

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

MARESA REDDING  
Plaintiff Below,

VS

ERNEST OWUSU  
Defendant Below,

§  
§  
§  
§  
§  
§  
§  
§

C.A. No. JP13-18-010382

TRIAL DE NOVO

Submitted: December 7, 2018  
Decided: January 7, 2019

**APPEARANCES:**

Maresa Reddings, Plaintiff appeared by and through Katelyn P. Lentz, Esq.  
Defendant, Ernest Owusu appeared pro se

Sean P. McCormick, Deputy Chief Magistrate  
Thomas P. Brown, Justice of the Peace  
Peter Burcat, Justice of the Peace

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

**CIVIL ACTION NO: JP13-18-010382**

**MARESA REDDING VS ERNEST OWUSU**

**ORDER ON TRIAL DE NOVO**

Factual and Procedural Background

On November 06, 2018, Maresa Redding, hereafter the plaintiff/tenant, filed an appeal in an action filed against Ernest Owusu, hereafter the defendant/landlord, for an alleged illegal ouster as defined in 25 *Del. Code* §5313. The plaintiff requests a judgment for treble damages for 29 days plus court costs and legal interest. The appeal was filed in accordance with 25 *Del. Code* §5717. Maresa Redding was represented by Katelyn P. Lentz, Esq. Ernest Owusu appeared pro se. The de Novo panel included the Honorable Sean McCormick, the Honorable Thomas Brown and the Honorable Peter Burcat. The original case was filed on September 04, 2018 and heard on October 11, 2018. The reserved decision was issued on November 01, 2018 and an Appeal was filed November 06, 2018. The Appeal was approved on November 08, 2018 and on November 19, 2018 all parties were notified to appear for trial on December 07, 2018. The defendant filed a counterclaim on December 03, 2018 and the plaintiff filed a Motion to Dismiss the counter claim on December 06, 2018.

The court below dismissed the original case without prejudice after determining that the plaintiff had named the wrong party as a defendant. The judge ruled that the plaintiff erred in filing against an employee of a corporation rather than the corporation. The company in question is Hope Housing, LLC.

8 *Del. Code* §'s 101, 102 and 103 govern the formation of corporations in the State of Delaware. The plaintiff argued that her appeal is based on the premise that the defendant has not fulfilled these requirements and that no corporate entity exists despite the defendant's claim and therefore the lower court should not have dismissed the case. She stated she searched multiple public records including the State of Delaware Secretary of State's Office, the Delaware Division of Revenue, New Castle County Government Licensing Department and the City of Wilmington's Division of Revenue. She did not find any records or business licenses for Hope Housing, LLC. Furthermore, the landlord's lease requires rent payments to be deposited directly into a specific bank account. The tenant sought and received charitable assistance for the security deposit. The charitable organization made the payable to the defendant personally. Finally, the landlord deposited this personal check into an account with the exact same account number specified in the lease. The tenant believes that there is no corporate entity.

The defendant argued that there is a legal corporation, but when the Trial de Novo Panel asked him if he had any proof of the company's existence with him at this time, he stated he did not. The Panel asked if he was aware that this was the central issue at the previous trial and he agreed he is aware of the issues. The Panel asked where he filed his Articles of Incorporation and he stated he filed his paperwork at the State Building, then changed his statement to say it was the City Building, then changed his story again to say that it was the Federal Building. He finally admitted he was not sure where he filed his paperwork.

The court examined the copy of the cancelled check and the lease furnished by the tenant. The personal check was deposited into an account bearing the same number as specified in the lease. Furthermore, the lease letter head does not include any reference to an LLC or any other corporate entity. It only states "Hope Housing".

For the above reasons, the Panel concluded that the defendant failed to comply with the requirements of 8 *Del. Code*. Therefore, we held that no legal corporate entity exists and we allowed the trial to proceed against Ernest Owusu as an individual.

Justice of the Peace Court Civil Rule 12 specifies that a counterclaim or cross-claim may be filed as a responsive pleading to a summons or by motion before or at trial. 25 *Del. Code* §5717(b) allows a counterclaim to be filed in a landlord-tenant dispute that was not raised at the original trial provided the counterclaim is filed within 5 days of the filing of the appeal.

The Panel heard oral arguments on the plaintiff's Motion to Dismiss the defendant's counterclaim. The tenant noted that there was no counterclaim filed with the court below, before or during the first trial. Nevertheless, the defendant did have a right to file a counterclaim on an appeal if it was filed timely. In this case, the counterclaim was not timely filed so it should not be considered today. The defendant had no response to the motion.

In this case, there was no counterclaim filed at the original trial. The plaintiff's appeal was filed on November 06, 2018, but the defendant's counterclaim was not filed until December 03, 2018. Because the defendant failed to raise a counterclaim at the original trial and failed to timely file a counterclaim in response to the plaintiff's appeal, the plaintiff's Motion to Dismiss the defendant's counterclaim is granted.

### **DISCUSSION**

A plaintiff has the burden of proving their case by a preponderance of the evidence. "Preponderance of the Evidence is a standard of proof that is met when a party's evidence indicates that the fact 'is more likely than not' what the party alleges it to be. Evidence which, as a whole, shows that the fact to be proved is more probable than not". 9 *Del. Admin. Code* 303-5.0.

The plaintiff's first witness was Maresa Redding. She testified that she responded to an advertisement for an apartment for rent. She met with the defendant and signed a lease in June 2018. She moved in on July 3<sup>rd</sup> or 4<sup>th</sup> of 2018. The lease, dated June 27, 2018 was entered into evidence as Plaintiff's Exhibit 1. The lease states, in part, that rent is due on the first of the month and if it is not paid by the 8<sup>th</sup>, the tenant will be evicted. The tenant went on to say that she renegotiated the lease so that rent was not due until the 8<sup>th</sup> of the month with biweekly payments of \$275.00. The plaintiff lived there for one month. On August 07, 2018 she received a phone call from the defendant and was told that if she failed to pay her rent by 5 PM that day, he would change the locks and throw her personal belongings onto the street. In an attempt to save her property, she left work immediately and began the process of moving. She believed her rent was not due until the 8<sup>th</sup> but she did not want to take the risk of her items being stolen or ruined by the weather.

The plaintiff moved into a motel and entered her receipts into evidence as Plaintiff's Exhibit 2. A few days later, she returned to the rental property to check her mail. She was greeted at the door by the defendant, refused entry and informed that there was no mail there for her.

The plaintiff entered as Plaintiff's Exhibit 3 a copy of text messages from the defendant that were sent to her on August 5<sup>th</sup> and 6<sup>th</sup>. The messages stated that the defendant has been trying to contact her, that "Ida" will be collecting the rent and if the rent is not paid by tomorrow (the 7<sup>th</sup>) eviction will occur on the 8<sup>th</sup>.

The plaintiff requests a judgment for treble damages pursuant to 25 *Del. Code* §5313 starting on August 07, 2018 and ending September 04, 2018, the date of the filing of this action.

On cross examination, the defendant established the facts that the plaintiff utilizes various social services and accepted the defendant's assistance in obtaining furniture from Urban Furniture. The defendant attempted to enter into evidence a copy of the security deposit check but was unable to overcome the plaintiff's objection as to relevance.

On redirect, the plaintiff established that the defendant failed to furnish her with a copy of the landlord-tenant code, as required by 25 *Del. Code* §5118. She emphasized that she believed that her rent was not due until the 8<sup>th</sup> of the month while the events leading to her ouster occurred on the 7<sup>th</sup> of August.

The defendant, during his case in chief, entered into evidence 4 documents. Exhibit 1 was a list of services he provides to his tenants as the owner/operator of Hope Housing, LLC. These services include providing information regarding existing social services available to his

tenants. Exhibit 2 was called "Demand or Quit" letter dated August 03, 2018. It states in pertinent part, "... you are hereby required to pay the above-listed amount in full OR quit the subject premise, move out, and hereby deliver possession of the same to the landlord".

The defendant testified that the plaintiff failed to pay rent timely and that he made a proper demand for payment via personal service. He admitted to sending the texts proffered as

Plaintiff's Exhibit 3 the plaintiff's cross examination amounted to a reiteration of the defendant's previous testimony.

### **ORDER**

After receiving closing arguments, the Panel took a short recess. Upon careful consideration of the testimony and evidence, the Panel finds the plaintiff was the more credible witness and she met her burden of proof by a preponderance of the evidence. Accordingly, we find in favor of the plaintiff for treble damages. Judgment is awarded to the plaintiff as follows: 29 days x \$15/day x 3 for a total of \$1,305.00 plus post judgment interest at an annual rate of 8.0%.

IT IS SO ORDERED 07th day of January, 2019

\_\_\_\_\_/s/Sean P. McCormick\_\_\_\_ (SEAL)  
Deputy Chief Magistrate  
On behalf of the 3-Judge Panel

Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).