

IN THE JUSTICE OF THE PEACE COURT
OF THE STATE OF DELAWARE

ORDER AMENDING JUSTICE OF THE PEACE COURT
CIVIL RULE 13

ORDER

This 18th day of MAY, 2021, it appears to the Court that it is necessary to amend Justice of the Peace Court Civil Rule 13 to reflect the raising of the jurisdictional limit of the Court from \$15,000 to \$25,000, and the removal of a jurisdictional limit for monetary claims, counter-claims, or cross-claims asserted in an action for summary possession arising from or relating to a commercial lease.

Rule 13. Counterclaims and cross-claims.

(a) Mandatory counterclaims. -- A mandatory counterclaim is any claim which the claimant has against any opposing party and which arises out of the transaction or occurrence that is the subject matter of the opposing party's claim unless: (1) it requires for its adjudication the presence of third parties of whom the Court cannot acquire jurisdiction; (2) at the time the action was commenced the claim was the subject of another pending action, (3) the opposing party brought suit upon the claim by attachment or other process by which the Court did not acquire jurisdiction to render a personal judgment on that claim, and the counter claimant is not stating any counterclaim under this Rule, or (4) the counterclaim exceeds \$25,000, provided, however, that the \$25,000 limit does not apply to counter-claims or cross-claims asserted in an action for summary possession arising from or relating to a commercial lease. An issue decided in any previous trial may not be relitigated in a counterclaim.

(b) Permissive counterclaims. -- A party may state as a permissive counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim exceeding or different from opposing claim. --

(1) A counterclaim may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(2) If the defendant has a counterclaim exceeding \$25,000, the defendant may bring it forward and plead it as a counterclaim, or not, at the defendant's pleasure, and shall not, by neglecting so to plead it, lose such cause of action. If the defendant pleads a counterclaim exceeding \$25,000, and the Court

finds in favor of the defendant, judgment shall be given to the defendant for the sum determined by the Court, provided it does not exceed \$25,000. If it exceeds \$25,000, that fact shall be stated on the record, and judgment shall be given for costs for the defendant who shall be at liberty to prosecute such cause of action in another court; or such defendant may take judgment for \$25,000 and forgo the excess above \$25,000. However, the \$25,000 limit shall not apply to counterclaims or cross-claims asserted in an action for summary possession arising from or relating to a commercial lease.

(3) In accordance with 25 *Del. C.* §5701B, parties aggrieved in matters arising from a commercial lease in which summary possession is sought may split or bifurcate the cause of action and file an action for summary possession and also file a plenary action between the same parties over the same lease in another court. Such plenary actions must be commenced no later than 6 months after a final judgment is entered in the action for summary possession.

(d) Filing of counterclaims and cross-claims. -- A counterclaim or cross-claim of which any party may be aware prior to the commencement of the trial on the plaintiff's claim, should be filed by the party in writing no later than five (5) days prior to the time and date of trial. In the event a counterclaim, or cross-claim is served within such close proximity to the commencement of the trial of the action as to give a party insufficient opportunity to prepare a defense thereon, the Justice of the Peace Court shall grant upon motion or request a continuance to the party in order that the party will not be prejudiced. Any party may bring any action of which the Justice of the Peace Court shall have jurisdiction as a counterclaim or cross-claim. A counterclaim or cross-claim shall be served in the same manner as provided for in the service of a bill of particulars.

(e) Counterclaim maturing or acquired after pleading. -- If during the course of the trial it should become evident that a party does have a counterclaim, or cross-claim of which that party was not aware previous to the commencement of the trial or other exceptional circumstances exist, the Court may, in its discretion, grant an adjournment of the proceedings so as to enable said party to file the counterclaim or cross-claim and to give the opposing party a reasonable opportunity to defend same.

(f) Residential summary possession cases. -- In a residential summary possession action, any counterclaim which was not raised because it was for an amount over \$25,000 will be barred if not pleaded in a court of competent jurisdiction within 60 days of the date of judgment.

(g) Cross-claims against coparty. -- A party may state as a cross-claim any claim by one party against a coparty arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein, or relating to any property that is the subject matter of the original action. Such

cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) Joinder of additional parties. -- Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

(i) Separate trials; separate judgments. -- If the Court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b) when the Court has jurisdiction to do so, even if the claims of the opposing party have been dismissed or otherwise disposed of.

(j) Judgment in favor of both original claim and counterclaim. -- When the Court finds in favor of both the claimant and the counterclaimant, the Court shall enter judgment for the difference in the amounts found due and owing. However, except for monetary claims, counter-claims, or cross-claims asserted in an action for summary possession arising from or relating to a commercial lease, the \$25,000 limit of subsection (c) of this Rule applies to the full amount found in the defendant's favor and not merely to the net amount of a judgment entered for the defendant.

FOR THE COURT:



Chief Magistrate Alan G. Davis

