

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

NAPS HOMES LLC
Plaintiff Below,
Appellee

VS

TIFFANY OTT
JOSE TRINIDAD
Defendant Below,
Appellant

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§ C.A. No. JP13-20-003956
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TRIAL DE NOVO

Submitted: June 21, 2021
Decided: June 29, 2021

APPEARANCES:

NAPS Homes LLC, Plaintiff, represented by attorney Paul G. Enterline, Esq.
Tiffany Ott, Defendant, represented by attorney Iran J. Garcia Domenech Esq.
Jose Trinidad, Defendant, represented by attorney Iran J. Garcia Domenech Esq.

Sean P. McCormick, Deputy Chief Magistrate
Peter Burcat, Justice of the Peace
Maria Perez-Chambers, Justice of the Peace

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
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CIVIL ACTION NO: JP13-20-003956

NAPS HOMES LLC VS TIFFANY OTT ET AL

ORDER ON TRIAL DE NOVO

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

In the afternoon of June 21, 2021 a three judge panel consisting of Deputy Chief Magistrate Sean P. McCormick and Judges Peter Burcat and Maria Perez-Chambers convened to consider the Defense request to appeal. For reasons stated below, the panel decided that the Defendants had waived their right to appeal and accordingly disallowed it. The panel also gave guidance regarding how the Center for Disease Control and Prevention's temporary hold in evictions (hereinafter, the "CDC order") applied to this instant matter.

Procedural History of the Case at Bar.

This matter was filed on July 29, 2020 in which the Plaintiff (then *pro se*, represented by Form 50 agent Manthan Shah) alleged the Defendants had gotten seven months behind in payment of rent for the unit known as 2700 Lancaster Ave. Apt. 2, Wilmington DE 19805. Accordingly, he was seeking a judgment for the back-debt as well as the right to evict. Because of the Corona-virus pandemic, the Court had been closed for several months; in-point-of-fact, the Court began to hear cases almost contemporaneously with the filing of this matter. Because of the backlog the Court faced, this matter was not set for consideration until January 12, 2021. In the meantime, Counsel for the Defense entered her entry of appearance on December 23, 2020. In that an additional filing was pending involving similar claims, Defense Counsel sought to have the matters combined for the sake of judicial economy.

On January 12, 2021 Defense Counsel entered with the Court a Stipulated Agreement¹ signed by the parties. The salient terms of the stipulation were as follows: The additional filing (case ending 4813) was dismissed. Regarding the case ending in 3956, the parties agreed to a repayment plan regarding the rental debt which extended into April 2021. Provided the payment plan was adhered to, the case would be dismissed. If the Defendants failed to make timely payments, the Plaintiff reserved the right to file an Affidavit of Breach with the Court (providing they did so on or before April 15, 2021,) at which point the Court would file a judgement against the Defendants for the balance due and immediately issue a Writ of Possession without the necessity of an

¹ The practice of accepting Stipulated Agreements is common in landlord-tenant cases. Both parties benefit; the tenant avoids a potential judgment against their credit history (which can be highly deleterious to future rental prospects;) the landlord retains the right to evict if the agreed-upon terms – usually a structured repayment plan – are not adhered to.

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additional hearing. Lastly, in Section 6(h) of the Stipulated Agreement, the Parties acknowledged they waived any right to appeal entry of this Order.

On April 13, 2021 Counsel for Plaintiff entered his appearance. Thereinafter on April 15 Plaintiff's Counsel filed an Affidavit of Breach with the Court along with a Interest of Justice Motion for the issuance of a Writ of Possession. Thereafter, the Court converted the Stipulated Agreement to a Judgment on April 26, 2021. On that same date, Defense Counsel filed with the Court a response in opposition to the Affidavit of Breach. Along with the response was a copy of a CDC order which unfortunately was un-readable.² In the Defense response, the Defense moved that the Stipulated Agreement be set-aside and the Writ of Possession be quashed, pointing in part to the CDC order in support of the disallowance of the Writ. The following day, April 27, 2021, the Defense filed a substitution of Counsel. Thereafter, in response to the Affidavit and the opposition thereto, the Court convened a hearing to determine if in fact an act constituting a breach of the Stipulated Agreement had occurred.

On May 20, a single Magistrate took up the matter to determine if in fact a breach had occurred. Her Order of May 28, 2021 held that a breach had in fact occurred, and accordingly she denied the motion to vacate the stipulated judgment advising that the Judgment of April 26 was withstanding. The judge then went on to consider Plaintiff's Interest of Justice Motion for the issuance of a Writ of Possession. Ultimately, she concluded that the factors supported eviction and accordingly denied the Defense motion to stay execution of the Writ of Possession. The Writ was to immediately issue. Her judgment on the Interest of Justice Motion may have changed if the CDC order was properly before the Court, however the judge advised in the body of her order that "The Court did not consider any CDC Declaration or related arguments at this hearing, as no legible copy of the CDC Declaration has been filed with the Court or Plaintiff's counsel at the time of the hearing." It is from that hearing that the Defense now appeals.

The Arguments Regarding the Right to Appeal.

Upon convening the three-judge panel, a specific question was posted to the Defense – What specifically was being appealed, and how did the Defense believe they retained the right of appeal if that right was waived by the Stipulated Agreement? In response, Defense Counsel advised he wished to appeal everything. He wished to appeal the denial of the motion to set the Stipulated Judgment aside. He wanted to appeal the consideration given to the factual issues which constituted the breach. He wished for the panel to consider the CDC order since the court below had declined to do so. Barring all else, he wished to offer further argument on the Interest of Justice motion. Counsel argued that the Defense right of appeal stems from the belief that the factual issues which

² Because of technological issues, Defense Counsel was unable to "e-file" her response and related documentation. Instead, she elected to travel to the Court and file the documents in person. Unfortunately, the Court's scanned copy of the CDC Declaration was illegible.

Plaintiff held out to constitute the breach should be considered a good-faith dispute and accordingly be further explored by the panel. He asserted he should be allowed to re-argue the facts surrounding the breach.

Plaintiff's Counsel countered with a Motion to dismiss the appeal, noting that the right of appeal had been unambiguously waived by the Defendant. Further, he argued that the CDC order was not vigorously asserted in the breach hearing; since the Court below did not address it, he believed the Panel likewise should not – especially if the appeal was dismissed. Alternatively, he argued that the waiver of appeal rights extended to application of the CDC order.

The Panel's findings.

Although the Defense appeal was timely sought, the panel held that the appeal right specified in 25 Del. C. § 5717 is not absolute. As with many rights, waiver of them can be bargained or negotiated to bring about a better outcome. The January 12, 2021 Stipulated Agreement was authored and submitted by Defense Counsel. Both parties were intended to benefit from the Agreement. It gave the Defendants a means by which to avoid either a judgment or eviction. The Plaintiff was willing to negotiate thusly because he knew he would retain the right to evict if the Defendants failed in their agreement – and that the matter would not drag out further on appeal. Clearly within the stipulation the Defendants waived their right of appeal as well as any other post-judgment hearings. The waiver was absolute and irrevocable. When the allegation of breach was offered and subsequently disputed despite the language that disallowed further hearings, the Court recognized that the fact pattern upon which the breach was alleged was at issue – and so further consideration was given in the interest of justice despite the prohibiting language.

In effect, the Defense is asking for re-examination of the previous additional consideration it had already been given. In playground terms, the Defense wants a “do-over” of a “do-over.” But here the panel noted that the Defense waived their right to appeal in any form in a document authored by their own attorney. To allow a party to set aside a stipulation because the outcome was other than they thought it would be would have an incredibly chilling effect to the practice of stipulated agreements. No landlord would consider one if they knew the terms – especially the ability to evict – could be easily undone or delayed. Despite the language prohibiting appeals or post-trial hearings, the Court gave them a “do over” in the interest of fairness. While technically, in adherence to the terms and conditions of the mutually entered into Stipulated Agreement, there would not be a “do over,” there certainly is no right to a second “do over.”

Since the panel declined to hear the appeal, it also declined to reconsider whether evicting the Defendants pursuant to the Judgment engendered as a result of the breach was in the Interest of Justice. That had already been determined by the Court below; we see no need to take up or override that finding. As to the CDC order, the Court below declined to address its applicability because the copy submitted in evidence was illegible. There was no dispute that a CDC order had been served by the Defendants upon the Plaintiff in September of 2020. Clearly the Defendants fall within its parameters and are entitled to its protections for the remainder of the time the CDC order is in place and withstanding. Accordingly, the Writ of Possession is stayed while the CDC moratorium remains in effect.

IT IS SO ORDERED 29th day of June, 2021

/s/ Sean P. McCormick (SEAL)
Deputy Chief Magistrate
On Behalf of 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).

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