

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

ROGER THOMAS,	:	
	:	
Plaintiff,	:	
	:	C.A. No.: K26C-06-027 JJC
v.	:	
	:	
TIMOTHY THOMAS, and	:	
V. GAIL MYER,	:	
	:	
Defendants.	:	

Submitted: August 14, 2026
Decided: September 3, 2026

ORDER

On this 3rd day of September 2026, having considered Plaintiff Roger Thomas’s complaint for ejectment, and Defendants Timothy Thomas and Gail Myer’s answer, their motion to dismiss, and their motion to transfer the case to the Court of Chancery, it appears that:

1. Plaintiff Roger Thomas (hereinafter “Mr. Thomas”) filed a complaint for ejectment under 10 *Del. C.* § 6701 (hereinafter, the “ejectment action”) seeking to remove Defendants Timothy Thomas and Gail Myer (hereinafter collectively referred to in the singular as “Ms. Myer”) from 333 MacArthur Drive, Dover, Delaware 19901 (hereinafter, “the property”). Mr. Thomas’s complaint also seeks unspecified damages.¹

¹ At oral argument, defense counsel identified no claim for money damages. Rather, he indicated that Mr. Thomas included the claim as merely a placeholder for possible future money damages. That claim is deemed withdrawn without prejudice.

2. Ms. Myer responded by contemporaneously filing an answer,² a motion to transfer the case to the Court of Chancery,³ and a motion to dismiss for lack of subject matter jurisdiction.⁴ In her answer, she contends that the Superior Court has no subject matter jurisdiction over the ejectment action because the court must look beyond the face of the deed to determine who truly owned the property. In all three filings, she contends that Mr. Thomas holds the property in constructive trust for Timothy Thomas and a third brother. Accordingly, Ms. Myer asserts that she and Mr. Timothy Thomas have an equitable ownership interest that precludes ejectment.

3. In this way, Ms. Myer's answer and motions allege that her claim to be the equitable owner of the property divests the Superior Court of subject matter jurisdiction over Mr. Thomas's ejectment claim. Ms. Myer's two motions—to dismiss and transfer—seek the same relief. Accordingly, they are appropriately considered as a single motion to dismiss under Superior Court Civil Rule 12(b)(1). In turn, her motion to dismiss, filed with her answer, converts the motion to one for judgment on the pleadings which is controlled by Superior Court Civil Rule 12(c).

4. In a Rule 12(c) motion, the Court examines the complaint and the answer together with the documents integral to those pleadings.⁵ The standards for evaluating motions to dismiss and judgment on the pleadings are nearly identical. The primary practical difference is that facts alleged in the complaint that are admitted in the answer become a fixed part of the record. Thereby, such admitted facts are fixed with no need to evaluate them under the reasonable conceivability standard. Given that, the Court considers all uncontested allegations to be true while drawing inferences regarding contested facts in favor of the non-moving party.⁶

² D.I. 15.

³ D.I. 16.

⁴ D.I. 17.

⁵ *Karcher v. Restoration Guys, LLC*, 2022 WL 2720887, at *2 (Del. Super. July 14, 2022).

⁶ *Id.*

5. Here, the complaint and answer demonstrate the absence of any material dispute regarding Mr. Thomas's ejectment claim. To this end, "[t]o prevail in an action for ejectment, the Plaintiff must prove ownership of the property and be out of possession."⁷ Mr. Thomas alleges both elements and Ms. Myer does not dispute them. Specifically, she concedes that Mr. Thomas possesses the only deed to the property and that the deed identifies him as the property's exclusive owner.⁸ Ms. Myer also acknowledges that she (and Timothy Thomas) remain in sole possession of the property. As a result, judgment on the pleadings in ejectment is appropriate.

6. Ms. Myer's allegations regarding equitable ownership nevertheless deserves judicial review. Namely, Ms. Myer contends that "Mr. Thomas holds bare legal title only, subject to a resulting trust for the benefit of all three (3) brothers."⁹ She further contends that their mother executed the deed and placed it in Mr. Thomas's name for the party's convenience while intending that all three brothers own the property as joint tenants.

7. The answer sufficiently raises her equitable ownership claim even though it does not formally designate it as a counterclaim. Specifically, it provides adequate notice that Ms. Myer alleges equitable ownership of the property through a constructive trust. Pursuant to Superior Court Civil Rule 8(c), "[w]hen a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the Court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation." Rule 8(f) further provides that "[a]ll pleadings shall be so construed as to do substantial justice." Here, what she designates as a defense is

⁷ *Woogen v. Hamilton*, 2003 WL 22064246, at *1 (Del. Super. Sept. 3, 2003) (citing *Furness v. Patterson*, C.A. No. 98C-07-246 (Del. Super. Sept. 28, 1998)).

⁸ D.I. 15 at 2; *see also* D.I. 1, Ex. A (deed).

⁹ D.I. 15 at 2.

properly considered a counterclaim – a counterclaim that arises from the same transaction and occurrence as Mr. Thomas’ ejectment action.

8. These competing claims lie in tension with one another given Delaware’s bifurcated system of law and equity. On the one hand, an ejectment action is one at law which limits responses to “defenses at law.”¹⁰ Mr. Thomas satisfies the elements for that claim and Ms. Myer raises no defenses at law. On the other hand, only the Court of Chancery has jurisdiction to consider Ms. Myer’s equitable counterclaim.¹¹ Ms. Myer must be given the chance to present her counterclaim before being forced to vacate her long-term residence.

9. Thus, the two competing claims—one resolved by judgment on the pleadings and one that remains unresolved—make two different results possible. One result transfers possession. The other result may not. As to the latter, Section 1902, of Title 10, Delaware Code provides that “[n]o civil action, suit or other proceeding brought in any court of this State shall be dismissed solely on the ground that such court is without jurisdiction of the subject matter[.]” The right to transfer the equitable claim provided by this statute would be meaningless if the Court were to permit Mr. Thomas to execute the judgment before resolution of the counterclaim.

10. In *Woogen v. Hamilton*,¹² the Superior Court examined this tension and resolved it in a commonsense manner. There, the court examined an ejectment claim

¹⁰ 10 Del. C. § 6701(b); see also *Huggins v. Benson*, C.A. No. K24C-03-020 NEP, D.I. 49 ¶ 5 (Del. Super. Sept. 25, 2024) (ORDER) (refusing to entertain defendant’s equitable claims in an ejectment action and denying motion to transfer without prejudice pending a final order).

¹¹ See *Enuha v. Enuha*, 694 A.2d 844, 1997 WL 328582, at *1 (Del. May 16, 1997) (TABLE) (“Although the defendants challenged, and continue to challenge, the plaintiffs equitable interest in the property, the Superior Court lacked jurisdiction to address the defendants’ claim of equitable ownership, which is a claim that properly should be brought before the Court of Chancery.”); *Woogen*, 2003 WL 22064246, at *1 (“Although, Defendant alleges an equitable interest in the property, [the Superior Court] does not have jurisdiction over that claim, which should properly be brought before the Court of Chancery.”).

¹² 2003 WL 22064246, at *1.

where the plaintiff held sole legal title and was out of possession.¹³ The defendant contended by counterclaim, as Ms. Myer has in this case, that she was the equitable owner of the property.¹⁴ In balancing the law-equity tension appropriately, the court granted the application for ejectment because there was no dispute over the elements.¹⁵ Nevertheless, the court stayed execution on the ejectment order indefinitely to give the defendant the opportunity to transfer her counterclaim to the Court of Chancery to litigate the equitable counterclaim.¹⁶

11. As in *Woogen*, Ms. Myer also deserves the opportunity to present her counterclaim in a forum that can consider it. Accordingly, execution of the ejectment order is stayed to provide her the opportunity to transfer her claim to the Court of Chancery pursuant to 10 *Del. C.* § 1902. The stay shall remain in effect for the sixty days provided by Section 1902 to elect transfer. If Ms. Myer makes the election, the stay shall extend until Chancery resolves the equitable claim.

12. Finally, this Court retains jurisdiction over the execution process during the stay. This will enable the Court to consider a request under Superior Court Civil Rule 60 to later modify or potentially vacate the order of ejection if Ms. Myer is successful in Chancery. On the other hand, if Ms. Myer (1) does not transfer the

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* The Court considered including the ejectment action within the scope of the invited election to transfer under Section 1902 because of Chancery's ancillary jurisdiction under the clean-up doctrine. It has opted not to for two reasons. First, the ejectment statute, which mirrors the common law, contemplates an ejectment procedure as only a Superior Court procedure which is initiated, and then resolved, after a filing in the Prothonotary's Office. 10 *Del. C.* § 1902. Second, the Superior Court has resolved this tension similarly in decisions other than in *Woogen*. See, e.g., *Huggins v. Benson*, 2024 WL 4287147, at *2 (Del. Super. Sept. 25, 2024) (deciding the ejectment claim in Superior Court on partial summary judgment and setting a damages claim for trial in Superior Court while recognizing that eventual transfer to Chancery to resolve the equitable counterclaim would be appropriate after resolution of the legal claims in Superior Court); *Enuha v. Enuha*, 1997 WL 328582, at *1 (Del. May 16, 1997) (affirming the Superior Court's decision to resolve the ejectment claim and declining to consider a counterclaim alleging equitable ownership).

counterclaim to Chancery within sixty days, or (2) if Mr. Thomas prevails in the Chancery action, the Court will promptly lift the stay of execution.

WHEREFORE, for the reasons stated above, Mr. Thomas's petition for a writ of ejectment is granted. Execution of the writ is stayed indefinitely, however, under the terms provided in this Order.

IT IS SO ORDERED.

Jeffrey J Clark
Resident Judge

Via File&Serve and Electronic Mail