

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

ROGER SHERMAN	:	C.A. No. JP16-17-002656
	:	
	:	
Defendant Below,	:	
Appellant,	:	
	:	
v.	:	
	:	
CALLAWAY FARNELL and	:	
MOORE, INC.,	:	
	:	
	:	
Plaintiffs Below,	:	
Appellees.	:	

TRIAL DE NOVO

Submitted: July 25, 2017
Decided: July 25, 2017

Roger Sherman, Defendant /Appellant, *pro se*.

Callaway Farnell and Moore, Inc., Plaintiffs /Appellees are represented by current Form 50 Agent Don Clymer.

ORDER

Murray, J
Sherlock, J
Cox, J

On July 25, 2017 this Court, consisting of the Honorable James A. Murray, the Honorable Michael P. Sherlock and the Honorable D. Ken Cox, acting as a special court pursuant to 25 *Del. C.* § 5717(a)¹ held a trial *de novo*² in reference to a Landlord/Tenant Summary Possession petition filed by Callaway Farnell and Moore, Inc., (hereinafter referred to as Plaintiffs), against Roger Sherman (hereinafter referred to as Defendant). For the following reasons the Court enters a **STIPULATED JUDGMENT**.

Factual and Procedural Background

Plaintiffs filed a Landlord/Tenant Summary Possession petition with Justice of the Peace Court No. 16 seeking possession, court costs, and accrued rent. This action is based on Defendant's failure to pay rent. Trial was held on May 17, 2017 and judgment was entered in favor of the Plaintiffs.³ Defendant filed a timely appeal of the Court's Order pursuant to 25 *Del. C.* § 5717(a). The Order from the Court below lacked clarity as to whether the issue of possession was tried and decided. The issue of possession is a jurisdictional requirement in order for a *De Novo* Court to try

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 *De novo* trial. Trying a matter anew; the same as if it had not been heard before and as if no decision had been previously rendered. Black's Law Dictionary 435 (6th ed. 1990).

³ *Callaway Farnell and Moore, Inc.*, Del. J.P., C.A. No. JP16-17-002656, Dillard, J. (May 17, 2017).

an appeal under 25 *Del. C.* § 5717.⁴ This *De Novo* Court remanded this case back to the Court below for further clarification as to the issue of possession.⁵ Thereafter, the Court below issued an Order stating possession had been an issue at trial and granted possession to Plaintiff.⁶ Whereas the issue of possession had been tried and decided on the merits, this *De Novo* Court holds jurisdiction to try Appellant's appeal. Consequently, trial *de novo* was scheduled and held.

Pre-trial Stipulation

Pre-trial, Parties were able to resolve all pending matters before the Court and have provided a Stipulated Judgment of same. The following terms and conditions are contained in the Parties stipulation:

- (1) Judgment is entered against Defendant in the amount of \$800.00.
- (2) Defendant agrees to pay judgment in full on or before September 1, 2017.

⁴ In a previous three judge panel decision, *Bowers v. Bowers*, the Court addressed the jurisdictional question for appealing cases involving possession and those which do not. The *Bowers* Court stated in pertinent part:

“...[T]he Court has traditionally interpreted this to mean that appeals to a 3-judge panel are permissible only where there has been an adjudication on the merits of the question of **possession** [emphasis added] of the rental unit. Where the issue of possession is not in question, such as here where an ancillary post judgment motion is being appealed, the Court has no jurisdiction.” *Bowers v. Bowers*, Del. J. P., C. A. No. JP16-16-000068. Hutchison, J., Sherlock, J., Dillard, J. (Sept. 16, 2017).

⁵ “This matter is hereby **REMANDED** back to the Court below for clarification of the Court's Ordered dated May 17, 2017 as to the issue of possession in order that the *De Novo* Court may determine proper jurisdiction of the appeal *subjudice*.” *Callaway Farnell and Moore, Inc.*, Del. J.P., C.A. No. JP16-17-002656. Murray, J., Sherlock, J., Cox, J. (June 13, 2017).

⁶ *Callaway Farnell and Moore, Inc.*, Del. J.P., C.A. No. JP16-17-002656, Dillard, J. (June 28, 2017).

- (3) Parties agree Plaintiffs are now in possession of 160 Jeneva Lane, Harrington, Delaware 19952.
- (4) Upon final payment Plaintiffs agree to satisfy judgment within 60 days.
- (5) Plaintiffs may execute on judgment if not paid in full on the above due date.

Conclusion

Pursuant to the Parties' Stipulated Judgment, the Court by unanimous vote, shall enter the terms and conditions as the *Order of the Court*.

The signed Stipulated Judgment *SHALL* be incorporated as part of this order.

IT IS SO ORDERED, this 25th day of July, 2017.


Judge James E. Murray (seal)

Attached: Stipulated Judgment

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

COURT ADDRESS:

CIVIL ACTION NO. SP16-17-002656

PLAINTIFF(S):
CALLAWAY FARNELL AND
MURK INC

VS. DEFENDANT(S):
ROGER SHERMAN

STIPULATED JUDGMENT

Check one:

The parties have stipulated to the agreement contained in the attached document. The stipulated agreement constitutes the judgment of this Court; or

The following stipulated agreement constitutes the judgment of this Court. (Continue on additional page(s), if needed.)

1. Judgment is entered against Defendant in the amount of \$ 800.00
2. Def. agrees to pay judgment in full on or before 9-1-17
3. Parties agree Plaintiff is now in possession of 160 JENEVA LANE, HARRINGTON, DE.
4. Upon final payment Plaintiff agree to satisfy judgment within 60 days. 5. Plaintiff may execute

I agree to the terms of the stipulated judgment. I understand that I am waiving my right to a trial and that I will not have a right to appeal this stipulated judgment.

[Signature]
(Plaintiff)

(Plaintiff's Address/Phone No.)

(Plaintiff No. 2, if any)

(Plaintiff No. 2's Address/Phone No.)

[Signature]
(Defendant)

16882 S. DUPONT HWY
(Defendant's Address/Phone No.)

HARRINGTON DE 19952
(Defendant No. 2, if any)

(Defendant No. 2's Address/Phone No.)

The above agreement by the parties is hereby entered as the judgment in this case.

IT IS SO ORDERED this 25TH day of July, 2017
[Signature]
Justice of the Peace

on judgment if not paid in full on 9-1-17 date.