

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

CHARLES W. WELCH, III  
JUDGE

June 22, 2011

John W. Paradee, Esq.  
Prickett, Jones & Elliott, P.A.  
11 N. State Street.  
Dover, DE 19901

Ms. Mary Justice  
P O Box 457  
Clayton, DE 19938

Stephen E. Smith, Esq.  
Prickett, Jones & Elliott, P.A.  
11 N. State Street  
Dover, DE 19901

Nicole M. Faries, Esq.  
Prickett, Jones & Elliott, P.A.  
11 N. State Street  
Dover, DE 19901

RE: Mary Justice v. Emory Hill Real Estate Services, Inc.  
C.A.No.: CPU5-11-000356  
Decision on Motion to Dismiss

Dear Mr. Paradee, Mr. Smith, Ms. Faries and Ms. Justice:

Appellant, Defendant-Below, Mary Justice, has filed the above referenced civil appeal with this Court seeking a trial *de novo* of a final order of a Justice of the Peace Court pursuant to 10 *Del. C.* Section 9571. Appellee, Plaintiff-Below, Emory Hill Real Estate Services, Inc., has filed a motion to dismiss the appeal pursuant to Court of Common Pleas Civil Rule 12(b)(1). In its motion, the appellee contends that the Court should dismiss the appellant's appeal because the Court of Common Pleas lacks subject matter jurisdiction over summary possession appeals from the Justice of the Peace Court.

Appellant responds that she is only appealing the Justice of the Peace Court's award of back rent to the appellee, and that this Court has subject matter jurisdiction over appeals from Justice of the Peace decisions on debt actions.

The Court held a hearing for this matter and at the conclusion of the evidence reserved decision. Appellee's motion to dismiss is granted as this Court lacks subject matter jurisdiction over the appellant's appeal.

### **FACTS**

Appellant resided in a leased rental unit at the Cannon Mills Apartment Complex in Dover, Delaware in 2010. The appellee took over the apartment complex in March 2010. Thereafter, the appellee filed a complaint in the Justice of the Peace Court against the appellant seeking summary possession of the leased property, back rent, late fees and court costs. After trial, the Justice of the Peace Court entered a judgment on January 31, 2011, awarding the appellee its claim for rent, together with court costs and interest on the award, and granting it summary possession of the leased property.

Appellant filed an appeal of this judgment to a three-judge panel of justices of the peace pursuant to 25 *Del. C.* Section 5717 ("Section 5717"). The Justice of the Peace Court dismissed the appeal because it violated the mirror image rule. The appellant then filed an appeal of this judgment with this Court pursuant to 10 *Del. C.* Section 9571. The notice of appeal stated that the appellant was appealing "the decision of [the] Justice of the Peace Court . . . dated January 31, 2011." The notice of appeal did not attempt to sever the rent claim from the summary possession covered by the judgment. However, the appellant contends that she is only appealing the Justice of the Peace Court's award of

back rent to the appellee, as she has already surrendered possession of the rental unit to the appellee.

### DISCUSSION

Appellee contends that this appeal should be dismissed for lack of subject matter jurisdiction. This contention is correct.

“The appellate jurisdiction of Delaware courts is limited by the Delaware Constitution and statutes.” *Capano Investments v. Levenberg*, 564 A.2d 1130, 1131 (Del. 1989) (citing *Shoemaker v. State*, 375 A.2d 431, 435-36 (Del. 1977)). The Justice of the Peace Court has jurisdiction over summary possession claims pursuant to 25 *Del. C.* Section 5701. In addition, litigants in summary possession actions have a right to appeal Justice of the Peace Court decisions to a special court comprised of three justices of the peace pursuant to 25 *Del. C.* Section 5717. However, Section 5717 does not provide litigants a right of appeal to the Court of Common Pleas. Summary possession decisions by the three-judge panel are final and no further appellate jurisdiction on the merits exists.<sup>1</sup>

Appellant contends that although the claim for summary possession cannot be appealed to the Court of Common Pleas, the rent claim can be severed from the summary possession claim and appealed to this Court.<sup>2</sup> However, the appellant failed to sever the claim when she filed the notice of appeal for this matter. Her appeal states that she was

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<sup>1</sup> The Supreme Court of Delaware has long held that the right of appeal in summary possession actions is limited. See *Capano*, 564 A.2d at 1131; *Bomba's Restaurant & Cocktail Lounge, Inc. v. Lord De La Warr Hotel, Inc.*, 389 A.2d 766, 768-69 (Del. 1978).

<sup>2</sup> See *Seaford Doughnut Co. v. Wheeler*, 1993 WL 331090 (Del. Super. July 28, 1993). *But cf. Neitzelt v. Meera Mgmt., L.L.C.*, 2006 WL 1719976 (Del. Super. May 1, 2006) (holding that “[n]either party can elect to sever [a] summary possession claim from [a] debt claim, which were filed jointly before the Justice of the Peace Court, and appeal the debt claim to the Court of Common Pleas.”).

appealing “the decision of [the] Justice of the Peace Court . . . dated January 31, 2011.”

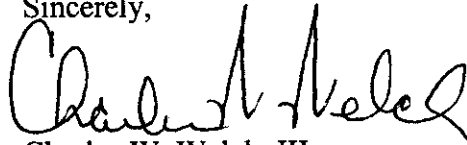
That decision included the award of summary possession of the rental unit to the appellee. This Court does not possess subject matter jurisdiction over appeals from Justice of the Peace decisions that include awards of summary possession. The appellant’s only avenue for appeal was to the three-judge panel pursuant to Section 5717.

**CONCLUSION**

As a result of the Court’s finding of fact, which is based upon the entire record, and the Court’s above-referenced conclusions of law, the appellee’s motion to dismiss is granted because the Court lacks subject matter jurisdiction over appellant’s appeal.

**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, flowing style.

Charles W. Welch, III

CWW:mek