

**COURT OF COMMON PLEAS  
FOR THE STATE OF DELAWARE**  
KENT COUNTY COURTHOUSE  
38 THE GREEN  
DOVER, DELAWARE 19901  
PHONE: (302) 735-3910

CHARLES W. WELCH, III  
JUDGE

July 25, 2016

Kashif I. Chowdhry, Esq.  
Parkowski, Guerke & Swayze, P.A.  
P.O. Box 598  
Dover, DE 19903  
Attorney for Defendant - Appellee,  
Tidewater Utilities, Inc.

La Mar Gunn  
2 Old North Road, #502  
Camden Wyoming, DE 19934  
*Pro se Plaintiff - Appellant*

RE: La Mar Gunn v. Tidewater Utilities, Inc. and Jefferson Associates  
C.A. No.: CPU5-15-000675

Decision on Appeal from Justice of the Peace Court  
(Appeal from denial of Motion to Vacate Non-suit)

Dear Mr. Chowdhry and Mr. Gunn:

This is the Court's decision on appeal from the Justice of the Peace Court's Order denying the appellant, plaintiff below, La Mar Gunn's (hereinafter "Gunn") Motion to Vacate Non-Suit Judgment. This appeal is governed by *Ney v. Polite*, 399A.2d 527 (Del. 1979). After careful review of the record and the parties' pleadings, the Court finds that the Justice of the Peace Court lacked subject matter jurisdiction. For this reason, the Justice of the Peace Court abused its discretion in denying Gunn's Motion to Vacate Non-Suit Judgment. The decision of the Justice of Peace Court is reversed and the case is remanded.

**FACTS & PROCEDURAL HISTORY**

Gunn filed a civil action in the Justice of the Peace Court against Tidewater Utilities, Inc., and Jefferson Associates (hereinafter "Defendants") alleging that he incurred economical damages caused by the Defendants' negligent conduct in erroneously reporting negative credit information about him to each of the credit bureaus. Defendants filed and served upon Gunn a demand for a bill of particulars which contained a notice of the trial date scheduled for April 30, 2015. Gunn filed an answer to the demand.

On the date of the trial, neither Gunn nor Jefferson Associates appeared for trial. The Justice of the Peace Court entered a non-suit judgment against Gunn. Thereafter, Gunn filed a timely motion to vacate the non-suit judgment pursuant to Justice of the Peace Court Civil Rule 60(b).

During the hearing on the motion, Gunn suggested that the Justice of the Peace Court did not have jurisdiction over his suit and that the Court should transfer the case to a court of competent jurisdiction pursuant to 10 *Del. C.* § 1902. Although the Justice of the Peace Court agreed that it did not have subject matter jurisdiction, it found that Gunn's request had no relevance to his failure to appear. On or about June 4, 2015, the Justice of the Peace Court entered an order denying Gunn's Motion to Vacate Non-Suit Judgment.

Gunn then filed a timely notice of appeal to this Court. Jefferson Associates failed to answer the Complaint on appeal. Tidewater Utilities, Inc. (hereinafter "Appellee"), filed a motion to dismiss, which the Court denied. The Court then advised the parties that this appeal would be considered pursuant to *Ney v. Polite* and ordered the parties to submit written arguments as to whether the Justice of the Peace Court abused its discretion in denying Gunn's Motion to Vacate Non-Suit Judgment.<sup>1</sup>

#### STANDARD OF REVIEW

The denial of an application to vacate a default or non-suit judgment possesses all the attributes of finality, and thus, is subject to appeal. *Ney v. Polite*, 399 A.2d 527, 529 (Del. 1979). All final judgments of the Justice of the Peace Court in a civil action may be appealed as a matter of right to this Court. 10 *Del. C.* § 9571. *Ney v. Polite*, provides that denial of an application to vacate default or non-suit judgment "will be a review of the order denying the motion and will not constitute a trial *de novo*." *Kenyon v. Setting*, 1992 WL 52200, at \*1 (Del. Super. Feb. 20, 1992) (citing *Ney v. Polite*, 399 A.2d at 529). Review in this Court is therefore limited to the

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<sup>1</sup> In addition, the Court ordered the parties to submit briefing as to whether the Justice of the Peace Court has jurisdiction over claims arising under the Federal Debt Collection Practices Act (hereinafter "FDCPA") when Gunn, in his written argument, argued that the Justice of the Peace Court lacked subject matter jurisdiction over his FDCPA claim. After review of the parties' submissions, the Court concludes that any argument in regards to the FDCPA is beyond the scope of the appeal as such claim was not raised by Gunn or heard by the court-below.

issue of whether the trier-of-fact abused its discretion in denying the motion to vacate the default or non-suit judgment. *Am. Spirit Fed. Credit Union v. Speedy Key Lock & Tow Servs.*, 2016 WL 399231, at \*3 (Del. Super. Jan. 29, 2016).

An abuse of discretion will only be found “when the trial judge exceed[s] the bounds of reason in view of the circumstances and has so ignored recognized rules of law or practice so as to produce injustice.” *State v. Wright*, 131 A.3d 310, 320 (Del. 2016).

## DISCUSSION

Subject matter jurisdiction involves a “court’s power to hear a case.” *N.J. Carpenters & the Trs. Thereof v. Tishman Constr. Corp. of N.J.*, 760 F.3d 297, 302 (3d Cir. 2014) (citation omitted). Therefore, courts have an “independent obligation to determine whether subject-matter jurisdiction exists.” *Id.*

An objection to a court’s subject matter jurisdiction may be raised “by a party, or by a court on its own initiative, at any stage in litigation, even after trial and the entry of judgment.” *See Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506 (2006). Justice of the Peace Civil Rule 12 provides that the Justice of the Peace Court must dismiss an action “[w]henever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter.”

A void judgment is a judgment rendered by a court lacking subject matter jurisdiction and a party may attack such judgment in a motion to vacate. *See York Fed. Sav. & Loan Ass’n v. Heflin*, 1996 WL 30241, at \*2 (Del. Super. Jan. 5, 1996); J.P. Ct. Civ. R. 60(b)(4). Pursuant to Rule 60(b) of the Justice of the Peace Civil Rules, “[o]n motion and upon such terms as are just, the Court may relieve a party or a party’s legal representative from a final judgment, order or proceeding for the following reasons: (4) the judgment is void.” “There is no question of discretion on the part of the court when a motion is made under Rule 60(b)(4). Either a judgment is void or it is valid.” 11 Charles Alan Wright, et al., *Federal Practice and Procedure* § 2862 (3d ed.).

In the instant matter, there is no dispute between the parties that the Justice of the Peace Court lacked subject matter jurisdiction over Gunn's claim. The Justice of the Peace Court has limited jurisdiction in actions in tort ". . . for damage, destruction or taking of personal property (including replevin), for injury to real property, and for trespass on the land." 10 *Del. C.* § 9301(1). Gunn's negligence claim for economical damages does not fall within Justice of the Peace Court's jurisdiction.

The Justice of the Peace Court's duty to vacate the non-suit judgment and dismiss the action for lack of subject matter jurisdiction as required by Justice of the Peace Civil Rules 12 and 60(b)(4) were implicated when (1) Gunn moved to vacate the non-suit judgment so that the case may be transferred to a court of competent jurisdiction and (2) the court found it lacked subject matter jurisdiction. See *Zae Int'l. Grp., Inc. v. Master-Tech, Inc.*, 2002 WL 32007212 (Del. Com. Pl. Jan. 11, 2002). The Justice of the Peace Court ignored recognized rules of law and practice when it failed to vacate the non-suit judgment and dismiss the action without prejudice for lack of subject matter jurisdiction. Such error amounts to an abuse of discretion.

Furthermore, the Justice of the Peace Court erred in holding that a lack of subject matter jurisdiction had no relevance to Gunn's failure to appear. Where a court lacks subject matter jurisdiction, it has no authority to enter a non-suit judgment for failure to appear.


In opposition, appellee, defendant below, Tidewater Utilities, Inc., suggests that the transfer of Gunn's claim to a court of competent jurisdiction would not change the outcome of his claim because Gunn fails to allege any recoverable damages. Whether a party has a cause of action goes to the merits of the case and, therefore, must be decided after, not before, a court has assumed jurisdiction. *Licata v. U.S. Postal Serv.*, 33 F.3d 259, 626 (3d Cir. 1994).

### **CONCLUSION**

For the foregoing reasons, the Justice of the Peace Court's order denying Gunn's Motion to Vacate Non-Suit Judgment is REVERSED. This case is REMANDED to the Justice of the Peace Court with instructions to permit Gunn to transfer the case to a court of competent jurisdiction, pursuant to 10 *Del. C.* § 1902, provided that he timely files a written election of

transfer and complies with the provisions of 10 *Del. C.* § 1902.<sup>2</sup> If he fails to do so, the Justice of the Peace Court should dismiss the case, without prejudice, pursuant to Justice of the Peace Civil Rule 12.

**IT IS SO ORDERED.**

Sincerely,  
  
Charles W. Welch, III

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<sup>2</sup> 10 *Del. C.* § 1902, in pertinent part, states: No civil action, suit or other proceeding brought in any court of this State shall be dismissed solely on the ground that such court is without jurisdiction of the subject matter, either in the original proceeding or on appeal. Such proceeding may be transferred to an appropriate court for hearing and determination, provided that the party otherwise adversely affected, within 60 days after the order denying the jurisdiction of the first court has become final, files in that court a written election of transfer, discharges all costs accrued in the first court, and makes the usual deposit for costs in the second court.