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CONCURRING AND DISSENTING OPINION BY LEVINSON, J.,
WITH WHOM ACOBA, J., JOINS

I agree with the majority's analysis and disposition of the plaintiff-appellant Priscilla Young's claims of abuse of process, bad faith, and intentional infliction of emotional distress (IIED). Majority opinion at 2, 17-28, 54-62. I disagree, however, with its conclusion that the third circuit court correctly dismissed Young's claim of "malicious defense." See id. at 2, 17, 28-53, 62. The claim borrows concepts from the tort of malicious prosecution. To establish a claim for malicious prosecution, a plaintiff must show that the prior proceedings were (1) terminated in his or her favor, (2) initiated by the defendant without probable cause, and (3) initiated by the defendant with malice. Wong v. Cayetano, 111 Hawaiʻi 462, 478, 143 P.3d 1, 17 (2006). The tort thus serves to protect "[t]he interest in freedom from unjustifiable litigation." Prosser and Keeton on Torts § 119, at 870 (5th ed., W. Page Keeton et al. eds., 1984). Such conduct is actionable when perpetrated by plaintiffs, but not defendants, because, by definition, the tort only provides a remedy for malicious "prosecutions." See Wong, 111 Hawaiʻi at 478, 143 P.3d at 17. That distinction between plaintiffs and defendants has led some commentators to consider whether, consistent with the underpinnings of the tort of malicious prosecution, courts should recognize a tort for malicious defense in civil cases. See Jonathan K. Van Patten & Robert E. Willard, The Limits of Advocacy: A Proposal for the Tort of Malicious Defense in Civil Litigation, 35 Hastings L.J. 891 (1984) [hereinafter, "Van Patten & Willard, The Limits of Advocacy"]; William T. Barker et al.,

Litigating About Litigation: Can Insurers be Liable for Too Vigorously Defending Their Insureds?, 42 Tort & Ins. L.J. 827 (2007).

One court has. In Aranson v. Schroeder, the New Hampshire Supreme Court recognized the tort of malicious defense, adopting the following standard:

> "One who takes an active part in the initiation, continuation, or procurement of the defense of a civil proceeding is subject to liability for all harm proximately[, i.e., legally,] caused, including reasonable attorneys' fees, if
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> (a) he or she acts without probable cause, i.e., without any credible basis in fact and such action is not warranted by existing law or established equitable principles or a good faith argument for the extension, modification, or reversal of existing law,
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> (b) with knowledge or notice of the lack of merit in such actions,
>
> (c) primarily for a purpose other than that of securing the proper adjudication of the claim and defense thereto, such as to harass, annoy or injure, or to cause unnecessary delay or needless increase in the cost of litigation,
>
> (d) the previous proceedings are terminated in favor of the party bringing the malicious defense action, and
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> (e) injury or damage is sustained."

671 A.2d 1023, 1028-29 (N.H. 1995) (quoting Van Patten and Willard, The Limits of Advocacy, 35 Hastings L.J. at 933-34).

There is no question that Young's first amended complaint, in substance, alleged the foregoing elements. It asserted that the defendants-appellees Allstate Insurance Company (Allstate) and Mark T. Ichiyama (collectively, the Defendants) took an active role in defending the underlying case without probable cause. The Defendants filed an answer that denied liability and asserted that Young had been injured by her own

negligence, that she had failed to mitigate her injuries, that she had filed her suit beyond the statute of limitations, that her claims were barred by her own unclean hands, and that she was estopped from bringing suit by her own wrongful conduct. Young's first amended complaint alleged that the Defendants were, however, well aware that the Febraury 4, 1998 collision was caused solely by the negligence of Allstate's insured, Daryl Fujimoto, who had already admitted to Allstate that he had fallen asleep at the wheel. The first amended complaint alleged that the Defendants were also aware that the defenses were groundless, that they raised the defenses to harass, annoy, or injure Young by unnecessarily delaying her case and by needlessly increasing the cost of litigation, litigation that ultimately terminated in her favor after she received a jury verdict of $198,971.71. And Young's first amended complaint alleged that, as a result of the foregoing conduct, she sustained injury and damage in the form of mental and emotional distress, suffering through the time and expense of arbitration and a full-blown trial. Neither the Defendants nor the majority disputes that these allegations would state a claim for malicious defense were we to recognize the claim. See majority opinion at 28-53.

The question is thus whether we should recognize the tort of malicious defense. Young argues that we should because the tort advances the same interests as the tort of malicious prosecution, the origins of which reach back to the early development of our common law, see, e.g., Kerr v. Hyman Bros., 6 Haw. 300, 302 (1881). Both torts hold parties accountable for

their wrongful conduct in litigation. Malicious prosecution claims impose liability upon plaintiffs for asserting claims that are malicious, frivolous, unsuccessful, and injurious. See Wong, 111 Hawai'i at 478, 143 P.3d at 17. Malicious defense actions hold defendants responsible for raising defenses of the same character. See Aranson, 671 P.2d at 1028-29. Neither tort imposes liability for mere vigorous advocacy; liability attaches only when parties maliciously advance groundless and unsuccessful claims or defenses. See Wong, 111 Hawai'i at 478, 143 P.3d at 17; Aranson, 671 P.2d at 1028-29. The strict requirements of malice, lack of "probable cause," and favorable prior disposition serve to minimize the chilling effect that the imposition of liability may have on zealous advocacy because those requirements render vigorous claims and defenses readily distinguishable from malicious ones. See Barbra Glesner Fines, Speculating on the Future of Attorney Responsibility to Nonclients, 37 S. Tex. L. Rev. 1283, 1302 (1995) [hereinafter, "Fines, Speculating on the Future"] ("[Malicious defense] is an intentional tort based on the affirmative misconduct of an attorney. To that extent, the[] doctrines [of malicious defense and malicious prosecution] pose little challenge to attorneys either philosophically or pragmatically."); Van Patten & Willard, The Limits of Advocacy, 35 Hastings L.J. at 920 ("[A] vigorous defense can be distinguished from a malicious defense."); Francis J. Mootz III, Holding Liability Insurers Accountable for Bad Faith Litigation Tactics With the Tort of Abuse of Process, 9 Conn. Ins. L.J. 467, 501-02 (2002/2003) [hereinafter, "Mootz, Holding Liability

Insurers Accountable"] (explaining that, "[a]lthough courts certainly should not circumscribe the ability of a party to defend against claims vigorously, there is a point where the defense becomes malicious rather than vigorous," and that the need to make that distinction "is no different than the same need to draw a line in the malicious prosecution context"). The need to deter the latter "provides a policy justification [for] these doctrines." Fines, Speculating on the Future, 37 S. Tex. L. Rev. at 1302; see also Chung v. McCabe Hamilton & Renny Co., 109 Hawai'i 520, 532, 128 P.3d 833, 845 (2006) (observing that malicious prosecution may result in the imposition of punitive damages); Van Patten & Willard, The Limits of Advocacy, 35 Hastings L.J. at 916-17.

The majority distinguishes the tort of malicious defense from the tort of malicious prosecution on the ground that the former's "primary purpose" element, see Aranson, 671 A.2d at 1029, is easier to satisfy than the latter's "malice" element, see Wong, 111 Hawaii at 478, 143 P.3d at 17. Majority opinion at 36-37. It observes that we have quoted Black's Law Dictionary in defining "malice" as "'the intent, without justification or excuse, to commit a wrongful act,' 'reckless disregard of the law or of a person's legal rights,' and 'ill will; wickedness of heart.'" Awakuni v. Awana, 115 Hawai'i 126, 141, 165 P.3d 1027, 1042 (2007) (quoting Black's Law Dictionary 976 (8th ed. 2004)) (brackets omitted), quoted in majority opinion at 36. In addition to generally defining "malice," Black's Law Dictionary specifically defines the elements of "malicious prosecution" as

including "malice," citing the Restatement (Second) of Torts §§ 674-681B (1977). Black's Law Dictionary 977. Section 674 of the Restatement illustrates that a person acts maliciously when he initiates litigation "primarily for a purpose other than that of securing the proper adjudication of the claim in which the proceedings are based." Restatement (Second) of Torts § 674(a); see also id. § 676 cmt. c; Van Patten and Willard, The Limits of Advocacy, 35 Hastings L.J. at 931-32; Myers v. Cohen, 5 Haw. App. 232, 236-37, 687 P.2d 6, 11 (1984), rev'd on other grounds by 67 Haw. 389, 688 P.2d 1145 (1984). Like the Restatement, Professor Prosser's treatise teaches that "malice" has been found where "the proceeding was begun primarily for a purpose other than the adjudication of the claim in suit." Prosser and Keeton on Torts § 120, at 895. Thus, for purposes of a malicious prosecution claim, a person acts with malice where he initiates the case primarily for a purpose other than the proper adjudication of the claims at issue in the action. See id.; Restatement (Second) of Torts § 674(a); Van Patten and Willard, The Limits of Advocacy, 35 Hastings L.J. at 931-32; Myers, 5 Haw. App. at 236-37, 687 P.2d at 11. The tort of malicious defense demands nothing less. See Aranson, 671 A.2d at 1029. Accordingly, I do not believe that the mental state required by the tort of malicious defense is any less exacting than the requisite state of mind for the tort of malicious prosecution.

In addition, the majority draws a distinction between the two torts in light of the position of the parties in the predicate proceedings. It accepts the Defendants' argument that,

unlike a plaintiff, a defendant is involuntarily haled into court and, consequently, although the plaintiff is liable in tort for maliciously asserting baseless and unsuccessful claims, the defendant should not likewise incur liability for advancing defenses cut from the same cloth. See majority opinion at 38-40. I disagree with the notion that a defendant, particularly one who asserts a malicious defense, is involuntarily haled into court. See Van Patten & Willard, The Limits of Advocacy, 35 Hastings L.J. at 920. To illustrate, "[a] defendant who, in bad faith, forces a plaintiff to prove the validity of an obligation or debt that the parties know to be legitimate has in effect precipitated the litigation by the unjustified refusal to pay." Id.

Furthermore, the argument advanced by the majority and the Defendants rests on the false premise that, by initiating the action, the plaintiff somehow assumes the risk that the defendant may maliciously defend against his claims by taking frivolous positions. See majority opinion at 39-40. Such conduct is plainly subject to sanctions pursuant to our rules of procedure and the inherent powers of our courts. See Hawaiʻi Rules of Civil Procedure (HRCP) Rule 11; Kawamata Farms v. United Agri Prods., 86 Hawaiʻi 214, 257, 948 P.2d 1055, 1098 (1997). Those authorities, which permit recovery of attorneys fees, see HRCP Rule 11(c)(2); Kawamata Farms, 86 Hawaiʻi at 257, 948 P.2d at 1098, along with Hawaiʻi Revised Statutes (HRS) § 636-16, which awards prejudgment interest for delays in litigation, see Schmidt v. Bd. of Dirs. of Ass'n of Apartment Owners of Marco Polo Apartments, 73 Haw. 526, 534, 836 P.2d 479, 13 (1992), do

not, however, provide a complete remedy for the potential damages that malicious defenses inflict. A plaintiff may additionally suffer reputational, psychic, and emotional harm as a result of such defenses in the same way that a defendant may incur general damages from the malicious assertion of groundless claims. See Aranson, 671 A.2d at 1028 (observing that, "when a defense is commenced maliciously or is based upon false evidence and perjury or is raised for an improper purpose, the litigant is not made whole if the only remedy is reimbursement of counsel fees"); see also Prosser and Keeton on Torts § 119, at 887 (explaining that general damages are recoverable in a malicious prosecution case). The harms are no different. See Aranson, 671 A.2d at 1027 (noting that a plaintiff is no "less aggrieved when the groundless claim put forth in the courts is done defensively rather than affirmatively in asserting a worthless lawsuit for improper purposes"). Consequently, I believe that parties aggrieved by malicious defenses should be "entitled to the same damages as are recoverable in a malicious prosecution claim." See id. at 1028; Van Patten & Willard, The Limits of Advocacy, 35 Hastings L.J. at 919 ("It makes no sense that a plaintiff should be denied access to the courts to recover for malicious defensive tactics in a jurisdiction where a defendant's right to recover for the same kind of injury is generally accepted."). Because such injuries are not fully redressable through our procedural rules, the inherent powers of our courts, or HRS § 636-16, recovering them via a malicious defense claim will not, as the

majority believes, see majority opinion at 48, result in a plaintiff recovering twice for the same injury.

To be sure, damages for emotional distress caused by maliciously asserted defenses may, in some cases, be recoverable through an IIED claim. See id. at 49-53. An IIED claim is, however, aimed at a different sort of wrongful conduct than a malicious defense claim. The tort of IIED imposes liability for outrageous conduct, Brooks v. Dana Nance & Co., 113 Hawai'i 406, 415, 153 P.3d 1091, 1100 (2007), whereas the tort of malicious defense imposes liability for malicious defenses, Aranson, 671 P.2d at 1028-29. The assertion of a malicious defense may, in some extreme cases, constitute outrageous conduct, particularly where the defenses are part of a larger scheme of improper conduct. See majority opinion at 58-62. Still, as a general matter, the mere assertion of a malicious defense will not, without more, rise to the level of outrageousness sufficient to sustain an IIED claim. Cf. Harrison v. Luse, 760 F. Supp. 1394, 1402-03 (D. Colo. 1991) (holding, under the circumstances of the case, that the filing of a frivolous and groundless civil action and the filing of another civil action for the purpose of harassing, embarrassing, inconveniencing, and intimidating the defendant did not reach the threshold level of conduct necessary to support a claim for outrageous conduct); Early Detection Ctr., P.C. v. New York Life Ins. Co., 403 N.W.2d 830, 834 (Mich. Ct. App. 1986) (holding that the filing of a groundless lawsuit was not of such an extreme nature so as to be characterized as outrageous and atrocious). For example, in the present matter,

if Young had alleged that the Defendants' malicious defenses were the sole factual basis for her IIED claim, her claim would fail as a matter of law. It is because of Young's additional allegations pertaining to the Defendants' larger pattern of conduct that we conclude that she has stated an IIED claim. See majority opinion at 58-62.

The majority seems to suggest that, because Young has stated a claim of IIED for which relief can be granted, we should not recognize the tort of malicious defense, in light of the fact that the tort of IIED offers the same remedies for her injuries as the tort of malicious defense. Id. at 51-52. Although it is clear that Young has successfully stated claims of both IIED and malicious defense and that both claims afford tort remedies, see id., there is no way of knowing in this appeal from a HRCP Rule 12(b)(6) dismissal whether Young will be able to prove both claims at trial. Her chances of establishing liability are better with respect to her malicious defense claim than with respect to her IIED claim, because, as previously stated, the malicious defense claim would require proof of fewer facts than the IIED claim. Thus, if this court were to decline to recognize the tort of malicious defense and Young were unable to prove her IIED claim, but she could have proven her malicious defense claim, then the tort of IIED would not provide her with an adequate remedy for the Defendants' assertion of malicious defenses. She should be afforded an opportunity to prove each of her claims for which relief can be granted. The fact that the relief potentially provided by her malicious defense and IIED

claims may overlap is no reason to refuse to recognize the tort of malicious defense, which serves to protect against a different, albeit narrower, class of wrongful conduct than the tort of IIED. See Godbehere v. Phoenix Newspapers, Inc., 783 P.2d 781, 785-86, 788 (Ariz. 1989) (recognizing the tort of false light invasion of privacy despite the defendants' contention that the tort overlapped with the already-recognized tort of IIED, because, although the torts might address the same injury and although a false publication might, in some cases, constitute outrageous conduct and vice versa, the same wrongful conduct would not always satisfy the elements of both torts, such that each tort had its place in protecting against a different type of conduct).

The majority next maintains that recognizing the tort of malicious defense would contravene the policies underlying the litigation privilege. Majority opinion at 40-41. Attorneys have an "absolute litigation privilege in defamation actions for words and writings that are material and pertinent to judicial proceedings." Matsuura v. E.I. du Pont de Nemours & Co., 102 Hawai'i 149, 154, 73 P.3d 687, 692 (2003).

> [T]he interrelated policies associated with the litigation privilege include: (1) promoting the candid, objective, and undistorted disclosure of evidence; (2) placing the burden of testing the evidence upon the litigants during trial; (3) avoiding the chilling effect resulting from the threat of subsequent litigation; (4) reinforcing the finality of judgments; (5) limiting collateral attacks upon judgments; (6) promoting zealous advocacy; (7) discouraging abusive litigation practices; and (8) encouraging settlement.

Id. at 155, 73 P.3d at 693; see also Silberg v. Anderson, 786 P.2d 365, 369-70 (Cal. 1990). The litigation privilege does not,

however, apply to claims for malicious prosecution, because the policies favoring the privilege are "'outweighed by the policy of affording redress for individual wrongs when the requirements of favorable termination, lack of probable cause, and malice are satisfied.'" Silberg, 786 P.2d at 371 (quoting Albertson v. Raboff, 295 P.2d 405, 410 (Cal. 1956)); accord Loigman v. Twp. Comm., 889 A.2d 426, 436 n.4 (N.J. 2006); Clark v. Druckman, 624 S.E.2d 864, 871 (W. Va. 2006); cf. Kahala Royal Corp. v. Goodsill Anderson Quinn & Stifel, 113 Haw. 251, 268-69, 151 P.3d 732, 749-50 (2007) (quoting Clark, 624 S.E.2d at 870 (quoting Baglini v. Lauletta, 768 A.2d 825, 833-34 (N.J. Super. App. Div. 2001))). The very same requirements are found in the tort of malicious defense, see Aranson, 671 A.2d at 1028-29, and, as such, the policy of affording redress for malicious defenses override the policies of the litigation privilege, cf. Silberg, 786 P.2d at 371. Thus, the majority's argument that the policies underlying the litigation privilege and the tort of malicious defense are at odds is correct as far as it goes. It simply falls short of providing a convincing reason to reject the tort of malicious defense any more than it would justify abandoning the tort of malicious prosecution.

The majority, along with the Defendants, asserts that recognizing the tort of malicious defense will lead to never-ending litigation. See majority opinion at 42-43. But the same argument could be made with respect to the tort of malicious prosecution. Mootz, Holding Liability Insurers Accountable, 9 Conn. Ins. L.J. at 502 ("Although the never-ending litigation is

a legitimate fear, it is no less a fear in the context of malicious prosecution."). The reason that malicious prosecution and malicious defense claims do not produce a Russian nesting doll of litigation[1] is that they are premised upon exacting elements that are narrowly construed. See Fines, Speculating on the Future, 37 S. Tex. L. Rev. at 1301 (explaining that the Aranson court was not concerned with the threat of increasing litigation, because malicious defense, like malicious prosecution, "would 'be scrutinized closely and construed narrowly'" (quoting Aranson, 671 A.2d at 1028)); see also Van Patten & Willard, The Limits of Advocacy, 35 Hastings L.J. at 921 ("Malicious prosecution actions have not clogged the courts or led to unending litigation."). Indeed, despite the fact that New Hampshire has recognized the tort of malicious defense for the past thirteen years, see Aranson, 671 A.2d at 1028-29, my research has uncovered all of two federal cases applying New Hampshire law that involved malicious defense claims, see Dias v. Bogins, No. 97-1612, 1998 U.S. App. LEXIS 536, at *3 (1st Cir. Jan. 13, 1998) (unpublished opinion) (holding that the plaintiff failed to state a claim of malicious defense); Bezanson v. Thomas (In re R & R Assocs.), No. 91-10983-MWV, 2003 Bankr. LEXIS 205, at *2, *8 (D.N.H. Bankr. Jan. 31, 2003) (unpublished opinion) (observing that, in response to a counterclaim, a party had asserted a counterclaim for malicious defense), aff'd in part and

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[1] See Athridge v. Aetna Cas. & Sur. Co., 163 F. Supp. 2d 38, 54 (D.D.C. 2001), rev'd on other grounds by 312 F.3d 474 (D.C. Cir. 2002) (arguing that, if every litigant could use his opponent's activities in litigation as the predicate for a second action, lawsuits would "become like the Russian Doll in which there is a Russian Doll in which there is a Russian doll ad infinitum").

vacated in part by Civil No. 03-127-JD, 2003 U.S. Dist. LEXIS 10693 (D.N.H. June 29, 2003). To my knowledge, the New Hampshire Supreme Court has yet to issue a single decision concerning the tort of malicious defense since it first handed down Aranson. Thus, the tort does not appear to have spawned a single appeal in the state's courts, much less led to an inundation of malicious defense claims. Cf. Godbehere, 783 P.2d at 787 (rejecting the argument that recognizing the tort of false light invasion of privacy would invite much new litigation, because only four such cases had been presented in Arizona and because other states that had recognized the tort had not been deluged with substantially more false-light litigation than Arizona). Furthermore, the notion that recognizing the tort of malicious defense would result in a flood of litigation "has accompanied virtually every innovation in the law." Fergerstrom v. Hawaiian Ocean View Estates, 50 Haw. 374, 377, 441 P.2d 141, 143 (1968).

> Assuming that it is true, that fact is unpersuasive unless the litigation largely will be spurious and harassing. Undoubtedly, when a court recognizes a new cause of action, there will be many cases based on it. Many will be soundly based and the plaintiffs in those cases will have their rights vindicated. In other cases, plaintiffs will abuse the law for some unworthy end, but the possibility of abuse cannot obscure the need to provide an appropriate remedy.

Id. at 377, 441 P.2d at 143-44 (recognizing the tort of invasion of privacy).

Apart from their attempt to distinguish malicious defenses from malicious prosecutions, the Defendants argue that special considerations arise in the insurance context that require this court to reject the tort of malicious defense. They reason that, because an insurer owes a contractual duty to defend

its insured in litigation, it automatically stands in an adversarial relation to a third-party claimant who has filed suit against its insured. The Defendants insist that, just as a third party cannot compel the insured to negotiate and settle at a loss, he is equally incapable of requiring the insurer to negotiate a favorable settlement or assume a more reasonable defensive strategy. Liability for malicious defense is not, however, premised upon a refusal to settle as such or for assuming a reasonable defense strategy; it attaches when a defendant maliciously asserts groundless and unsuccessful defenses. See Aranson, 671 A.2d at 1028-29. Thus, I do not believe that any special considerations in the insurance context militate against the recognition of the tort.

This case presents a question of first impression in Hawaiʻi. It is for that reason that the Defendants' reliance on the Kansas Supreme Court's decision in Wilkinson v. Shoney's, Inc., 4 P.3d 1149 (Kan. 2000), is misplaced. There, after explaining that its caselaw had rejected a claim for malicious defense since 1910, the court stated that it was not prepared to recognize a new cause of action for malicious defense. Id. at 1157-59 (citing Baxter v. Brown, 111 P. 430 (Kan. 1910)). The Wilkinson court concluded that, if such an action were deemed desirable or needed, action by the legislature would be required, especially in light of the court's "long-standing recognition of the law to the contrary." Id. at 1159. In the present matter, the Defendants maintain that, as was the case in Kansas, if the tort of malicious defense were deemed desirable or needed in this

jurisdiction, action by the Hawai'i legislature would be necessary. Yet, unlike the Kansas Supreme Court, see id. at 1157-59, the appellate courts in this jurisdiction have not discussed, much less rejected, the tort of malicious defense. Putting aside the distinction between Hawai'i and Kansas caselaw, the Defendants' argument could be understood as an assertion that, because Hawai'i has never recognized a claim for malicious defense, action by the legislature would be required to recognize the tort in this jurisdiction. That very argument was rejected by this court long ago when it concluded that: "The error in the defendant's position approaches Brobdingnagian[2] proportions. To accept it would constitute more than accepting a limited view of the essence of the common law. It would be no less than an absolute annihilation of the common law system." Fergerstrom, 50 Haw. at 375, 441 P.2d at 142.

"'[T]he genius of the common law, upon which our jurisprudence is based, is its capacity for orderly growth.'" Id. at 376, 441 P.2d at 143 (quoting Lum v. Fullaway, 42 Haw. 500, 502 (1958)) (brackets in original). Its branches sprout by analogy. In view of the similarities between malicious prosecutions and malicious defenses, I would recognize the tort of malicious defense in civil cases and adopt the standard articulated by the New Hampshire Supreme Court in Aranson, 671 A.2d at 1028-29. Cf. James W. Glover, Ltd. v. Fong, 40 Haw. 503,

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2 "Brobdingnagian" means "[c]olossal; of extraordinary size; gigantic." Webster's New International Dictionary 399 (2d ed. 1960). The word derives from "Brobdingnag," an imaginary country from Jonathan Swift's Gulliver's Travels where "everything is on an enormous scale." Id.

511-12 (Terr. 1954) (recognizing a claim in tort for "a willful and malicious making of a false return[3] with intent to injure as a part of a persistent and deliberate attempt to evade performance of a purely ministerial duty," in part because such conduct was similar "to the comparable misconduct on which is based an action for malicious prosecution"). In this case, as previously noted, Young has stated a claim for malicious defense in her first amended complaint for which relief can be granted. Accordingly, I would hold that the circuit court erred in dismissing that claim and I would therefore vacate its September 17, 2004 judgment as to that claim.

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[3] A "false return" is "[a] process server's or other court official's recorded misrepresentation that process was served, that some other action was taken, or that something is true." Black's Law Dictionary 636.