

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

**COURT ADDRESS:
480 BANK LN
DOVER DE 19904**

CIVIL ACTION NO: JP16-12-006850

STEPHEN D ROOD VS TYREANA TUCKER

**SYSTEM ID: 002984
CAROLYN H DEBERNARD
BONNIE M. BENSON P.A.
306 E. CAMDEN-WYOMING AVENUE
CAMDEN DE 19934**

ORDER

Civil Action JP16-12-006850 was filed as a landlord tenant dispute over failure to pay rent. Subsequently, there was a counterclaim filed to reclaim the deposit made for the purchase of the rental property under a separate, stand alone option to buy.

The case was heard by a bench trial on January 30, 2013. Both the claim and counterclaim were adjudicated in favor of the Plaintiff. The decision was timely appealed. The action was continued one time. A second continuance request was denied. The Defendant posted an appeal bond of \$4451.50.

The action was scheduled for a trial de novo on March 7, 2013. Not only did the Defendant fail to appear at the scheduled time, she failed to appear after the 15 minute grace period provided by Policy Directive 008. The panel of Judges Cox, Darling and Wall heard and granted a motion to deny the appeal. The order of January 30, was affirmed. The appeal bond was ordered released to the Plaintiff. Per diem rent was also affirmed.

On March 11, 2013, the Defendant filed an emergency motion to stay the writ of eviction, a temporary stay was granted pending a hearing. That hearing was conducted on March 22, 2013 by the same panel cited above. Here follows their unanimous decision in 2 parts.

First, we address the case in chief. We find there was no excusable neglect for the Defendant's failure to appear. Further, there would have no different outcome. The motion to vacate the case in chief is denied. The stay on the writ eviction is removed. If the appeal bond has not been released to the Plaintiff, it shall be effected. The order for per diem rent remains in effect.

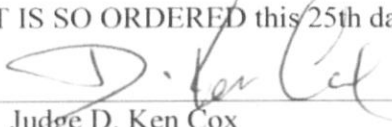
Second, we address the counterclaim. The option to buy the rental unit was signed by the same parties on the same date as the lease. The limited equitable jurisdiction granted to the Justice of the Peace Court at 25 Del. Code §314 states in subsection a that the jurisdiction is restricted to contracts where the seller provides the financing for the purchase. No mention is made of jurisdiction over an option to buy real estate. Section VII of the option to buy states:

“There will be no Owner financing for this property. Buyer must either pay cash or obtain financing from a commercial lender.”

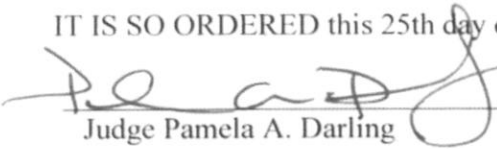
Further, action on the option is not ripe. The option does not expire until August 1, 2013.

The Court unanimously rules that the Justice of the Peace Court does not have jurisdiction over the counterclaim subject matter. The counterclaim is dismissed without prejudice.

IT IS SO ORDERED this 25th day of March, 2013

 (SEAL)
Judge D. Ken Cox

IT IS SO ORDERED this 25th day of March, 2013

 (SEAL)
Judge Pamela A. Darling

IT IS SO ORDERED this 25th day of March, 2013

 (SEAL)
Judge Robert B. Wall Jr.