IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA COURT OF COMMON PLEAS FOR THE FOURTH JUDICIAL CIRCUIT

Appellate Case No. 2025-002362

John Hamilton and Erin Hamilton…..……..Appellants,

David McLaurin and David McLaurin Appraiser, LLC,……...…Respondents.

[INITIAL] BRIEF OF THE APPELLANTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

Rules

I. ISSUES ON APPEAL

A. **The trend of the law in South Carolina is that a professional appraiser is liable to a foreseeable third party for negligent misrepresentation where the third party detrimentally relied upon the appraiser's materially inaccurate and negligent appraisal. The Hamiltons alleged detrimental reliance on the appraisal at issue, which must be assumed to be true for purposes of ruling on a motion to dismiss. Did the lower court err in granting the motion to dismiss?**

B. **Under South Carolina Law, the failure to follow governmental or industry standards may be a basis for a claim of negligence. The Hamiltons allege that the Defendant appraiser, David McLaurin, did not follow the VA Minimum Property Requirements as required. Did the lower court err in granting the motion to dismiss this claim?**

II. STATEMENT OF THE CASE

This case arises from the Appellants' (John and Erin Hamilton's) purchase of a home located at 405 Watson Hill Lane in Chesterfield, South Carolina, which they purchased in good faith, after the receipt of an appraisal from a duly licensed and approved Veterans Administration (hereinafter "VA") appraiser, David McLaurin. The appraisal report prepared by David McLaurin reported the subject property to be in overall average to mostly good condition.[1] The Hamiltons, in deciding whether to close on the subject property, relied upon the representations made by McLaurin in the VA appraisal. After closing on June 7, 2023, the Hamiltons discovered many undisclosed defective and deteriorating conditions not included in the VA appraisal. The Hamiltons relied upon the information contained within the McLaurin appraisal to their detriment and incurred damages. The Hamiltons filed their Complaint on January 15, 2024. McLaurin and his LLC filed a Motion to Dismiss the Complaint pursuant to Rule 12(B)(6) of the South Carolina Rules of Civil Procedure on March 8, 2024. In their Motion to Dismiss filed March 8, 2024, the Respondents, David McLaurin and his appraisal company argued that the Hamiltons' Complaint should be dismissed

[1] Facts contained herein are cited in the Complaint of the underlying cause of action, Civil Action No. 2023-CP-17-00017 at pages 1, 9, 10, and 11.

on the grounds that the Hamiltons' Complaint failed to state facts sufficient to state a cause of action because the appraisal specifically states it was prepared for the benefit of the lender.

First, the Hamiltons opposed the motion to dismiss based upon the express language contained within the appraisal, which states that the borrower may rely upon the VA appraisal. Secondly, the Hamiltons contend that, as an appraiser, McLaurin owed a duty to them because he possessed a pecuniary interest in the appraisal. And therefore, knew, or should have known, that the Hamiltons - as foreseeable third-party beneficiaries - would rely upon the appraisal in their decision to take out a VA mortgage loan. The Hamiltons, therefore, alleged McLaurin had a duty to exercise reasonable care when making the physical inspection of the property and in the preparation and provision of the appraisal to both the VA and to the borrowers.

The lower court heard the Motion to Dismiss and entered its order on May 22, 2025, granting Dismissal. The Hamiltons filed their motion for reconsideration, which was denied by Judge McFaddin on October 28, 2025.

III. STATEMENT OF THE FACTS

The Appellant, John Hamilton, is a veteran who elected to utilize the benefit of a VA-backed home loan to purchase the property located at 405 Watson Hill Lane, Chesterfield, South Carolina. David McLaurin Appraiser, LLC is a single-member LLC owned and operated by Respondent David McLaurin. Compl. ¶ 56. VA appraisals are made and performed to protect the interests of both the veteran and the Veterans Administration. Exhibit D to Complaint. VA appraisals are unique in that there are Minimum Property Requirements ("MPRs") to ensure that the property being mortgaged is safe and structurally sound. *Id.*; *see also* Compl. ¶ 59. To obtain a VA loan, a prospective veteran-buyer is required to retain a VA-approved appraiser to assess the condition of

the home and provide an opinion as to the overall value of the home based upon the assessed condition. For this reason, Respondents, David McLaurin and McLaurin Appraiser, LLC, were retained by the mortgage lender on behalf of the Hamilton's and paid for by the Hamilton's. Compl. ¶ 55.

On or about May 19, 2023, McLaurin inspected the subject property and completed the required VA appraisal report, representing the property to be in "overall average to mostly good condition," assigning a favorable Conditions and Rating score of C3 stating in his report that "I saw no repairs or deferred maintenance." Ex. D to Compl. McLaurin further represented in the report that "[a]ll utilities were functioning properly" and that "[i]n my opinion, the home meets the minimum property requirements set by the VA." McLaurin assessed the value of the subject property at $250,000.00. Complaint at ¶ 52. The Hamiltons were provided a copy of the VA appraisal on or about May 19, 2023. *Id.*

On June 7, 2023, the Hamiltons relied upon the VA appraisal to close on the subject property. Compl. ¶ 56. The express language of the VA report prepared by the Respondents specifically states in part as follows:

> 23. **The borrower**, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants **may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.** (emphasis added).

Exhibit D to Compl.

The Hamiltons allege in their complaint that they justifiably relied upon the VA appraisal report, which was prepared at their expense as a VA benefit for Appellant John Hamilton's military service. Compl. ¶ 56.

The Hamiltons discovered defective and deteriorating conditions upon moving into the property, contrary to representations made by the Respondents. Compl. ¶ 60. The VA appraisal, prepared by David McLaurin, failed to reflect the true condition of the subject property which in reality has many defects, including sloping floors, structural issues, decay, and damage due to termites, electrical issues, etc. *Id.*

IV. STANDARD OF REVIEW

"On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the trial court." *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). "That standard requires the Court to construe the complaint in a light most favorable to the nonmovant and determine if the 'facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.' " *Hager v. McCabe, Trotter & Beverly, P.C.*, 435 S.C. 740, 746, 869 S.E.2d 886, 889 (Ct. App. 2022) (quoting *219 *Morris*, 381 S.C. at 646, 675 S.E.2d at 433). "If the facts and inferences would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper." *Id.* citing, *Santos v. Harris Inv. Holdings, LLC*, 439 S.C. 214, 218–19, 886 S.E.2d 483, 485 (Ct. App. 2023), *reh'g denied* (May 15, 2023).

V. ARGUMENT

A. The trend of the law in South Carolina is that a professional appraiser is liable to a foreseeable third party for negligent misrepresentation where the third party detrimentally relied upon the professional appraiser's materially inaccurate and negligent appraisal. The Hamiltons alleged detrimental reliance on the appraisal at issue, which must be assumed to be true for purposes of ruling on a motion to dismiss. The Circuit Court erred in granting the motion to dismiss.

South Carolina law provides "a duty to exercise reasonable care in giving information exists when the defendant has a pecuniary interest in the transaction." *Winburn v. Ins. Co. of N.*

Am., 287 S.C. 435, 442, 339 S.E.2d 142, 146 (Ct. App. 1985), citing, RESTATEMENT (SECOND) OF TORTS § 552 (1977); *cf. Gordon-Gallup Realtors, Inc. v. Cincinnati Insurance Co.,* 274 S.C. 468, 265 S.E.2d 38 (1980); *Lawlor v. Scheper,* 232 S.C. 94, 101 S.E.2d 269 (1957). Sufficient indication of pecuniary interest exists when information is given in the course of the defendant's business, profession, or employment. *Id.*, citing, RESTATEMENT (SECOND) OF TORTS § 552, Comment d, at 129—30 (1977); *see* Prosser and Keaton, *The Law of Torts* § 107 at 747 (5th ed. 1984). Additionally, in this state, "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." *Barker v. Sauls*, 289 S.C. 121, 345 S.E.2d 244 (1986), citing, *Terlinde v. Neely*, 275 S.C. 395, 271 S.E.2d 768 (1980). The liability of the tort-feasor "exists independently of contract, and rests upon tort-feasor's duty to exercise due care." *Id.*, citing, *Edward's of Byrnes Downs v. Charleston Sheet Metal Co., Inc.*, 253 S.C. 537, 172 S.E.2d 120 (1970).

South Carolina jurisprudence, following Restatement (Second) of Torts § 552, establishes liability for supplying false information in the course of a business, profession, or employment, and extends to third parties who are "foreseeable recipients of the information that may either benefit from the information or use the information for guidance" and are thus liable to third-parties for negligent misrepresentation when a third party suffers injury or loss from reliance upon such information. *See Winburn v. Ins. Co. of N. Am.*, 287 S.C. 435, 339 S.E.2d 142 (Ct. App. 1985); *S.C. State Ports Auth. v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 346 S.E.2d 324 (1986); *ML-Lee Acquisition Fund v. Deloitte & Touche*, 320 S.C. 143, 463, S.E.2d 618 (Ct. App. 1995); *Fabian v. Lindsay*, 410 S.C. 475, 765 S.E.2d 132 (2014).

The United States Court of Appeals for the Fourth Circuit found "based upon the trend of South Carolina jurisprudence," a professional appraiser is liable to a third party for negligent misrepresentation, under South Carolina common law, "in the event the third party detrimentally relied upon the professional appraiser's materially inaccurate and negligent appraisal," *Priv. Mortg. Inv. Servs., Inc. v. Hotel & Club Assocs., Inc.*, 296 F.3d 308, 310 (4th Cir. 2002). In *Private Mortgage*, Private Mortgage brought a negligent claim against Hotel and Club Associates on the basis that their appraisal as contained in the appraisal report constituted a negligent misrepresentation upon which Private Mortgage reasonably and justifiably relied to its detriment. *Id.* 296 F.3d at 311. On appeal, the Fourth Circuit considered whether, "under South Carolina common law, an exception to the general rule that a negligent misrepresentation must relate to a present or preexisting fact exists when the negligent misrepresentation is the nature of a professional opinion, given by a person who intends it for the guidance of others, and a third party detrimentally relies upon it." *Id.* 296 F.3d at 313 (4th Cir. 2002).

While the South Carolina Court of Appeals has not spoken directly, the Fourth Circuit noted here that, "[a]ccording to the South Carolina Court of Appeals, 'the Restatement approach represents the soundest method of determining the scope of an accountant's duty to third persons for negligent misrepresentation' because it 'balances the need to hold accountants to a standard that accounts for their contemporary role in the financial world with the need to protect them from liability that unreasonably exceeds the bounds of their real undertaking.'" *Id.* 296 F.3d at 314, citing, *ML-Lee Acquisition Fund v. Deloitte & Touche* at 627.

On a writ of certiorari in the same case, the South Carolina Supreme Court expressly adopted the Restatement (Second) of Torts Section 552 standard of liability for the reasons set forth by the South Carolina Court of Appeals. *Id.*, citing, *ML-Lee Acquisition Fund v. Deloitte &*

Touche, 327 S.C. 238, 489 S.E.2d 470, 471 n. 3 (S.C. 1997). Based on the South Carolina Supreme Court's ruling in *ML-Lee*, the Fourth Circuit reasoned it was common sense that:

> [I]f the South Carolina Supreme Court was comfortable in adopting the Restatement (Second) of Torts Section 552 with respect to the liability of a professional accounting firm to a third party in the context of a misrepresentation of fact negligently supplied for the guidance of others, the Court, if presented with the opportunity, would not hesitate to adopt Comment b. to Section 552 with respect to the liability of a professional real estate appraisal firm to a third party in the context of a negligent appraisal of a parcel of real property supplied for the guidance of others.

Priv. Mortg. Inv. Servs., Inc. v. Hotel & Club Assocs., Inc., 296 F.3d 308, 314 (4th Cir. 2002). Restatement (Second) of Torts Section 552 Comment b provides that "**[t]he rule stated in this section applies not only to information given as to the existence of facts but also to an opinion given upon facts equally well known to both the supplier and the recipient.**" *Id.* (emphasis added).

The Fourth Circuit also pointed to the fact that Comment b is the drafters of the Restatement (Second) of Torts' considered explanation of when Section 552 applies to a particular fact pattern as further evidence to support its belief that the South Carolina Supreme Court would not hesitate to adopt comment b. The Fourth Circuit also believed the public policy implications of adopting the approach in the Restatement (Second) of Torts' represented "the soundest method of determining the scope of a professional real estate appraiser's duty to third persons for negligent misrepresentation because it balances the need to hold professional real estate appraisers to a standard that accounts for their contemporary role in the financial world with the need to protect them from liability that unreasonably exceeds the bounds of their real undertaking." *Priv. Mortg. Inv. Servs., Inc.* at 296 F.3d 313-314.

Finally, the Fourth Circuit believed that dicta by the South Carolina Court of Appeals in *AMA Management Corp. v. Strasburger*, 309 S.C. 213, 420 S.E.2d 868 (Ct. App. 1992), suggested that, if presented with the issue, the South Carolina Supreme Court would adopt Comment b. to Restatement (Second) of Torts § 552. *Id.*, citing *AMA Management Corp. v. Strasburger*, 309 S.C. 213, 420 S.E.2d 868 (Ct. App. 1992). Specifically, in *AMA Management Corp. v. Strasburger*, the South Carolina Court of Appeals stated in dicta:

> Mere statement of opinion, commendation of goods or services, or expression of confidence that a bargain will be satisfactory does not give rise to liability in tort. . . . if the defendant has a pecuniary interest in making the statement and he possesses expertise or special knowledge that would ordinarily make it reasonable for another to rely on his judgment or ability to make careful enquiry, the law places on him a duty of care with respect to representations made to plaintiff.

Id. at 874.

The Fourth Circuit believed this dictum was fully consistent with Comment b to Restatement (Second) of Torts Section 552. *Id.* 296 F.3d at 315. Ultimately, the Fourth Circuit held "the South Carolina Supreme Court would adopt Comment b. to Restatement (Second) of Torts Section 552 and hold a professional appraiser liable to a third party for negligent misrepresentation under South Carolina common law in the event the third party detrimentally relied upon the professional appraiser's materially inaccurate and negligent appraisal of the "as is" market value of a parcel of real property." *Id.*

Other jurisdictions also apply the Restatement (Second) of Torts reasoning in Section 552 to appraisers. *Diloreti v. Countrywide Home Loans, Inc.*, No. 5:14-CV-76, 2014 WL 12771142 (N.D.W. Va. Nov. 14, 2014), citing, *Private Mortg. Inv. Servs., Inc. v. Hotel & Club Assocs., Inc.*, 296 F.3d 308, 313 – 15 (4th Cir. 2002); *Bryant Bank v. Talmage Kirkland & Co., Inc.*, No. 1130080, 2011 WL 11742121, at *9 (Ala. May 23, 2014). Other jurisdictions have also applied the Restatement (Second) of Torts reasoning in Section 552 in factual scenarios similar to the

facts of the Hamiltons' case against the McLaurin, such as the court in *Schaaf v. Highfield*, 127 Wash. 2d 17, 896 P.2d 665 (1995). In *Schaaf v. Highfield*, the Supreme Court of Washington, *En Banc*, held that a real estate appraiser hired by the Veterans Administration (VA) owes a duty of care to third parties. *Schaaf v. Highfield*, 127 Wash. 2d 17, 19, 896 P.2d 665, 666 (1995).

In *Schaaf*, the plaintiff, a veteran, purchased a home with a loan guaranteed by the VA. *Id.* After purchasing the home, the plaintiff was deployed to the Persian Gulf; however, when he returned from deployment to the home he had purchased he discovered that a leak in the roof had left stains down the walls of the hallway entrance and ruined the carpet in the stairway landing and caused the carpet to develop a bad smelling odor. *Id.* 127 Wash. 2d. at 19, 896 P.2d at 667. The plaintiff then filed a verified complaint suing the VA-hired appraiser and others. *Id.* 127 Wash. 2d. at 20, 896 P.2d at 667. The trial court granted the VA-hired appraiser's motion for summary judgment. *Id.* In *Schaff*, the plaintiff eventually filed a notice of appeal directly to the Supreme Court of Washington and the court accepted direct review. *Id.*

At the time of the plaintiff's appeal in *Schaff*, no State of Washington Appellate Court had resolved the issue of whether an appraiser owes a duty of care to third parties. *Id.* 127 Wash. 2d. at 23, 896 P.2d at 668. However, after acknowledging that past Washington cases had cited the Restatement (Second) of Torts Section 552 with approval, the Supreme Court of Washington concluded that "Section 552 applies to a real estate appraiser," such as a VA-hired appraiser, who "in the course of his business, profession or employment. . . supplies false information for the guidance of others in their business transactions." *Id.* 127 Wash. 2d. at 23, 896 P.2d at 667.

The Supreme Court of Washington then considered to what extent the duty of a VA-hired appraiser extends to third parties not in privity with the appraiser. *Id.* The Supreme Court of Washington found "under Section 552, lack of privity is no defense to a claim of negligent

misrepresentation;" however, "only those in a limited class may advance such claims." *Id.* 127 Wash. 2d. at 26, 896 P.2d at 670. The Supreme Court of Washington then examined whether the plaintiff who had relied on the VA-hired appraiser's report qualified as a member of the limited class permitted to advance a claim of negligent misrepresentation against the VA-hired appraiser for its production of a negligent report. *Id.*

The Supreme Court of Washington reasoned that since Schaff, the plaintiff, was a prospective home buyer who had applied to the VA for a loan guaranty, and the VA hired the VA-Appraiser solely because of Schaff's application, Schaff was the most proximal third party there would ever be to the VA-hired appraiser's report. *Id.* In other words, if the VA-hired appraiser's liability did not extend to Schaff, then no other third party would ever have a cause of action against the appraiser. Thus, the court ruled that Scaff was a member of the limited class that could pursue a negligent misrepresentation claim against the VA-hired appraiser. *Id.* Ultimately, the Supreme Court of Washington ruled in Schaff's favor, and held that a third party may state a claim for negligent misrepresentation against a real estate appraiser pursuant to Restatement (Second) of Torts Section 552, and that "[t]he liability of a real estate appraiser in these circumstances extends only to those involved in the transaction that triggered the appraisal report, including but not limited, to the buyer and the seller." *Id.* 127 Wash. 2d. at 27, 896 P.2d at 670.

In the case at bar, David McLaurin and McLaurin Appraisal, LLC., owed a duty of ordinary care to the Hamiltons when preparing the VA Appraisal Report for 405 Watson Hill Lane in Chesterfield, South Carolina, which they purchased in good faith, after the receipt of an appraisal from a duly licensed and approved Veterans Administration (hereinafter "VA") appraiser. South Carolina law provides "a duty to exercise reasonable care in giving information exists when the defendant has a pecuniary interest in the transaction." 18 S.C. Jur. Negligence § 57, citing,

RESTATEMENT (SECOND) OF TORTS § 552 (1977); *cf. Gordon-Gallup Realtors, Inc. v. Cincinnati Insurance Co.,* 274 S.C. 468, 265 S.E.2d 38 (1980); *Lawlor v. Scheper,* 232 S.C. 94, 101 S.E.2d 269 (1957). A sufficient indication that "a pecuniary interest exists on behalf of the defendant when information is given in the course of the defendant's business, profession or employment. . ." *Id.*, citing, RESTATEMENT (SECOND) OF TORTS § 552, Comment d, at 129—30 (1977); *see* Prosser and Keaton, *The Law of Torts* § 107 at 747 (5th ed. 1984).

McLaurin was compensated for preparing the VA Appraisal Report and provided the information in the course of business. Thus, both David McLaurin and his LLC possessed a pecuniary interest in the transaction. In South Carolina, "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." *Barker v. Sauls*, 289 S.C. 121, 345 S.E.2d 244 (1986), citing, *Terlinde v. Neely*, 275 S.C. 395, 271 S.E.2d 768 (1980). The United States Court of Appeals for the Fourth Circuit, found "based upon the trend of South Carolina jurisprudence," the Supreme Court of South Carolina would hold a professional appraiser liable to a third party for negligent misrepresentation, under South Carolina common law, "in the event the third party detrimentally relied upon the professional appraiser's materially inaccurate and negligent appraisal of the 'as is' market value of a parcel of real property." *Priv. Mortg. Inv. Servs., Inc. v. Hotel & Club Assocs., Inc.*, 296 F.3d 308, 310 (4th Cir. 2002).

Other jurisdictions have applied the Restatement (Second) of Torts reasoning in Section 552 to appraisers. *Diloreti v. Countrywide Home Loans, Inc.*, No. 5:14-CV-76, 2014 WL 12771142 (N.D.W. Va. Nov. 14, 2014), citing, *Private Mortg. Inv. Servs., Inc. v. Hotel & Club Assocs., Inc.*, 296 F.3d 308, 313 – 315 (4th Cir. 2002); *Bryant Bank v. Talmage Kirkland & Co., Inc.*, No. 1130080, 2011 WL 11742121 at *9 (Ala. May 23, 2014). At least one other jurisdiction

has found that a real estate appraiser hired by the VA to perform an appraisal pursuant to a VA-backed home loan owed a duty of ordinary care in preparing the appraisal report to a third party that was involved in the transaction and initiated the appraisal by pursuing a VA-backed loan. *Schaaf v. Highfield*, 127 Wash. 2d 17, 896 P.2d 665 (1995). Given the relevant mandatory authority providing South Carolina abides by the concept of negligent misrepresentation described in the Restatement (Second) of Torts § 552, and the abundance of persuasive authority that suggests the liability of a real estate appraiser should be extended to third parties that may justifiably rely on information given in the course of the appraiser's profession, David McClaurin and McClaurin Appraisal owed a duty to the Hamiltons when preparing the VA Appraisal Report.

McLaurin and his LLC argue in their Motion to Dismiss that neither party owed any duty to the Hamiltons because the appraisal was prepared for the lender of the subject property. However, this does not negate the right of the Veteran to rely on the appraisal according to the trend in the law of South Carolina.

The principal case upon which David McLaurin and his company rely, *Robertson v. First Union Nat. Bank*, 350 S.C. 339, 350 565 S.E.2d 309, 315 (Ct. App. 2002), for the proposition that an appraiser owes no duty to anyone other than the person or entity who ordered the appraisal, does not support their position.

1. McLaurin's Mischaracterization of the Holding in *Robertson.*

McLaurin's claim that the South Carolina Court of Appeals held in *Roberston* that an appraiser representing, employed by, or acting on behalf of a bank does not owe a prospective mortgagor a duty of care is a mischaracterization of the law as it applies in this case. Hrg. Tr. at 3:18-4:4. In *Robertson*, the Court of Appeals held "Appellants' negligent misrepresentation claim

fails because they have failed to prove reliance on the 1993 appraisal." *Robertson v. First Union Nat. Bank*, 350 S.C. 339, 350 565 S.E.2d 309, 315 (Ct. App. 2002). Therefore, the focus of the court in *Robertson* was the fifth element of negligent misrepresentation: whether the plaintiff justifiably relied on the representation. McLaurin's characterization of the court's holding in *Robertson* encompasses dicta that was not essential to the court's finding that there was a failure of proof as to the fifth element of negligent misrepresentation. This is evident because in South Carolina, "[l]iability for negligence in preparing reports has been extended to parties other than those to the contract in certain circumstances[and] [consultants]. . . and may be found liable in negligence to non-contracting parties who have ***reasonably relied*** on their reports in taking some action." *South Carolina State Ports Authority v. Booz-Allen & Hamilton*, 289 S.C. 373, 376-377 346 S.E.2d 324, 326 (1986). In other words, if there is reasonable reliance on a report or appraisal, then a duty exists. If no reasonable reliance exists, then no duty exists.

The court in *Robertson* did not hold, as McLaurin suggests, that an appraiser could never commit negligent misrepresentation where there is reasonable reliance. In *Robertson,* the appraiser did not owe a duty *in tort* to the prospective mortgagor because, under the circumstances, there was no proof the prospective mortgagor had reasonably relied on the appraisal, which meant that the plaintiff could not satisfy the fifth element of negligent misrepresentation. There was no proof of reasonable reliance not only because of that fact that the appraiser was employed by and acting as agent for the bank (no contractual duty), but also because it was undisputed that the parties agreed to a contract price without seeing an appraisal, and thus there was no evidence that the subject property was worth less than $200,000.00, among other reasons. *Robertson v. First Union Nat. Bank*, 350 S.C. 339, 350 565 S.E.2d 309, 315 (Ct. App. 2002). More importantly, in *Robertson,* the Appellants did not receive a copy of the appraisal until five years after purchasing

the subject property and testified they did not rely on it in purchasing the property. *Id.* 350 S.C. at 348. Therefore, in *Robertson,* no duty arose *in tort* on behalf of the appraiser because there was **no evidence that the prospective mortgagor reasonably relied on the appraisal**.

The facts of the case at bar are clearly distinguishable from *Robertson* because, in this case, McLaurin knew or should have known that the Hamiltons were foreseeable recipients of the appraisal, which was done ultimately for their benefit. McLaurin knew or should have been aware that the Hamiltons may rely on representations made in their appraisal because they initiated the appraisal by applying for the VA loan (the Plaintiff, John Hamilton's name was listed on the Appraisal Report, the Plaintiffs paid for the appraisal, and Plaintiffs have alleged they relied on the appraisal before deciding to close on the subject property). In fact, the Plaintiffs specifically allege that they relied to their detriment on the appraisal at issue. Therefore, at the pleading stage, there are sufficient allegations, which must be taken as true, that the Hamiltons reasonably relied on the appraisal in the case at bar, whereas in *Robertson,* there was no evidence of reliance. Therefore, since there are allegations that Plaintiffs John and Erin Hamilton reasonably relied on representations made by David McLaurin and McLaurin Appraiser, LLC, made in their appraisal report, a duty arises in tort.

The fact that there may be no contractual duty between the parties in this case is not dispositive. Contractual duty was merely one consideration the court in *Robertson* used to show that the plaintiff in that case had not reasonably relied on the appraisal. This is the only rational interpretation of the *Robertson* court's ruling, because otherwise *Robertson* would contradict established South Carolina law that "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." *Barker v. Sauls*, 289 S.C. 121, 122, 345 S.E.2d 244 (1986), citing *Terlinde v. Neely*, 275 S.C. 395, 271 S.E.2d 768 (1980).

Moreover, further evidence that the Defendants' characterization of the holding in *Robertson* is misplaced is the fact that the Fourth Circuit *Private Mortg. Inv. Services, Inc. v. Hotel and Club Associates, Inc.*, held that the Supreme Court of South Carolina, based on the trend in South Carolina jurisprudence, would hold a professional appraiser liable to a third party for negligent misrepresentation, under South Carolina common law, in the event the third party detrimentally relied upon the professional appraiser's material inaccurate and negligent appraisal. 296 F.3d 308, 310 (4th Cir. 2002). It is compelling that the Fourth Circuit's Opinion in *Private Mortg. Inv. Services, Inc.* was issued after the Court of Appeals of South Carolina issued its Opinion in *Robertson v. First Union National Bank.*

The Restatement (Second) of Torts § 552, to which South Carolina abides, specifically states that liability for negligent misrepresentation extends to loss suffered:

> (a) by the person or one of a limited group of persons for whose benefit and guidance he intends to supply the information **or knows that the recipient intends to supply it**; and
>
> (b) through reliance upon it in a transaction that he intends the information to influence **or knows that the recipient so intends or in a substantially similar transaction.**

RESTATEMENT (SECOND) OF TORTS § 552 (1977) (emphasis added).

Therefore, the Hamiltons only have to show that they were in the class of limited persons for whose benefit and guidance McLaurin intended to supply the information to, or knew the intended recipient intended to supply the information to the Plaintiffs. David McLaurin and McLaurin Appraisal had actual knowledge when preparing the VA Appraisal Report that the report could be given by the VA or the lender to the Hamiltons, that the Hamiltons were intended

beneficiaries of the information, who would potentially rely upon the appraisal report in deciding as to whether or not to purchase the property at the center of this case. This is evidenced by the fact that the Uniform Residential Appraisal Report created by McLaurin specifically lists as the borrower the Plaintiff, John Hamilton.

Furthermore, similar to the VA-hired appraiser in *Schaaf*, the VA hired McLaurin to perform the appraisal solely because of Mr. Hamilton's VA-backed loan application. Thus, the Hamiltons are the most proximal third parties there will ever be to the VA Appraisal Report prepared by McLaurin. As a matter of public policy, the Hamiltons should have some sort of protection from an appraiser's negligence. Therefore, the Court should find that McLaurin's argument fails because, even if the appraisal states that the report is "intended for the lender," he still had knowledge that the VA would supply the information to the Hamiltons, who paid for it. Thus, McLaurin owed a duty of ordinary care in preparing the VA Appraisal Report to the Hamiltons as foreseeable third-party beneficiaries.

B. The Hamiltons' Negligent Misrepresentation Claim States Facts Sufficient to State a Cause of Action Because It is Alleged They Detrimentally Relied on The Appraisal.

A ruling dismissing a complaint for failure to state facts sufficient to constitute a cause of action must be based solely on allegations set forth in the complaint. *Doe v. Marion,* 373 S.C., 390, 395, 645 S.E.2d 245, 247 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff relief on any theory, dismissal is improper. *Id.* The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). Moreover, the complaint should not

be dismissed merely because the court doubts the plaintiff will prevail in the action. *Id.* Courts take as true the allegations of the nonmoving party and resolve all factual disputes in their favor.

McLaurin's argument that there was no duty fails because the Hamiltons are pleading both the value and the condition of 405 Watson Hill Lane were substantially in error. Aside from value, McClaurin also made representations that the house was in mostly good condition and structurally well-maintained without any deficiencies or adverse conditions that would affect the livability, soundness, or structural integrity of the home. The Hamiltons allege that McLaurin was negligent and grossly negligent in failing to report widespread termite damage, electrical issues, and other conditions that affect the soundness and structural condition of the property. The Hamiltons relied on McLaurin's negligent misrepresentations in deciding to purchase the property; therefore, McLaurin's argument is without merit. Compl.¶ 60.

Defendants' second argument fails because South Carolina abides by the Restatement (Second) of Torts § 552, which specifically states that liability for negligent misrepresentation extends to loss suffered:

> (a) by the person or one of a limited group of persons for whose benefit and guidance he intends to supply the information **or knows that the recipient intends to supply it**; and
> (b) through reliance upon it in a transaction that he intends the information to influence **or knows that the recipient so intends or in a substantially similar transaction.**

RESTATEMENT (SECOND) OF TORTS § 552 (1977).

The Plaintiffs are only required to show that they were in the class of limited persons for whose benefit and guidance the Defendants intended to supply the information to, or the Defendants knew the intended recipient would supply the information to Plaintiffs to rely upon. In this case, David McLaurin had actual knowledge when preparing the VA Appraisal Report that

the report could be given by the VA to the Plaintiffs and that the Plaintiffs were intended beneficiaries of the information and would potentially rely on the appraisal in purchasing 405 Watson Hill Lane. This is evident because the Uniform Residential Appraisal Report created by Defendants specifically states that the Borrower who initiated the Appraisal is the Plaintiff, John Hamilton. Also, Plaintiffs paid for the Appraisal. Furthermore, VA Minimum Property Requirements, which Defendants were obligated to abide by, specifically state that a VA appraisal is for the benefit of the Veteran. Therefore, regardless of whether the Appraisal Report states it is "intended for the VA," the Defendants still had knowledge that the VA would supply the information to the veteran. Thus, McLaurin's argument that Hamiltons could not have justifiably relied on the appraisal is without merit.

D. Under South Carolina Law, the failure to follow governmental or industry standards may be the basis for a claim of negligence. Plaintiffs allege that the Defendant appraiser, David McLaurin, did not follow VA Minimum Property Requirements as required. The lower court erred in by granting the motion to dismiss this claim.

In this case, the Defense does not dispute the published VA Minimum Property Requirements ("MPRs"), and so, it is assumed their argument is grounded in the premise that such duties were not owed to the purchaser. The Court should reject this argument as inconsistent with South Carolina law.

> [T]he general rule is that evidence of industry safety standards is relevant to establishing the standard of care in a negligence case. *See, e.g., McComish v. DeSoi,* 42 N.J. 274, 200 A.2d 116, 120–21 (1964) (holding that construction safety manuals and codes were properly admitted as objective standards of safe construction); *Walheim v. Kirkpatrick,* 305 Pa.Super. 590, 451 A.2d 1033, 1034–35 (1982) (holding that safety standards regarding the safe design and use of trampolines, including ASTM standards, were admissible on the issue of the defendants' negligence, even though the defendants were unaware of the standards); *Stone v. United Eng'g,* 197 W.Va. 347, 475 S.E.2d 439, 453–55 (1996) (no error to admit evidence of safety standards for the design and guarding of conveyors even

> though the standards had not been imposed by statute and did not have "the force of law"); *see generally* Daniel E. Feld, Annotation, *Admissibility in Evidence, on Issue of Negligence, of Codes or Standards of Safety Issued or Sponsored by Governmental Body or by Voluntary Association,* 58 A.L.R.3d 148, 154 (1974) (modern trend is to admit safety codes on the issue of negligence). This kind of evidence is admitted not because it has "the force of law," but rather as "illustrative evidence of safety practices or rules generally prevailing in the industry."
>
> *McComish v. DeSoi,* 200 A.2d at 121.

Elledge v. Richland/Lexington Sch. Dist. Five, 352 S.C. 179, 186, 573 S.E.2d 789, 793 (2002). Thus, non-compliance with the Minimum Property Requirements, which are published standards by a governmental agency, the VA, which standards are to protect Veterans, may serve as a basis for the Plaintiffs' negligence claims in South Carolina.

MPRs are government standards designed to protect the interests of Veterans, such as John Hamilton. Compl. ¶ 59. They also require the appraiser to recommend repairs, not inspections, for any conditions that do not appear to meet MPRs. If the appraiser is aware of any repairs that will be required due to local code enforcement, the appraiser must prepare the appraisal subject to these repairs. Appraisers must comment and adjust for any market reaction discovered as a result of water contamination, as well as any environmental stigma. The appraiser must notify the lender promptly when a hazard is identified so that the eligibility of the property may be addressed, depending on the nature of the hazard, to provide as much time as possible to resolve the situation. The appraisal must be prepared "subject to" the repair of any defective conditions, with the contributory value of the completed repair included in the value. Therefore, David McLaurin also possessed a duty to abide by the MPRs when he undertook to perform the appraisal and make representations about 405 Watson Hill Lane. The Plaintiffs specifically alleged in the Complaint that McLaurin was negligent and grossly negligent in failing to report various defects in accordance VA Minimum Property Requirements. Compl. ¶ 60.

For the foregoing reasons, it was error to grant the Defendants' Motion to Dismiss this aspect of Plaintiffs' negligence claim as pled in the Complaint.

VI. CONCLUSION

The trend in the law in South Carolina is to recognize a claim for negligent misrepresentation by an appraiser where the recipient alleges justifiable reliance on an appraisal for his or her benefit. The lower court erred in dismissing the Hamiltons' complaint for negligent misrepresentation. In addition, a complaint alleging a violation of industry or government standards states sufficient facts to state a cause of action for negligence under South Carolina law. Therefore, the Circuit Court erred in dismissing the negligence claim, and its ruling should be reversed.

BY: _____

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January 6, 2026

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA COURT OF COMMON PLEAS FOR THE FOURTH JUDICIAL CIRCUIT

RECEIVED
JAN 09 2026
SC Court of Appeals

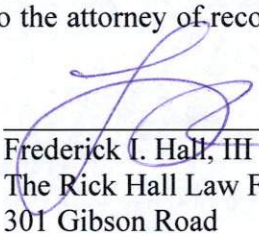
Appellate Case No. 2025-002362

John Hamilton and Erin Hamilton…..……..Appellants,

David McLaurin and David McLaurin Appraiser, LLC,……...….Respondents.

PROOF OF SERVICE

I certify that I have served the Initial Brief of the Appellants by depositing a copy in the U.S. Mail, postage prepaid, on January 6, 2026, addressed to the attorney of record, Travis W. Redd, Jr., at the addresses listed below:



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January 6, 2026

VIA US MAIL, POSTAGE PREPAID & EMAIL
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RE: *John Hamilton and Erin Hamilton, Appellants v. David McLaurin and David McLaurin Appraiser, LLC, Respondents*, Appellate Case No. 2025-002362

Dear Ms. Kitchings:

Please find enclosed the Initial Brief of the Appellants and the Designation on the Matter to be filed in the above-referenced matter. Proof of Service upon counsel for the respondents is also enclosed herewith.

Please contact me at my Lexington office with questions.

Very Truly Yours,

Frederick I. Hall, III

Enclosure

cc: Travis Redd, Esq. (via email)
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