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Case Number 86,2014

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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

APPELLANTS' REPLY BRIEF

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Dated: May 27, 2014

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

CONSTITUTIONS

STATUTES

RULES

OTHER AUTHORITIES

I.
INTRODUCTION

> *A landlord-tenant dispute, like any other lawsuit, cannot be resolved with due process of law unless both parties have had a fair opportunity to present their cases. Our courts were never intended to serve as a rubber stamps for landlords seeking to evict their tenants, but rather to see that justice be done before a man is evicted from his home.*[1]

Taylor argues that the Justice of the Peace Court 13 (the "JP Court") can issue a forthwith summons that requires attendance of a tenant at a hearing on less than one day's notice, that at that hearing the JP Court can evict that tenant, and that this decision of the JP Court does not violate concepts of due process of law. (Ans. Br. at 10.) Taylor further argues that this can all be done free from the review standards set forth by this Court in *Maddrey v. Justice of the Peace Court 13*, 956 A.2d 1204 (Del. 2008). (Ans. Br. at 9.)

Taylor is wrong on both counts because a forthwith summons cannot be used to reduce the time standards for a summary possession proceeding set forth in Chapter 57 of Title 25 of the Delaware Code and doing so violates due process, which violation, along with other defects in that process, is subject to review by the Superior Court or this Court on a writ of *certiorari* or by this Court invoking its original jurisdiction. In support of these points, the Blacks reply as follows.

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1 *Pernell v. Southall Realty*, 416 U.S. 363, 385 (1974).

II.
REPLY ARGUMENT

A. Taylor Argues for the First Time that the Forthwith Summons Issues Did Not Relate to Summary Possession But Were Instead Based on Refusal to Grant Access.

The JP Court should not have issued the forthwith summons because Taylor did not satisfy the statutory requirements of 25 *Del. C.* § 5115. (*See* Op. Br. at 14-22, 28-31.)[2] In response, Taylor does not argue that he met the statuary requirements but instead comes up with a new argument he did not make to the Superior Court, which means he has waived it.[3] If the Court considers this new argument, that "Black foreclosed access to the rental unit[,]" which kept Taylor from gathering evidence in support of his allegations in the submitted lawyer's letter, it should be rejected. (Ans. Br. at 6-7.)[4] In support of this argument, Taylor

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[2] Because Taylor does not meaningfully respond to several of the points raised in the Blacks' Opening Brief, namely with regard to whether the JP Court erred as a matter of law or proceeded irregularly, except where addressed specifically herein, the Blacks refer the Court to their Opening Brief in support of those arguments. (Op. Br. at 14-22 (error as a matter of law), 28-31 (irregular proceedings).); *see also* Del. Supr. Ct. R. 14(c)(i).

[3] *See* Del. Supr. Ct. R. 8 ("Only questions fairly presented to the trial court may be presented for review"); *see also AT&T Corp. v. Lillis*, 953 A.2d 241, 252 (Del. 2008) (finding appellee waived choice of laws argument by not raising with trial court).

[4] Taylor claims that the Blacks do not dispute that the five day notice letter met statutory requirements (it did not because the lease required 7 days' notice (A069)), that the Blacks do not dispute that rent was due and owing, citing A122, which in fact recites that the Blacks did dispute this based on Taylor's harassing phone calls and failure to comply with the notice provisions of the lease (*see* A063, ¶ 13; A068, ¶ 14), and alleges without reference to the record that (i) "Black is not concerned with their contractual obligation(s)", and the Blacks do not contest the merits of the request for forthwith summons. (Ans. Br. at 6.) These statements are not correct as the citations show.

deceptively cites to his original letter from his lawyer to the JP Court, A016,[5] the factual allegations of which were rebutted at trial and are not accurate. *See* A122 ("Taylor admitted to entering onto the premises on multiple occasions, but testified he was only inside the house when accompanied by the defendant. Other visits to the premises were to tend to maintenance of the outside pool.") Taylor's selective citations of the record are not only misleading but show that the letter in support of a forthwith summons was based on falsities. Taylor even complains that the Blacks fail to demonstrate how the issues would have turned out differently had the JP Court provided them with due process. (Ans. Br. at 11.) Rebutting the factual underpinnings of the forthwith summons would have just been the start of how things would have been different. With the falsity of the grounds in support of the forthwith summons revealed, it might not have issued, and the Blacks would have had time to demand a jury trial and assert counterclaims for damages against Taylor for his breach of the access provisions of the Lease. While it is not possible to know how this jury trial would have turned out, the use of the forthwith summons to prevent it is problematic.

[5] Taylor has argued that the Superior Court, and now this Court, cannot review Taylor's counsel's letter requesting the forthwith summons. (Op. Br. Ex. A, 12:8-10 ("I don't think the request for a forthwith summons is reviewable by your Honor because it's not part of the complaint. It's a separate request, separate document."); Ans. Br. at 9.) In his Answering Brief, though, Taylor attempts to re-litigate the forthwith summons issue that the Blacks were denied the opportunity to litigate below by relying heavily on this letter and presumably expecting this Court to review it and rely on it. (Ans. Br. at 6-7.) If Taylor wishes for the Court to now go into the merits of his counsel's letter, then the appeal should be granted.

The forthwith summons statute, 25 *Del. C.* § 5115, authorizes a very narrow relief: an expedited hearing on whether the tenant has caused substantial or irreparable harm to landlord's person or property. The Court's consideration of a request for a forthwith summons statutorily is limited to the allegations in support of the request and is limited to certain types of relief. *See, e.g., Metrodev Newark, LLC v. Justice of the Peace Court 13*, 2010 WL 939800, at *6-8 (Del. Super. Feb. 18, 2010) ("By definition, the [JP Court's] jurisdiction for remedies is statutorily prescribed. Several provisions in the Code set out obligations for tenants and landlords. Each such provision has specified remedies."). In *Metrodev*, the Superior Court, reviewing the JP Court's decision on *certiorari*,[6] noted that in a retaliation case under 25 *Del C.* § 5516 the JP Court cannot award possession as a remedy because possession can only be granted on a summary basis for the grounds set forth in 25 *Del. C.* § 5702. *Id.* Failure to permit reasonable access, as now alleged by Taylor, does not justify issuance of a forthwith summons for summary possession even if his allegations were accurate, which they were not. *Compare* 25 *Del. C.* § 5910 (permitting an injunction for refusal to grant

[6] It is worth noting that the Superior Court in *Metrodev* reviewed and reversed a tenant's improper remedy under 25 *Del. C.* § 5516. 2010 WL 939800, at *6-8. Taylor would have this Court believe that a landlord's improper remedy, *i.e.* issuance of the forthwith summons, is not reviewable. It really cannot be the law that landlords are entitled to *certiorari* review when the JP Court grants the tenant a particular remedy to the landlord's detriment, as in *Metrodev*, but that *certiorari* review is unavailable when the landlord obtains an improper remedy to the tenant's detriment.

reasonable access) *with* § 5702 (setting forth grounds for summary possession, none of which relate to denial of access); *see also* 25 *Del. C.* § 5513(c) (permitting the landlord the use of a forthwith summons for a waste or breach of contract suit - not summary possession - which is the only explicit, non-definitional statutory reference to the "forthwith summons" outside of 25 *Del. C.* § 5115). Taylor is under the flawed belief, that "landlord-tenant cases are summary proceedings[]," when of course not all disputes between a landlord and tenant are subject to summary proceedings, only those in Section 5702 are. (Ans. Br. at 9.)

Even accepting as true Taylor's argument that his request for a forthwith summons was premised on refusal of access and not failure to pay rent, the JP Court erred as a matter of law by issuing a summary possession remedy on grounds not set forth in 25 *Del. C.* § 5702. Thus, in addition to the grounds set forth in the Blacks' Opening Brief under the *Maddrey* decision, the appeal should be granted.

B. The JP Court's Issuance of a Forthwith Summons Violated the Blacks' Due Process Rights.

By forcing the Blacks into a summary possession hearing on less than 24 hours' notice, the Blacks did not receive timely and adequate notice of the eviction, which prevented time to find counsel, essentially eliminated their right to demand a jury trial, and resulted in a loss of a "significant interest in property." *See Greene v. Lindsey,* 456 U.S. 444, 450-451 (1982) ("In this case, appellees have been

deprived of a significant interest in property: indeed, of the right to continued residence in their homes."); *Lindsey v. Normet*, 405 U.S. 56, 66 (1972) ("Due process requires that there be an opportunity to present every available defense."); *Caulder v. Durham Housing Auth*., 433 F.2d 998, 1004 (4th Cir. 1970).

Taylor's response to this constitutional infirmity is to complain that the Blacks' reference to *Lindsey v. Normet* is to a minority opinion and that the Blacks had a second full trial. (Ans. Br. at 10.)

As an initial matter, the *Lindsey* majority recognized that if a provision of a forcible entry and detainer action (similar to the summary possession statute here) is "applied so as to deprive a tenant of a proper hearing in a specific situation" then, presumptively, that action is unconstitutional. *Lindsey*, 405 U.S. at 65 (citing case law that required as-applied violations rather than facial constitutional violations).

The question then should be, did the JP Court deny the Blacks' procedural due process? The Blacks recognize that many states permit a "speedy remedy" for summary proceedings. *See* Cornelius J. Moynihan, *Introduction to the Law of Real Property* (West Publishing Co. 1988, 2d. ed.) at §6, n. 8 (noting that Restatement (Second) of Property (Landlord and Tenant) § 14.1 lists the various statutes by state). But, the Blacks have not been able to find a single published decision that

permits eviction on less than one day's notice, absent a need to save lives.[7] *See Thomas v. Cohen*, 304 F.3d 563, 576-577 (6th Cir. 2001) (finding same-day eviction by police officers violated due process); *cf. Jones v. Norwood*, 2013 WL 454909, at *12 (Ohio Ct. App. Feb. 6, 2013) (finding that an emergency one-day eviction violated due process for purposes of a Section 1983 action).

Indeed, in general, the law is relatively consistent that while summary proceedings are permissible on a shortened basis, due process must be satisfied. *See Watkins v. Dodson*, 68 N.W.2d 508, 513 (Neb. 1955) ("It is [] essential that due process attend all special and summary proceedings of a judicial character, [] and where a special or summary remedy fails to afford the essential elements of due process of law it is invalid.") (quoting 16 C.J.S., Constitutional Law, § 612, pp. 1225, 1229). This due process, generally, requires: (1) timely and adequate notice detailing reasons for proposed eviction, (2) opportunity for tenant to confront and cross-examine adverse witnesses, (3) right of tenant to be represented by counsel, (4) a decision, based on evidence in which the reasons for the decision

[7] Many states require more than 24 hours for a tenant to respond to a complaint and appear for trial. *See, e.g., War Eagle Vill. Apts. v. Plummer*, 775 N.W.2d 714, 720-721 (Iowa 2009) (finding unconstitutional a state forcible entry and detainer statute that scheduled a hearing within seven days and permitted service by mail); *Butler v. Farner*, 70 P.2d 853, 856-857 (Colo. 1985) (upholding Colorado forcible entry and detainer statute that permits tenant to appear within five to ten days after the complaint is served); *Deal v. Municipal Court*, 157 Cal. App. 3d 991, 997 (Cal. App. 1984) (California requirement that the complaint be answered within five days of service does not deny due process when the tenant can obtain a ten-day extension on good cause); *Bludson v. Popolizio*, 561 N.Y.S.2d 14, 15-16 (N.Y. App. Div. 1990) (tenant receives advance notice of a hearing by certified mail of at least 15 days).

and the evidence on which the Court relied are set forth, and (5) an impartial decision maker. *See, e.g., Caulder, supra*; *see also Bucks Co. Housing Auth. v. Santiago*, 1980 WL 642, at *6 (Pa. Com. Pl. Aug. 13, 1980) (following *Caulder*); *see also McCray v. Good*, 384 F. Supp. 604, 607 (S.D. Tex. 1974) (noting that due process requires timely notice and opportunity to be heard with counsel).

1. The JP Court Violated the Blacks' Due Process Rights by Not Providing Timely and Adequate Notice of the Summary Possession Hearing.

As stated, *25 Del. C.* § 5705, requires at least five but not more than thirty days' notice of a summary possession hearing. Here, the JP Court gave the Blacks less than one day's notice. This prejudiced the Blacks in multiple ways, including, but not limited to, (a) effectively eliminating their right to demand a jury, and (b) truncating the time in which the Blacks could present counterclaims, such as rent abatement and breach of contract.

Regarding the jury trial demand, this is most certainly a fundamental right in a landlord-tenant action. *See, e.g., Pernell*, 416 U.S. at 370 ("This Court has long assumed that actions to recover land, like actions for damages to a person or property, are actions at law triable to a jury.") (citation omitted); *Lecates v. Justice of the Peace Court No. 4*, 637 F.2d 898, 909 (3d Cir. 1980) (holding that where Delaware grants "a constitutional right to a jury trial, Delaware may not, consonant with due process, make a defendant's opportunity to enjoy the right dependent on

the amount of money he has."); *Hopkins v. Justice of the Peace Court No. 1*, 342 A.2d 243 (Del. Super. 1975) (holding Delaware's previous landlord tenant code unconstitutional because it denied tenants a right to a jury trial). Delaware's Landlord-Tenant Code now provides that defendant may demand a jury trial within ten days after being served. *See* 25 *Del. C.* § 5713. Here, however, the Blacks had a single day, though the summons stated they would have ten days to make the jury trial demand. (*See* A011.) The use of the forthwith summons thus effectively eliminated the Blacks' jury trial right.[8]

Additionally, the truncated notice also effectively eliminated the normal time period the Blacks would have had to assert claims and defenses or counterclaims on a *de novo* appeal. *See* 25 *Del. C.* § 5717(a) (giving five days from judgment to request a trial *de novo*) and (b) (giving five days from the filing of the appeal to present a bill of particulars "identifying any new issues which claimant intends to raise at the hearing which were not raised in the initial proceeding"). In the normal course, the tenant is entitled to between five and thirty

[8] While not necessarily relevant to the Appeal, Taylor has argued that the Blacks have not stated how things would change if due process were provided (Ans. Br. at 11) – apparently, to Taylor, the means – a constitutional violation – justifies the ends – eviction. But, putting to test Taylor's many harassing phone calls and entry on the premises contrary to the notice provisions of the lease to a jury might result in the Blacks' obtaining damages from him. Indeed, if the appeal is granted and the eviction and monetary judgment vacated, the Blacks do not seek to move back into Taylor's property as he argues – with no support, (Ans. Br. at 10), but they will seek to hold him accountable in damages for his wrongful eviction. *See, e.g.,* 25 *Del. C.* § 5717(d).

days to prepare for the first hearing – which, Taylor represented to the Superior Court, is more than thirty days as a practical matter (Op. Br. Ex. A, 15:17-23) – and then ten additional days to prepare counter-claims to be raised at the trial *de novo*. 25 *Del. C.* § 5705. When a landlord rushes a tenant into an expedited hearing – as here – the tenant's total time (trial and appeal) to research counter-claims, gather evidence and witnesses, consult with competent counsel, and prepare the necessary bill of particulars shrinks to a timeframe less than that required by the statute and in violation of procedural due process.

Thus, as applied here, even though the Blacks theoretically had the right to a *de novo* appeal as argued by Taylor, the damage was done. Had the JP Court not violated their constitutional rights, the Blacks would have more effectively presented their case. Taylor's complaint about the Blacks not caring about the Landlord's rights is unfounded and irrelevant. (Ans. Br. at 10.) And, the response is simple: Taylor caused his own problems by seeking a baseless forthwith summons and should not be heard to complain about the consequences of his decision. In short, the standard is not whether the result would be different but whether the JP Court violated the Blacks' due process rights. If so, justice demands reversal.

2. The JP Court Violated the Blacks' Due Process Rights by Effectively Eliminating Their Right to Be Represented by Counsel.

The Supreme Court held in *Lassiter v. Dep't of Social Servs. of Durham Co, North Car.*, 452 U.S. 18, 34 (1981), that the poor are entitled to the assistance of appointed counsel in proceedings related to parental rights. Delaware has followed this guidance. *See In re Carolyn S. S.*, 498 A.2d 1095, 1096-1099 (Del. 1984) (applying *Lassiter* to Family Court termination proceedings); *see also Watson v. Div. of Family Servs.*, 813 A.2d 1101 (Del. 2002) (applying *Lassiter* to so-called dependency and neglect proceedings).

Lassiter's case-by-case analysis follows *Mathews v. Eldridge*, 424 U.S. 319 (1976), whose three-part test for procedural due process requires analysis of the following factors:

> (1) the private interest that will be affected by the official action; (2) the risk that there will be an erroneous deprivation of the interest through the procedures used and the probable value of additional or substitute procedural safeguards; and (3) the government interest involved, including the added fiscal and administrative burdens that addition or substitute procedure would require.

Moore v. Hall, 62 A.3d 1203, 1208-1209 (Del. 2013) (citing *Mathews*, 424 U.S. at 335); *see also Watson*, 813 A.2d at 1111-1112 (applying the *Mathews* factors and finding that a mother's due process rights were violated when the Family Court did not appoint counsel knowing that she was indigent and had a history of mental health and substance abuse problems).

Applying the *Mathews* test here suggests that the JP Court should have considered appointing counsel to protect the Blacks' rights. First, the right to one's home is a fundamental, private interest protected by the United States and Delaware Constitutions. *Cannon v. State*, 807 A.2d 556, 568-569 (Del. 2002) (Holland, J., dissenting). Second, holding a hearing on one days' notice involving indigent tenants proceeding *pro se* certainly increases the potential that the JP Court could commit error. *See* Rachel Kleinman, *Housing* Gideon*: The Right to Counsel in Eviction Cases*, 31 Ford. Urban L. J. 1507, 1515-16 & n. 71 (citing studies that show outcome of eviction cases affected by legal representation). Third, holding a summary possession trial in due course (25 *Del. C.* § 5701 *et seq.*) – instead of via a forthwith summons – seems to create no additional burden on the state of Delaware (arguably the forthwith summons process puts a greater strain on the system than just complying with the summary possession statue notice provisions as written by the General Assembly). Thus, it is logically consistent with existing precedent to suggest that if a tenant's right to a home is going to be taken away on less than five days' notice, the court should conduct a *Lassiter*-type analysis and consider appointing counsel to protect that tenant's rights. *See, e.g.*, Andrew Scherer, Gideon's *Shelter: The Need to Recognize a Right to Counsel for Indigent Defendants in Eviction Proceedings*, 23 Harv. C.R.-C.L. L. Rev. 557 (1988); Kleinman, *Housing* Gideon, *supra*, at 1511-17 (same).

Here, of course, the Blacks are not arguing that the JP Court should have appointed counsel,[9] but instead, they argue that the less than one day's notice of the summary proceeding had the as-applied effect of violating their due process rights by effectively eliminating their ability to retain counsel. This constitutional grievance demands redress.

3. The JP Court Violated the Blacks' Due Process Rights by Not Issuing a Decision Stating the Reasons for the Decisions and Evidence on Which It Relied.

As argued in their Opening Brief, the JP Court never stated its reasons for issuing the forthwith summons. (Op. Br. at 8.) Even though Taylor puts some stock in the fact that the issue was considered on the JP Court appellate panel, the appellate panel also did not state any reasons why the issuance of a forthwith summons was appropriate, simply finding that the original judge looked at the request, considered it, and granted it, and that was adequate. (A121.) The statute, however, requires evidence. 25 *Del. C.* § 5115. When the JP Court provides a landlord a statutory remedy despite the landlord's failure to comply with the statute, the JP Court denies due process by disrupting the delicate balance of obligations, rights, and procedural safeguards that the General Assembly set in place. *See, e.g.*, *Hopkins*, 342 A.2d at 245 (underscoring that the 1972 Landlord-

[9] Of course, if the Court wants to consider this important issue and perhaps permit submission to it of various studies and additional briefing on the topic, it could exercise its original jurisdiction and seek appropriate submissions. Counsel for the Blacks are willing to participate in this exercise of the Court's original jurisdiction if the Court exercises it.

Tenant Code carefully revised the reciprocal rights and obligations of landlords and tenants through substantive and procedural changes).

4. Where a Tenant's Rights Are Truncated to Less than a Single Day, then at a Minimum, Due Process and *Maddrey* Require that the Decision Be Subject to Review by a Law-Trained Judge.

Taylor argues that the forthwith summons request is not part of the record that can be reviewed under *Maddrey*.[10] (Ans. Br. at 12.) His logic seems to be that the forthwith summons is not part of the Complaint. (*Id.*) This makes no sense. Response to a complaint is commanded by a summons. They are part and parcel of the commencement of suit. 25 *Del. C.* § 5704. Indeed, here, the Constable served the Summons with the Complaint attached. (A011-016.) That the summons is part of the Complaint is elementary. Taylor's logic, though, supports the Blacks' position. If the Complaint can be reviewed under *Maddrey* but the Summons cannot, the Superior Court, on *certiorari* review would have no basis to determine why less than one day's notice of the summary possession proceeding

[10] Taylor's brief suggests a misunderstanding of the Blacks' use of the word "record" on page 30 of the Blacks' Opening Brief. The Blacks, by referring here to the record, were referring back to the phrase "record for review" used in the prior sentence, which is not a mischaracterization of Taylor's quote. Taylor argued, and continues to argue, that the reviewable record on *certiorari* does not include Taylor's request for a forthwith summons. The Blacks have submitted and continue to submit that it does.

was granted when the statute at issue requires at least five days' notice. 25 *Del. C.* § 5705(a). This is the definition of "proceeding irregularly."[11]

An additional reason that Taylor is wrong is that his argument, stripped to its essence, is that without evidence and in total contradiction of the statute, 25 *Del. C.* § 5115, the JP Court can "willy-nilly" issue forthwith summons and never, ever be subject to review. (Op. Br. Ex. A, 12:14-20 ("THE COURT: So, are you saying that the J.P. Court -- if the J.P. Court decided as a matter of, you know – I don't know, we'll call it administrative practice -- that a party would get a forthwith summons just willy-nilly whenever they asked for it and there would be no review of that, that that practice would be unreviewable by any other court?"); Ans. Br. at 9 (arguing that the Superior Court can never review on certiorari the "legal conclusions" reached in issuance of the forthwith summons).) The problem with Taylor's argument is that the Third Circuit has held that under the United States Constitution if "one's legal claim[] is to have meaningful content, it would seem that a litigant should be afforded, at some point in the judicial process, a judge who is knowledgeable about the law." *Lecates*, 637 F.2d at 910 (detailed discussion of the Delaware system of JP Courts and law trained judges sitting in review of those courts). The time for that review is now, on writ of *certiorari* or by this Court's

[11] Because Taylor does not meaningfully respond to the Blacks' argument that the JP Court proceeded irregularly, the Blacks refer the Court to their Opening Brief at 28-31.

exercise of its original jurisdiction. Indeed, the Delaware legal system permits the JP Courts to decide many routine landlord-tenant cases, but when something complex or unusual happens, *Maddrey* and the Delaware and United States constitutions demand review.

C. The Blacks Request a Narrow *Certiorari* Review that Will Not Open the Floodgates of Litigation.

The Blacks are mindful of the narrow review the *certiorari* permits and, accordingly, seek a review of whether the JP Court reviewed any evidence before issuing its forthwith summons and whether the issuance of that forthwith summons in the landlord-tenant summary possession context is appropriate. Under *Maddrey*, *certiorari* review is appropriate here, and the Blacks do not request, as Taylor suggests, a review of the sufficiency of the evidence below – because there is none. (*See* Op. Br. at 13-22).

Taylor suggests that if the Blacks' *certiorari* petition is granted, tenants will rampantly abuse and prolong summary possession hearings and the "floodgates" will open (Ans. Br. at 9.). *But see Criss v. Salvation Army Residences*, 319 S.E.2d 403, 407 (W. Va. 1984) ("Some delay, of course, is inherent in any fair-minded system of justice."). However, Taylor argued differently in the Superior Court below when representations were made about how rarely these summonses are requested and how more rarely they are granted. (Op. Br. Ex. A, 21:19-22:12) ("[A]s a practitioner there all the time and as an officer of the Court, forthwith

summonses are rarely granted. I can represent that to the Court very comfortably. . . . I've only requested, out of hundreds and hundreds of cases I've done, maybe half a dozen times. This might have only been the second time I've had one granted. . . . [I]t's just something that doesn't happen very often."). Based on Taylor's counsel's representations to the Superior Court, the Blacks submit that the number of forthwith summonses granted on no evidence would be even less frequent.

The Blacks respectfully submit that not granting their appeal will be more likely to open the proverbial "flood gates." Once the word gets out that landlords can obtain a summary possession hearing on less than one day's notice and without evidence to obtain that hearing, imagine the deluge of forthwith requests that landlords will file with the JP Court, lawyer's letter in hand. And, imagine, the poor and indigent, the mentally ill, or even those just on vacation – all subject to eviction on less than one day's notice and not able to do anything about it or ever have it reviewed on appeal; perhaps, unless, of course, the JP Court's put a stop to it – maybe they would someday, but imagine the number of individuals' rights who will be trampled on by landlords and this states' legal system. This is the policy issue this Court should be concerned about, not those raised by Taylor.

D. This Court Can Exercise Its Original Jurisdiction to Issue the Writ of *Certiorari* to Justice of the Peace Court 13.

The Blacks argued in their Opening Brief, that this Court has original jurisdiction under Article IV, § 11(5) of the Delaware Constitution and the Rules of this Court. The Court has before it the necessary record to issue a writ of *certiorari* decision on the merits. Therefore, the Blacks respectfully submit that, in the alternative to reversing the Superior Court's decision denying their request for the writ, this Court can exercise its original jurisdiction and either render judgment in favor of the Blacks or otherwise conduct those proceedings it deems proper under its original jurisdiction.

III.
CONCLUSION

The treatment of poor and less advantaged citizens, like disabled veterans with medical conditions that cause them to lose their job and income, is a serious matter with which both the federal and Delaware courts have wrestled for many years. Justice Douglas was one of their strongest advocates because he thought that "wealth, like race, is a suspect criterion for classification of those who have rights and those who do not." *Simmons v. West Haven Housing Auth.*, 399 U.S. 510, 514 (1970) (Douglas, J., dissenting). While this sentiment has never carried a majority in the United States Supreme Court, much like our first quotation to Justice Douglas's dissent in *Lindsey v. Normet*, 405 U.S. at 85, of which Taylor was so critical, it does suggest that we should treat those with less resources in a manner that gives them fair access to our legal system, not that we should rush in for a forthwith summons to try and have them, and their children, thrown out into the snow in the midst of one of the coldest winters in recent memory. In *Simmons*, Justice Douglas added a particularly apt conclusion:

> [W]ith all respect, the decisions below reflect an 18th century lawyer's approach to the task of protecting a landed interest. Every appeal of course entails delay; and in a sense all appeals are antithetical to the spirit of summary eviction. But . . . appellate courts are no longer closed to the poor. Eviction laws emphasize speed for the benefit of landlords. Equal protection often necessitates an opportunity for the poor as well as the affluent to be heard.

399 U.S. at 516 (Douglas, J., dissenting). We respectfully submit that the summary proceeding provisions of Chapter 57 of Title 25 of the Delaware Code strike the balance well enough to allow the landlord quick enough access to an eviction hearing but no so quick as to violate due process; but, when due process is violated, this Court's precedent in *Maddrey* demands law-trained judicial intervention to right the wrongs visited on Delaware citizens. It is for these reasons, and those stated in the rest of this Reply Brief and in the Blacks' Opening Brief that we request that the appeal be granted.

DATED: May 27, 2014

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