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IN THE SUPREME COURT OF THE STATE OF DELAWARE

SEAN MCMAHON, Plaintiff Below, Appellant, v. TIFFANY MCMAHON, Defendant Below, Appellee.	No. 218, 2024 On Appeal from a Decision of the Superior Court of the State of Delaware C.A. No. S22C-06-022 MHC

CORRECTED APPELLANT'S OPENING BRIEF

OFFIT KURMAN

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Dated: September 12, 2024

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I. NATURE OF THE PROCEEDING

The underlying case involves defamation of Appellant Sean McMahon ("Plaintiff" or "S. McMahon") by Appellee Tiffany McMahon ("Defendant" or "T. McMahon"). D.I. 13[1] [A0067-A0083]. Plaintiff sought monetary damages against Defendant in the Superior Court of the State of Delaware based upon claims of libel, slander, malicious prosecution, abuse of process, and intentional infliction of emotional distress. Defendant filed a Motion to Dismiss ("Motion") on December 7, 2022, which was initially heard by the Court on January 20, 2023 and passed for supplemental briefing. Following this supplemental briefing, oral argument was held on April 16, 2024. The Superior Court ultimately granted Defendant's Motion on April 29, 2024 and dismissed the Plaintiff's Complaint in its entirety.

Plaintiff takes the instant appeal from this April 29, 2024 Opinion and Order of the Superior Court, and respectfully requests that this Court reverse the Superior Court's decision to dismiss his case and remand this matter to the Superior Court for further proceedings consistent therewith.

[1] "D.I." hereinafter refers to the docket entry in the Superior Court of the State of Delaware, as listed in the attached Appendix.

II. SUMMARY OF ARGUMENT

1. The Court erred as a matter of law when it dismissed Counts III (slander *per* se) and IV (libel) of the Plaintiff's Amended Complaint by dismissing Delaware's notice pleading standard. *See VLIW Tech., LLC v. Hewlett-Packard Co.,* 840 A.2d 606, 611 (Del. 2003).

2. Assuming *arguendo* that the Court did not err as a matter of law as outlined in ¶ 1 above, the Court abused its discretion by denying the Plaintiff's request for leave to amend his Complaint or otherwise for a dismissal without prejudice and leave to replead. *See,* Super. Ct. Civ. R. 15(a); *E.I. du Pont de Nemours & Co. v. Allstate Ins. Co.,* No. CIV.A. 99C-12-253JTV, 2008 WL 555919, at *1 (Del. Super. Ct. Feb. 29, 2008).

III. STATEMENT OF FACTS

A. Procedural Background

Plaintiff filed his original Complaint against Defendant on June 29, 2022, claiming malicious prosecution, abuse of process, and defamation. D.I. 1 [A0001-A0015]. Following Defendant's request for a continuance, she filed a *pro se* Answer on July 29, 2022. D.I. 4 [A0022-A0023]; D.I. 5 [A0024-A0053]. Almost two months later, Defendant retained counsel who entered his appearance on September 12, 2022, following which the parties requested that the Court defer the scheduling conference to allow them time to engage in settlement negotiations. D.I. 7 [A0057]; D.I. 8 [A0059]. The Court granted this request. D.I. 9 [A0060].

On November 29, 2022, Plaintiff filed an Amended Complaint in accordance terms stipulated to by both parties. D. I. 13 [A0067-A0083]. The Amended Complaint alleged an additional count of intentional infliction of emotional distress, and separated the defamation claim into libel and slander *per se* claims. *Id.* Defendant filed a Motion to Dismiss (the "Motion") Plaintiff's Complaint in its entirety on December 7, 2022. D.I. 14 [A0104-A0107]. The Motion was initially heard on January 20, 2023, and was passed for supplemental briefing. D.I. 16 [A0117].

The parties jointly requested several extensions of the supplemental briefing schedule, as they were engaged in settlement negotiations, all of which were granted

by the Court. D.I. 17-20 [A0118-A0126]. The supplemental briefing ultimately concluded on May 10, 2023, and oral argument was scheduled for October 2, 2023. D.I. 24 [A0218]. The parties then requested a continuance of the October 2, 2023 hearing to continue their attempts to resolve the dispute; this request was once again granted by the Court. D.I. 25 [A0219]; D.I. 26 [A0221]. Settlement negotiations ultimately proved unsuccessful, however, prompting the Plaintiff to request that the Court schedule the pending oral argument, which was heard on April 16, 2024. D.I. 28 [A0223]; D.I. 29 [A0225]. To date, no discovery has been conducted by either party.

On April 29, 2024, the Superior Court issued an Opinion and Order granting Defendant's Motion and dismissing the Plaintiff's Complaint in its entirety. D.I. 31 [A0227-A0243]. The present Appeal followed on May 29, 2024. D.I. 32 [A0244-A0245].

Through the instant Appeal, Plaintiff seeks to have the Court's Opinion and Order of April 29, 2024 overturned with respect to Counts III and IV of the Amended Complaint only. The Plaintiff is not seeking review or reconsideration of the Court's ruling with respect to Counts I, II, or V of the Amended Complaint.

B. Factual Background

1. Plaintiff Asserts Several Tort Claims Against Defendant, Including Claims of Defamation

As detailed in the Amended Complaint, T. McMahon was married to Darin McMahon, the brother of S. McMahon, making Plaintiff and Defendant siblings-in-law. D.I. 13 at ¶ 4 [A0068]. As the result of a tragic gun incident in which he was involved in 2019, Darin McMahon required continuous medical care and attendance by a caretaker. *Id.* at ¶ 5 [A0068]. Defendant made systematic and continuous efforts to then restrict Plaintiff's access to his brother (Darin), which caused the relationship between the parties to decline throughout the year 2021. *Id.* at ¶¶ 6-11 [A0068-A0069].

On multiple occasions throughout 2021, Defendant voiced concerns about her husband Darin's health and the severe stress it was causing her to multiple individuals, including Plaintiff's sister, Olivia Robb, and Defendant's coworker, Terry Waddel. *Id.* at ¶ 14 [A0070]. Defendant further communicated to Olivia Robb, Ritch Thurman, and Terry Waddel, among others, that she had suffered suicidal ideations as a result of this stress. *Id.* When Plaintiff became aware of Defendant's suicidal ideations and learned that they were brought on by the stress of caring for Darin, he grew increasingly concerned about the safety of all involved – the Defendant, Darin, and their children. *Id.* at ¶¶ 15-16 [A0070]. It was this concern that caused the Plaintiff to call 911 on January 28, 2022 and request that a police

officer conduct a welfare check at Defendant and Darin's home. *Id.* at ¶ 17 [A0071]. Following this incident, Defendant, in an effort to misrepresent what actually occurred on January 28, 2022, fraudulently accused Plaintiff of filing a false police report when discussing the incident with multiple individuals at her place of employment. *Id.* at ¶ 20 [A0071].

Defendant then proceeded to make numerous additional defamatory statements, among them a text message in the fall of 2021 to her coworker Erin Bailey. *Id.* at ¶ 29 [A0073]. The message portrayed a truck, similar in appearance to Plaintiff's truck, which read "want to make sure they aren't here to talk to you/ambush". *Id.* Bailey's text message was referencing Plaintiff, which only would have been made had Defendant relayed defamatory statements to Bailey, indicating that Plaintiff was stalking her and/or would be there to "ambush" her. *Id.* Moreover, on or around February 28, 2022, Defendant sent a text message to Darin with an image of a truck outside of their home which read "reason for this? Or should we just deny it?", again implicating that Plaintiff was stalking her. *Id.* at ¶ 30 [A0073-A0074].

Plaintiff's Amended Complaint alleges the following counts: (1) Malicious Prosecution; (2) Abuse of Process; (3) Slander *Per Se*; (4) Libel; and (5) Intentional Infliction of Emotional Distress.

2. Defendant/Appellee Moves – Successfully – to Dismiss the Plaintiff's Amended Complaint

On April 29, 2024, the Superior Court issued its Opinion and Order dismissing the Plaintiff's Amended Complaint in its entirety (the "Decision"). D.I. 31 at *17 [A0243]. Through the instant appeal, Plaintiff seeks review of the Superior Court's decision to grant Defendant's Motion to Dismiss, as well as its denial to permit Plaintiff the opportunity to further amend his Complaint.

As to Count III of the Complaint (Slander *Per Se*), the Superior Court determined that Plaintiff failed to sufficiently plead that Defendant's alleged statements imputed a crime upon Plaintiff because it was not pled with specificity. D.I. 31 at *11 [A0237]. Specifically, the Court held that although the Plaintiff alleged that Defendant accused him of filing a false police report in statements to third parties, he failed to "provide with specificity the statement made….[or] the person or persons it was made to." *Id.* at *11-12 [A0237-A0238].

In Count IV of his Complaint (Libel), Plaintiff refers to two specific instances giving rise to the claim: (1) text messages sent from Defendant to a co-worker, implicating that Defendant previously conveyed to her coworker that Plaintiff was stalking her; and (2) text messages sent from Defendant to Darin implicating same. The Court held that the allegations contained in Count IV were not sufficient to put the Defendant on notice of the claims against her, because Plaintiff "provide[d] no

actual evidence and/or proof of Defendant's alleged defamatory statements." *Id.* at *14 [A0240].

Finally, Plaintiff also argued in his Brief in Opposition to the Defendant's Motion to Dismiss that, if the Court was inclined to hold that the Plaintiff's claims were not sufficiently pled for the purposes of the Defendant's Motion, it was then appropriate for the Court grant the Plaintiff leave to file a second amended complaint. D.I. 22 at 20 [A0176]. Plaintiff, through the undersigned counsel, further addressed this issue at the oral argument on April 16, 2024. D.I. 34 at 37:7-11 [A0312]. The Court denied this request out of hand by making a remark from the bench that the case had "gone on for years now" and "[p]leadings [were] closed". *Id.* at 37:12-18 [A0312]. It did not address this request in its written opinion, nor did it at any point – either orally from the bench or in writing – cite any legal authority in support of this position.

IV. ARGUMENT

A. QUESTIONS PRESENTED

Did the Superior Court err in granting Defendant's Motion to Dismiss Counts III and IV of Plaintiff's Complaint on the grounds that Plaintiff failed to plead his claims with specificity and/or failed to provide evidence for his allegations?

Plaintiff has preserved this issue because it was addressed both in his Brief in Opposition and at oral argument on April 16, 2024. *See* D.I. 22 at 16 [A0172]; *See also* D.I. 34 at 19:10-15 [A0294], 24:9-16 [A0299], 30:8-10 [A0305].

B. SCOPE OF REVIEW

Under Delaware law, final judgments granting motions to dismiss are reviewed *de novo. Farmer v. Brosch,* 8 A.3d 1139, 1141 (Del. 2010) (citing *Leatherbury v. Greenspun*, 939 A.2d 1284, 1288 (Del. 2007)).

C. MERITS OF ARGUMENT

1. The Superior Court's decision to dismiss Count III of Plaintiff's Amended Complaint for failure to plead with specificity was reversible error.

In Count III of his Amended Complaint (Slander *Per Se*), Plaintiff claimed that Defendant made false statements to her colleagues at Rehoboth Elementary School which imputed a crime upon Plaintiff. D.I. 13, ¶¶ 53-59 [A0078-A0079]. Plaintiff alleges the statements included allegations that: (1) Plaintiff was abusive toward her; (2) Plaintiff would be the type of person to threaten violence against her; and (3) Plaintiff filed a false police report. *Id.* Moreover, Plaintiff specified in his Amended Complaint that some of the comments made by Defendant regarding his propensity to threaten violence against her and her family were made to specific third parties: Judy Hudson, Jen Stephenson, and Renee Kosc, all of whom were employees at Rehoboth Elementary School. *Id.* at ¶ 54 [A0078].

In its Motion to Dismiss, Defendant argued with respect to this count that Plaintiff did not adequately plead that Defendant accused him of a crime constituting slander *per se* because he failed to "indicate…that Defendant stated Plaintiff acted intentionally" in filing a police report. D.I. 21 at 15 [A0147]. The Superior Court's analysis on this particular count hinged upon the question of whether or not the Plaintiff "alleged [his claim] with specificity." D.I. 31 at *11 [A0237].

The four categories of slander *per se* have "the tendency to isolate the object of the defamation from society so that the person defamed might never know the reason for, and the extent to which, the person has been shunned." *Q-Tone Broad., Co. v. Musicradio of Maryland, Inc.,* No. CIV.A. 93C-09-021, 1994 WL 555391, at *7 (Del. Super. Ct. Aug. 22, 1994) (citing *Spence v. Funk*, 396 A.2d 967, 970 (Del. 1978)). In analyzing the allegedly defamatory nature of a statement, courts look to the meaning which would be given to the statement by "reasonable persons of ordinary intelligence." *Id.* at *5 (citing *Ward v. Zelikovsky,* 136 N.J. 516, 528 A.2d 972 (1994)). If a statement is only capable of one meaning, a court may determine as a matter of law whether it is defamatory. *Taj Mahal Travel, Inc. v. Delta Airlines, Inc.,* 164 F.3d 186, 189 (3d Cir. 1998). However, if the statement is capable of a defamatory or non-defamatory construction, its meaning must be determined by a trier of fact. *Id.*

Here, the Superior Court began its analysis by noting that the Plaintiff did allege that the "Defendant told multiple people, including colleagues at Rehoboth Elementary School, that Plaintiff filed a false police report." D.I. 31 at *11 [A0237]. The Court further agreed that initiating a false police report is a crime pursuant to Delaware Code, and thus would survive a motion to dismiss "if sufficiently alleged with specificity." *Id.*

Where the Court's analysis failed, however, was in its holding that the Plaintiff failed to identify "the statement imputing a crime, who the communication was published to or how the alleged statements damaged him with any degree of specificity." D.I. 31 at *12 [A0238]. This holding does not adequately capture Delaware's notice pleading standard, which requires only that a plaintiff plead facts sufficient to put a defendant on fair notice of the claims asserted against them, after which the burden shifts to the defendant to "determine the details of the cause of action by way of discovery for the purpose of raising legal defenses." *Klein v. Sunbeam Corp.,* 94 A.2d 385, 391 (Del. 1952), *opinion adhered to on reargument,* 95 A.2d 460 (Del. 1953). Contrary to the Superior Court's contention in its holding, Plaintiff's Amended Complaint *does* set forth the nature of the slanderous language – namely, that Defendant stated Plaintiff filed a false police report and such statements were made to her coworkers at Rehoboth Elementary School – and it does so with more than a reasonable degree of specificity. D.I. 13, ¶ 58 [A0079]. The question on a motion to dismiss is not the sufficiency of the evidence or even the ability of a party to make its claim; it is merely the sufficiency of the allegations pled, and the Plaintiff's allegations here meet that standard. To wit, the Amended Complaint need only to have sufficiently alleged that Defendant made "a harmful and untrue statement" about the Plaintiff, which it clearly does. *Wright v. Pepsi Cola*

Co., 243 F. Supp. 2d 117, 125 (D. Del. 2003).[2] While the Superior Court's ruling suggested that the jurist in question may have personally disagreed with the contention that the Plaintiff *should* have the ability to seek legal redress for his claims, as evidenced by its dismissiveness in labeling this matter as a "petty domestic disagreement," its analysis must be governed by legal standards and not personal opinions. D.I. 31 at *17 [A0243].[3] Whether the damages at issue may or may not be *de minimis* is of little consequence at this stage, as the Plaintiff is not required to make a showing of special damages for a slander *per se* claim. *Spence v. Funk,* 396

[2] Indeed, the District Court's holding in *Wright* is quite notable here, as the Court found a general averment in the plaintiff's complaint that the defendants "intentionally made false statements about the [p]laintiff calling him dishonest, and questioning his professional ability before the public" to be sufficient to survive an initial motion to dismiss because "at [that] stage of the case, [the] statement [satisfied] the defamatory statement element, despite its generality, because it [alleged that] a harmful and untrue statement was made." 243 F. Supp. 2d at 124-125. The Plaintiff's allegations in his Amended Complaint are made to a greater degree of specificity than those pled in *Wright*, making them more than sufficient to survive a motion to dismiss under Delaware law.

[3] In fact, the very case the Superior Court cited for Judge Quillen's eloquent statement that *de minimus non curat lex* – that is, the law does not govern trifles – is readily distinguishable from the instant matter. That statement was initially written by Judge Quillen in the context of another slander *per se* claim where the plaintiff's issue was that the defendants committed defamation by making statements that "essentially restate[d] actions which plaintiff [attributed] to himself" – namely, statements made by the defendants suggesting some sort of nefarious intent behind the plaintiff's walking around the trailer park where he and the defendants lived taking pictures of the street, and specifically the defendants' trailer. *See Read v. Carpenter*, 1995 WL 945544, *4 (Del. Super. Jun. 8, 1995), *aff'd* 670 A. 2d 1340 (Del. 1995). Of note, the plaintiff in that matter did not dispute that he took those actions, whereas in the instant matter, the only factual nexus between the Defendant's defamatory statement and what the Plaintiff actually did was the simple fact that he communicated with the police. Plaintiff disputes both the contention that he made a formal police report (he asked for a wellness check to be performed) and the contention that he made any false representations to the police. The distinction between the allegations levied by the Defendant and what actually happened is not a trifling one; it is the very clear line between the concerned conduct of a law-abiding citizen and the recklessness of a criminal.

A.2d 967, 970 (Del. 1978). As is such, the Superior Court's ruling with respect to Count III of the Plaintiff's Amended Complaint is unsupported by Delaware law and should be reversed.

2. The Superior Court's decision to dismiss Count IV of Plaintiff's Amended Complaint for failure to provide proof and/or evidence of Defendant's alleged defamatory statements was reversible legal error.

In Count IV of his Amended Complaint, Plaintiff alleges that Defendant committed libel against him by publishing two text messages – one to her coworker, Erin Bailey, and one to Darin McMahon – which falsely implied that Plaintiff was stalking Defendant. D.I. 13, ¶¶ 62-66 [A0079-A0080]. In her Motion to Dismiss, Defendant contended that the Plaintiff's libel claim was insufficient because it failed to identify the defamatory communication. D.I. 21 at 16 [A0148]. The Superior Court's analysis focused on whether the five elements of libel were sufficiently pled: (1) the defamatory nature of the communication; (2) publication; (3) reference to the plaintiff; (4) the third party's understanding of the defamatory nature of the communication; and (5) injury. D.I. 31 at *12-13 [A0238-A0239]. The Court ultimately dismissed Count IV of Plaintiff's Amended Complaint upon a finding that the Plaintiff failed to provide actual evidence and/or proof of Defendant's alleged defamatory statements. *Id.* at *14 [A0240].

Once again, the Court's analysis has ignored the relevant law governing its analysis by overextending the application of the Rule 12(b)(6) standard, under which "even silly or trivial libel claims can easily survive a motion to dismiss where plaintiff pleads facts that put the defendant on notice of his claim, however vague or lacking in detail these allegations may be." *Doe v. Cahill,* 884 A.2d 451, 459 (Del.

2005).[4] Under this standard, a writing need not even positively identify the defamed individual, as extraneous evidence can show that the Defendant intended to refer to the Plaintiff and was understood to be the subject of the writing by third parties to whom it was published. *Klein v. Sunbeam Corp.,* 94 A.2d at 391 (1952). Under this standard, the Plaintiff's libel claims against the Defendant must survive an initial motion to dismiss.

Indeed, the Plaintiff's Amended Complaint sufficiently identified the defamatory communications made to both Erin Bailey and Darin McMahon, implicating that Plaintiff was stalking Defendant. D.I. 13, ¶¶ 62, 64 [A0079-A0080]. Plaintiff's identification of the substance of the communications, and the parties to and from whom it was communicated, even based on circumstantial evidence, is sufficient to overcome a Motion to Dismiss because it pleads a set of facts upon which a reasonable jury could conceivably find for the Plaintiff. *See Ciabattoni v.*

[4] Here, it is again worth revisiting the Superior Court's brushing off of the Plaintiff's claims as "petty" (*see*, n.3, *supra*) in light of additional case law by this very Court regarding the standard for libel. Of particular consequence to this Court's ruling in *Doe v. Cahill* was another Supreme Court opinion, *Ramunno v. Cawley*, 705 A.2d 1029 (Del. 1998). This Court's language in overturning the Superior Court's dismissal of a libel claim in that matter is quite instructive: "The trier of fact might very well find that the error was immaterial and that the controversy itself is trivial. Indeed, on a summary judgment record or at trial, the defendants may be successful in portraying this dispute as silly. But in dismissing the complaint on this ground, the Superior Court strayed from the time-honored rules governing motions to dismiss under Rule 12(b)(6) by failing to draw every reasonable factual inference in favor of the complainant." 705 A.2d at 1036. Again, a jurist's personal opinion that a matter is trivial – or, as the Superior Court here put it, petty – is immaterial at the motion to dismiss stage. Inserting such an opinion into the proceedings at that stage merely risks preventing a plaintiff from being given their lawful opportunity to develop properly pled claims via discovery.

Teamsters Loc. 326, No. N15C-04-059 VLM, 2020 WL 4331344, at *3 (Del. Super. Ct. July 27, 2020). The failure of the Superior Court to apply the Rule 12(b)(6) standard in accordance with Delaware law, and require evidence and/or proof prior to discovery, was legal error warranting reversal of its dismissal of Count IV of the Amended Complaint.

V. ARGUMENT

A. QUESTION PRESENTED

Did the Court err in denying Plaintiff's request for leave to file a second amended complaint under Superior Court Rule 15(a)?

This question is preserved because Plaintiff requested both in his Brief in Opposition to Defendant's Motion and at oral argument that the Court grant him leave to file a second amended complaint should the Court find the claims were not sufficiently plead. *See* D.I. 22 at 20 [A0176]; *See also* D.I. 34 at 37:7-11 [A0312]. Though it was not addressed in the Court's Order and Opinion, this request was nonetheless addressed by the Court at oral argument of the Motion to Dismiss, when it denied Plaintiff's request for leave from the bench. *See Id.* at 37:12-18 [A0312].

B. SCOPE OF REVIEW

Under Delaware law, orders denying amendment under Rule 15 are reviewed on an abuse-of-discretion basis. *Mullen v. Alamguard of Delmarva, Inc.*, 625 A.2d 258, 262-64 (Del. 1993) (citing *Annone v. Kawasaki Motor Corp.,* 316 A.2d 209, 210-211 (Del. 1974); *Mergenthaler, Inc. v. Jefferson*, 332 A.2d 396, 398 (Del. 1975)).

C. MERITS OF ARGUMENT

1. The decision of the Superior Court to deny Plaintiff's request for leave to file a second amended complaint pursuant to Superior Court Civil Rule 15(a) was an abuse of discretion and reversible error.

Superior Court Civil Rule 15(a) allows for a party may amend his pleading by leave of court, and such "leave shall be freely given when justice so requires." Sup. Ct. Civ. R. 15(a). "The rule directs the liberal granting of amendments….[and] in the absence of prejudice to another party, the trial court is required to exercise its discretion in favor of granting leave to amend." *Mullen v. Alarmguard of Delmarva, Inc.,* 625 A.2d 258, 263 (Del. 1993) (citing *Ikeda v. Molock,* 603 A.2d 785 (Del. 1991)). Mere delay alone is an insufficient basis for the Court to deny a party leave to amend a pleading. *Chrysler Corp. v. New Castle Cnty.,* 464 A.2d 75, 84 (Del. Super. Ct. 1983). While the Superior Court's rationale for denying the Plaintiff's request for leave to amend is not at all well-articulated, the record clearly suggests that simple delay was its only basis for denying this request.

The only rationale advanced by the Court for denying the Plaintiff's request here was a simple observation from the bench during oral arguments that "this case has gone on for years now….". D.I. 34 at 37:14-15 [A0312]. This observation by the Court makes no reference to the sort of "evidence of undue delay, bad faith or dilatory motive on part of the movant, repeated failure to cure deficiencies, prejudice, futility, or the like" that would turn this into the sort of delay justifying a

decision to deny a motion for leave to amend. *MVC Cap. Inc. v. U.S. Gas & Elec., Inc.,* No. CVN20C07062PRWCCLD, 2021 WL 4486462, at *3 (Del. Super. Ct. Oct. 1, 2021). Plaintiff's request for leave was denied out of hand, without even an attempt by the Court to determine whether there was actually any prejudice to the Defendant, simply because the case had been ongoing for a period of time and was still only at the motion to dismiss stage. *See* D.I. 34 at 37:14-15 [A0312].

In considering a request for leave to amend, the court "balance[s] the hardship encountered by the moving party if such motion is denied against the prejudice suffered by the adverse party if such motion is granted." *MVC Cap. Inc.,* 2021 WL 4486462, at *5 (Del. Super. Ct. Oct. 1, 2021) (internal citations omitted). Defendant would suffer no demonstrable prejudice if the Court granted Plaintiff leave to amend his complaint, as the Plaintiff would not be advancing any new theories of relief, but would instead simply be elaborating upon his existing allegations to provide the specificity the Court desires.[5] *See Id.*

"Delaware freely allows amendment in all but the most limited circumstances." *Id.* (internal citations omitted). There is no undue delay "with just the passage of time and no prejudice" to the Defendant. *Id.* While the Court references the extensive period of time that has elapsed since the start of this

[5] Comparatively, the Plaintiff would be acting in bad faith if he sought amendment for the purpose of alleging contradictory facts, but that is not what the Plaintiff has sought to do in the instant matter. *See MVC Cap, Inc.*, 2021 WL 448462 at *5.

litigation, it didn't even make an attempt to determine whether this time lapse was at all due to bad faith conduct on behalf of Plaintiff or otherwise constituted an attempt to act in a dilatory manner by delaying the proceedings. Moreover, if the Court *did* make that attempt, it would have been unable to find that any delay was the existence of bad faith or dilatory conduct, as the docket makes it clear that all of the requests for extensions and reschedulings in this matter were made jointly by the parties with the Court's own approval, and these requests were made in good faith by the parties as they attempted to resolve their dispute. *See* D.I. 8, 17-20 [A0121-A0126]; D.I. 25-26 [A0219-A0221]. Though the settlement efforts ultimately proved unsuccessful, there is clearly no indication of bad faith on the part of the Plaintiff (that is, the party seeking leave to amend here).

Granting leave for the Plaintiff to file a second amended complaint would not cause any unfair prejudice to the Defendant. Under the "liberal" standard of Rule 15(a) of its Rules of Civil Procedure, the Superior Court's denial of the Plaintiff's request for leave to amend thus represents an abuse of discretion that should be reversed.

VI. CONCLUSION

For at least the foregoing reasons, Appellant respectfully requests that this Court reverse the decision of the Superior Court of Delaware and remand this matter for further proceedings consistent with its opinion.

Respectfully submitted,

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4869-6911-2029, v. 1