

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

<b>JANET BATCHELOR,</b>	:	
<b>Formerly DBA DANCENERGY,</b>	:	<b>ID No. K17C-11-001 NEP</b>
	:	<b>In and For Kent County</b>
<b>PLAINTIFF,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>ALEXIS PROPERTIES, LLC,</b>	:	
<b>BB PROPERTIES OF DELAWARE,</b>	:	
<b>LLC, JOHN WELCOME d/b/a</b>	:	
<b>WELCOME HOME REALTY &amp;</b>	:	
<b>LIVEDE.COM, INC. and</b>	:	
<b>MELISSA HOPKINS, ESQ.</b>	:	
	:	
<b>DEFENDANTS.</b>	:	

Submitted: December 5, 2017  
Decided: February 23, 2018

**ORDER**

Before the Court are Defendants John Welcome’s (hereinafter “Defendant Welcome”), Alexis Properties’ (hereinafter “Defendant Alexis”) and Melissa Hopkins’s (hereinafter “Defendant Hopkins”) motions to dismiss. The motions request dismissal of all counts of the complaint filed by Ms. Janet Batchelor (hereinafter “Plaintiff”), who seeks damages relating to a lease of a property located at 5099 N. Dupont Hwy. Ste B, Dover, DE 19901 (hereinafter the “Property”).

The facts recited are those as alleged in Plaintiffs' complaint.<sup>1</sup> On May 4, 2016, Plaintiff signed a lease prepared by Defendant Welcome (hereinafter the "Lease"), which would lease the Property, owned by BB Properties of Delaware, LLC, to Plaintiff for the term of June 1, 2016 to May 31, 2017. Plaintiff intended to use the property to operate a dance studio, and, in anticipation of taking possession, incurred certain expenses. Upon assuming possession on June 1, 2016, Plaintiff found the premises filled with garbage and debris, rendering it unfit for her purposes, and began efforts to put it into a condition such that the premises could be used.

On June 30, 2016, the Property was sold to Defendant Alexis, but Defendant Welcome continued to manage the Property. Shortly thereafter, Defendants Alexis and Welcome leased the Property's storage unit and parking lot to a third party in violation of the Lease. The third parties' use of these areas hindered Plaintiff's use of the Property. On March 2, 2017, and again on May 2, 2017, Plaintiff gave Defendants notice that she would be vacating based on Defendants' actions. Plaintiff vacated on May 31, 2017. Thereafter, Defendants threatened legal action, and later, employing the services of Defendant Hopkins, filed a summary possession complaint and a debt action, which were legally groundless and intended to extort money from Plaintiff. Plaintiff then filed this suit, alleging various breaches of contract, breach of the covenant of good faith, and malicious prosecution.

Three motions to dismiss are now before the Court, one filed by Defendant Alexis, a second by Defendant Welcome, and the third by Defendant Hopkins.

In its motion, Defendant Alexis argues that dismissal is appropriate due to (1) a failure to plead damages and (2) a failure to allege standing, as Plaintiff was not a party to the rental agreement.

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<sup>1</sup> *Savor Inc. v. FMR Corp.*, 812 A.2d 894, 896–97 (Del. 2002) (on a motion to dismiss "all well-pleaded factual allegations are accepted as true.").

Defendant Welcome's motion to dismiss is largely identical to that filed by Defendant Alexis, but also argues that Defendant Welcome was improperly named instead of Liveinde.com, Inc. Defendant Welcome provides no law or authority indicating that such would be appropriate.

Defendant Hopkins moves only to dismiss the claim for malicious prosecution. Dismissal, she argues, is warranted because (1) all actions she filed were filed with probable cause and in good faith; (2) Plaintiff has failed to plead damages; and (3) the summary possession action was voluntarily dismissed and did not terminate in Plaintiff's favor.

On a motion to dismiss, the moving party bears the burden of demonstrating that "there are no material issues of fact and that he is entitled to judgment as a matter of law."<sup>2</sup> Upon this Court's review of a motion to dismiss, "(i) all well-pleaded factual allegations are accepted as true; (ii) even vague allegations are well-pleaded if they give the opposing party notice of the claim; (iii) the Court must draw all reasonable inferences in favor of the non-moving party; and (iv) dismissal is inappropriate unless the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof."<sup>3</sup> Additionally, "a *pro se* pleading is judged by a 'less stringent standard' than a pleading or document filed by an attorney."<sup>4</sup>

As an initial matter, the Court finds that because Defendant Welcome failed to cite any legal authority or to craft a legal argument to persuade the Court that he should be dismissed because he was acting as a mere agent of Liveinde.com, Inc., he has failed to demonstrate entitlement to judgment as a matter of law on that basis.

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<sup>2</sup> *Daisy Constr. Co. v. W.B. Venables & Sons, Inc.*, 2000 WL 145818, at \*1 (Del. Super. Jan. 14, 2000).

<sup>3</sup> *Savor Inc.*, 812 A.2d at 896-97.

<sup>4</sup> *Johnson v. State*, 442 A.2d 1362, 1364 (Del. 1982).

Insofar as he wishes the complaint to be amended, such an application is properly brought by Plaintiff.<sup>5</sup> The Court shall consider further arguments concerning the strength of claims against Mr. Welcome personally at the summary judgment phase.

Because the multiple motions to dismiss before the Court contain similar arguments, the Court shall address the motions collectively, on an issue-by-issue basis. First, the Court shall consider whether Plaintiff has standing to bring all claims, then whether she has failed to plead damages, and finally whether dismissal of the malicious prosecution claim against Defendant Hopkins is warranted.

### **A. Standing**

Defendants Alexis's and Welcome's motions to dismiss assert that Plaintiff lacks standing to pursue her claims against them. This is so, Defendants argue, because Plaintiff is suing for breach of a rental agreement, even though she is not the tenant named on the agreement: the Lease names Dancenergy<sup>6</sup> as the tenant, with Plaintiff merely signing the agreement.

Plaintiff responds that she does have standing to bring suit: while the lessee was named as Dancenergy in the Lease, she asserts that she was the "sole proprietor" of the dance studio and that "Dancenergy" is a fictitious name for which a proper application had been filed.

Notably, neither party has cited any legal authority to persuade the Court on the issue of standing. As indicated earlier, on a motion to dismiss, the moving parties, here the Defendants, bear the burden of demonstrating entitlement to judgment as a matter of law. Defendants argue that Plaintiff does not have standing to sue for the

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<sup>5</sup> Super. Ct. Civ. R. 15.

<sup>6</sup> In the Lease, the entity is referenced as "Dance Energy" rather than "Dancenergy," which is the reference in the complaint.

contractual injuries alleged, but have offered no case law or legal authority whatsoever in support of this argument.<sup>7</sup> The Court must conclude that Defendants have failed to demonstrate entitlement to judgment as a matter of law.

## **B. Failure to Plead Damages**

Defendants argue that dismissal is warranted because Plaintiff has failed to plead damages, which are “an essential element” of each claim against Defendants. While Defendants apparently concede that Plaintiff generally pleaded that she had suffered damages, she did not plead “specific factual allegations supporting the existence of legally cognizable damages,” and she failed to “logically show how she, as an individual, suffered damages economically or otherwise.”

Plaintiff’s opposition response fails to address this aspect of Defendants’ motions.

As noted in *Nieves v. All Star Title, Inc.*, a decision of this Court cited by Defendants, Plaintiff must plead all essential elements of the claims brought.<sup>8</sup> Damages are an essential element of breach of contract,<sup>9</sup> breach of the implied covenant of good faith and fair dealing,<sup>10</sup> and malicious prosecution.<sup>11</sup>

Regarding breach of contract, Plaintiff alleges four separate counts: Count I alleges breach by delivering the premises filled with debris and garbage; Count II alleges that Defendants wrongfully leased the parking lot to a third party; Count III

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<sup>7</sup> Defendants Alexis and Welcome concede in their motions that it is “unclear” from the Lease what type of entity “Dancenergy” is.

<sup>8</sup> 2010 WL 4227057 at \*4 (Del. Super. Oct. 22, 2010).

<sup>9</sup> *Interim Healthcare, Inc. v. Spherion Corp.*, 884 A.2d 513, 548 (Del. Super. 2005), *aff’d*, 886 A.2d 1278 (Del. 2005).

<sup>10</sup> *Charlotte Broad., LLC v. Davis Broad. of Atlanta, L.L.C.*, 2015 WL 3863245, at \*6 (Del. Super. June 10, 2015), *aff’d*, 134 A.3d 759 (Del. 2016).

<sup>11</sup> *Quartarone v. Kohl's Dep't Stores, Inc.*, 983 A.2d 949, 954 (Del. Super. 2009).

alleges that Defendants wrongfully leased the communal spaces to a flea market; and Count IV alleges that Defendants failed to return the security deposit.

Plaintiff claims that the damages suffered as a result of Count I are that she was forced to take efforts “in Mid-June [sic] 2016, to put the premises into a condition she could use for it’s [sic] Intended [sic] purpose.”<sup>12</sup> For Counts II and III, Plaintiff alleges that she was wrongfully denied the use of the property she bargained for, such use having some economic value as indicated by the Lease, and further that the leasing of these areas to third parties “prohibited Plaintiff from conducting business,” impliedly resulting in lost profits. Finally, for Count IV, the loss of the money constituting the security deposit is self-evident damage. Therefore, it appears that the damages alleged were sufficient to put Defendants on notice of the nature of the claims. While it appears from Defendants’ motions that these allegations are, in their view, insufficient, they again have provided no legal authority or argument to convince the Court that these allegations of damages are insufficient to survive dismissal.

### **C. Malicious Prosecution**

Defendant Melissa Hopkins argues that dismissal of the malicious prosecution charge is warranted because (1) all actions were filed with probable cause and in good faith; (2) Plaintiff has failed to plead damages; and (3) the summary possession action was voluntarily dismissed and did not terminate in Plaintiff’s favor.

In response, Plaintiff asserts that Ms. Hopkins did not have probable cause to file the suit. As to damages, Plaintiff claims it was a “reasonable conclusion” from her original filing that the allegations in the complaint have injured her personal and

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<sup>12</sup> Complaint ¶ 22.

professional reputation. Finally, Plaintiff has no reply to the claim that the possession action did not terminate in her favor.

Malicious prosecution claims are viewed with disfavor by Delaware courts, and assessed with careful scrutiny.<sup>13</sup> To plead malicious prosecution, a plaintiff must allege: “(1) the institution of civil proceedings; (2) without probable cause; (3) with malice; (4) termination of the proceedings in the aggrieved party's favor; and (5) damages which were inflicted upon the aggrieved party by seizure of property or other special injury.”<sup>14</sup>

As to Defendant Hopkins's first argument regarding why dismissal of the malicious prosecution claim is warranted, defendant Hopkins's insistence that she had probable cause to file the suit and did so in good faith will not avail her in the face of Plaintiff's assertions to the contrary. Defendant Hopkins alleges that her clients represented to her that they did not have possession of the property, and only later discovered that they did have possession and timely voluntarily dismissed the action. In contrast, Plaintiff alleges that Defendant Hopkins “knew Plaintiff had fulfilled the lease terms and properly vacated.” Plaintiff's allegations must be accepted as true until such time as the factual record is more developed.<sup>15</sup> However, should Plaintiff be unable to discover evidence that Defendant Hopkins brought the action without probable cause and in bad faith, this claim is subject to be resolved in Defendant Hopkins's favor at the summary judgment phase.

Defendant Hopkins's second argument in favor of dismissal fails because Plaintiff alleged in the complaint that the malicious prosecution “caused plaintiff

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<sup>13</sup> *Kaye v. Pantone, Inc.*, 395 A.2d 369 (Del. Ch. 1978).

<sup>14</sup> *Nix v. Sawyer*, 466 A.2d 407, 411 (Del. Super. 1983).

<sup>15</sup> *Ferguson v. Wesley Coll., Inc.*, 2000 WL 706833, at \*2 (Del. Super. Mar. 23, 2000).

damages beyond repair, personally and professionally.”<sup>16</sup> While the word “reputation” is not explicitly used, it appears to the Court that, particularly in light of Plaintiff’s *pro se* status, this language may be read as an allegation of personal and professional reputational harm.

Finally, Defendant Hopkins has failed to support her third argument, as she has presented no legal authority showing that a voluntary dismissal should not be considered as a termination in Plaintiff’s favor.

**WHEREFORE**, for the foregoing reasons, Defendants’ Motions to Dismiss are **DENIED**.

**IT IS SO ORDERED.**

/s/ Noel Eason Primos

Judge

NEP/wjs

*Via File&ServeXpress & U.S. Mail*

oc. Prothonotary

cc. Janet Batchelor

BB Properties of Delaware, LLC.

Counsel of Record

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<sup>16</sup> Complaint ¶ 89.