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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals Jr., Circuit Court Judge

Case No. 2023-000540

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

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 REHEARING EN BANC

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The opinion holds a car dealer may deceptively sell a vehicle for re-sale, and escape liability to an intended re-purchaser. The victim may not sue under the common law, the UTPA, or the Dealers Act, the panel holds. Other tortfeasors are responsible for the foreseeable consequences of their conduct. Why should car dealers deceptively selling automobiles be exempt? This is worthy of en banc consideration. The holding that the Dealers Act does not allow suits between car dealers also deserves en banc consideration.

FACTS

Respondent is a full-service new-and-used car dealer. Respondent sold a previously wrecked pickup truck under a green light at an auction where all vehicles bought are intended to be re-sold. (R. p. 210) ("You acknowledge and agree that any Vehicle is purchased for resale."). The wreck was so extreme the entire frame had to be replaced. Respondent knew this, but sold it as being without structural replacements. Respondent admitted at oral argument that there generally is liability in such situations, and defended on the ground that the intermediate purchaser-re-seller here discovered the true nature of the vehicle, and still passed the deception on to Petitioner. Other tortfeasors are responsible for the foreseeable consequences of their grossly negligent or intentional conduct. Why should car dealers deceptively selling automobiles be exempt?

I. Background Law as to All Claims

A. The Well-Established Law of Proximate Cause

1. Foreseeability and Intervening Causes

Settled law holds that the intervening purchase-re-sale here is not the sort of intervening cause that breaks the chain of proximate causation. (Br. of Appellant, pp. 24-29).

Without an intervening cause, it is enough that one should have foreseen that some injury might result. *Horne v. Atl. Coast Line R. Co.*, 177 S.C. 461, 471, 181 S.E. 642, 646 (1935) (quoting

45 Corpus Juris, 918, § 484) ("[I]f by the exercise of reasonable care it might have been foreseen or anticipated that some injury might result."). It does not matter whether the precise person who suffers the injury is foreseeable. *Tobias v. Carolina Power & Light Co*., 190 S.C. 181, 186, 2 S.E.2d 686, 688 (1939).

Intervening acts change this by limiting the original wrongdoers' liability to injuries of the same sort as would be foreseeable from the original act. This is well-established.

> While the general rule is that, *if*, subsequently to an original wrongful or negligent act, *a new cause has intervened, of itself sufficient to stand as the cause of the injury,* the former must be considered as too remote, still, *if the character of the intervening act claimed to break the connection between the original wrongful act and the subsequent injury was such that its* ***probable or natural consequences could reasonably have been anticipated,*** apprehended, or foreseen by the original wrongdoer, ***the causal connection is not broken*** *and the original wrongdoer is responsible for all the consequences resulting from the intervening act.*

Tobias, 190 S.C. at 186, 2 S.E.2d at 687-88 (emphasis added). *Stone v. Bethea*, 251 S.C. 157, 161 S.E.2d 171, 174 (1968) (similar); *Mellen v. Lane,* 377 S.C. 261, 278–84, 659 S.E.2d 236, 245–48 (Ct. App. 2008) (gathering numerous authorities); *Crowley v. Spivey*, 285 S.C. 397, 406–09, 329 S.E.2d 774, 780–81 (Ct. App. 1985) (same). The opinion's holding, 2025 WL 1950260, at * 3 (emphasis added), that the UTPA fails because Grainger acted "based on its *independent* knowledge of the truck's condition," conflicts with this well-established law.

"The test is to be found in the probable consequences reasonably to be anticipated, and not in the number or exact character of events subsequently arising." *Matthews v. Porter*, 239 S.C. 620, 626, 124 S.E.2d 321, 324 (1962). *Ayers v. Atlantic Greyhound Corp.*, 208 S.C. 267, 276-77, 37 S.E.2d 737, 740-41 (1946) (quoting *Locklear v. Southeastern Stages*, 193 S.C. 309, 8 S.E.2d 321 (1940)) (similar). Liability exists "if such intervening cause was set in motion by the original wrongdoer." *Pfaehler v. Ten Cent Taxi Co.*, 198 S.C. 476, 486, 18 S.E.2d 331, 335 (1942). *Roddey v. Wal-Mart Stores E., LP,* 415 S.C. 580, 590–91, 784 S.E.2d 670, 676 (2016) (same). Grand

Strand tossed a ticking time bomb into the stream—hoping the explosion would be in someone else's hands. Selling, for resale, a previously wrecked truck as never having been wrecked sets in motion events that foreseeably leads to a victim paying for a valuable never-wrecked truck and receiving instead a wrecked one. The causal connection is not broken and the original seller is responsible for the consequences. "[I]t matters not that the supervening and concurrent cause was an act of negligence of a third person or even a wilful or criminal act." *Ayers*, 208 S.C. at 277, 37 S.E.2d at 741 (internal citations omitted). This too is extraordinarily well-established. Citing many authorities, *Ayers* began the portion quoted above by saying "We repeat." The point *Ayers* "repeat[ed]" has been re-repeated more than once.[1]

Because the injury here is the type that normally occurs from Respondent's original wrongful act, the intervening action is not legally relevant. Were the opinion read as holding otherwise, it would mean it overlooked the above cases.

2. Jury Issue

Proximate cause has two requirements: but-for causation and foreseeability. *Hurd v. Williamsburg Cnty.*, 353 S.C. 596, 612, 579 S.E.2d 136, 144 (Ct. App. 2003), *aff'd,* 363 S.C. 421, 611 S.E.2d 488 (2005). These are jury issues except in "rare or exceptional cases." *Id.* at 613–14, 579 S.E.2d at 145. The foreseeability element was addressed above. The but-for requirement does not save Respondent, as here, it appears obvious Target's loss would not have happened without Respondent's acts, Respondent has not argued otherwise, and had Respondent done so, the question would be for the jury. If the Court finds that more facts are required for a resolution, the

[1] *Wineglass v. McMinn*, 235 S.C. 537, 541–42, 112 S.E.2d 652, 654 (1960) (following *Tobias*); *id.* (quoting *Ayers*) (internal citations omitted) ("We repeat that it matters not that the supervening and concurrent cause was an act of negligence of a third person, or even a wilful or criminal act"); *Culbertson v. Johnson Motor Lines*, 226 S.C. 13, 24, 83 S.E.2d 338, 343 (1954) (alteration in original) (quoting *Ayers*) ("We repeat that it matters not that the supervening and concurrent cause was an act of negligence of a third person * * * or even a wilful or criminal act").

affirmance of dismissal before discovery was complete errs. (Br. of Appellant p. 9).

B. Foreign Cases

The opinion overlooks the many courts in other jurisdictions that were outraged by the idea that one could fraudulently sell a vehicle, **intending it be resold**, and then tell the victim he or she may not sue him. (Br. of Appellant pp. 29-35; Reply Br. 15 n.7). Neither Respondent nor the opinion cites a single case holding the opposite.

II. Statutory Claims

Both statutes here, the South Carolina Unfair Trade Practices Act ("UTPA"), S.C. Code Ann. Sections 39-5-10 to -730, and the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act ("Dealers Act"), S.C. Code Ann. Sections 56-15-10 to -600, are remedial. Remedial statutes receive "a construction giving the words the largest, the fullest, the most extensive meaning of which they are susceptible." *Allen v. Union Oil & Mfg. Co.*, 59 S.C. 571, 577, 38 S.E. 274, 276 (1901) (Br. of Appellant pp. 16-17) (citing authorities).

Courts are without power to limit the operation of a statute. "[T]o limit or expand the statute's operation . . . . is not the court's place." *Garrison v. Target Corp.*, 435 S.C. 566, 586, 869 S.E.2d 797, 808 (2022) (quoting authorities). *Edwards v. State Law Enf't Div.*, 395 S.C. 571, 575, 720 S.E.2d 462, 464 (2011 (similar).

A. UTPA

The panel holds, "As to Target's claim under the UTPA, we again find that the record fails to demonstrate a causal connection between the alleged harm and the alleged deceptive act." As an initial matter, the holding overlooks that Target *did* demonstrate a causal relationship, but-for causation. *J.T. Baggerly* (but-for causation is a causal relationship).

The opinion seems to hold that injuries are limited to those that are a "direct result," not merely a "result," of the violation. However, 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. The holding overlooks the plain meaning rule and the associated rule that it is error to limit the operation of a statute. *E.g.*, *Garrison,* 435 S.C. at 586, 869 S.E.2d at 808 and authorities cited there.[2] It overlooks many additional authorities, including *Colleton Preparatory Acad. Inc. v. Hoover Universal, Inc.* ("*Colleton Prep.*"), 379 S.C. 181, 666 S.E.2d 247 (2008). (Br. of Appellant pp. 2, 15). "[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 (citing the dissent in *Reynolds v. Ryland Group, Inc.,* 340 S.C. 331, 531 S.E.2d 917 (2000)). *Colleton Prep.* involved two certified questions.[3] 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 (emphasis added). *Id*. at 184, 666 S.E.2d at 249 (emphasis added),

> We answer the second question, '*yes*.'[4]

Colleton Prep.'s broader holding is, "To recover under the Act, [all] a plaintiff must prove [is] a violation of the Act, proximate cause,"–not "direct cause"–"and damages," *id.* at 194, 666 S.E.2d at 254. That resolves the UTPA issue here. The existence of a violation and damages are not seriously disputed here. That leaves only proximate cause. As explained in Part I, this is a jury

[2] The case the panel quotes in support of its UTPA holding does not require a *direct* causal connection, but merely "a causal connection." *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharms., Inc.*, 414 S.C. 33, 57–58, 777 S.E.2d 176, 189 (2015).

[3] *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.*, Op. No. 28291, No. 2023-001655, 2025 WL 2055721 (S.C. July 23, 2025).

[4] *Colleton Prep*. additionally held it would be "absurd" to "prohibit UTPA actions by all remote buyers and competitors." 379 S.C. at 196, 666 S.E.2d at 255 (praising the dissent in another case where the dissent so argued).

question.

Any doubts about whether the UTPA allows suit should be resolved by giving the remedial statute "the most extensive meaning" the words can bear. *Allen*, 59 S.C.at 577, 38 S.E. at 27. The Court should rehear.

B. Dealers Act

The *sua sponte* holding that "the Dealers Act does not apply to this case as Target, Grand Strand, and Grainger are car dealers," overlooks the principles and cases discussed above. The Dealers Act allows suits by anyone, including car dealers. "[A]ny person who shall be injured in his business or property by reason of anything forbidden in this chapter may sue therefor . . . ." S.C. Code Ann. § 56-15-110(1). A fair reading of the entire Act shows it is in large part concerned with protecting car dealers. E.g., sections 56-15-40 through -70.

The cases the opinion cites, 2025 WL 1950260, at * 3, are not to the contrary. One, *Freeman v. J.L.H. Invs., LP,* holds that the Dealers Act was enacted "for the purpose of consumer protection," not "*only* for the purpose of consumer protection."[5] The other, *Mid-State Auto Auction of Lexington Inc. v. Altman*, concerns section 56-15-320, a section solely about suits on dealers' bonds, not the act more broadly.[6] Even if, as the quotation from *Mid-State Auto* might seem to

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[5] The panel quotes *Freeman* (omissions in original) as "explaining 'the Legislature enacted ... the Dealers Act ... for the purpose of consumer protection.'" The full sentence in *Freeman* is, "Furthermore, because the Legislature enacted the SCCPC and the Dealers Act both for the purpose of consumer protection, the statutes cannot be read in isolation." *Freeman* was simply commenting on a similarity in purpose between the Dealers Act and another statute, not attempting to define the limits of the statutes' operations. Had *Freeman* stated the Dealers Act was enacted "solely" for the purpose of consumer protection, it would have erred.

[6] *Mid-State Auto Auction* concerned section S.C. Code Ann. 56-15-320, which solely concerns dealers' bonds. "An owner or his legal representative . . . has a right of action . . . upon the bond . . . ." § 56-15-320. *Mid-State Auto Auction* was an action on such a bond. As the panel notes, *Mid-State Auto Auction* overruled *Connecticut Indemnity Co. v. Burdette Chrysler Dodge Corp.* "to the extent [*Connecticut Indemnity*] recites that the latter part of [section] 56-15-320 allows recovery by anyone, not just motor vehicle owners, for loss or damage suffered as the result of a dealer violating any of the provisions in Chapter 15 of Title 56 . . ." *Mid-State Auto Auction* did so because

suggest, the right to sue under the Act were limited to "just motor vehicle owners," Petitioner could still sue, not under its hat as a dealer, but as the owner of the motor vehicle in question.

As with the UTPA, the opinion apparently reads a requirement for direct causation, unmediated by later events, into the Dealers Act, and reads an act by another as breaking that direct causation. It states, 2025 WL 1950260, at * 3 (quoting S.C. Code Ann. § 56-15-40(B) (Supp. 2024)) (alteration in original), "Additionally, even if the Dealers Act applied, a dealer is only subject to liability when it 'engage[s] in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties or to the public.' " If the opinion is read as meaning Respondent did not engage in an action that was "arbitrary, in bad faith, or unconscionable," the Court should rehear, as Respondent fraudulently sold a vehicle whose entire frame had been replaced. If it is read as holding the statute requires direct damage, not just any damage, the Court should rehear as the statute does not limit the "damage" clause to acts that "directly" cause damage.[7] The holding would thus overlook the authorities cited above regarding the UTPA, as it would violate the plain meaning rule, and improperly limit the operation of the statute. As a remedial measure, the UTPA is instead to be read to give it "the most extensive

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the earlier case had violated the plain meaning rule. "Section 56–15–320 specifically states the purpose of a dealer's bond is to indemnify 'for loss or damage suffered *by an owner of a motor vehicle, or his legal representative.'* " *Mid-State Auto Auction,* 324 S.C. at 69, 476 S.E.2d at 692 (emphasis in original) (citing *Hughes v. Edwards*, 265 S.C. 529, 220 S.E.2d 231 (1975) for the plain meaning rule). To read section 56-15-320's language into sections 56-15-40 and 56-15-110 is contrary to *Mid-State Auto Auction*'s holding.

[7] The Dealers Act provides, "[A]ny person who shall be injured" may sue. It does not say, "directly injured." S.C. Code Ann. § 56-15-110(1). Further, it allows suit for damage incurred "by reason of" a violation," *id*., not, "directly by reason." A teenager invites a friend to spend summer vacation at his family's home. The friend is loud at night, causing the parents to loose sleep. If the parents say, "Any more late night noise by reason of your friend staying here, and he has to leave," and at two a.m. the friend's friends are honking their horns and yelling to get him to come out, he has to leave. It is no defense that the noise was not directly by the friend. He has to leave because of the noise of his friends which was because he was there. Had he not been there, the friends would not have shown up.

meaning" the words can bear. *Allen*, 59 S.C.at 577, 38 S.E. at 27.

Because limiting the Dealers Act to exclude claims by dealers and claims for indirect damage overlooks settled law, the Court should rehear.

III. Negligence.

> A tortfeasor may be liable for injury to a third party arising out of the tortfeasor's contractual relationship with another, despite the absence of privity between the tortfeasor and the third party. The tortfeasor's liability exists independently of the contract and rests upon the tortfeasor's duty to exercise due care. This common law duty of due care includes the duty to avoid damage or injury to foreseeable plaintiffs.

Johnson v. Sam Eng. Grading, Inc., 412 S.C. 433, 449, 772 S.E.2d 544, 552 (Ct. App. 2015) (quoting *Dorrell v. S.C. Dep't of Transp*., 361 S.C. 312, 318, 605 S.E.2d 12, 14–15 (2004)). The Court explained the principles in *Araujo v. S. Bell Tel. & Tel. Co.*, 291 S.C. 54, 57–58, 351 S.E.2d 908, 910 (Ct. App. 1986) (footnote omitted) (emphasis added) (citing Prosser and Keaton *On the Law of Torts*, Chapter 9, Section 53 (5th ed. 1984)),

> 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. [The point is] to protect others from **unreasonable** risk of harm.

Carter v. R.L. Jordan Oil Co., 294 S.C. 435, 444, 365 S.E.2d 324, 329–30 (Ct. App. 1988) (citations omitted), *rev'd on other grounds*, 299 S.C. 439, 385 S.E.2d 820 (1989), further explained, a duty of care does not arise "against harm . . . so unlikely to occur that the risk . . . would commonly be disregarded [but] only with respect to a danger which is apparent to one in the position of the actor before the harm occurs." *See also Snow v. City of Columbia*, 305 S.C. 544, 554-55, 409 S.E.2d 797, 803 (Ct. App. 1991) (similar). The panel's holding that there is no duty conflicts with these principles. It is an unreasonable risk of harm that was apparent to Grand Strand.

Why shouldn't a used car dealer selling a vehicle to another *for resale* owe a duty to the

party that buys it on the re-sale? As a matter of first impression in South Carolina, the panel holds it does not. But the explanation it provides for *why* it holds there is no duty overlooks the core of the issue. 2025 WL 1950260, at * 1. It quotes three cases for the point that ordinarily, the common law imposes no duty on a person to act,[8] which overlook the fact that when one *does* act, common law imposes all kinds of duties. Those cases would apply if the Court were considering a defendant dealer who had sat by quietly while it knew another dealer was misrepresenting a car, not the dealer who actively misrepresented the condition of the truck. The opinion's two remaining cases are quoted regarding relationships between plaintiffs and defendants. However, *S.C. State Ports Auth. v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 346 S.E.2d 324 (1986), is quoted solely for the proposition that "A tort-feasor's duty arises from his relationship to the injured party." This says nothing about whether a seller-for-repurchase and the intended rebuyer have a legally cognizable relationship. A partial sentence is quoted from *Laidlaw Env't Servs. (TOC), Inc. v. Honeywell, Inc.*, 966 F. Supp. 1401, 1414 (D.S.C. 1996) *aff'd*, 113 F.3d 1232 (4th Cir. 1997) (alteration in original), which concerned the economic loss rule. The quoted sentence states in full (emphasis added), "A buyer-seller relationship does not constitute a 'special relationship' *precluding operation of the rule.*" There was no reason to extend *Laidlaw's* holding—that the buyer-seller relationship is not a "special relationship" distinguishing parties *who have a contract* from others subject to that rule—to the situation here, where the parties, as the opinion states, did not share a contract.

The opinion's discussion of an implied duty to disclose, overlooks that here, there was an explicit duty to disclose (Br. of Appellant p. 18); that there was not simply silence, but an

[8] The opinion quotes one case as stating, "Ordinarily, the common law imposes no duty on a person to act, another stating, "Under South Carolina common law, there is no general duty to control the conduct of another or to warn a third person or potential victim of danger," and a third stating, "At common law, a person ordinarily has no duty to protect another from a harm inflicted by a third party." These shed no light on the duties one takes on by acting.

affirmative misrepresentation; and while it recognizes its cited case *Wright v. Craft,* holds duties may arise "from the circumstances of the case," as here, it does not explore this aspect of *Wright*. This is a "placing-into-the-stream-of commerce" case, not simply a "failure-to-disclose" case. "By placing this product into the stream of commerce, the builder owes a duty of care to those who will use his product . . . ." *Terlinde v. Neely*, 275 S.C. 395, 399, 271 S.E.2d 768, 770 (1980)." "There is no justifiable reason why an innocent corporate consumer should be denied recovery when a manufacturer places a defective article into commerce." *JKT Co. v. Hardwick*, 274 S.C. 413, 418, 265 S.E.2d 510, 512 (1980). Similarly, there is "no justifiable reason" why an innocent corporate purchaser should be denied recovery when a used car dealer buys a severely wrecked vehicle it had worked on, then sells it as without damage. "[I]it has profited by receiving a fair price and, as between it and an innocent purchaser, the innocent purchaser should be protected." *Lane v. Trenholm Bldg. Co.*, 267 S.C. 497, 503, 229 S.E.2d 728, 731 (1976). In these cases, the Supreme Court has found liability for plain-vanilla negligence. The panel should do the same.

If the Court sees a conflict between the panel's cases and the above, please see Part IV.

IV. Conflict Between Opinions

"In [a] state of conflict between the decisions, it is up to the court to 'choose ye this day whom ye will serve;'" "The Court must decide the question based on its assessment of 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. Enf't Div.*, 366 S.C. 141, 145, 621 S.E.2d 344, 346 (2005) (alteration in original). *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).

For its "sense of law, justice and right," the Court can again look to several Supreme Court decisions. "[W]hen the Court is confronted with a new scenario not properly disposed of by our present set of rules, *it once more responds by expanding our rules to provide the innocent buyer*

with protection." *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 621, 879 S.E.2d 746, 760 (2022) (unanimous) (cleaned) (citing cases). "The erosion of the concept of privity has been a legal phenomenon for more than a decade, and this Court has not been reluctant to contribute to its demise." *JKT Co.,* 274 S.C. at 417, 265 S.E.2d at 512 (footnote omitted). "By placing this product into the stream of commerce, the builder owes a duty of care to those who will use his product . . . ." *Terlinde v. Neely*, 275 S.C. 395, 399, 271 S.E.2d 768, 770 (1980). "South Carolina is in the vanguard in permitting a plaintiff to recover economic loss from a seller with whom he did not deal and who made no express warranties to him." *JKT Co.*, 274 S.C. at 418, 265 S.E.2d at 512. "There is no justifiable reason why an innocent corporate consumer should be denied recovery when a manufacturer places a defective article into commerce." *Id*. at 418, 265 S.E.2d at 512. "[I]t has profited by receiving a fair price and, as between it and an innocent purchaser, the innocent purchaser should be protected." *Lane,* 267 S.C. at 503, 229 S.E.2d at 731.

As to policy, the Supreme Court has a "*policy* of providing a remedy where a duty outside the contract is breached." *Colleton Prep.*, 379 S.C. at 191, 666 S.E.2d at 252 (emphasis added). There are "strong public policy notions" behind "the SCUPTA and the Dealers Act," *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 30 n.7, 644 S.E.2d 663, 671 n.7 (2007); which intend to control and eliminate deceptive trade practices, *Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc.*, 290 S.C. 475, 477, 351 S.E.2d 347, 349 (Ct. App. 1986); "to give additional protection to the victims of unfair trade practices," *State ex rel. McLeod v. C & L Corp.*, 280 S.C. 519, 527, 313 S.E.2d 334, 339 (Ct. App. 1984), *abrogated on other grounds* by *Murphy v. Owens-Corning Fiberglas Corp.*, 346 S.C. 37, 550 S.E.2d 589 (Ct. App. 2001); "to prevent fraudulent transfer of cars," *Am. Lease Plans, Inc. v. R. C. Jacobs Plumbing, Heating & Air Conditioning, Inc.*, 274 S.C. 28, 33, 260 S.E.2d 712, 714 (1979).

A decision for Petitioner accords with all these cases and policies. It would also ensure the victim may collect from the original tortfeasor, that if one link in a series of sales moves out of state, is otherwise unreachable, or goes bankrupt, the victim may recover.

The Court should hold that one who wrongfully sells an item, expecting it to be resold, owes a duty of care to the immediate repurchaser, and that one who does so fraudulently is liable to whoever ends up possessing the time bomb.

V. Aggravated Negligence and Intentional Torts

If the opinion includes Petitioner's claims of aggravated negligence (recklessness, willfulness, and wantonness) and fraud as claims failing for lack of a duty, it should be reheard. Courts do not ask, "But to whom does he have a duty not to be reckless?" (Br. of Appellant p. 2).

Other tortfeasors are responsible for the foreseeable consequences of their reckless or intentional conduct. Why should car dealers deceptively selling automobiles be exempt?

VI. Regarding Negligent Misrepresentation and Fraud, Specifically

As stated in Appellant's Reply Brief, at 22,

> our appellate courts have not ruled on whether an upstream car dealer that deceptively places a wrecked vehicle into the stream of commerce is liable to the victim who ends up paying for the deception. Target recognizes that dicta in some cases would seem to address the issue as to the fraud and negligent misrepresentation causes of action but that is all it is—dicta.

Those cases did not address the situation where a seller deceptively sells a product, *intending that it be resold*, and is sued by an indirect purchaser. *See, e.g., K & A Acquisition Grp., LLC v. Island Pointe, LLC*, 383 S.C. 563, 682 S.E.2d 252, 259 n.4 (2009) ("[W]e find the case is distinguishable and the statement constitutes dicta."). The opinion quotes two cases, 2025 WL 1950260, at * 1, stating that fraud and negligent misrepresentation require the plaintiff have directly relied on a statement from the defendant to the plaintiff, but these too are dicta. The question in *West v. Gladney* was whether statements could properly be relied on by one with superior knowledge, not

whether an intervening act insulated the original wrongdoer. "[Defendant] West contend[ed] [Plaintiff] Gladney had more access to the financial records than did West," and "Gladney produced no evidence to refute West's statements." 341 S.C. 127, 134, 533 S.E.2d 334, 338 (Ct. App. 2000). The holding in *deBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 536 S.E.2d 399 (Ct. App. 2000), that "There is no indication that Mercedes made a representation directly to deBondt that she would receive the promotional materials for the SLK she purchased from Carlton. Therefore, we affirm the grant of summary judgment" was appropriate for those facts. There, a customer had not received promised promotional materials. The dealer, not the manufacturer, promised the customer she would receive those materials, *id.* at 267, 536 S.E.2d. at 406, and it was the dealer's fault she did not receive them, because the dealer had not properly notified the manufacturer that she was entitled to those materials, *id*. at 264, 536 S.E.2d at 404. As the dealer was both the party that made the promise and the party whose wrong led to the promise being unfilled, the dealer was solely responsible for the result.

This is another novel issue and may be conceptually distinct from the issue discussed in Part IV above.

Authorities on the law support liability. For example, the Restatement of the Law concisely states the principles of South Carolina law discussed in Part I.

> 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**.

Restatement (Second) of Torts § 533 (emphasis added). This case squarely fits Section 533, and no South Carolina case prohibits its adoption. Indeed, South Carolina has long adopted Restatement principles where they align with fairness and foreseeability.

Many other authorities favor liability. As noted in AMERICAN JURISPRUDENCE,

> It has been repeatedly held that where a party makes false representations to another with the *intent or knowledge* that they be *exhibited or repeated* to a third party for the purpose of deceiving him, the third party, if so deceived to his injury, can maintain an action in tort against the party making the false statements for the damages resulting from the fraud.

Oppenhuizen v. Wennersten, 139 N.W.2d 765, 768 (Mich. App. 1966) (emphasis in original) (quoting 23 AM. JUR., *Fraud and Deceit*, § 118, pp. 903, 904). The second edition is similar. "[I]n cases involving unlawful acts, intervening causes are especially likely not to be held to preclude liability of the wrongdoer." *Kimberlin v. DeLong,* 637 N.E.2d 121 (Ind. 1994) (quoting 74 AM. JUR. 2d *Torts* § 29, 644). Prosser and Keeton agree. *Id*. (quoting W. Page Keeton *et al*., PROSSER AND KEETON ON THE LAW OF TORTS §§ 8-9 (5th ed. 1984). Hubbard and Felix agree. "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).

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). Yet under the panel's holding, innocent consumers are likely to be left to sue shell LLCs, judgment-proof individuals, individuals who have left the state or country, or have died, and bankrupt companies. Honest resellers get stuck with worthless inventory and/or damaged reputations. The ultimate victim is left without remedy, even though the original seller set the injury in motion. *Pfaehler,* 198 S.C. at 486, 18 S.E.2d at 335. Meanwhile, the fraudster profits from its deception.[9] The Court would likely not allow the manufacturer of a counterfeit

[9] Respondent has already attempted to immunize itself from any claim by the intermediate purchaser-re-seller. It moved for summary judgment against Grainger. Def. Grand Strand Nissan

brake system to escape liability by selling it to a distributor, who sells it to a retailer, who realizes it is counterfeit but sells it to a consumer who crashes. The injury is no less real because the fraud was laundered through intermediaries. And if every link in the chain is amenable to suit, the opinion will burden courts with hearing claims between each link, when a victim v. initial wrongdoer suit would suffice.

The panel's opinion, unintentionally but effectively, creates immunity for a particularly dangerous kind of commercial fraudster: a car dealer who deceptively sells a previously wrecked vehicle at auction, knowing it will be resold. This case presents an ideal and necessary opportunity for this Court to make clear: fraud, foreseeably passed downstream, carries consequences.

Ninety-plus percent of the judges who considered the issue in the cases cited on pages 29 through 44 of Petitioner's opening brief found those who deceptively place a vehicle in the stream of commerce, intending it to be resold, are liable to the ultimate victim. The Court should concur with the experts and the overwhelming majority of fellow jurists and not let South Carolina be an outlier, a state where a car dealer can deceptively sell a car for resale and be immune to recovery by his victim. It's common sense that when a car dealer expects a third party to bear the loss, that dealer is liable to the victim.

Petitioner respectfully requests rehearing en banc.

Respectfully submitted,

Inc.'s Mot. for Summ. J. as to Cross Claims Asserted by Grainger Companies, Inc. d/b/a Grainger Honda (Horry County Public Index 2022CP2600861 (11/28/23)). It withdrew its motion only after Petitioner pointed out in the Reply Brief that Grand Strand was attempting to escape all liability for its acts. (Reply Br. p. 24). But Respondent is free to renew its motion once this appeal ends, as its grounds for that motion—that the arbitration clause in the parties' contract with the auction forbids recovery, *id.* at 1—will still be there at the end of the appeal.

July 31, 2025

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Jul 31 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals Jr., Circuit Court Judge

Case No. 2023-000540

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

Appellant,

v.

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

Defendants,

Of whom Grand Strand Nissan, Inc., is the

Respondent.

Proof of Service

I certify that I served Appellant's Petition for Rehearing En Banc on Respondent Grand Strand Nissan, Inc. today by sending a copy of the same via email to its counsel of record, Sarah P. Spruill, at sspruill@hsblawfirm.com.

A copy of the email is attached.

July 31, 2025

s/ Brooks R. Fudenberg
Brooks R. Fudenberg
14 Ashe Street
Charleston SC 29403
843-696-8911
Attorney for Appellant

From:	Brooks R. Fudenberg
To:	"Caskey, Mary"; "Steve Moskos"; sspruill@hsblawfirm.com
Cc:	"Glunt, Alex"
Subject:	RE: Target v Grand Strand
Date:	Thursday, July 31, 2025 11:50:28 PM
Attachments:	Pet. Reh. Target 07-31.pdf

Please find attached my client's Petition for Rehearing, which I hereby serve upon you.

Thank you.

From: Brooks R. Fudenberg
Sent: Saturday, November 4, 2023 6:33 AM
To: Caskey, Mary <mcaskey@hsblawfirm.com>; 'Steve Moskos' <steve@moskoslawfirm.com>
Cc: Glunt, Alex <aglunt@hsblawfirm.com>
Subject: RE: Target v Grand Strand 2nd Motion for Extension

Mary,

We consent.

Brooks R. Fudenberg
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THIS COMMUNICATION MAY CONTAIN CONFIDENTIAL AND PRIVILEGED ATTORNEY-CLIENT OR ATTORNEY WORK PRODUCT INFORMATION. IF YOU ARE NOT THE INTENDED RECIPIENT, PLEASE CONTACT THE SENDER AND THEN DESTROY THIS COMMUNICATION

From: Caskey, Mary <mcaskey@hsblawfirm.com>
Sent: Friday, November 3, 2023 10:09 PM
To: 'Steve Moskos' <steve@moskoslawfirm.com>
Cc: Brooks R. Fudenberg <Brooks.R.Fudenberg@FudenbergLaw.com>; Glunt, Alex <aglunt@hsblawfirm.com>
Subject: RE: Target v Grand Strand 2nd Motion for Extension

Steve and Brooks: can you consent to a second extension of time for Respondent's brief in the appeal? Please let me know. Thx.

HAYNSWORTH
SINKLER BOYD

Mary M. Caskey | Attorney
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From: Steve Moskos <steve@moskoslawfirm.com>
Sent: Monday, August 7, 2023 8:15 PM
To: Caskey, Mary <mcaskey@hsblawfirm.com>
Cc: Brooks Fudenberg (brooks.r.fudenberg@fudenberglaw.com) <brooks.r.fudenberg@fudenberglaw.com>; Lawson, William E. <WLawson@TurnerPadget.com>
Subject: Target v Grand Strand 2nd Motion for Extension

Mary,

Please find enclosed Appellant's second motion to extend time, which I hereby serve upon you. thank you for consent to this motion.

Steve

C. Steven Moskos
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