

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

Luciel Howell ,	:	C.A. No. 07-02-0172AP
	:	
Defendant below/	:	
Appellant,	:	
	:	
v.	:	
	:	
Delaware State Housing Authority/	:	
Clark's Corner,	:	
	:	
Plaintiff below/	:	
Appellee.	:	

**Submitted: February 28, 2007**

**Decided: February 28, 2007**

**Decision on appeal from the Justice of the Peace Court.**

**Appellant's appeal is dismissed for lack of subject matter jurisdiction.**

**James G. McGiffin, Jr., Esquire, Community Legal Aid Society, Inc., 840 Walker Road, Dover, Delaware 19904, Attorney for Defendant Below/Appellant.**

**Jeffrey Clark, Esquire, Schmittinger & Rodriguez, 414 South State Street, Dover, Delaware 19901, Attorney for Plaintiff Below/Appellee.**

**Trader, J.**

This is an appeal from Justice of the Peace Court decision denying appellant's motion to stay a writ of possession. Because this is an appeal from a magistrate court involving a summary possession proceeding for possession of real property, this case must be dismissed for lack of subject matter jurisdiction.

The relevant facts are as follows: On October 26, 2006, the plaintiff filed a complaint for summary possession and accrued rent against the defendant in the Justice of the Peace Court 16. Thereafter, a magistrate granted the plaintiff's request for summary possession and accrued rent. On an appeal to a three-judge panel on February 21, 2007, the Justice of the Peace Court entered an Order awarding possession of the rental unit to the plaintiff. On the same date, the plaintiff requested immediate possession of the rental unit by writ of possession. On February 22, 2007, the defendant filed a motion to stay the writ of possession. On February 23, 2007, the application to stay the writ of possession was denied by the Justice of the Peace Court. On the same date, the plaintiff filed a Praecipe and Notice of Appeal with this Court. The request to proceed in *forma pauperis* was granted by the Court.

The defendant has taken an appeal under 10 Del. C. Sec. 9571. I hold that an appeal does not lie from the ruling of a magistrate in a summary possession proceeding by virtue of 10 Del. C. Sec. 9571. *Bomba's Restaurant and Cocktail Lounge v. Lord De La Warr Hotel*, 389 A.2d 766, 769 (Del. 1978). 10 Del. C. Sec. 9571 has been on the Delaware law books for more than one hundred twenty-five years and has never been construed to apply to actions for summary possession.

The Delaware Supreme Court has long held that there is no right of appeal in summary possession proceedings to the Superior Court. *Capano Investments v.*

*Levenberg*, 564 A. 2d 1130, 1131 (Del. 1989); *Bomba's Restaurant and Cocktail Lounge v. Lord De La Warr Hotel*, *supra*. Prior to January 15, 1995, appeals from final judgments of the Justice of the Peace Courts came to the Superior Court. 10 Del. C. Sec. 9570-71. An exception to that rule is that the Superior Court could not entertain appeals of final judgments in summary possession proceedings. *Capano Investments v. Levenberg*, 564 A.2d 1130, 1131 (Del. 1989). On January 15, 1995, the appellate court for final judgments of Justice of the Peace Court was changed from the Superior Court to the Court of Common Pleas. 19 *Del. Laws Ch.* 423. Similar to the Superior Court, the Court of Common Pleas does not have jurisdiction over appeals of final judgments in summary possession proceedings.

The right of appeal in summary possession proceedings is limited by 25 Del. C. Sec. 5717. Under Sec. 5717, litigants in summary possession proceedings have a right to a trial *de novo* before a special court comprised of three Justices of the Peace. Sec. 5717, however, does not confer the right of appeal to the Court of Common Pleas.

At oral argument, the appellant requested permission to amend the Notice of Appeal to a Request for a Petition for Writ of Certiorari. Since this Court lacks subject matter jurisdiction, this request is denied.

Based on the foregoing discussion, this Court has no jurisdiction to entertain an appeal from the three-judge panel of the Justice of the Peace Court. Accordingly, the appeal is dismissed for lack of subject matter jurisdiction.

**IT IS SO ORDERED.**

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**Merrill C. Trader**  
**Judge**