



STATE OF DELAWARE
JUSTICE OF THE PEACE COURT No. 13
1010 CONCORD AVENUE
CONCORD PROFESSIONAL CENTER
WILMINGTON, DELAWARE 19802

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PETER P MITCHELL
816 BRANCH ROAD
NEWARK, DE 19711

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NICOLE MITCHELL
816 BRANCH ROAD
NEWARK, DE 19711

VS.

Civil Action No: JP13-14-001041

SYSTEM ID: @2648775
STEPHANIE L GRAYSON
PO BOX 5333
WILMINGTON, DE 19808

SYSTEM ID: @2648782
MELISSA GREER
445 WOOD STOCK LANE
WILMINGTON, DE 19808

ORDER

Trial de novo heard April 29, 2014. Plaintiffs Peter P. Mitchell and Nicole Mitchell and Defendant Stephanie Grayson were present. Both parties were self-represented. Defendant Greer was not a party on the appeal. The trial de novo panel consisted of Judge Bonita N. Lee, Judge Nina M. Bawa and Judge Marie E. Page.

At pre-trial the Court ruled that it lacked jurisdiction. The case, when initially filed, did not involve possession. Plaintiff was claiming a debt in the amount of \$4,200 plus prejudgment interest in the amount of \$210.00; \$20.00 bad check fee and \$40.00 court costs.

Procedural History

The Plaintiffs filed the instant case on January 27, 2014 seeking a money judgment in the amount stated in the paragraph above. It appears from the complaint form that Plaintiff originally indicated the case was a debt action, but also checked the box for summary possession. Plaintiffs did not indicate that possession was being sought.

A trial was scheduled for March 4, 2014. Only Defendant Grayson appeared. After hearing the testimony of the parties, the trial court entered judgment in favor of the Plaintiff in the amount of \$2,749.88 plus \$40.00 court costs and 5.75% post judgment interest. The written order was issued March 10, 2014. The trial judge also noted in the order, "Tenant vacated; possession is no longer at issue." The judge entered the same judgment amount by default against Defendant Greer. In a sworn affidavit submitted to the Court in support of the default judgment Plaintiff Peter Mitchell stated the tenant[s] vacated the property on January 26, 2014. Defendant Grayson filed an appeal to the three-judge panel on March 17, 2014.

Pre-Trial Issues

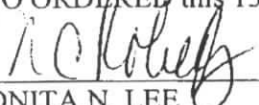
Neither party raised any pre-trial issues. However, the three-judge panel conducted an inquiry to determine if the panel had jurisdiction to hear the matter as an appeal. Pursuant to 25 Del. C. §5717 an aggrieved party in a summary possession case may appeal to a three-judge panel in the Justice of the Peace Court. In the instant case the tenants had already vacated the rental unit a day prior to the actual filing of this case. The fact that tenants vacated prior to the filing of the instant case is evidenced by the sworn affidavit included in the Court's record and confirmed by the parties today. However, Defendant contends the move-out date was actually January 24, 2014, not January 26 as the landlord states. Using either date would resolve the issue of possession prior to the date the case was filed. That possession was not an issue before the trial court is also memorialized in the written judgment from the original trial. The trial court accepted the landlord's testimony and awarded 26 days of January at a per diem rate of \$46.66.

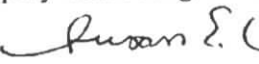
Justice of the Peace Court Civil Rule 41 (f) states:

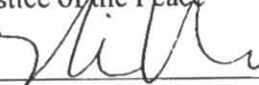
Dismissal without prior notice. The Court may order a complaint, petition or appeal dismissed, *sua sponte*, without notice, when such complaint, petition or appeal manifestly fails on its face to invoke the jurisdiction of the Court and where the Court concludes, in the exercise of its discretion, that the giving of notice would serve no meaningful purpose and that any response would be of no avail.

The Court holds that this matter was originally a debt action for unpaid rent. There are no other claims for equitable relief. The issue of possession was resolved prior to the filing of the instant action. We conclude that the Court lacks jurisdiction to hear an appeal where the only claim in controversy is a debt. Under the above cited Civil Rule, the Court must adjourn the proceeding pre-trial and the judgment with the appeal time to run from the date of this order.

IT IS SO ORDERED this 13th day of March 2014


BONITA N. LEE
Deputy Chief Magistrate


MARIE E. PAGE
Justice of the Peace


NINA M. BAWA
Justice of the Peace

