RECEIVED

Oct 07 2026

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.

REPLY BRIEF

Brooks R. Fudenberg
LAW OFFICES OF BROOKS R. FUDENBERG, LLC
14 Ashe Street
Charleston, SC 29403
Tel.: (843) 696-8911

C. Steven Moskos
C. STEVEN MOSKOS, P.A.
6650 Rivers Ave., Ste 210
N. Charleston, SC 29406
Tel. (843) 763-5297

Attorneys for Petitioner

TABLE OF CONTENTS

Table of Authorities ii

PRELIMINARY STATEMENT 1

I. THE COURT SHOULD REACH THE MERITS; GRAND STRAND'S ATTEMPTS TO AVOID THEM FAIL. 1

A. The Questions Presented Are Properly Before the Court. 1

B. Target Argues the Law and the Facts of This Case, Not "Mere Hypotheticals." 2

C. The Absence of Direct Communication and Reliance Is a Premise, Not an Answer. 3

D. The Court of Appeals' "Reservation" Does Not Bar Review. 3

II. THE OPINION IMPROPERLY READS AN UNENACTED LIMITATION INTO BOTH REMEDIAL STATUTES. 4

A. Grand Strand Disputes Only Which Unenacted Limitation the Opinion Added. 4

B. Grand Strand's Reading Cannot Be Squared with Colleton Prep's Result or Rationale. 4

C. Grand Strand's Supporting Contentions Do Not Cure the Errors. 5

D. Proximate Cause Is for the Jury. 6

III. DEALERS MAY SUE UNDER THE DEALERS ACT; THE CONTRARY HOLDING SHOULD BE REVERSED 9

A. Grand Strand Again Seeks an Unenacted Limitation on a Remedial Statute. 9

B. Grand Strand's Supporting Contentions Do Not Cure the Error. 10

IV. SETTLED OR NOVEL, THE COMMON-LAW ISSUES RESOLVE FOR TARGET. 11

A. Grand Strand Has No Case in Which a Culpable Upstream Seller That Misrepresented Goods Sold for Prompt Resale Escaped Liability to the Intended Repurchaser 12

1. Dicta Is Not Controlling 13

2. Grand Strand Has Only Dicta. 13

B. If an Issue Here Is Novel, the Mims Standard Applies. 14

C. The Mims Standards Yield a Decision for Target 14

D. Grand Strand's Own Authorities Support Target. 16

E. The Decision Should Also Be for Target on the Basis of Completed Torts. 17

1. Completed Torts 17

2. Chronology. 18

F. Grand Strand's "Courts Are Reluctant to Expand Tort Liability" Argument Is Wrong and Off Point 19

G. The Decision Is for Target Even Apart from the Novel-Issue Standards. 20

H. Grand Strand's Remaining Authorities Do Not Help It. 20

CONCLUSION.....21

TABLE OF AUTHORITIES

Cases

Ayers v. Atl. Greyhound Corp., 208 S.C. 267, 37 S.E.2d 737 (1946).....8

Bramlette v. Charter-Med.-Columbia, 302 S.C. 68, 393 S.E.2d 914 (1990).....6, 8, 9

Britt v. Sorin Grp. Deutschland GMBH, 690 F. Supp. 3d 538 (D.S.C. 2023).....21

Byerly v. Connor, 307 S.C. 441, 415 S.E.2d 796 (1992).....14, 19, 21

Charleston Lumber Co. v. Miller Hous. Corp., 318 S.C. 471, 458 S.E.2d 431 (Ct. App. 1995) 4

Clark v. McDaniel, 546 N.W.2d 590 (Iowa 1996) 20

Colleton Prep. Acad., Inc. v. Hoover Universal, Inc., 379 S.C. 181, 666 S.E.2d 247 (2008)4, 5, 6, 20

Crowley v. Spivey, 285 S.C. 397, 329 S.E.2d 774 (Ct. App. 1985).....9

Culbertson v. Johnson Motor Lines, 226 S.C. 13, 83 S.E.2d 338 (1954).....8

Damico v. Lennar Carolinas, LLC, 437 S.C. 596, 879 S.E.2d 746 (2022) 20

deBondt v. Carlton Motorcars, Inc., 342 S.C. 254, 536 S.E.2d 399 (Ct. App. 2000) 13

Doe 1 v. Varsity Brands, LLC, No. CV 6:22-2957-HMH, 2023 WL 4088483 (D.S.C. June 20, 2023) 5

Doe ex rel. Doe v. Batson, 345 S.C. 316, 548 S.E.2d 854 (2001) 4

Edwards v. State Law Enf't Div., 395 S.C. 571, 720 S.E.2d 462 (2011).....10

Edward's of Byrnes Downs v. Charleston Sheet Metal Co., 253 S.C. 537, 172 S.E.2d 120 (1970) 11, 12, 15

Elam v. South Carolina Dep't of Transp., 361 S.C. 9, 602 S.E.2d 772 (2004).....2

Fitzer v. Greater Greenville S.C. YMCA, 277 S.C. 1, 282 S.E.2d 230 (1981) 15

Freeman v. J.L.H. Invs., LP, 414 S.C. 362, 778 S.E.2d 902 (2015).....10

Grabinski v. Blue Springs Ford Sales, Inc., 136 F.3d 565 (8th Cir. 1998).....16

Graham v. Whitaker, 282 S.C. 393, 321 S.E.2d 40 (1984).....7

Greenville Bistro, LLC v. Greenville Cnty., 435 S.C. 146, 866 S.E.2d 562 (2021) 2

Hageman v. Twin City Chrysler-Plymouth, Inc., 681 F. Supp. 303 (M.D.N.C. 1988).....5

Hendricks v. Clemson Univ., 353 S.C. 449, 578 S.E.2d 711 (2003) 14, 17, 21

Henson v. S.C. Dep't of Corr., Op. No. 28343 (S.C. Sup. Ct. filed July 22, 2026) 9

Hughes v. Children's Clinic, P. A., 269 S.C. 389, 237 S.E.2d 753 (1977).....7

I'On, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000) 13

J.T. Baggerly v. CSX Transp., Inc., 370 S.C. 362, 635 S.E.2d 97 (2006) 7, 9

JKT Co. v. Hardwick, 274 S.C. 413, 265 S.E.2d 510 (1980) 12, 19

K & A Acquisition Grp., LLC v. Island Pointe, LLC, 383 S.C. 563, 682 S.E.2d 252 (2009).....13

Kennedy v. Columbia Lumber & Mfg. Co., 299 S.C. 335, 384 S.E.2d 730 (1989).....20

Lane v. Trenholm Bldg. Co., 267 S.C. 497, 229 S.E.2d 728 (1976).....12

Langley v. Boyter, 284 S.C. 162, 325 S.E.2d 550 (Ct. App. 1984), opinion quashed, 286 S.C. 85, 332 S.E.2d 100 (1985).....15

MacPherson v. Buick Motor Co., 217 N.Y. 382, 111 N.E. 1050 (1916).....12

Matthews v. Porter, 239 S.C. 620, 124 S.E.2d 321 (1962).....7

Mellen v. Lane, 377 S.C. 261, 659 S.E.2d 236 (Ct. App. 2008).....6

Mims Amusement Co. v. S.C. L. Enf't Div., 366 S.C. 141, 621 S.E.2d 344 (2005).....12, 14, 21

ML-Lee Acquisition Fund L.P. v. Deloitte & Touche, 320 S.C. 143, 463 S.E.2d 618 (Ct. App. 1995).....14, 17, 21

ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 489 S.E.2d 470 (1997).....14, 17, 21

Nelson v. Concrete Supply Co., 303 S.C. 243, 399 S.E.2d 783 (1991).....15

In re Nov. 4, 2008 Bluffton Town Council Election, 385 S.C. 632, 686 S.E.2d 683 (2009).....2

Oliver v. S.C. Dep't of Highways & Pub. Transp., 309 S.C. 313, 422 S.E.2d 128 (1992).....8

O'Brien v. B.L.C. Ins. Co., 768 S.W.2d 64 (Mo. 1989) (en banc).....16

Ex parte Peele, 85 S.C. 140, 67 S.E. 135 (1910).....13

Pfaehler v. Ten Cent Taxi Co., 198 S.C. 476, 18 S.E.2d 331 (1942).....9

Priv. Mortg. Inv. Servs., Inc. v. Hotel & Club Assocs., Inc., 296 F.3d 308 (4th Cir. 2002).....21

Ravan v. Greenville County, 315 S.C. 447, 434 S.E.2d 296 (Ct. App. 1993).....20

Ruh v. Metal Recycling Servs., LLC, 439 S.C. 649, 889 S.E.2d 577 (2023).....7, 15

Salladin v. Tellis, 247 S.C. 267, 146 S.E.2d 875 (1966).....12

Springfield v. Williams Plumbing Supply Co., 249 S.C. 130, 153 S.E.2d 184 (1967).....12

Staples v. Duell, 329 S.C. 503, 494 S.E.2d 639 (Ct. App. 1997).....19, 21

Stone v. Bethea, 251 S.C. 157, 161 S.E.2d 171 (1968).....7, 8, 14

Stubbs v. Ratliff, 202 S.C. 67, 24 S.E.2d 127 (1943).....13

Terlinde v. Neely, 275 S.C. 395, 271 S.E.2d 768 (1980).....12

Varwig v. Anderson-Behel Porsche/Audi, Inc., 74 Cal. App. 3d 578, 141 Cal. Rptr. 539 (Ct. App. 1977).....20, 21

State ex rel. Wilson v. Ortho-McNeil-Janssen Pharms., Inc., 414 S.C. 33, 777 S.E.2d 176 (2015).....5

Wineglass v. McMinn, 235 S.C. 537, 112 S.E.2d 652 (1960).....8

Wright v. Craft, 372 S.C. 1, 640 S.E.2d 486 (Ct. App. 2006).....20

Wyatt v. Fowler, 326 S.C. 97, 484 S.E.2d 590 (1997).....14, 19, 21
Young v. Tide Craft, Inc., 270 S.C. 453, 242 S.E.2d 671 (1978).....8

Statutes

S.C. Code Ann. § 56-15-10(n).....9, 11
S.C. Code Ann. § 56-15-40.....10, 11
S.C. Code Ann. § 56-15-110.....9
S.C. Code Ann. § 56-15-320.....9

Rules

Rule 56, SCRCP.....4
Rule 242, SCACR.....2

Other Authorities

Restatement (Second) of Torts § 533 (1977).....16, 17
Melvin A. Eisenberg, Legal Reasoning (2022) 2
Legal Information Institute, Wex, "But-for test," https://www.law.cornell.edu/wex/but-for_test..7

PRELIMINARY STATEMENT

Three points control this reply.

First, Grand Strand has no case. After a petition, a return, and a merits brief, Grand Strand still cites no decision—of this Court or any court—in which a culpable upstream seller who misrepresented goods sold for prompt resale escaped liability to the intended repurchaser. Its nearest authorities do not even involve a sale by the defendant.

Second, Grand Strand does not defend the justice of its own rule. Novel issues in this State are decided by the answer that best comports with "the law and public policies of this state and the Court's sense of law, justice, and right." Grand Strand never claims its position meets that standard. It does not dispute that, under its rule, innocent victims go uncompensated and fraudsters keep their gains whenever the intermediary cannot be sued. Whether the governing law is treated as settled or as novel, the result is the same: liability follows the tortious wrongdoer.

Third, Grand Strand rewrites statutes and the record. It writes limitations into the UTPA and the Dealers Act their plain text do not contain, and effectively copies a Dealers Act provision limited to one section into another.

The grant of summary judgment to Grand Strand should be reversed.

I. THE COURT SHOULD REACH THE MERITS; GRAND STRAND'S ATTEMPTS TO AVOID THEM FAIL.

A. The Questions Presented Are Properly Before the Court.

Grand Strand asks the Court to ignore Target's questions 4 through 7 as too far removed from the petition. They are not. Questions 4, 5, and 6 track Petition points I.A-D, and question 7 simply brings forward an argument Grand Strand itself ran throughout its Return. Organizing questions for clarity in light of the parties' contentions is permitted.

Any doubt is immaterial. The settled rule is that an inartful statement of a question does not bar review of an issue whose substance is clear from the decisions below. E.g., *Greenville Bistro*, *LLC v. Greenville Cnty*., 435 S.C. 146, 170-71, 866 S.E.2d 562, 575 (2021). See also Am. Reply Br. 2-3 (collecting cases). That rule forecloses the relief Grand Strand seeks, which is to avoid the issues entirely. In any event, Grand Strand's own proposed Issue 1 restores the questions in its opening words—whether the Court of Appeals "correctly affirm[ed] the grant of summary judgment to Grand Strand Nissan, Inc." Under either side's framing, the issues are before the Court.[1]

B. Target Argues the Law and the Facts of This Case, Not "Mere Hypotheticals."

Grand Strand opens its argument by charging that "Target Motors argues hypotheticals rather than the actual, undisputed facts of this case." Resp. Br. 7. Not so. Target's opening brief rests on 54 decisions of this Court and argues from the facts of this case, rather than treating the facts as their own conclusion, as Grand Strand does. And hypotheticals are a hallmark of legal reasoning, not a vice. MELVIN A. EISENBERG, LEGAL REASONING 90 (2022).

Grand Strand also contends that "Target Motors concedes that Grand Strand made no representations to it and that it did not rely on any representations by Grand Strand," and that "[i]t is these facts that divorce this case from the hypotheticals posed by Target Motors." Resp. Br. 15. That misreads the hypotheticals. Every hypothetical in Target's brief already assumes no

[1] Grand Strand separately argues that Target's fraud and negligent-misrepresentation arguments "should not be considered" because "[t]he petition does not reach the elements" of those claims. Resp. Br. 1 n.1. No rule requires a petition to list every element of a cause of action when the certified question concerns only one element. Grand Strand's rule would force the Court to read about elements unnecessary to its decision, would conflict with Rule 242(d)(3)'s command for "concise" arguments "presented with accuracy, brevity, and clarity," and would turn the appellate rules "into a trap for the unwary," contrary to *In re Nov. 4, 2008 Bluffton Town Council Election*, 385 S.C. 632, 637-41, 686 S.E.2d 683, 686-88 (2009), and *Elam v. South Carolina Dep't of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004).

direct communication, no direct representation, and no direct reliance between the original wrongdoer and the victim. The absence of those connections is the premise of each example, even where it is not spelled out. Because Grand Strand insists the premise be made explicit, the margin supplies versions that say so in terms.[2]

C. The Absence of Direct Communication and Reliance Is a Premise, Not an Answer.

Every question here—except whether dealers may sue under the Dealers Act—is a variation on one theme. When a car dealer affirmatively misrepresents a vehicle as free of structural replacements, knowing it has a major one, and intends the buyer to resell it as never-wrecked, with no direct contact and no reliance on communications that never occurred, who bears the loss: the original seller or the victim?

Grand Strand's answer, in effect, is: "There was no communication and no reliance." It repeats that observation some twenty times across an eighteen-page brief, as if it decided the case. It does not. It merely sets up the question—*what happens then?*—that Grand Strand never answers.[3]

D. The Court of Appeals' "Reservation" Does Not Bar Review.

Grand Strand writes that "[t]he court of appeals expressly reserved the question raised by Target Motors" (Resp. Br. 15). If the question is whether a second-stage buyer may sue a first-stage seller who intended the product to reach that buyer but did not deal with him directly, the

---

[2] One who throws a lit bomb is liable to the victim even if an intermediate party tosses the bomb away so it explodes next to the victim—and even if the intermediary recognized the danger, and even if the original tortfeasor never dealt with, represented anything to, or was relied on by the victim. The original wrongdoer should have expected his act to injure someone, and is liable to that someone. So too a driver whose car veers into another lane, causing a second car to strike a third: a jury could find the first driver liable to everyone in the chain, including those to whom it represented nothing and who relied on nothing it said.

[3] Grand Strand usually phrases this as one or more "admissions" by Target.

Court of Appeals answered it—while labeling it reserved. The Court should reach the merits.[4]

II. THE OPINION IMPROPERLY READS AN UNENACTED LIMITATION INTO BOTH REMEDIAL STATUTES.

A. Grand Strand Disputes Only Which Unenacted Limitation the Opinion Added.

Against Target's argument that the opinion below improperly adds to the UTPA's and Dealers Act's injury requirements a further requirement, specifically, that the injury be direct, Grand Strand counters, "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." Resp. Br. 15. That is an argument about *what* the opinion reads into the statute. Either way, the Court of Appeals erred, as Grand Strand does not dispute that it is improper to read unenacted limitations into remedial statutes.

As the same logic applies to the panel's holding on Dealers Act causation, the same resolution is appropriate.

Whether Petitioner in this case satisfies the Court's *Colleton Prep* standard is a separate matter, discussed below. But the Court should make clear it meant what it stated in *Colleton Prep*: the causation standard for UTPA claims is proximate cause, nothing more, nothing less.[5]

---

[4] Grand Strand presents *Doe ex rel. Doe v. Batson*, 345 S.C. 316, 548 S.E.2d 854 (2001), as requiring affidavits under Rule 56, SCRCP (Resp. Br. 7). In fact, summary judgment against an affidavit-less litigant was reversed as premature, vacating the duty discussion because "[t]he paucity of the record makes it impossible for us to determine the merits of Doe's argument," and remanding "for discovery and development of Doe's theories of recovery." 345 S.C. at 323, 548 S.E.2d at 858. The Rule is against Grand Strand too: it makes affidavits optional. Rule 56(c), SCRCP ("together with the affidavits, if any"); Rule 56(e), SCRCP ("by affidavits or as otherwise provided in this rule"). So are the facts: Mr. Hickman filed an affidavit (R. pp. 148-50), as Grand Strand's own brief acknowledges (Resp. Br. 6, 9).

[5] "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)).

B. Grand Strand's Reading Cannot Be Squared with *Colleton Prep*'s Result or Rationale.

Although it claims to rely on *Colleton Prep*, Grand Strand never explains how the Court could have reached its result there under Grand Strand's reading, or how its proposed rule would avoid the "absurd result" *Colleton Prep* warned against. Pet. Br. 16-17 (quoting *Colleton Prep.*, 379 S.C. at 185, 196, 666 S.E.2d at 249, 255).

C. Grand Strand's Supporting Contentions Do Not Cure the Errors.

1. Colleton Prep already defines the "causal connection" as proximate cause.

Grand Strand quotes *Colleton Prep* for the proposition that a UTPA injury must be "a result of" the tortious act (Resp. Br. 16), but overlooks that *Colleton Prep* defined that phrase: "To recover under the Act, a plaintiff must prove a violation of the Act, proximate cause, and damages." *Colleton Prep.*, 379 S.C. at 194, 666 S.E.2d at 254. Its related argument—that *Colleton Prep* and *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharms., Inc.*, 414 S.C. 33, 57-58, 777 S.E.2d 176, 189 (2015), require a "causal connection"—fails for the same reason. The *Colleton Prep* Court did not leave the "causal connection" blank to be filled in later; it said what the connection is: proximate cause.

2. A federal court's reading of North Carolina law does not override this Court's declarations of South Carolina law. The only "support" Grand Strand offers for a reliance requirement is a federal order that apparently was never made aware of *Colleton Prep*—it never mentions the case. (Resp. Br. 16) (quoting *Doe 1 v. Varsity Brands, LLC*, No. CV 6:22-2957-HMH, 2023 WL 4088483, at *13 *(D.S.C. June 20, 2023)). That order in turn rests only on another federal order construing North Carolina law. Doe*, at *13 (quoting *Hageman v. Twin*

City Chrysler-Plymouth, Inc., 681 F. Supp. 303, 308-09 (M.D.N.C. 1988)).[6]

3. Target did brief causation; the opinion Grand Strand defends never mentions proximate cause. Grand Strand says Target's opening brief "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*." That is wrong several times over. First, Target's opening brief explained at length why the *Colleton Prep* causation standard governs and how the lower courts departed from it. Pet. Br. 14-17, 22-23. Second, the only "causal connection" the Court of Appeals addressed was the new reliance requirement it added to the UTPA and the Dealers Act—which the opening brief also addressed in depth. Pet. Br. 15-17, 22-23; see also Pet. Br. 31-33. Third, the circuit court's causation analysis and the Court of Appeals' analysis differ not only from *Colleton Prep* but greatly from each other: the Court of Appeals did not adopt the circuit court's holdings (R. pp. 10–11) that there can be only one but-for cause and that the injury was unforeseeable—the very arguments Grand Strand renews here. The opinion never mentions proximate cause. Fourth, the opening brief addressed *Colleton Prep*'s proximate-cause requirement directly, showing that proximate cause has two elements, but-for causation and foreseeability, both met here, with any reasonable doubt reserved for the jury. Pet. Br. 14, 16, 17-18 & n.8, 19, 21 & n.12. Fifth, Grand Strand's sentence implies the same theory ran through the order, the opinion, and *Colleton Prep*—but the opinion never cites *Colleton Prep*. It reads as if *Colleton Prep* had never been decided.

[6] Even *Hageman*, as quoted in *Doe*, made its meaning clear: "[A] private plaintiff cannot recover in an action for a deceptive trade practice if the plaintiff is unable to prove that the deceptive practice worked." (Alteration in original.) Here it is undisputed that the deceptive practice worked—it got Grand Strand a never-wrecked price for a previously wrecked truck.

D. Proximate Cause Is for the Jury.

The parties agree that proximate cause requires only two elements: but-for causation and foreseeability. They disagree on what those terms mean.

1. The parties further agree that but-for causation means "the plaintiff's injury would not have occurred 'but for' the defendant's action." Brief of Respondent (Resp. Br.) 14 (quoting *Mellen v. Lane*, 377 S.C. 261, 278, 659 S.E.2d 236, 245 (Ct. App. 2008)); *Bramlette v. Charter-Med.-Columbia*, 302 S.C. 68, 72, 393 S.E.2d 914, 916 (1990). "Causation in fact is proved by establishing the injury would not have occurred 'but for' the defendant's [act]. "The test asks, 'but for the existence of X, would Y have occurred?'" https://www.law.cornell.edu/wex/but-for_test.

Grand Strand has never explained why Target's injury would have occurred without Grand Strand's wrongful act. Instead, it argues in effect that if Grainger's acts were a but-for cause, Grand Strand's acts cannot also be a but-for cause. But common sense and this Court's rulings establish there can be more than one but-for cause. *Ruh v. Metal Recycling Servs., LLC*, 439 S.C. 649, 654, 889 S.E.2d 577, 580 (2023) (citing *J.T. Baggerly v. CSX Transp., Inc*., 370 S.C. 362, 635 S.E.2d 97 (2006)); *Matthews v. Porter,* 239 S.C. 620, 627–28, 124 S.E.2d 321, 324–25 (1962).

Grand Strand also tries to redefine but-for causation to make reliance a part of but-for causation, where it does not belong. Grand Strand writes,

> 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.

Resp. Br. 14. But reliance is an entirely separate concept.

2. **Foreseeability and the Doctrine of Intervening Causes.** This Court has explained that 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)). Grand Strand provides no definition of "foreseeable" or the like but jumps to why it thinks it "fails." It quotes a 1968 case, *Stone*: "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.'" Resp. Br. 14 (quoting *Stone v. Bethea*, 251 S.C. 157, 162, 161 S.E.2d 171, 173 (1968)). Assuming, arguendo, that Grand Strand is correct that Grainger's attempt to recoup its loss was "entirely independent," Grand Strand ignores the more recent decision of this Court, cited in Target's opening brief, stating that an intervening act does not break foreseeability if "its probable or natural consequences could reasonably have been anticipated, apprehended, or foreseen," *Oliver v. S.C. Dep't of Highways & Pub. Transp.*, 309 S.C. 313, 317, 422 S.E.2d 128, 131 (1992); and *Bramlette's* 1990 statement that "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." 302 S.C. at 73, 393 S.E.2d at 917 (emphasis added). Pet. Br. 18 n. 8, 19. Grand Strand's reliance on *Young v. Tide Craft, Inc.*, 270 S.C. 453, 242 S.E.2d 671 (1978) for its supposed holding that unforeseeability of the mechanics of the later cause will by itself break proximate causation fails for the same reason—in fact, the later *Bramlette* decision explicitly folded *Young* into its either-suffices holding.

3. Innocence or Willfulness Makes No Difference. Grand Strand writes throughout of the knowing, intentional nature of Grainger's acts, which it contrasts with innocence at one

point, Resp. Br. 11-12 (discussing negligent misrepresentation, but the point may be intended to apply more broadly). It urges that the knowing, intentional—that is, willful, although Grand Strand avoids that word—nature of the acts makes them unforeseeable or otherwise breaks proximate causation. This, too, has been rejected by the Court, which has repeated, and re-repeated, 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); *Culbertson v. Johnson Motor Lines*, 226 S.C. 13, 24, 83 S.E.2d 338, 343 (1954); *Ayers v. Atl. Greyhound Corp.*, 208 S.C. 267, 37 S.E.2d 737, 741 (1946)); *Oliver; Bramlette*, Pet. Br. 19–20, 18 n.8; *see also Pfaehler v. Ten Cent Taxi Co*., 198 S.C. 476, 18 S.E.2d 331 (1942) (first actor liable although the more direct cause was a third party's unauthorized, drunken taking of the car); *see also Crowley v. Spivey*, 285 S.C. 397, 409, 329 S.E.2d 774, 781–82 (Ct. App. 1985) (first actors liable where the intermediate actor shot and killed the victims).

4. It's a Jury Issue. "Proximate cause 'is a question of fact for the jury.'" *Henson v. S.C. Dep't of Corr.*, Op. No. 28343, slip op. at 8 (S.C. Sup. Ct. filed July 22, 2026) (quoting *J.T. Baggerly*, 370 S.C. at 369, 635 S.E.2d at 101). At trial, Grand Strand will be entitled to argue to the jury that Target's injury would have occurred even if Grand Strand's wrongful act had not, and that the injury of someone paying a never-wrecked price for a previously-wrecked truck was unforeseeable, but it is not entitled to summary judgment on those issues.

III. DEALERS MAY SUE UNDER THE DEALERS ACT; THE CONTRARY HOLDING SHOULD BE REVERSED.

Grand Strand cites no case—other than this one—holding that a dealer may not sue under the Dealers Act's "any person" provision and its express definition of "person." S.C. Code Ann. §§ 56-15-110(1), 56-15-10(n). Nor has anyone cited a case the other way. The issue appears to be one of first impression in the appellate corpus.

A. Grand Strand Again Seeks an Unenacted Limitation on a Remedial Statute.

Grand Strand does not deny that the panel misread *Mid-State Auto*, nor that it applied a limitation confined to one section (§ 56-15-320) to the Act as a whole. It does not deny that excluding dealers from the Act's "any person" provision is inconsistent with the statute read whole and discordant with its purpose. And—most importantly—it does not dispute that transplanting a single-section limitation into a separate, broad section, where it conflicts with that section's plain language and purpose, is reversible error.

Nor does Grand Strand claim the plain language is other than Target quotes it. Its statement that "[i]n future cases, the language of the Dealers Act will control" (Resp. Br. 17) (emphasis added) effectively concedes that here, the language did *not* control. As with statutory causation, Grand Strand asks the Court to read limiting words into a remedial statute. Because the opinion contradicts this Court's decisions, it should be reversed.

B. Grand Strand's Supporting Contentions Do Not Cure the Error.

Grand Strand quotes the opinion—"citing *Freeman v. J.L.H. Invs., LP*, 414 S.C. 362, 778 S.E.2d 902 (2015)"—for the proposition that the Dealers Act was enacted "for the purpose of consumer protection." Resp. Br. 17. That would help Grand Strand only if the Act served consumer protection *alone*—and any such argument is defeated by the Act's plain language, which provides more than consumer protection. *See* Pet. Br. 12; *Edwards v. State Law Enf't Div.*, 395 S.C. 571, 575, 720 S.E.2d 462, 464 (2011). Grand Strand has no answer to the opening brief's showing that *Freeman* does not make consumer protection the Act's only purpose. *Freeman*'s actual sentence is: "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." 414 S.C. at 373, 778 S.E.2d at 908. *Freeman* never held the Act is *only* a consumer-protection statute, and the holding Grand Strand urges would override the Act's plain language.

Grand Strand's argument that § 56-15-40 "does not include any dealer to dealer conduct in its list of '[s]pecific acts deemed unfair methods of competition'" (Resp. Br. 17) is technically true but irrelevant. That section lists forbidden *acts*; it does not say who may sue. The Act answers that separately: "any person" injured may sue, and "person" is defined to include dealers.[7] Grand Strand never addresses this showing. (*See* Pet. for Cert. 4-5; Cert. Reply 1-2; Pet. Br. 12.)

Grand Strand also argues that the conduct here is not referenced in § 56-15-40(4). Resp. Br. 17. The paragraph it cites no longer exists, and in any event the point is irrelevant: whether paragraph (4) or the renumbered paragraph (E) also reaches this conduct does not matter, because paragraph (B) of the same section already deems it a violation 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." That another subsection does not repeat the prohibition does not undo (B).

Grand Strand's contention that the panel's holding is limited to this case's facts has no answer to Target's point that a rule that "this dealer cannot sue because no dealer may sue" cannot be confined to its facts. And Grand Strand's suggestion that the 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," fails because the causation holding fails, for the reasons in Part II.D.

[7] S.C. Code Ann. § 56-15-10(n) defines "Person" as "a natural person, corporation, partnership, trust or other entity, and, in case of an entity, it shall include any other entity in which it has a majority interest or effectively controls as well as the individual officers, directors and other persons in active control of the activities of each such entity."

Because the opinion conflicts with the Act's text, its definition of "person," and its purposes—and Grand Strand disputes none of that conflict—the Court should reverse.

IV. SETTLED OR NOVEL, THE COMMON-LAW ISSUES RESOLVE FOR TARGET.

Grand Strand insists "well-settled South Carolina law" controls. Resp. Br. 8. If so, Target wins: the only settled law is that a seller's liability does *not* stop with its immediate purchaser. Target's opening brief quoted several decisions of this Court so holding—*Byrnes Downs*, *Springfield*, *Salladin*, and *Lane*. Pet. Br. 30-34.[8] *See also JKT Co. v. Hardwick*, 274 S.C. 413, 265 S.E.2d 510 (1980); *Terlinde v. Neely*, 275 S.C. 395, 271 S.E.2d 768 (1980). Under those holdings, Grand Strand loses. The Court of Appeals dicta on which Grand Strand mainly relies are, by definition, not settled law.

If the governing law is *not* settled, Grand Strand loses again. Novel issues are decided by "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." *Mims Amusement Co. v. S.C. L. Enf't Div.*, 366 S.C. 141, 145, 621 S.E.2d 344, 346 (2005). Grand Strand has never defended the justice or rightness of its position. It does not dispute that its rule leaves innocent victims uncompensated and fraudsters enriched whenever the intermediary cannot be sued; it says only that the harm will not occur when the intermediary *is* suable. That concession leaves every case in which the intermediary is unavailable—including, potentially, this one: Grand Strand moved for summary judgment against Grainger, withdrew the motion (without prejudice) after Target flagged it to the

[8] *Edward's of Byrnes Downs v. Charleston Sheet Metal Co.*, 253 S.C. 537, 172 S.E.2d 120 (1970); *Springfield v. Williams Plumbing Supply Co.*, 249 S.C. 130, 153 S.E.2d 184 (1967); *Salladin v. Tellis*, 247 S.C. 267, 146 S.E.2d 875 (1966); *Lane v. Trenholm Bldg. Co.*, 267 S.C. 497, 229 S.E.2d 728 (1976). These and other cases are discussed at Pet. Br. 30-34. *See also MacPherson v. Buick Motor Co.*, 217 N.Y. 382, 111 N.E. 1050 (1916), on which *Springfield* and *Salladin* rest, discussed at Pet. Br. 31.

Court of Appeals, and may refile and keep its gains if it prevails here.

A. Grand Strand Has No Case in Which a Culpable Upstream Seller That Misrepresented Goods Sold for Prompt Resale Escaped Liability to the Intended Repurchaser.

Three filings in, Grand Strand still has not produced a single case in which an indirect seller who misrepresented a product in a transaction intended as an intermediary step bore no liability to the intended repurchaser.

Dicta does not make a point settled. On the remaining disputed issues—ignoring the standard of review, the meaning of but-for, and similar boilerplate—all Grand Strand has is dicta.

1. Dicta Is Not Controlling.

"Even an obiter dictum from Chief Justice McIver is entitled to great consideration; but it should not control when opposed to the result of careful examination of the law in a case where the question is directly involved." *Ex parte Peele*, 85 S.C. 140, 145, 67 S.E. 135 (1910). *Stubbs v. Ratliff*, 202 S.C. 67, 70–71, 24 S.E.2d 127, 128 (1943) (quoting and applying the same passage). "[W]e find the case is distinguishable and the statement constitutes dicta." *K & A Acquisition Grp., LLC v. Island Pointe, LLC*, 383 S.C. 563, 682 S.E.2d 252, 259 n.4 (2009). *See also I'On, LLC v. Town of Mt. Pleasant,* 338 S.C. 406, 411 & n.1, 526 S.E.2d 716, 718–719 & n.1 (2000) (holding "a novel question of law" existed despite an earlier Supreme Court holding whose language would have resolved the case, as the earlier case "did not address" the specific issue in the current case);

2. Grand Strand Has Only Dicta.

Grand Strand presents no case holding that when one who knows the truth affirmatively misrepresents a good, while intending its purchaser to turn around and re-sell the good with the same representation, is not suable by the victim. Nor, more broadly, when the seller has reason to know the truth it misrepresents, not actual knowledge, or has reason to expect the resale, not

actual intent that it be resold. . Not one.[9] Target has repeatedly called attention to this absence,[10] and Grand Strand still has nothing. Its only Supreme Court cases near the issue do not even involve a sale by the defendant.[11]

Nor does Grand Strand have dicta from cases that actually considered the question as a hypothetical.

It appears to Petitioner that even the dicta Respondent most presses is entirely from the Court of Appeals. Thus, at best for Grand Strand, the issues are open.

B. If an Issue Here Is Novel , the *Mims* Standard Applies.

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." *Mims Amusement Co. v. S.C. L. Enf't Div*., 366 S.C. 141, 145, 621 S.E.2d 344, 346 (2005).[12]

---

[9] The closest is *deBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 536 S.E.2d 399 (Ct. App. 2000), where a dealer told a customer one thing and the manufacturer the reverse. The court found no evidence of fraud by the manufacturer but allowed the customer's Dealers Act and UTPA claims against it to proceed—and, as to the dealer that made the false representation, reversed summary judgment on fraud, deceit, and negligent misrepresentation. 342 S.C. at 268, 536 S.E.2d at 406. Liability followed the tortious wrongdoer.

[10] *See* Pet. Br. 27-28; Am. Reply Br. 15-16 & n.18, 22 & n.23; Pet. for Reh'g 11-12; Reply to Return 14.

[11] Arranged alphabetically: *Byerly v. Connor*, 307 S.C. 441, 443-44, 415 S.E.2d 796, 798 (1992) (hazardous condition on leased land); *Hendricks v. Clemson Univ.*, 353 S.C. 449, 456-57, 578 S.E.2d 711, 714 (2003) (academic advising of a student-athlete); *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 240, 489 S.E.2d 470, 471 (1997) (accountant's audits); *S.C. State Ports Auth. v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 376, 346 S.E.2d 324, 325-26 (1986) (consultant's market study); *Wyatt v. Fowler*, 326 S.C. 97, 101, 484 S.E.2d 590, 592 (1997) (State's proceedings against a citizen). Grand Strand's other Supreme Court citations on the common-law claims are its summary-judgment-standard cases (Resp. Br. 6-7), the two causation cases addressed above (*Young*; *Stone*), and an economic-loss case whose premise—privity—Grand Strand concedes is absent (Resp. Br. 13).

[12] Target has pressed this standard repeatedly. Pet. Br. 28–29, 32; Reply to Return 13 n.20; Pet. for Cert. 8; Pet. for Reh'g 10; Am. Reply Br. 23. *See also* Br. of Appellant 11 n.5, 38 (quoting

C. The *Mims* Standards Yield a Decision for Target.

Target has argued that its position best comports with public policies, Pet. Br. 33-34; and the parties' briefs may reasonably be seen as advocating that their positions best comport with the governing legal framework, but Grand Strand's filings nowhere claim its position comports with "justice and right." The closest Grand Strand comes is to say its rule is just *when the intermediary can be sued*—leaving every case where the intermediary cannot, and the victim ends up with nothing while the fraudster keeps its gains.[13]

On comporting with our law, the isolated dicta Grand Strand cites cannot compete with this Court's own words:

> The question of whether the principal in an independent-contractor relationship can be held liable for its own negligence in selecting a particular contractor has never been squarely before this Court. We view our "yes" answer to the question, however, as a straightforward application of the defining principles of tort law in this State, and we believe our answer should come as no surprise to even a casual student of the law.

Ruh, 439 S.C. at 654, 889 S.E.2d at 580 (emphasis in original) (citing *Fitzer*, 277 S.C. at 3, 282 S.E.2d at 231 ("There is no tenet more fundamental in our law than liability follows the tortious wrongdoer.")). *Ruh* added that "the basic premise of our fault system" is that a defendant "who is at fault in causing an accident" should not be allowed "to escape bearing any of its cost." *Id.* n.2.[14] And this Court held: "[N]o state has held that a principal is insulated from the

---

similar standard in *State v. Sweat*); has repeatedly identified what is unjust about Grand Strand's rule (Pet. Br. 27-29, 34; Reply to Return 2, 6; Pet. for Cert. 1, 6-7; Pet. for Reh'g 9; Am. Reply Br. 1, 24-25), and has repeatedly noted Grand Strand's silence (Pet. Br. 10; Reply to Return 2; Am. Reply Br. 9, 19).

[13] Grand Strand does not deny it attempted exactly that here, and has reserved the right to try again. *See* Pet. Br. 4.

[14] *Ruh*, 439 S.C. at 654 n.2, 889 S.E.2d at 580 n.2 (quoting *Langley v. Boyter*, 284 S.C. 162, 183, 325 S.E.2d 550, 562 (Ct. App. 1984), *opinion quashed*, 286 S.C. 85, 332 S.E.2d 100 (1985), reasoning later adopted in *Nelson v. Concrete Supply Co.*, 303 S.C. 243, 399 S.E.2d 783 (1991);

consequences of its own negligence simply because its contractor was also negligent in causing the injury." *Ruh*, 439 S.C. at 655, 889 S.E.2d at 581. By the same logic, no court has held that a car dealer is insulated from the consequences of its own fraud simply because its intermediary committed the same wrong.

The novel-issue standard therefore points one way. Grand Strand's rule finds no support in this State's tort principles and no defense in justice; Target's position is a straightforward application of the rule that liability follows the tortious wrongdoer.

D. Grand Strand's Own Authorities Support Target.

1. Innocent intermediaries are not required for liability. Grand Strand partially quotes Restatement (Second) of Torts § 533 (1977): "[T]he 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 . . . ." Resp. Br. 12. The ellipsis is Grand Strand's, and it suggests the gap should be filled with "through an innocent intermediary." (*See id.*; *id.* p. 11.) There is no need to speculate. The drafters filled it: "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 test turns on what the maker "intends or has reason to expect" at the time of the misrepresentation—not on how, or how innocently, the statement is later passed along. Whether the intermediary repeats the statement happily or

---

and RALPH C. McCULLOUGH II & GERALD M. FINKEL, A GUIDE TO SOUTH CAROLINA TORTS IV-2 (1st ed. 1995)). The duty at issue is the duty to use due care not to injure others who are not parties to the contract. *See* Pet. Br. 30 (quoting *Byrnes Downs*, 253 S.C. at 542, 172 S.E.2d at 122) ("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.").

angrily, innocently or culpably, in writing or by phone, is beyond the Restatement's concern, and should be. Liability attaches, or does not, at the moment of the misrepresentation.

Grand Strand reads an innocent-intermediary requirement into "each of" Target's cases holding culpable upstream dealers liable to downstream purchasers. Resp. Br. 12. That is inaccurate: some of those cases involved innocent intermediaries and some culpable ones, and the culpable first actors were held reachable by the downstream victim regardless of the intermediary's culpability.[15] Grand Strand offers no reason its rule is sound. "You are liable if your intermediary is a saint, but if you have reason to suspect his honesty, you go free" makes no sense. The Restatement and Target's cases fit this Court's repeated holding that an intermediary's culpability "matters not," *see supra Part II.D.3*—a conflict Grand Strand never tries to resolve.[16]

2. ML-Lee supports Target. Grand Strand describes *ML-Lee Acquisition Fund L.P. v. Deloitte & Touche*, 320 S.C. 143, 160-62, 463 S.E.2d 618, 628-29 (Ct. App. 1995), as "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." Resp. Br. 12. This case has exactly those facts. And *ML-Lee*, on the very pages Grand Strand cites, quotes the governing standard with approval: "It is enough, likewise, that the maker of the representation knows that his recipient intends to transmit the information to a similar person, persons, or group." 320 S.C. at 160, 463 S.E.2d at 628. This case meets that test.

---

[15] In *O'Brien v. B.L.C. Ins. Co.*, 768 S.W.2d 64, 68-69 (Mo. 1989) (en banc), the culpable intermediary settled and the upstream seller remained liable; in *Grabinski v. Blue Springs Ford Sales, Inc.*, 136 F.3d 565, 569 (8th Cir. 1998), a culpable first seller and a culpable intermediary were both liable.

[16] Grand Strand also concedes that South Carolina has not adopted § 533, but offers no reason it should not be adopted.

3. Hendricks supports Target. Grand Strand quotes two sentences from *Hendricks v. Clemson Univ.*, 353 S.C. 449, 456-57, 578 S.E.2d 711, 714 (2003), ending with "Ordinarily, the common law imposes no duty on a person to act." Resp. Br. 9. It omits the next sentence: "Where an act is voluntarily undertaken, however, the actor assumes the duty to use due care." Grand Strand acted voluntarily—it sold the frame, certified the truck, and sold the truck for resale. Under Grand Strand's own case, it owed a duty of due care.[17]

E. The Decision Should Also Be for Target on the Basis of Completed Torts.

1. Completed torts.

Grand Strand does not directly deny that it completed torts against Grainger. Respondent does not address the opening brief's showing that a jury could find Grand Strand completed torts against Grainge before Grainger ever resold. Pet. Br. 10. Nor does it dispute that one is generally held liable for the foreseeable harms its torts against one proximately cause others. Pet Br. 19, 29, 32, 34. Petitioner argued that Grand Strand was therefore liable for the harms to an adjacent third party—Target—for its completed fraud, Pet. Br. 29, negligence, Pet. Br. 32, and negligent misrepresentation, Pet. Br. 34, against Grainger, provided one or more of those completed torts were proved at trial. Respondent does not directly address these arguments.

The only indirect rebuttals Petitioner sees in Respondent's brief is, first, its claim that but-for causation and foreseeability mean something other than whether the injury would have occurred without Grand Strand's acts and whether the type of injury to someone like Plaintiff was foreseeable. Target is not a remote link in a long chain; it was the first re-purchaser, months later, through the very resale channel Respondent chose. The common-law claims should go to

[17] *See* Pet. Br. 30.

the jury on this ground alone, as the admissions on which Respondent rests cannot support summary judgment on the common-law claims.

The second indirect rebuttal is Respondent's erroneous claim about timing, which is discussed in the next section.

2. Chronology

Grand Strand incorrectly states that Grainger received a partial refund before it sold the truck to Target. It states, "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. *After resolving* Grainger's claims . . . Manheim and Grainger decided to sell the vehicle" through Manheim's auction. Resp. Br. 5 (emphasis added) (citing only R. at 121 # 11 for the refund). But its own source, 121 # 11, indicates the agreement was after the sale to Target.[18]

And the 50% refund was not "on the truck," but only on the loss. Id. Grand Strand paid none of that. It was Manheim, not Grand Strand, that paid the loss. *Id.* Manheim is the Auction. Target corrected all three points in the Court of Appeals, Am. Reply Br. 10 & n.8, and the payor again at certiorari, Cert. Reply 5 n.6—and Respondent's brief repeats the same two sentences. Grand Strand still has not paid a penny to anyone for its misrepresentation.

F. Grand Strand's "Courts Are Reluctant to Expand Tort Liability" Argument Is Wrong and Off Point.

To the extent Grand Strand reaches the merits of the novel issues, it argues that "[c]ourts are reluctant to create new duties or to expand tort liability." Resp. Br. 9. It cites three cases. *Id.*

---

[18] R. at 121 # 11 states in part,

> Mr. McKenzie advised that he could not sell the truck showing the damages listed on the AutoCheck report. Manheim offered to re-run the truck and sold it as a result. The truck was sold and lost money. Mr. McKenzie requested Manheim cover the entire loss. They would not. They offered to split 50% of the loss, which Mr. McKenzie agreed to even though he did not believe it was fair.

(citing *Staples v. Duell*, 329 S.C. 503, 494 S.E.2d 639 (Ct. App. 1997); *Wyatt v. Fowler*, 326 S.C. 97, 484 S.E.2d 590 (1997); *Byerly v. Connor*, 307 S.C. 441, 415 S.E.2d 796 (1992)).[19] None says what Grand Strand claims, and none is on point. *Staples* and *Byerly* involved defendants who played no role in creating the harm and had no knowledge of the danger. (*Staples*, 329 S.C. at 509 n.2, 494 S.E.2d at 642 (no awareness of the dead tree); *Byerly*, 307 S.C. at 443, 415 S.E.2d at 797 (a condition the defendant "did not create and about which it had no knowledge").) *Wyatt* concerns the public-duty rule and is likewise inapposite.

On the contrary, this Court "has not been reluctant" to extend liability to a transaction to which the plaintiff was not a party. *JKT Co. v. Hardwick*, 274 S.C. 413, 417, 265 S.E.2d 510, 512 (1980) ("The erosion of the concept of privity has been a legal phenomenon for more than a decade, and this Court has not been reluctant to contribute to its demise."). "South Carolina is in the vanguard in permitting a plaintiff to recover economic loss from a seller with whom he did not deal and who made no express warranties to him." *Id.* at 418, 265 S.E.2d at 512. When faced with a new scenario "not properly disposed of by our present set of rules," this Court "respond[s] by expanding our rules to provide the innocent buyer with protection." *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 621, *879* S.E.2d 746, 760 (2022), *cert. denied*, 143 S. Ct. 2581 (2023) (quoting *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 384 S.E.2d 730 (1989)). And *Colleton Prep* recognized the Court's "policy of providing a remedy where a duty outside the contract is breached." 379 S.C. at 191, 666 S.E.2d at 252. Expanding protection to Target, if any expansion is even needed, is a continuation of that policy—not a departure from it.

[19] *Staples*, *Wyatt*, and *Byerly* appear in Grand Strand's Part II. Because Grand Strand deploys them as merits arguments on the novel issues, Target answers them here, with the merits.

G. The Decision Is for Target Even Apart from the Novel-Issue Standards.

Even setting aside the "justice and right" considerations required for novel questions, the result does not change. The fundamental tenet that liability follows the tortious wrongdoer is a deeper principle of this State's law than the unconsidered dicta Grand Strand offers.

H. Grand Strand's Remaining Authorities Do Not Help It.

Grand Strand cites fourteen cases across its next two Parts, but none supports the proposition that the issues here are settled in its favor. Only two concern a culpable seller intending or expecting the sale to reach beyond its immediate customer—and both allowed the remote buyer's claim against the upstream dealer. *Varwig v. Anderson-Behel Porsche/Audi, Inc.*, 74 Cal. App. 3d 578, 141 Cal. Rptr. 539 (Ct. App. 1977); *Clark v. McDaniel*, 546 N.W.2d 590 (Iowa 1996); (*see* Resp. Br. 12).[20]

Summation to Part IV. Grand Strand never contends that any holding of this Court decides any question presented. It never contends that its position survives the criteria for deciding novel issues. And it never offers a decision of this Court—or any court—holding an upstream malfeasor not liable to a downstream purchaser on remotely comparable facts. Even without the "justice and right" considerations of *Mims*, the fundamental precept that liability follows the tortious wrongdoer outweighs the dicta Grand Strand presents.

[20] Grand Strand's remaining Part II cases are *Wright v. Craft*, 372 S.C. 1, 640 S.E.2d 486 (Ct. App. 2006) (buyer may recover from the dealer that sold to him; silent on the dealer one step up the chain); *Ravan v. Greenville County*, 315 S.C. 447, 434 S.E.2d 296 (Ct. App. 1993) (duty owed to a downstream purchaser); *Priv. Mortg. Inv. Servs., Inc. v. Hotel & Club Assocs., Inc.*, 296 F.3d 308 (4th Cir. 2002) (appraiser answerable to a non-client third party); and *Britt v. Sorin Grp. Deutschland GMBH*, 690 F. Supp. 3d 538 (D.S.C. 2023) (quoted only for the statement that the Supreme Court "has yet to extend negligent misrepresentation beyond the accounting or consulting contexts"—which, if anything, suggests the issue is open). *ML-Lee* and *Hendricks* are addressed in subsections D.2 and D.3; *Staples*, *Wyatt*, and *Byerly* in subsection E; *Booz-Allen* and the economic-loss case in note 16; *Varwig* and *Clark* in the text above.

CONCLUSION

For the foregoing reasons, the grant of summary judgment to Grand Strand Nissan, Inc. should be reversed, and the case remanded for trial. Whether the governing law is treated as settled or as novel, the controlling principle is the same: a fraudulent seller does not escape liability to the buyer it intended to reach by pointing to the intermediary through which it meant its misrepresentation to pass. Liability follows the tortious wrongdoer.

<table>
<tr><td colspan="2">Respectfully submitted,</td></tr>
<tr><td>*s/Brooks R. Fudenberg*
LAW OFFICES OF BROOKS R. FUDENBERG, LLC
Brooks R. Fudenberg
14 Ashe Street
Charleston, SC 29403
Tel.: (843) 416-2558
eFax: (910) 401-1242
BRF@Fudenberglaw.com</td><td>*s/C. Steven Moskos*
C. STEVEN MOSKOS, P.A.
C. Steven Moskos
6650 Rivers Ave., Ste 210
N. Charleston, SC 29406
Tel. (843) 763-5297
Steve@moskoslawfirm.com</td></tr>
<tr><td colspan="2">Attorneys for Petitioner</td></tr>
</table>