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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals Jr., Circuit Court Judge

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

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

Petitioner,

v.

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

Defendants,

Of which Grand Strand Nissan, Inc., is the

Respondent.

**REPLY IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI**

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OVERVIEW

Undisputed matters make a grant of certiorari appropriate. Disputed matters also warrant the grant.

The Court of Appeals' opinion holds that automobile dealers may not sue under the Dealers Act where others may do so. The Return in Opposition to Petition for a Writ of Certiorari does not dispute the Petition's showing that this holding is both novel and erroneous. The opinion also construes the Dealers Act and UTPA narrowly, conflicting with precedent requiring broad construction of remedial statutes. The return does not dispute this. Each is an independent, "special and important," ground to grant certiorari under Rule 242, SCACR. The Court should grant the writ, receive briefing, and provide guidance.

Additionally, the return's core position is that Respondent should not have to compensate the victim for the foreseeable, but-for, consequence of Respondent's tortious act—not under the common law and not under the statutes. The position conflicts with a mountain of additional decisions of this Court. This provides more reasons to grant certiorari.

ARGUMENT

I. UNDISPUTED MATTERS MAKE A GRANT OF CERTIORARI PROPER.

A. The Court of Appeals' Holding On An Undisputed Novel Issue Should Be Reviewed By This Court. It is undisputed that the opinion's holding that Dealers may not sue under the Dealers Act is both novel and wrong. (Pet. pp. 3-4).¹ The return apparently hopes to

¹ The return ignores the novelty and the merits of this holding. To Petitioner's knowledge, no one has ever made the argument that Dealers may not sue under the main authorization-to-sue section of the Dealers Act, and no court has ruled on the issue in any other case, including the cases the Opinion cites. Certainly if the issue were not novel Respondent would have cited at least one case raising the issue. But the only mention of novelty in the return is in its Part 1, which concerns duty,

avoid the issue by omitting “novel questions of law” from its rendition of “the factors listed in Rule 242, SCACR. . . .” (Ret. p. 2). The Court should review this novel issue of statutory construction. *See* Rule 242(b)(1), SCACR.

B. Undisputed Conflicts with Prior Decisions of the Supreme Court Governing Statutory Construction Also Make Certiorari Appropriate. The petition shows that prior decisions of this Court mandate a broad reading of remedial measures such as the UTPA and Dealers Act rather than the narrow reading adopted by the Court of Appeals. (Pet. pp. 4, 6) (citing cases). The return simply ignores the point. Because it is undisputed that the opinion conflicts with this entire line of cases, the Court should grant certiorari. *See* Rule 242(b)(3), SCACR.

C. Other Undisputed Points. (1) There is also the undisputed unfairness and unjustness of the opinion’s holdings—unjust and unfair to the public in allowing fraudsters to profit from their illegal acts when an intermediary party is unreachable (Pet. pp. 1, 7-8); and unfair and unjust to the victims in similar situations (*id.*). These support a grant of certiorari as to all claims. **(2)** It is also undisputed that a wealth of prior decisions of the Court establishes that one who tortiously acts is responsible to victims who suffer foreseeable injury that they would not have received but for the tort, even if the injury is directly inflicted by others, and even if there is no

not statutory claims, and where it denies any novelty. Any attempt to extend the denial to the Dealers Act claim would properly be disregarded as without supporting citations or analysis, *see, e.g., Transportation Ins. Co. & Flagstar Corp. v. S.C. Second Inj. Fund*, 389 S.C. 422, 432, 699 S.E.2d 687, 692 (2010).

The return says nothing about the merits of the holding, claiming only that the holding is limited to its facts, which is clearly erroneous, as the holding that *because* no dealers may sue under the Dealers Act, the plaintiff here may not sue, is clearly not limited to its facts.

The Opinion erroneously rejects the position that “anyone, not just motor vehicle owners,” may sue under the Act. It erroneously reads the Act as serving only “for the purpose of consumer protection.” (Opinion, p. 4). Respondent reads this as precluding suits between dealers. Regardless of whether this precludes all suits by dealers or only suits between dealers, it is both novel and erroneous.

communication, reliance, or interaction between the original tortfeasor and the victim (Pet. p. 9).

Because of these undisputed matters, the Court should grant the petition.

II. OTHER MATTERS

A. The Return Errs in Denying that Special and Important Reasons Exist to Grant Certiorari.

As shown just above, special and important undisputed reasons under Rule 242, SCACR, exist to grant certiorari. These include the novel decimation of the Dealers Act to exclude Dealers as plaintiffs, and the conflict with all the Court's opinions requiring broad interpretations of remedial statutes. The return makes much of the unpublished nature of the opinion here,² suggesting there is no harm done except to Petitioner. But even a court of "[e]quity ought to follow the law, and not proceed in contradiction to the law." *Harman v. Counts*, 4 S.C.L. 476, 477 (S.C. Const. App. 1811). In South Carolina, hundreds or thousands of used cars are sold at auction each week. It is important to get the law straight about what happens when one misrepresents the vehicle.

And there's more. There's the novel question of whether the common law allows fraudsters to escape liability to the intended victims by routing the expected harm through an intermediary. The Court should resolve this novel issue, and also resolve the conflict between the few cases stating that to recover under the common law for negligent misrepresentations, the victim must have relied on the defendant's representation, on the one hand, and on the other hand the many cases holding that one is responsible for the foreseeable consequences of one's tortious act, regardless of whether any communications, interactions, or reliance took place between the wrongdoer and the victim. This, too, is a novel issue. Similarly, while intent to deceive is not

² The signatory of the Return is also the signatory of a Brief pending before the Court of Appeals that contains two pages of discussions of unpublished cases. Resp't's Init. Br. (filed Feb. 9, 2026), *Daniel O'Shields v. Columbia Automotive*, No. 2025-000801, pages 12, 17-23-24.

necessary for a UTPA claim, *see, e.g., State ex rel. McLeod v. Brown*, 278 S.C. 281, 285, 294 S.E.2d 781, 783 (1982), this case raises a novel question of whether an intended victim of a UTPA violation has a cause of action against a tortfeasor it “never communicated or interacted with.” The Court should also grant the petition to address the many, many conflicts between prior decisions of the Court and the opinion as discussed in the petition (*passim*) and pages 6-14 below.

B. Certain Misleading Statements in the Return

The return misstates the Court’s precedent about resolving novel issues like those here. It states, “Target Motors seeks to recover for a nondisclosure with respect to a transaction to which it was not a party. . . . Generally, *courts are reluctant* to create new duties or to expand tort liability.” (Ret. 7-8) (emphasis added). In reality, “[T]his Court *has not been reluctant*” to expand tort liability with respect to a transaction to which the plaintiff was not a party. *JKT Co. v. Hardwick*, 274 S.C. 413, 417, 265 S.E.2d 510, 512 (1980) (footnote omitted) (emphasis added) (“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.”). “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.” *Id.* at 418, 265 S.E.2d at 13.³

The return also makes a series of misleading statements that attempt to avoid the issues. It asserts that “Target Motors has not included any argument in its petition relating to the rulings on the fraud and negligent misrepresentation claims.” Actually, the petition argued these claims on

³ *See also Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 621, 879 S.E.2d 746, 760 (2022), *cert. denied*, 143 S. Ct. 2581 (2023) (quoting *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 384 S.E.2d 730 (1989)) (alterations in original) (“when the Court is confronted with a new scenario ‘not properly disposed of by our present set of rules,’ it ‘[o]nce more[] respond[s] by expanding our rules to provide the innocent buyer with protection’ ”); *Colleton Preparatory Acad., Inc. v. Hoover Universal, Inc. (Colleton Prep)*, 379 S.C. 181, 191, 666 S.E.2d 247, 252 (2008) (noting “our policy of providing a remedy where a duty outside the contract is breached.”).

the first page, the last page, and in between.⁴ The return claims the opinion limits itself to its facts—but the opinion does not do so, and it would have made no sense for it to do so: How does one limit a holding that *because* no dealers may sue under the Dealers Act, the Plaintiff here may not sue, to its facts? It asserts that “The Petition is based entirely on hypotheticals,” but this too is not so: The petition rests on 23 prior decisions of this Court. The return claims the hypotheticals do not address the lack of any representation by Respondent on which Petitioner relied; but actually, the *hypotheticals* very much address that (Petition p. 7).⁵ Perhaps more important, so too do *cases* on which the petition relies. “Many prior opinions of this Court hold that one who sets a chain of actions in motion that foreseeably results in a reasonably-anticipatable harm is liable to the ultimate victim *even when there is no communication or interaction* between the original tortfeasor and the victim.” (emphasis added) (Pet. p. 9) (citing cases). Additional cases are provided below.

Also false is the suggestion that Grand Strand paid any damages for its actions at issue here.⁶ So too is the assertion that “Grand Strand has not argued that it is entitled to any kind of

⁴ The petition “argued” these claims everywhere, except its sections devoted to statutory claims and its statement of the case, where “argument” is improper (and where the claims are discussed).

⁵ Since the return asserts the hypotheticals in the petition are lacking, here are some that explicitly contain the magic language on which the return apparently insists. One who tosses a lit bomb is liable to the victim, even if an intermediate party tosses the bomb away from himself so it explodes next to the victim, and even if the intermediate party recognizes the bomb is dangerous, and even if the original tortfeasor had no interactions with and made no representations to the victim, who did not rely on any representations by the original tortfeasor. He should have expected his tortious act to hurt someone and is therefore liable to the victim. A jury might find one whose car veers into another lane, causing a second car to hit a third which it should have avoided, but did not avoid, is liable to everyone in the chain, including those to whom it represented nothing, communicated nothing, with whom there were no interactions, and who did not rely on the tortfeasors’ statements.

⁶ The return states, “Grainger resolved its claim related to the truck by accepting a 50% refund on the truck” (Ret. p. 5) (citing R. at 121 # 11). But R. at 121 # 11 makes clear that it was the auction, not Respondent, that paid the refund. Grand Strand has not paid a dime.

immunity” The return is playing word games—Grand Strand clearly argued that Petitioner may not sue it, and argued that the intermediate purchaser may not sue it.⁷ Grand Strand may not have employed the word “immunity,” but it clearly claimed it is immune from suit in the sense that no party may sue it for its deception here. Grand Strand does not deny having acted tortiously and caused harm.⁸ It just argues it is entitled to keep its ill-gotten gains.

C. Reply To the Return’s Numbered Arguments

The return has two numbered arguments. They are addressed in reverse order.

1. The Opinion’s Statutory Holdings as Presented by the Return Conflict with *Colleton Prep* and a Wealth of Other Precedent.

The petition argues that the opinion improperly inserts a direct causation requirement into the Dealers Act and UTPA statutes and that this is improper, whether the statutes are remedial or not. The return disagrees. It maintains instead that the opinion is consistent with “the causal connection requirement . . . as identified in *Colleton Preparatory Acad., Inc. v. Hoover Universal, Inc.*, 379 S.C. 181, 195, 666 S.E.2d 247, 255 (2008).” (Ret. p. 11). The Return quotes *Colleton Prep* as holding the harm must be “a result of” the violation. (Ret. pp. 10-11).⁹ But the return omits an important point from *Colleton Prep*. It quotes the case as holding, “Persons or

⁷ Def. Grand Strand Nissan Inc.’s Mot. for Summ. J. as to Cross Claims Asserted by Grainger Companies, Inc. d/b/a Grainger Honda (11/28/23)) (Supp. R. pp. 1-44). Grand Strand withdrew its motion only after Target’s reply brief before the Court of Appeals pointed out Grand Strand was telling the Court of Appeals that Grainger could sue it while telling the circuit court the reverse. (Am. Reply Br. p. 24 n.25). Grand Strand’s withdrawal of the motion states the withdrawal is “without prejudice” (Supp. R. p. 46), so it may renew the motion once this appeal concludes.

⁸ Grand Strand concedes a deceptive act. (Ret. p. 4 (“the truck was placed under a green light, indicating that the truck did not have structural damage.”); *id.* p. 5 (the car has “structural damage.”)).

⁹ The return also cites *Health Promotion Specialists, LLC* for the “as a result” proposition and *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharms.* for the virtually identical “causal connection” proposition. (Ret. pp. 10-11).

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 [sic] recover actual damages” (Ret. p. 11), but omits the next sentence, “To recover under the Act, a plaintiff must prove a violation of the Act, proximate cause, and damages,” 379 S.C. at 194, 666 S.E.2d at 254. *Colleton Prep* makes clear that “causal connection” and “a result” mean “proximate cause.”¹⁰

The Return never mentions the term “proximate cause” in its Argument section. It ignores the voluminous holdings on what is required to show proximate cause. Instead, it argues that under a test known only to Respondent, there is no causal connection between its acts and Target’s harm. Under the Return’s reading, the opinion challenged here conflicts with even more cases than under Petitioners’ reading.

It is well-established that proximate cause has only two elements: but-for causation and foreseeability. *Bramlette v. Charter-Med.-Columbia*, 302 S.C. 68, 72, 393 S.E.2d 914, 916 (1990).¹¹ “Causation in fact is proved by establishing the injury would not have occurred ‘but for’ the defendant’s [act]. Legal cause is proved by establishing foreseeability.” *Id.* (citations omitted). The issue is for the jury except in rare cases. *Hurd*, 363 S.C. at 427–29, 611 S.E.2d at 492.¹²

But-for causation is for the jury if it may be reasonably “inferable from the evidence that

¹⁰ The Court has held similarly regarding other statutes. “[W]hen the statute speaks of contributing to the injury, it meant as a proximate cause . . . [a] causal connection.” *McBride v. Atl. Coast Line R. Co.*, 140 S.C. 260, 138 S.E. 803, 810 (1927) (emphasis added). “[S]o far as proximate cause is concerned the rule at common law and under the statute is the same” *Id.*

¹¹ See also *Baggerly v. CSX Transp., Inc.*, 370 S.C. 362, 369, 635 S.E.2d 97, 101 (2006) (same); *Hurd v. Williamsburg Cnty.*, 363 S.C. 421, 427–28, 611 S.E.2d 488, 492 (2005) (same).

¹² See also *Baggerly*, 370 S.C. at 369, 635 S.E.2d at 101 (citing *Player v. Thompson*, 259 S.C. 600, 193 S.E.2d 531 (1972)).

the respondent would not have been injured in the absence of negligence on the part of the [defendant].” *Matthews v. Porter*, 239 S.C. 620, 632, 124 S.E.2d 321, 327 (1962).

To establish foreseeability, “It is sufficient that there is a reasonable generalized gamut of greater than ordinary dangers of injury and that the sustaining of the injury was within this range.” *Graham v. Whitaker*, 282 S.C. 393, 398, 321 S.E.2d 40, 43 (1984) (following *Hughes v. Children’s Clinic, P. A.*, 269 S.C. 389, 237 S.E.2d 753 (1977)). It is not necessary that the “particular” victim or “manner” of injury be foreseeable.¹³ *Horne v. Atl. Coast Line R. Co.*, 177 S.C. 461, 471, 181 S.E. 642, 646 (1935).¹⁴ “South Carolina has adopted the doctrine that negligent conduct is the proximate cause of injury if that injury is within the scope of the foreseeable risks of the negligence.” F. Patrick Hubbard & Robert L. Felix, *THE SOUTH CAROLINA LAW OF TORTS* 169 (5th ed. 2023).¹⁵ “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*, 239 S.C. at 626, 124 S.E.2d at 324 (citing *Woody v.*

¹³ A criminal shoots at another criminal and hits an innocent child. The child did not participate in the criminal’s world and never had contact with the criminals. Does that mean he has no rights regarding being shot?

¹⁴ It is “not necessary to render it the proximate cause that the person committing it could or might have foreseen . . . the particular manner in which it occurred, or that it would occur to the particular person” *Horne*, 177 S.C. at 471, 181 S.E. at 646 (quoting 45 Corpus Juris, 918, § 484). “It is enough that he should have foreseen that his negligence would probably result in injury of some kind to some one.” *Id.* at 477, 181 S.E. at 649 (quoting *Sandel v. State*, 115 S.C. 168, 104 S.E. 567, 13 A. L. R. 1268 [1920]). *Tobias v. Carolina Power & Light Co.*, 190 S.C. 181, 186, 2 S.E.2d 686, 688 (1939) (following *Horne* and citing 13 A.L.R. 1268).

¹⁵ See also *Bramlette*, 302 S.C. at 73, 393 S.E.2d at 917 (emphasis added) (citing *Young v. Tide Craft, Inc.*, 270 S.C. 453, 242 S.E.2d 671 (1978) and *Benford v. Berkeley Heating Co.*, 258 S.C. 357, 188 S.E.2d 841 (1972)) (“Under South Carolina law, the primary wrongdoer’s action is a legal cause of an injury if either the intervening act or the injury itself was foreseeable as a natural and probable consequence of that action.”). “Primary” in this context means “first in time.” “In operation an intervening cause succeeds or follows that which, for convenience, is called the primary cause, though, as we have seen, it is only the remote cause” *Horne*, 177 S.C. at 470, 181 S.E. at 646 (quoting *Sandel v. State*, 115 S.C. 180, 104 S.E. 567, 13 A. L. R. 1268 [1920]).

South Carolina Power Co., 202 S.C. 73, 24 S.E.2d 121 [1943]).

Events that occur after the initial tortious act and involve other actors do not erase these rules. Unless they produce an unforeseeable harm, they do not break the chain of liability. *E.g.*, *Matthews; Woody*. See also *Player v. Thompson*, 259 S.C. 600, 606-07, 193 S.E.2d 531, 534 (1972) (“It is enough (to impose liability) to show that it is a proximate concurring cause that, but for it, the injury would not have occurred”) (quoting *Horton v. Greyhound Corp.*, 241 S.C. 430, 128 S.E.2d 776 (1962)). What the return and opinion refer to as the “independent” nature of Grainger’s act makes no difference. *Childers v. Gas Lines, Inc.*, 248 S.C. 316, 324-25, 149 S.E.2d 761, 765 (1966) (An “intervening, independent action” does not change the rule that one “may be held liable for anything which appears to have been a natural and probable consequence of his negligence.”) (citing *Brown v. National Oil Co.*, 233 S.C. 345, 105 S.E.2d 81 [1958]; *Hicklin v. Jeff Hunt Machinery Company*, 226 S.C. 484, 85 S.E.2d 739 [1955]); *Matthews*, 239 S.C. at 627, 124 S.E.2d at 325.¹⁶ This holds even if the independent act is “itself sufficient to stand as the cause of the injury” *Matthews*, 239 S.C. at 627, 124 S.E.2d at 325 (quoting *Tobias v. Carolina Power & Light Co.*, 190 S.C. 181, 2 S.E.2d 686 (1939)); *Oliver v. S.C. Dep’t of Highways & Pub. Transp.*, 309 S.C. 313, 317, 422 S.E.2d 128, 131 (1992). The “causal connection is not broken” by third party acts when the resulting injury “could reasonably have been . . . foreseen” *Oliver*, 309 S.C. at 317, 422 S.E.2d at 131 (quoting *Tobias*).

¹⁶ That Grainger’s acts occurred after Respondent’s acts makes no difference.

“[If an injury] would not have happened in the absence of the negligence of either person, the negligence of each of the wrongdoers will be deemed a proximate cause of the injury, *although they may have acted independently of one another; and both are answerable*, jointly or severally, to the same extent as though the injury were caused by his negligence alone, without reference to which one was guilty of the last act of negligence.”

Matthews, 239 S.C. at 627, 124 S.E.2d at 325 (emphasis added) (quoting *Brown v. National Oil Co.*).

Here, whether selling a previously-wrecked vehicle as never-wrecked foreseeably leads to the consequence here—someone paying for a never-wrecked vehicle and receiving instead a vehicle that was previously wrecked—is for the jury.¹⁷ It is also for the jury to decide whether Target would have received its injury “but for” Respondent’s action. It is for the jury to determine whether there is the “causal connection” called “proximate causation.”

The return never employs the words “proximate cause” or “intervening act,” other than to note these were raised below. It attempts to make “as a result” mean something more restrictive than “proximate cause.” But in emphasizing the phrase “as a result,” *Colleton Prep* was not indicating the phrase should be read restrictively. Rather, it was *rejecting* that argument, both in the next sentence, as discussed above, and in the case as a whole, holding the UTPA allows suit. 379 S.C. at 186, 194-96, 666 S.E.2d at 250, 254-55.¹⁸

Petitioner thinks the error is simpler—an insertion of the word “directly” into the causation requirement. But if one rejects the simple explanation, the more complex one leads to the same

¹⁷ What the theory would be as to why Petitioner’s injury would have occurred without Respondent’s wrongful act is a mystery to Petitioner. Nevertheless, Respondent is entitled to present its theory, if it has one, to the jury.

¹⁸ The single paragraph the opinion devotes to the UTPA claim contradicts these cases in its beginning, middle, and end.

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. . . . 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. *In 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. (Opinion, p. 5) (emphasis added). But under the Court’s prior decisions, there *is* a “causal connection” that is unbroken. *Oliver*. That Grainger’s act was “independent” makes no difference. *Matthews*. Target’s injuries *can* be tied to (“tethered to”) Grand Strand under the governing standard of proximate cause. *Colleton Prep*.

basic point, a massive conflict between the opinion here and this Court’s precedent.

The return’s argument about causation under the Dealers Act is similar to its argument about causation under the UTPA. It fails for similar reasons. It also fails for additional reasons shown in the attached note.¹⁹

Whether the opinion inserts the word “direct” into the statutes or jettisons proximate cause for a standard of its own making, the opinion contradicts many prior decisions of this Court. If the Court of Appeals were entitled to create an exception to proximate causation, used-car dealers misrepresenting the structural integrity of vehicles should not be the beneficiaries. The Court should grant certiorari to review these holdings that contradict so many of its decisions.

2. The Court Should Review the Opinion’s Repeated Holdings that One Is Not Liable to Victims of Foreseeable, But-For Consequences of One’s Tort, and Grant Certiorari on the Common-Law Claims as Well.

The return’s other numbered argument is about duty. (“I. The court of appeals correctly found that there was not a duty based on the specific facts of this case.”). The argument could apply only to the common-law claims, as statutes themselves provide the “duty” for statutory claims, *Whitlaw v. Kroger Co.*, 306 S.C. 51, 53, 410 S.E.2d 251, 252 (1991). But even regarding the common law, the issue it raises is no ground to deny liability. As detailed above, one is responsible for the foreseeable consequences of one’s tortious acts. When Vehicle *A* is negligently crashed into Vehicle *B*, which then accidentally collides with Vehicle *C*, which then causes damage to Building *D*, courts do not ask whether the driver of *A* had a duty to the owner of *D* to not collide with *B*. They ask simply whether the damage to *D* was a reasonably-foreseeable and but-for result of *A*’s tort against *B*. A tortfeasor who breaches a duty to one is liable to the foreseeable indirect

¹⁹ Additional errors exist in the return’s Dealers Act argument. For example, the return misleadingly emphasizes language from S.C. Code Ann. § 56–15–40(B), which concerns the definition of a Dealer’s Act *violation*, as if it were instead about the *causation* requirement.

victims regardless of whether he had an independent duty to any of them. (Pet. p. 9). As discussed above, a mountain of this Court's precedents establish that Petitioner meets this test of foreseeable harm. And although the driver of *C* could certainly have driven his car into Building *D* even had *A* not engaged in his tort, the law makes it a jury question whether *A*'s act is a but-for cause of *D*'s damages. Similarly, if an upstream dam owner, angry at the next dam owner, releases an excessive amount of water, and the downstream dam owner, to protect his own dam, opens his gates enough to let the excess water pour through, the upstream actor cannot disclaim responsibility for the flooding that follows. The downstream release is a foreseeable response to the surge.

Regarding the specific common-law causes of action, as to negligence, Respondent is liable to Petitioner for the foreseeable but-for results of its breach of duty to Grainger. The panel's holding that Grand Strand is not liable to Target because it did not owe *Target* a "common law duty of care that would support a negligence claim" conflicts with the many prior decisions of this court on proximate cause and intervening acts discussed in section 1. It should be reviewed under subparagraph (3) of Rule 242(b). Alternatively, the Court should consider whether to recognize a common-law duty of a used car dealer to an intended second purchaser. This is a novel issue, and should be reviewed under 242(b)(1).²⁰

²⁰ If the Court wishes to address the issue, ample precedent exists to decide it in favor of Petitioner.

The fact that plaintiff was not a party to the contract under which defendant was acting is not determinative of plaintiff's right to sue. The liability of defendant to plaintiff exists independently of contract and rests upon the common law duty to exercise due care to avoid injury or damage to others.

Edward's of Byrnes Downs v. Charleston Sheet Metal Co., 253 S.C. 537, 542, 172 S.E.2d 120, 122 (1970). "[O]ur objective is to protect the innocent purchaser from latent defects. The reasoning, which would arbitrarily interpose a first buyer as an obstruction to someone equally as deserving, is incomprehensible." *Terlinde v. Neely*, 271 S.E.2d 768, 770, 275 S.C. 395, 399 (1980). "[L]egal duty is that which the law requires to be done or forborne with respect to a particular individual or the public at large." *S.C. Elec. & Gas Co. v. Utilities Const. Co.*, 244 S.C. 79, 88, 135 S.E.2d 613, 617 (1964). "Finally, the recognition of a duty in this context advances a major policy goal of tort law: deterrence." *Shaw v. Psychomedics Corp.*, 426 S.C. 194, 200, 826 S.E.2d

As to negligent misrepresentation,²¹ Respondent is again liable to Petitioner for the foreseeable but-for results of its admitted²² misrepresentation to Grainger. Additionally, the return recognizes that the common-law may imply a duty to disclose “from the circumstances of the case” (Ret. p. 8) (quoting *Wright v. Craft*, 372 S.C. 1, 25, 640 S.E.2d 486, 499 (Ct. App. 2006)). Whether such an implied duty arises in the context here is a novel issue. The argument that Grand Strand had no *implicit* duty to disclose ignores that Grand Strand had an *explicit* duty to disclose;²³ and that Grand Strand did not simply fail to disclose, it actively misrepresented.²⁴

The Court has many times distinguished liability for breaches of contractual duties from liability for actions “that occur[] outside the terms of the contract.” *E.g.*, *Carroll v. Isle of Palms Pest Control, Inc.*, 446 S.C. 177, 187, 918 S.E.2d 532, 537 (2025), *reh'g denied* (Aug. 11, 2025) (quoting *Dixon v. Texas Co.*, 222 S.C. 385, 389, 72 S.E.2d 897, 899 (1952)). “[R]estricting an injured party to a contractual remedy for conduct that breaches a duty independent of the contract is nonsense.” *Id.* at 189, 918 S.E.2d at 538. *See also id.* at 182–91, 918 S.E.2d at 535–39 (citing additional cases). Here, the duty not to misrepresent the vehicle pre-existed, and was breached before the formation of the contract, so the return’s reliance on cases about whether breaches of

281, 284 (2019). That is more than enough for the Court to grant the petition and decide whether a used car dealer that deceptively sells a used car for re-sale owes a duty to the intended repurchaser, a question that should be decided in accord with “the law and public policies of this state and the Court’s sense of law, justice, and right,” *Mims Amusement Co. v. S.C. L. Enft Div.*, 366 S.C. 141, 145, 621 S.E.2d 344, 346 (2005).

²¹ As shown on pages 4 and 5 above, the return is simply wrong in stating, “Target Motors has not included any argument in its petition relating to the rulings on the fraud and negligent misrepresentation claims.”

²² *See* note 8 above.

²³ It is undisputed that the auction rules explicitly require disclosure. *See also* S.C. Code Ann. §§ 36-1-201, 36-1-304, imposing an obligation of good faith. Good faith here required disclosure.

²⁴ *See* note 8.

contractual duty by accountants and the like create tort liability is misplaced. Grand Strand's malfeasance was at core a tort, not merely a breach of contract. Respondent is liable to Petitioner for the foreseeable injuries inflicted on Target as a result of its negligent misrepresentation to Grainger. In light of the conflict between the opinion's and Respondent's cases declaring that the *victim* must have relied on the representation in order to bring a cause of action for negligent misrepresentation, and the cases holding one responsible for the foreseeable, but-for, consequences of one's tort, the Court should grant certiorari to review this novel issue. *See* Rule 242(b)(1), SCACR.

Respondent is also liable for the foreseeable consequences of its fraud. *State v. Ciesielski*, 213 S.C. 513, 518, 50 S.E.2d 194, 196 (1948). This may be especially so here, as Respondent intended the consequences of its fraud to fall on another victim rather than the immediately defrauded party.²⁵ At the very least, whether South Carolina law allows one to defraud another, with the intent and expectation that the other will similarly injure an ultimate victim, and escape liability to that ultimate victim, is a novel question. Dicta in some cases may say "yes," but the Court has never so held.

The Court should grant certiorari on the common law claims, and make clear that a car dealer who intends to route a fraud through another party may not disclaim liability to the victim.

SUMMATION AS TO ALL CLAIMS

The Court should address the undisputedly novel and erroneous holding that the Dealers Act excludes dealers from the statutory right of "any person who shall be injured in his business or property" to sue. It should address the conflict between the opinion's holdings on the statutory claims and the Court's prior decisions instructing the proper way to construe remedial statutes. As

²⁵ All vehicles at the auction were intended for the purchaser to re-sell. (R. p. 210, paragraph (m)).

to both common-law fraud and statutory fraud under the Dealers Act, S.C. Code Ann. § 56-15-10(m), the Court should grant the petition and decide whether routing the intended harm through an intermediary allows the fraudster to escape liability to the victim. And while deception is not necessary for a UTPA claim, the Court should also decide whether under that statute one who intends a deceptive act and intends the harm to fall on someone other than the immediate hearer is liable to an expected victim.

As to all the common law claims, the opinion creates a new rule whereby a tortfeasor escapes liability to foreseeable, indirect victims. The Court should address whether it is necessary that one had a duty specifically to the victim or if it suffices for liability to the foreseeable victim that one committed a tort against another which resulted in foreseeable injury to the victim.

Conclusion

The Court should grant the petition and resolve the several novel issues and misinterpretations of the Court’s prior decisions.

Respectfully submitted,

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