STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Case No. 2022-CP-26-00861

Target Motors, LLC d/b/a Port City Motors,

Plaintiff,

vs.
Grand Strand Nissan, Inc., Grainger Companies, Inc. d/b/a Grainger Honda, and Manheim Remarketing, Inc. d/b/a Manheim, Darlington,

Defendants.

ORDER GRANTING GRAND STRAND NISSAN, INC.'S MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFF'S CLAIMS

This matter came before the Court on Defendant Grand Strand Nissan, Inc.'s ("Grand Strand") Motion for Summary Judgment as to all claims asserted by Plaintiff Target Motors, LLC d/b/a Port City Motors ("Plaintiff"). A hearing was held before me on January 3, 2023. Mary M. Caskey, Esq. appeared for Grand Strand, and C. Steven Moskos, Esq. appeared for the Plaintiff. William E. Lawson was present for Grainger Companies, Inc. d/b/a Grainger Honda ("Grainger"), but the Motion sought no relief from Grainger. After the hearing and having carefully considered the motion, the parties' memoranda, the summary judgment record, and the arguments of counsel at the hearing, the Court grants summary judgment in favor of Grand Strand as detailed below.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate if the movant shows that there is no genuine dispute as to any material fact, and the movant is entitled to judgment as a matter of law. Rule 56(c), SCRCP. "Summary judgment is appropriate in those cases in which plain, palpable and indisputable facts

exist on which reasonable minds cannot differ." *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984).

The Court must view the facts and inferences in the light most favorable to the nonmoving party. *See Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E.2d 659, 661 (Ct. App. 1994). When the nonmoving party bears the burden of proof as to an issue, a party seeking summary judgment may meet this standard by showing the trial court "that there is an absence of evidence to support the nonmoving party's case." *Richardson v. State-Record Co., Inc.*, 330 S.C. 562, 566, 499 S.E.2d 822, 825 (Ct. App. 1998). "[W]hen ruling on a summary judgment motion, a court must determine whether the plaintiff has established a prima facie case as to each element of a claim…." *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 358, 650 S.E.2d 68, 71 (2007). If a plaintiff cannot establish facts on each element of the cause of action asserted, summary judgment is mandated by Rule 56(c), SCRCP. *Id.*

If a motion has been properly made and supported in accordance with Rule 56, the non-moving party may not rest on its pleadings but must come forward with specific facts showing that there is a genuine issue for trial. Rule 56(e), SCRCP; *Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 580, 602 S.E.2d 389, 392 (2004). This showing must be based on evidence that would be admissible at trial. *Hall v. Fedor*, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002).

UNDISPUTED FACTS

Grand Strand is a car dealership that services, repairs, sells, and buys new and used cars. On August 30, 2019, Grand Strand completed wreck-related repairs on a 2018 Nissan Titan SV (the "Truck") owned by Aaron Burnstein. Grand Strand also sold parts to Performance Collision, a body shop that completed other repairs on the Truck. After the Truck was fully repaired, Burnstein traded the Truck into Grand Strand for $24,000.00 on October 14, 2019. Shortly

thereafter, Grand Strand entered the Truck into an online auction owned and operated by Manheim Remarketing, Inc. d/b/a Manheim, Darlington ("Manheim").

On November 14, 2019, co-Defendant Grainger Companies, Inc. d/b/a Grainger Honda ("Grainger") purchased the Truck through the auction for $21,000.00. This transaction was Grand Strand's last connection to the Truck.

About two weeks after the purchase, Grainger entered the Truck into the Charleston Auto Auction, but the Truck was removed from the auction after an AutoCheck report pulled by the auction reported structural damage. Grainger then contacted Manheim about the structural damage to the Truck, and Manheim offered to run the Truck back through Manheim's auction. Although both Grainger and Manheim knew the Truck had structural damage, the Truck was put back through the auction under a green light on December 12, 2019, with no disclosure of the frame damage.

On January 2, 2020, Plaintiff purchased the Truck from Grainger through the auction. Plaintiff admits that Grand Strand was not involved in this transaction and did not communicate with Plaintiff regarding the condition of the Truck at any time prior to Plaintiff's purchase of the Truck. Plaintiff also admits that there is no contract or agreement related to the Truck between Plaintiff and Grand Strand. Further, Plaintiff did not review any disclosures by Grand Strand about the Truck or rely on any information provided by Grand Strand to Grainger when Plaintiff decided to purchase the Truck.

Plaintiff then sold the Truck on its lot to a consumer on January 25, 2020. On February 17, 2020, the consumer complained to Plaintiff about the Truck's structural damage. Plaintiff ultimately paid the consumer $4,000 as the result of the damage to the Truck, and this suit followed.

DISCUSSION

Ultimately, all of Plaintiff's claims require either that Grand Strand have some form of communication, relationship, or interaction with Plaintiff regarding the history and condition of the Truck and that Grand Strand be the proximate cause of Plaintiff's damages. Grand Strand has shown that there is no evidence to support Plaintiff's claim, and Plaintiff has failed to identify any genuine issue of material fact in rebuttal.[1] The undisputed facts show that Grand Strand did not enter into any transactions with Plaintiff for the sale of the Truck, and Grand Strand did not communicate with Plaintiff at any point prior to this lawsuit about the condition or history of the Truck. Grand Strand's alleged fault is too remote to be linked to Plaintiff's damages as a matter of law, particularly when an intervening party, Grainger, had knowledge of the prior wreck damage and failed to disclose it to the Plaintiff.

1. Plaintiff's claim for negligence fails because Grand Strand owed Plaintiff no duty and did not cause Plaintiff's damages.

To prove negligence, a plaintiff is required to show that "(1) the defendant owed a duty of care to the plaintiff, (2) the defendant breached the duty by a negligent act or omission, (3) the defendant's breach was an actual and proximate cause of the plaintiff's injury, and (4) the plaintiff suffered injury or damages." *Wright v. PRG Real Est. Mgmt., Inc.*, 426 S.C. 202, 212, 826 S.E.2d 285, 290 (2019). However, Plaintiff did not prove any genuine issue of material fact as to whether or not Grand Strand owed a duty to Plaintiff, or as to whether Grand Strand was the proximate cause of Plaintiff's damages, and the Court grants summary judgment in favor of Grand Strand on Plaintiff's negligence claim.

[1] In its Memorandum in Opposition to Grand Strand's Motion and at the hearing, Plaintiff argued that summary judgment was premature because Plaintiff had not been able to conduct depositions. However, Plaintiff's representative admitted that Plaintiff never had any communication with Grand Strand of any kind prior to purchasing the Truck, and Plaintiff could not identify any fact that if discovered would create a duty by Grand Strand to Plaintiff. Further, it was undisputed among the Parties that Grainger knew the Truck was wrecked when it sold the Truck to Plaintiff, acknowledging a key intervening fact that would break any causal link between Plaintiff and Grand Strand.

(i) Grand Strand did not owe a duty to Plaintiff under any theory recognized by South Carolina law.

"If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law." *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 135-36, 638 S.E.2d 650, 656 (2006). In South Carolina, the duty to disclose has been reduced to three distinct classes:

> (1) where it arises from a preexisting definite fiduciary relation between the parties; (***2) where one party expressly reposes a trust and confidence in the other with reference to the particular transaction in question, or else from the circumstances of the case, the nature of their dealings, or their position towards each other, such a trust and confidence in the particular case is necessarily implied***; (3) where the very contract or transaction itself, in its essential nature, is intrinsically fiduciary and necessarily calls for perfect good faith and full disclosure without regard to any particular intention of the parties.

Wright v. Craft, 372 S.C. 1, 25, 640 S.E.2d 486, 499 (Ct. App. 2006) (emphasis added). Duty is intrinsically tied to the relationship between the parties.

Plaintiff argues that Grand Strand's duty to Plaintiff is implied based on the second class stated above and that the circumstances of this case created a duty from Grand Strand to Plaintiff. However, it is undisputed that there was no contract or transaction between Grand Strand and Plaintiff of any kind. It is also undisputed that Plaintiff and Grand Strand never had any communications about the Truck prior to Plaintiff's purchase of the Truck, and Plaintiff never relied on any documentation or disclosures made by Grand Strand about the Truck.[2] "A tortfeasor's duty arises from his relationship to the injured party." *South Carolina State Ports*

[2] Plaintiff relied on two cases to argue the existence of a duty to a third party, but in both cases, the negligent party intended for unknown third parties to rely on the information and the third parties actually did rely on the negligently prepared information. *See ML-Lee Acquisition Fund, L.P. v. Deloitte v. Touche*, 320 S.C. 143, 463 S.E.2d 618 (Ct. App. 1995) (finding an accountant owed a duty to third parties whom the accountant intended the information to benefit and when the third parties relied on an audit report prepared by the accountant); *Private Mortgage Investment Services, Inc. v. Hotel and Club Associates, Inc.*, 296 F.3d 308 (4th Cir. 2002) (finding an appraiser could be liable to a third party for negligent misrepresentation for information in an appraisal where the appraiser knew the appraiser would be used by third parties and the third party actually relied on the information). In this case, there was no evidence offered that Grand Strand knew that any third party would rely on information presented during the sale to Grainger, nor any evidence that Plaintiff actually relied on any omissions or representations by Grand Strand in the first sale to Grainger. Therefore, there is no basis to find that Grand Strand owed any duty to Plaintiff.

Authority v. Booz–Allen & Hamilton, Inc., 289 S.C. 373, 376, 346 S.E.2d 324, 325–26 (1986). For liability to attach, "the parties shall have sustained a relationship recognized by law as the foundation of a duty of care." *Ravan v. Greenville Cnty.*, 315 S.C. 447, 467, 434 S.E.2d 296, 308 (Ct. App. 1993). "Where this relationship is too attenuated, a duty will not arise." *Id.* (citations omitted).

Any other duty Plaintiff claims that Grand Strand owes is too attenuated and not recognized by South Carolina law. Plaintiff argues that because Grand Strand knew that the Truck might be sold by Grainger and subsequent owners, Grand Strand's liability expands to all future owners of the Truck. However, whether a duty of care exists is a matter of law, and South Carolina has been reluctant to recognize or create new duties of care that would expand the scope of traditional tort liability. *Huggins v. Citibank, N.A.*, 355 S.C. 329, 332, 585 S.E.2d 275, 276 (2003). *See, e.g., Hendricks v. Clemson University*, 353 S.C. 449, 578 S.E.2d 711 (2003) (holding that a school owes no duty of care to a student in giving advice concerning the courses the student should take); *Wyatt v. Fowler, 326 S.C. 97*, 484 S.E.2d 590 (1997) (holding that the state does not owe its citizens a duty of care to proceed without error when it brings legal action against them); *Byerly v. Connor*, 307 S.C. 441, 415 S.E.2d 796 (1992) (holding that the South Carolina Public Service Authority had no duty to discover and warn of a latent hazardous condition on land that it leased to another). South Carolina has not recognized a theory of liability where a previous vehicle owner could be held liable to a future purchaser for failing to disclose wreck damage where the parties had no relationship or interaction, and the Court declines to create one here.

Plaintiff also alleges that Grand Strand owed him a contractual duty to disclose prior wreck damage, even though Plaintiff admits that it was not in privity of contract with Plaintiff. Plaintiff relies heavily on the contractual provisions of the Auction Policy that governed the relationship

between Grand Strand, Manheim, and Grainger. However, Plaintiff was not a third party beneficiary to the Auction Policy, and it is undisputed that Grand Strand no contractual duties to Plaintiff.[3]

Finally, Plaintiff argued that Grand Strand owed Plaintiff a statutory duty under the UTPA and Dealers' Act to disclose prior wreck damage. However, neither statute imposes a duty on vehicle owners to disclose damage to future, unknown owners, and Grand Strand's actions could not have been unfair or deceptive to Plaintiff when Grand Strand did not own the Truck at the time of the sale and Grand Strand did not interact with Plaintiff prior to the Truck's purchase.

(ii) Grand Strand was not the proximate cause of any damage suffered by Plaintiff.

Even if Grand Strand owed a duty to Plaintiff, its claims for negligence still fail as a matter of law because Plaintiff failed to prove that Grand Strand was the proximate cause of Plaintiff's damages. A claim for "[n]egligence is not actionable unless it is a proximate cause of the injury." *Bishop v. S.C. Dep't of Mental Health*, 331 S.C. 79, 88, 502 S.E.2d 78, 83 (1998). "Proximate cause requires proof of: (1) causation-in-fact, and (2) legal cause." *J.T. Baggerly v. CSX Transp., Inc.*, 370 S.C. 362, 369, 635 S.E.2d 97, 101 (2006). "Causation-in-fact is proved by establishing the injury would not have occurred "but for" the defendant's negligence, and legal cause is proved by establishing foreseeability." *Id.* Although the issue of proximate cause is generally one for the jury, "when the evidence is susceptible of only one inference, [] proximate cause becomes a matter of law for the court." *Bishop*, 331 S.C. at 89, 502 S.E.2d at 83.

[3] Further, a breach of a duty which arises under the provisions of a contract between the parties must be redressed under contract, and a tort action will not lie." T*ommy L. Griffin Plumbing & Heating Co. v. Jordon, Jones & Goulding, Inc.*, 320 S.C. 49, 54-55, 463 S.E.2d 85, 88 (1995) ("In most instances, a negligence action will not lie when the parties are in privity of contract."). Only if a duty arises independently from any contractual duties between the parties can there possibly be a tort action. *Id.*

Here, the only inference the Court can reach is that Grand Strand was not the proximate cause of Plaintiff's damages. The evidence in the record demonstrated that Grainger was fully aware that the Truck had been damaged when it sold the Truck to Plaintiff. Any duty to disclose was Grainger's and any damage to Plaintiff was caused by Grainger. The test for cause in fact is not: "but for" Grand Strand's sale to Grainger, Plaintiff suffered damages. Instead, the test here is "but for" Grainger's failure to disclose known wreck damage and "but for" Grainger knowingly selling the Truck back through the auction without disclosing the damage, Plaintiff suffered damages. There are simply too many intervening negligent events to link Grand Strand to Plaintiff's damages. *See Oliver v. South Carolina Dep't of Highways & Public Transp.*, 309 S.C. 313, 422 S.E.2d 128 (1992) (stating that an intervening cause can render initial negligence too remote).

2. There are no representations to support Plaintiff's fraud or negligent misrepresentation claims.

It is undisputed between the Parties that Grand Strand never made any representation to Plaintiff, by omission or otherwise, because Grand Strand did not know the identity of Plaintiff, did not participate in the sale of the Truck to Plaintiff, and did not have any interaction of any kind with Plaintiff. Without a representation, Plaintiff's claims for negligent misrepresentation and fraud fail as a matter of law. *See Beneficial Fin. I, Inc. v. Windham*, 431 S.C. 256, 273, 847 S.E.2d 793, 802–03 (Ct. App. 2020) (finding that a negligent misrepresentation claim must have a representation made to the plaintiff); *Sorin Equip. Co. v. The Firm, Inc.*, 323 S.C. 359, 366, 474 S.E.2d 819, 823 (Ct. App. 1996) (determining that a fraud claim must have a material false representation to survive). Here, Plaintiff's claims rest solely on representations made by Grand Strand to Grainger, and not by representations made by Grand Strand to Plaintiff. Any claims arising from Grand Strand's representations to Grainger are Grainger's claims alone.

Further, for negligent misrepresentation and fraud claims, a plaintiff must prove that the defendant was the proximate cause of actual damages and that the damage was suffered as a result of the reliance on the representation. As already outlined above, Grand Strand was not the proximate cause of any damage suffered by Plaintiff, and the Court grants summary judgment in favor of Grand Strand on these claims.

3. Grand Strand did not act unfairly or deceptively towards Plaintiff.

There is no evidence of an unfair or deceptive act by Grand Strand as to Plaintiff. To prove a claim under the UTPA, the plaintiff must establish that "(1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected [the] public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 638, 743 S.E.2d 808, 816 (2013); *see also* S.C. Code Ann. § 39-5-20. It is axiomatic that Grand Strand could not have committed an unfair or deceptive act against Plaintiff because it never engaged in or entered into a transaction with Plaintiff.

Additionally, "[t]he statute clearly requires that in order to recover pursuant to the UTPA one must prove each of the following three elements . . . 1) a violation of the Act, 2) proximate cause, and 3) damages." *Charleston Lumber Co. v. Miller Hous. Corp.*, 318 S.C. 471, 482, 458 S.E.2d 431, 438 (Ct. App. 1995). As with Plaintiff's other claims, it has failed to prove that Grand Strand was the proximate cause of its damages, and therefore cannot recover under the UTPA. South Carolina law does not recognize a theory of liability for a vehicle owner to pursue claims against a dealer with whom the owner had no direct contact with solely because the dealer placed the vehicle in the stream of commerce. The Court grants summary judgment in favor of Grand Strand as to Plaintiff's UTPA claim.

4. Grand Strand did not violate the Dealers Act.

For the same reasons the Court granted summary judgment in favor of Grand Strand on Plaintiff's UTPA claim, the Court grants summary judgment as to Plaintiff's South Carolina Motor Vehicle Dealer's Act claim (the "Dealers Act"). The Dealers Act provides that unfair deceptive acts or practices as defined in section 56-15-40 are unlawful. S.C. Code Ann. § 56-15-30(a). Specifically, the Act provides that it is unlawful for any motor vehicle dealer to "engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damages to any of the parties or to the public." S.C. Code Ann. § 56-15-40(B). However, a party can only recover under the Act against the dealer who proximately caused the party's damage.

Plaintiff has not produced any evidence to show that Grand Strand acted arbitrarily or in bad faith towards Plaintiff because Grand Strand has never taken any action towards Plaintiff at all. Plaintiff was not a party to Grand Strand's contract to sell the Truck, and Grand Strand never communicated with Plaintiff about the Truck or its condition. And as outlined above, Grand Strand cannot be held liable for fraud or for its refusal to fulfill a duty or contractual obligation because Grand Strand did not owe a duty to Plaintiff and did not have a contract with Plaintiff setting forth any obligations owed by Grand Strand. Ultimately, nothing Grand Strand did could be construed as the proximate cause of Plaintiff's damages because Grand Strand's transactions did not involve Plaintiff or directly harm Plaintiff. Grainger is the only party that contracted and communicated with Plaintiff and is the only party that can be held liable in this action.

CONCLUSION

For the above reasons, the Court grants Grand Strand's motion and finds that judgment shall be entered in favor of Grand Strand on all claims asserted by the Plaintiff.

IT IS SO ORDERED.

_____

William H. Seals Jr.
Horry County
Fifteenth Judicial Circuit

_____, 2023

Horry Common Pleas

Case Caption: Target Motors LLC , plaintiff, et al VS Grand Strand Nissan Inc , defendant, et al

Case Number: 2022CP2600861

Type: Order/Summary Judgment

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157