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SC Court of Appeals

May 14, 2025

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Target Motors, LLC v. Grand Strand Nissan, Inc.
Appellate Case No. 2023-000540

Dear Ms. Kitchings:

The following authorities have come to the attention of Appellant.

I. The following authorities pertain to duty and proximate cause, arranged along a spectrum from authorities pertaining only to duty through those pertaining to both issues to those pertaining only to proximate cause.

1. *Araujo v. S. Bell Tel. & Tel. Co.*, 291 S.C. 54, 57–58, 351 S.E.2d 908, 910 (Ct. App. 1986) (emphasis added) (footnote omitted):

> There is no formula for determining duty; a duty is not sacrosanct in itself but only an expression of the sum total of those considerations of policy which lead the law to say that a particular plaintiff is entitled to protection. Suffice it to say that a multiplicity of factors come into play when courts contemplate the question of duty. These factors include the policy of deterring future tortfeasors, the moral culpability of the tortfeasor and numerous other conceivable factors; duty is seen in general terms as requiring a person or corporation to conform his or its conduct to a standard which is adequate to protect others from **unreasonable** risk of harm.

2. *Carter v. R.L. Jordan Oil Co.*, 294 S.C. 435, 444–45, 365 S.E.2d 324, 329–30 (Ct. App. 1988) (emphasis added) (citations omitted), *rev'd in part on other grounds*, 299 S.C. 439, 385 S.E.2d 820 (1989):

> The duty of care is that standard of conduct the law requires of an actor in order to protect others against the risk of harm from his actions. The law does not make the actor an insurer against all possible harm he may cause. He is not required to guard against harm which is not reasonably to be anticipated, or which is so unlikely to occur that the risk, although recognizable, would

> commonly be disregarded. A duty of care arises only with respect to a danger which is apparent to one in the position of the actor before the harm occurs.

3. *Regions Bank v. Schmauch*, 354 S.C. 648, 663–64, 582 S.E.2d 432, 440 (Ct. App. 2003) ("Every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it.") (citing cases).

4. *Andrade v. Johnson*, 356 S.C. 238, 245, 588 S.E.2d 588, 592 (2003) (emphasis added) (citation omitted):

> A tort-feasor may be subjected to tort liability for injury to a third party arising out of the tort-feasor's contractual relationship with another, despite the absence of privity between the tort-feasor and the third party. The tort-feasor's liability exists independently of contract, and rests upon the tort-feasor's duty to exercise due care.[1]

5. *Barnett v. United States*, 650 F.Supp.3d 412, 432 (2023) (D.S.C. 2023) (emphasis added) (citations omitted), aff'd, 132 F.4th 299 (4th Cir. 2025):

> Tort law imposes "a duty to exercise reasonable care" on those whose conduct presents a risk of harm to others. General maritime law imposes a duty to exercise reasonable or ordinary care under the circumstances, including the duty to warn of foreseeable dangers and to refrain from injuring someone.

6. *Fitzer v. Greater Greenville S.C. Young Men's Christian Ass'n*, 277 S.C. 1, 3, 282 S.E.2d 230, 231 (1981) (modified by statute) (revoking the immunity of charitable institutions to tort liability because "There is no tenet more fundamental in our law than liability follows the tortious wrongdoer.")

7. *Sentry Select Ins. Co. v. Maybank L. Firm, LLC*, 426 S.C. 154, 159, 826 S.E.2d 270, 272 (2019) (quoting F. PATRICK HUBBARD & ROBERT L. FELIX, THE SOUTH CAROLINA LAW OF TORTS 7 (4th ed. 2011)):

> The deterrent purpose of tort law is also served by our decision [extending legal malpractice liability from the direct client to his insurer].
>
> > One reason for making a defendant liable in tort for injuries resulting from a breach of his duty is to prevent such injuries from occurring. Underlying this justification is the assumption that potential wrongdoers will avoid wrongful behavior if the benefits of that behavior are outweighed by the costs imposed by the payment of damages ....

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[1] *See also Kleckley v. Nw. Nat. Cas. Co.,* 330 S.C. 277, 282, 498 S.E.2d 669, 672 (Ct. App. 1998), *aff'd*, 338 S.C. 131, 526 S.E.2d 218 (2000) (similar).

8. *Voeltz v. Bridge Charleston Invs. E, LLC*, No. 2:16-CV-2971-RMG, 2019 WL 943543, at *3 (D.S.C. Feb. 26, 2019) (citing *Small v. Pioneer Mach., Inc.*, 316 S.C. 479, 491 (Ct. App. 1994)) (holding defendant liable when an "intervening" party did the same thing defendant had done):

> "To the extent ESC acted negligently in failing to repair the first floor EMI, it was foreseeable that another party would do so as well."

9. *S.C. Ins. Co. v. James C. Greene & Co.*, 290 S.C. 171, 176, 348 S.E.2d 617, 620 (Ct. App. 1986) (citations omitted):

> Where several causes combine to produce injury, ... if a person's negligence is a proximate cause of an injury to another, the fact that the negligence of a third party concurred with his own negligence to produce the harm does not relieve him of liability.

10. *Shepard v. S.C. Dep't of Corr.*, 299 S.C. 370, 375, 385 S.E.2d 35, 37–38 (Ct. App. 1989) (emphasis added):

> An act or omission need not be the sole cause of the injury in order to be a proximate cause. A given injury may result from multiple causes. <u>It is enough if the negligent act complained of is at least one of the causes without which the injury would not have occurred</u>. . . .
>
> A special case is presented **if the injury is independently caused by the intervening act of a third party.** Generally, if between the time of the original negligent act or omission and the occurrence of the injury, there intervenes a willful, malicious, or criminal act of a third person producing the injury, and the intervening act was not intended by the negligent actor and could not have been foreseen by him as a probable result of his own negligence, the causal link between the original negligence and the injury is broken, and there is no proximate causation. *Stone v. Bethea*, 251 S.C. 157, 161 S.E.2d 171 (1968).
>
> **The test is whether** the intervening act and the injury resulting therefrom are of such a character that **the author of the primary negligence should have reasonably anticipated them** in light of the attendant circumstances. *Id.* One is not charged with foreseeing that which is unpredictable or which could not be expected to happen. *Id.* On the other hand, it is not necessary that the actor should have contemplated the particular chain of events that occurred, but only that the injury at the hand of the intervening party was within the general range of consequences which any reasonable person might foresee as a natural and probable consequence of the negligent act. *See Crowley v. Spivey,* 285 S.C. 397, 329 S.E.2d 774 (Ct.App.1985); *Stewart v. West African Terminals Ltd.* [1964] 2 Lloyd's Rep. 371.

11. *Roddey v. Wal-Mart Stores E., LP*, 415 S.C. 580, 590–91, 784 S.E.2d 670, 676 (2016) (emphasis added) (citations omitted):

> [T]he intervening negligence of a third party will not excuse the first wrongdoer if such intervention ought to have been foreseen in the exercise of due care. "In such case, the original negligence still remains active, and a contributing cause of the injury." Accordingly, **if the intervening acts are set into motion by the original wrongful act and are the foreseeable result of the original act**, **the "final result, as well as every intermediate cause, is considered in law to be the proximate result** of the first wrongful cause."
>
> . . . . [T]he trial court erred in finding the directed verdict was proper as to foreseeability, because there is more than one reasonable inference as to whether the consequences of the Wal–Mart employees' actions were foreseeable.

12. *Newton v. S.C. Pub. Railways Comm'n,* 319 S.C. 430, 432, 462 S.E.2d 266, 267 (1995):

> [I]t was foreseeable that an individual who, like Ross, knew of the malfunction would ignore the signal, fail to stop, and be hit by a train while crossing the track. This type of accident is a natural and probable consequence of the Commission's negligence.

13. *Hill v. York Cnty. Sheriff's Dep't,* 313 S.C. 303, 308–09, 437 S.E.2d 179, 182 (Ct. App. 1993) (emphasis added):

> Further, it was foreseeable that such injury could result from the alleged negligence. While it is true that an individual was the direct cause of Hill's injury, the record includes evidence from which it could be inferred that Hill was shot because of his intoxicated condition, i.e. "they were running their mouths." We see no difference between this inference and the inference that Wood fell off the trestle because he was intoxicated. The intervening negligence of a third person will not excuse the first wrongdoer if such intervention ought to have been foreseen in the exercise of due care. In such case, the original negligence still remains active, and a contributing cause of the injury. *Locklear v. Southeastern Stages, Inc.,* 193 S.C. 309, 8 S.E.2d 321 (1940). Liability exists for the natural and probable consequences of negligent acts and omissions proximately flowing therefrom. *Graham v. Whitaker,* 282 S.C. 393, 321 S.E.2d 40 (1984). The test by which the negligent conduct of the original wrongdoer is to be **insulated** as a matter of law **by the independent negligent act of another**, is whether the intervening act and the injury resulting therefrom are of such character that the author of the primary negligence should have reasonably foreseen and anticipated them in the light of attendant circumstances. *Locklear,* supra. . . . [T]here is a reasonable inference that law officers might foresee the injury that occurred to Hill as a result of such actions. We hold a genuine issue of fact exists as to whether any

> negligence of the Sheriff's Department was the proximate cause of Hill's injury.

14. *Steele v. Rogers*, 306 S.C. 546, 551–52, 413 S.E.2d 329, 333 (Ct. App. 1992) (citation omitted):

> The Oil Company argues that the particular injury to Steele—wounding by a shotgun blast—was too remote from the sale of the beer to be foreseeable. . . . We are not prepared to say that [such a connection] is so uncommon an event as to be unforeseeable as a matter of law in all circumstances.[2]

15. *Satterfield v. Bright*, 289 S.C. 254, 256, 345 S.E.2d 769, 770 (Ct. App. 1986) (citing *Wilson v. Marshall*, 260 S.C. 271, 195 S.E.2d 610 (1973)) ("The question should be submitted to the jury if there may be a fair difference of opinion regarding whose act or acts produced or contributed as a direct and proximate cause to the injury complained of.")

II. Other

16. *Hager v. McCabe, Trotter & Beverly, P.C.*, 435 S.C. 740, 752, 869 S.E.2d 886, 892 (Ct. App. 2022)

> Dismissing this case at the pleading stage would require us to look past the fact that the derivative claims were properly alleged and rely exclusively on public policy. The first place we look for public policy is to the legislature. The second is to binding precedent. Because neither precludes this suit's filing, we believe the better course is to exercise restraint.

This case goes to Parts II and VI.B of the Brief of Appellant and Part II.D of the Reply Brief.

17. *Doctor v. Robert Lee, Inc.*, 215 S.C. 332, 335, 55 S.E.2d 68, 69 (1949)) (alteration in original) ("One who is injured by the wrongful act of two or more joint [tortfeasors] has the option of bringing an action against either one or all of them as [ ] defendants. . .").

This case goes to Part IV.A of the Brief of Appellant and Parts II.B and II.C of the Reply Brief.

> Copies of the opinions are attached.
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> Thank you.

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[2] *Id*. at 548–49, 413 S.E.2d at 331:

> Rogers went into the store and purchased two six packs of beer . . . At the house, the group went in, watched television, and continued drinking beer. While they were drinking, they began talking about guns. . . . They decided to go outside and fire the gun. As they left the house . . . . [t]he shotgun accidentally discharged, wounding Steele in the leg.

<table>
<tr><td colspan="2">Sincerely,</td></tr>
<tr><td>s/Brooks R. Fudenberg
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Cc: Sarah H. Spruill, Esq.
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