

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

2 BUBBLES LLC	§	
Plaintiff Below,	§	
Appellee	§	
	§	
	§	C.A. No. JP13-19-004300
VS	§	
	§	
	§	
ALBERTA BOWERS	§	
Defendant Below,		
Appellant		

**On Plaintiff's motion for new trial and/or reargument.**

Submitted September 16, 2019.  
Decided October 17, 2019.

**Motion Denied.**

**Appearances:**

Plaintiff/Appellee represented by John R. Weaver, Jr., Esq.  
Defendant/Appellant represented by John D. Stant II, Esq.

**The Panel:**

Sean P. McCormick, Deputy Chief Magistrate.  
James Hanby, Justice of the Peace.  
Thomas Brown, Justice of the Peace.

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY  
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**CIVIL ACTION NO: JP13-19-004300**

**2 BUBBLES LLC V ALBERTA BOWERS**

**ORDER ON MOTION**

The panel is in receipt of a motion from Plaintiff seeking that the panel “grant a new trial or re-argument” of its decision. As counsel notes, the parties have an extensive history of litigation<sup>1</sup>. At no point during the course of those many, many hearings did the Defense lodge any counterclaim arguing that the Plaintiff had engaged in retaliatory acts as defined by and within 25 Del. C. § 5516<sup>2</sup>. Such a claim should have been raised pursuant to Justice of the Peace Civil Rule No. 13.<sup>3</sup> Given that the Rule requires counterclaims to be pursued at the earliest opportunity, and given that this is the third iteration of litigation between the parties, and given it was only at the most recent hearing that damages as provided within 25 Del. C. § 5516 has been considered or awarded, the panel should either reconsider and disallow said damages as not pursued previously or allow Plaintiff the opportunity to seek a new trial if only to prepare a defense regarding allegations of retaliatory acts. Plaintiff closes the motion by noting that “[Plaintiff] certainly is prejudiced when a court *sua sponte* decides to raise an issue that the defense has not even signaled that it is in play.”

It is that last line that characterizes the nature of the panel’s award of damages pursuant to 25 Del. C. § 5516(e) – It was awarded not as a result of a counterclaim raised by the Defense but rather as a result of a frank admission of malfeasance that came in response to a relatively philosophical question proffered by Defense Counsel. To recount:

Defense Counsel – “So, it’s okay to break the law? You feel it okay to not fix things if rent is not paid?”  
Mr. Purvis -- “If it will inconvenience another to move on, yeah, I am okay with it. I mean, I know its not legal, but I am okay with it. Someone who has never paid rent? Yeah.”

The panel has since taken to referring to this exchange as our A Few Good Men<sup>4</sup> moment. In the film a pair of marines are on trial for assaulting a fellow marine by engaging in a hazing ritual known as

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<sup>1</sup> Please refer to the panel’s Order dated September 6, 2019 for a more extensive recitation of the history of the case at bar.

<sup>2</sup> 25 Del. Code § 5516 states in pertinent part that “Retaliatory acts are prohibited.” The code then goes on to define a retaliatory act as “an attempt on the part of the landlord to pursue an action for summary possession or otherwise cause the tenant to quit the rental unit involuntarily . . .after the tenant has pursued or is pursuing any legal right or remedy arising from the tenancy.

<sup>3</sup> Justice of the Peace Civil Rule No. 13. Counterclaims and cross-claims. The rule advises that “A mandatory counterclaim is any claim which the claimant has against any opposing party and which arises out of the same transaction or occurrence that is the subject matter of the opposing party’s claim . . .” Thereafter Counsel also referred to Rule 8 as disallowing the claim. Here, counsel errs. The allowance for a counterclaim and requirement for timely filing of a Bill of Particulars in a landlord-tenant appeal is found within 25 Del. C. § 5717(b).

<sup>4</sup> A Few Good Men, (2002) A film produced by Castle Rock Entertainment.

a “Code Red.” The assault was such that the victim died. Defense counsel, Lt. Daniel Kaffee, theorizes that the Code Red was ordered by a superior officer (although he has the merest of circumstantial evidence to support his theory.) The film turns on a dramatic exchange between Naval Lt. Daniel Kaffee (played by Tom Cruise) and Col. Nathan R. Jessup (the marines’ commanding officer, played by Jack Nicholson.)

Lt. Kaffee asks: “Did you order the Code Red?”

Col. Jessup thunders in response: “You’re god-damned right I did!”

Col. Jessup did not just answer the question – he responded in such a way that showed he took full ownership of his actions. So did Mr. Purvis. His response to the question quite frankly astonished the members of the panel. Who would have believed that a party would so adamantly admit to wrongdoing within our immediate presence? Regardless, he did – and once spoken, the panel cannot ignore the admission.<sup>5</sup> It is simply impossible to un-ring that bell. The panel gave a great deal of consideration to its decision to act *sua sponte* so as to ensure such an action would not be viewed as an abuse of discretion. Ultimately, the panel decided that the nature of Purvis’ testimony compelled the panel to act as it did. In our opinion, other than to muzzle his client entirely, Plaintiff’s Counsel can no more prepare a defense to his client’s frank admission than he can put the genie back in the bottle. Counsel could have taken the opportunity to attempt to rehabilitate his client’s testimony, but he did not take the opportunity to do so. We can only speculate as to why Counsel elected not to question his client further, but it seems that, given the bantam and pugilistic nature of Purvis’ testimony throughout the proceeding, had the issue been further probed it is possible that the subsequent testimony would likely have only worsened his position. Perhaps Counsel thought it better to leave sleeping dogs lie. Given this rationale, the Plaintiff’s motion is hereby denied.

IT IS SO ORDERED 17th day of October, 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).

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<sup>5</sup> It is worthy of note that Plaintiff’s Counsel attempted to protect his client from himself at the moment the question was offered by Defense Counsel – but Mr. Purvis answered even as the objection was lodged. The fact that Purvis spoke over his own attorney underscores in our minds his eagerness to express his absolute disdain for the Defendant and the situation he caused he to be in. Once the question was answered, the panel overrode the objection, holding the admission that of a party opponent and therefore both allowable and highly probative. And, since the statement came from the Purvis himself, there is no way the panel could find that the statement’s prejudicial effect outweighed its probative value and relevance.