

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
24 CV 022933-910

CHARITY MAINVILLE, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 ANNA DE SANTIS and DE SANTIS )  
 RENTALS, LLC, )  
 )  
 Defendants. )

**MEMORANDUM OF LAW  
SUPPORTING DEFENDANTS'  
MOTION TO DISMISS**

Defendants Anna De Santis and De Santis Rentals, LLC submit this brief in support of their motion to dismiss under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure.

**PROCEDURAL HISTORY RELEVANT TO THE MOTION**

On July 22, 2024, Plaintiff Charity Mainville filed her original complaint in the small claims division. (eCourts Index # 2). Defendants' former counsel filed a motion to dismiss under Rule 12(b). (eCourts Index # 5). The dismissal motion was not permitted or ruled on in small claims court. *See* N.C. Gen. Stat. § 7A-216 ("Demurrers and motions to challenge the legal and formal sufficiency of a complaint in an assigned small claim action shall not be used."). Mainville filed two more amended complaints in the small claims division. (eCourts Index #'s 7 and 9). After losing in small claims court, appealing to district court, losing at arbitration, and appealing the arbitrator's decision for a trial de novo, Mainville filed another amended complaint on December 16, 2024 ("amended complaint"). (eCourts Index # 23). Defendants' former counsel filed a motion to strike, or in the alternative, to dismiss the amended complaint under Rule 12(b)(6) ("Strike Motion"). (eCourts Index # 31). The Strike Motion asserted that the amended complaint should be struck because it was improperly filed without leave of court. (Strike Motion at 1-2). Dismissal was asserted in the alternative, and application for dismissal was relevant only after the Court determined which amended

pleading was Mainville's operative complaint. The undersigned counsel noticed his appearance as Defendants' counsel on January 31, 2025, and the Strike Motion was noticed for hearing on February 13, 2025.

On February 10, 2025, Mainville filed a notice of appeal from numerous interlocutory orders and a motion to stay all trial court proceedings pending her interlocutory appeal(s). At the hearing on February 13, 2025, Judge Davidian allowed Mainville to argue her stay motion, even though it was not properly noticed. He then decided to hear arguments on the amended complaint, its validity, and whether it should be struck from the record. The beginning of the hearing centered on Mainville's argument that her appeals triggered an automatic stay, stripping the trial court of jurisdiction to conduct further proceedings. Then, Judge Davidian decided to hear arguments about the motion to strike. Ultimately, he deferred his ruling until the next day, when he announced it. After Judge DaviediaDefendants filed a new motion to dismiss and an answer and counterclaim.

### **STANDARD OF REVIEW**

Rule 12(b)(6) of the North Carolina Rules of Civil Procedure provides for the dismissal of an action when the complaint "fail[s] to state a claim upon which relief can be granted." The trial court's consideration of a Rule 12(b)(6) motion has several aspects. "[T]he well-pleaded material allegations of the complaint are taken as true[.]" *Sutton v. Duke*, 277 N.C. 94, 98, 176 S.E.2d 161, 163 (1970) (citation omitted), and "the complaint is liberally construed[.]" *Wells Fargo Bank, N.A. v. Corneal*, 238 N.C. App. 192, 195, 767 S.E.2d 374, 377 (2014). "Legal conclusions, however, are not entitled to a presumption of validity." *Id.* Similarly, the court is "not required . . . to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *Strickland v. Hedrick*, 194 N.C. App. 1, 20, 669 S.E.2d 61, 73 (2008) (citations and internal quotation marks omitted). A party's motion to dismiss must be granted when an insurmountable bar to

recovery appears on the face of the complaint, “such as an absence of law to support a claim, an absence of facts sufficient to make a good claim, or the disclosure of some fact that necessarily defeats the claim.” *Al-Hourani v. Ashley*, 126 N.C. App. 519, 521, 485 S.E.2d 887, 889 (1997) (citation omitted).

## ARGUMENT

### **I. The record establishes that Defendants’ Rule 12(b)(6) motion has not been ruled on**

At the hearing on September 25, 2025, Defendants made arguments about why their motion to dismiss has never been argued or decided. The arguments below are meant to supplement the ones made at the hearing.

Generally, when a complaint is properly amended, a motion to dismiss filed before the amendment is rendered moot. *E.g., Houston v. Tillman*, 234 N.C. App. 691, 695, 760 S.E.2d 18, 20 (2014) (“With respect to defendants’ argument that the trial court erred in denying their motion to dismiss the original complaint, plaintiff’s amendment and restatement of the complaint has rendered any argument regarding the original complaint moot.”); *Coastal Chem. Corp. v. Guardian Indus., Inc.*, 63 N.C. App. 176, 178, 303 S.E.2d 642, 644 (1983) (noting that the trial court found defendant’s motion to dismiss plaintiff’s original complaint presented a “moot question” when the trial court granted plaintiff’s motion to amend). Defendants’ motion to dismiss in small claims court was rendered moot by Mainville’s first amended pleading and by N.C. Gen. Stat. § 7A-216.

After appeal to district court, Mainville filed her amended complaint (her third amended pleading) without leave of court. Defendants responded by moving to strike, and in the alternative, dismissed the amended complaint. The dismissal argument would only kick in if the amended complaint was allowed by the Court. Judge Davidian’s order contains findings of fact and the findings only address the stay and strike motions. All told, Judge

Davidian’s order essentially reset defendants’ pleading obligations and did not rule on motion to dismiss (pleaded in the alternative to striking the amended complaint) because: the order is titled: “Order (Denying Plaintiffs request for Automatic Stay & Denying Defendant's Motion to Strike Plaintiff's Amended Complaint)”; the order contains findings that are relevant only to the stay motion and the motion to strike.; the title of Defendants’ motion (motion to strike/dismiss) is mentioned several times in the order, but the findings and disposition show that his ruling was simply that the Court was identifying the operative complaint, denying Defendants’ motion to strike it, and directing Defendants to respond to the amended complaint by March 14, 2025. The reset effectively mooted the prior motion to dismiss. This Court should review and decide the current motion to dismiss so that the substantive issues may be adjudicated, rather than procedural technicalities defeating the merits. Even if there is ambiguity in the record (i.e. no clear indication that the Court considered the Rule 12(b)(6) motion pleaded in the alternative), ambiguities should be resolved in favor of preserving substantive rights.

It would be unfair for Defendants to be denied the right to be heard on the substance of their motion, when they effectively cannot seek clarification from Judge Davidian because Mainville will claim that her pending federal lawsuit (which includes Judge Davidian as a defendant) precludes him from clarifying or explaining his order.

**II. All Mainville’s defamation claims must be dismissed because she fails to allege essential elements of libel and slander and many of the statements complained of are protected by judicial privilege**

**A. The amended complaint does not allege what defendant(s) made the allegedly defamatory statements**

There are two distinct defendants—Anna De Santis and De Santis Rentals, LLC—and the amended complaint defines and refers to them collectively as “Defendant.” (Amended Compl. at 1). Mainville repeatedly claims that “Defendant” made libelous and slanderous

statements about her. (Amended Compl. at 4-7). But Mainville does not identify which defendant made each statement complained of. Was it Anna De Santis, De Santis Rentals, LLC or both? If it was the LLC, who made the statements on behalf of the company and was that person an authorized agent? Mainville's failure to attribute specific statements to specific defendants renders her defamation claims facially deficient. *Wynn v. Tyrrell Cty. Bd. of Educ.*, 253 N.C. App. 658, 799 S.E.2d 286, N.C. App. LEXIS 358 at \*8 (2017) (affirming dismissal of claims for defamation per se because the plaintiff's complaint failed to plead the claims with sufficient particularity, including "identify[ing] which members of the Board made the allegedly defamatory statements").

B. Mainville's defamation claims based on alleged statements made in small claims court and court-arbitration are barred by the absolute privilege afforded to statements made in the due course of judicial proceedings

Under North Carolina law, "a defamatory statement made in the due course of a judicial proceeding is absolutely privileged and will not support a civil action for defamation, even though it be made with express malice." *Jarman v. Offutt*, 239 N.C. 468, 472, 80 S.E.2d 248, 251 (1954) (cleaned up). As a general matter, the "privilege is not restricted to trials in civil actions or criminal prosecutions, but includes every proceeding of a judicial nature before a competent court or before a tribunal or officer clothed with judicial or quasi-judicial powers." *Id.* (cleaned up).

Mainville admits in her amended complaint that statements Defendants made in small claims court are not actionable because they are protected by judicial privilege. (Amended Compl. at p.6, ¶ 2(b)). This is true, and those statements cannot form the basis for a defamation claim. Mainville claims that statements made during the parties' court-ordered arbitration are not subject to judicial privilege. But the principle in *Jarman*, cited above, and the statutes and rules governing the process show that arbitration is a judicial-type proceeding, clothing arbitrators in judicial protection and power. *See, e.g.*, N.C. Gen.

Stat. § 7A-37.1 (establishing the court-ordered arbitration process and providing that “[a]rbitrators in this procedure shall have the same immunity as judges from civil liability for their official conduct”); Rules of N.C. Court-Ordered Arbitration, Rule 6(i) (“Arbitrators shall have the authority of a trial judge to govern the conduct of hearings, except the arbitrator may not issue contempt orders, issue sanctions or dismiss the action.”). Accordingly, statements made by Defendants during the arbitration proceeding are protected by judicial privilege.

C. Even assuming alleged statements are sufficiently attributed to one or both defendants and not protected by judicial privilege, the alleged statements are not defamatory under North Carolina law

1. *General law on defamation*

To state a claim for defamation, a plaintiff must allege “that the defendant made false, defamatory statements of or concerning the plaintiff, which were published to a third person, causing injury to the plaintiff’s reputation.” *Tyson v. L’Eggs Prods., Inc.*, 84 N.C. App. 1, 10-11, 351 S.E.2d 834, 840 (1987). Generally, “libel is written while slander is oral” *Phillips v. Winston-Salem/Forsyth Cty. Bd. of Educ.*, 117 N.C. App. 274, 277, 450 S.E.2d 753, 756 (1994).

North Carolina law recognizes three classes of libel: “(1) publications obviously defamatory which are called libel per se; (2) publications susceptible of two interpretations one of which is defamatory and the other not; and (3) publications not obviously defamatory but when considered with innuendo, colloquium, and explanatory circumstances become libelous, which are termed libels per quod.” *Arnold v. Sharpe*, 296 N.C. 533, 537, 251 S.E.2d 452, 455 (1979). Our courts recognize two classes of slander: “slander *per se* and slander per quod.” *Donovan v. Fiumara*, 114 N.C. App. 524, 527, 442 S.E.2d 572, 574 (1994).

Libel per se occurs when the publication “considered alone without explanatory circumstances: (1) charges that a person has committed an infamous crime; (2) charges a

person with having an infectious disease; (3) tends to impeach a person in that person's trade or profession; or (4) otherwise tends to subject one to ridicule, contempt or disgrace.” *Boyce & Isley v. Cooper*, 153 N.C. App. 25, 29, 568 S.E.2d 893, 898 (2002).

Slander per se occurs when false remarks, which in and of themselves, amount to “(1) an accusation that the plaintiff committed a crime involving moral turpitude; (2) an allegation that impeaches the plaintiff in his trade, business, or profession; or (3) an imputation that the plaintiff has a loathsome disease.” *Id.* at 29-30, 568 S.E.2d at 898.

2. *On its face, the amended complaint fails to establish claims for second class libel, libel per quod, and slander per quod*

To begin, Mainville cannot establish second class libel because she failed to allege written statements susceptible of two meanings, *Tyson*, 84 N.C. App. at 11, 351 S.E.2d at 840 (“In the present case, the complaint is insufficient to state a claim for libel within the second class because the complaint does not allege that the letter is susceptible of two meanings.”). In addition, she has not pleaded special damages, so there are no viable claims for libel or slander per quod. *Arnold*, 296 N.C. at 537, 251 S.E.2d at 455 (“In publications which are libelous *per quod*, the innuendo and special damages must be alleged and proved.”); *Donovan*, 114 N.C. App. at 527, 442 S.E.2d at 575 (“In the case *sub judice*, plaintiffs’ complaint contains no assertion of special damages, and in their appellate brief they concede the absence of such allegation. Therefore, it is uncontroverted plaintiffs failed to state a claim for slander *per quod*.”). Accordingly, the only categories of defamation at issue are libel and slander per se.

3. *The allegations about libel do not state a claim because statements to a person acting at the plaintiff’s request cannot support a defamation action*

Mainville’s sole claim for libel fails because a “communication to the plaintiff, or to a person acting at the plaintiff’s request, cannot form the basis for a libel or slander claim.” *Friel v. Angell Care Inc.*, 113 N.C. App. 505, 508, 440 S.E.2d 111, 113 (1994); *see also Pressley*

*v. Continental Can Co., Inc.*, 39 N.C. App. 467, 469, 250 S.E.2d 676, 678 (1979) (“A publication of a libel, procured or invited by the plaintiff, is not sufficient to support an action for defamation.”) (cleaned up); *Taylor v. Jones Bros. Bakery, Inc.*, 234 N.C. 660, 68 S.E.2d 313 (1951) *overruled on other grounds*, *Hinson v. Dawson*, 244 N.C. 23, 92 S.E.2d 393 (1956) (recognizing that a statement “invited or procured by plaintiff, or by a person acting for him, is not sufficient to support an action for defamation”). She alleges that one of the defendants (we don’t know which one) defamed her in a “written reference” provided to a third-party property management company. (Amended Compl. at p. 4, ¶ 1). Importantly, the amended complaint’s context shows that the management company contacted one of the Defendants because Mainville was seeking new housing and it needed to check out Mainville’s references, not because one of the Defendants initiated contact with the management company. Consequently, Mainville cannot state a claim for defamation based on statements that either Defendant purportedly made to the management company, which solicited the challenged statements while investigating Mainville’s housing application. *Friel*, 113 N.C. App. at 508, 440 S.E.2d at 113 (holding that the plaintiff’s former employer was not liable for defamation based on statements to a potential new employer who was checking the plaintiff’s references).

4. *The alleged statements are not defamatory, as a matter of law, because they do not reach the threshold under North Carolina law, and they are nothing more than statements of opinion or rhetorical hyperbole*

Overall, the alleged statements complained of are that one or both Defendants said: Mainville “had a disqualifying housing history” (Amended Compl. p. 4, ¶ 1); Anna De Santis was “afraid” and “scared” of Mainville, Ms. De Santis’ assistant was “terrified” of Mainville, and other tenants were “afraid” of her (Amended Compl. p. 5, ¶ 2(a)(i)-(ii); and Mainville “posed a threat, resulting in the presence of police officers at Plaintiff’s move-out inspection” (Amended Compl. p. 6, ¶ 2(c)). None of these statements fit into the categories of libel and slander per se recognized above. The statements also fail to meet the high threshold for

plaintiffs attempting to allege defamation per se. *Robinson v. Nationwide Ins. Co.*, 273 N.C. 391, 395, 159 S.E.2d 896, 899 (1968) (insurance company's statement that it was cancelling the plaintiff's policy because of his "infavorable [sic] personal habits" was not libelous per se); *Penner v. Elliott*, 225 N.C. 33, 34, 33 S.E.2d 124, 125 (1945) (a libel per se claim could not be maintained based on statements that the plaintiff was a man who would not pay his debts, would not work, and was "a man that respectable people had best not have anything to do with"); *Stutts v. Duke Power Co.*, 47 N.C. App. 76, 82, 266 S.E.2d 861, 865 (1980) (recognizing that "alleged false statements made by defendants, calling plaintiff 'dishonest' or charging that plaintiff was untruthful and an unreliable employee, are not actionable per se").

Further, statements regarding Mainville as a threat and commenting on various people's fear of her are not actionable. "Rhetorical hyperbole and expressions of opinion not asserting provable facts are protected speech." *Daniels v. Metro Magazine Holding Co., L.L.C.*, 179 N.C. App. 533, 539, 634 S.E.2d 586, 590 (2006). Characterizations of Mainville's housing history, statements of fear about Mainville's conduct, and implications that Mainville might pose a threat are nothing more than vague statements of opinion or rhetorical hyperbole. These statements cannot support claims for defamation per se. *See Ward v. Jett Props., LLC*, No. COA08-1508, 2010 N.C. App. LEXIS 210, at \*12 (2010) (unpublished) (considering statements in context and holding that the landlord-defendant's characterization of plaintiff-tenant's conduct as harassment, pestering, threatening, irritating, and nonsense amounts to statements of opinion or rhetorical hyperbole that are not actionable as libel *per se*"); *Perry v. Wiltse*, 256 Ill. App. 3d 422, 424, 628 N.E.2d 626, 628, 195 Ill. Dec. 162 (Ill. App. 1 Dist., 1993) (cited in *Ward v. Jett*; concluding that a building manager's statement to the tenant's landlord that tenant had repeatedly called and harassed the manager with complaints was not libelous per se, because the manager used the word

harass “not to suggest the commission of a criminal offense but rather in the sense of to bother or irritate”). Consequently, the content and nature of the statements alone defeat all Mainville’s defamation claims.

**III. Mainville’s claims for breach of contract and breach of the implied warranty of habitability are insufficiently pleaded to meet the elements of both claims**

The amended complaint contains a hybrid claim for breach of contract and breach of the implied warranty of habitability. This leads to confusion because the two theories of liability are separate and distinct. Breach of a lease may not be a breach of the implied warranty of habitability, and vice versa. In addition, traditional contract damages apply to breaches of a lease, but one remedies for habitability claims include rent abatement and related damages.

“The elements of a claim for breach of contract are (1) existence of a valid contract and (2) breach of the terms of the contract.” *McLamb v. T.P. Inc.*, 173 N.C. App. 586, 588, 619 S.E.2d 577, 580 (2005) (cleaned up). A valid lease contains four essential elements: “(1) the parties’ names (lessor and lessee), (2) a description of the realty demised, (3) a statement of the term of the lease, and (4) the rent or other consideration.” *Fuller v. Southland Corp.*, 57 N.C. App. 1, 8, 290 S.E.2d 754, 759 (1982).

Here, the amended complaint contains the property address and a rental amount, but Mainville does not identify the landlord or allege the term of the lease. As noted above, there are two defendants—Anna De Santis and De Santis Rentals, LLC—and the amended complaint defines and refers to them collectively as “Defendant.” The amended complaint is silent on which defendant was the landlord, and if the allegation is that both defendants were liable under the lease, Mainville fails to plead sufficient facts establishing the allegation. Further, the amended complaint makes a conclusory allegation that a laundry list of repair failures breached the lease. (Amended Compl. p 1-2, ¶ 4). But she does not identify the lease

provisions, and the complaint cannot establish which acts breached which provisions. Instead, she lumps her claims about the lease with her claims about the implied habitability warranty. All told, Manville's bare bones allegations do not show the existence of a valid lease and a breach of the lease's terms.

Regarding the implied warranty of habitability under N.C. Gen. Stat. § 42-42, Mainville again fails to identify which defendant was her landlord. In this way, she cannot establish which defendant purportedly breached the implied habitability warranty.

Moreover, under section 42-42 and case law, "a landlord must receive notice of necessary repairs and have reasonable opportunity to repair before the landlord is liable for applicable housing code violations." *Terry v. Pub. Serv. Co. of N.C., Inc.*, 385 N.C. 797, 810, 898 S.E.2d 648, 657 (2024). Mainville alleges that she gave notice about "needed repairs" but she fails to show that a defendant (again, we don't know which defendant she is alleging as landlord) was given a reasonable repair opportunity. She also fails to show that repairs were not made in response to her notice. Accordingly, nothing in the amended complaint establishes that either defendant violated section 42-42.

#### **IV. An unfair and deceptive trade practices has not been sufficiently pleaded**

To state a claim under N.C. Gen. Stat. § 75-1.1, a plaintiff must allege that "(1) the defendants committed an unfair or deceptive act or practice, or an unfair method of competition, (2) in or affecting commerce, (3) which proximately caused actual injury to the plaintiffs or to the plaintiffs' business." *Birtha v. Stonemor, N.C., LLC*, 220 N.C. App. 286, 298, 727 S.E.2d 1, 10 (2012) (cleaned up).

First off, Mainville fails to allege which defendant(s) was the landlord and identify which defendant committed the unfair and deceptive acts.

Further, Mainville's UDTPA claim primarily rests of allegations of fraudulent misrepresentations. A claim for fraud requires a plaintiff to plead "the time, place and

content of the fraudulent representation, identity of the person making the representation and what was obtained as a result of the fraudulent acts or representations.” *Bob Timberlake Collection, Inc. v. Edwards*, 176 N.C. App. 33, 39, 626 S.E.2d 315, 321 (2006). “The well-recognized elements of fraud are 1) a false representation or concealment of a material fact, 2) reasonably calculated to deceive, 3) made with intent to deceive, 4) which does in fact deceive, and which 5) results in damage to the injured party. A complaint charging fraud must allege these elements with particularity.” *Id.* (cleaned up). “Mere generalities and conclusory allegations of fraud will not suffice.” *Sharp v. Teague*, 113 N.C. App. 589, 597, 439 S.E.2d 792, 797 (1994) (cleaned up). When a UDTPA claim is based on allegations of deceptive conduct, the allegations must be pleaded with particularity. *See, e.g. Topshelf Mgmt. v. Campbell-Ewald Co.*, 117 F. Supp. 3d 722, 731, 2015 U.S. Dist. LEXIS 100910, at \*21 (M.D.N.C. Aug. 3, 2015) (“Rule 9(b) applies to section 75-1.1 claims alleging detrimental reliance on false or deceptive representations . . . this claim also lacks sufficient particularity under Rule 9(b) and will be dismissed.”). “In pleading actual fraud, the particularity requirement is met by alleging time, place and content of the fraudulent representation, identity of the person making the representation and what was obtained as a result of the fraudulent acts or representations.” *Edwards*, 176 N.C. App. at 39, 626 S.E.2d at 321.

The amended complaint lacks particularized details about which defendant (much less, which agent of defendant, if the allegations are against the LLC) made misrepresentations and when and where they were made. Mainville also fails to allege that a specific defendant falsely represented or concealed a material fact with the intent to deceive. Importantly, the allegations regarding misrepresentations that a defendant purportedly made to the NCDOJ (*see* Amended Compl. p. 3, ¶), were not made to Mainville

and are not actionable. Overall, the amended complaint does not sufficiently plead the substantive elements of fraud with the required particularity.

At bottom, this action concerns Mainville’s complaints about her landlord during a lease agreement, and that will not support an action under the UDTPA. *Branch Banking & Trust Co. v. Thompson*, 107 N.C. App. 53, 62, 418 S.E.2d 694 (1992) stressing that “a mere breach of contract, even if intentional, is not sufficiently unfair or deceptive to sustain an action under N.C.G.S. § 75-1.1”).

**CONCLUSION**

For the reasons stated above, the amended complaint does not state claims for defamation, breach of contract, breach of the implied warranty of habitability, and unfair and deceptive trade practices. Accordingly, the amended complaint should be dismissed, with prejudice, in its entirety.

Respectfully submitted this 30<sup>th</sup> day of September 2025.

**HATCH, LITTLE & BUNN, L.L.P.**  
*Counsel for Defendants*

By: David M. Yopp

David M. Yopp  
N.C. State Bar No. 48185

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**CERTIFICATE OF SERVICE**

The undersigned served the foregoing MEMORANDUM OF LAW SUPPORTING DEFENDANTS' MOTION TO DISMISS on the pro se Plaintiff using the eCourts electronic file and serve system, and by depositing a copy of the same into the United States First Class Mail, postage-paid, in accordance with Rule 5 of the North Carolina Rules of Civil Procedure, addressed as follows:

[REDACTED]  
Charity Mainville  
[REDACTED]  
[REDACTED]

This 30<sup>th</sup> day of September 2025.

**HATCH, LITTLE & BUNN, L.L.P.**  
*Counsel for Defendants*

By: David M. Yopp

David M. Yopp  
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