

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY
COURT NO. 17**

**COURT ADDRESS:
23730 SHORTLY ROAD
GEORGETOWN DE 19947**

CIVIL ACTION NO: JP17-19-004722

PACHER VS SANDHILL ACRS MHC AKA SANDHILL ACRES MHC

**SYSTEM ID: @3267587
SANDHILL ACRES MHC LC AKA SANDHILL ACRES MHC LLC
PO BOX 8456
VIRGINIA BEACH VA 23450**

C.M. Davis for the Court
Plaintiff represented by Curtis Crowther, Esq.
Defendant represented by Nicole Faries, Esq.

The Court wishes to begin by apologizing to the parties for the delay in the issuance of this opinion. This case has been caught in turmoil of the unfortunate turn of events that our world has seen in the past several months. While more pressing matters may have intervened, this is still a matter of importance to these parties and the Court is sensitive to the time it has taken to getting this decision issued, even in light of the fact that counsel has made it clear that no prejudice would come to either party.

Procedural Posture

Plaintiff, Michael and Koreen Pacher (hereinafter “Pachers”), brought this action against their landlord, Sandhill Acres MHC LLC (hereinafter “Sandhill”) seeking a declaratory judgment that a new park rule promulgated by Sandhill regarding the feeding of free-roaming cats was unenforceable and void as a matter of public policy and law. At the trial level, the Court heard legal argument on the question of whether this Court has jurisdiction over declaratory judgments. The single judge ruled that we do not have such jurisdiction; Plaintiffs brought a timely appeal.

Rather than hear the matter as a trial on the merits, the parties agreed to bifurcate the matter and have an initial hearing on the legal question. The specific question is whether this Court has jurisdiction under 10 Del. C. §6501 et. seq. to issue a declaratory judgment in a case construing the contractual language - and rules resulting therefrom - of a residential land lease. Treating this as a motion to dismiss for lack of subject matter jurisdiction, the Court reserved trial for if it determined it had subject matter jurisdiction. The Court held a hearing on the motion to dismiss for lack of subject

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matter jurisdiction on January 30, 2020 and then ordered post-hearing briefing on specific questions. That briefing was concluded on March 4, 2020. This is the Court's decision on the motion. For the reasons stated below, the Court finds that the provisions of 10 Del. C. §6501 grant this Court the authority to issue declaratory judgments within its limited jurisdiction.

Facts

The facts related to, and necessary for the consideration of, this motion are limited. The Pachters are the owners of their manufactured home. It sits on a lot in Sandhill Acres, owned by the defendant. The plaintiffs have a lot lease for the placement of the home and therefore are subject to the provisions of that lease. The lease permits the landlord to promulgate certain rules pertaining to the health, safety and welfare of all tenants. In this instance the landlord issued a rule limiting park residents from caring for and feeding free-roaming cats that have become something of a fixture in the park. The Pachters claim not to own the cats, but are caring for them in a fashion in accord with Delaware law. In furtherance of the rule, Sandhill has given the Pachters written notice of their intent to enforce the rule, though they never followed through with an action for eviction. Despite the landlord not seeking to enforce the rule or the notice by subsequently bringing action, Plaintiffs have brought this action to pre-empt any such action by the landlord.

Positions of the Parties

The Pachters claim that this Court has jurisdiction under the express language of the statute to adjudicate this matter and issue a declaratory judgment. They claim that two elements must be met – first, that the Justice of the Peace Court is a “court of record” and second, that the Court must have jurisdiction over the underlying subject matter of the case. In support, they claim that the very fact that the Court now records its proceedings is sufficient to make it a court of record. Further, they claim that this Court is the only one with jurisdiction over the underlying subject matter, the adjudication of issues dealing with the possession of rentals.

Sandhill counters that this Court does not have jurisdiction to issue a declaratory action, as it is not a court of record. It further claims that the underlying question before the Court is not one of possession, but one of contractual construction and reformation, not within the jurisdiction of the Court.

Discussion

Preliminary Considerations

This Court has approached its position on this matter reluctantly. Were the litigants to have polled the members of this panel prior to hearing the argument, there would have been full agreement that the Court was not one where the relief sought was available. While we realize this may seem like pre-judgment, the fact is that the combined legal experience of the panel totals nearly 80 years. In that time, not one member of the panel had ever been presented with this question, and it had been essentially a matter of “common knowledge” that the Justice of the Peace Court did not have the authority to hear an action seeking declaratory judgment. In support of this position, the Court rules specifically omit Rule 57, which is the rule that governs such actions for the sister Courts of this state. In short, we believed the judge below had properly considered the matter. After the motion hearing, however, it became clear to the Court that the argument may have some merit and required careful consideration. The Court is cognizant of and sensitive to the potential legal and administrative disruption a finding of jurisdiction could have.

In order to understand how the Court has arrived at this decision, it is important to understand the manner by which this Court can gain jurisdiction. The Justice of the Peace Court is a Court of limited jurisdiction. Aside from the inherent powers of any Court, the Justice of the Peace Court obtains its authority only through constitutional or statutory grant. Predominantly, the civil jurisdiction of the Court is confined to Chapter 93 of Title 10 of the Delaware Code for general jurisdiction issues and Chapters 57 and 63 of Title 25 for matters related to leasehold possession and distress. While those are the primary locations for jurisdictional questions, some stand-alone statutes - for example the Wage Claim Act, the Auto Repair Fraud Prevention Act and the Timber Trespass Act - bestow jurisdiction over matters where the claim does not exceed the Court’s jurisdictional amount under 10 Del C. §9301.

Some of those stand-alone statutes grant the power to hear a case to the Justice of the Peace Court as “a court of competent jurisdiction.” In these cases, the jurisdictional language contained in 10 Del C. §9301(2) may apply, as an “action for any penalty or forfeiture incurred under the provisions of any statute” when the monetary limit is not exceeded. Others of those stand-alone statutes directly state that the Justice of the Peace Court has jurisdiction. Still others, by the terms and operation of the statute in question, include the Court as one with jurisdiction. The jurisdiction of the Court is ascribed in these last two circumstances under subsection (6) of §9301, which invokes a catch-all for “any other civil jurisdiction provided by law.”

If this Court is to have jurisdiction in this case, it is under this last circumstance, as declaratory judgments under 10 Del. C. §6501 are not part of the Court’s explicit grant of jurisdiction. Because of this, we need to look to the operation and language of the declaratory judgment statute itself to determine if such jurisdiction is “provided by law.” That statute states, in pertinent part:

Except where the Constitution of this State provides otherwise, courts of record within their respective jurisdictions shall have the power to declare rights, status and other legal relations whether or not further relief is or could be claimed.

There is no specific provision in the Constitution of Delaware of 1897 prohibiting Justices of the Peace from making a declaratory judgment. That leaves only the two remaining questions presented by the parties: Is the Justice of the Peace Court a “court of record” for purposes of this statute? Does this Court have jurisdiction over the underlying subject matter of the request for relief? The Court has concluded, as discussed below, the answer to both of those questions is in the affirmative.

Court of Record

Defendant has asserted that the Justice of the Peace Court is not a court of record. There is scant evidence, however, that this is legally accurate. Historically, Delaware has viewed the Justice of the Peace Court as one of record. The Justice of the Peace Court jurisdiction defining case of *Shoemaker v. State*, citing Woolley on Delaware Practice says, “*All courts are of record, which have the power to fine and imprison. Justices of the Peace have this power, therefore the courts of Justices of the Peace are courts of record, and have been so considered since the early judicial history of the State.*”¹ Further, in the 1922 case of *Hawkins v. Lewes Journal Co.*, the Court of Chancery explicitly stated that the Justice of the Peace Court was a court of record, maintaining, “While the court of a justice of the peace is a court of record, yet it is a court of inferior jurisdiction.”²

More broadly, the Justice of the Peace Court clearly meets the legal definition of a “court of record” in Black’s Law Dictionary, which defines it as, “*A court that is required to keep a record of its proceedings. The court’s records are presumed accurate and cannot be collaterally impeached.*”³ While the record of the Justice of the Peace Court proceedings is not often converted into a transcript for purposes of appeal as in a more traditional view of a court of record, the Justices of the Peace have been statutorily required to maintain accurate written records for hundreds of years. A 1861 version of

¹ *Shoemaker v. State*, 375 A.2d 431, 440 (Del. 1977).

² *Hawkins v. Lewes Journal Co.*, 13 Del.Ch. 317 (1922).

³ COURT, Black’s Law Dictionary (11th ed. 2019).

the law we now know as 10 Del. C. §9562 - requiring the keeping of dockets - went so far as to delineate the size of the paper on which such records were to be made.⁴ Furthermore, certain proceedings have required an additional audio since the time of *Shoemaker* and, since November 2015, the Court has maintained electronic audio records of all proceedings in accord with a policy directive.⁵

Jurisdiction Over Underlying Subject Matter

Having determined this Court is one “of record” for purposes of the statute, we now turn to the issue of whether the Court has jurisdiction over the underlying subject matter. *Heathergreen Commons Condominium Ass’n v. Paul*, (hereinafter *Heathergreen*) provides that jurisdiction under the Declaratory Judgment Act is based upon whether law or equity would have jurisdiction, independent of the Act, if the subject matter of the controversy would develop to a later stage.⁶ Ultimately, the question becomes: is the case at hand within the court’s respective jurisdiction? *Heathergreen* analyzes this issue through two statements: 1) the Court of Chancery has jurisdiction over a declaratory judgment action only if there exists an underlying basis for equity jurisdiction measured by traditional standards, and 2) the Superior Court would have jurisdiction in a declaratory judgment action only if it would otherwise have subject matter jurisdiction in the absence of the declaratory judgment action.

The second statement is helpful here, if we replace “Superior Court” with “Justice of the Peace Court”. Doing so, the statement becomes: The Justice of the Peace Court would have jurisdiction in this declaratory judgment action only if it would otherwise have subject matter jurisdiction in the absence of the declaratory judgment action. To apply this analysis to the issue at hand, the Court must engage in a series of “what if’s” because there is currently no underlying action. Plaintiffs are requesting the declaratory judgment on the presumption that, if it is not granted and the new rule(s) apply, then Plaintiffs will violate the rule and Landlord will commence a summary possession proceeding. Using this presumption, the Justice of the Peace Court would have subject matter jurisdiction because of its exclusive jurisdiction over summary possession proceedings.

Alternatively, taking the position of the defendant, other than the issuance of a notice, there has been no attempt to enforce the new rule. Because of this, the defendant contends, the matter is not yet ripe for adjudication. The underlying matter, as it currently stands, would be more akin to an action to amend the contract through reformation. The Court would not be deciding the issue of possession, but

⁴ 12 Del. Laws c. 91. “The said dockets to be the following sizes, viz: not more than seventeen inches long by twelve inches wide and not less than thirteen inches long by eight inches wide...”

⁵ Justice of the Peace Court Policy Directive 98-167.

⁶ *Heathergreen Commons Condominium Ass’n v. Paul*, 503 A.2d 636 (Del. Ch. 1985)

the issue of whether the rule was appropriately added to the contractual obligations of the plaintiffs and was ultimately enforceable.

Because the jurisdictional issue is unclear, the policy behind the Declaratory Judgment Act may be considered. In *Schneider v. Wilmington Trust Co.*, the Court of Chancery asserted that, “The basic purpose of the Declaratory Judgment Act is to enable courts to adjudicate a controversy prior to the time when remedy is traditionally available, but this does not mean that the court may give an advisory opinion or adjudicate a hypothetical issue.”⁷

While there is undoubtedly public policy in support of addressing legal matters at the earliest stage, and promoting “preventative justice”, the Delaware Declaratory Judgment Act requires the existence of an “actual controversy” as a judicial prerequisite.⁸ In *Marshall v. Hill*, the Superior Court of Delaware stated that the, “...prerequisites of a controversy, such as will warrant consideration of a declaratory judgment action under our statute may be summarized as follows: (1) It must be a controversy involving the rights or other legal relations of the party seeking declaratory relief; (2) it must be a controversy in which the claim of right or other legal interest is asserted against one who has an interest in contesting the claim; (3) the controversy must be between parties whose interests are real and adverse; (4) the issue involved in the controversy must be ripe for judicial determination.”⁹ Additionally, the Superior Court has noted that the discretion necessary in this determination should be liberally exercised in order to advance the remedial purpose of the Declaratory Judgment Act.¹⁰ As the Supreme Court of Delaware indicated in *Stabler v. Ramsay*, the primary purpose of the declaratory judgment procedure is to enable the law of a case to be determined before differences actually ripen into injuries. However, authorities are unanimous that courts will not consider problems that they do not have a likelihood of needing to settle at a later time. “They must, in short, be convinced that litigation sooner or later appears to be unavoidable before they will intervene.”¹¹

The ripeness necessary for a declaratory judgment action does not require that the situation have evolved to a point where coercive action is required by plaintiff, but that there is a *high*

⁷ *Schneider v. Wilmington Trust Co., Bank of Delaware*, 310 A.2d 897 (reversed on other grounds).

⁸ *Harleysville Mut. Cas. Ins. Co. v. Carroll*, 123 A.2d 128, 130 (Del. Super. Ct. 1956).

⁹ *Harleysville Mut. Cas. Ins. Co. v. Carroll*, 123 A.2d 128, 130 (Del. Super. Ct. 1956) citing *Marshall v. Hill*, 1952, 47 Del. 478, 93 A.2d 524.

¹⁰ *Burris v. Cross*, 583 A.2d 1364 (Del. Super. 1990).

¹¹ *Stabler v. Ramsay*, 32 Del.Ch. 547 (1952).

probability that such relief could be or would be sought when the claim matures (emphasis added).¹² The Delaware Supreme Court has asserted that a ripeness determination is a common sense assessment of whether the interests of the party seeking the immediate relief outweigh any concerns of the court in postponing the question until it is in a more concrete and final form. A dispute is ripe for declaratory judgment if, "...litigation sooner or later appears to be unavoidable and where the material facts are static." The opposite is true as well: a dispute is not ripe if it is based upon contingent and uncertain events that may or may not occur. The plaintiff must establish a "reasonable likelihood" that the contingent events will be triggered.¹³ The United States Bankruptcy Court for the District of Delaware has similarly stated that the potential future event must signal immediacy and reality to warrant a declaratory judgment, noting that the event must be "certainly impending".¹⁴

The Superior Court of Delaware suggests that factors to consider in determining whether an issue is ripe for declaratory relief include a practical evaluation of the legitimate interests of a plaintiff in prompt resolution of the matter, hardship in that further delay may threaten their rights, the likelihood of future factual development to make the issue fully ripe, and the need to conserve resources. These practical, common sense factors aid the court in weighing the interest of those seeking relief from a concern of immediate impact against the interest of the court in postponing review until the question is in more concrete and final form.¹⁵

Rollins International, Inc. v. International Hydronics Corp. provides an example of the way in which the Delaware Supreme Court has analyzed a ripeness issue. In *Rollins*, the defendant sought a declaratory judgment ordering that it had no present duty to plaintiff under a nondisclosure agreement because portions of the agreement were void and unenforceable. Rollins, an industrial waste treatment company, sought to have the nondisclosure agreement determined to be enforceable even though Hydronics had not yet violated its terms. In that case, the Court relied upon the argument that Hydronics was continuing in the business of industrial waste treatment and although the Hydronics did not allege a specific intent to disclose their knowledge, a sufficient general intent to act could be inferred and it was, "reasonably clear that further litigation was probable."¹⁶

¹² *Burris v. Cross*, 583 A.2d 1364 (Del.Super. 1990).

¹³ *XI Specialty Ins. Co. v. WMI Liquidating Trust*, 93 A.3d 1208 (Del. 2014).

¹⁴ *Matter of Trans World Airlines, Inc.*, 169 B.R. 91 (1994).

¹⁵ *Hoechst Celanese Corp. v. National Union Fire Ins. Co. of...*, 623 A.2d 1133 (Del.Super 1992).

¹⁶ *Rollins International, Inc. v. International Hydronics Corp.*, 303 A.2d 660 (Del. 1973).

The facts of the case at hand indicate that, if Sandhill Acres enforces their new rule regarding the feeding of feral cats, and if the Pacher's continue to feed the feral cats in opposition to the rule, the Pacher's will be evicted through a summary possession proceeding pursuant to 25 *Del.C.* § 5702(4), for breaching a lawful obligation relating to the tenant's use of the premises. While it is true that the defendant has not taken any further action to enforce the rule, the very fact that it has promulgated the rule and subsequently sent notice means that the status quo has been modified significantly. Future litigation seems unavoidable – the plaintiffs believe that they have a legal right to continue to treat the feral cats as they are, and the defendant has indicated no other method by which it would accomplish its desire to do away with the cat colony. As such, it is reasonably likely that relief would be sought in the future. The only way the Court sees this claim to mature in the future is to move into an action for summary possession; jurisdiction over possession matters lies exclusively in this Court. Therefore, the declaratory action is appropriate.

Judgment

For the reasons stated above, the Court denies the motion to dismiss for lack of subject matter jurisdiction. The Court further directs this matter back to a single judge for trial. Because this action was dismissed based on the motion, but after trial, remand to the original trial judge for a decision on the merits is appropriate and affords the parties all measure of appeal as may be taken in a landlord/tenant action.

IT IS SO ORDERED this 23rd day of October, 2020

/s/ Alan G. Davis

Chief Magistrate Davis for the Court



NOTICE OF APPEAL RIGHTS

See attached instructions for more information on appeal procedures. If no appeal is filed, parties may remove all exhibits from the Court no sooner than 16 days and no later than 30 days, from the date of this judgment. If not removed, the Court may dispose of the exhibits without further notice to the parties.

Final Date of Appeal of a Civil Case to the Court of Common Pleas is 15 days from the judgment.

Final Date for Appeal of a Landlord/Tenant case to a 3 Judge Panel is 5 days from the judgment.

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