

IN THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**Nov 21 2025**

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

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S.C. SUPREME COURT

William H. Seals, Jr. Circuit Court Judge

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Appellate Case No. 2025-002148

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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.

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**RETURN IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI**

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**COUNTERSTATEMENT OF QUESTIONS PRESENTED**

**1. Did the court of appeals correctly affirm the grant of summary judgment to Grand Strand Nissan, Inc. (“Grand Strand”) in this case where Target Motors, LLC d/b/a Port City Motors (“Target Motors”) admits that Grand Strand did not make any representations to it and that Target Motors did not rely on any representations made by Grand Strand?**

## **INTRODUCTION**

This is not a products liability action. Nor is it a personal injury action. Nor is it a construction defect case. Instead, it is an action relating to representations in the sale of a used vehicle where Target Motors, LLC d/b/a Port City Motors (“Target Motors”) admits that Grand Strand Nissan, Inc. (“Grand Strand”) did not make any representations to it and that Target Motors did not rely on any representations made by Grand Strand.

Grand Strand has not argued that it is entitled to any kind of immunity, but has argued instead that Target Motors cannot establish the elements of its claims based on the specific, undisputed facts of this case. The court of appeals, recognizing the unusual facts presented here, affirmed the grant of summary judgment in an unpublished *per curiam* opinion that repeatedly limits the rulings to this specific set of facts. Nothing in the opinion suggests there is any broader application. In its Petition, Target Motors poses a host of hypothetical questions, but it does not address the underlying factual issues that drove the decisions of the circuit court and the court of appeals.

This case does not implicate any of the factors listed in Rule 242, SCACR—there is no dissent in the decision of the court of appeals; there is no conflict with prior decisions of this Court; and there is no substantial constitutional issue or federal question. As such, the Petition should be denied.

## **COUNTER-STATEMENT OF THE CASE**<sup>1</sup>

Target Motors filed this action on February 8, 2022 against Grand Strand, Grainger Companies, Inc. d/b/a Grainger Honda (“Grainger”), and Manheim Remarketing, Inc. d/b/a Manheim, Darlington (“Manheim”) asserting various causes of actions against each defendant. (R.

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<sup>1</sup> Respondent incorporates its brief before the court of appeals by reference.

at 95-108). The claims against Grand Strand stem from the sale of a used truck sold first by Grand Strand to Grainger through Manheim’s auction and then by Grainger to Target Motors in a second auction.<sup>2</sup>

In its amended complaint, Target Motors asserted the following causes of action against Grand Strand: (1) negligence, (2) negligent misrepresentation, (3) fraud, (4) the South Carolina Unfair Trade Practices Act (“UTPA”), and (5) the Dealer’s Act. (R. at 20-29). Grand Strand answered, asserting the following defenses: (1) failure to state a claim; (2) intervening and superseding acts; (3) comparative negligence; (4) absence of proximate cause; and (5) several equitable defenses. (R. at 30-37).

Grand Strand moved for summary judgment on October 5, 2022. (R. at 112-17). Following a hearing, the circuit court entered an order granting Grand Strand’s motion for summary judgment on January 19, 2023 on the following grounds: (1) Grand Strand did not owe any duty to Target Motors; (2) Grand Strand did not cause any damage to Target Motors; (3) Grand Strand did not make any representations to Target Motors; (4) Grand Strand did not act unfairly or deceptively with respect to Target Motors so as to trigger the UTPA; and (5) Target Motors did not have a claim against Grand Strand under the Dealer’s Act. (R. at 4-15). Target Motors filed a motion to reconsider seeking more specific rulings as to each claim (R. at 225-26), which the circuit court denied on March 3, 2023 (R. at 16-18).

This appeal followed. The court of appeals affirmed the grant of summary judgment in an unpublished *per curiam* opinion dated July 16, 2025, finding that: (1) Grand Strand did not have a duty to Target Motors because it “never communicated or interacted with Target about the truck’s

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<sup>2</sup> Grainger filed a cross-claim against Grand Strand relating to the first sale of the truck at Manheim. (R. at 38-45).

condition;” (2) there was no implied duty because Target did not impose any trust or confidence in Grand Strand; (3) the UTPA does not create an independent duty in negligence; (4) the absence of any representation to Target Motors by Grand Strand is fatal to the fraud and misrepresentation claims; (5) the Dealer’s Act does not apply because the parties here are all dealers and because Target Motors admitted it did not rely on any alleged misrepresentations by Grand Strand (“Target admits that it solely relied on representations made by Grainger. Thus, the record before us does not contain a disputed fact that would create an inference that Grand Strand caused any harm to Target.”); and (6) the UTPA claim fails because “we again find that the record fails to demonstrate a causal connection between the alleged harm and the alleged deceptive act.”

Target Motors sought rehearing by petition dated July 31, 2025, but did not raise any argument that the court of appeals misapprehended the facts of this case. The court of appeals denied the petition on September 22, 2025.

### **COUNTER-STATEMENT OF FACTS**

The material facts of this case are undisputed. Grand Strand is a car dealership that services, repairs, sells, and buys new and used cars. On or about August 30, 2019, Grand Strand completed wreck-related repairs on a 2018 Nissan Titan (the “truck”) owned by Aaron Burnstein. (R. at 114 ¶ 5-6). Grand Strand also sold parts to Performance Collision, a body shop that completed other repairs on the truck. (R. at 115 ¶ 6). On October 14, 2019, after the truck was repaired, Burnstein sold the truck to Grand Strand for \$24,000. (*Id.* ¶ 8). Shortly thereafter, Grand Strand entered the truck into an online auction owned and operated by Manheim. (*Id.* ¶ 10). At the auction, the truck was placed under a green light, indicating that the truck did not have structural damage. (R. at 21 ¶ 17, 54:19-25).

On November 14, 2019, Grainger purchased the truck through Manheim's auction for \$21,000. (*Id.* ¶ 11). Grand Strand was not involved in any further transactions with the truck. (*Id.* ¶¶ 12–13).

Roughly two weeks after Grainger purchased the truck, Grainger tried to sell the truck through the Charleston Auto Auction. (R. at 21 ¶ 18, 120 # 6). Grainger removed the truck from the auction after the auction company presented an AutoCheck report showing prior structural damage. (R. at 120 # 6). Grainger notified Manheim about the discovered structural damage. (R. at 21 ¶ 19, 121 ## 9-11).

Grainger commenced an arbitration through Manheim against Grand Strand, and Grainger resolved its claim related to the truck by accepting a 50% refund on the truck. (R. at 121 # 11). After resolving Grainger's claims and despite the AutoCheck report and their knowledge of the structural repairs, Manheim and Grainger decided to sell the vehicle through the Manheim auction. (*Id.*; R. at 135 # 9, 22 ¶¶ 23-24).

Target Motors purchased the truck from Grainger through the Manheim auction on January 2, 2020. (R. at 23 ¶ 32). The sale was under a green light, and no disclosure of the wreck damage was made. (*Id.*; R. at 121 # 11). Before purchasing the truck, Target Motors consulted a Carfax report, an AutoCheck report, a report from the NADA, and a Manheim Market Report. (R. at 127 # 6).

After Target Motors purchased the truck, it sold it to a customer on January 25, 2020. (R. at 23 ¶ 35). Shortly thereafter, the customer complained to Target Motors after discovering the truck's structural damage. (*Id.* ¶ 36). As a result, Target Motors compensated the customer \$4,000. (*Id.* ¶ 37).

Target Motors admitted the following key facts: (1) Grand Strand was not involved in any transaction with Target Motors; (2) there was no contract between Grand Strand and Target Motors; (3) Target Motors did not communicate with Grand Strand regarding the condition of the truck prior to Target Motors purchasing the truck; (4) Target Motors did not rely on or review any information provided by Grand Strand regarding the truck; (5) Target Motors did not rely on any information provided by Grand Strand to Grainger regarding the truck; and (6) Target Motors solely relied on Grainger's representations in its purchase of the truck. (R. at 148-50, 151-53, 156-57, 22-23 ¶¶ 23-32; 135 # 9).

The court of appeals provided the following summary of the undisputed facts:

Grand Strand acknowledges that it made a representation to Grainger, but then Grainger learned about the truck's accident history, made the same representation to Target, and Target repeated it to the customer. In other words, Grainger decided to resell the truck under the auction's green light based on its independent knowledge of the truck's condition. The record contains no evidence that Target relied on any statement that can be attributed to Grand Strand when it purchased the truck at the second auction.

These facts drove the analysis in the decisions below, and they are not contested in the Petition.

### **ARGUMENTS**

The Petition is based entirely on hypotheticals rather than the actual, undisputed facts of this case. As admitted by Target Motors, Grand Strand did not make any representations to Target Motors, and Target Motors did not rely on any representations made by Grand Strand. Thus, these representation-based claims must fail.<sup>3</sup> It is as simple as that.

The court of appeals limited its ruling to the facts of this case ("the undisputed facts and circumstances of this case...;" "on these facts...;" "[j]ust as Mercedes never made a representation

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<sup>3</sup> Target Motors has not included any argument in its Petition relating to the rulings on the fraud and negligent misrepresentation claims.

to deBondt, Grand Strand did not make any representation directly (or even indirectly) to Target;” “the record before us;” “the record fails to demonstrate a causal connection;” “[i]n light of the fact that Target’s reliance cannot plausibly be tethered to Grand Strand, we leave for another day the question of whether the original seller of an automobile may be liable for a misrepresentation even though the original seller never made a misrepresentation to the ultimate purchaser;” and “[a]ccordingly, we affirm the circuit court’s decision to grant summary judgment as the record fails to establish a duty or a causal connection between Grand Strand’s alleged misrepresentation and Target’s alleged harm.”). Given this language, there is no risk that courts will apply this unpublished opinion as suggested by Target Motors. The questions posed by Target Motors remain for future cases.

**I. The court of appeals correctly found that there was not a duty based on the specific facts of this case.**

South Carolina law does not impose a general obligation to act in any certain way with respect to third parties (or in other words, the law does not recognize a wrong) without a duty. *Hendricks v. Clemson Univ.*, 353 S.C. 449, 456–57, 578 S.E.2d 711, 714 (2003) (“An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance. Ordinarily, the common law imposes no duty on a person to act.” (citation omitted)). Issues of existence and scope of duty are questions of law for the court. *Id.*; *Staples v. Duell*, 329 S.C. 503, 506–07, 494 S.E.2d 639, 641 (Ct. App. 1997).

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 there was no reliance by the plaintiff on any representation made by the defendant. More generally, Target Motors seeks to recover for a nondisclosure with

respect to a transaction to which it was not a party where it admits it did not rely on that representation in any way in purchasing the vehicle.

Generally, courts are reluctant to create new duties or to expand tort liability. *Staples*, 329 S.C. at 510–11, 494 S.E.2d at 643; *see Wyatt v. Fowler*, 326 S.C. 97, 101, 484 S.E.2d 590, 592 (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, 443-44, 415 S.E.2d 796, 798 (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).

In response to Grand Strand’s motion for summary judgment, Target Motors argued that there was a common law duty to disclose based on the “circumstances of the case, the nature of [the parties’] dealings, or their position towards each other,” citing *Wright v. Craft*, 372 S.C. 1, 25, 640 S.E.2d 486, 499 (Ct. App. 2006). (R. at 155). Under *Wright*, a duty to disclose can arise under the following circumstances:

- (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.

372 S.C. at 25, 640 S.E.2d at 499.

The circuit court and the court of appeals correctly rejected this argument because there was no relationship or communication between Grand Strand and Target Motors, and it was undisputed that Target Motors did not rely on any representations or disclosures by Grand Strand in buying the truck. *See S.C. State Ports Auth. v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 376,

346 S.E.2d 324, 325–26 (1986) (“A tortfeasor’s duty arises from his relationship to the injured party.”); *Ravan v. Greenville Cnty.*, 315 S.C. 447, 467, 434 S.E.2d 296, 308 (Ct. App. 1993) (“[T]he parties shall have sustained a relationship recognized by law as the foundation of a duty of care.”). The parties did not have a pre-existing relationship, fiduciary or otherwise. The parties did not enter a contract or transaction. Target Motors did not receive or rely on any representation by Grand Strand.

This admitted lack of reliance distinguishes this case from the limited South Carolina case law finding that a duty can extend to third parties to a transaction if the defendant intended for third parties to rely on a representation and *if there was, in fact, reliance by a third party*. See *ML-Lee Acquisition Fund, L.P. v. Deloitte v. Touche*, 320 S.C. 143, 160-62, 463 S.E.2d 618, 628-29 (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), affirmed on this ground 327 S.C. at 241-42, 489 S.E.2d at 472; *Priv. Mortg. Inv. Servs., Inc. v. Hotel & Club Assocs., Inc.*, 296 F.3d 308, 313-15 (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); *Britt v. Sorin Grp. Deutschland GMBH*, No. 6:18-CV-03117-DCC, 2023 WL 5757306, at \*6 (D.S.C. Sept. 6, 2023) (stating “that the Supreme Court of South Carolina has yet to extend negligent misrepresentation beyond the accounting or consulting contexts” in third party reliance cases).

The decisions of the court of appeals and the circuit court are fully consistent with the law of this state relating to duty and do not raise novel issues. Target Motors seeks to create a new exception to the general rules. Grand Strand submits that this case is not the one for the Court to

consider the scenarios posed in the Petition. There was no representation by Grand Strand to Target Motors and no reliance by Target Motors on any representation made by Grand Strand, and the seller who made representations to Target Motors and on which Target Motors relied is present as a party and offers an opportunity for Target Motors to recover to the extent it can prove its claims.

**II. The court of appeals correctly found that Target Motors had not presented a genuine issue of fact as to its claims under the Dealer’s Act and the UTPA based on the record in this case.**

Target Motors concedes that Grand Strand made no representations to it and that it did not rely on any representations by Grand Strand. It is these facts that divorce this case from the hypotheticals posed by Target Motors. Nothing in the opinion of the court of appeals adds a requirement that the representation be “direct,” but rather that there must be some reliance by the plaintiff on a representation causing injury. The court of appeals expressly reserved the question raised by Target Motors and ruled “[i]n light of the fact that Target’s reliance cannot plausibly be tethered to Grand Strand, we leave for another day the question of whether the original seller of an automobile may be liable for a misrepresentation even though the original seller never made a misrepresentation to the ultimate purchaser.” Thus, there is no tension with existing case law.

The UTPA prohibits “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” S.C. Code Ann. § 39-5-20(a). 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*, 403 S.C. at 638, 743 S.E.2d at 816 (emphasis added). Target Motors argues that the circuit court erred in granting summary judgment on the UTPA claim and the court of appeals erred in affirming because a UTPA claim can be

brought by “any person,” including remote purchasers. This argument fails to consider the causal connection requirement as addressed by the circuit court and the court of appeals and as identified in *Colleton Preparatory Acad., Inc. v. Hoover Universal, Inc.*, 379 S.C. 181, 195, 666 S.E.2d 247, 255 (2008)

The UTPA “requires a causal connection” between the injury and the complained of deceptive act or practice, which in this case is an alleged misrepresentation. *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharms., Inc.*, 414 S.C. 33, 57–58, 777 S.E.2d 176, 189 (2015). Although the UTPA does not require privity of contract, a remote purchaser must prove that its damages were “a result of” the deceptive act. *Colleton Preparatory Acad., Inc.*, 379 S.C. at 194, 666 S.E.2d at 254 (“Persons or any legal entity suffering an ascertainable loss of money or real or personal property ‘as a result of the use or employment by another person of an unfair or deceptive method, act or practice’ may bring an action to cover recover actual damages.” (emphasis in original)). “Establishing this causal connection in a misrepresentation case necessarily requires proof that the plaintiff detrimentally relied on the defendant’s deceptive conduct.” *Doe I v. Varsity Brands, LLC*, No. CV 6:22-2957-HMH, 2023 WL 4088483, at \*13 (D.S.C. June 20, 2023).

Here, the lower courts concluded that Target Motors was not harmed by any unfair or deceptive act committed by Grand Strand because it did not contract with Target Motors and Target Motors did not rely on any representations made by Grand Strand in making its purchase. These facts are not in dispute and do not give rise to any inference or question of material fact that “plaintiff detrimentally relied on the defendant’s deceptive conduct.”

Similarly, in affirming the ruling as to the Dealer’s Act claim, the court of appeals included two grounds: (1) the Dealer’s Act does not apply because the parties here are all dealers, and (2) Target Motors admitted it did not rely on any alleged misrepresentations by Grand Strand.

The Dealer's Act prohibits "unfair or deceptive acts or practices." S.C. Code Ann. § 56–15–30(a). It is violation of the Dealer's Act "to engage in any arbitrary, in bad faith, or unconscionable and *which causes damage to* any of the parties or to the public." S.C. Code Ann. § 56–15–40(B) (emphasis added). There is a cause of action for "any person who shall be injured in his business or property by reason of anything forbidden in this chapter[.]" S.C. Code Ann. § 56-15-110. A necessary part of the claim requires that the plaintiff prove that the alleged act caused the plaintiff's damages.

Again, Target Motors, by admitting that it solely relied on information provided by Grainger and not Grand Strand, has essentially admitted that Grand Strand did not cause damage to Target Motors. If Target Motors did not rely on or review any information provided by Grand Strand or any information provided by Grand Strand to Grainger, how could Grand Strand be the cause of Target Motors' damages? The court of appeals would have been correct to affirm the circuit court on this basis alone.

With respect to applicability of the Dealer's Act to claims between dealers, the Court of Appeals again ruled based on the facts of this case. In future cases, the plain language of the Dealer's Act will control and will dictate whether the plaintiff or plaintiffs in that case may assert a claim under the Dealer's Act.

### **CONCLUSION**

For these reasons, the petition does not raise any question for this Court's review under Rule 242, SCACR, and the Petition should be denied so that this case may proceed on the merits as to the remaining claims and parties.

Respectfully submitted,

*s/ Sarah P. Spruill*

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