



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

TELEPHONE: (302) 577-2550

SYSTEM ID: @2912669  
LARCHWOOD PARTNERS  
1300 KING STREET  
WILMINGTON, DE 19801

VS.

Civil Action No.: JP13-16-013446

SYSTEM ID: @2912670  
EUGENE E BLAINE  
1318 E. 12TH STREET  
WILMINGTON, DE 19802

**Appearances:**

Plaintiff Larchwood Partners represented by Daniel C. Kerrick, Esq.  
Defendant Eugene E. Blaine represented by Donald L. Gouge, Jr., Esq.

Before: Lee, D.C.M.; Hanby, J.; Ferrell, J.

Heard: April 4, 2017  
Decided: May 5, 2017

**ORDER ON TRIAL DE NOVO**

**Procedural Posture**

Plaintiff filed this action to recover possession of a commercial property due to Defendant's failure to pay rent. In the instant matter Plaintiff is only seeking possession, as the rent owed by the Defendant exceeds the jurisdictional limit of this Court. The summary possession case was filed November 4, 2016 and was heard by a single judge (Ufberg, J.) on January 17, 2017. In a decision issued February 21, 2017, the Court found in favor of the Plaintiff and the Defendant filed a timely appeal of that judgment.

The appeal was heard before a three judge panel consisting of Deputy Chief Magistrate Lee, Judge Ferrell and Judge Hanby. The Panel convened on April 4, 2017. At pretrial, Defendant presented a Motion to Dismiss. This Order memorializes the decision on Defendant's Motion to Dismiss that was announced in open court.

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## Arguments

Defendant argues Plaintiff cannot bring this action and appear before the Court as Plaintiff has failed to comply with the requirements set forth in 8 Del. C. §§ 371 and 372, which provides in pertinent parts:

§ 371 Definition; qualification to do business in State; procedure.

(a) As used in this chapter, the words "foreign corporation" mean a corporation organized under the laws of any jurisdiction other than this State.

(b) No foreign corporation shall do any business in this State, through or by branch offices, agents or representatives located in this State, until it shall have paid to the Secretary of State of this State for the use of this State, \$80, and shall have filed in the office of the Secretary of State:

(1) A certificate, as of a date not earlier than 6 months prior to the filing date, issued by an authorized officer of the jurisdiction of its incorporation evidencing its corporate existence. If such certificate is in a foreign language, a translation thereof, under oath of the translator, shall be attached thereto;

(2) A statement executed by an authorized officer of each corporation setting forth (i) the name and address of its registered agent in this State, which agent may be any of the foreign corporation itself, an individual resident in this State, a domestic corporation, a domestic partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), a domestic limited liability company, a domestic statutory trust, a foreign corporation (other than the foreign corporation itself), a foreign partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), a foreign limited liability company or a foreign statutory trust, (ii) a statement, as of a date not earlier than 6 months prior to the filing date, of the assets and liabilities of the corporation, and (iii) the business it proposes to do in this State, and a statement that it is authorized to do that business in the jurisdiction of its incorporation. The statement shall be acknowledged in accordance with § 103 of this title.

§372. Additional requirement in case of change of name, change of business purpose or merger or consolidation.

(a) Every foreign corporation admitted to do business in this State which shall change its corporate name, or enlarge, limit or otherwise change the business which it proposed to do in this State, shall, within 30 days after the time said change becomes effective, file with the Secretary of State a certificate...

Defendant argues that Plaintiff conducts business on a regular and ongoing basis in this State and is currently renting to at least ten tenants in the property occupied by the Defendant. According to the defense, Plaintiff has owned the property located in Wilmington, Delaware since 1988. It is the Defendant's position that Plaintiff should not enjoy the benefit of using the courts of this State without complying with Delaware statutes and fulfilling its financial obligations to the State of Delaware.

Plaintiff does not dispute that it is a foreign corporation. Neither does Plaintiff dispute that it leases to approximately ten tenants in the same building complex occupied by the Defendant. Further Plaintiff acknowledges that 8 Del. C. §§371 and 372 set forth certain qualifications to do business in this state.

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However, Plaintiff argues it is exempt from the registration requirements of the aforementioned statutes by 8 Del. C. §373 which provides in pertinent part:

(a) No foreign corporation shall be required to comply with §§371 and 372 of this title, under any of the following conditions:

... (7) if it secures or collects debts or enforces any rights in property securing the same.


#### Legal Analysis


This Court must determine if Plaintiff's business operations fall within a statutory exception that exempts Plaintiff from the requirements of §§ 371 and 372. In an earlier case, the Delaware Supreme Court held that Centralia, a Pennsylvania corporation that purchased commercial property and engaged in commercial leasing activities in Delaware, was required to register to do business as foreign corporation pursuant to 8 Del. C. §371, *Centralia Mining Co. v. Crawford*, 14 A.3d 519 (Del 2011). Similarly, in the instant matter, Plaintiff is a foreign corporation that owns a commercial property in Wilmington, Delaware where it leases to several tenants including the Defendant. Although Centralia did not argue it was exempt from the registration requirements of 8 Del. C. §373, the Court finds the nature and character of Plaintiff's business dealings to be comparable to that of Centralia and therefore the holding of the Supreme Court is properly applied in this case.

Accordingly, the Court holds that Plaintiff Larchwood Partners, a foreign corporation, is required to register to do business in Delaware as set forth in 8 Del. C. §§371 and 372. Plaintiff's failure to register prevents it from maintaining an action in this court. Therefore, the instant summary possession action is dismissed without prejudice.

IT IS SO ORDERED this 05th day of May, 2017

 (SEAL)  
(for) BONITA N. LEE  
Deputy Chief Magistrate

 (SEAL)  
(for) JAMES R. HANBY, SR.  
Justice of the Peace

 (SEAL)  
EMILY A. FERRELL  
Justice of the Peace

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