

IN THE CIRCUIT COURT FOR BALTIMORE CITY

JEANNETTE BELLIVEAU,	*	
Plaintiff,	*	
vs.	*	Case No. 24-C-19-001836
AirBNB Inc.,	*	
Defendant.	*	

PLAINTIFF’S REQUEST FOR LEAVE TO AMEND COMPLAINT
AND
FOR CONVERSION OF MATTER TO RECORD APPEAL

JEANNETTE BELLIVEAU, Plaintiff, representing herself, hereby respectfully moves this Court, pursuant to Md. Rule 2-341(b)¹, for leave to amend the ad damnum clause in her Complaint against AirBNB Inc. from \$5,000.00 (covering damages for 8/14/2018 to 12/31/2018) to an amount in excess of \$75,000.00 to account for the continuing damages resulting from the Defendant’s negligence in connection with the publication of a false and defamatory review on the Plaintiff’s AirBNB web page. As a result of the Defendant’s failure to adequately investigate

¹ “A party may file an amendment to a pleading after the dates set forth in section (a) of this Rule only with leave of court. If the amendment introduces new facts or varies the case in a material respect, the new facts or allegations shall be treated as having been denied by the adverse party. The court shall not grant a continuance or mistrial unless the ends of justice so require.”

See also Md. Rule 7-112(d) (explaining that, in the context of de novo appeals heard in the Circuit Court, the form and sufficiency of pleadings are governed by the rules applicable in the District Court, but that the appeal shall otherwise proceed in accordance with the rules governing cases instituted in the circuit court). *See also Goldstein v. Bank*, 41 Md.App. 224 (1979) (stating that leave to amend pleadings should be granted freely in order to promote justice); *see also Gensler v. Korb Roofers, Inc.*, 37 Md.App. 538 (1977) (noting that amendments to pleadings are to be allowed freely and liberally so long as the factual pattern remains essentially the same and no new cause of action is stated invoking different legal principles).

the false post and Defendant's subsequent deactivation of the Plaintiff from the platform, the Plaintiff has suffered and continues to suffer tangible and significant economic damages. In addition, as the real amount in controversy exceeds \$5,000.00, the Plaintiff further requests that this Court convert the pending de novo appeal to an appeal on the record in accordance with Md. Rule 7-113, stating in support thereof as follows:

BRIEF FACTUAL AND PROCEDURAL BACKGROUND

1. The Plaintiff, who makes her living as a short-term rental host², originally filed a Complaint in November 2018 in the District Court for Baltimore City against the Defendant, the rental platform through which she had been earning over 90% of her income. The factual circumstances substantiating the Complaint began in August 2018 when the Defendant's Trust and Safety Department sent an email to the Plaintiff indicating its receipt of a report from a guest that a weapon was present at the Plaintiff's residence. (See Exhibit A.) Upon receipt of this email, the Plaintiff immediately replied that she had no weapons of any description on her property and expressed bafflement. (See Exhibit B.)

2. In its initial notice, the Defendant neglected to explain to the Plaintiff that a guest had provided a written statement to the Defendant alleging the presence of a "9mm hand gun" in the Plaintiff's residence, a fact that emerged eight (8) months later in the District Court hearing on this case. The Defendant provided no details to the Plaintiff regarding the report, causing the Plaintiff to wonder if her sewing scissors had led to the guest's complaint. Nor did the Defendant explain to the Plaintiff that a Customer Service representative also recommended that the guest provide a review to be published on the Plaintiff's listing page. Such a review was in fact

² The Plaintiff rents out various rooms in her Upper Fells Point residence to individuals seeking short to mid-term lodging.

provided by the guest and subsequently published by the Defendant on the Plaintiff's listing page. (See Exhibit C.) The Defendant did not seek any clarification or explanation from the Plaintiff regarding the alleged "weapon" before proceeding.

3. The Defendant subsequently deactivated the Plaintiff from the platform, where she had been earning several thousand dollars monthly as her only source of income. Rather than providing any explanation for its actions or communicating with the Plaintiff, the Defendant instead bluntly stated that this action would not be reconsidered and that the Defendant would not respond further to the Plaintiff. (See Exhibit D, email from Defendant to Plaintiff stating in conclusion that "[w]e cannot reconsider this determination or respond further regarding your account.")

4. Only after the Defendant (1) disabled the links to the Plaintiff's listings, (2) falsely informed the Plaintiff's upcoming guests that the Plaintiff had cancelled their stays, and (3) terminated the Plaintiff's account, the Plaintiff finally learned that guest's review had reported a rubber training pistol, barely visible in the dog's toy basket, as a "9 mm hand gun." (See Exhibit E.)

5. The Defendant's abrupt dismissal of the Plaintiff occurred in the absence of any threat to guests in the Plaintiff's home. The guest did not provide her defamatory report and review to the Defendant until about 72 hours after leaving the Plaintiff's property, according to the Defendant's Counsel at the original trial. There was no threat to the complaining guest, presumably returned by this time to her domicile 400 miles from Baltimore. None of the guests staying in the Plaintiff's residence in the two-week time span between the Defendant's receipt of this erroneous report and the time the Defendant terminated the Plaintiff from its platform had any complaints—let alone a complaint regarding an unsecured weapon—nor had the Plaintiff's

650 or so previous guests expressed any concerns about the Plaintiff or her residence personally or through the Defendant. At all times these prior guests stayed with the Plaintiff, the rubber toy training pistol had been in the same location.

6. The Defendant's callous and negligent mishandling of this situation was clearly avoidable. In its haste, the Defendant gave no deference or consideration to the Plaintiff's stellar record as an AirBNB host with over 650 guests and 500 exemplary reviews over five-year period, choosing instead to blindly accept as fact the allegations presented in a single defamatory review. Only a moment or two of investigating would have revealed that the complaining guest was a profound outlier in a sea of glowing reviews and—at the very least—that the matter warranted further investigation. Instead, it appears that the Defendant's Trust and Safety Department has a policy of automatically terminating hosts without evidence or investigation and regardless of the merits of a complaint. Such a policy presents an incredible and irresponsible window of opportunity for mischief and harm. Individuals doing business in this competitive market could eliminate competitors by simply filing false reports, knowing that deactivation will be swift, imminent, and devoid of any real investigation or due process.

7. At the time her Complaint was originally filed, the Plaintiff had suffered actual damages in the range of \$5,000.00 from lost income and thus filed in Small Claims Court, seeking \$5,000.00 for the damages incurred from 8/14/2018 to 12/31/2018.

8. This case was heard in District Court in March 2019, wherein the Defendant's Counsel claimed that "safety was of paramount concern" in attempting to explain the Defendant's actions. However, despite the purported urgency claimed at trial, the Defendant waited two weeks to terminate the Plaintiff. This delay allowed the Defendant to collect an impressive fee for its share of a lucrative weekend in August where the Plaintiff hosted attendees

paying premium rates during the popular “Moonrise” music festival at Pimlico. This delay and the surrounding circumstances cast doubt on the Defendant’s apparent position that its conduct was necessary to quickly address a legitimate safety concern.

9. At the March hearing, the Defendant claimed erroneously and repeatedly that the company had conducted an “investigation,” that the company had spoken directly to the Plaintiff, that the Plaintiff had been “suspended” rather than terminated, that the Plaintiff’s reinstatement results from a “reopened investigation” rather than a lawsuit, and that the Plaintiff had been reinstated much earlier than was actually the case. Unpersuaded, the presiding Judge condemned the Defendant’s purported “investigation” as “bogus” and “a fraud,” emphasizing the fact that the Defendant never attempted to hear the Plaintiff’s side of the story before proceeding to strip her of her listing privileges and publish the review defaming her. The Judge’s Order, in effect, directed the removal of the defamatory review alleging the presence of an “unsecured 9mm hand gun” from the Plaintiff’s listing and threatened contempt proceedings if the Defendant failed to comply. In denying the pecuniary relief sought by the Plaintiff, the District Court relied on the “terms of service” signed by the Plaintiff stating that AirBNB would not “be liable for any incidental, special, exemplary or consequential damages, including lost profits.” The legality and/or enforceability of the underlying contract between the parties was not addressed.

REQUEST TO AMEND DAMAGES

A. Continuing Economic Damages

10. Since the Plaintiff’s filing of her initial complaint, she has continued to suffer additional damages as a result of the Defendant’s arbitrary deactivation and similarly erratic reversal of the deactivation. Her monthly income is down by 90 percent. So that these additional

damages may be considered within the confines of the instant proceeding, allowing for the ultimate and just resolution of this matter, the Plaintiff seeks leave to amend her Complaint.

11. The effects of the Defendant's conduct on the Plaintiff's livelihood are tangible and substantial. The Plaintiff's bookings and income through AirBNB is now less than 10 percent of what it was during same time period in the prior year. (See Exhibit F). As such, it appears as through the damage caused by the Defendant's careless approach to handling complaints and investigations may be irreparable. Prior to being terminated in August 2018, the Plaintiff's several short-term rentals were fully booked on a regular basis. Since her reinstatement in March 2019, the Plaintiff has struggled to consistently fill her rooms.

12. The Plaintiff requests leave of this Court to amend her complaint to account for damages that have accrued since the filing of her District Court action and will continue to accrue for the foreseeable future, as the destructive effects of the Defendant's callous and otherwise negligent conduct continue to wreak havoc on the Plaintiff's ability to make a living.

B. Additional Damages

13. In addition to the continuing loss of income due to lost rentals resulting from the Defendant's publication of the defamatory post and its deactivation of the Plaintiff, the Plaintiff also remains encumbered by damage to her reputation, emotional distress from being rendered unable to support herself without public assistance, and a lack of confidence in her ability to make a living as a short-term rental host.

14. With this Court's permission, the Plaintiff would also be amending her complaint to include a request for punitive damages, given the stark indifference of the Defendant to the consequences of its actions. The following actions taken by the Defendant have appeared

inexplicable to neutral observers, including the Judge in Small Claims Court, and support an award for punitive damages in favor of the Plaintiff. The Defendant:

- (a) Failed to contact the Plaintiff for additional details regarding the complaint;
- (b) Has yet to identify the alleged unsecured weapon purportedly substantiating its course of conduct;
- (c) Either overlooked or disregarded the Plaintiff's record as an AirBNB host in immediately acting on a single baseless negative review;
- (d) Denied the Plaintiff any meaningful opportunity to be heard before taking action against her;
- (e) Has yet to complete a legitimate inquiry into the matter and failed to take any meaningful steps to mitigate the damages caused.

15. If the Plaintiff's instant request for leave to amend her Complaint is denied, the Plaintiff will be required to file a separate action before this Court for the continuing damages that have accrued since the time of her initial filing and have not been presented for consideration by this Court or the District Court.

16. In the interests of justice and judicial economy, the Plaintiff asks this Court for leave to amend the ad damnum clause of her Complaint to reflect the additional damages that have accrued since the filing of her initial Complaint as described herein, given the following facts:

- (a) The Defendant's negligence in handling its receipt of a false report;
- (b) The Defendant's indifference to the harm caused the Plaintiff and inaction to correct its response from August until February;

(c) The emotional trauma and financial harm directly caused to the Plaintiff as a result of Defendant's conduct;

(d) The wanton particulars of the Plaintiff's removal from the AirBNB platform – that is, the links to her listing stopped working, then she received an outcry from her many upcoming guests wondering “why she had cancelled them,” as she sat at the dolphin exhibit feeling faint and distressed at the National Aquarium, then she was terminated by AirBNB, and only AFTER termination did she piece together that a guest had reported a rubber training pistol in the dog's toy basket. (See Exhibit C); and

(e) The publication of a false review containing the dangerous assertion that the Plaintiff had an unsecured, unregistered weapon in dog's toy basket by front door, leaving herself and her property exposed to criminal activity.

IV. CONVERSION TO APPEAL ON THE RECORD

17. In conjunction with her request to amend the damages sought in complaint, the Plaintiff respectfully asks this Court to convert the pending de novo appeal to an appeal on the record, as the amended damages sought dictate that a record appeal will be required. Pursuant to Md. Code Ann., Courts & Judicial Proceedings § 12-401(f), “in a civil case in which the amount in controversy exceeds \$5,000 exclusive of interest, costs, and attorney's fees ... an appeal shall be heard on the record made in the District Court.”

18. The Plaintiff has a copy of the audio recording from the District Court proceeding, and is prepared to order a transcript thereof to be provided to this Court upon the Court's granting of this request for leave to amend.

WHEREFORE, the Plaintiff respectfully requests that this Court grant her the following relief in the interests of justice and judicial economy:

A. That this Court permit the Plaintiff to amend her complaint so that the Court may consider the damages that have accrued since the filing of her District Court complaint and which will continue to accrue for the foreseeable future, if not indefinitely;

B. That this Court convert this matter to an appeal on the record in accordance with Maryland's Rules of Civil Procedure governing District Court Appeals with an amount in controversy exceeding \$5,000.00;

C. That this Court continue the hearing presently scheduled for **May 10**, 2019, so as to afford ample time for the generation and transmission of the transcript to this Court; and

D. That this Court grant any such further and additional relief as may be appropriate.

RESPECTFULLY SUBMITTED,

JEANNETTE BELLIVEAU
203 South Ann St.
Baltimore, MD 21231
410-342-5131
amateursguide@gmail.com

I hereby certify under the penalty of perjury that the facts contained in the foregoing document are true and accurate to the best of my knowledge, information and belief.

JEANNETTE BELLIVEAU

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on _____, April _____, 2019, a copy of the foregoing document was hand delivered to:

Spencer Evans, Esq.
Niles, Barton & Wilmer
111 S. Calvert St.
Suite 1400
Baltimore, MD 21202

Counsel for Defendant

JEANNETTE BELLIVEAU

IN THE CIRCUIT COURT FOR BALTIMORE CITY

JEANNETTE BELLIVEAU, *

Plaintiff, *

vs. * Case No. 24-C-19-001836

AIRBNB INC., *

Defendant. *

ORDER

Upon consideration of the Plaintiff’s Request for Leave to Amend Complaint and for Conversion to Record Appeal, any response thereto, and any other relevant information, it is, this _____ day of _____, 2019, by the Circuit Court for Baltimore City,

ORDERED, that the Plaintiff’s Request for Leave to Amend Complaint be, and is hereby, GRANTED. It is further

ORDERED, that the Plaintiff shall submit her amended complaint with this Court on or before _____. It is further

ORDERED, that the amendments made by the Plaintiff shall be limited to those proposed by Plaintiff in her Request. It is further

ORDERED, that this matter shall be converted to an appeal on the record, pursuant to Courts & Judicial Proceedings § 12-401(f). It is further

ORDERED, that the hearing presently scheduled for May 10, 2019 be continued to _____. It is further

ORDERED, that the Plaintiff shall request the transmittal of the transcript from the District Court for Baltimore City to this Court on or before _____.

And, it is further

ORDERED, that

JUDGE