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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

Appellate Case No. 2025-002148
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.

BRIEF OF PETITIONER

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OVERVIEW

Liability follows the tortious wrongdoer. No tenet of South Carolina law is more fundamental. The decision below is the first of which the parties are aware, from any court, to hold what Grand Strand needs this Court to hold: that a dealer may misrepresent a car, intend its resale, and cap its liability at the first buyer. Nine courts, from the Supreme Courts of Iowa and Missouri to the Eighth Circuit, have confronted a deceptive vehicle sale into the resale stream, and every one held the upstream seller answerable to the downstream buyer or allowed the claim to proceed. (The cases are collected at the outset of the Argument.) That result follows from a principle long settled in South Carolina: one who sets a foreseeable harm in motion answers for it. That the intermediate dealer, Grainger, later discovered the truck's wreck history and passed it on anyway does not free the original deceiver; it adds a second wrongdoer, and excuses neither. Nor is the question limited to this truck: South Carolina's dealers-only auctions are a high-volume, recurring marketplace, and the rule the decision below adopts would govern every sale in them.

STATEMENT OF THE CASE

Petitioner Target Motors, LLC d/b/a Port City Motors ("Target") filed this action in the Horry County Court of Common Pleas on February 8, 2022 (Case No. 2022-CP-26-00861). The action arose from Target's January 2, 2020 purchase of a used 2018 Nissan Titan SV pickup truck through an online dealer auction operated by Manheim Remarketing, Inc. d/b/a Manheim, Darlington ("Manheim"). (R. pp. 96–108.) The original complaint named Respondent Grand Strand Nissan, Inc. ("Grand Strand"), the truck's earlier seller; Grainger Companies, Inc. d/b/a Grainger Honda ("Grainger"), the intermediate dealer that resold the truck to Target; and Manheim. Because the original complaint pleaded a claim under the federal Odometer Act, Defendants removed the case to federal court; Target then amended to drop both Manheim and the federal claim, and the case was remanded on April 18, 2022. (R. pp. 90–92, 20–29, 19.)

The Amended Complaint asserted claims against Grand Strand for negligence (including recklessness, willfulness, and wantonness), negligent misrepresentation, fraud, violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10 to -730 ("UTPA"), and violation of the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act, S.C. Code Ann. §§ 56-15-10 to -600 ("Dealers Act"). (R. pp. 24–28.) It asserted similar claims, plus a breach-of-contract claim, against Grainger. (R. pp. 23–28.) Grainger is not a party to this appeal. Grand Strand answered on April 26, 2022, denying liability and asserting, among other defenses, that Target's injuries were caused by "the intervening and superseding acts of third parties," and that its conduct was not the proximate cause of any injury to Target. (R. pp. 30–37 (Answer); quoted language at R. p. 36.)

The amount involved on appeal is unknowable at this point. Target's itemized actual damages are approximately $4,000 (R. p. 132); the Amended Complaint further seeks double actual damages and attorney's fees under the Dealers Act, treble actual damages and attorney's fees under the UTPA, punitive damages on the common-law claims, prejudgment interest, and costs. (R. pp. 25–28.)

Grand Strand moved for summary judgment on all of Target's claims against it on October 5, 2022. (R. pp. 112–13, 137–47.) After a hearing on January 3, 2023, the Honorable William H. Seals, Jr., granted the motion; the formal order was filed January 19, 2023. (R. pp. 4–15; *see also id*. at 1.) The order held that Grand Strand owed Target no duty "under any theory recognized by South Carolina law." It further held that Grand Strand's "alleged fault is too remote to be linked to Plaintiff's damages as a matter of law;" that "[t]here are simply too many intervening negligent events to link Grand Strand to Plaintiff's damages." It held there were no representations to support fraud and negligent misrepresentation claims. It held that the UTPA claim fails because "It is axiomatic that Grand Strand could not have committed an unfair or deceptive act against Plaintiff because it never engaged in or entered into a transaction with Plaintiff." It also held, "Grand Strand did not violate the Dealers Act." "[A] party can only recover under the Act against the dealer who proximately caused the party's damage." (R. pp. 7–13.) Target's motion to reconsider was denied by order filed March 3, 2023. (R. p. 16.) Discovery was not complete when these orders issued. (R. pp. 62, 66, 73.) Target served its notice of appeal on March 31, 2023.

While the appeal was pending, Grand Strand moved in the lower court for summary judgment on Grainger's claims against it. (Supp. R. pp. 3-44). Target's Reply Brief pointed out Grand Strand's lower court motion. (Am. Reply Br. p. 24 n.25.) Grand Strand then withdrew its summary judgment motion against Grainger "without prejudice," leaving no bar on Grand Strand renewing its motion once the appellate proceedings end. (Supp. R. pp. 45-46)

The Court of Appeals heard argument on May 6, 2025, and, in an unpublished per curiam opinion filed July 16, 2025, affirmed. *Target Motors, LLC v. Grand Strand Nissan, Inc.*, Op. No. 2025-UP-244 (S.C. Ct. App. filed July 16, 2025). The court held the Dealers Act does not apply because the parties here are dealers. It held neither the UTPA nor Dealers Act claims could succeed because Grand Strand made no representation to Target. It concluded that, as a matter of law, there was therefore no causal connection between Grand Strand's act and Target's harm.

It denied the fraud and negligent misrepresentation claims on similar grounds, holding Target did not rely on any statement by Grand Strand.

The court found a lack of evidence that "Grand Strand's alleged misrepresentation was 'repeated' to Target." It also found that Grand Strand "made a representation to Grainger" and that Grainger "made the same representation to Target." (Opinion, p. 5).

It stated, "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." (*Id.*)

It noted that "Target repeated [the misrepresentation] to the customer") and held there is "no evidence that Target relied on any statement that can be attributed to Grand Strand." (*Id.*)

It denied the negligence claim on grounds the original Seller, Grand Strand, owes no duty to an allegedly intended and expected re-purchaser, Target, when the two never communicated. (It also rejected the argument that the UTPA creates a duty actionable in negligence, which is not challenged here.)

The court expressly "le[ft] 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." *Id.*

Target petitioned for rehearing, and sought en banc consideration, which the Court of Appeals denied on September 22, 2025. Target petitioned this Court for a writ of certiorari on October 22, 2025. This Court granted the petition on June 17, 2026, and directed the parties to brief the case under Rule 242(i), SCACR (Appellate Case No. 2025-002148).

STANDARD OF REVIEW

This appeal comes to the Court on summary judgment, and review is *de novo*. An appellate court applies the same standard that governs the trial court under Rule 56(c), SCRCP: summary judgment is proper only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Turner v. Milliman*, 392 S.C. 116, 121–22, 708 S.E.2d 766, 769 (2011); *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 329–30, 673 S.E.2d 801, 802 (2009). In making that determination the court views the evidence and every reasonable inference from it in the light most favorable to the nonmoving party, here, Target. *Id.* Every factual statement in this brief carries the same implicit qualifier: *the record would permit a jury to so find.* As to proximate cause in particular, "[l]egal cause is ordinarily a question of fact for the jury," *Oliver v. South Carolina Dep't of Highways & Pub. Transp.*, 309 S.C. 313, 317, 422 S.E.2d 128, 131 (1992), and "[o]nly in rare or exceptional cases may the question of proximate cause be decided as a matter of law." *Hurd v. Williamsburg Cnty.*, 353 S.C. 596, 613–14, 579 S.E.2d 136, 145 (Ct. App. 2003), aff'd, 363 S.C. 421, 611 S.E.2d 488 (2005). Whether the UTPA and the Dealers Act reach Target's claims are questions of statutory interpretation that the Court likewise reviews *de novo*. *See CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011).

STATEMENT OF FACTS

This case concerns a wrecked truck that Grand Strand repaired and sent, damage undisclosed, into a market that exists only for resale, and the downstream dealer that paid for the deception.

The 2018 Nissan Titan had suffered extreme wreck-related frame damage. Repairing it cost more than $18,000 and required removing and replacing the frame itself. (R. p. 21 ¶¶ 14–15; R. p. 135.) Grand Strand's role ran through both ends of that repair: it performed wreck-related work on the truck itself, and it sold the replacement frame to the body shop that installed it. (R. pp. 5, 114–15, 185; *see also* R. p. 21 ¶ 15.) Grand Strand completed the wreck-related repairs on August 30, 2019. (R. pp. 5, 114.) On October 14, it acquired the truck. (R. pp. 5, 21 ¶ 16, 137.) Weeks later, it entered the truck into Manheim's online auction. (R. pp. 21–23.)

Grand Strand sold the truck under a "green light," the auction's signal that a vehicle carries no structural damage. Manheim is a dealers-only auction whose rules require a seller to "disclose permanent structural damage, any structural alterations, structural repairs or replacements." (R. p. 202.) The green light further indicated the truck had no structural replacements. (R. p. 220 (GS Ans. to Int. No. 23); R. p. 21 ¶ 17; R. p. 85 lines 15–19; R. p. 63 lines 23–25; R. p. 64 lines 6–8; R. p. 138.) Grand Strand does not dispute it made the green-light representation; it asserts it was a "mistake" and not "an unfair trade practice." (R. p. 64

lines 6–8; R. p. 65 lines 10–13; R. p. 85 lines 15–19.) It has also sworn that it "knew the vehicle had been wrecked when it accepted it as a trade in . . . ." (R. p. 219 (Ans. to Int. No. 13).)

The Manheim auction exists for a single purpose: resale. Its terms state that "any Vehicle is purchased for resale . . . ." (R. p. 210.) A dealer who green-lights a truck there knows it is being bought to be sold again, immediately to another dealer, later, to a consumer.

As expected and intended, that happened. On November 14, 2019, Grand Strand sold the "no structural replacements" truck to Grainger for $21,000. (R. p. 115 ¶ 11; R. p. 117.) Grainger's Carfax, pulled at the sale, showed no damage, and Manheim's post-sale inspection passed the truck. (R. p. 120 (Grainger Ans. to Int. No. 6); R. p. 121 (Ans. to Int. No. 9).) About two weeks later, Grainger tried to resell the truck through another auction. On the block, that auction announced the structural damage its AutoCheck report had flagged: "STRUCTURAL OR FRAME REPAIR PERFORMED." (R. p. 211; R. p. 120.) Grainger pulled the truck from the lane, unsold, and asked Manheim to take it back. (R. pp. 120–21.) Manheim refused, re-inspected the truck, advised that no structural damage could be found, and offered to re-run it through the auction. (R. p. 121 (Ans. to Int. No. 11).) Grainger did as Grand Strand had done. It re-ran the same vehicle under the same green light, and without disclosure. Target bought it on January 2, 2020, for $20,100, nine hundred dollars less than Grainger had paid. (R. pp. 21–23; R. p. 115 ¶ 11; R. p. 212.) The truck had "sold and lost money," and Manheim then agreed to split Grainger's loss. (R. p. 121.) Target in turn sold it to a retail customer. (R. p. 23.) There is no indication that Target knew about the wreck damage until on or about February 17, 2020, when Target's customer discovered it and informed Target. Target paid the customer $4,000 to make it right. (R. p. 23.)

Summary judgment was granted over Plaintiff's objections before discovery closed and before Grand Strand was deposed about what it knew, what it intended, and what it expected when it green-lit the truck. (R. pp. 62, 66, 73.) And although the circuit court's order may leave a contrary impression, Target never sued Grand Strand for breach of contract; its only contract claim ran against Grainger. (R. pp. 23, 160.) Target's claims against Respondent all sound in tort. The record thus presents a deceptive structural-damage sale into a resale-only market, a foreseeable chain to Target and a consumer, and a quantified loss.

ARGUMENT

It is only fair that one who intends to injure another, even indirectly, should make the one it injured whole. He should not escape by saying: I deceived another member of the group first, and it was he who passed the injury on to you. As the common law more formally puts it, liability follows the intentional wrongdoer, and he answers to the victim of his wrong. *Ruh v. Metal Recycling Servs., LLC*, 439 S.C. 649, 654, 889 S.E.2d 577, 580 (2023). There is "no tenet more fundamental in our law," *id*., especially where, as here, the harm was intended. As the statutory law puts it, an automotive dealer who deceptively sells a used car has broken the law, and he is liable to the foreseeable victim of the but-for consequences. Respondent has made much in past filings of the fact that its initial purchaser, who was never intended to be the victim of the wrong, discovered Respondent's wrong and passed it down the chain. But Grainger's discovery-and-repeat, if that happened, does not absolve Grand Strand; it makes them jointly responsible for Target's injury.

Courts across the country agree: an upstream seller answers to the downstream buyer. *Clark v. McDaniel*, 546 N.W.2d 590, 592–94 (Iowa 1996) (adopting Restatement (Second) of Torts § 533; dealer that misrepresented a rebuilt car to its buyer liable in fraud to its buyer's buyer, reasoning from negligent misrepresentation's reach to "all foreseeable users of the information, considering the end and aim of the transaction"); *O'Brien v. B.L.C. Ins. Co.*, 768 S.W.2d 64, 68–69 (Mo. 1989) (insurer that sold a flood car without branding the title liable in negligence and statutory fraud, with punitive damages, to the ultimate purchaser; "[e]ven criminal conduct will not always insulate a tortfeasor, if the criminal conduct is reasonably foreseeable"); *Grabinski v. Blue Springs Ford Sales, Inc.*, 136 F.3d 565, 569 (8th Cir. 1998) (that the dealer's statements "were not made 'directly to'" the downstream buyer "is not a defense"); *Varwig v. Anderson-Behel Porsche/Audi, Inc.*, 141 Cal. Rptr. 539, 540–41 (1977) (dealer that misrepresented a car's title could be held liable in deceit to a subsequent purchaser with whom it had no interaction; its representation to the intermediary "was in law an indirect misrepresentation to plaintiff, who purchased the car in reliance upon Autocar's repetition of the representation"); *Oppenhuizen v. Wennersten*, 139 N.W.2d 765, 768–69 (Mich. App. 1966) (one who sold under a forged title through an unknowing reseller liable to the reseller's customer); *Freeman v. Myers*, 774 S.W.2d 892, 893–94 (Mo. Ct. App. 1989) (odometer rollback; § 533 liability to the retail customer downstream of the wholesaler's buyer); *Conatzer v. American Mercury Insurance Co.*, 15 P.3d 1252, 1254–57 (Okla. Civ. App. 2000) (undisclosed salvage history; downstream buyer stated claims for negligence, fraud, and consumer-protection violation; "We cannot say, as a matter of law, that the acts or omissions of other parties were sufficient to constitute a supervening cause"); *Thornton v. State Farm Mut. Auto Insurance Co.*, No. 1:06-CV-00018, 2006 WL 3359448 (N.D. Ohio Nov. 17, 2006) (wrecked car placed into commerce undisclosed; fraud, negligence per se, and statutory claims survived dismissal); *Jones v. Santander Consumer USA Inc.*, No. 16-14012-CIV, 2016 WL 11570406, at *4 (S.D. Fla. Aug. 2, 2016) (defendant "collected a non-salvage premium for the car when it sold it" while "shift[ing] the salvage discount downstream"), *report and recommendation adopted*, 2016 WL 11570405 (S.D. Fla. Aug. 19, 2016). Several of these courts so held even where the intermediary itself acted knowingly and wrongfully, in *O'Brien*, criminally. Respondent has cited no case from any jurisdiction holding the buyer has no remedy against the earlier seller.

This case is an a fortiori version of these cases. Here, we have a jury question about a completed tort by Grand Strand against Grainger. A jury could find that Grand Strand owed Grainger a duty of care that it breached; that Grainger relied on the resulting misrepresentation and lost money, completing the tort; or even that Grand Strand defrauded Grainger. (R. pp. 120–21; R. p. 115 ¶ 11; R. p. 212.) If the jury so finds, it could find that the harm to Target was a foreseeable and but-for result of those torts, and apply the well-established doctrine of proximate cause. None of these cases involved a completed tort at the first sale; the misrepresentation's intended travel sufficed. Application of these principles may vary from claim to claim, the route from the injury to its source depends on the theory, but all the roads lead to Grand Strand.

The Court of Appeals' opinion seeks to both reserve the question and decide it: ruling against the victim on every claim, the panel states it nonetheless "le[ft] 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.)

At every stage, Petitioner has pointed out the injustice of Respondent's position. (E.g., Reply Br. p. 1). Respondent has never disputed the point. Instead, its defense rests on a technical, legalistic approach, one that is contrary to a host of substantive and technical decisions of this Court.

We begin with the statutory claims, then the common-law claims for fraud, negligence, and negligent misrepresentation. Respondent raises what amounts to an intervening-cause defense to all five claims; it is addressed most directly in Part I.D.

I. THE STATUTES ENTITLE A REMOTE PURCHASER LIKE TARGET TO RECOVER FOR ITS PROXIMATELY CAUSED LOSS.

A. A Dealer May Sue Under the Dealers Act.

The Court of Appeals held that dealers may not sue under the Dealers Act where others may do so. It held the Dealers Act "does not apply" to this case because Target, Grand Strand, and Grainger are car dealers. That holding, reached *sua sponte*, without briefing by any party. on a question of first impression, cannot be reconciled with the statute's text, its structure, or this Court's precedents.

A fair reading of the entire Dealers Act shows it is largely concerned with protecting car dealers. *E.g.*, S.C. Code Ann. § 56-15-40 ¶¶ (C)(1) to (5), (D)(1) to (13); *see also* sections 56-15-50 through -70, -90 through -100. Its substantive protections exist in large part so dealers may sue manufacturers and distributors. And it has a general right-to-sue provision: "any person who shall be injured in his business or property by reason of anything forbidden in this chapter may sue therefor in the court of common pleas . . . ." Section 56-15-110(1). In holding that the Dealers Act excludes its major beneficiaries from its right-to-sue provision, the opinion conflicts with the decisions of this Court holding that a statute is to be read "as a whole and in a manner consonant and in harmony with its purpose." *Senate by & through Leatherman v. McMaster*, 425 S.C. 315, 322, 821 S.E.2d 908, 912 (2018); *CFRE, L.L.C. v.*

Greenville Cty. Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011); *S.C. State Ports Auth. v. Jasper Cty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006).

The holding also conflicts with the plain meaning of the statute. The phrase "any person" includes dealers. *See* section 56-15-110(1) ("any person"); section 56-15-10(n) (defining "person" to include corporations and other entities). Reading the statute to exclude parties whom its plain text includes conflicts with this Court's decisions holding that unambiguous statutes must be read according to their plain meaning, *e.g.*, *Grungo-Smith v. Grungo*, 444 S.C. 556, 566–67, 910 S.E.2d 455, 461 (2024), and that remedial statutes must be read broadly, *e.g.*, *Allen v. Union Oil & Mfg. Co.*, 59 S.C. 571, 577, 38 S.E. 274, 276 (1901).

Grand Strand's conduct is "forbidden in this chapter." Section 56-15-40(B) makes it unlawful for "any . . . motor vehicle dealer" to engage in action "arbitrary, in bad faith, or unconscionable . . . which causes damage to any of the parties or to the public." That provision names a dealer as violator and reaches damage to the parties *or* to the public. Both halves of a § 56-15-110 claim are met on the statute's face: a forbidden act, and an injured "person."

The opinion also conflicts with the cases it cites in support. *Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 69 n.4, 476 S.E.2d 690, 692 n.4 (1996), did not reject the proposition that the *Dealers Act* "allows recovery by anyone, not just motor vehicle owners;" it rejected the proposition that "*§ 56–15–320* allows recovery by anyone, not just motor vehicle owners. . ."[1] *Id.* (emphasis added). Section 56-15-320 concerns dealers' surety

[1] SECTION 56-15-320. Application for wholesale or dealer license; bond; duties upon change of circumstances and termination of business; death of licensee.

bonds: "An owner or his legal representative . . . has a right of action . . . upon the bond . . . ." § 56-15-320. *Mid-State* limited recovery under that section to owners because *that section's* text says "owner": "Section 56–15–320 specifically states the purpose of a dealer's bond is to indemnify 'for loss or damage suffered *by an owner of a motor vehicle, or his legal representative*.' " 324 S.C. at 69, 476 S.E.2d at 692 (emphasis in original); *see also id.* at 67 n.1, 476 S.E.2d at 691 n.1 (statutory words "must be given their ordinary meaning") (citing *Hughes v. Edwards*, 265 S.C. 529, 220 S.E.2d 231 (1975)). The contrast makes Target's point: when the Legislature meant "owner," it wrote "owner" (§ 56-15-320); when it meant "any person," it wrote "any person" (§ 56-15-110). To read section 56-15-320's language into sections 56-15-40 and 56-15-110 is contrary to *Mid-State Auto Auction*'s holding. It is a reasonable legislative choice to limit suits on dealers' bonds while leaving dealers free to sue under the Act itself; there is no comparable logic to reading dealers, perhaps the Act's principal intended beneficiaries, out of the Act.

Freeman v. J.L.H. Invs., LP, 414 S.C. 362, 373, 778 S.E.2d 902, 908 (2015), did not state that consumer protection is the Act's sole purpose. The opinion quotes *Freeman*, with omissions, as "explaining 'the Legislature enacted . . . the Dealers Act . . . for the purpose of consumer protection.'" The full sentence in *Freeman* reads: "Furthermore, because the Legislature enacted the SCCPC and the Dealers Act both for the purpose of consumer protection, the statutes cannot be read in isolation." *Freeman* was observing that two statutes share a purpose and must be read together, not defining the limits of the Dealers Act's operation. *Freeman* was a consumer class action; it had no occasion to decide whether a dealer may sue. And to the extent *Freeman* could be misread to exclude dealers from the class of plaintiffs, that is itself a reason for this Court to clarify the statute's correct reading.[2]

The holding below misreads the Act's plain text, misapplies the two authorities it cites, and conflicts with this Court's decisions on statutory construction. It should be reversed.

B. The Elements of a Statutory Claim Are Violation, Proximate Causation, and Injury. The Opinion Errs in Requiring More.

"To recover under the [Unfair Trade Practices] Act, a plaintiff must prove a violation of the Act, proximate cause, and damages." *Colleton Prep. Acad., Inc. v. Hoover Universal, Inc.*, 379 S.C. 181, 666 S.E.2d 247 (2008) (citing *Charleston Lumber Co. v. Miller Hous. Corp.*, 318 S.C. 471, 482, 458 S.E.2d 431, 438 (Ct. App. 1995)).

Similar logic applies to recovery under other statutes. "[T]he word 'contributed' in the statute means contributing as a proximate cause of the injury." *McBride v. Atl. Coast Line R. Co.*, 140 S.C. 260, 268, 138 S.E. 803, 805 (1927) (railroad crossing statute); *see id.* at 273, 138 S.E. at 807 ("the decisions of this court hold that this means contributing as a proximate cause"); *see also Trivelas v. S.C. Dep't of Transp.*, 348 S.C. 125, 134–35, 558 S.E.2d 271, 275 (Ct. App. 2001) (quoting *Rayfield v. S.C. Dep't of Corr.*, 297 S.C. 95, 104, 374 S.E.2d 910, 915 (Ct. App. 1988)) (once breach is established, "The only issue then left for the jury to

[2] To head off any "two-issue rule" claim by Respondent, Petitioner notes that the panel's "Additionally, even if the Dealers Act applied, a dealer is only subject to liability when it 'engage[s] in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties or to the public.' . . . .[T]he record before us does not contain a disputed fact that would create an inference that Grand Strand caused any harm to Target." (Opinion, p. 5) appears to be a restatement of its holding that Grand Strand's representations were insufficient to make out a claim by Target, and not a holding that the misrepresentation was not arbitrary, in bad faith, or unconscionable or that it caused no harm to Grainger.

determine is the third element of negligence, viz., whether the defendant's conduct proximately caused damage to the plaintiff.").

The texts of the statutes here, if anything, suggest a more pro-plaintiff approach than common-law proximate causation: They cannot be read, consistently with the maxim to interpret statutes to achieve their goals, as imposing a stricter standard for causation.[3]

The opinion below, whether it reads a requirement of direct causation into the UTPA, making it read "Any person who suffers any ascertainable loss of money or property, real or personal, *directly* as a result," as the Petition claims, or whether it adds "and who relies on a communication from the tortfeasor," as the Response implicitly argues, encounters the same problems: The statutes do not say that, words are not to be read into statutes to limit or expand their operations, nor read into statutes at all, and a host of this Court's opinions so hold. "[T]o limit or expand the statute's operation . . . . is not the court's place. . . ." *Garrison v. Target Corp.*, 435 S.C. 566, 586, 869 S.E.2d 797, 808 (2022) (quoting authorities). *Edwards v. State Law Enf't Div.*, 395 S.C. 571, 575, 720 S.E.2d 462, 464 (2011). *Grungo-Smith,* 444 S.C. at 566–67, 910 S.E.2d at 461 (plain language); *Senate by & through Leatherman v. McMaster*, 425 S.C. at 322, 821 S.E.2d at 912 (same); were there any doubt, the rule of liberal construction of remedial statutes would solve it, *see Allen*, 59 S.C. at 577, 38 S.E. at 276; *S.C. Dep't of*

[3] The UTPA provides, "*Any person who suffers any ascertainable loss* of money or property, real or personal, *as a result* of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by Section 39-5-20 *may bring an action.*" Section 39-5-140(a) (emphasis added).
The Dealers Act states, "It shall be deemed a violation of Section 56-15-30(a) for any . . . motor vehicle dealer to engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties or to the public." Section 56-15-40(B). "*[A]ny person who shall be injured* in his business or property by reason of anything forbidden in this chapter *may sue therefor*." Section 56-15-110(1) (emphasis added).

Mental Health v. Hanna, 270 S.C. 210, 213, 241 S.E.2d 563, 564 (1978) (similar); *Inabinet v. Royal Exch. Assurance of London*, 165 S.C. 33, 36, 162 S.E. 599, 600 (1932) (similar). "Any" means "any." Not "any, with such exceptions as courts see fit to add."

C. The Facts Here Meet the Standard Set by the Legislature and This Court.

Proximate cause has only two components: causation in fact and legal cause, the latter resting on foreseeability. *Bramlette v. Charter-Med.-Columbia*, 302 S.C. 68, 72, 393 S.E.2d 914, 916 (1990); 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). Reliance is not an element.[4] (Reliance is an element of common-law fraud and negligent misrepresentation but not of statutory causation.) The statutory claims require no communication or interaction between plaintiff and defendant, and thus no reliance on any. For example, in *Colleton Prep* the Court, unanimous on the UTPA question,[5]answered "yes" to a certified question asking whether "a plaintiff who used but did not purchase a product directly from the defendant and nonetheless suffered a loss as a result of the defendant's unfair or deceptive acts" may "obtain relief" under the UTPA. 379 S.C. at 186, 666 S.E.2d at 250; *id.* at 196, 666 S.E.2d at 255 ("Accordingly, we answer the second certified question, 'yes.'"). The plaintiff school was a remote user, the product was fire-retardant lumber in its roof trusses. and there was "no evidence that Plaintiff dealt directly with Defendant." *Id.* at 185, 666 S.E.2d

[4] Duty is likewise not among the elements: for statutory claims, the statutes themselves provide the "duty." *Whitlaw v. Kroger Co*., 306 S.C. 51, 53, 410 S.E.2d 251, 252 (1991). Whatever force a no-common-law-duty argument may have against common-law claims, it has none against the statutory ones.

[5] *Colleton Prep.'s* answer to the other certified question was *overruled in part on other grounds by Sapp v. Ford Motor Co*., 386 S.C. 143, 687 S.E.2d 47 (2009), which was then *abrogated by Carroll v. Isle of Palms Pest Control, Inc.*, 446 S.C. 177, 918 S.E.2d 532 (2025).

at 249. The Court stated the elements of recovery, "a violation of the Act, proximate cause, and damages,", and reliance is not among them. *Id.* at 194, 666 S.E.2d at 254. Nowhere did the Court ask whether the school had ever received, read, or relied on any representation by the manufacturer. It instead rejected the contrary rule as one that "would lead to an absurd result," because it "would prohibit UTPA actions by all remote buyers and competitors, who have traditionally been allowed to proceed under the Act." *Id.* at 196, 666 S.E.2d at 255. Remote buyers like Target. *Colleton Prep* states what a UTPA claim requires. Target meets those requirements, or at the least a jury could so find. The opinion below errs by adding a fourth.

Grand Strand's repeated objections that the harm here was not a but-for and foreseeable result of its deceptive sale-intended-for-resale are unconvincing. At best they would defeat a motion by Target for summary judgment on causation, had one been made. They would not justify terminating Target's case, as happened here.

The Court of Appeals' opinion never mentions proximate cause. Although it holds that the actions of the intermediary, Grainger, prevent Grand Strand from being liable to Target, it disregards the well established law on the topic, as discussed in Part I.D.

D. An Intervening Act, Even a Willful or Criminal One, Does Not Break the Chain Where the Type of Injury Was Foreseeable.

A third party's act does not break the chain of liability if the type of injury suffered was foreseeable at the time of the wrongful act. It matters not that the intervening act was willful or criminal, nor that the specific victim was unforeseen, only that this type of injury, to someone, was foreseeable.

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.[6] *Horne v. Atl. Coast Line R. Co.,* 177 S.C. 461, 471, 181 S.E. 642, 646 (1935).[7] "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).[8] "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. 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, those events do not break the chain

[6] 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?

[7] 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).

[8] *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.") (emphasis added). "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]).

of liability.

> *[I]f the character of the intervening act* claimed to break the connection between the original wrongful act and the subsequent injury *was such that its probable or natural consequences could reasonably have been anticipated*, apprehended, *or foreseen* by the original wrongdoer, the causal connection is not broken and *the original wrongdoer is responsible for all the consequences* resulting from the intervening act.

Oliver v. South Carolina Dep't of Highways & Pub. Transp., 309 S.C. 313, 317, 422 S.E.2d 128, 131 (1992) (emphasis added). *Tobias v. Carolina Power & Light Co.*, 190 S.C. 181, 186, 2 S.E.2d 686, 687-8 (1939) (same); *Matthews v. Porter*, 239 S.C. 620, 627, 124 S.E.2d 321, 325 (1962) (same). Here, the consequence, someone ending up with a previously wrecked vehicle after paying for a never-wrecked one, could reasonably have been anticipated by Grand Strand. Again, under *Oliver*, the very case the circuit court relied on, the decision should be for Target.[9]

What the opinion refers to as the "independent" nature of Grainger's act makes no difference.[10] *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*

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[9] Grand Strand's position has been that it could not foresee that its buyer would discover its misrepresentation and repeat it. That is wrong on the law, the mechanics of how a foreseeable injury arrives need not be themselves foreseeable. And popular culture understands what Respondent calls unforeseeable. When Greg Brady's friend deceived him into buying a used car for more than it was worth, and Greg's father told him, "caveat emptor," Greg's first instinct was to pass the car, and the misleading sales pitch with it, to the next buyer. *The Brady Bunch: The Wheeler-Dealer* (ABC television broadcast Oct. 8, 1971). Greg, though, had a pang of conscience and rejected caveat emptor, just as our law has done for 200 years. *See Barnard v. Yates*, 10 S.C.L. (1 Nott & McC.) 142, 147 (1818).

[10] It is no more "independent" than Greg Brady's decision to cheat the next customer. Even if it were independent, that does not insulate Grand Strand, as discussed in the text following this note.

v. Jeff Hunt Mach. Company, 226 S.C. 484, 85 S.E.2d 739 [1955]); *Matthews,* 239 S.C. at 627, 124 S.E.2d at 325.[11] 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*); *Oliver*, 309 S.C. at 317, 422 S.E.2d at 131. 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*).

The Court has repeated and re-repeated that the nature of the intermediate act does not matter if the injury incurred is a type of injury that should have been foreseen. "We repeat that it matters not that the supervening and concurrent cause was an act of negligence of a third person or even a wilful or criminal act." *Wineglass v. McMinn*, 235 S.C. 537, 541–42, 112 S.E.2d 652, 654 (1960) (quoting *Ayers v. Atl. Greyhound Corp.*, 208 S.C. 267, 37 S.E.2d 737, 741 (1946)) (internal citations omitted). "We repeat that it matters not that the supervening and concurrent cause was an act of negligence of a third person * * * or even a wilful or criminal act." *Culbertson v. Johnson Motor Lines*, 226 S.C. 13, 24, 83 S.E.2d 338, 343 (1954) (alteration in original) (quoting *Ayers*).

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[11] 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 answerabl*e, 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 324 (emphasis added) (quoting *Brown v. National Oil Co.*, 233 S.C. 345, 105 S.E.2d 81 (1958)).

Moreover, here, the intervening discovery-and-repetition was sufficiently foreseeable to require jury determination, even if the test were that the type of intervening act be foreseeable.[12]

When Grand Strand green-lit the truck, three possible outcomes were easily foreseeable: the buying dealer would quickly discover the damage and unwind the sale; the dealer would discover it and pass the truck on without disclosure; or the dealer would not discover it and pass it on unknowingly. Two of the three send the deception on to the next buyer; only the first, a quick discovery and rescission, would have stopped it. The middle path occurred here.

That means Grainger is a *concurrent* wrongdoer, not a superseding cause: its choice to pass the truck along adds a second tortfeasor; it does not absolve the first. Under "the established law of this jurisdiction," plaintiffs are entitled to sue both tortfeasors whose actions played a role in their injury. *Halsey v. Minnesota-S.C. Land & Timber Co.*, 174 S.C. 97, 177 S.E. 29, 38 (1934). "One who is injured by the wrongful act of two or more joint [tortfeasors] has the option of bringing an action against either one or all of them as [ ] defendants. . ." *Doctor v. Robert Lee, Inc.*, 215 S.C. 332, 335, 55 S.E.2d 68, 69 (1949).

Had Grainger never learned the truth, it would have passed the green light along automatically, Grand Strand's deception producing the downstream loss by itself and Grand Strand would be liable. Grand Strand does not seriously claim otherwise. (Oral argument at

[12] Summary judgment effectively holds, as a matter of law, that a discovery-and-resale-without-disclosure is unforeseeable. But the resale was precisely what a dealers-only, resale-only auction exists to produce, and whether such a discovery-and-repetition was foreseeable would be a matter for the jury, using its common sense and experience, to determine, not for an appellate judge. *See, e.g.*, *Railroad Co. v. Stout*, 84 U.S. (17 Wall.) 657, 663–64 (1873) (twelve jurors from all walks of life, consulting together, "can draw wiser and safer conclusions from admitted facts thus occurring than can a single judge.")

12:46-13:00; 15:12-15:35). Target would have been harmed with or without Grainger's discovery; Grainger's 'discovery cannot be the sole cause. Grainger's discovery arguably adds a second wrongdoer, but it does not undo the causal force Grand Strand had set in motion.

Grainger denies any culpable intent. (R. pp. 38–40 (Answer); R. pp. 42–45 (cross-claim against Grand Strand); R. p. 120 (Grainger Ans. to Int. No. 6).) A jury could find Grainger knowingly repeated the lie, or that it credited the auction's own inspections over a lone database entry and repeated Grand Strand's certification believing it true. Either finding defeats summary judgment: a knowing Grainger is a concurrent wrongdoer, as just shown; an unknowing Grainger is the ordinary conduit through whom a misrepresentation travels to the buyer its maker intended to reach. *See* Parts II and IV below.

The opinion's statement that Grainger acted on "independent knowledge of the truck's condition" (Opinion, p. 5) is not an undisputed fact; it is one of two available inferences. On the panel's own theory that inference was dispositive, "independent knowledge" is what severed the chain, so Rule 56 required it to be drawn the other way, and the affirmance fails on its own terms.

These rules do more than assign losses between dealers. A structurally damaged truck certified as sound does not stop with the dealer who buys it, this one did not; it traveled to a consumer. (R. p. 23.) Holding the original wrongdoer answerable despite an intermediary's knowing silence is important to the health and safety of the public.

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).[13] But under the Court's decisions, there *is* a "causal connection" that is not broken. *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*.

The remaining elements of a UTPA claim need not detain us. With hundreds of auction sales each week in South Carolina, the public interest is involved in getting the rules right, so is the public's interest in knowing of internal damage to vehicles. Grand Strand admits a "mistake" in sending through the green-light lane a car that did not qualify for it (R. p. 85 lines 15–19); the tendency of that "mistake" to deceive is obvious, and is all that is needed for a "deceptive" or "misleading" claim under the UTPA *Gentry v. Yonce*, 337 S.C. 1, 12, 522 S.E.2d 137, 143 (1999). (Intent to deceive is not required. *Id*.) The statutory claims therefore

[13] The material represented by the ellipsis in text above first states that "the record does not demonstrate that Grand Strand's alleged misrepresentation was 'repeated' to Target," and then states Grainger "made the same representation to Target." It does not explain how making the same representation is not repeating the representation. In full, it states,

> *See State ex rel. Wilson v. Ortho-McNeil-Janssen Pharms., Inc.*, 414 S.C. 33, 57–58, 777 S.E.2d 176, 189 (2015) ("[The] []UTPA requires that a private claimant suffer an *actual* loss, injury, or damage, and requires a causal connection between the injury-in-fact and the complained of unfair or deceptive acts or practices."). We respectfully cannot agree with Target's characterization of events because the record does not demonstrate that Grand Strand's alleged misrepresentation was "repeated" to Target. Grand Strand acknowledges that it made a representation to Grainger, but then Grainger learned about the truck's accident history, made the same representation to Target, and Target repeated it to the customer.

turn on the causation just shown (and, for the Dealers Act, on the standing established in Part I.A and the violation shown there).

The opinion below reads a restrictive requirement into statutory texts to limit their operation. That is contrary to a host of precedent on construction of statutes and to this Court's construction of the UTPA.

The statute says any person injured "as a result of" a deceptive practice may sue; it does not say "unless an intermediary discovered the deception before repeating it."

II. A FRAUDSTER CANNOT ESCAPE LIABILITY TO ITS INTENDED VICTIM BY ROUTING THE FRAUD THROUGH AN INTERMEDIARY.

Fraud is a special case.[14] The law properly extends liability for intentional torts like fraud where it would cut off liability for mere negligence. Hubbard & Felix, *supra*, at 176 1(citing authorities). The trend has been to extend fraud liability yet further.[15]

> Initially, the concern to prevent undue liability was given prominence by the courts, and liability was limited to persons A *intended* to rely on the misrepresentation or to persons whose relationship was like privity. More recently, many cases have given greater weight to the wrongfulness of fraud and have extended the defendant's liability for fraud to the persons or class of persons whom he intends *or has reason to expect* to act or to refrain from action in reliance upon the fraudulent misrepresentation.

Id. at 422-23 (footnotes omitted) (internal quotation marks omitted) (emphasis in original).

Respondent here is a full-service, franchise dealer. It should be expected to know the rules better than a mom-and-pop dealer or a consumer. It knew the vehicle was wrecked, it

[14] This section discusses only common-law fraud; the statutory claims are addressed in Part I.

[15] Prosser and Keeton agree. *See Kimberlin v. DeLong*, 637 N.E.2d 121, 126 (Ind. 1994) (quoting W. Page Keeton *et al.*, *Prosser and Keeton on The Law of Torts* § 8, at 37 (5th ed. 1984) ("The defendant's interests have been accorded substantially less weight in opposition to the plaintiff's claim to protection when moral iniquity is thrown into the balance.").) *Id.* (quoting § 9, at 40 of the same treatise) ("Liability for intentional torts extends beyond foreseeability because 'it is better for unexpected losses to fall upon the intentional wrongdoer than upon the innocent victim.'").

worked on it. It sold another shop the replacement frame. It then bought the vehicle and passed it off as never-wrecked, no structural replacements. It sold the pickup to Grainger for the specific purpose of Grainger reselling it. It intended the loss to fall on that second purchaser. It now says that intended victim may not sue it. The Court should not allow Respondent to succeed on that defense. Other courts that have considered the issue have found their law does not allow such an outcome. (*See* the cases collected at pages 8-10 above; they are described more fully in Target's Brief of Appellant to the Court of Appeals at pp. 29-34.)

If the Court agrees, it has many options about how narrowly to state its holding. Among those that come to Petitioner's attorneys' minds are, first, to limit the holding to automotive dealers. "It is difficult to conceive of a commodity that is any more likely to involve knowledge by a seller that there is an especial likelihood that a misrepresentation will reach third persons and will influence their conduct, than in the case of a motor vehicle." *Clark v. McDaniel*, 546 N.W.2d 590, 593-94 (Iowa 1996) (cleaned). Automobiles are necessary components of modern life for many people, *see Delaware v. Prouse*, 440 U.S. 648, 662 (1979); *Bell v. Burson*, 402 U.S. 535, 539 (1971); *S.C. Dep't of Motor Vehicles v. McCarson*, 391 S.C. 136, 148, 705 S.E.2d 425, 431 (2011) (citing *Bell*), and one of the few, perhaps the only one--that inherently carry great risk of death or serious injury. Passing off previously-wrecked and "repaired" vehicles as never wrecked adds to these hazards, and puts behind the wheel the very customers who would not feel safe driving a previously-wrecked vehicle. These are special harms, justifying a special rule.

The rule might be further narrowed to used vehicles, given the well-known problems with honesty in that industry, and to commercial dealers. It might be limited to situations in which, as here, the resale is the point of the first sale. It might be further limited to allow only the first re-purchaser, the only one we know was intended, to sue. It might be limited to situations in which the first seller actually knew, not merely "should have known", of the vehicle's true status, and where the deception was an affirmative act like sending it through a "green light" lane, rather than a mere passive failure to disclose.

The Court could limit its holding to a case with all these elements: franchise dealer, actual knowledge, affirmative misrepresentation, transaction intended only as a temporary placeholder on the way to a consumer purchase, and leave open exactly which one(s) are required for future development.

The Court could also go broader, and join other Supreme Courts that have adopted or applied Section 533 of the Restatement (Second) of Torts:

> The maker of a fraudulent misrepresentation is subject to liability for pecuniary loss to another who acts in justifiable reliance upon it if the misrepresentation, although not made directly to the other, is made to a third person and the maker intends or has reason to expect that its terms will be repeated or its substance communicated to the other, and that it will influence his conduct in the transaction or type of transaction involved.

The Iowa Supreme Court adopted Section 533 in just such a case, holding it "reasonable to charge a seller, especially a dealer in vehicles, with knowledge that his buyer will pass along information to a second buyer that has been provided by the original seller." Clark, 546 N.W.2d at 594; see also *Davis v. McGuigan*, 325 S.W.3d 149, 159 (Tenn. 2010) ("we adopt section 533 of the Restatement (Second) of Torts"); *Tessier v. Rockefeller*, 33 A.3d 1118, 1125 (N.H. 2011) ("The fact that the alleged misrepresentation was not made directly to the plaintiff does not defeat her cause of action.") (applying § 533); *Epperson v. Roloff*, 719 P.2d 799, 803 (Nev. 1986) (citing § 533; jury question where sellers supplied misinformation to their listing agent with reason to believe the agent would communicate it to the buyer). Or it could, as many other state Supreme Courts have, hold that formal adoption of the section is unnecessary because its principles already exist in the state's law.[16]

Under any combination of the proposed rules above, Target has a jury issue as to recovery from Grand Strand. Grand Strand, the maker of a fraudulent misrepresentation, is a large, franchise automotive dealer that knew the vehicle had been wrecked (R. p. 219 (GS Ans. to Int. No. 13)), worked to hide the wreck damage, and presented it as never-wrecked in a transaction that intended there be a third party like Target to bear the injury. It intended the terms to be repeated and its substance communicated to the second purchaser. Target was that purchaser. Under even the narrowest proposed rule, Grand Strand is liable to that intended victim.

The common law has recognized for centuries the principle that one who sets a wrong in motion is liable, no matter how many persons pass along the potential injury. *See* the *Squib case*, *Scott v. Shepherd*, 96 Eng. Rep. 525 (K.B. 1773). A more modern version might be an Art dealer 1 selling a painting to Dealer 2, telling Dealer 2 the painting is by Artist Smith. In reality, it is by Artist Jones, and so is less valuable. Dealer 2 discovers the deception, and asks Dealer 1 to rescind the contract. When Dealer 1 refuses, Dealer 2 decides that rather than sue

[16] *E.g.*, *Mirkin v. Wasserman*, 858 P.2d 568, 575–76 (Cal. 1993) (§ 533 "articulates the relevant principle;" California cases "expressly apply section 533" and others "apply the principle that the section restates"); *Kaufman v. i-Stat Corp.*, 754 A.2d 1188, 1196–97 (N.J. 2000) (reaffirming that "indirect reliance" satisfies common-law fraud where the plaintiff "hears the substance of the misrepresentation, by means however attenuated;" discussing § 533); *Citizens State Bank v. Gilmore*, 603 P.2d 605, 611–12 (Kan. 1979 (1979) (Kansas's earlier rule "was adopted in the final draft of the Restatement," quoting §§ 531 and 533); *Diamond Point Plaza Ltd. Partnership v. Wells Fargo Bank, N.A.*, 929 A.2d 932, 945–46 (Md. 2007)) (applying the "principles set forth in §§ 531 through 533" as "instructive"). This Court has proceeded the same way with Restatement sections it finds sound. *See Ruh v. Metal Recycling Servs., LLC*, 439 S.C. 649, 656, 889 S.E.2d 577, 581 (2023) (holding it "unnecessary to go so far as to 'adopt'" a Restatement section while "find[ing] the text of and comments to [a subsection] will be useful in future cases").

Dealer 1, it will just pass the deception along. It sells the painting to Dealer 3, giving the same assurance that the painting is by Smith. A string of Dealers each do the same, discovering the deception and passing it on, until the painting arrives at Dealer 6, an honest dealer who discovers and refuses to pass along the deception. Dealer 6 should be entitled to sue Dealer 2, who neither started nor ended the chain of deception. A fortiori, he should be able to sue Dealer 1, who started the chain of deception. One has a duty to foreseeable subsequent purchasers not to offer a deceptive product to a middleman for resale. As long as each sale was intended for resale, and the links were reasonably foreseeable, the first Dealer should be liable to whoever is left holding the bag. The intervening-cause rules collected in Part I.D apply with full force here.

The rule below is at its worst where the chain is innocent. Suppose the Wrongdoer cheats a couple, who, innocently unaware, resell the car to Sally Smith. Sally's only claim is breach of contract against the couple: no treble or double damages, no punitive damages, no fees, and litigation costs that swamp any recovery. So Sally reasonably does not sue; the couple, never sued, have no damages of their own; and no one can reach the Wrongdoer at all, who keeps the sound-car price it was paid for a wrecked car. The more innocent the rest of the chain, the safer the fraud.

Dicta in some cases, recitals speaking of reliance on a representation made by the defendant to the plaintiff as an element, may say the opposite: no matter the intent or the target, liability ends with the initially defrauded person. This Court has never so held. The question may be novel, but the law that answers it is not.

"In [a] state of conflict between the decisions, it is up to the court to 'choose ye this day whom ye will serve. . . .'" *Mims Amusement Co. v. S.C. L. Enf't Div.*, 366 S.C. 141, 145, 621 S.E.2d 344, 346 (2005) (quoting *Antley v. New York Life Ins. Co.*, 139 S.C. 23, 30, 137 S.E. 199, 201 (1927)) (alteration in original). When a novel issue arises, "The Court must decide the question based on its assessment of which answer and reasoning best comport with the law and public policies of this state and the Court's sense of law, justice, and right." *Id.*

Here, fundamental principles of our law support Petitioner. "There is no tenet more fundamental in our law than liability follows the tortious wrongdoer." *Ruh v. Metal Recycling Servs., LLC*, 439 S.C. 649, 654, 889 S.E.2d 577, 580 (2023) (quoting *Fitzer v. Greater Greenville S.C. Young Men's Christian Ass'n*, 277 S.C. 1, 3, 282 S.E.2d 230, 231 (1981)). One who sets an evil act in motion toward an intended end cannot claim foul when the victim sues him. An evildoer should not profit from his wrong.

Or the Court could dispense with all the above: As Target argued from the start, Grand Strand's deception at the auction set the chain in motion (R. p. 170); the record permits a jury to find that the deception took hold on its first audience, Grainger bought the misrepresented truck and bore a loss. Here, there is enough evidence to make a jury issue, or at least a discovery issue[17], of whether Grand Strand defrauded Grainger. If Target can establish that, the completed fraud proves the deception took hold and traveled as designed. And Target was not a bystander to that fraud; it was the buyer the fraud was aimed at. For the loss that landed on it, the ordinary rules of proximate cause make Grand Strand's liability a jury question.

[17] The trial judge cut off discovery by Target into these issues by granting summary judgment before Target could depose Grand Strand on such questions as, "What do you expect to happen with a truck after you sell a truck at auction? What did you expect to happen with this truck? What did you intend? Tell us about other instances when you sold a previously-wrecked vehicle as unwrecked." If that evidence is needed for the fraud claim to survive, that is another reason to reverse the Court of Appeals.

III. CAR BUYERS CAN SUE, IN NEGLIGENCE, DEALERS WHO KNOWINGLY SELL A WRECKED VEHICLE SPECIFICALLY FOR RESALE.

One who buys a vehicle with a hidden structural replacement should be able to sue the dealer who hid it, whether the dealer did so intentionally or negligently. At least where the dealer sold the car specifically for resale, not for use. When *A* intends and expects something to move from *A* to *B* to *C*, one has a common-law and common-sense duty to C. The opinion lost sight of this.

It does so by conflating nonfeasance with misfeasance. It quotes cases holding that "a person ordinarily has no duty to protect another;" "no general duty to control the conduct of another or to warn," and "Ordinarily, the common law imposes no duty on a person to act" (opinion, page 3), all true, but none of these say anything about the duties the law imposes on one who acts.

This Court drew that line 50 years ago. In *Edward's of Byrnes Downs v. Charleston Sheet Metal Co*., the trial court had excused the defendant on the ground that its conduct was "at the most, non-action," remediable only in contract. This Court reversed: "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." 253 S.C. 537, 542, 172 S.E.2d 120, 122 (1970). It stated just last year that mere nonfeasance "is not enough," but a tort action lies for "active negligence or misfeasance" occurring outside a contract's terms. *Carroll v. Isle of Palms Pest Control, Inc*., 446 S.C. 177, 187, 918 S.E.2d 532, 537 (2025) (citing *Dixon v. Texas Co*., 222 S.C. 385, 389, 72 S.E.2d 897, 899 (1952)).

The opinion makes the undisputed points that a negligence claim requires a duty, and that that requires "a relationship recognized by law," but it never paused to consider whether seller and intended repurchaser is a relationship recognized by law. Instead, it imports a reliance requirement into a plain negligence claim. That is a mistake, and the reliance element is discussed in the next section, regarding negligent misrepresentation, which does have a reliance requirement. This Court should address the question the Court of Appeals let pass without discussion. It should then hold that when one sells a product for resale, he owes a duty to the next purchaser. Or, more narrowly: one who sells for resale a dangerous product with structural nonconformities owes an affirmative duty to disclose them, a duty that does not depend on active misrepresentation. The Court may narrow the holding further along any of the lines collected in Part II.

This principle is well-established in our law. "There is nothing anomalous in a rule which imposes upon A, who has contracted with B, a duty to C and D and others according as he knows or does not know that the subject-matter of the contract is intended for their use." *MacPherson v. Buick Motor Co.*, 217 N.Y. 382, 393, 111 N.E. 1050, 1054.

> In 1916, Mr. Justice Cardozo in the celebrated case of *MacPherson*[], held that no privity was required when the cause of action was based on negligence. The holding of *MacPherson* has by today been followed by almost, if not, every jurisdiction, including this court in the recent case of *Salladin v. Tellis Pharmacy*, 247 S.C. 267, 146 S.E.2d 875 [1966].

Springfield v. Williams Plumbing Supply Co., 249 S.C. 130, 136, 153 S.E.2d 184, 186-87 (1967). The panel failed to weigh the distinction between a (generally non-existent) duty to rescue and the responsibility to bear the reasonably foreseeable consequences of one's actions.

It is true that this general rule has not been specifically applied to franchise automobile dealers selling structurally damaged vehicles for resale at auction, making the question here novel in that respect. But all of these distinctions from the general rule make it even more important to apply it here. It may even be said that whether the general rule applies is a novel question: But *Springfield* and *Salladin* leave little if any doubt that the rule comports with and springs from our law, and that a contrary holding would be contrary to those principles. If the question, whether a dealer that knowingly sells a structurally damaged vehicle as undamaged, for resale, owes a duty of care to the intended repurchaser, is one of first impression, it is to be decided by what best comports with our law, and what justice and right require, *Mims*, and should be decided in favor of Petitioner.

Additionally, a jury could find Grand Strand breached the care it owed Grainger, and, applying normal principles of proximate cause[18], find that Target's loss was a foreseeable, but-for consequence of the breach of that duty.

The Court should find that Grand Strand had a duty to Target, and if not, or in addition, that whether Target's loss was a foreseeable, but-for injury at the time of Grand Strand's sale is for the jury.

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[18] Whether such a chain was foreseeable presents the kind of "questions that . . . can only be properly decided in the light of the evidence adduced upon the trial." *Gossett v. Burnett*, 251 S.C. 548, 551, 164 S.E.2d 578, 579 (1968). There, a bank wrongfully set off a false burglar alarm. The responding officer sped to the scene, "negligent, willful and wanton," the complaint alleged, running a red light, and his car collided with a second vehicle and then a third, knocking that one into the plaintiff's stationary car, the fourth vehicle in the chain. The bank demurred on the ground that the damage "was caused solely by the intervening and superseding acts" of the drivers. This Court reversed: the case was "an important case of completely novel impression," and, applying the rule of *Springfield,* "justice, not only to the litigants, but the general public, requires that the case be tried on the merits and the evidence fully developed." *Id*. at 550–52, 164 S.E.2d at 578–80.

IV. GRAND STRAND AND GRAINGER ARE EACH LIABLE TO TARGET FOR THEIR ROLE IN THE NEGLIGENT MISREPRESENTATION.

That Grand Strand misrepresented is conceded (R. p. 85 lines 15–19; R. p. 65 lines 12–13), and whether its self-described "mistake" was negligent is a jury issue. The only question here at issue in this appeal is how far liability for that negligent misrepresentation extends before a court, as a matter of law, cuts it off.

The opinion below relies on two Court of Appeals cases, not Supreme Court cases, that do not address the issue here: *West v. Gladney*, 341 S.C. 127, 134, 533 S.E.2d 334, 338 (Ct. App. 2000), and *deBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 536 S.E.2d 399 (Ct. App. 2000).[19] But neither the Court of Appeals nor the parties have found a case squarely posing the issue here, which is whether liability of *A* for a negligent misrepresentation to *B,* when *A* intends *B* to sell to *C,* extends to *C*.

By logic and fairness, it should. Especially when a used-car dealer puts a structurally-damaged vehicle on the road while misrepresenting it as undamaged. It comports with public policy that has rejected *caveat emptor. See Lane v. Trenholm Bldg. Co.*, 267 S.C. 497, 503,

[19] *West* did not state, "a requirement that the plaintiff justifiably relied on the *misrepresentation* made by the defendant;" it required only reliance on "the representation" made by the defendant, and held that plaintiff there knew more about the underlying issue than defendant did, and so could not have relied on the representation, regardless of whether the representation was false.

The customer/plaintiff in *deBondt* had not received promised promotional materials, an issue at an altogether different level than receiving a vehicle with hidden structural repairs. The dealer, not the manufacturer, promised the customer she would receive those materials, *id.* at 267, 536 S.E.2d at 406, and it was the dealer's, not the manufacturer's, fault she did not receive them: the dealer had not properly notified the manufacturer, Mercedes, that she was entitled to receive them, *id*. at 264, 536 S.E.2d at 404. As the dealer was both the party that made the promise and the party whose wrong led to the promise being unfulfilled, the dealer was solely responsible for the result. This information is implicit in the truncated portion of the sentence the opinion partially quotes: Mercedes made no representation "that she would receive the promotional materials for the SLK she purchased from Carlton," i.e., no part in the falseness.

229 S.E.2d 728, 731 (1976). Our law is strongly against the "intervening cause" argument the opinion uses without naming. *See* Part I.D. It is only just that the wrongdoer compensate the victim. To prevent that just result would require strong justification, and the opinion and Respondent offer none.

There are two independent routes to Grand Strand's liability. The first is the road the courts collected above have traveled: the misrepresentation was made to be repeated, the same representation was made to Target, Target relied on it, and Target is within the limited class for whose guidance the representation was intended. The second: every element of negligent misrepresentation, including loss, was complete as to Grainger at the first sale, and Target's loss is a but-for, foreseeable result of that tort. [20]

Respondent in its filings below and with this Court offered not a single case, not one, where the tort had been completed, and the question was how far liability extended. Other actors are liable for the foreseeable but-for consequences of their acts: Why should this Court endorse an exception for used-car dealers?

If the Court prefers a narrower holding, the limits collected in Part II serve here as well. It could also require what this record shows: that the seller actually knew, not merely had reason to know, the representation was false, and intended, not merely expected, its repetition. So even if there is generally no liability for sellers who merely intend the misrepresentation to reach the second buyer, there should be liability here.

Grand Strand intended its buyer to repeat its representations, accurate or not, to the next intended buyer. The intermediary's discovering the misrepresentation does not cure Grand Strand's proximate cause problem: the only question under proximate cause is

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[20] *See* discussion in Part I.D above.

whether the type of injury that occurred is a type foreseeable at the time of the original tortfeasor's misrepresentation. The Court should not create a new and special proximate-causation standard under which one link's discovery-and-passing-on of the misrepresentation absolves the one who set the chain in motion.

Here, the representation reached Target, and Target justifiably relied on it. Target's principal swore that he "only buy[s] cars under an auction's 'green light' as those cars are not supposed to have any major problems or wreck damage;" that he "expected that Grainger Honda was providing me truthful information it had received from the person or dealer from whom it had purchased the truck;" and that "[h]ad I known that Grand Strand Nissan had misrepresented the condition of the truck, I would not have purchased it from Grainger Honda." (R. pp. 148–50 (Hickman Aff. ¶¶ 5, 8, 10).)

Grand Strand makes much of Target's admission that it relied on Grainger's representation. But the Court of Appeals itself found what that representation was: "the same representation" Grand Strand had made, the same green light, certifying the same truck free of the same structural damage, at the same auction house. (Opinion, p. 5.)

Grand Strand worked on the truck, knew it had a replaced frame, and Grand Strand ran the truck green anyway. (R. pp. 5, 114–15, 185, 219–20; R. pp. 64–65.) On this record a jury could find, at the very least, a want of reasonable care in failing to alert buyers to the structural damage.

The Court should find that the Seller had a duty to the intended second-buyer, and if not, that whether the injury was a foreseeable, but-for result of the breach of Grand Strand's duty to Grainger is a jury issue.

CONCLUSION

Grand Strand knew this truck had been wrecked to its frame, it sold the very frame that went into it. It certified the truck sound anyway, sold it into a market that exists only for resale, and collected a sound-truck price. The deception then traveled exactly the road Grand Strand built for it, and the loss landed where such losses always land: on a buyer who trusted that a green light meant what it said.

Every claim here asks the same question: may the seller who set that deception in motion keep its profit because the deception passed through other hands on the way to its victim? The statutes answer no, violation, proximate cause, and injury are the elements, and all three are here. The common law answers no, liability follows the tortious wrongdoer, and a wrongdoer does not keep the fruits of a wrong by routing the wrong through another. The decision below answers yes, and in a State whose dealer auctions sell hundreds if not thousands of vehicles a week, that answer will not stay limited to this truck.

The Court may draw its holding as narrowly as this case: a franchise dealer, actual knowledge, an affirmative certification of soundness, a sale made for resale. However narrow the rule, the judgment cannot stand.

Target respectfully requests that the Court reverse the decision of the Court of Appeals, reverse the grant of summary judgment on each of Target's claims, and remand for trial. In the alternative, the Court should reverse and remand for completion of discovery.

Respectfully submitted,	
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