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S.C. SUPREME COURT

IN 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

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 theRespondent.

BRIEF OF RESPONDENT

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COUNTERSTATEMENT OF QUESTIONS PRESENTED¹

1. Did the court of appeals correctly affirm the grant of summary judgment to Grand Strand Nissan, Inc. (“Grand Strand”) in this case where Target Motors, LLC d/b/a Port City Motors (“Target Motors”) admits that Grand Strand did not make any representations to it and that Target Motors did not rely on any representations made by Grand Strand?
2. Did the court of appeals correctly hold that Grand Strand owed Target no duty of care, where the parties had no relationship, contract, or communication of any kind?
3. Did the court of appeals correctly find that Grand Strand did not cause any damage to Target Motors for purposes of Target Motors’s statutory claims based on the undisputed facts of this case in which third parties decided to resell the truck at issue under a green light after discovering its structural damage?

¹ Petitioner’s questions presented in its briefing do not match those presented in its petition for a writ of certiorari (“petition”). Questions 4-7 do not have a corollary in the petition and should not be considered by the Court. The petition does not reach the elements of fraud and negligent misrepresentation, and Petitioner’s arguments on these points should not be considered by this Court. See Rule 242, SCACR.

INTRODUCTION

This is not a products liability action. Nor is it a personal injury action. Nor is it a construction defect case. Instead, it is an action relating to representations in the sale of a used vehicle between dealers where Target Motors admits that Grand Strand did not make any representations to it and that Target Motors did not rely on any representations made by Grand Strand. Those admissions are dispositive.

Grand Strand has not argued that it is entitled to any kind of immunity, but has argued instead that Target Motors cannot establish the elements of its claims based on the undisputed facts of this case. The court of appeals, recognizing the unusual facts presented here, affirmed the grant of summary judgment in an unpublished *per curiam* opinion that repeatedly limited the rulings to this specific set of facts. Nothing in the opinion suggests there is any broader application. Based on these facts, this is not the case to reach the sweeping hypotheticals posed by Target Motors and the decision of the court of appeals should be affirmed.

STATEMENT OF THE CASE

Target Motors filed this action on February 8, 2022 against Grand Strand, Grainger Companies, Inc. d/b/a Grainger Honda (“Grainger”), and Manheim Remarketing, Inc. d/b/a Manheim, Darlington (“Manheim”) asserting various causes of actions against each defendant. (R. at 95-108). The claims against Grand Strand stem from the sale of a used truck sold first by Grand Strand to Grainger through Manheim’s auction and then by Grainger to Target Motors in a second auction.² Grainger, a remaining defendant that is not a party to this appeal, sold the truck to Target Motors and is separately answerable to it.

² Grainger filed a cross-claim against Grand Strand relating to the first sale of the truck at Manheim. (R. at 38-45).

In its amended complaint, Target Motors asserted the following causes of action against Grand Strand: (1) negligence, (2) negligent misrepresentation, (3) fraud, (4) the UTPA, and (5) the Dealers Act. (R. at 20-29). Grand Strand answered, asserting the following defenses: (1) failure to state a claim; (2) intervening and superseding acts; (3) comparative negligence; (4) absence of proximate cause; and (5) several equitable defenses. (R. at 30-37).

Grand Strand moved for summary judgment on October 5, 2022. (R. at 112-17). Following a hearing, the circuit court entered an order granting Grand Strand's motion for summary judgment on January 19, 2023 on the following grounds: (1) Grand Strand did not owe any duty to Target Motors; (2) Grand Strand did not cause any damage to Target Motors; (3) Grand Strand did not make any representations to Target Motors; (4) Grand Strand did not act unfairly or deceptively with respect to Target Motors so as to trigger the UTPA; and (5) Target Motors did not have a claim against Grand Strand under the Dealers Act. (R. at 4-15). Target Motors filed a motion to reconsider seeking more specific rulings as to each claim (R. at 225-26), which the circuit court denied on March 3, 2023 (R. at 16-18).

This appeal followed. In its Appellant's brief before the court of appeals, Target Motors presented one issue, "[w]hen a car dealer deceptively sells a previously-wrecked vehicle, intending that it be resold, is the dealer automatically immune from liability to all purchasers after the first purchaser?" (Brief of Appellant at 1). Grand Strand argued that this single issue did not reach any of the specific grounds given by the circuit court and that the case should be affirmed as a result pursuant to Rule 208(b), SCACR. (Respondent's Brief at 6-7). In addition, Target Motors failed to include any argument as to the UTPA, negligent misrepresentation, or fraud causes of action.

(*Id.* at 7, 14). As such, Grand Strand argued that the circuit court’s rulings on those claims were the law of the case and required affirmance. (*Id.*).³

The court of appeals affirmed the grant of summary judgment in an unpublished *per curiam* opinion dated July 16, 2025, finding that: (1) Grand Strand did not have a duty to Target Motors because it “never communicated or interacted with Target about the truck’s condition;” (2) there was no implied duty because Target did not impose any trust or confidence in Grand Strand; (3) the UTPA does not create an independent duty in negligence; (4) the absence of any representation to Target Motors by Grand Strand is fatal to the fraud and misrepresentation claims; (5) the Dealers Act does not apply because the parties here are all dealers and because Target Motors admitted it did not rely on any alleged misrepresentations by Grand Strand (“Target admits that it solely relied on representations made by Grainger. Thus, the record before us does not contain a disputed fact that would create an inference that Grand Strand caused any harm to Target.”); and (6) the UTPA claim fails because “we again find that the record fails to demonstrate a causal connection between the alleged harm and the alleged deceptive act.”

Target Motors sought rehearing by petition dated July 31, 2025. The court of appeals denied the petition on September 22, 2025. This Court later granted certiorari.

FACTS

The material facts of this case are undisputed. Grand Strand is a car dealership that services, repairs, sells, and buys new and used cars. On or about August 30, 2019, Grand Strand completed wreck-related repairs on a 2018 Nissan Titan (the “truck”) owned by Aaron Burnstein. (R. at 114 ¶ 5-6). Grand Strand also sold parts to Performance Collision, a body shop that completed other repairs on the truck. (R. at 115 ¶ 6). On October 14, 2019, after the truck was repaired, Burnstein

³ Grand Strand renews those arguments here and would encourage the Court to affirm pursuant to Rule 220, SCACR.

sold the truck to Grand Strand for \$24,000. (*Id.* ¶ 8). Shortly thereafter, Grand Strand entered the truck into an online auction owned and operated by Manheim. (*Id.* ¶ 10). At the auction, the truck was placed under a green light, indicating that the truck did not have structural damage. (R. at 21 ¶ 17, 54:19-25).

On November 14, 2019, Grainger bought the truck through Manheim's auction for \$21,000. (*Id.* ¶ 11). Grand Strand was not involved in any further transactions with the truck. (*Id.* ¶¶ 12–13).

Shortly after Grainger purchased the truck, Grainger tried to sell the truck through the Charleston Auto Auction. (R. at 21 ¶ 18, 120 # 6). Grainger removed the truck from the auction after the auction company presented an AutoCheck report showing prior structural damage. (R. at 120 # 6). Grainger notified Manheim about the discovered structural damage. (R. at 21 ¶ 19, 121 ## 9-11).

Grainger commenced an arbitration through Manheim against Grand Strand, and Grainger resolved its claim related to the truck by accepting a 50% refund on the truck. (R. at 121 # 11). After resolving Grainger's claims and despite the AutoCheck report and their knowledge of the structural repairs, Manheim and Grainger decided to sell the vehicle through the Manheim auction. (*Id.*; R. at 135 # 9, 22 ¶¶ 23-24).

Target Motors purchased the truck from Grainger through the Manheim auction on January 2, 2020. (R. at 23 ¶ 32). The sale was under a green light, and no disclosure of the wreck damage was made. (*Id.*; R. at 121 # 11). Before buying the truck, Target Motors consulted a Carfax report, an AutoCheck report, a report from the NADA, and a Manheim Market Report. (R. at 127 # 6).

After Target Motors purchased the truck, it sold it to a customer on January 25, 2020. (R. at 23 ¶ 35). Shortly thereafter, the customer complained to Target Motors after discovering the

truck's structural damage. (*Id.* ¶ 36). As a result, Target Motors compensated the customer \$4,000. (*Id.* ¶ 37).

Target Motors admitted the following key facts: (1) Grand Strand was not involved in any transaction with Target Motors; (2) there was no contract between Grand Strand and Target Motors; (3) Target Motors did not communicate with Grand Strand regarding the condition of the truck prior to Target Motors purchasing the truck; (4) Target Motors did not rely on or review any information provided by Grand Strand regarding the truck; (5) Target Motors did not rely on any information provided by Grand Strand to Grainger regarding the truck; and (6) Target Motors solely relied on Grainger's representations in its purchase of the truck. (R. at 148-50, 151-53, 156-57, 22-23 ¶¶ 23-32; 135 # 9).

The court of appeals provided the following summary of the undisputed facts:

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. 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.

These facts drove the analysis in the decisions below.

STANDARD OF REVIEW

On appeal from a grant of summary judgment, this Court's standard of review is the same as that of the circuit court. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). Summary judgment is appropriate if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Rule 56(c), SCRC.P.

This Court must view the facts and inferences in the light most favorable to the nonmoving party. *See, e.g., Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E.2d 659, 661 (Ct. App. 1994). The standard in considering a summary judgment motion is not a "mere scintilla," but rather whether

there is a “genuine issue of material fact” remaining for trial. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 460, 892 S.E.2d 297, 300 (2023). When the nonmoving party bears the burden of proof on an issue, the moving party is entitled to summary judgment if “there is an absence of evidence to support the nonmoving party’s case.” *Richardson v. State-Rec. Co.*, 330 S.C. 562, 566, 499 S.E.2d 822, 825 (Ct. App. 1998). “[W]hen ruling on a summary judgment motion, a court must determine whether the plaintiff has established a prima facie case as to each element of a claim . . .” *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 358, 650 S.E.2d 68, 71 (2007). If a plaintiff cannot establish facts on each element of the cause of action asserted, summary judgment is mandated by Rule 56(c). *Id.*

If a motion has been properly made and supported in accordance with Rule 56, the nonmoving party may not rest on its pleadings but must come forward with specific facts showing that there is a genuine issue for trial. Rule 56(e), SCRCPP; *Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 580, 602 S.E.2d 389, 392 (2004). A nonmoving party cannot evade summary judgment by creating and relying on “an inference that is not reasonable or an issue of fact that is not genuine.” *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

Nor can the non-moving party avoid summary judgment by casual reference to additional discovery that might be done. Rule 56(f), SCRCPP. “Rule 56(f) requires the party opposing summary judgment to at least present affidavits explaining why he needs more time for discovery.” *Doe ex rel. Doe v. Batson*, 345 S.C. 316, 321, 548 S.E.2d 854, 857 (2001). Target Motors did not present an affidavit in response to Grand Strand’s motion.

ARGUMENTS

Target Motors argues hypotheticals rather than the actual, undisputed facts of this case. As admitted by Target Motors, Grand Strand did not make any representations to Target Motors, and

Target Motors did not rely on any representations made by Grand Strand. Thus, these representation-based claims must fail under well-settled South Carolina law. It is as simple as that.

I. The admissions by Target Motors that Grand Strand made no representations to it and that it relied solely on Grainger are fatal to its claims for fraud and negligent misrepresentation.

Target Motors concedes that Grand Strand did not make any representations to it and that Target Motors did not rely on any representations made by Grand Strand. Those admissions are dispositive of the fraud and negligent-misrepresentation claims, both of which require justifiable reliance on a representation made by the defendant. *West v. Gladney*, 341 S.C. 127, 135, 533 S.E.2d 334, 338 (Ct. App. 2000) (“Fraud based on a misrepresentation and negligent misrepresentation both include a requirement that the plaintiff justifiably relied on the representation made by the defendant.”); *Sorin Equip. Co. v. The Firm, Inc.*, 323 S.C. 359, 366, 474 S.E.2d 819, 823 (Ct. App. 1996) (stating that the required elements of fraud are: “(1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer’s ignorance of its falsity; (7) the hearer’s reliance on its truth; (8) the hearer’s right to rely thereon; and (9) the hearer’s consequent and proximate injury.”); *deBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 266, 536 S.E.2d 399, 405 (Ct. App. 2000) (finding that negligent misrepresentation requires that “the defendant made a false representation to the plaintiff” and that “the plaintiff justifiably relied on the representation.”); *Beneficial Fin. I, Inc. v. Windham*, 431 S.C. 256, 273, 847 S.E.2d 793, 802–03 (Ct. App. 2020) (providing that the elements of a claim for misrepresentation are: “(1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (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.”).

Target Motors has admitted that there was no representation by Grand Strand to it and no reliance on its part on any representation by Grand Strand. (R. at 148-50, 151-53, 156-57, 22-23 ¶¶ 23-32; 135 # 9). Thus, summary judgment was appropriate on these claims.

II. The court of appeals correctly found that there was not a duty based on the specific facts of this case.

South Carolina law does not impose a general obligation to act in any certain way with respect to third parties (or, in other words, the law does not recognize a wrong) without a duty. *Hendricks v. Clemson Univ.*, 353 S.C. 449, 456–57, 578 S.E.2d 711, 714 (2003) (“An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance. Ordinarily, the common law imposes no duty on a person to act.” (citation omitted)). Issues of existence and scope of duty are questions of law for the court. *Id.*; *Staples v. Duell*, 329 S.C. 503, 506–07, 494 S.E.2d 639, 641 (Ct. App. 1997). Courts are reluctant to create new duties or to expand tort liability. *Staples*, 329 S.C. at 510–11, 494 S.E.2d at 643; see *Wyatt v. Fowler*, 326 S.C. 97, 101, 484 S.E.2d 590, 592 (1997) (holding that the state does not owe its citizens a duty of care to proceed without error when it brings legal action against them); *Byerly v. Connor*, 307 S.C. 441, 443–44, 415 S.E.2d 796, 798 (1992) (holding that the South Carolina Public Service Authority had no duty to discover and warn of a latent hazardous condition on land that it leased to another).

“A tort-feasor’s duty arises from his relationship to the injured party.” *S.C. State Ports Auth. v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 376, 346 S.E.2d 324, 325–26 (1986). Here, there was no relationship of any kind between Grand Strand and Target Motors: no contract, no communication, and no transaction.

South Carolina has not recognized a theory of liability where a previous vehicle owner could be held liable to a future purchaser for failing to disclose wreck damage where the parties had no relationship or interaction and there was no reliance by the plaintiff on any representation made by the defendant. More generally, Target Motors seeks to recover for a nondisclosure with respect to a transaction to which it was not a party where it admits it did not rely on that representation in any way in purchasing the truck.

In response to Grand Strand's motion for summary judgment, Target Motors argued that there was a common law duty to disclose based on the "circumstances of the case, the nature of [the parties'] dealings, or their position towards each other," citing *Wright v. Craft*, 372 S.C. 1, 25, 640 S.E.2d 486, 499 (Ct. App. 2006). (R. at 155). Under *Wright*, a duty to disclose can arise under the following circumstances:

- (1) where it arises from a preexisting definite fiduciary relation between the parties;
- (2) where one party expressly reposes a trust and confidence in the other with reference to the particular transaction in question, or else from the circumstances of the case, the nature of their dealings, or their position towards each other, such a trust and confidence in the particular case is necessarily implied; (3) where the very contract or transaction itself, in its essential nature, is intrinsically fiduciary and necessarily calls for perfect good faith and full disclosure without regard to any particular intention of the parties.

372 S.C. at 25, 640 S.E.2d at 499.

The circuit court and the court of appeals correctly rejected this argument because there was no relationship or communication between Grand Strand and Target Motors, and it was undisputed that Target Motors did not rely on any representations or disclosures by Grand Strand in buying the truck. See *Ravan v. Greenville Cnty.*, 315 S.C. 447, 467, 434 S.E.2d 296, 308 (Ct. App. 1993) ("[T]he parties shall have sustained a relationship recognized by law as the foundation of a duty of care."). The parties did not have a pre-existing relationship, fiduciary or otherwise. The parties did not enter a contract or transaction. Target Motors did not receive or rely on any

representation by Grand Strand. And finally, a duty based on trust and confidence cannot be implied from the circumstances because Target Motors admitted that it did not communicate with Grand Strand regarding the truck and admitted that it did not have a relationship with Grand Strand, contractual or otherwise.

This admitted lack of reliance distinguishes this case from the limited South Carolina case law finding that a duty can extend to third parties to a transaction if the defendant intended for third parties to rely on a representation and *if there was, in fact, reliance by a third party*. See *ML-Lee Acquisition Fund, L.P. v. Deloitte v. Touche*, 320 S.C. 143, 160-62, 463 S.E.2d 618, 628-29 (Ct. App. 1995) (finding an accountant owed a duty to third parties whom the accountant intended the information to benefit and when the third parties relied on an audit report prepared by the accountant), affirmed on this ground 327 S.C. at 241-42, 489 S.E.2d at 472; *Priv. Mortg. Inv. Servs., Inc. v. Hotel & Club Assocs., Inc.*, 296 F.3d 308, 313–15 (4th Cir. 2002) (finding an appraiser could be liable to a third party for negligent misrepresentation for information in an appraisal where the appraiser knew the appraisal would be used by third parties and the third party actually relied on the information); *Britt v. Sorin Grp. Deutschland GMBH*, 690 F. Supp. 3d 538 (D.S.C. 2023) (stating “that the Supreme Court of South Carolina has yet to extend negligent misrepresentation beyond the accounting or consulting contexts” in third party reliance cases).

This is a disclosure case involving the sale of a used truck, not a traffic case or a case involving personal injury. As such, this Court should follow the rule in *Wright* as opposed to the cases cited by Target Motors relating to “duty to the public” or “actors that indirectly injured the victims in the motor vehicle context.” Target Motors’s collection of decisions from other jurisdictions does not advance its cause, because each of those cases turned on reliance that traveled intact to the downstream buyer. In those cases, the intermediary innocently passed along

the original seller's misrepresentation, and the downstream buyer relied on it. That is the theory the Restatement (Second) of Torts § 533 (1977) embodies, providing that "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" Section 533 is intended to provide recourse for individuals who rely on information passed on from one party to another. For example, in both *Varwig v. Anderson-Behel Porsche/Audi, Inc.*, 74 Cal. App. 3d 578, 540, 141 Cal. Rptr. 539, 581 (Ct. App. 1977) and *Clark v. McDaniel*, 546 N.W.2d 590, 593 (Iowa 1996), the injured party relied on information passed from the original seller through the intermediate seller.

Here, Target Motors relied solely on the representations of Grainger and Manheim and did not rely on or review any information from Grand Strand. As discussed by the court of appeals,

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. 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.

These facts place this case squarely outside the scope of § 533 and the limited South Carolina case law extending duty to include third parties to a transaction if the defendant intended for third parties to rely on a representation and the third party so relied. See *ML-Lee Acquisition Fund, L.P.* 320 S.C. at 160-62, 463 S.E.2d at 628-29. South Carolina has not adopted § 533, and even if it applied, it would not save the claims raised by Target Motors: the intermediary here did not innocently repeat Grand Strand's certification. Grainger discovered the truth, was compensated for it, and

then resold the truck on its own independent knowledge. Thus, even if this Court were inclined to adopt § 533, it would not change the result in this case.

Target Motors also argued at the summary judgment stage that there was a contractual duty owed by Grand Strand. (R. at 156-157). However, there is no dispute that there was not a contractual relationship between the parties. As such, the circuit court correctly found that this theory did not give rise to a duty. The circuit court correctly noted that even if there were a contract, any claim in tort would be barred by the economic loss rule. (R. at 10 n. 3, citing *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 54–55, 463 S.E.2d 85, 88 (1995) (“In most instances, a negligence action will not lie when the parties are in privity of contract.”)).

Target Motors seeks to create a new exception to the general rules surrounding tort duty in this state. Grand Strand submits that this case is not the one for the Court to consider the scenarios posed by Target Motors. There was no representation by Grand Strand to Target Motors and no reliance by Target Motors on any representation made by Grand Strand, and the seller who made representations to Target Motors and on which Target Motors relied is present as a party and offers an opportunity for Target Motors to recover to the extent it can prove its claims. As a result, summary judgment was proper as to fraud, negligence, and negligent misrepresentation claims brought by Target Motors against Grand Strand.

III. Grand Strand did not cause any injury to Target Motors; Grainger's and Manheim's knowing resale was an independent, intervening cause.

Even setting duty aside, Target Motors cannot establish causation. Proximate cause requires both causation in fact and legal cause, and the “touchstone of proximate cause in South Carolina is foreseeability.” *Young v. Tide Craft, Inc.*, 270 S.C. 453, 242 S.E.2d 671 (1978). “Causation in fact is proved by establishing the plaintiff’s injury would not have occurred ‘but for’ the defendant’s action.” *Mellen v. Lane*, 377 S.C. 261, 278, 659 S.E.2d 236, 245 (Ct. App. 2008). “Legal cause is proved by establishing foreseeability.” *Id.* “Foreseeability of some injury from an act or omission is a prerequisite to its being a proximate cause of the injury for which recovery is sought.” *Stone v. Bethea*, 251 S.C. 157, 161, 161 S.E.2d 171, 173 (1968).

Target’s admission that it relied solely on Grainger — and never on anything from Grand Strand — forecloses “but-for” causation: if Target never saw or relied on any representation by Grand Strand, Grand Strand’s earlier green-light listing was not the “but for” cause of the decision by Target Motors to buy the truck.

Legal cause fails as well. When “an entirely independent and efficient agency intervenes to cause the injury, the latter is to be deemed the direct or proximate cause, and the former only the indirect or remote cause.” *Id.*, 251 S.C. at 162, 161 S.E.2d at 173. That is precisely what the undisputed record shows. Grainger and Manheim discovered the truck’s structural damage and then made the deliberate, knowing choice to resell the truck under a green light without disclosure. Their knowing decision was the efficient cause of any loss to Target Motors, not Grand Strand’s earlier sale.

With respect to causation, “when the evidence permits but one reasonable inference, a question of law is presented for the court.” *Young*, 270 S.C. at 464, 242 S.E.2d at 676 (holding that a repairman’s decision to splice a steering cable he knew was dangerous was, “as a matter of law,

the sole proximate cause” of the injury, despite the manufacturer’s alleged upstream fault). A tortfeasor “cannot be charged with ‘that which is unpredictable or that which could not be expected to happen.’” *Id.* So too here: an intermediate dealer’s decision to resell a truck it knew to be structurally damaged, after being paid to take back the loss, is the kind of independent, knowing act that severs the causal chain as a matter of law as found by both the circuit court and the court of appeals. This Court should reach the same conclusion and affirm the grant of summary judgment.

IV. The court of appeals correctly found that Target Motors had not presented a genuine issue of fact as to its claims under the Dealers Act and the UTPA based on the record in this case.

Target Motors concedes that Grand Strand made no representations to it and that it did not rely on any representations by Grand Strand. It is these facts that divorce this case from the hypotheticals posed by Target Motors. Nothing in the opinion of the court of appeals adds a requirement that the representation be “direct,” but rather that there must be some reliance by the plaintiff on a representation causing injury. The court of appeals expressly reserved the question raised by Target Motors. Thus, there is no tension with existing case law.

The UTPA prohibits “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” S.C. Code Ann. § 39-5-20(a). To prove a claim under the UTPA, the plaintiff must establish that “(1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected the public interest; and (3) the plaintiff suffered monetary or property loss as *a result* of the defendant’s unfair or deceptive act(s).” *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 638, 743 S.E.2d 808, 816 (2013) (emphasis added). Target Motors argues that the circuit court erred in granting summary judgment on the UTPA claim and the court of appeals erred in affirming because a UTPA claim can be brought by “any person,” including remote purchasers. This

argument fails to consider the causal connection requirement as addressed by the circuit court and the court of appeals and as identified in *Colleton Preparatory Acad., Inc. v. Hoover Universal, Inc.*, 379 S.C. 181, 195, 666 S.E.2d 247, 255 (2008), overruled on other grounds by *Sapp v. Ford Motor Co.*, 386 S.C. 143, 145, 687 S.E.2d 47, 48 (2009).

The UTPA “requires a causal connection” between the injury and the complained of deceptive act or practice, which in this case is an alleged misrepresentation. *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharms., Inc.*, 414 S.C. 33, 57–58, 777 S.E.2d 176, 189 (2015). Although the UTPA does not require privity of contract, a remote purchaser must prove that its damages were “a result of” the deceptive act. *Colleton Preparatory Acad., Inc.*, 379 S.C. at 194, 666 S.E.2d at 254 (“Persons or any legal entity suffering an ascertainable loss of money or real or personal property ‘as a result of the use or employment by another person of an unfair or deceptive method, act or practice’ may bring an action to recover actual damages.” (emphasis in original)). “Establishing this causal connection in a misrepresentation case necessarily requires proof that the plaintiff detrimentally relied on the defendant’s deceptive conduct.” *Doe 1 v. Varsity Brands, LLC*, No. CV 6:22-2957-HMH, 2023 WL 4088483, at *13 (D.S.C. June 20, 2023).

Here, the lower courts concluded that Target Motors was not harmed by any unfair or deceptive act committed by Grand Strand because it did not contract with Target Motors and Target Motors did not rely on any representations made by Grand Strand in making its purchase. These facts are not in dispute and do not give rise to any inference or question of material fact that “plaintiff detrimentally relied on the defendant’s deceptive conduct.”

Similarly, in affirming the ruling as to the Dealers Act claim, the court of appeals included two grounds: (1) the Dealers Act does not apply because the parties here are all dealers, and (2) Target Motors admitted it did not rely on any alleged misrepresentations by Grand Strand. The

Dealers Act prohibits “unfair or deceptive acts or practices.” S.C. Code Ann. § 56–15–30(a). It is violation of the Dealers Act “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.” S.C. Code Ann. § 56–15–40(1) (emphasis added). There is a cause of action for “any person who shall be injured in his business or property by reason of anything forbidden in this chapter[.]” S.C. Code Ann. § 56-15-110. A necessary part of the claim requires that the plaintiff prove that the alleged act caused the plaintiff’s damages.

Again, Target Motors, by admitting that it solely relied on information provided by Grainger and not Grand Strand, has essentially admitted that Grand Strand did not cause damage to Target Motors. If Target Motors did not rely on or review any information provided by Grand Strand or any information provided by Grand Strand to Grainger, how could Grand Strand be the cause of any injury to Target Motors?

This Court need not resolve the scope of the Dealers Act’s right of action to affirm, because the causation holding independently disposes of the claim, and because — whatever the Dealers Act’s reach — Target Motors failed to show the required causal connection to Grand Strand. In future cases, the language of the Dealers Act will control and will dictate whether the plaintiff or plaintiffs in that case may assert a claim under the Dealers Act.

With respect to applicability of the Dealers Act to claims between dealers, the court of appeals again ruled based on the facts of this case. In doing so, it observed that the Dealers Act, enacted “for the purpose of consumer protection,” did not reach this dispute among dealers, citing *Freeman v. J.L.H. Invs., LP*, 414 S.C. 362, 778 S.E.2d 902 (2015). In addition, S.C. Code Ann. § 56-15-40 does not include any dealer to dealer conduct in its list of “[s]pecific acts deemed unfair methods of competition and unfair or deceptive acts or practices,” nor is the type of conduct at

issue here referenced in § 56-15-40(4), which lists practices “deemed a violation of paragraph (a) of Section 56-15-30 for a motor vehicle dealer[.]” As such, the court of appeals correctly found that the Dealers Act did not provide a remedy for Target Motors.

CONCLUSION

Under the facts of this case, the circuit court and the court of appeals correctly found that Grand Strand was entitled to summary judgment. This Court should affirm those rulings under existing precedent and should resist Target Motors’s invitation to consider a host of hypothetical fact patterns.

Respectfully submitted,

s/ Sarah P. Spruill

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