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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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

Appellate Case No. 2025-002362

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

v.

Connie W. Page, Donna W. Eslick, Albert Jason Watson, Ray K. Watson, Jr., Crystal Darline Newmon (aka Newman), John K. Sims, Pee Dee Pest Pros, LLC, David McLaurin and David McLaurin Appraiser, LLC,

of which David McLaurin and David McLauin Appraiser, LLC are the Respondents.....Respondents.

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# REPLY BRIEF OF THE APPELLANTS

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Frederick I. Hall, III
The Rick Hall Law Firm, LLC
301 Gibson Road
Lexington, SC 29072
(803) 957-5333
(803) 957-7717 facsimile
S.C. Bar No. 2591
*Attorney for Appellants*

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## I. Introduction

This reply brief is to respond to the arguments offered by Respondents which claim that the case of *Robertson v. First National Bank,* 350 S.C. 339, 565 S.E.2d 309 (Ct. App. 2002) is controlling precedent in this case and which bound the circuit court to a ruling that required dismissal of the claims filed by the Hamiltons against David McClaurin and McLaurin Appraiser, LLC (collectively referred herein as "McLaurin") for negligently misrepresenting the condition of the home this veteran purchased, as well as its value. *Roberston* is not controlling precedent, and the Respondents engaged in a tortured legal analysis of the Court's holding in *Robertson. Robertson* was not decided based on a lack of duty but rather on a "failure of proof." Not only have the Respondents mischaracterized the holding in *Roberston,* but they also fail to elucidate its facts and grossly mischaracterize the basis upon which *Robertson* was decided.

*Robertson* was decided on a summary judgment ruling, and not on a motion to dismiss. And in a curious ruling by the circuit court, it completely reversed itself from a ruling made in a pending case with nearly identical facts. *See* Ex. B to Plaintiffs' Memorandum in Opposition to McLaurin's Motion to Dismiss, and Order Denying Motion to Dismiss in the case of *Garrett v. Dunaway, et al.*, Civil Action No. 2023-CP-40-1131 (case involving a claim of negligent misrepresentation in an appraisal and negligent failure to abide by VA Minimum Property Requirements (MPRs) against Jon Andrews and Andrews Appraisal, entered by J. G. McFaddin on April 5, 2024.). Not only should the claim for negligent misrepresentation stand, but also should the claim for failure to abide by the VA Minimum Property Requirements. For the reasons set forth herein, this Court should not hesitate to reverse the circuit court's dismissal of this case and reject the reasoning of the McLaurin Defendants.

## II. Argument

### 1. The Respondents have grossly mischaracterized the holding in *Robertson* and failed to elucidate its facts.

The Court of appeals' ruling in *Roberston v. First National Bank* has been mischaracterized because its ruling was based on a failure of proof where the Plaintiffs failed to show that they had relied on an appraisal in deciding to purchase a commercial building in taking out a bank loan and mortgage. *Id.* 565 S.E. 2d at 312, 315. What the Respondents omit to point out to this Court is that the *Robertson* appellants' negligent misrepresentation claim failed because they failed to prove reliance on a 1993 appraisal, which they had not even seen until 1998. *Robertson*, 565 S.E. 2d at 312, 315. Of course, there could be no reliance on an appraisal that the purchasers had not even seen prior to taking out a loan. In contrast, the Hamiltons here allege here in their Complaint in paragraphs 51 and 52 respectively:

> 51. That the Plaintiffs relied to their detriment on the attached appraisal in deciding to go forward with the closing and understood that the appraisal represented the subject property to be in "overall average to good condition."
>
> 52. That the Plaintiffs were provided a copy of the VA Appraisal on or about May 19, 2023, prior to closing June 7, 2023.

The failure to address these factual differences is glaring and disturbing to the Hamiltons, as it should be to this Court. The *Robertson* case is not controlling and is completely inapposite to the matter before the Court here.

Moreover, the Hamiltons also alleged in their Complaint that:

> Defendant David McLaurin Appraiser, LLC had a pecuniary interest in making statements on the appraisal and had a duty of care to see that he communicated truthful information both as to **the value** of the property and its condition.

R. p.14, Complaint at ¶ 55 (emphasis added).

The notion that it is only the condition of the property that the Hamiltons are complaining about is patently false. *See* Respondents' Brief at 8 (implying that the Hamiltons "do not allege that the market value of the property was inaccurate."). The Hamiltons, in fact, did allege inaccuracy by asserting that the value was false in their Complaint:

> **[T]hat the Defendant's (sic) breached their duty by failing to exercise due care in conveying false information both as to the value of the property and its condition**, and that the Plaintiffs justifiably relied on the representations made in the appraisal....

R. p. 14, Complaint at ¶ 55 (emphasis added).

Respondents in their Brief at 9 concede, as they must, the Hamiltons are entitled to rely on the appraisal as "part of any mortgage transaction" for the purchase of the property. Relying upon the appraisal is precisely what the Hamiltons did! This admission by the Respondents is enough for this Court to summarily reverse the lower court's dismissal. One cannot earnestly argue – even nicely – that part of any mortgage transaction does not involve *both* the condition and value of the subject property. Who, in their right mind, would take out a mortgage on a piece of property where the appraisal itself was lopsided? Meaning in property appraisals in where condition drives value, if the true and actual condition was accurately reflected, then the true and actual value should so be reflected. Is it not part of every mortgage transaction to rely on the property to be in a mortgageable condition and of mortgageable value? Why should an appraiser be able to say to an expected recipient and beneficiary of his or her appraisal that the property is in average to overall good condition if it is not true?

2. **The Respondents falsely assert that the Hamiltons are not intended users of the appraisal report. The appraisal report states: "The borrower ... may rely on this appraisal report as part of any mortgage transaction that involves one or more of these parties."**

John D. Hamilton is listed as the borrower on the Appraisal Report at p. 1 of 6 (R. p. 53, Ex. D to the Complaint). To suggest Mr. Hamilton cannot use the appraisal in the purchase of this property, which the Hamiltons bought and paid for, including a mortgage transaction to enable the purchase, is nonsensical and outside the plain language of the appraisal itself.

3. **The *Gecy v. South Carolina Bank & Trust Case* is factually and legally distinguishable from the instant matter and is no bar to a negligent misrepresentation case under the Restatement (Second) of Torts with regard to a negligent appraisal.**

Respondents cite to *Gecy v. South Carolina Bank and Trust*, 422 S.C. 509, 812 S.E.2d 750 (Ct. App. 2018) as support that the § 552 of the Restatement (Second) of Torts has not been extended beyond accounting and consulting contexts, and therefore should not be applied here, or it would open the proverbial floodgates of "potentially limitless liability." This argument lacks merit. The notion that there is no duty owed to the Veteran, who by virtue of his or her service to our nation, exercising his benefit to access a VA-backed loan requiring a VA appraisal that, by the VAs own regulations, requires adherence to the VA's own Minimum Property Requirements, is wholly nonsensical.

The Hamiltons will not belabor the argument, which has been thoroughly briefed in the Hamiltons' Initial Brief, as to the holding of a South Carolina federal judge, affirmed by the Fourth Circuit, which expressly predicted the South Carolina Supreme Court would not hesitate to adopt comment b. to § 552, and therefore recognize that a negligent representation by an appraiser to an expected recipient buyer is actionable. *Private Mortgage Inv. Services Inc. v. Hotel Club and*

*Associates, Inc.* 296 F.3d 308, 314 (2002). An appraiser is most certainly a consultant as to the value of property and is thus within the ambit of the Restatement 2d comment b. to § 552.

Respondents' attempt to rest upon the *Gecy* holding, which involved a prospective building contractor who did not get a contract fulfilled when a bank loan application was rejected, does not hold water. The *Gecy* case has no application in the instant matter because the contractor had no reasonable expectation as to whether the bank would grant his customer a loan (and there is no evidence Mr. Gecy was even mentioned in the loan application). *Gecy v. South Carolina Bank and Trust*, 422 S.C. 509, 518, 812 S.E.2d 750, 755. (Ct. App. 2018). Furthermore, in *Gecy,* the prospective building contractor was not a party to the loan application, he was not an intended beneficiary of the loan application, and his interests cannot be said to be anything but remote. *Id.* At best, the prospective building contractor was an optimistic or hopeful distant beneficiary of the loan in *Gecy*.

Conversely, the Hamiltons, in the case at bar, are foreseeable direct recipients and third-party beneficiaries because the Hamiltons paid for the appraisal to be performed by virtue of taking out a VA mortgage. The Hamiltons' name is on the appraisal report, and the Hamiltons personally would be subject to the mortgage agreement and make monthly payments to the lender based upon the appraisal report. Unlike the building contractor in *Gecy*, the Hamiltons possessed every reason to rely upon the fact that their VA-backed loan would be approved pending the completion of a true and accurate VA appraisal, which was performed in adherence to the MPRs as required by the VA.

**4. Governmental standards, such as the VA Minimum Property Requirements, supply a basis for a claim of negligence. An appraiser must follow them for the protection of the Veteran. This establishes a clear duty.**

Allowing an appraiser to neglect established governmental standards applicable to an appraisal should be actionable. This Court should properly recognize the duty which the Veterans Administration already imposed, as the Respondents represented that the VA standards had been met: "In my opinion the home meets the minimum property requirements set by the VA," according to McLaurin. Appraisal Report at p. 3 of 6 (R. p. 55, Ex. D to the Complaint).

The Respondents mischaracterize the holding in *Elledge v. Richland/Lexington Sch. Dist. Five*, in so arguing that the Minimum Property Requirements (MPRs) do not establish a duty of care. 352 S.C. 179, 185–86, 573 S.E.2d 789, 792–93 (2002).

> In our opinion, respondents' proffered evidence was relevant to, and admissible on, the first required element of negligence—the **District's duty of care** to respondents. *See Bloom v. Ravoira, supra;* Rules 401, 402, SCRE. We agree with Chief Judge Hearn's observation that the trial court was under "the mistaken belief that the District must have adopted these national protocols before such evidence was admissible."

*Elledge,* 341 S.C. at 478, 534 S.E.2d at 291 (emphasis added).

What the Respondents fail to address is the fact that the Minimum Property Requirements (MPRs) promulgated by the VA articulate standards by which appraisers are to value property. The Respondents set forth in the Appraisal Report that "[i]n my opinion the home meets the **minimum property requirements set by the VA**," thus applying the MPRs to the prepared report. Appraisal Report at 3 (emphasis added). These referenced MPRs are set forth specifically for the benefit of the veteran, and such standards unequivocally and without question establish a duty that the Hamiltons allege the Respondents breached. R. pp. 15, 55 Complaint at ¶ 60 and Appraisal Report at 3 (Ex. D to the Complaint).

## III. Conclusion

Having fully replied to the extent necessary, this Court should reverse the dismissal of Hamilton's claims in full.

Respectfully Submitted,

**THE RICK HALL LAW FIRM, LLC**

BY: _____

Frederick I. Hall, III
301 Gibson Road
Lexington, SC 29072
(803) 957-5333
(803) 957-7717 (facsimile)
rick@sctrialattorneys.com
S.C. Bar No. 2591
*Attorney for Appellants*

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