

COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
KENT COUNTY COURTHOUSE
DOVER, DELAWARE 19901
PHONE: (302) 739-4618

CHARLES W. WELCH, III
JUDGE

May 28, 2010

Mr. Gregory Strong
Ms. Lillie Brown
535 Lexington Ave.
Smyrna, DE 19977

Carolyn H. deBernard, Esq.
Bonnie M. Benson, P.A.
306 E. Camden-Wyoming Ave.
Camden, DE 19934

RE: JKKB v. Gregory Strong and Lillie Brown
C. A. No.: CPU5-10-000695

Decision on Defendants' Motion to Dismiss

Dear Mr. Strong, Ms. Brown and Ms. deBernard:

The Court is in receipt of the Motion to Dismiss filed by Appellees, Defendants-Below, Gregory Strong and Lillie Brown ("Defendants"). After a careful review of the file for this matter and the defendants' motion, please be advised that the motion is denied.

Appellant, Plaintiff-Below, JKKB ("Plaintiff"), is appealing the Justice of the Peace Court's March 4, 2010, judgment in favor of the defendants with respect to the payment of back rent. The defendants seek dismissal of the appeal, asserting that this is an appeal from a summary possession action, and, therefore, this Court does not have appellate jurisdiction. The defendants also maintain that the plaintiff violated the mirror-image rule when it did not raise the summary possession claim in its appeal, and, as a result, this Court lacks jurisdiction to hear the appeal.

Procedurally, claims for summary possession are appealed to a three-judge panel in the Justice of the Peace Court. *Jarmon v. Owner's Management Co.*, 2004 WL 1859988, at *1 (Del. Com. Pl.). No right of appeal exists in this Court for summary possession proceedings. *Bomba's Rest. & Cocktail Lounge, Inc. v. Lord DeLaWarr Hotel, Inc.*, 389 A.2d 766, 768 (Del. 1978). However, where a litigant does not appeal the rent issue to the three-judge panel, he or she may appeal it directly to the Court of Common Pleas. *Seaford Doughnut Co. v. Wheeler*, 1993 WL 331090, at *2 (Del. Super.) (citing 10 *Del. C.* § 9570 and 25 *Del. C.* § 5717(c)).

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In this case, the plaintiff appealed the portion of the Justice of the Peace Court final order regarding the payment of back rent. Such an appeal to this court is proper. Therefore, the defendants' Motion to Dismiss is denied.

The defendants must file an Answer to the plaintiff's Complaint within 20 days of the date of this letter, or default judgment may be awarded in favor of the plaintiff.

IT IS SO ORDERED.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is written in a cursive style with a large initial "C" and "W".

Charles W. Welch, III

CWW:mek