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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DILLON COUNTY
Court of Common Pleas
Honorable George M. McFaddin, Jr., Circuit Court Judge

Case No. 2024-CP-17-00017

Appellate Case No. 2025-002362

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

v.

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

INITIAL BRIEF OF RESPONDENTS

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II. Whether South Carolina's public policy supports extending potential liability for negligent misrepresentation to lender-retained appraisers who fail to identify structural defects when preparing an appraisal.

COUNTER-STATEMENT OF THE CASE

Appellants John and Erin Hamilton ("Appellants") filed this lawsuit on January 15, 2024, a little more than six months after closing on the purchase of residential real property located at 405 Watson Hill Lane, Chesterfield, South Carolina ("the Property"). Appellants asserted claims against eight defendants, all of whom were involved in the purchase of the Property in various capacities. The suit included claims for negligence and negligent misrepresentation against Respondents David McLaurin and David McLaurin Appraiser, LLC ("McLaurin"), the appraiser retained by Appellants' lender to conduct an appraisal of the Property in connection with financing the purchase.

McLaurin filed a Motion to Dismiss the claims against it under Rule 12(b)(6), SCRCP, on March 8, 2024. McLaurin argued that it did not owe Appellants a duty of care sufficient to support their negligence and negligent misrepresentation claims under South Carolina law, citing the express language of the Appraisal that identified the lender, not Appellants, as the intended user. McLaurin argued that South Carolina precedent required the circuit court to dismiss Appellants' claims against an appraiser hired by a third-party.

Appellants argued in response that McLaurin owed a duty of care because Appellants justifiably relied on the Appraisal when closing on the Property. Appellants argued, "in South Carolina, if there is a reasonable reliance on a report or appraisal, then a duty exists. If no reasonable reliance exists, then no duty exists." Appellants also noted that the mortgage for the purchase of the Property was backed by the Department of Veterans Affairs and therefore subject to certain "Minimum Property Requirements." Appellants contended these requirements are intended to "help ensure that the [P]roperty is safe, structurally sound, and sanitary." According to Appellants, these requirements operated to create a duty of care owed by an appraiser who performs an appraisal in connection with a VA-backed loan subject to the VA's Minimum Property Requirements.

The circuit court held oral argument on November 11, 2024, and subsequently issued an order dismissing Appellants' claims against McLaurin on May 22, 2025. The circuit court determined that this Court's decision in *Robertson v. First Union Nat'l Bank*, 350 S.C. 339, 565 S.E.2d 309 (Ct. App. 2002), required it to dismiss Appellants' claims because McLaurin was retained by the lender and, therefore, any duty of care would be owed to the lender, not Appellants.

Appellants filed a Motion to Reconsider under Rule 59(e), SCRCP. The circuit court denied the motion to reconsider on October 28, 2025. This appeal followed.

COUNTER-STATEMENT OF FACTS

Appellants agreed to a contract for the purchase of the Property on April 22, 2023, for a total purchase price of $249,000. (Pl.'s Compl. ¶ 8). Appellants financed their purchase through a Department of Veterans Affairs (VA)-backed loan issued by Coast2Coast Mortgage. (Pl.'s Compl., Exhibit D). In connection with the loan, Coast2Coast Mortgage retained McLaurin to perform a residential appraisal of the Property. (*Id.*).

In May 2023, McLaurin visited the Property and prepared a Uniform Residential Appraisal Report ("the Appraisal") with the stated purpose to "provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property." (Pl.'s Compl., Exhibit D). Consistent with that stated purpose, the Appraisal analyzed the sales contract for the purchase of the Property; identified and described the improvements on the Property; and compared the Property to other similar properties in the surrounding area. (*Id.*). The Appraisal further disclosed that it was not a home inspection, was limited to a visual observation of accessible areas, and should not be relied upon to disclose conditions and/or defects in the Property. (*Id.*). The Appraisal noted the Property was in "overall average to good condition" and appraised the market value of the Property at $250,000. (*Id.*).

Appellants closed on the Property on June 7, 2023, and filed suit against McLaurin and six others a little more than six months later. As to McLaurin, Appellants asserted claims for negligence and negligent misrepresentation for McLaurin's alleged failure to identify and disclose defects at the Property, including improperly sloped flooring, decay damage due to termites, and electrical issues at the Property. Appellants also sued the sellers and the pest control company that prepared the CL 100 report for the purchase of the Property.

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). "In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint." *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). "If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, 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.* "At the Rule 12 stage, therefore, the first decision for the trial court is to decide only whether the pleading states a claim." *Skydive Myrtle Beach, Inc. vs. Horry Cty.*, 426 S.C. 175, 180, 826 S.E.2d 585, 588 (2019).

ARGUMENT

I. The Circuit Court Correctly Applied South Carolina Precedent When It Dismissed Appellants' Negligence and Negligent Misrepresentation Claims Against McLaurin.

This Court's decision in *Robertson v. First Union National Bank*, 350 S.C. 339, 350, 565 S.E.2d 309, 315 (Ct. App. 2002), controls this appeal. A lender-retained appraiser owes no duty of care to prospective purchasers; and without duty, neither a negligence nor a negligent misrepresentation claim can survive a motion to dismiss. Appellants' argument on appeal misses the mark and conflates the elements of duty of care on the one hand, and justifiable reliance on the other. McLaurin was employed on behalf of Appellants' lender, and any duty of care owed by McLaurin flowed to the lender, not Appellants. The circuit court correctly concluded that Appellants' claims for negligence and negligent misrepresentation against McLaurin "fail for the absence of the duty of care element." This Court should affirm.

A. The absence of the duty of care element required dismissal of Appellants' negligence and negligent misrepresentation claims against McLaurin.

To recover on a claim for negligence, whether the claim is for simple negligence or negligent misrepresentation, a plaintiff "must show (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach." *Tanner v. Florence County Treasurer,* 336 S.C. 552, 561, 521 S.E.2d 153, 158 (1999) (quoting *Andrews v. Piedmont Air Lines,* 297 S.C. 367, 369, 377 S.E.2d 127, 128 (1989)). "The absence of any one of these elements renders the cause of action insufficient." *Andrews,* 297 S.C. at 369, 377 S.E.2d at 128–29. The existence of a duty of care is a

question of law for the court. *Houck v. State Farm Fire & Cas. Ins. Co.*, 366 S.C. 7, 11–12, 620 S.E.2d 326, 329 (2005).

To establish liability for negligent misrepresentation, the plaintiff must show: "(1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the representation; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance upon the representation." *AMA Mgmt. Corp. v. Strasburger,* 309 S.C. 213, 222, 420 S.E.2d 868, 874 (Ct. App. 1992).

In *Robertson v. First Union National Bank*, this Court affirmed the dismissal of a plaintiff's negligent misrepresentation claim against an appraiser in connection with the purchase of real property. 350 S.C. 339, 350, 565 S.E.2d 309, 315 (Ct. App. 2002). As in this case, the appraisal in *Robertson* was performed for the bank's benefit after the parties had already agreed to a contract price for the property. *Id.* The Court held that, under those circumstances, the appraiser owed no duty of care to the purchasers. *Id.*

Here, as in *Robertson*, Respondents were hired by the lender to perform an appraisal solely for purposes of mortgage financing. (Pl.'s Compl., Ex. D). The first page of the Appraisal identifies the document as an "Appraisal Report of the real property located at 404 Watson Hill Ln, Chesterfield, SC 29709 **for Coast2Coast Mortgage/VA**." (*Id.*) (emphasis added). The first line on the second page of the Appraisal could not be clearer in stating that the purpose of the Appraisal is to "provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property." (*Id.*).

Appellants' own allegations confirm that McLaurin was retained exclusively on behalf of Appellants' lender. (Pls.' Compl. ¶ 50). The Appraisal expressly identifies the lender—not the prospective purchasers—as the intended user, and states that its intended use is to assist the lender/client in evaluating the property for a mortgage finance transaction. (Ex. D at 4.). Appellants were neither McLaurin's clients nor the intended users of the Appraisal. Under these circumstances, Appellants have failed to allege facts giving rise to a duty of care, and the circuit court correctly concluded that their claims against McLaurin fail as a matter of law.

B. Restatement (Second) of Torts § 552 does not create a duty of care owed by McLaurin under South Carolina law.

Appellants ask this Court to extend potential liability for negligent misrepresentation claims to include non-contracting third parties under Restatement (Second) of Torts § 552. This Court should deny Appellants' request and affirm the circuit court's order of dismissal as to McLaurin.

The Restatement (Second) of Torts § 552 provides,

> (1) One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.
>
> (2) Except as stated in Subsection (3), the liability stated in Subsection (1) is limited 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).

Appellants contend that South Carolina should apply § 552 to extend potential liability to appraisers who are hired by a third-party, such as a prospective lender for a mortgage, so long as the plaintiff alleges they relied on the appraisal to their detriment. But South Carolina has never extended potential liability so far as to obviate the language contained in the appraisal itself, particularly where such language clearly and explicitly identifies the intended user of the information.

While South Carolina has applied Restatement (Second) of Torts § 552 to find a duty of care is owed to non-contracting third parties in certain professional contexts, this Court recently noted that South Carolina's application of § 552 has been limited to the accounting and consulting contexts. *Gecy v. S.C. Bank & Trust*, 422 S.C. 509, 519, 812 S.E.2d 750, 756 (Ct. App. 2018) (noting "South Carolina has applied § 552 to non-contracting third-parties only in the accounting and consulting contexts"). In *Gecy*, this Court denied a similar request to extend liability under § 552 to include allegedly false information provided to a third-party because the purpose of imposing liability under § 552 was to "prevent the supplying of 'false information for the *guidance of others in their business transactions*.'" *Id.* In other words, § 552 liability is **not** intended to protect a non-contracting third party who was not the intended recipient of the information, like Appellants in this case.

Even if South Carolina adopted § 552 in its entirety, the subsection (2) limitations are fatal to Appellants' claims. Subsection (2)(a) limits liability to persons "for whose benefit and guidance" the supplier *intends* to supply the information. Here, McLaurin expressly stated in the Appraisal that it was prepared for the lender/client to evaluate the subject property for a mortgage finance transaction. McLaurin did not intend to supply the Appraisal for Appellants' benefit and guidance in identifying structural defects. Subsection (2)(b) further limits liability to transactions that the

supplier intends the information to influence. The Appraisal was intended to influence the lender's decision about mortgage financing—not to inform Appellants about whether the Property had structural deficiencies.

The Fourth Circuit's analysis in *Priv. Mortg. Inv. Servs., Inc. v. Hotel & Club Assocs., Inc.*, 296 F.3d 308 (4th Cir. 2002), does not advance Appellants' position. There, the Fourth Circuit predicted that the South Carolina Supreme Court would extend § 552 liability to real estate appraisers in the event a third party detrimentally relied on a "materially inaccurate and negligent appraisal of the 'as is' market value" of the property. *Id.* at 314–15 (emphasis added). Appellants do not allege that the market value opinion in the Appraisal was inaccurate. Rather, Appellants allege that McLaurin failed to identify structural defects, which is a fundamentally different claim and falls well outside the scope of the *Private Mortgage* court's analysis.[1]

Appellants also cite to the Washington Supreme Court's decision in *Schaaf v. Highfield*, 127 Wash. 2d 17, 896 P.2d 665 (1995), which applied § 552 to hold that a VA-hired appraiser owed a duty of care to a prospective purchaser. Critically, however, the *Schaaf* court still affirmed summary judgment for the appraiser because the plaintiff failed to demonstrate justifiable reliance—precisely the element that is a question of law in this case. *Id.* at 28–29, 896 P.2d at 670–71. And the Washington court reached its holding without the benefit of South Carolina's controlling precedent in *Robertson*, which this Court decided in 2002 and which squarely forecloses Appellants' duty argument. This Court is bound by its own precedent, not by an out-of-state decision addressing a different state's common law.

Appellants contend that allegations of detrimental reliance are sufficient to create a duty of care owed by McLaurin. Specifically, Appellants rely on a provision stating that "[t]he borrower,

[1] *Private Mortgage* was decided approximately two months after this Court's decision in *Robertson* but did not cite to or consider *Robertson*.

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." (Pl.'s Compl., Ex. D at p. 6) (emphasis added). This argument misses the mark and ignores the clear, unambiguous language in the Appraisal.

First, Appellants claim of justifiable reliance on the Appraisal does not mean the Appraiser Defendants owed a duty of care to convey information about the structural integrity of the Property. The Appraiser Defendants' observations about the physical condition of the Property are incidental to the primary purpose of the Appraisal—to provide an adequately supported market value of the Property.

Second, the Appraiser Defendants do not suggest Appellants would not be entitled to rely on the Appraisal "**as part of any mortgage finance transaction"** for the purchase of the Property. Appellants would of course be entitled to rely on the Appraisal for "an accurate, and adequately supported, opinion of the market value of the subject property." But Appellants may not rely on the Appraisal to support a negligent misrepresentation claim for alleged defects in the physical condition of the Property when the Appraisal clearly cautions that it is not a substitute for a home inspection. By its express terms, the Appraisal permits reliance by a borrower only in connection with a mortgage finance transaction. It does not purport to vouch for the physical condition of the Property or to identify latent defects, and it expressly disclaims any such function. Reliance on the appraisal for purposes beyond its stated, limited use cannot create a duty where South Carolina law otherwise recognizes none.

C. The VA Minimum Property Requirements do not create a duty of care owed by McLaurin to Appellants.

Appellants rely heavily on Minimum Property Requirements published by the VA in connection with VA-backed loans. According to Appellants, "the failure to follow governmental or industry standards," like the Minimum Property Requirements, "may be the basis for a claim of negligence." But this argument misconstrues South Carolina negligence law and the role of the Minimum Property Requirements.

To recover on a negligence claim, a plaintiff must first plead sufficient facts to establish that the defendant owed her a duty of care. *Moore v. Weinberg,* 373 S.C. 209, 221, 644 S.E.2d 740, 746 (Ct. App. 2007). The existence of a duty is a question of law for the court to decide. *Id.* If a plaintiff pleads sufficient facts to establish a duty of care was owed, the court must also "formulate the standard of conduct to which the duty requires the defendant to conform." *Doe ex rel. Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 247, 711 S.E.2d 908, 912 (2011). Stated differently, the duty element in a negligence claim is effectively a two-step analysis. The court must first determine if a duty exists under South Carolina common law, statute, or other special relationship between the injured party and the tortfeasor. If a duty exists, the court must formulate the standard of care to which the duty requires the defendant to conform. The standard of care may be established by "common law, statutes, administrative regulations, industry standards, or a defendant's own policies and guidelines." *Madison ex rel. Bryant v. Babcock Center, Inc*., 371 S.C. 123, 140, 638 S.E.2d 650, 659 (2006) (citing *Peterson v. Natl. R.R. Passenger Corp.,* 365 S.C. 391, 397, 618 S.E.2d 903, 906 (2005).

The circuit court correctly determined that Appellants' negligence claim fails as a matter of law because the Complaint did not plead sufficient facts to establish that McLaurin owed a duty of care. The Minimum Property Requirements do not themselves establish a duty of care owed by

McLaurin to Appellants because a tortfeasor's duty "arises from his relationship to the injured party." The circuit court did not consider the Minimum Property Requirements because the relationship between McLaurin and Appellants was not one "recognized by law as the foundation of a duty of care." In fact, the relationship between McLaurin and Appellants is a rare example of one where South Carolina law explicitly does not recognize a duty of care owed. The existence of the Minimum Property Requirements and McLaurin's reference to them in the Appraisal do not create a duty of care where the law otherwise recognizes none.

Appellants cite *Elledge v. Richland/Lexington School District Five*, 352 S.C. 179, 573 S.E.2d 789 (2002), for the proposition that government standards, like the Minimum Property Requirements, independently impose a duty of care where one may not otherwise exist. This proposition is unsupported by *Elledge* or the authority cited therein.

In *Elledge*, a nine-year-old student sued her school district after sustaining serious injuries in an accident on the playground of the school she attended. The student claimed the school district was negligent in failing to purchase and maintain reasonably safe playground equipment. *Id.* at 182, 573 S.E.2d at 791. The student sought to introduce evidence of industry standards for playground equipment and testimony from the district's purchasing coordinator related to the district's policy for purchasing playground equipment. *Id.* The trial court excluded the evidence, and the district ultimately obtained a defense verdict. *Id.* at 183-84, 573 S.E.2d at 791-92.

The *Elledge* trial court's evidentiary rulings were reversed on appeal. The issue on appeal was whether the evidence of industry standards and district policy was erroneously excluded as evidence of the district's standard of care. *Id.* at 186, 573 S.E.2d at 793. Our Supreme Court affirmed this Court's reversal, finding the excluded evidence was "highly probative on the issue

of defining the District's duty of care." *Id.* Neither of our appellate courts addressed whether the district owed the student a duty in the first instance because the district didn't raise the issue.

Here, the circuit court correctly found McLaurin did not owe Appellants a duty of care as a matter of South Carolina common law based on the factual allegations in the complaint. Without a duty, evidence relating to any purported standard of care plays no role in the analysis. *Doe ex rel. Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 247, 711 S.E.2d 908, 912 ("It follows that, if no duty has been established, evidence as to the standard of care is irrelevant. Only when there is a duty would a standard of care need to be established."). Put simply, the Minimum Property requirements would only be relevant to the analysis if McLaurin owed a duty of care in the first place, which it did not. This Court should affirm.

II. Appellants' Policy Arguments Are in Direct Conflict with South Carolina Statutory Law and Appellate Court Precedent.

Appellants ignore the settled state of South Carolina law and ask this Court to adopt a new rule for negligent misrepresentation claims against lender-hired appraisers so long as the prospective purchaser alleges justifiable reliance on the appraisal. They suggest myriad policy arguments to expand the scope of negligent misrepresentation claims to include any statement a plaintiff claims they justifiably relied upon. The suggested rule would create effectively limitless potential liability for certain professions and is in direct conflict with South Carolina statutory law and appellate court precedent.

As an initial matter, South Carolina regulates residential real estate appraisers under the South Carolina Real Estate Appraiser License and Certification Act. The General Assembly has defined "appraisal" to mean "the act or process of developing an **opinion of value**," S.C. Code Ann. § 40-60-20(2), and "appraisal assignment" to mean "an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a

disinterested third party in rendering an unbiased analysis, opinion, or conclusion that **estimates the value of real estate."** S.C. Code Ann. § 40-60-20(3). The observation or identification of structural defects at the applicable property is noticeably absent from the Act and reflects South Carolina's public policy understanding of the role that appraisers occupy in real estate transactions.

To be clear, the General Assembly provides ample protection for potential homebuyers in South Carolina. For example, a seller of residential real property is required to disclose specified "characteristics and conditions of the property" under the Residential Property Condition Disclosure Act. The Disclosure Act also creates a civil cause of action against the seller for any information on the disclosure form that he knows to be "false, incomplete, or misleading," and requires the licensed real estate agent who lists the subject property to inform the seller of their disclosure obligations. Most importantly, the Disclosure Act specifically "does not limit the obligation of the purchaser to inspect the physical condition of the property and improvements" at issue. In short, the General Assembly has concluded that the most effective protection for homebuyers is provided through affirmative disclosure duties imposed on sellers, coupled with potential liability for any known defects they fail to disclose.

This Court reached the same conclusion in *Chastain v. Hiltabidle*, 383 S.C. 508, 673 S.E.2d 826 (Ct. App. 2009), where the plaintiff similarly attempted to expand liability for undisclosed defects in residential real estate transactions to include the listing agent for the subject property. This Court evaluated the statutory duties of real estate agents and homebuyers, noting that section 40-57-137 of the South Carolina code provides that a real estate licensee is not required to discover latent defects or advise clients on matters beyond the scope of real estate expertise. *Id.* at 519, 673 S.E.2d at 832. When read together with the Disclosure Act's directive that it does not "limit the obligation of the purchaser to inspect the physical condition of the property and improvements,"

the Court held that the General Assembly "places the duty of performing such an inspection or investigation squarely on the shoulders of the buyer" and therefore declined to extend liability to the listing agent. *Id.* This Court should similarly decline to extend potential liability to lender-retained appraisers like McLaurin and affirm the circuit court's order finding Appellants' claims fail for lack of duty of care.

CONCLUSION

For the foregoing reasons, David McLaurin and David McLaurin Appraiser, LLC request this Court affirm the circuit court's order dismissing Appellants' claims for negligence and negligent misrepresentation under Rule 12(b)(6), SCRCP.

Respectfully submitted,

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