*, Appx. 105; Memorandum in Opposition to Motion to Compel Arbitration at 2.) In support, she presented a Regulation Z form, which is a consumer-financing disclosure required by federal regulation.

In that form, the parties agreed that Ms. Walsh's 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." (Appx. 121; Regulation Z Disclosure Form.) They also acknowledged that they 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).)

Boat-N-RV objected to that form being considered as part of the parties' sales contract, as it is inadmissible parol evidence. (Appx. 84–85; Boat-N-RV's Memorandum in Support of Motion to Compel Arbitration at 3–4.)

On January 18, 2017, the circuit court denied Boat-N-RV's motion. It based its ruling on a belief that the Regulation Z Disclosure Form created a "condition precedent to the formation of any contract." (Appx. 71; Circuit Court Order at 2.) It concluded: "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." (Appx. 72; Circuit Court Order at 3.)

This ruling is squarely contrary to numerous decisions of the United States and South Carolina Supreme Courts. Accordingly, Boat-N-RV filed its notice of appeal the very next day. (Appx. 137; Notice of Appeal.)

IV. The Court of Appeals issued a summary decision affirming the circuit court's ruling, but it actually cited authority making clear that reversal is required.

Briefing closed on September 26, 2017, when Ms. Walsh filed her final brief with the Court of Appeals. The Court of Appeals did not conduct oral argument, and it affirmed the circuit court's refusal to enforce the parties' arbitration agreement by an unpublished summary decision issued on March 13, 2019.

In that decision, the Court of Appeals cited *New Hope Missionary Baptist Church v. Paragon Builders*, 379 S.C. 620, 667 S.E.2d 1 (Ct. App. 2008), as authority in support of its decision to affirm. (Appx. 2; Court of Appeals Order ¶ 1.) This was a surprising citation, because *New Hope Missionary Baptist Church* unequivocally stands for the proposition that arbitration is required here based on the same line of United States Supreme Court authority that Boat-N-RV cited in its filings. To be sure, the Court of Appeals's summary decision would have been a correct ruling if it contained this same citation, but just ended with "REVERSED" instead of "AFFIRMED."

Boat-N-RV timely filed a petition for rehearing and pointed out that the Court of Appeals's decision was directly contrary to numerous cases from the United States Supreme Court, the South Carolina Supreme Court, and even the case law cited in its own order. (Appx. 11–13; Petition for Rehearing at 3–5.) The Court of Appeals denied that petition on June 5, 2019. (Appx. 4; Order Denying Rehearing.) This petition timely follows.

ARGUMENT

I. The Court of Appeals's decision is squarely inconsistent with numerous decisions of the United States and South Carolina Supreme Courts regarding enforcement of the Federal Arbitration Act.

Rule 242(b), SCACR, states that this Court considers whether "the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court," or whether "a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court" when evaluating a certiorari request.

This case falls immediately within these guidelines. As discussed above, Ms. Walsh's objection to enforcing the parties' arbitration agreement here was an argument that the parties' sales contract as a whole was unenforceable because it contained a so-called unsatisfied condition precedent. She has never challenged the parties' arbitration agreement in any way.

Beginning with *Prima Paint Corp. v. Flood & Conklin Manufacturing Co.*, 388 U.S. 395, 404 (1967), the United States Supreme Court has been clear that the only way for a party to avoid enforcement of an arbitration agreement under the Federal Arbitration Act is to challenge the agreement to arbitrate specifically. A challenge to the contract as a whole, such as Ms. Walsh's here, will not do.[2]

[2] There is no genuine dispute that the Federal Arbitration Act governs this interstate transaction between a South Carolina corporation and a resident of New Jersey. Nor is there any genuine dispute that Ms. Walsh's claims fall within the broad scope of the arbitration agreement.

The South Carolina Supreme Court has adopted this analysis into the state's own jurisprudence. *See 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).

And the *Prima Paint* analysis is especially applicable when, as here, the parties' arbitration agreement specifically delegates any "gateway" question about the arbitrability of a case to an arbitrator. *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 69–72 (2010).

The circuit court accepted Ms. Walsh's improper objection to arbitration based on the contract as a whole, rather than specifically challenging the parties' arbitration agreement, and the Court of Appeals affirmed. But because there was no challenge to the arbitration agreement itself, arbitration is required here, and the court does not have any authority to assess whether the parties' contract contained a so-called "condition precedent."

Accordingly, the Court of Appeals's decision stands in direct contradiction to numerous controlling decisions regarding the Federal Arbitration Act, including at least:

United States Supreme Court

Prima Paint Corp. v. Flood & Conklin Manufacturing Co., 388 U.S. 395, 404 (1967).

Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 449 (2006).

Preston v. Ferrer, 552 U.S. 346, 353–54 (2008).

Rent-A-Center, W., Inc. v. Jackson, 561 U.S. 63, 69–72 (2010).

Henry Schein, Inc. v. Archer & White Sales, Inc., 139 S. Ct. 524, 529 (2019).

New Prime Inc. v. Oliveira, 139 S. Ct. 532, 538 (2019).

South Carolina Supreme Court

South Carolina Public Service Authority v. Great Western Coal, Inc., 312 S.C. 559, 562–63, 437 S.E.2d 22, 24 (1993).

Jackson Mills v. BT Capital Corp., 312 S.C. 400, 403–04, 440 S.E.2d 877, 879 (1994).

Munoz v. Green Tree Financial Corp., 343 S.C. 531, 540, 542 S.E.2d 360, 364 (2001).

Carolina Care Plan, Inc. v. United HealthCare Services, Inc., 361 S.C. 544, 550–51, 606 S.E.2d 752, 755 (2004).

Smith v. D.R. Horton, Inc., 417 S.C. 42, 48, 790 S.E.2d 1, 4 (2016).

* * * * *

In addition to these cases from controlling courts, the Court of Appeals's decision is also contrary to several of its own decisions on this exact issue, including at least:

South Carolina Court of Appeals

Housing Authority of Columbia v. Cornerstone Housing, LLC, 356 S.C. 328, 338, 588 S.E.2d 617, 622 (Ct. App. 2003).

New Hope Missionary Baptist Church v. Paragon Builders, 379 S.C. 620, 629–31, 667 S.E.2d 1, 5–6 (Ct. App. 2008).[3]

One Belle Hall Property Owners Association v. Trammell Crow Residential Co., 418 S.C. 51, 64, 791 S.E.2d 286, 293 (Ct. App. 2016).

* * * * *

Because the Court of Appeals's decision is directly inconsistent with each of the authorities listed above, Boat-N-RV respectfully submits that certiorari is appropriate to correct this errant ruling and to bring South Carolina jurisprudence back in line with long-settled controlling authority from both this Court and the United States Supreme Court.

---

[3] As noted above in the Statement of the Case, the Court of Appeals cited *New Hope Missionary Baptist Church* in Paragraph 1 of its summary decision, but it failed to apply the governing principle from that case. (Appx. 2; Court of Appeals Order ¶ 1.)

II. The remaining issues decided by the Court of Appeals are also contrary to well-established law.

This Court can correct the Court of Appeals's error by granting certiorari on the first issue alone and issuing a summary reversal that cites ***any*** of the dozen-plus cases listed in the preceding section. However, the Court of Appeals addressed two additional issues in its decision: one deals with issue preservation, and the other deals with conditions precedent in a contract. Its resolution of each of these issues is also inconsistent with established law, and provides additional grounds for certiorari review.

A. This Court has long held that an issue must be timely raised and ruled on in order for an issue to be preserved for appellate review, which happened here.

Because the circuit court relied exclusively on the Regulation Z Disclosure Form as the basis for its decision that the parties' sales contract contained an unsatisfied "condition precedent," Boat-N-RV argued on appeal that this document was inadmissible and could not be considered in the analysis because it is improper parol evidence. (*E.g.*, Appx. 30–31; Boat-N-RV's Opening Brief at 9–10.)

The Court of Appeals held that this issue was not preserved for appellate review. (Appx. 2; Court of Appeals Order ¶ 2.) It provided no discussion of its reasoning, but cited cases for the following propositions: (1) an issue cannot be raised for the first time on appeal; (2) a timely objection is required to preserve an issue; and (3) a party must file a Rule 59(e) motion to preserve an issue that has not been ruled upon. (*Id.*)

Boat-N-RV is at a loss as to how any of these principles could apply here. Boat-N-RV specifically objected to admission of any extracontractual documents in its memorandum in support of arbitration filed with the circuit court. (Appx. 84–85; Boat-N-RV's Memorandum in Support of Motion to Compel Arbitration at 3–4.) But the circuit court not only denied the

objection and considered the Regulation Z Disclosure Form, that document was the sole basis of the circuit court's ruling. (Appx. 71; Circuit Court Order at 2.)

This Court has reiterated time and again that there are only two requirements to preserve an issue for appellate review: the issue must have been raised to the trial court, and it must have been ruled upon. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733–34 (1998).

In this instance, there was nothing more for Boat-N-RV to do in order to preserve its parol evidence objection for appellate review: it objected to the document being considered, but the circuit court considered the document over Boat-N-RV's objection. Accordingly, the Court of Appeals's issue-preservation ruling was incorrect and should be corrected by this Court.

Moreover, there was no reason to file a Rule 59(e) motion under these circumstances, as this Court has specifically held. *See, e.g., id.* at 77, 497 S.E.2d at 734 ("Post-trial motions are not necessary to preserve issues that have been ruled upon at trial; they are used to preserve those that have been raised to the trial court but not yet ruled upon by it."). To extent that the Court of Appeals's decision here can be understood to impose a Rule 59(e) motion requirement as a prerequisite to preserving any issue for appellate review, its ruling is contrary to this Court's preservation guidelines and should be reversed.

B. Because the parties already began performing under the sales contract, there is no way the contract was "never formed," as the circuit court held.

Boat-N-RV has argued throughout that there is no way that the parties did not form their sales contract because the complaint expressly alleges that the parties signed the sales contract and began their respective performances under it, including Ms. Walsh making her down payment to purchase the recreational vehicle. (Appx. 74; Compl. ¶¶ 7–10.) Instead, Ms. Walsh's failure to secure financing necessary to fully pay for the vehicle absolved Boat-N-RV from further performance under the contract, such as delivering title to the vehicle to Ms. Walsh.

The circuit court, however, held that the Regulation Z Disclosure Form created a "condition precedent to the formation of the [sales] contract" that was never satisfied. (Appx. 72; Circuit Court Order at 3.) The Court of Appeals affirmed that decision, but both the circuit court and the Court of Appeals have improperly conflated conditions precedent to ***contract formation*** with conditions precedent to ***contract performance***.

Courts agree that when a party signs a contract that requires it to obtain financing, that requirement is a condition precedent to contract performance, not to contract formation. *See, e.g.*, *Champion v. Whaley*, 280 S.C. 116, 122–23, 311 S.E.2d 404, 407–08 (Ct. App. 1984) (rejecting an argument that one party's obligation to secure financing amounted to a condition precedent to contract formation because—just as here—the parties had already signed a contract, "[a]t that point nothing was left to negotiate," and "[t]he parties had reached a final bargain"); *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).

The Court of Appeals even cited case law and included parentheticals in support of its decision that make Boat-N-RV's point. The court first cited and quoted *Worley v. Yarborough Ford, Inc.*, 317 S.C. 206, 210, 452 S.E.2d 622, 624 (Ct. App. 1994), and included this parenthetical: "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.'" (Appx. 2–

3; Court of Appeals Order ¶ 3 (emphasis added).) It then cited and quoted *McGill v. Moore*, 381 S.C. 179, 187, 672 S.E.2d 571, 575 (2009), and included this parenthetical: "'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.'" (Appx. 3; Court of Appeals Order ¶ 3 (emphasis added).)

There is no way to understand how the Court of Appeals concluded that the parties never really formed their sales contract. It did not explain its reasoning in the summary decision, and the authorities it cited stand for the opposite conclusion than that which the court reached.

It is certainly not the law that no contract can ever exist for any transaction requiring a Regulation Z consumer-finance disclosure unless the consumer actually secures financing, but that appears to be the only way to construe the Court of Appeals's decision. Accordingly, Boat-N-RV respectfully requests that the Court grant this petition and review and reverse the lower court's decision.

CONCLUSION

Since *Prima Paint*'s issuance in 1967, it has been settled that in order to avoid arbitration under the Federal Arbitration Act, an objecting party may not simply challenge the contract as a whole in which the arbitration agreement is found; instead, the challenge must specifically go to the arbitration agreement itself. That rule has been reiterated time and again by the United States Supreme Court and this Court.

The Court of Appeals, however, appears to have ignored all of that authority in its treatment of this case. In order to realign this case with controlling authority, the Court should grant this petition, summarily reverse the Court of Appeals's decision, and compel this matter to arbitration consistent with the parties' arbitration agreement.

Respectfully submitted,

WOMBLE BOND DICKINSON ~~(US)~~ LLP

By:_____

M. Todd Carroll
S.C. Bar No. 74000
todd.carroll@wbd-us.com
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
(803) 454-6504

Attorneys for Petitioner Boat-N-RV Megastore

Columbia, South Carolina
July 3, 2019

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: Petition for a 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

womblebonddickinson.com

WOMBLE BOND DICKINSON

Womble Bond Dickinson (US) LLP

1221 Main Street
Suite 1600
Columbia, SC 29201

t: 803.454.6504

M. Todd Carroll
Direct Dial: (803) 454.7730
E-mail: Todd.Carroll@wbd-us.com

July 3, 2019

Via Hand Delivery
The Honorable Daniel E. Shearouse
Clerk of Court, Supreme Court of South Carolina
1231 Gervais Street
Columbia, South Carolina 29201

Re: Annalee Walsh v. Boat-N-RV Megastore and Ridgeland Recreational Vehicles, Inc.
Court of Appeals Case No. 2017-000120/Opinion No. 2019-UP-103

Dear Mr. Shearouse:

Please find enclosed the following for filing:

1. Petition for Writ of Certiorari and 6 copies
2. Appendix to Petition for Writ of Certiorari and one unbound copy
3. Check in the amount of $250

We appreciate you filing these materials and returning a stamped copy of them to us via our courier.

With kind regards, I remain

Very truly yours,

M. Todd Carroll

MTC/tm
Enclosures
cc: The Honorable Jenny Abbott Kitchings *(Petition for Writ of Certiorari only)*
Darrell Thomas Johnson, Jr.
Joshua R. Fester

1

$1.45 US POSTAGE
4 OZ FIRST-CLASS MAIL FLATS RATE

RETAIL

062S0009938092
FROM 29201

stamps endicia
07/03/2019

USPS FIRST CLASS MAIL®

Womble Bond Dickinson (US) LLP
1221 Main Street, Suite 1600
Columbia SC 29201

C076

SHIP TO: The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Clerk of Court
1220 Senate Street
Columbia SC 29201-3769

RECEIVED
JUL 05 2019
SC Court of Appeals