

**IN THE JUSTICE OF THE PEACE COURT NO. 16
OF THE STATE OF DELAWARE IN AND
FOR KENT COUNTY**

ALBERT CARTER, Jr.,
DARIA L. CARTER,

C.A. No. JP16-12-003744

Defendants/Counterclaimants,
Appellants ,

v.

ARTHUR B. HALL III,

Plaintiff,
Appellee.

TRIAL DE NOVO

Submitted: September 6, 2012

Decided: September 6, 2012

Victoria J. Hoffman, Esquire, Legal Services Corporation of Delaware, Inc.
for Defendants/Counterclaimants/Appellants.

Gary R. Dodge, Esquire, P.A., Dover, Delaware for Plaintiff/ Appellee.

ORDER

Arndt, J
Murray, J
Sweet, J

On September 6, 2012, this Court, comprised of the Honorable Ernst M. Arndt, the Honorable James A. Murray and the Honorable William J. Sweet, acting as a special court pursuant to 25 *Del. C.* § 5717(a)¹ convened a trial *de novo* in reference to a Landlord/Tenant Summary Possession petition filed by Arthur B. Cahall III, (hereinafter referred to as “Plaintiff”), against Albert Carter, Jr., & Daria L. Carter (hereinafter referred to as “Defendant” or “Defendants”) and counterclaim filed by Defendants against Plaintiff. For the following reasons the Court ***DISMISSES Plaintiff’s petition and Defendants’ counterclaim and the judgment entered by the Court below is “VOID”.***

Factual and Procedural Background

Plaintiff filed a Landlord/Tenant Summary Possession petition with Justice of the Peace Court No. 16 seeking possession, court cost, accrued rent and post-judgment interest at the current legal rate. This action is based on Defendants failure to pay rent. Trial was held on August 6, 2012, and judgment was entered in favor of Plaintiff.² Thereafter, Defendants filed a

¹ 25 *Del. C.* § 5717(a). *Nonjury trials.* “With regard to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgment, a trial *de novo* before a special court comprised of 3 justices of the peace other than the justice of the peace who presided at the trial, as appointed by the chief magistrate or a designee, which shall render final judgment, by majority vote....”

² *Cahall v. Carter Jr et al*, Del J.P., C.A. No. JP16-12-003744, Wall, J. (Aug. 6, 2012).

timely appeal of the Court's Order pursuant to 25 *Del. C.* § 5717(a) and filed a counterclaim.

Motion to Withdraw Counterclaim

Upon convening trial, Counsel advised the Court that they had spoken pre-trial and wished to present a series of motions for the Courts consideration. First, Defense Counsel motioned the Court to withdraw their pending counterclaim without prejudice. Plaintiff did not oppose Defendants' motion. Secondly, Defense Counsel also motioned to have Defendant's bond returned to her.³ Plaintiff again did not oppose Defendant's motion.

Motion to Dismiss Petition

Counsel for Plaintiff motioned the Court to Dismiss his petition without prejudice. Defendants did not oppose Plaintiff's motion.

Conclusion

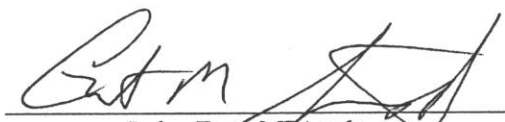
Based on Plaintiff's unopposed Motion to Dismiss his petition and Defendants' unopposed Motion to Withdraw their Counterclaim and have the bond returned, the Court by unanimous vote ***GRANTS WITHOUT PREJUDICE*** Plaintiff's and Defendants' motions.

³ Daria L. Carter posted a \$350.00 appeal bond.

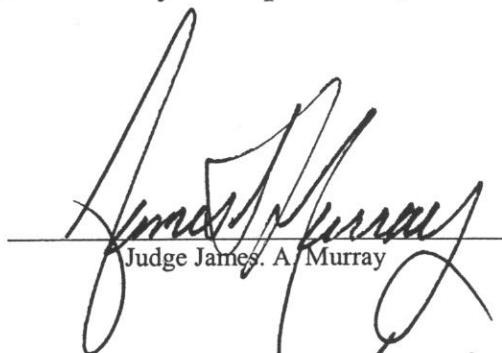
Whereas Plaintiff's petition has been dismissed without prejudice, the judgment entered by the Court below is "VOID".⁴

The Chief Clerk shall return the appeal bond previously post by Defendant, Daria L. Carter in the amount of \$350.00.

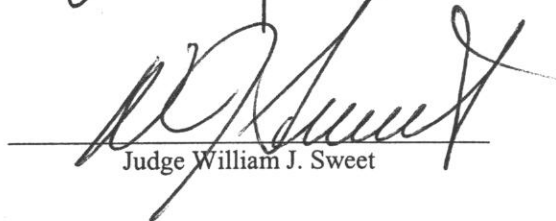
IT IS SO ORDERED, this 6th day of September, 2012.



Judge Ernst M. Arndt



Judge James A. Murray



Judge William J. Sweet

⁴ *Cahall v. Carter Jr et al*, Del J.P., C.A. No. JP16-12-003744, Wall, J. (Aug. 6, 2012).