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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals Jr., Circuit Court Judge

Opinion No. 2025-UP-244 (S.C. Ct. App. filed July 16, 2025)

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

Petitioner,

v.

Grand Strand Nissan, Inc., and Grainger
Companies, Inc. d/b/a Grainger Honda,

Defendants,

Of which Grand Strand Nissan, Inc., is the

Respondent.

PETITION FOR WRIT OF CERTIORARI

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STATUTES

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QUESTIONS PRESENTED

- I. As to the Issues, Generally
 - A. Original Wrongdoer fraudulently sells a vehicle to Purchaser 1, intending that Purchaser 1 sell the vehicle rather than use it for transportation, and intends that Purchaser 1 similarly misrepresent the vehicle. Purchaser 1 sells the vehicle to Purchaser 2. Does the Original Wrongdoer escape liability to Purchaser 2?
 - B. Same question, except that all three parties are in the automotive sales industry.
 - C. Same questions as above, except the misrepresentation by Original Wrongdoer was negligent rather than intentionally fraudulent.
 - D. Same questions as above, except that the misrepresentation was that the vehicle had no structural damage, repairs, or replacements, when the entire frame had been replaced.
- II. The South Carolina Unfair Trade Practices Act provides relief to “any person” injured “as a result of” a violation. Did the Court of Appeals err in requiring “any person” to be injured as a direct result of the violation?
- III. The Dealers Act allows compensation to those injured “by reason of” a violation. Did the Court of Appeals err in holding that indirect injuries do not suffice?
- IV. Does the South Carolina Dealers Act allow suits by car dealers?

SUMMARY

These novel questions in South Carolina are proper for review under Rule 242(b)(1), SCACR. Question 1.D., especially, is important to the health and safety of the public. Under the Court of Appeal’s opinion, used car dealers profit from even discovered fraud, if Purchaser 1 goes out of business before Purchaser 2 discovers the fraud. The opinion is unfair to innocent victims who discover the fraud only after Purchaser 1 is unavailable for suit.

STATEMENT OF THE CASE

Respondent Grand Strand Nissan, Inc. (Original Wrongdoer), sold a vehicle at an auction where all vehicles are intended for resale. (R. p. 210).¹ Original Wrongdoer represented that the vehicle had no structural damage or replacements, while knowing the vehicle's entire frame had been replaced and other major repairs had been performed. (R. pp. 174-90). It sold the vehicle to Grainger Companies, Inc. d/b/a Grainger Honda (Purchaser 1) without disclosing the prior wreck. Purchaser 1 is not a party to this appeal. Purchaser 1 attempted to sell the vehicle, discovered the fraud, and then sold it to Petitioner Target Motors, LLC d/b/a Port City Motors (Purchaser 2) without disclosing the prior frame damage.

While still unaware of the prior wreck damage, Purchaser 2 sold the truck to a consumer. The consumer learned of the prior frame damage and made a claim against Purchaser 2. Purchaser 2 made consumer whole. Purchaser 2, on February 8, 2022, filed suit against both wrongdoers. Original Wrongdoer was granted summary judgment on all claims by Purchaser 2. These were for fraud, negligence, negligent misrepresentation, and violation of the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act (Dealers Act), S.C. Code Ann. Sections 56-15-10 to -600 and the South Carolina Unfair Trade Practices Act (UTPA), S.C. Code Ann. Sections 39-5-10 to -730. (R. pp. 24-28). Purchaser 2 appealed. The Court of Appeals affirmed. Reasoning that Original Wrongdoer owes no duty to Purchaser 2, with whom Original Wrongdoer had no interactions, its opinion denies the common law claims. "Here, the circuit court found Grand Strand did not have a duty because it never communicated or interacted with Target about the

¹ "You acknowledge and agree that any Vehicle is purchased for resale in the form of tangible personal property in the regular course of business and is the sort usually purchased [for] resale." (R. p. 210) paragraph (m)) (Manheim Terms and Conditions, p. 5 paragraph (m)).

truck's condition. We agree.” (Opinion, p. 2). “For the same reasons, we affirm [on]Target's fraud and negligent misrepresentation claims.” (*Id.* p. 4).

It holds the lack of a direct connection between the parties is fatal to the statutory claims. “Here, it is undisputed that Target did not rely on any alleged misrepresentation made by Grand Strand because Grand Strand never made any representations to Target.” (*Id.* p. 5) (regarding Dealers Act). It similarly holds that the lack of “a [direct] causal connection” is fatal to the UTPA claim. (*Id.* p. 5)

It also holds that car dealers may not sue under the Dealers’ Act. “As to Target's claim under the Dealers Act, we affirm the circuit court's grant of summary judgment because the Dealers Act does not apply to this case as Target, Grand Strand, and Grainger are car dealers.” (Opinion, p. 4).

The Petition for Rehearing en banc was denied on September 23, 2025.

I. IN READING THE DEALERS ACT AGAINST ITS PLAIN LANGUAGE TO DENY CAR DEALERS THE RIGHT TO SUE, THE OPINION HERE CONFLICTS WITH A PLAIN READING OF THE ACT AND MANY DECISIONS OF THIS COURT.

A fair reading of the entire Dealers Act shows it is in large part concerned with protecting car dealers. E.g., SC Code Ann. § 56-15-40 ¶¶ (C)(1) to (5), (D) (1) to (13); *see also* sections 56-15-50 through -70, -90 through -100. It has a general right-to-sue provision that “any person who shall be injured in his business or property by reason of anything forbidden in this chapter may sue therefor in the court of common pleas” Section 56-15-110(1). In holding that the Dealers Act excludes its major beneficiaries from its right-to-sue provision, the opinion here conflicts with prior decisions of this Court in *Senate by & through Leatherman v. McMaster*, 425 S.C. 315, 322, 821 S.E.2d 908, 912 (2018); *CFRE, L.L.C. v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011); and *S.C. State Ports Auth. v. Jasper Cty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006), which each hold that a statute is to be read “as a whole and in a manner consonant and in

harmony with its purpose."

The opinion also conflicts with the plain meaning of the statute. The phrase "any person" includes dealers. *See* section 56-15-110(1) ("any person"); Section 56-15-10(n) (defining "person"). Reading the statute to exclude parties whom its plain text includes conflicts with many prior decisions of this Court holding that unambiguous statutes must be read according to the plain meaning, e.g. *Grungo-Smith v. Grungo*, 444 S.C. 556, 566–67, 910 S.E.2d 455, 461 (2024), and with many more holding that remedial statutes must be read broadly, e.g., *Allen v. Union Oil & Mfg. Co.*, 59 S.C. 571, 577, 38 S.E. 274, 276 (1901).²

The opinion here also conflicts with the cases it cites in support. *Mid-State Auto Auction of Lexington Inc. v. Altman*, 324 S.C. 65, 69 n.4, 476 S.E.2d 690, 692 n.4 (1996) did not reject the proposition that the *Dealers Act* "allows recovery by anyone, not just motor vehicle owners;" it rejected the proposition that "§ 56–15–320 allows recovery by anyone, not just motor vehicle owners. . ."³ *Id.* (emphasis added). *Freeman v. J.L.H. Invs., LP*, 414 S.C. 362, 373, 778 S.E.2d 902, 908 (2015) did not state that consumer protection is the sole purpose of the Dealers Act, and if it had stated that, it would have erred for reasons discussed above.

The en banc Court denied rehearing. The opinion reads dealers out of the Dealers Act. It conflicts with many decisions of this Court. Whether dealers may sue under the Dealers Act is a novel issue, raised sua sponte by the Court of Appeals here. The holding is proper for review pursuant to both 242(b)(1) and (b)(3), SCACR. As South Carolina federal courts feel free to cite unpublished South Carolina appellate decisions, the Court should grant review to consider the evisceration of the Dealers' Act under this holding.

² Additional cases on both points are provided in Section II.

³ SECTION 56-15-320. Application for wholesale or dealer license; bond; duties upon change of circumstances and termination of business; death of licensee.

II. IN READING BOTH STATUTES AGAINST THEIR PLAIN LANGUAGE TO MINIMIZE THEIR EFFECT, THE OPINION CONFLICTS WITH MANY PRIOR DECISIONS OF THIS COURT.

It is undisputed that Original Wrongdoer violated both the Dealers Act and the UTPA.

Neither the UTPA nor the Dealers Act requires direct infliction of harm for a claim to exist. The Dealers Act provides, “*any person* who shall be injured in his business or property *by reason of anything* forbidden in this chapter may sue therefor in the court of common pleas and shall recover double the actual damages by him sustained, and the cost of suit, including a reasonable attorney's fee.” Section 56-15-110(1) (emphasis added). The statute does not say “*directly* by reason.” Petitioner obviously incurred harm “by reason of” Original Wrongdoer’s tortious act.

The UTPA provides, “Any person who suffers any ascertainable loss of money or property . . . as a result of [a] method, act or practice declared unlawful by Section 39-5-20” may sue. S.C. Code Ann. § 39-5-140(a). The statute uses “any” loss, not “direct” loss. Indirect losses are enough. Petitioner suffered an ascertainable loss as a result of Original Wrongdoer’s wrongful act.

The statutory claims should be allowed to proceed. Moreover, in violating these Acts, Original Wrongdoer expected and intended that the injury would be indirect.

The Court of Appeals rejects both Target’s Dealers Act claim and its UTPA claim on grounds the injury was not directly caused by Wrongdoer. “[U]nder the UTPA, we again find that the record fails to demonstrate a causal connection” between Wrongdoer’s actions and Target’s harm. It holds similarly regarding the Dealers Act. “[T]he record before us does not contain a disputed fact that would create an inference that Grand Strand caused any harm to Target.”

In effectively reading the word “directly” into the statutes, the opinion conflicts with many prior decisions of this Court holding it is error to read words into statutes. E.g., *Grungo-Smith v. Grungo*, 444 S.C. 556, 566–67, 910 S.E.2d 455, 461 (2024); *Garrison v. Target Corp.*, 435 S.C. 566, 586, 869 S.E.2d 797, 808 (2022) (same); *Edwards v. State Law Enforcement Div.*, 395 S.C.

571, 575, 720 S.E.2d 462, 465 (2011) (same).

In limiting the operation of these remedial statutes, the opinion also contradicts the many cases holding that remedial statutes are to be broadly construed to achieve their purposes. E.g., *Allen v. Union Oil & Mfg. Co.*, 59 S.C. 571, 577, 38 S.E. 274, 276 (1901) (remedial statutes receive “a construction giving the words the largest, the fullest, the most extensive meaning of which they are susceptible.”); *S.C. Dep’t of Mental Health v. Hanna*, 270 S.C. 210, 213, 241 S.E.2d 563, 564 (1978) (similar); *Inabinet v. Royal Exch. Assurance of London*, 165 S.C. 33, 36, 162 S.E. 599, 600 (1932) (similar).

The opinion also contradicts, or at least is in extreme tension with, the Supreme Court’s holding *Colleton Preparatory Acad. Inc. v. Hoover Universal, Inc.* (“*Colleton Prep.*”), 379 S.C. 181, 666 S.E.2d 247 (2008). “[T]he plain meaning of the UTPA statute did not limit remedies to the initial purchaser.” 379 S.C. at 195, 666 S.E.2d at 254. *Colleton Prep.* involved two certified questions.⁴ The question relevant here was,

(2) Can a plaintiff who used but did not purchase a product directly from the defendant and nonetheless suffered a loss as a result of the defendant’s unfair or deceptive acts obtain relief under the South Carolina Unfair Trade Practices Act?

Id. at 186, 666 S.E.2d at 250. *Id.* at 184, 666 S.E.2d at 249. “We answer th[is] second question, ‘yes.’” “As the dissent in *Reynolds* pointed out, to hold privity is required before a party may maintain a UTPA action would lead to *an absurd result*. Such a finding *would prohibit UTPA actions by all remote buyers and competitors, who have traditionally been allowed to proceed under the Act . . .*” *Id.* at 196, 666 S.E.2d at 255 (emphasis added).

⁴ *Colleton Prep.*’s answer to the other certified question was *overruled in part on other grounds* by *Sapp v. Ford Motor Co.*, 386 S.C. 143, 687 S.E.2d 47 (2009), which was then *abrogated* by *Carroll v. Isle of Palms Pest Control, Inc.*, 446 S.C. 177, 918 S.E.2d 532 (2025).

The Court should grant certiorari to resolve the conflict between the opinion here and the Court's prior decision and the conflict or tension between this decision and *Colleton Prep*.

III. A CAR DEALER THAT FRAUDULENTLY SELLS A VEHICLE TO ANOTHER DEALER, INTENDING IT BE MISLEADINGLY RESOLD, IS LIABLE TO THE VICTIM.

Perhaps because the rule regarding intervening causes is so strongly in favor of liability here, the opinion does not base its ruling on the common law claims on a lack of proximate cause.⁵ Instead, it holds that one who fraudulently sells a vehicle, intending that it be promptly resold, has no duty to the second purchaser.⁶ That cannot be the law. It means that one who successfully cheats a first purchaser—intending that it cheat a second—is immune to suit by the victim with whom it has not communicated. If Original Wrongdoer cheats a couple, who later sell the car to Sally Smith and then leave the state, Sally is without recourse unless she can track them down and find a lawyer willing to take the case. Even if the couple is in-state and locatable, if that couple had been innocently unaware of the deception when it sold the car to Sally, she will likely be unable to find an attorney willing to take on the case. It would be a straight breach-of-contract case, with no multiple damages, punitive damages, or attorney fees available. The costs of litigation could easily overwhelm any recovery. Sally cannot reasonably sue the couple; the couple thus have no damages and cannot sue the Wrongdoer. The Wrongdoer gets away with fraud.

⁵ An intervening cause breaks the chain of liability only if the resulting harm was of a type that could not reasonably have been anticipated. *Oliver v. S.C. Dep't of Highways & Pub. Transp.*, 309 S.C. 313, 317, 422 S.E.2d 128, 131 (1992); *Matthews v. Porter*, 239 S.C. 620, 626, 124 S.E.2d 321, 324 (1962); *Pfaehler v. Ten Cent Taxi Co.*, 198 S.C. 476, 486, 18 S.E.2d 331, 335 (1942). Proximate cause does not mean direct cause. The Court of Appeals' opinion here conflicts with these cases.

⁶ “[The circuit court found Grand Strand did not have a duty because it never communicated or interacted with Target about the truck's condition. We agree.” (Opinion, p. 2) (discussing the negligence claim); “For the same reasons, we affirm . . . on Target's fraud and negligent misrepresentation claims.” (*Id.* p. 4).

Far better, as a matter of policy and of fairness, to hold the one who started the fraud responsible under South Carolina law.

Target believes this result is dictated by already-existing South Carolina law. Under “the established law of this jurisdiction,” plaintiffs are entitled to sue both tortfeasors whose actions played a role in their injury. *Halsey v. Minnesota-S.C. Land & Timber Co.*, 174 S.C. 97, 177 S.E. 29, 38 (1934). If not, then it is a novel issue, to be decided by “which answer and reasoning best comport with the law and public policies of this state and the Court’s sense of law, justice, and right.” *Mims Amusement Co. v. S.C. L. Enft Div.*, 366 S.C. 141, 145, 621 S.E.2d 344, 346 (2005). *State v. Sweat*, 379 S.C. 367, 373, 665 S.E.2d 645, 649 (Ct. App. 2008), *aff’d as modified*, 386 S.C. 339, 688 S.E.2d 569 (2010) (similar). The Court should grant certiorari and consider which answer best comports with our state’s policies, law, justice, and right.⁷

The Court should grant certiorari and determine whether South Carolina law allows used car dealers to get away with fraud like this.

⁷ Our state’s policies are strongly against fraud. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 30 & n.7, 644 S.E.2d 663, 671 & n.7 (2007). The weight of authority supports Target. “Where the initial act is an intentional tort, it is more likely that the defendant’s acts will be regarded as a proximate cause *despite the intervening act.*” F. Patrick Hubbard & Robert L. Felix, THE SOUTH CAROLINA LAW OF TORTS (5th ed. 2023) 176 (citing, e.g., RESTATEMENT § 435A; PROSSER § 9, at 40; *Mellen v. Lane*, 377 S.C. 261, 659 S.E.2d 236 (Ct. App. 2008)) (emphasis added). The trend is to “extend[] the defendant’s liability for fraud ‘to the persons or class of persons whom he intends *or has reason to expect* to act or to refrain from action in reliance upon the fraudulent misrepresentation.’ ” *Id.* at 422-23 (footnotes omitted) (emphasis in original). Professors Patrick and Hubbard’s formulation makes sense, and is supported by other authorities. *See, e.g., Kimberlin v. DeLong*, 637 N.E.2d 121, 126 (Ind. 1994) (quoting W. Page Keeton *et al.*, PROSSER AND KEETON ON THE LAW OF TORTS §§ 8-9 (5th ed. 1984); 74 AM. JUR. 2d *Torts* § 29, 644); *Oppenhuizen v. Wennersten*, 139 N.W.2d 765, 768 (Mich. App. 1966) (quoting 23 AM. JUR., *Fraud and Deceit*, § 118, pp. 903, 904); *Restatement (Second) of Torts* § 533 (similar).

IV. USED CAR DEALERS THAT SELL A CAR, INTENDING IT BE PROMPTLY RESOLD, OWE A DUTY TO THE INTENDED REPURCHASER.

Whether used-car dealers, selling a car for resale, owe a duty of care to the intended repurchaser, is a novel issue in South Carolina. The Court of Appeals says “no,” but its reasoning is faulty. It relies on cases holding that one ordinarily has no duty to another, as if Respondent here were simply a by-stander. Here, though, Respondent was the one who set the injury in motion. Many prior opinions of this Court hold that one who sets a chain of actions in motion that foreseeably results in a reasonably-anticipatable harm is liable to the ultimate victim even when there is no communication or interaction between the original tortfeasor and the victim. E.g., *Gossett v. Burnett*, 251 S.C. 548, 164 S.E.2d 578 (1968) (chain of wrongful acts by various actors; original wrongdoer is liable to ultimate victim); *Pfaehler v. Ten Cent Taxi Co.*, 198 S.C. 476, 18 S.E.2d 331 (1942 (similar); *Roddey v. Wal-Mart Stores E., LP*, 415 S.C. 580, 590–91, 784 S.E.2d 670, 676 (2016) (similar); *Horne v. Atl. Coast Line R. Co.*, 177 S.C. 461, 471, 181 S.E. 642, 646 (1935) (similar). Its related holding that a defendant is not liable unless “it communicated or interacted with” the victim also conflicts with the same decisions of this Court.

Because the precise issue is novel, and the Court of Appeals’ opinion on this novel issue conflicts with prior decisions of the Court on the broader issues, the Court should grant certiorari as anticipated by paragraphs (b)(1) and (b)(3) of Rule 242, SCACR.

Conclusion

The Court should grant the petition, obtain briefing, and clarify whether automotive dealers may sue under the Dealers Act, whether the Dealers Act and UTPA allow claims by those whom are indirectly injured by violations of those Acts, and whether one may fraudulently or negligently place an item in the stream of commerce for resale and disclaim liability to the victim under the common law, and the other questions raised above.

The Court should then hold that one who wrongfully sells an item, expecting it to be resold rather than used by the purchaser, owes a duty of care to the immediate repurchaser, and that one who does so fraudulently is directly liable to whoever ends up bearing the burden of the fraud. “There is no tenet more fundamental in our law than liability follows the tortious wrongdoer.” *Ruh v. Metal Recycling Servs., LLC*, 439 S.C. 649, 654, 889 S.E.2d 577, 580 (2023) (quoting *Fitzer v. Greater Greenville S.C. Young Men’s Christian Ass’n*, 277 S.C. 1, 3, 282 S.E.2d 230, 231 (1981)).

Other options might include adopting the Restatement (Second) of Torts § 533. It provides (emphasis added),

The maker of a fraudulent misrepresentation is subject to liability for pecuniary loss to another who acts in justifiable reliance upon it if the misrepresentation, although not made directly to the other, is made to a third person and *the maker intends or has reason to expect that its terms will be repeated or its substance communicated to the other, and that it will influence his conduct in the transaction or type of transaction involved.*

This case squarely fits Section 533, and no South Carolina case prohibits its adoption. The Court could do as in *Ruh*, 439 S.C. at 656, 889 S.E.2d at 581 (holding it “unnecessary to go so far as to ‘adopt’ ” a Restatement section while “find[ing] the text of and comments to [a subsection] will be useful in future cases as our circuit and appellate courts determine the parameters of this theory of liability”).

The Court might limit its holding to used car dealers, given the known problems with honesty in that business, and the dangers involved in people driving vehicles with false understandings of their structural histories.

The Court could hold narrowly that when a car dealer fraudulently sells as without structural replacements a vehicle it knows has had major structural replacements, and intends and expects its Purchaser not to use the vehicle for driving, but solely for resale, and intends and

expects Purchaser 1 to pass along the deception to Purchaser 2, the original wrongdoer is liable to Purchaser 2.

The Court should go further, and make negligent misrepresentations by car dealers of cars they offer for resale actionable by the next purchaser.

If *Colleton Prep.* and the other cases do not control the Dealers Act and UTPA claims here, the Court should hold that one may not escape Dealers Act and UTPA liability to the victim by routing the intended harm through another party.

And it should reverse the Court of Appeals' holding that dealers may not sue under the Dealers Act.

Respectfully submitted,

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