

IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE, IN AND FOR
NEW CASTLE COUNTY
COURT NO. 13

Howard Macknett)	
PLAINTIFF)	
)	
v.)	Civil Action No. JP9-14-000462
)	
Heather Wolf & Daniel South)	
DEFENDANTS)	

Decision following Trial *De Novo* heard June 3, 2014.

ORDER.

On Plaintiff's claim seeking possession and costs of filing.

JUDGMENT FOR PLAINTIFF.

Michael P. Morton, Esquire; Michael P. Morton P.A., 1203 North Orange Street, Wilmington,
DE 19801. Counsel for Howard Macknett.

Melissa A. Hopkins, Esquire; Hopkins & Windett, LLC, 438 S. State Street, Dover, DE 19901.
Counsel for Heather Wolf & Daniel South.

Lee, McCormick, & Roberts, J.

Procedural History of the Case at Bar.

The above-referenced matter was originally filed in Justice of the Peace Court No. 9 on or about April 2, 2014 in which the Plaintiff, Howard Macknett (and hereafter, the Landlord), sought possession of the property located at 316 Sawmill Branch Road, which is located in the vicinity of Townsend, Delaware. Judgment was entered in favor of the Plaintiff on April 29, 2014 and was immediately appealed by Defendants (and hereafter, the Tenants) Heather Wolf and Daniel South to a Trial *De Novo*. The *De Novo* Panel convened on June 3, 2014 to consider the appeal. The salient facts are as follows: The parties entered into a month-to-month rental agreement commencing on December 1, 2009. The lease in question, signed on November 21, 2009 by the parties, was never modified or renewed, and so was deemed controlling. On October 22, 2013 the Landlord noticed the Tenants of his intention to raise the monthly rental amount from \$850 per month to \$1,100 per month. The increase was rejected by the Tenants.

Accordingly, the Landlord then sent to the Tenants on December 19, 2013 a notice of termination pursuant to 25 Del. C. § 5106(d) advising them that the lease would be terminated within 60 days, the 60 days beginning on January 1, 2014 and ending March 1, 2014.¹ The notice, a single document addressed to both tenants, was sent via certified mail. The green card (the signing of which signifies delivery of the document in question and thus notice to the recipient) was signed on December 21, 2013 by Mr. South. Although the document was not signed for by Ms. Wolf, she freely acknowledged in her testimony that Mr. South advised her of his receipt of it and that he had shown her the document. None-the-less, the Defense maintained that Ms. Wolf had never in fact been noticed of the Landlord's demand that she vacate the property. It was on this point that the entire matter turned.

¹ Testimony revealed that the parties verbally agreed to extend the 60-day period to vacate the unit by an additional 30 days, through April 1, 2014. It is presumably for this reason that the action was not filed until April 2, 2014.

The Defense argued that by sending one notice to both persons, the Landlord had not met the requirements for personal service specified by 25 Del. C. § 5113(a) – specifically, that Ms. Wolf had never personally been served with the Landlord’s notice of termination. Since proof of service is a prerequisite to the filing of a complaint,² lack of service (or proof thereof) would remove from the Court personal jurisdiction over Ms. Wolf in this instant matter, requiring the Court to dismiss the action effectively against both Tenants and would necessitate Mr. Macknett to issue a new properly-served 60-day notice prior to re-filing. Defense Counsel offered case-law³ in support of the argument that Counsel held was both beneficial and compelling to the Panel’s consideration of the argument.

Counsel for Plaintiff argued that the case-law proffered was neither binding nor on point. Counsel argued that service had properly been established both pursuant to 25 Del. C. §5513(b) (in that certified mail had been sent and received) and 25 Del. C. § 5114(1) (in that Ms. Wolf clearly admitted knowledge of the notice of termination.)

Given the differences of argument as they related to both the issue of service and the case-law proffered, the Panel concluded the hearing by ordering a briefing schedule to allow for further argument. The Panel now comes to address the argument further presented.

² 25 Del. Code § 5705 (b), in speaking as to service and filing of notice, states in pertinent part that “The notice and complaint, together with proof of service thereof, shall be filed with the court before which the complaint is to be heard prior to the hearing . . . If service has been made by certified or registered mail, the return receipt, signed, refused, or unclaimed, shall be proof of service.”

³ The matter of *Lasocha v. Weir*, Del. J.P., C.A. No. JP16-08-003647.

THE APPLICABILITY OF THE MATTER OF LASOCHA V. WEIR TO THE CASE

AT BAR.

In his supporting brief, Counsel for Plaintiff has argued “First and foremost, this Court is not bound by prior decisions of other three Judge panels from Sussex and Kent County.”⁴ While this is fundamentally true, the Court will note at this juncture that the reasoned opinion issued by a tribunal of similar brethren should always be considered, and to the extent that the facts considered are similar, should be considered persuasive. That said, the Court must respectfully disagree in part with the findings contained within *Lasocha v. Weir*.

The facts germane to the case at bar found within *Lasocha* are as follows: as a result of non-payment of rent, the landlord (Lasocha) personally served a demand for rent entitled “Notice to Pay Rent or Quit” on or about June 6, 2008 upon the tenancy. When the landlord knocked on the door, a woman unknown to her answered. It was upon this unknown woman (who signed for receipt of the notice “C. Waite”) and not the tenant (Weir) that the landlord served the notice. After receiving no response from the tenant, the landlord then filed for summary possession on or about June 17, 2008. The trial court dismissed the action on August 4, 2008 noting amongst other deficiencies that service was not established pursuant to 25 Del. C § 5113(a).⁵ Admittedly, the landlord had no idea whom the woman who signed for the notice was; the landlord even testified “I did not know she lived there.” Since clearly the landlord had no idea to whom she handed the notice or if the woman in question even had a legal right to be inside of the unit in question (for all the landlord knew, the woman could have been a burglar) the trial court held that personal service had not been established.

On Appeal, the Panel *De Novo* concurred with the trial court on the issue, stating in its opinion that “Merely serving an adult at the tenant’s residence who is not a resident is not

⁴ Plaintiff’s answering brief to Defendant’s opening brief, page 1, paragraph 2.

⁵ 25 Del. Code § 5113(a) states in pertinent part that “Any notice or service of process required by this Code shall be served either personally upon the tenant or landlord or upon the tenant by leaving a copy thereof at the person’s rental unit or usual place of abode with an adult person residing therein . . .”

service.”⁶ The panel stated further that “. . . the notice must be served upon the tenant(s) as required by 10 Del. C. § 9524, 25 Del. C. § 5113, Court Rule, and consistent with case law.”⁷ It is upon the reference incorporating the notice requirements found within 10 Del. C. § 9524 that the panels differ in opinion.

10 Del. C. § 9524, which is found in SUBCHAPTER II, CIVIL ACTIONS FOR DEBT, which in turn is found in Chapter 95 to Title 10, entitled “PROCEDURE”, specifies how service is to be made in a debt action and how said service is to be verified in the event of a judgment by default. The section allows for personal service or service via certified mail, but is specific in the need for service upon an individual. As this relates to the Defense argument, since service was not made individually upon Ms. Wolf, the Court lacks personal jurisdiction over her.

While the Panel would agree that service perfected under this section clearly would meet the notice requirements set forth within the landlord-tenant code, the Panel disagrees with the notion that the specifics of this section must be adhered to in order to achieve notice in an action for summary possession. 10 Del. C. § 9524(a) states in pertinent part that “Service of a summons in an action under *this subchapter* upon an individual other than an infant or incompetent person, shall be made . . . “ [*emphasis added.*] Here, the section refers back to SUBCHAPTER II, CIVIL ACTIONS FOR DEBT, as is found in Chapter 95 of Title 10 and thus is exclusive to service under that subchapter.

While quite often the basis for an action for summary possession is a rental debt, it is not the only reason upon which a landlord may seek to evict or remove a tenant from a rental unit. The fact that one person is seeking to displace another from a residence is what separates an action for summary possession from a mere debt action; the onus of eviction as a result of rental debt (or other bases) is what makes an action for summary possession truly unique – so unique in

⁶ Lasocha v. Weir, Del. J.P. C.A. No. JP16-08-003647; Page 9, last paragraph.

⁷ Ibid., Page 7, paragraph 3.

fact that the Landlord-Tenant Code proscribes specifically its own requirements for perfecting notice. PART III of Title 25 (“Property”) is entitled “Residential Landlord-Tenant Code”. It’s first provision, § 5101 “Applicability of Code” in section (a) states “*This Code* shall regulate and determine all legal rights, remedies and obligations of all parties and beneficiaries of any rental agreement of a rental unit within this State, whenever executed.” [*emphasis added.*] Clearly the opening language of § 5101 indicates that it is the notice provisions found within the “Residential Landlord-Tenant Code” that are applicable to service for the case at bar and not those listed in Chapter 95 of Title 10.

The notice provisions applicable to the Residential Landlord-Tenant Code are found within 25 Del. C. § 5113 & § 5114. “The material aspects of 10 Del. C. §9524 and 25 Del. C. §5113 are the same . . .”⁸ Both sections are substantially the same in that they allow for personal service or service by means of certified mail. Both sections serve substantially the same purpose, i.e. to serve notice upon an individual in such a way so as to prove service was made. However, both are applicable only to the Subchapter or Part of the Title in which they are found. More importantly, despite the specific means of establishing notice as set forth in §5113, §5114 offers a more liberal means of establishing notice. 25 Del. C. §5114 states:

§ 5114. Notice; contractual notice between the parties.

A person has notice of a fact if:

- (1) The person has actual knowledge of it;
- (2) The person has received a notice pursuant to the provisions of this Code; or
- (3) From all the facts and circumstances known at the time in question, such person has reason to know that it exists. (70 Del. Laws, c. 513 § 1.)

It is by means of application of §5114 that Plaintiff claims to have established service on Ms. Wolf. She testified that she was made aware of the notice of termination by Mr. South. Further, the 30-day extension of the 60-day notice of termination was negotiated by Ms. Wolf.

⁸ *Ibid.*, Page 9, Paragraph 1, quoting *Key Box “5” operatives, Inc. v. Valentine*, Del. J.P. C.A. No. JP17-95-02-0224.

Clearly she had actual knowledge of the notice of termination if she later negotiated the terms of it.

CONCLUSION

There was no question that the form of the notice of termination was sufficient for its purpose; rather the only question was whether Ms. Wolf was properly served with it. Clearly she knew of it; she was very forthright in her testimony that Mr. South advised her of the notice. Her knowledge of the fact is further underscored by her subsequent actions (further negotiating the time period to vacate the unit). Once the fact of her knowledge was established, service was established pursuant to 25 Del C. §5114. As such, possession plus the costs of filing are hereby awarded to Plaintiff in this matter.

IT IS SO ORDERED THIS 3rd DAY OF SEPTEMBER A.D. 2014.

The Hon. Bonita Lee

The Hon. Sean P. McCormick

The Hon. Nancy Roberts