

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

DEUTSCHE BANK NATIONAL TRUST COMPANY	§	
Plaintiff/Counter Claim Defendant Below,	§	
Appellee	§	
	§	
VS	§	C.A. No. JP17-20-003952
CHRISTINE CUSACK	§	
JOHN CUSACK	§	
Defendant/Counter Claim Plaintiff Below,	§	
Appellant	§	

**TRIAL DE NOVO**

Submitted: August 8, 2022  
Decided: September 6, 2022

**APPEARANCES:**

Janet Z. Charlton, Esquire, represented the Plaintiff.

The defendants appeared pro se. (An Attorney for the Defendants entered his appearance in this case but later requested, and was granted, the termination of his appearance.)

Deborah Keenan, Deputy Chief Magistrate

William P. Wood, Justice of the Peace

John C. Martin, Senior Justice of the Peace

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

**CIVIL ACTION NO: JP17-20-003952**

**DEUTSCHE BANK VS CHRISTINE CUSACK ET AL**

**ORDER ON TRIAL DE NOVO**

The Court has entered a judgment or order in the following form:

**HISTORY**

This case was previously filed with the Superior Court as an Ejectment action. On June 5, 2020, the Superior Court dismissed the action for lack of subject matter jurisdiction. The Superior Court docket for this case states, in part, "This matter is subject to Section 314." On October 2, 2022, this case was filed as a Landlord-Tenant action with the Justice of the Peace Court. The plaintiff, Deutsche Bank National Trust Company, made no claim for a financial award but did request possession of the subject property, located at 10703 DuPont Road, Lincoln, Delaware, based on non-payment of rent totaling \$30,010.86. The defendants, Christine and John Cusack, failed to appear, and a default judgment was entered against them on June 2, 2022. On June 10, the defendants filed a Motion to Vacate the default judgment because both were hospitalized on the trial date. When this Motion was denied after a hearing, the defendants filed an appeal of their case to a Three Judge Panel. This is the decision of the Panel hearing the appeal as a trial *de novo*.

Trial before the Panel was heard on August 8, 2022. The plaintiff is the title holder of the property. Its account executive testified as to how the defendants became responsible for the payment of an installment sales contract to the plaintiff for the purchase of the property. According to his testimony, the last payment on the loan for the property was made in June 2015. On September 8, 2020, the plaintiff sent the defendants a five-day demand letter for payments due on the installment loan totaling \$30,010.86. When this amount was not paid, court action was initiated to obtain possession of the property. Neither defendant contested this debt, but Mr. Cusack testified that he had made attempts to make payments on the debt but was unable to do so.

**DISCUSSION**

The essence of this case involves the change from the original installment sales contract to a rental agreement, with jurisdiction in this court. As the plaintiff's witness explained, the defendants became obligated by a transfer of duties from the original parties (now deceased) to whom they were related. Paragraph 19 of the contract addresses this change. The transfer was recorded through an "Assignment of Rights Under Property Purchase Contract and Indemnity Agreement" which the defendants signed on July 22, 2021, and which was introduced into evidence by the plaintiff. In this document, Christine Cusack and John Cusack, agreed and stipulated that they "have made payments due under the Contract and they have acted as the actual buyers of the Property under the Contract for all intents and purposes." Paragraph 19 states, in part:

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...if any default be made in the performance (by Buyer) and continue for a period of thirty (30) days in the payment of any of the installments of principal, interest...or any other sum herein agreed to be paid by Buyer ...this Agreement shall be declared null and void and **any amount or amounts paid in by the Buyer to the Seller shall be determined and considered to be rent paid by the Buyer to the Seller** and all improvements constructed in or upon the property shall be retained by the Seller as compensation for the use and occupancy of said premises up to the period of default...(emphasis added).

The evidence presented during trial reveals that the defendants are proper parties to the installment sales contract which has reverted to a rental agreement. The Court must then look to the statutory language found in 25 *Del. C.* §314 and §5101(c), which is the only mechanism for this Court to entertain a sales agreement as a landlord-tenant action. 25 *Del. C.* §5101c states:

This Code shall apply to any relationship between parties arising under a conditional sales agreement which has been converted to a landlord/tenant agreement by operation of §314(d)(3) of this title, but shall not apply to any other conditional sales agreement.

25 *Del. C.* §314(d) requires a seller to give notice of intent to convert the sales agreement to a rental agreement as follows:

Notwithstanding the provisions of subsection (c) of this section, the parties may agree, under the contract of sale to not engage in a final settlement until fulfillment of a condition of paying the last installment of the purchase price under a conditional sale, provided that the conditional sales agreement includes provisions indicating:

(1) The periodic rental value of the real estate, which is not to exceed 75% of the original periodic installment amount under the conditional sales agreement;

(2) In the event of buyer or buyers default for failure to pay, the buyer or buyers have a right to redeem the property by making full payment of the remaining contract amount within 120 days of the seller or sellers providing written notice of the default;

(3) If, after default, the buyer or buyers fail to redeem the property by full payment within 120 days, the contract converts by law to a landlord/tenant agreement, wherein rent shall be the rental value established in paragraph (d)(1) of this section above and which shall apply retroactive to the date of default.

The fact that the plaintiff initially filed this action as an ejectment makes clear that it did not believe the action to be a landlord-tenant case. Consequently, a reasonable inference would be that Plaintiff had not sent a 120-day notice of default to Defendants as required by §314. No 120-day notice was presented at trial. Absent a 120-day notice that complies with §314, the agreement between the parties remains a sales agreement and this Court would not have jurisdiction until the requisite notices were given. Because the Superior Court did not address the 120-day notice in its decision, this Court cannot pretend to know that it was given either before the Superior Court made its

ruling or after. In fact, if any presumption should be made, it is that, had the 120-day notice been given, counsel would have introduced it as evidence during trial, just as the five-day demand notice was introduced.

#### ORDER

After considering all the evidence presented, the Court finds that Plaintiff has failed to prove its case by a preponderance of the evidence and finds in favor of the Defendants. As the Court would do with a landlord-tenant action lacking proper notice, this action is dismissed without prejudice, allowing plaintiff to bring its claim again once it has complied with the statutory requirements of 25 *Del. C.* §314.

IT IS SO ORDERED 06th day of September, 2022

/s/Deborah C Keenan (SEAL)  
Deputy Chief Magistrate  
For the Three 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).