IN THE COURT OF COMMON PLEAS IN THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

FRANCIS N. GWANMESIA,	)	
	)	C.A. No. CPU5-12-000176
Defendant-Below, Appellant	)	
	)	
v.	)	
	)	
SUSAN MAYNARD,	)	
	)	
Plaintiff-Below, Appellee	)	

November 20, 2012

Mr. Francis Gwanmesia
128 Fieldbrook Drive
Magnolia, DE 19962

Ms. Susan Maynard
826 Persimmon Tree Lane
Dover, DE 19901

DECISION ON APPEAL (REMAND)

Appellant, Defendant-Below, Francis N. Gwanmesia ("Defendant"), has filed a civil appeal with this Court pursuant to 10 *Del. C.* § 9571 and *Ney v. Polite,* 399 A.2d 527 (Del. 1979), for a review of a denial by the Justice of the Peace Court of his motion to vacate a default judgment that was entered against him. Defendant contends that the Justice of the Peace Court abused its discretion when it denied his motion to vacate the default judgment because he never received proper service of process to file an answer to the Plaintiff's complaint.

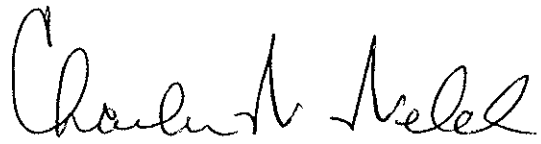
When deciding whether a motion to vacate default judgment has been decided properly, the only issues before the Court are whether the Justice of the Peace Court's

decision was proper under law and was not arbitrary and capricious. With a *Ney v. Polite* appeal, the appeal is on the record. The Court must rely on the record of the Justice of the Peace Court when making its decision.

In pertinent part, Justice of the Peace Court Civil Rule 7(a) provides that "[d]efendants shall file an answer as directed by the summons." In its decision denying the Defendant's motion to vacate the default judgment entered against him for this matter, the Justice of the Peace Court found that the Defendant was served with the complaint in this matter on or about July 28, 2011, by certified mail, and that he never filed an answer to it. Although the Justice of the Peace Court record for this matter shows that service was issued by certified mail on the Defendant, the record contains no copy of the summons that was served upon him. Therefore, this Court cannot verify that he was directed to file an answer to the Complaint. The Defendant contends that he never received a summons directing him to file an answer to the complaint for the case in the Justice of the Peace Court. Since a copy of any summons that was issued to the Defendant directing him to file an answer for this matter appears to be missing from the record of the Justice of the Peace Court, this Court, as the reviewing court, is not able to perform a proper review of the Defendant's contention that he was never directed to file an answer to the complaint in that court. Therefore, this matter is **REMANDED** to the Justice of the Peace Court for further proceedings in accordance with this decision. Specifically, the Justice of the Peace Court is instructed to hold a hearing to determine whether a summons directing the Defendant to file an answer to the complaint for this matter was sent to the Defendant and, if so, the contents of such order. This matter shall

be returned from remand with a report of the Justice of the Peace Court's findings within sixty days of this order.

IT IS SO ORDERED this 20th day of NOVEMBER, 2012.



CHARLES W. WELCH
JUDGE