

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

TAILWIND CAPITAL )  
PARTNERS, INC., )  
 )  
Plaintiff, )  
 ) C.A. No. N18C-11-209 FWW  
v. )  
 )  
DRIVEN BY SAFETY, INC., )  
 )  
Defendant. )

Submitted: March 15, 2019  
Decided: June 26, 2019

*Upon Defendant's Motion to Dismiss*

**DENIED**

**ORDER**

Richard M. Beck, Esquire, Sally E. Veghte, Esquire, Klehr Harrison Harvey  
Branzburg LLP, 919 Market Street, Suite 1000, Wilmington, DE 19801, Attorneys  
for Plaintiff.

Kate A. Mahoney, Esquire, Neil R. Lapinski, Esquire, William M. Kelleher,  
Esquire, Phillip A. Giordano, Esquire, Gordon, Fournaris & Mammarella, P.A.,  
1925 Lovering Avenue, Wilmington, DE 19806, Attorneys for Defendant.

**WHARTON, J.**

This 26th day of June, 2019, upon consideration of the Motion to Dismiss of Defendant Driven By Safety, Inc., Tailwind Capital Partners, Inc.'s Response, and the record in this case, it appears to the Court that:

(1) On November 26, 2018, Plaintiff Tailwind Capital Partners ("Tailwind") brought this action against Driven By Safety, Inc. ("DBS"), alleging breach of contract.<sup>1</sup> On January 14, 2019, DBS filed a Motion to Dismiss or for a More Definite Statement.<sup>2</sup> In lieu of responding to that motion, Tailwind filed an Amended Complaint on February 7, 2019 setting forth additional factual allegations in support of its breach of contract claim.<sup>3</sup> The Amended Complaint alleges that DBS executed a convertible promissory note in favor of Tailwind on June 6, 2018, that DBS defaulted on the note by making false statements in violation of the terms of the note, and that Tailwind suffered damages due to DBS's failure to repay the note.<sup>4</sup>

(2) On February 20, 2019, DBS filed this Motion to Dismiss for failure to state a claim pursuant to Superior Court Civil Rule 12(b)(6).<sup>5</sup> DBS claims that the Amended Complaint failed to put them on notice adequately of the breach of the

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<sup>1</sup> Pl.'s Compl., at 1.

<sup>2</sup> Pl.'s Resp. Mot. Dismiss, at 2.

<sup>3</sup> Pl.'s Am. Compl., at 1.

<sup>4</sup> *Id.* at 3-4.

<sup>5</sup> Def's. Mot. to Dismiss, at 1.

obligation imposed by the note or the resultant damages.<sup>6</sup> On March 15, 2019, Tailwind filed an answer opposing DBS's Motion to Dismiss.<sup>7</sup> Tailwind asserts it has properly stated a claim for breach of contract against DBS.<sup>8</sup>

(3) A motion to dismiss for failure to state a claim pursuant to Superior Court Rule 12(b)(6) will not be granted if the "plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint."<sup>9</sup> The Court's review is limited to the well-pled allegations in the complaint.<sup>10</sup> In ruling on a 12(b) motion, the Court "must draw all reasonable factual inferences in favor of the party opposing the motion."<sup>11</sup> Dismissal is warranted "only if it appears with reasonable certainty that the plaintiff could not prove any set of facts that would entitle him to relief."<sup>12</sup>

(4) The pleading standards governing a motion to dismiss in Delaware are minimal.<sup>13</sup> Delaware is a notice pleading jurisdiction, and a complaint need only "give general notice as to the nature of the claim asserted against the defendant in

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<sup>6</sup> *Id.* at 3.

<sup>7</sup> Pl.'s Resp. Mot. Dismiss, at 1.

<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Browne v. Robb*, 583 A.2d 949, 950 (Del. 1990).

<sup>10</sup> *Doe v. Cahill*, 884 A.2d 451, 458 (Del. 2005).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See *Central Mort. Co. v. Morgan Stanley Mort. Capital Holdings LLC*, 27 A.3d 531, 536 (Del. 2011).

order to avoid dismissal for failure to state a claim.”<sup>14</sup> To state a claim for breach of contract, a party must plead simply: (1) the existence of a contract; (2) a breach of the contract; and (3) damages suffered as a result of the breach.<sup>15</sup> A plaintiff need not plead specific facts to state an actionable claim.<sup>16</sup>

(5) The Amended Complaint easily satisfies this standard, as the pleading includes sufficient allegations of contract, breach, and damages.<sup>17</sup> The Amended Complaint alleges the existence of a contract - that DBS “executed an unsecured convertible promissory note in favor of Tailwind in the principal amount of \$150,000.00.”<sup>18</sup> It includes allegations regarding a breach, citing to six separate written statements by DBS that are “false, incorrect, incomplete or misleading... thus constituting an Event of Default pursuant to the Note.”<sup>19</sup> Finally, the Amended Complaint alleges damages, pleading that as a result of the breach, “[DBS] is liable to Tailwind for the immediate payment of \$162,066.30... [i]n addition... [to] payment of continually accruing interest and costs incurred by Tailwind in connection with the enforcement of the Note.”<sup>20</sup> Because Tailwind sufficiently pled

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<sup>14</sup> *Nye v. Univ. of Del.*, 2003 WL 22176412, at \*3 (Del. Super. Ct. Sept. 17, 2003); *see also* Super. Ct. Civ. R. 8(a)(1).

<sup>15</sup> *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003).

<sup>16</sup> *Id.* at 611.

<sup>17</sup> Pl.'s Resp. Mot. Dismiss, at 4.

<sup>18</sup> Pl.'s Am. Compl., at 3.

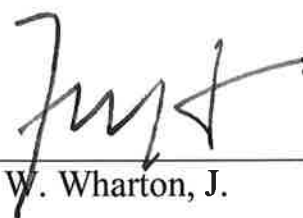
<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 6-7.

a claim against DBS for breach of contract, it has satisfied its requirements under Rule 12(b)(6).

**THEREFORE**, Defendant Driven By Safety, Inc.'s Motion to Dismiss is **DENIED**.

**IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read 'F. Wharton', is written over a horizontal line.

Ferris W. Wharton, J.