

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

CAROL WOODARD and )  
GENEEN WOODARD, )  
 )  
Plaintiffs, )  
v. )

C.A. No. N25C-12-440 CLS

KELLER WILLIAMS REALTY )  
CENTRAL DELAWARE, KWRC )  
RENTALS LLC, THE WILKINS )  
GROUP, LLC, KELLER WILLIAMS )  
REALTY, LLC, KELLER WILLIAMS )  
REALTY, INC., KELLER WILLIAMS, )  
LLC, DAVID BURMEISTER, SONJA )  
BURMEISTER, DAVID A. )  
WELLINGTON, and DELAWARE )  
ENGINEERING SOLUTIONS LLC, )  
 )  
Defendants. )

Date Submitted: February 17, 2026

Date Decided: May 7, 2026

*Upon Consideration of the Defendant Engineering Solutions LLC's Motion to Dismiss, **GRANTED.***

**ORDER**

James J. Meehan, III and John M. Spadaro, Esquires of SHELSBY AND LEONI, *Attorney for Plaintiffs.*

Dean A. Campbell, Esquire of the LAW OFFICE OF DEAN A. CAMPBELL, PA, *Attorney for Defendant Delaware Engineering Solutions LLC.*

**SCOTT, J.**

Before the Court is Defendant Delaware Engineering Solutions LLC's ("Defendant") Motion to Dismiss<sup>1</sup> under Superior Court Civil Rule 12(b)(6) and Carol Woodard's and Geneen Woodard's (collectively, "Plaintiffs") Response in Opposition.<sup>2</sup> It appears to the Court that:

1. On December 22, 2023, Plaintiffs were housesitting Shereen Williams' rental property.<sup>3</sup> While housesitting, the ceiling in the laundry room "suddenly and without warning . . . caved in [on Plaintiffs,] causing severe injuries[.]"<sup>4</sup>

2. At the time of the incident, Ms. Williams leased the property from David and Sonja Burmeister.<sup>5</sup> Before the property was sold to the Burmeisters in October 2023, David A. Wellington owned and leased the property to Ms. Williams.<sup>6</sup>

3. Following a July 2023 inspection, the City of Dover Department of Inspections (the "Department") notified Mr. Wellington that the property had several City Code Violations.<sup>7</sup> The Department informed Mr. Wellington that he was required to cure the violations by November 23, 2023, "including . . . replacing the entire roof to avoid reoccurring leaks."<sup>8</sup>

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<sup>1</sup> Def. Del. Engineering Solutions LLC's Mot. to Dismiss, D.I. 10 ("Def.'s Mot. to Dismiss").

<sup>2</sup> Pls.' Resp. to Def. Del. Engineering Solutions LLC's Mot. to Dismiss, D.I. 18 ("Pls.' Resp.").

<sup>3</sup> Compl., D.I. 1, ¶¶ 18–19.

<sup>4</sup> *Id.* ¶ 20.

<sup>5</sup> *Id.* ¶ 22–24.

<sup>6</sup> *Id.* ¶¶ 13, 19.

<sup>7</sup> *Id.* ¶ 21.

<sup>8</sup> *Id.*

4. When Mr. Wellington sold the property to Defendants David and Sonja Burmeister in October 2023, the roof had not been replaced.<sup>9</sup> The Burmeisters were allegedly aware of the City Code Violations.<sup>10</sup> On December 11, 2023, a property manager for the Burmeisters notified Ms. Williams that “a structural engineer would be performing an inspection of the basement, walls, roof, etc., on December 13, 2023.”<sup>11</sup>

5. On December 13, 2023, an agent for Delaware Engineering Solutions LLC performed an inspection of the property but failed to “note in his report several” of the City Code Violations.<sup>12</sup>

6. The roof was never replaced before the ceiling collapsed on Plaintiffs.

7. Plaintiffs filed a Complaint on December 19, 2025, alleging negligence against all of the Defendants due to the injuries sustained from the unrepaired roof.<sup>13</sup> On January 29, 2026, Defendant filed this Motion to Dismiss under Rule 12(b)(6).<sup>14</sup> Plaintiffs responded in opposition.<sup>15</sup> The matter is now ripe for decision.

8. Upon a motion to dismiss under Superior Court Civil Rule 12(b)(6), the Court (i) accepts all well-pled factual allegations as true, (ii) accepts even vague allegations

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<sup>9</sup> *Id.* ¶¶ 22, 24.

<sup>10</sup> *Id.* ¶ 25.

<sup>11</sup> *Id.* ¶ 26.

<sup>12</sup> *Id.* ¶¶ 28–29.

<sup>13</sup> *See generally id.*

<sup>14</sup> *See generally* Def.’s Mot. to Dismiss.

<sup>15</sup> *See generally* Pls.’ Resp.

as well-pled if they give the opposing party notice of the claim, (iii) draws all reasonable inferences in favor of the non-moving party, and (iv) only dismisses a case where the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances.<sup>16</sup> The Court does not, however, accept “conclusory allegations that lack specific supporting factual allegations.”<sup>17</sup> But “it is appropriate . . . to give the pleader the benefit of all reasonable inferences that can be drawn from the pleading.”<sup>18</sup>

9. Defendant proffers that the Complaint should be dismissed because as a private home inspection company, it did not owe a duty to anyone not in privity of contract.<sup>19</sup> On the other hand, Plaintiffs claim that the Complaint sufficiently alleges a duty under the Restatement (Second) of Torts § 324A.<sup>20</sup> The Court agrees with Defendant, but for different reasons.

10. The Delaware Supreme Court has adopted the Restatement (Second) of Torts § 324A.<sup>21</sup> Section 324A “imposes a duty to exercise reasonable care if someone ‘undertakes, gratuitously or for consideration, to render services to another which he

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<sup>16</sup> *ET Aggregator, LLC v. PFJE AssetCo Hldgs. LLC*, 2023 WL 8535181, at \*6 (Del. Super. Dec. 8, 2023).

<sup>17</sup> *Id.* (quoting *Ramunno v. Crawley*, 705 A.2d 1029, 1034 (Del. 1998)).

<sup>18</sup> *TrueBlue Inc. v. Leeds Equity Partners IV, LP*, 2015 WL 5968726, at \*2 (Del. Super. Sept. 25, 2015) (quotation omitted).

<sup>19</sup> Def.’s Mot. to Dismiss ¶ 13.

<sup>20</sup> Pls.’ Resp. ¶¶ 4–5.

<sup>21</sup> *Barnes v. Hooper*, 341 A.3d 1006, 2025 WL 1576705, at \*3 (Del. June 4, 2025) (TABLE).

should recognize as necessary for the protection of a third person or his things[.]”<sup>22</sup>  
“If the duty is imposed, the person rendering services ‘is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if . . . his failure to exercise reasonable care increases the risk of such harm[.]”<sup>23</sup>

11. The Complaint alleges that Defendant owed Plaintiffs “a duty to maintain the premises in a reasonably safe condition and to protect lawful occupants and invitees from foreseeable hazards.”<sup>24</sup> While the Court agrees with Plaintiffs that the duty alleged does not arise from a contract but from Section 324A, the allegations nevertheless fail to plead a duty arising from the failure to exercise reasonable care under Section 324A as against Defendant.<sup>25</sup>

12. Here, an agent of Defendant undertook an inspection of the property’s roof. Taking the allegations as true, the Burmeisters were aware of the City Code Violations and the Department required that the violations be fixed. Accordingly, it is reasonable to infer that the inspection was necessary for the protection of third persons such as Plaintiffs.

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<sup>22</sup> *Id.* (quoting Restatement (Second) of Torts §324A).

<sup>23</sup> *Id.*

<sup>24</sup> Compl. ¶ 30.

<sup>25</sup> *See* Pls.’ Resp. ¶ 5.

13. “Once there is a sufficient allegation that a defendant performed an undertaking, the plaintiff must allege facts which would place defendant’s conduct within one of three separate scenarios enumerated by [Section] 324A.”<sup>26</sup>

14. Section 324A(a) holds a defendant liable where a failure to exercise reasonable care in the undertaking increased the risk of harm.<sup>27</sup> “A finding of an increased risk of harm requires ‘a physical change to the environment or material alteration of the circumstances.’”<sup>28</sup> For example, in *Dunfee*, this Court concluded that there was no increased risk of harm where the defendant “failed to note any problems with boilers” upon inspection.<sup>29</sup> Like *Dunfee*, Defendant here merely failed to note any problems with the ceiling—there are no allegations that Defendant caused a physical change or material alteration to the ceiling.

15. Plaintiffs also do not allege that Defendant undertook to perform a duty that it owed to Plaintiffs as guests of Ms. Williams.<sup>30</sup> Nowhere in the Complaint do Plaintiffs allege that Defendant owned or possessed the property at issue.<sup>31</sup> Plaintiffs’ status as guests of the tenant attenuates any duty that Defendant may have in the absence of allegations of a special relationship.

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<sup>26</sup> *Dunfee v. KGL Holdings Riverfront, LLC*, 2019 WL 1975633, at \*5 (Del. Super. Apr. 30, 2019); Restatement (Second) of Torts § 324A(a)–(c).

<sup>27</sup> *Dunfee*, 2019 WL 1975633, at \*6.

<sup>28</sup> *Id.* at \*6 (*Patton v. Simone*, 626 A.2d 844, 851 (Del. Super. 1992)).

<sup>29</sup> *Id.*

<sup>30</sup> Restatement (Second) of Torts § 324A(b); *see also* Pls.’ Resp. n.9.

<sup>31</sup> *See e.g.*, *Dunfee*, 2019 WL 1975633, at \*7.

16. Finally, Plaintiffs do not allege in the Complaint or argue that the injuries were sustained due to reliance upon the undertaking.<sup>32</sup>

17. Therefore, for the foregoing reasons, Defendant Delaware Engineering Solutions LLC's Motion to Dismiss is **GRANTED**.

**IT IS SO ORDERED.**

*/s/ Calvin Scott*  
Judge Calvin L. Scott, Jr.

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<sup>32</sup> Restatement (Second) of Torts § 324A(c).