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IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES DAVID BLACK., and ELISABETH V. BLACK, Petitioners below, Appellants, v. JUSTICE OF THE PEACE COURT 13, And PAUL D. TAYLOR, Respondents Below, Appellees.	))) **No. 86, 2014**)) APPEAL FROM THE) JANUARY 23, 2014 ORDER) OF THE SUPERIOR COURT) OF THE STATE OF) DELAWARE IN AND FOR) NEW CASTLE COUNTY IN) C.A. N14A-01-006(CEB)

APPELLEE PAUL D. TAYLOR'S CORRECTED ANSWERING BRIEF

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NATURE AND STAGE OF THE PROCEEDINGS

The appellee, Paul D. Taylor ("Taylor") adopts the Nature and Stage of the Proceedings set forth by Appellants ("Black"), except for the arguments contained within. Pursuant to *Supreme Court Rule* 14(b)(iii), Taylor submits that this section should be an objective statement of the nature of the proceedings and the judgment or order sought to be reviewed. Argument is best left to the Argument section, consistent with *Supreme Court Rule* 14(b)(vi).

SUMMARY OF ARGUMENT

The Superior Court properly considered the request for a writ of certiorari, based on this Court's standards in *Maddrey v. Justice of the Peace Court 13*, 956 A.2d 1204 (Del. 2008) and denied the application. The Blacks' seek to have this Court and the Superior Court for this and future writs of certiorari in landlord – tenant matters to expand the scope of review to necessarily consider the merits and evidence of decisions of the Justice of the Peace Court, essentially seeking to overturn *Maddrey*.

RESPONSE TO APPELLANT'S SUMMARY OF ARGUMENT

1. The appellee does not dispute the law cited by appellants on page 4 of their opening brief, summary of argument and agrees that the petition to Superior Court satisfied the requirement that no other review was available.

2. However, on page 5, it is denied that the Superior Court erred in denying the petition because Justice of the Peace Court 13 did proceed according to law and second that the lower court proceeded regularly. The appellants had two full hearings on the merits on whether or not they paid rent. All statutory requirements under the Landlord-Tenant code were met as set forth infra.

STATEMENT OF FACTS

Taylor does not dispute Blacks' statement of facts to the extent that they are facts with citations to the record and are not argument. Additional facts for the Court's consideration for a proper review of this appeal follow.

On November 22, 2013, the underlying hearing before a single judge was held (A119). On November 27, 2013, Magistrate Judge Ross issued a written decision, awarding back rent and possession to Taylor (A119). Judge Ross implicitly found that the statutory requirements for her decision were met by awarding back rent and possession to Taylor and explicitly found substantial evidence of irreparable harm by ordering Taylor to restore electricity to the rental unit (A119). Per lease, this was the responsibility of Black (A067, ¶11). On December 4, 2013, Black appealed (A021). Also on December 4, 2013, counsel for Taylor requested that Black post a bond, as required by 25 *Del.C.* 5517(a), (B5). Magistrate Judge Ross denied the request for a bond (A021).

The *de novo* hearing was not convened until January 2, 2014, well beyond the 15 days mandated by law, 25 *Del.C.* §5717(a). (A021-023). The *de novo* panel found that all of the statutory requirements had been met, thereby awarding back rent and possession to Taylor (A120-122). The written decision was released on January 14, 2014 (A120-122). A writ of possession was promptly requested (A023), also on January 14, 2014. The following day counsel for Black requested

a stay of execution of the writ of possession (B7). (The complete docket sheet from Justice of the Peace Court #13 is attached at B1-4). On January 15, 2014, counsel for Taylor requested the posting of a bond, again, this time citing *Superior Court Civil Rule* 62(c) (B8). This request was granted by Order dated January 16, 2014 (B9). In a follow up to another letter from counsel for Black, Taylor suggested that that lockout is moved to after the hearing was scheduled before Superior Court Judge Butler (B11). The Justice of the Peace Court was then advised on January 23, 2014 that the request for a writ of *certiorari* was denied by Judge Butler and stay of execution of the writ of possession was lifted (B12). By agreement of the parties, possession was granted to the landlord Taylor on January 28, 2014 (B13).

I. THE SUPERIOR COURT CORRECTLY DISMISSED THE PETITION FOR A WRIT OF *CERTIORARI* AS JUSTICE OF THE PEACE COURT COMMITTED NO ERRORS

A. Question Presented. The Superior Court did not err in dismissing the petition for *certiorari* as a review of the record demonstrates compliance with the requirements of *Maddrey v. Justice of the Peace Court 13*, 956 A.2d 1204 (Del. 2008).

This argument was preserved in Taylor's response to the Black's petition (A111-117) and at oral argument (Ex. A to the Opening Brief, p.12-22).

B. Scope of Review. Review of the Superior Court's decision dismissing a petition for a writ of certiorari is reviewed *de novo*. *American Funding Svcs. v. State*, 41 A.3d 711, 713 (Del. 2012).

C. Merits of Argument.

The underlying basis of this case has been ignored by the appellants, for good reason. They failed to pay rent (A059, ¶2, A120-122). There is no dispute that the complaint for back rent and possession met statutory requirements (25 *Del.C* §5707 and §5708) (A013, A119-122). There is no dispute that the notice required by 25 *Del.C.* §5502 (e.g. five day letter) met statutory requirements, as well as the proof of service required by 25 *Del.C.* §5113 (A 014-015). The appellants do not dispute that rent was due and owing (A122). The sole basis for

this appeal is that the Court with original jurisdiction determined that a Forthwith summons should issue. The fact remains that the appellants had not one, but *two full hearings* to determine the merits of their case (A119-122). The forthwith summons was not a determination of the merits of the case. And both times, the Court that hears thousands and thousands of landlord-tenant cases a year determined that the statutory requirements were met. Nowhere in their brief do the appellants claim, nor can they, that the result would have been different even if the Forthwith summons had not issued. The appellants were afforded due process since they had two full hearings on the merits, the second hearing, before three judges, *de novo,* was over 40 days after the first trial. The *de novo* trial was 30 days after the appeal was filed (when it is required by statute to be within 15 days of the request for a trial *de novo*, 25 *Del.C.* §5717(a), a point not raised by Black). Furthermore, Black was represented by counsel for the *de novo* hearing. The rights of the landlord are ignored by Black. Taylor has a right to collect rent, but Black is not concerned with their contractual obligation(s) in this regard.

Nowhere in the record does Black contest the merits of the request for a forthwith summons. Black argues that because the request (A016) did not allege "substantial evidence was not provided and that a tenant has caused substantial and irreparable harm" that it was issued in error (Opening Brief, "O.B." at p. 17). Yet, the reason that such evidence could not be provided is that Black foreclosed access

to the rental unit (A016). Black does not dispute or deny that the rental unit was without heat or electricity. The Blacks' foreclosed the possibility of providing "substantial evidence" that they had "caused substantial or irreparable harm." As noted in the request for the forthwith summons, which is separate and apart from the complaint, (separate docket entry) Taylor cited 25 *Del.C.* §5504, §5509 and §5510 of the landlord tenant code (none of which are discussed by Black in their excerpts of the forthwith request). Particularly relevant is sections 5509 and 5510. Section 5509 allows the landlord reasonable access to the property, which, in this case, it was alleged that Black refused (A016). Section 5510 states that the "tenant shall be liable to the landlord for any harm proximately caused by their unreasonable refusal to allow access". 25 *Del.C.* §5510(a). Of particular interest is the second sentence of this section which states that "any court of competent jurisdiction may issue an injunction against a tenant who has unreasonably withheld access to the rental unit". Presumably this means Justice of the Peace Court or the Court of Chancery. That necessarily contemplates a forthwith, expedited procedure in either court. The practical effect of the Blacks' position is that a tenant should deny a landlord access, in direct violation of the Landlord – Tenant code and then argue that a forthwith summons cannot issue since the landlord is prevented from determining if the tenant has caused substantial or irreparable harm. Black wants this Court to review the grant of the application of

the forthwith summons in this matter in a vacuum, without reading the entire Landlord –Tenant code in a harmonious manner or the entire request for a forthwith summons in this case. There is no mention that Black was unable to pay rent and expected Taylor to allow them to continue to live rent free or at a reduced amount, less than the agreed upon rent (A049, ¶12). Black did not want to move until the end of the school year and offered to pay only partial rent ($1,000 per month, not the contractually agreed upon rent of $1,600) until June, (none of the the detriment of the landlord (A060, ¶10).

Taylor submits that it is clear from this Court's decision in *Maddrey v. Justice of the Peace Court 13*, 956 A.2d 1204, 1216 (Del. 2008) that the record up for review is "nothing more than the initial papers, limited to the complaint initiating the proceeding, the answer or response (if required), and the docket entries." Nothing more. "On a common law writ of *certiorari*, the Superior Court cannot look behind the face of the record." *Id.* at p. 1215. By allowing a review of the merits of the granting of a Forthwith summons pursuant to 25 *Del.C.* §5115 requires more than what is permitted by a writ of *certiorari*. A writ of *certiorari* "cannot embrace an evaluation of the evidence considered by the inferior tribunal". *Id.* at p. 1216. The reviewing Court "may not weigh evidence or review the lower tribunal's factual findings." *Id.* at p. 1213. By granting the relief demanded by appellants will allow anyone who is granted or denied a forthwith summons, or

anyone who is "prejudiced" by its issuance a right of review. As this Court knows, landlord – tenant back rent and possession cases are summary proceedings. Even if this Court were to grant the relief requested and send the case back to Justice of the Peace #13, the end result will remain the same – back rent is due and possession would be awarded to the landlord. This is nothing more than "an end run around the General Assembly's clearly expressed intent that no traditional appellate review lies in summary possession cases after a three judge hearing in the Justice of the Peace Court has concluded". *Id.* at p. 1214. The appellants are asking this Court to specifically instruct the Superior Court to review and evaluate evidence surrounding the issuance of the Forthwith summons in all cases.

By going beyond the face of the record as the appellants suggest necessarily prolongs summary possession cases and requires the reviewing Court to engage in second guessing of evidence or rulings. Again, landlord – tenant cases are summary proceedings. To require more, as the appellants demand, will prolong the process and back up the Courts to the detriment of landlords. There are no facts in dispute and they have been properly resolved by the lower courts.

Regardless, this Court is being asked to direct the Superior Court to weigh and evaluate evidence and/or review the factual and legal conclusions reached in the issuance of the Forthwith summons, all beyond a writ of *certiorari*.

If the writ is granted, the appellants appear to be seeking the right to move back into the rental unit (even assuming that it is available), all without posting a bond or paying rent, which at the time of the *de novo* hearing in January 2014 was many months in arrears ($7,606.66, A122). A bond was requested (A115-117), which is supported by 25 *Del.C.* §5717(a) and *Superior Court Civil Rule* 62(c) (B5, B8 and A115-117). In the event that this Court determines that a writ should issue, Black must be ordered to post a bond, as they are obligated, by law, to protect the judgment and to pay rent going forward. They should not have it both ways.

The Blacks conclude their first argument by asserting that their rights were violated by denying them a meaningful opportunity to be heard. Taylor does not contest the general statements of due process law cited by Black. The problem with the citation to *Lindsey v. Nomet*, 405 U.S. 56 (1972) for example, is that Black cites the minority opinion for support. Furthermore, Black had a *second* full hearing, 40 days later, at no cost, no bond, continued occupancy of the rental unit and no rent payments. The facts here do not come close to a deprivation of due process rights.

The original five day notice was properly sent on November 13, 2013 (A014-015). The Blacks were not dispossessed, legally, of their rental unit until

January 28, 2014, which is 75 days later. And did not pay a dime in rent. They were hardly denied due process rights.

Black claims that if they were given adequate time and resources (e.g. a *pro bono* attorney) that they *could* have prevailed (emphasis added) (O.B. at p. 27). But they fail to cite any evidence, documents or facts to support this sophistry. Because there are none.

II. THE SUPERIOR COURT CORRECTLY DISMISSED THE PETITION FOR A WRIT OF *CERTIORARI* AS JUSTICE OF THE PEACE COURT DID NOT PROCEED IRREGULARLY

A. Question Presented. The Justice of the Peace Court did not proceed irregularly and therefore the Superior Court properly dismissed the petition for certiorari consistent with the requirements of *Maddrey v. Justice of the Peace Court 13*, 956 A.2d 1204 (Del. 2008).

This argument was preserved in Taylor's response to the Black's petition (A111-117) and at oral argument (Ex. A to the Opening Brief, p.12-22)

B. Scope of Review. Review of the Superior Court's decision dismissing a petition for a writ of certiorari is reviewed de novo. *American Funding Svcs. v. State*, 41 A.3d 711, 713 (Del. 2012).

C. Merits of Argument.

This is little more than a re-hash of the prior argument. The only point to make here is that Black misquotes counsel on page 30 of their Opening Brief. A review of the record reveals that counsel argued that a review of the forthwith summons is not part of the complaint for review, not that it is not part of the record. Ex A to O.B. at p. 21:14-18. Obviously, the request for and granting (or denial) of a forthwith summons is part of the docket sheet and therefore the record.

III. ALTHOUGH THIS COURT COULD EXERCISE ORIGINAL JURISDICTION, THERE IS NO REASON TO DO SO.

For the reasons stated above, there is no legal or factual basis for this Court to issue a writ of *certiorari*. But if it chooses to do so, the case should be remanded to the lower court for further proceedings, not the Justice of the Peace Court.

CONCLUSION

For the reasons stated within, the Court must affirm the trial Court.

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CERTIFICATE OF SERVICE

I, Donald L. Gouge, Jr., hereby certify that on this 16th day of May 2014, I caused a true and correct copy of the foregoing **APPELLEE PAUL D. TAYLOR'S *CORRECTED* ANSWERING BRIEF** to be served upon the following counsel and parties in the manner indicated:

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