

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

**KEITH DORSEY,** )  
Defendant Below/Appellant, )  
 )  
v. )  
 )  
**MARILYN COCHRAN,** )  
Plaintiff Below/Appellee. )  
 )

C.A. No.: CPU 4-10-005067

Date Submitted: January 3, 2011  
Date Decided: January 31, 2011

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**FINAL ORDER AND OPINION ON PLAINTIFF BELOW/APPELLEE’S**  
**MOTION TO DISMISS**

This is the Court’s Final Order and Opinion on Plaintiff Below/Appellee’s Motion to Dismiss. Because this Court lacks subject matter jurisdiction over appeals from final judgments in summary possession proceedings from the Justice of the Peace Court, this action is Dismissed.

**I. The Facts**

Plaintiff Below/Appellee Marilyn Cochran (hereinafter “Cochran”) leased property located at 154 Christiana Landing, Wilmington, Delaware 19801 (hereinafter “Rental Unit”) to Defendant Below/Appellant Keith Dorsey (hereinafter “Dorsey”).

On June 11, 2010, Cochran initiated this action in Justice of the Peace Court No. 13, alleging a claim against Dorsey for possession and unpaid rent on the rental unit. On July 14,

2010, the Justice of the Peace Court found in favor of Cochran. The Justice of the Peace Court entered default judgment against Dorsey for possession, rent and costs. On July 26, 2010, Dorsey filed an Application for Motion Hearing requesting that the Court vacate the judgment against him. On August 10, 2010, a hearing was held on Dorsey's Motion to Vacate in which the Motion was denied on August 13, 2010. On August 17, 2010, Dorsey appealed the decision to this Court. On August 20, 2010, Dorsey filed a Motion to Stay in this Court. This Court granted the aforementioned Motion on August 23, 2010.

One pending civil motion is now before the Court. Cochran filed a Motion to Dismiss Dorsey's Appeal for failure to comply with the statutory filing requirements. Specifically, Cochran moves for this Court to dismiss Dorsey's appeal because the Motion to Vacate Default Judgment Dorsey filed in the Justice of the Peace Court was not timely.

The Court ordered the parties to provide briefing as to the issues in the matter.

## **II. Parties' Contentions**

### **A. Appellee's Memorandum**

Appellee states that the original action filed in the Justice of the Peace Court was a summary possession action that should have been appealed to a three-judge panel in the Justice of the Peace Court. In support of the argument, Appellee states that the action in the Justice of the Peace Court was filed under the provision of 25 *Del. C.* Chapter 57 and requested rental and possession. Both rental and possession were granted to Cochran by the Justice of the Peace Court by a Default Judgment entered on July 14, 2010.

Dorsey then filed a Motion to Vacate Default Judgment pursuant to 25 *Del. C.* § 5712(b) in the Justice of the Peace Court. The Motion was denied.

Cochran argues that under Chapter 57 of 25 *Del. C.* which addresses summary possession provides, in relevant part, “...any party aggrieved by the judgment may request in writing, within five days after judgment, a trial de novo before a special court comprised of three justices of the peace other than the justice of the peace who presided at trial.”<sup>1</sup> In addition, Cochran cites to *Capano Investments v. Levenberg*<sup>2</sup> for the proposition that possession questions must be appealed to a three-judge court and its decision is the “final judgment” on the matter.<sup>3</sup> Further, Appellee states that “the Court [in *Capano*] clearly stated that the statute did not ‘confer a right of appeal to the Superior Court, particularly in light of the language regarding ‘final judgment.’”

Cochran asserts that since the issuance of *Capano*, there have been several decisions of the Court of Common Pleas affirming that in cases solely involving possession and in cases involving possession and other issues including back rent, the sole avenue of appeal is to a three-judge panel in the Justice of the Peace Court. Cochran cites to *Manufactured Home Communities, Inc. v. Elmer Brown*<sup>4</sup>, *D&F Properties v. Cindy Bransfield*<sup>5</sup> and *TD Banknorth, N.A. v. MHC, Inc.*<sup>6</sup> to stand for the proposition that the cases most clearly define this Court’s lack of subject matter jurisdiction. Cochran argues that all the cases clearly state that in a suit in which combined claims for possession and rent are filed in a single suit, any appeal is covered by the summary possession section and thus the final appeal is to a three-judge panel under 25 *Del. C.* § 5717(a).

Cochran next argues that there is no right of appeal to the Superior Court in matters involving actions where summary possession is an issue.

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<sup>1</sup> 25 *Del. C.* § 5717(a).

<sup>2</sup> *Capano Investments v. Levenberg*, 564 A.2d 1130 (Del. Super. Ct. 1989).

<sup>3</sup> *Id.* at 1131 citing *See* 25 *Del. C.* § 5717(a).

<sup>4</sup> *Manufactured Home Communities, Inc. v. Elmer Brown*, 1999 WL 1847440, Del. Com. Pl. Jan. 22, 1999.

<sup>5</sup> *D&F Properties v. Cindy Bransfield*, 2006 WL 925204, Del. Com. Pl. April 5, 2006.

<sup>6</sup> *TD Banknorth, N.A. v. MHC, Inc.*, 2007 WL 1202308, Del. Com. Pl. April 24, 2007.

Cochran cites to *Bomba's Restaurant & Cocktail Lounge, Inc. v. Lord De La Warr Hotel, Inc.*<sup>7</sup> to state that the Delaware Supreme Court, under an earlier version of 25 Del. C. Chapter 57 stated that “. . . historically, Superior Court has not had jurisdiction over an appeal from a Magistrate Court in a case involving summary action for possession of real property.”<sup>8</sup> The Court further discussed the question of “whether a litigant can have a ‘dual trial’ on possession and other matters in controversy between parties to a lease and suggested that the Superior Court and the Justice of the Peace Court attempt by Rule to settle the procedural problems.”<sup>9</sup> Cochran contends that based upon a reading of this case, it appears to be limited to cases where both parties have claims against each other, i.e., cases in which a counterclaim is involved.

In addition, Cochran argues that 25 Del. C. § 5717 states that “a party aggrieved by the judgment rendered [in a nonjury trial] may request in writing, within 5 days after judgment, a trial de novo before a special court comprised of 3 Justices of the Peace other than the Justice of the Peace who presided at the trial . . . which shall render final judgment . . .”

Cochran correctly asserts that there is no other avenue of appeal. Cochran asserts that this proposition has been confirmed by the Delaware Supreme Court in *Maddrey v. Justice of the Peace Court 13*<sup>10</sup> in which Chief Justice Steele, for the court en banc, stated “the Delaware General Assembly clearly intended the Justice of the Peace Court to process landlord tenant summary possession cases quickly and summarily. The Delaware Code provides that a party aggrieved by an initial single judge’s judgment in a summary possession hearing may request a trial *de novo* before a three judge Justice of the Peace panel. There the statutory process ends.”<sup>11</sup>

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<sup>7</sup> *Bomba's Restaurant & Cocktail Lounge, Inc. v. Lord De La Warr Hotel, Inc.*, 389 A.2d 766 (Del. 1978).

<sup>8</sup> *Id.* at 769.

<sup>9</sup> *Bomba*, *supra*.

<sup>10</sup> *Maddrey v. Justice of the Peace Court 13*, 965 A.2d 1204 (Del. 2008).

<sup>11</sup> *Maddrey* at 1206.

Finally, Cochran argues that the provisions of 10 *Del. C.* § 1902 apply to all matters in the event that that a Court dismisses for lack of subject matter jurisdiction. However, Cochran reiterates that the sole avenue to appeal the Order of Justice of the Peace Kathleen C. Lucas dated August 13, 2010 was to a three-judge panel. Under 10 *Del. C.* § 1902, this Court may transfer a proceeding to the appropriate Court where it determines that it is without jurisdiction of the subject matter upon proper application of the party adversely affected. Cochran asserts that in the case at hand, since the matter before the Court involves summary possession and since appeals in summary possession cases must be requested within five (5) days after judgment and final decision rendered within fifteen (15) days after said request for trial *de novo*<sup>12</sup>, it would be inequitable to return this matter to the Justice of the Peace Court four (4) months after the final decision would have been rendered. Further, Cochran argues that the purpose of 25 *Del. C.* Chapter 57 is to provide a speedy resolution of the issue of possession and returning this matter to the Justice of the Peace Court would frustrate the aim of the statutory scheme.

In conclusion based upon the foregoing reasons and all the facts, Cochran contends that the Court of Common Pleas lacks subject matter jurisdiction in the appeal filed by Dorsey, the Superior Court does not have appellate jurisdiction in this matter and returning the matter to the Justice of the Peace Court would be inequitable and as such, should merely be dismissed.

#### **B. Appellant's Memorandum**

Dorsey has failed to file a response as ordered by the Court.

### **III. Opinion and Order**

The issues presently before this Court are 1) whether the instant case is a summary possession and rent action that should have been appealed to a three-judge panel in the Justice of the Peace Court; 2) whether assuming that the first issue is answered in the affirmative, does a

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<sup>12</sup> See 25 *Del. C.* § 5717.

right of appeal to Superior Court exist; and 3) if this Court should grant the instant Motion to Dismiss, whether the provision in 10 *Del. C.* § 1902 applies.

Though Cochran moves this Court to dismiss the appeal for Dorsey's failure to timely file the Motion to Vacate Default Judgment, the Court must determine whether it has jurisdiction over this matter. Title 25, Chapter 57 of the *Delaware Code* governs summary possession proceedings, which are special hearings designed to promptly resolve disputes between a landlord and tenant over the right to possession of a rental unit.<sup>13</sup>

A party aggrieved by a judgment in such a proceeding must appeal to a three-judge panel in the Justice of the Peace Court within five days of the judgment.<sup>14</sup> The Court of Common Pleas does not have jurisdiction over appeals of final judgments in summary possession proceedings.<sup>15</sup>

Judging by the four corners of the Complaint below and the parties' prayers for relief the matter appears clearly to this Court to be a summary possession proceeding. On her Justice of the Peace Complaint, Cochran indicated on the cover sheet that it was an action for summary possession. In addition, both parties request possession of the rental unit in the Court and the court below.

It is therefore clear that the matter below was a summary possession proceeding. Specifically, the matter is for possession of the rental unit as well as for damages based upon unpaid rent. Thus, there is no separate debt action in this matter that this Court would have subject matter jurisdiction over. As such, the proper venue for an appeal from the judgment was with a three-judge panel in the Justice of the Peace Court, not with the Court of Common Pleas.

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<sup>13</sup> *Cochran v. Stigler*, 2008 WL 5176550 at \*1, Del. Com. Pl. Oct. 30, 2008 citing *See Bomba's Restaurant & Cocktail Lounge, Inc. v. Lord De La Warr Hotel, Inc.*, 389 A.2d 766 (Del. Super. Ct. 1978).

<sup>14</sup> *Cochran v. Stigler*, 2008 WL 5176550 at \*1, Del. Com. Pl. Oct. 30, 2008 citing See 25 *Del. C.* § 5717(a) ("This is an accepted departure from the General Appeals Statute, 10 *Del. C.* § 9571, which governs most civil appeals from the Justice of the Peace Courts.")

<sup>15</sup> *Cochran v. Stigler*, 2008 WL 5176550 at \*1, Del. Com. Pl. Oct. 30, 2008 citing *Howell v. Del. St. Housing Authority*, 2007 WL 1248446 at \*1, Del. Com. Pl. Feb. 28, 2007.

Appellant Dorsey did not appeal the decision of the Justice of the Peace Court to a three-judge panel as required by 25 Del. C. § 5717. Further, Appellant Dorsey had failed to provide a response regarding the issues involved within this appeal as Ordered by this Court.

There is a final question regarding the consequences of this dismissal. “Should an appeal be filed in the wrong court, the Order dismissing it can provide for transfer to the body having subject matter jurisdiction . . . [provided] that the appeal was filed within the prescribed time.”<sup>16</sup> Here, the judgment was entered on July 14, 2010 and the appeal to this Court was filed on August 17, 2010. Because the appeal was filed outside of the five-day period under 25 Del. C. § 5717, this Court concludes that it cannot transfer the appeal.

Because this Court lacks subject matter jurisdiction, this case is hereby dismissed. Each party shall bear their own costs.

**IT IS SO ORDERED** this 31<sup>st</sup> day of January, 2011.

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John K. Welch  
Judge

cc: Ms. Tamu White, Supervisor  
CCP Civil Division

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<sup>16</sup> *Cochran v. Stigler*, 2008 WL 5176550 at \*2, Del. Com. Pl. Oct. 30, 2008 citing *Manufactured Home Communities, Inc. v. Brown*, 1999 WL 1847440 at \*, Del. Com. Pl. Jan. 22, 1999.