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No. 24-CV-273

In the

District of Columbia Court of Appeals

MATTHEW BARE

Appellant,

v.

RAINFOREST ALLIANCE, INC.,

Appellee.

*Appeal from the Superior Court of the District of Columbia,
Civil Division No. 2023-CAB-006898 (Hon. Carl E. Ross, Judge)*

BRIEF FOR APPELLEE

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August 15, 2024

Rule 28 (a)(2) STATEMENT

Appellee was represented at the trial court level by M. Robin Repass of Fisher and Phillips, LLP. Appellee is represented on appeal by M. Robin Repass and J. Andres Roldan of Fisher and Phillips, LLP. Appellant was represented at the trial court level and on appeal by Philip B. Zipin of Zipin, Amster & Greenberg, LLC.

Appellee, Rainforest Alliance, Inc. is an international non-profit, non-governmental organization.

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JURISDICTIONAL STATEMENT

On November 8, 2023, Appellant Matthew Bare ("Appellant" or "Bare") filed a Complaint against Appellee Rainforest Alliance, Inc. ("Appellee" or "RA") in the Superior Court of the District of Columbia for claims of (1) violating the D.C. Wage and Collections Act, D.C. Code § 32-1301, et seq. and (2) common law breach of contract. The Superior Court of the District of Columbia had jurisdiction over Appellant's claims pursuant to D.C. Code § 11-921.

On March 6, 2024, the Superior Court of the District of Columbia entered judgment dismissing Appellant's claims. Appellant has appealed this decision. This Honorable Court has jurisdiction over this appeal pursuant to D.C. Code § 11-721.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did the Superior Court err in dismissing Appellant's Complaint for failure to state a claim upon which relief may be granted?
2. Did the Superior Court err in rejecting Appellant's request to amend his Complaint in the "Conclusion" section of its Opposition to Appellant's Motion to Dismiss?

STATEMENT OF THE CASE

On November 8, 2023, Appellant Matthew Bare (Appellant" or Bare") filed a Complaint against Appellee Rainforest Alliance, Inc. ("Appellee" or "RA") in the Superior Court of the District of Columbia, claiming (1) violation of the District of Columbia Wage Payment and Collection Law ("DCWPCL") and (2) common law breach of contract. A-6-19. Bare alleged that RA failed to pay a "redundancy settlement" that Bare claims he was legally entitled to receive. A-6. On December 8, 2023, RA filed its Motion to Dismiss Bare's Complaint pursuant to D.C. Super. Ct. R. Civ. P. 12(b)(6). A-22-29. There, RA argued that the redundancy settlement was a discretionary payment that is not considered "wages" under the DCWPCL. A-22-26. RA argued that the redundancy settlement was not "automatic and mandatory" because it was subject to Bare executing a "release of claims, settlement agreement or other similar agreement." A-22-26. For these reasons, RA argued that because the payment was discretionary, the payment did not constitute wages owed to Appellant under the DCWPCL. A-26. RA also argued similarly regarding Bare's breach of contract claim, asserting that it should be dismissed because no contractual obligation required payment of the redundancy settlement where Bare failed to satisfy the condition precedent prior to termination. A-26-29.

On December 20, 2023, Bare filed an Opposition to RA's Motion to Dismiss (hereinafter "Opposition" or "Appellant's Opposition"). A-30-36. There, Bare **conceded** that in fact, no release agreement or release of claims was executed. A-34. To excuse this deficiency, Appellant argued that the condition precedent was waived because RA did not provide Bare the release prior to his uncontested termination, an allegation not pled in his Complaint. A-34. Appellant did not file any motion to request leave to amend his Complaint. Instead, Appellant merely stated at the conclusion of his Opposition that if the Motion to Dismiss was granted, he "would like an opportunity to amend." A-36.

On December 27, 2023, RA filed its Reply to Bare's Opposition with the trial court.[1] There, RA argued that Bare failed to refute its assertion that the redundancy payment was discretionary with any legal authorities. DX at 1. RA argued that the determination of whether an enforceable contract exists is a question of law and that the Court had sufficient information at its disposal to determine whether the condition precedent to the contract was met. DX at 4.

On March 6, 2024, the Superior Court issued an ordering dismissing both of Bare's claims with prejudice. A-38-45. The Superior Court found that Bare failed to allege that he had satisfied the condition precedent – the execution of a release

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[1] Appellee's Reply to Appellee's Opposition was not included in the Joint Appendix filed by Appellant. Appellee has filed a Joint Motion for Leave to File an Amendment to the Joint Appendix.

agreement, or that the release had been waived by. A-42-45. RA. The trial court also noted that Bare "effectively" conceded he did not satisfy the condition precedent in his Opposition to RA's Motion to Dismiss. A- 43-44. The Superior Court held that because of this deficiency, coupled with the concession that the condition precedent had not been met, Bare's DCWPCL and breach of contract claims failed. A-45.

STATEMENT OF FACTS

On August 10, 2023, Bare learned that his position had become "redundant" as a consequence of RA's new "Strategy and Operating Model" launched in 2023. A-7. RA instituted a policy to provide "redundancy settlement" to those RA employees who were directly impacted by the restructuring. RA described the terms of the "redundancy settlement" as follows:

> [RA] will pay a redundancy settlement as set forth below, subject to the employee executing a release of claims, settlement agreement, or other similar agreement as provided by the Rainforest Alliance, if and as applicable and appropriate in the relevant country.

A-7. Bare was interested in resigning his employment, effective September 22, 2023, in order to receive the redundancy settlement. A-8. Prior to finalizing or signing any release of claims or settlement agreement needed to receive the redundancy settlement, Bare emailed RA colleagues, making several observations that were critical of RA's management. A-8. These comments were not

appreciated by management. On September 8, 2023, RA terminated Bare's employment. A-8. As a result**,** he was denied the redundancy settlement. A-8.

STANDARD OF REVIEW

A decision of the Superior Court of the District of Columbia to dismiss a complaint for failure to state a claim is reviewed de novo. Atkinson v. D.C., 281 A.3d 568, 570 (D.C. 2022). A complaint should be dismissed under Rule 12(b)(6) if it does not satisfy the pleading standard in Rule 8(a), which requires a pleading to contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Potomac Development Corp. v. District of Columbia 28 A.3d 531, 552 – 553 (D.C. 2011). A complaint that "fails to allege the elements of a legally viable claim" will not survive. Rayner v. Yale Steam Laundry Condominium Assoc., 289 A.3d 387, 396 (D.C. 2023).

A Superior Court decision denying leave to amend a pleading is reviewed for abuse of discretion. Leave to amend is not automatic and this Court examines the following five factors in determining if the Superior Court abused its discretion: (1) the number of requests to amend; (2) the length of time that the case has been pending; (3) the presence of bad faith or dilatory reasons for the request; (4) the merit of the proffered amended pleading; and (5) any prejudice to the non-moving party. Crowley v. N. Am. Telecomms. Ass'n, 691 A.2d 1169, 1174 (D.C. 1997).

SUMMARY OF THE ARGUMENT

The facts of this matter are quite simple, and not contested, making it ripe for dismissal during the pleading stage. This Court has all the information at its disposal and no additional discovery is needed. Appellant was offered a "redundancy payment," contingent upon signing the execution of a release of claims, settlement agreement, or other similar agreement. He did not execute a settlement agreement or other similar agreement required by the RA prior to his uncontested termination.

Bare's appeal to this Court – which seeks reversal of the dismissal of his claims alleging violations of the D.C. Wage Payment and Collections Act and Breach of Contract - is wholly without merit. Appellant's arguments were considered – and soundly rejected by the Superior Court. Bare fails to state a claim for relief because he failed to sufficiently plead that he satisfied the condition precedent required to (1) allege that his claimed "wages" were "earned," as is required by the DCWPCL; (2) allege that the payment was a "wage"(as is also required by the DCWPCL) and not a discretionary payment, and (3) plead that the condition precedent was met such that a contractual obligation existed. The Superior Court considered the facts that (1) no allegation of satisfying the condition precedent was made, and (2) Bare **conceded** in his Opposition that he had not satisfied the condition precedent of signing a release. The Superior Court,

as well as this Honorable Court, is within its right to look beyond the pleadings for the limited purpose of considering the fact that Bare conceded that he did not execute the required condition precedent (release agreement) in his Opposition to RA's Motion to Dismiss. Bare's Complaint referenced the requirement of the release and settlement, which is integral and central to the alleged claims giving rise to his lawsuit.

Bare's attempts to cure this fundamental deficiency by resorting to the "prevention doctrine" are misplaced. In short, Bare alleges that his failure to sign the required release of claims and settlement agreement should be excused because he was terminated prior to getting an opportunity to sign them. "The Prevention Doctrine" merely disallows a promisor to act in bad faith to hinder the condition precedent. If the contract explicitly or implicitly permits the promisor to take some action, and that action, in turn, prevents or hinders the occurrence of some condition precedent to the promisor's performance obligation, then the failure to meet that obligation will not constitute breach. The mere fact that RA had yet to provide the release agreement prior to his uncontested termination does not constitute wrongful conduct sufficient to allege the prevention doctrine as a matter of law. Nowhere in Bare's Complaint does it allege any bad faith on the part of RA, nor could it have, given RA was in the right to terminate him at any point in light of his at-will employment status. Furthermore, Bare's cited cases from other

jurisdictions demonstrate a pattern of active hindrance by the employer in changing the terms of the condition precedent, something not alleged here or that could be alleged in this matter. Because Bare failed to allege facts that he satisfied the condition precedent required to receive the redundancy payment and failed to allege sufficient facts to support his position that it was waived, Bare's claims must fail.

Bare's arguments that he should have been given leave to amend his complaint are also without merit. First, Bare did not file any motion to request leave to amend his Complaint. Instead, Bare merely stated at the conclusion of his Opposition that if the Motion to Dismiss was granted, he "would like an opportunity to amend." A-36. Second, the passage of time does not ordinarily in and of itself call for the granting or denial for leave to amend. Here, there is no reason to provide leave to amend considering that any amendment would be futile given the fact Bare already conceded he did not satisfy the condition precedent in his Opposition to RA's Motion to Dismiss. No amendment to his Complaint could cure that deficiency. Bare's arguments are a simple attempt to persuade this Court to overturn the Superior Court's decision on a mere technicality when the facts in this matter were already established. We respectfully ask this Honorable Court to affirm the Superior Court's Decision.

ARGUMENT

1. The Superior Court Properly Ruled that Appellant Did Not Allege He Met the Performance of a Condition Precedent.

The Superior Court properly concluded that Bare's Complaint failed to allege that the condition of executing the release was met. The facts in this matter are undisputed and ripe for ruling on a 12(b)(6) motion. Bare identified and described the condition precedent in his Complaint, quoting from the applicable redundancy settlement terms that specify that the payment of the settlement is "subject to the employee executing a release of claims, settlement agreement, or other similar agreement." A-7. Yet, Bare failed to allege any facts in the Complaint's "Facts" section that he executed the required agreement or release or even pled generally that he satisfied the condition precedent. Instead, Bare merely generally alleged in his "Count II Breach of Contract" claim that he had met the conditions to receive the redundancy payment. A-10.

Bare also could not have alleged that he executed the release, because, as he conceded in his Opposition to RA's Motion to Dismiss, he did not sign any such agreement or release. A-34. It is well established that a trial court in ruling on a Rule 12(b)(6) motion may, under certain circumstances, consider facts or documents outside of the four corners of the complaint without converting to a motion for summary judgment. See Smith v. Public Defender Service, 686 A.2d 210, 212 (D.C.1996) (holding that "in a number of opinions and orders [in other

cases], as well as a brief and a transcript," the court has considered "matters outside the pleading" within the meaning of Rule 12(b). Specifically pertinent to this case, this Court has held that a trial court may inquire into the contents or existence of documents "referred to in the complaint" that are "central to plaintiff's claim…without converting the motion to one for summary judgment." Oparaugo v. Watts, 884 A.2d 63 (D.C.2005).

The redundancy payment, as well as the existence of an executed agreement, are documents "referred to in the complaint" and "central to plaintiff's claim" in this matter. As such, it is proper for this Court and the Superior Court to consider Bare's concessions that no release agreement had been signed. Bare is now attempting to claim that he alleged all obligations were met under the contract, despite previously admitting in his trial court filings that such an allegation would be patently false.

As discussed in more detail in the following paragraph, Bare's own arguments in his Brief and in his trial court Opposition, attempt to go outside the four corners of his Complaint. There, Bare alleges that because he had not been provided the settlement agreement or release of claims, the "prevention doctrine" applies. (A's Brief pp. 16). However, this was not an allegation plead in his Complaint, but instead an allegation mentioned in their Opposition. A-35. Bare can't have it both ways.

Bare unsuccessfully attempts to overcome the fundamental deficiency of failing to allege the condition precedent was met, by resorting to the "prevention doctrine." The prevention doctrine operates as an "exception to the general rule that [a party] has no duty to perform under a contract containing a condition precedent until the condition occurs." District–Realty Title Ins. Corp. v. Ensmann, 767 F.2d 1018, 1023 (D.C.Cir.1985). The doctrine "excuses a condition precedent when a party **wrongfully** prevents the condition from occurring." Id. (*Emphasis Added*). The prevention doctrine stands for the basic proposition "that if a promisor is himself the cause of the failure of performance, either of an obligation due to him or of a condition upon which liability depends, he cannot take advantage of the failure." Reiman v. Int'l Hospitality Group, 558 A.2d 1128,1132 (D.C. 1989). The rationale underlying the "prevention doctrine" is that when a promise is made with a condition precedent, there is an implied promise that the promisor will act in **good faith** and not prevent the performance of the condition or make it more difficult. R. A. Weaver & Assocs. v.Haas & Haynie Corp., 663 F.2d 168, 176 (D.C. Cir. 1980) (*emphasis added*). A party must plead sufficient facts to show that the promisor substantially hindered the condition precedent from occurring. Id.

In the spirit of good faith, however, if the contract explicitly or implicitly permits the promisor to take some action, and that action, in turn, prevents or

hinders the occurrence of some condition precedent to the promisor's performance obligation, then the failure to meet that obligation will not constitute breach. King & King, Chartered v. Harbert Int'l, Inc., 436 F.Supp.2d 3, 12 (D.D.C. 2006). Furthermore, “there is no breach if the risk of such a lack of cooperation was assumed by the other party or if the lack of cooperation is justifiable. Restatement (Second) of Contracts § 245.

Here, the prevention doctrine is inapplicable as a matter of law, because the Complaint and its Opposition failed to allege any facts that RA acted in bad faith in terminating Bare prior to his execution of the agreement or in otherwise not providing Bare with an agreement for signature. Bare described the condition in the Complaint, quoting from the applicable redundancy settlement terms that specify that the payment of the settlement is “subject to the employee executing a release of claims, settlement agreement, or other similar agreement.” A-7. Nowhere in the Complaint is it alleged that Bare could be protected from termination. Bare could have claimed wrongful termination but chose not to. The alleged contract doesn’t expressly or implicitly override Bare’s at-will employment status. See Strass v. Kaiser Found. Health Plan, 744 A.2d 1000, 1011 (D.C.2000) (In the District of Columbia we recognize “a hiring not accompanied by an expression of a specific term of duration creates an employment relationship

terminable at will by either party at any time.") Therefore, the prevention doctrine cannot cure the deficiencies in Bare's Complaint.

Bare's numerous cases from other jurisdictions cited in his Brief regarding the prevention doctrine are not binding on this Court. They also all involve an active hindrance pertaining to a change in the terms of the condition precedent itself. (A's Brief pp. 19-23). In the cases cited the defendant attempted to change the terms of the release and settlement agreement to change the terms of the original condition precedent. See Zarling v. Abbott Labs., 2021 U.S. Dist. LEXIS 116200 (D. Minn. June 22, 2021); Stroh v. DataMark, Inc., 2007 U.S. Dist. LEXIS 23629 (D. Utah Mar. 29, 2007); Bock v. Computer Assocs. Int'l, Inc., 2000 U.S. Dist. LEXIS 5753 rev'd on other grounds (N.D. Ill. Mar. 23, 2000); Leblanc v. Bedrock Petroleum Consultants, 2021 U.S. Dist. LEXIS 170270 at *18-19 (S.D. Tex. June 3, 2021). Here, unlike the cases Bare cited, the terms of the agreement are not alleged to have been changed, nor were they.

2. The Superior Court Properly Dismissed Appellant's District of Columbia Wage Payment and Collection Law and Breach of Contract Claims.

Due to Bare failing to allege sufficient facts to demonstrate that the condition precedent was met, both Bare's DCWPCL and breach of contract claims must fail.

A. The DCWPCL Required Appellant to Allege Sufficient Facts that the Redundancy Payment was "Wages" Earned.

To plead a proper cause of action under the DCWPCL, a plaintiff needs to allege: (1) plaintiff was an "employee", and the defendant was plaintiff's "employer" within the meaning of the DCWPCL; (2) wages" were **owed** to the plaintiff; and (3) wages were not timely paid to the employee following the termination of employment. DCWPCL, § 32–1303(*emphasis added*). Specific to terminations, the DCWPCL requires that "[w]henever an employer discharges an employee; the employer shall pay the employee's wages **earned** not later than the working day following such discharge." D.C. Code § 32-1303(1) (emphasis added). Here, the Superior Court correctly concluded that since Bare failed to allege the condition precedent was met and he conceded that he had not satisfied the condition precedent prior to his uncontested termination, the wages were not earned and thus not actionable under the DCWPCL. A-45.

B. Because the Redundancy Payment was Not "Automatic and Mandatory," it Cannot Constitute Wages Under the DCWPCL.

Not only can this Court affirm the Superior Court's ruling based on the fact that Bare did not sufficiently plead that the redundancy settlement constituted "wages owed," but Bare's claim must also be dismissed because the redundancy settlement is not "wages" under the DCWPCL. Payments that are discretionary and given only by leave of the employer are not considered "wages" under the DCWPL. Ronaldson v. National Association of Home Builders, 502 F.Supp.3d 290, 297 (D.D.C. 2020) (*remanded on other grounds)*. The inquiry here turns on

whether Bare was entitled to, or owed, the payment at issue at the time in question. *See e.g.,* Dorsey v. Jacobson Holman, PLLC, 756 F.Supp.2d 30, 36 – 37 (D.D.C. 2010) (holding that "bonuses" and similar payments are covered under the DCWPCL when they are "owed," but not when they are discretionary, and given only by leave of the employer).

An important distinction between payments considered "wages" under the DCWPCL and "discretionary" payment is whether the payment was "automatic and mandatory," versus whether the employer had discretion to modify or discontinue the entitlement to the payment. *See* Molock v. Whole Foods Market, Inc., 297 F.Supp.3d 114, 134 (D.D.C. 2018) (finding that, unlike the discretionary year-end bonus examined in Dorsey, the Plaintiffs in the Molock matter showed that their entitlements to a bonus payments were "automatic and mandatory"); see also Brady v. Liquidity Services, Inc., 2018 WL 6267766, *4 (D.D.C. Nov. 30, 2018) (reasoning that the employee was not entitled to a bonus payment discussed in his offer letter under DCWPCL because its terms were discretionary).

Here, Bare's entitlement to the redundancy settlement was not "automatic and mandatory," but instead, required him to execute a release of claims, settlement agreement, or other similar agreement. He did not execute a settlement agreement or other similar agreement required by RA. A-8. Instead, he was terminated for reasons unrelated to the redundancy settlement after sending out an

email critical of the company's management. A-8. The discretionary nature of the payment is further supported by the fact that settlement agreements and releases in the employment context, such as any release Bare would have been required to execute before receiving the redundancy settlement, include periods during which the settlement agreement and release could be revoked. For example, a waiver of a claim under the Age Discrimination in Employment Act (ADEA) is governed by the Older Workers Benefit Protection Act (OWBPA), which reads that a waiver of ADEA claims is not considered "knowing and voluntary" unless, at a minimum the agreement provides for a period of at least seven days following the execution of such agreement, for a party to revoke it. 29 CFR §1625.22(e)(2).

As recognized by the District of Columbia Court of Appeals, "[a]ll agreements have some degree of indefiniteness and some degree of uncertainty." Eastbanc, Inc. v. Georgetown Park Associates II, L.P., 940 A.2d 996, 1002 (D.C. 2008). Bare himself states in his Complaint that, "[w]ages due to a terminated employee must be paid within one (1) working day following termination." A-9. Payment of the redundancy settlement within one working day following termination could not have happened here where a release was necessary, given Bare's timeline. Thus, the redundancy settlement remained discretionary and was not part of wages owed to the Appellant.

C. The Superior Court Properly Dismissed Appellant's Breach of Contract Claim as No Contractual Obligation was Sufficiently Pled.

The determination of whether an enforceable contract exists is a question of law. Eastbanc, Inc. v. Georgetown Park Associates II, L.P., 940 A.2d 996, 1002 (D.C. 2008). Here, the Superior Court properly took notice of the fact that Bare conceded that he did not satisfy the condition precedent required to create any contractual obligation between the parties, and, therefore, no contract was created as a matter of law. A-45. To prevail on a breach of contract claim in the District of Columbia, a party must establish (1) a valid contract between the parties; (2) an obligation or duty arising out of the contract; (3) a breach of that duty; and (4) damages caused by the breach. Pernice v. Bovim, 183 F.Supp.3d 84, 87 (D.D.C. 2016). A plaintiff bringing a breach of contract claim bears the burden of showing not only that a contract exists, but also that the elements of the breach exist. Peck v. SELEX Systems Integration, 270 F. Supp.3d 107, 115 (D.D.C. 2017). As the court explained in Peck, "[t]his means that [plaintiff] must show that he was entitled to severance under the agreement and that he was not otherwise excluded from the severance payment." Id.

Bare's breach of contract claim fails as a matter of law because he failed to satisfy the condition precedent (execution of the settlement agreement and release). Bare's Complaint admitted that payment of the redundancy payment was subject to the employee executing a release of claims, settlement agreement, or other similar agreement as provided by Rainforest Alliance. A-7. The requirement of an

executed release or settlement agreement is a condition precedent, which must occur before performance under a contract becomes due. As such, Bare's claim of breach of contract must fail as a matter of law.

3. Bare Failed to File a Motion to Request Leave to Amend His Complaint

The passage of time does not ordinarily in and of itself call for the granting or denial of the motion. Eagle Wine & Liquor Co. v. Silverberg Electric Co., 402 A.2d 31, 35 (D.C.1979). Reasons that may justify denying leave to amend are "undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies [and] futility of amendment." Epps v. Vogel, 454 A.2d 320, 325 n. 8 (D.C.1982). Leave to amend is not automatic and this Court examines the following five factors in determining if the Superior Court abused its discretion: (1) the number of requests to amend; (2) the length of time that the case has been pending; (3) the presence of bad faith or dilatory reasons for the request; (4) the merit of the proffered amended pleading; and (5) any prejudice to the non-moving party. Id. at 401-02.

Here, Bare did not file any motion to request leave to amend his Complaint and as such, he failed to provide the Superior Court with any arguments as to the factors mentioned above. Instead, Bare merely stated at the conclusion of his Opposition that if the Motion to Dismiss was granted, he "would like an opportunity to amend." A-36.

Even if the court were to consider this a proper method of requesting such relief, the request had no merit. The Court already had all the information at its disposal to render its judgment. Any cures to the complaint would not override the admissions already made in Bare's Opposition that he did not meet a required condition precedent to any agreement, and nowhere in the Superior Court record has Bare alleged (or even indicated that he might allege, if afforded the opportunity to amend) the sort of bad faith on the part of RA that would implicate the doctrine of prevention. As such, even if an amendment had been granted, Bare would have still failed to state a claim upon which relief could be granted. See Rayner v. Yale Steam Laundry Condominium Association, 289 A.3d 387 (2023) (This Court affirmed Superior Court's denial of leave to amend complaint in part because the proposed amendments would not overcome the same hurdles that merited dismissing his claims under Rule 12(b)(6)). Bare's attempts to persuade this Court on a mere technicality is without merit. The Court already has all the undisputed facts at its disposal to render judgment and an amendment to the complaint would not overcome its hurdles.

CONCLUSION

For the above stated reasons, we ask this Honorable Court to affirm the Superior Court's dismissal of Appellant's claims.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on this 15th day of August 2024, she caused a true and correct copy of the foregoing **Brief for Appellee** to be filed with the Clerk of the Court using the efile DC filing system, which will automatically send e-mail notification of such filing to any attorneys of record.

/s/ M. Robin Repass
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