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**IN THE JUSTICE OF THE PEACE COURT NO. 16
OF THE STATE OF DELAWARE IN AND
FOR KENT COUNTY**

MAST PROPERTIES, LLC.,	:	C.A. No. JP16-10-003385
	:	
	:	
Plaintiff Below,	:	
Appellee,	:	
	:	
v.	:	
	:	
ANTHONY HAYES,	:	
DIANNE HAYES,	:	
	:	
	:	
Defendants/Counterclaimants Below,	:	
Appellants.	:	

TRIAL DE NOVO

Submitted: September 21, 2010
Decided: September 21, 2010

Timothy A. Reisinger, Esquire, Attorney for the Plaintiff/Appellee.

Anthony Hayes, Defendant/Appellant/Counterclaimant, *pro se*.
Dianne Hayes, Defendant/Appellant/Counterclaimant, *pro se*.

ORDER

Dillard, Magistrate
Foor, Magistrate
Murray, Magistrate

On September 21, 2010, this Court, comprised of the Honorable Debora Foor, the Honorable James A. Murray and the Honorable Dwight D. Dillard, acting as a special court pursuant to 25 *Del. C.* § 5717(a)¹ held a trial *de novo* in reference to a Landlord/Tenant Summary Possession Petition filed by Mast Properties, LLC., (hereinafter referred to as “Plaintiff”), against Anthony Hayes and Dianne Hayes (hereinafter referred to as “Defendants”) and two counterclaims filed by the Defendants. For the following reasons the Court ***Dismisses the Defendants’ Appeal and Counterclaims.***

Factual and Procedural Background

Plaintiff filed a Landlord/Tenant Summary Possession Petition² with Justice of the Peace Court No. 16 seeking possession, court cost, accrued rent, and late charges. This action is based on non-payment of rent. On July 22, 2010, the Defendants were served with notice of said petition. Trial was scheduled on August 4, 2010, however was continued³ at the request of the

¹ 25 *Del. C.* § 5717(a). *Nonjury trials.* “With regard to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgment, a trial *de novo* before a special court comprised of 3 justices of the peace other than the justice of the peace who presided at the trial, as appointed by the chief magistrate or a designee, which shall render final judgment, by majority vote....”

² Plaintiff’s petition was EFiled on 2010-07-13 17:36 and included attachments pursuant to 25 *Del. C.* § 5707.

³ Continuance request submitted to the Court on August 3, 2010 at 2:52pm.

Defendants. Trial was rescheduled for August 23, 2010. On August 17, 2010, the Defendants filed a counterclaim. Trial was held on August 23, 2010, at which time judgment was entered in favor of the Plaintiff.⁴ Thereafter, on August 27, 2010, the Defendants filed a timely appeal⁵ of the Court's Order pursuant to 25 *Del. C.* § 5717(a) as well as a motion to proceed *in forma pauperis*. Both the Defendants' Motion to proceed *in forma pauperis* and appeal were approved on August 27, 2010. Trial *de novo* and the Defendant's counterclaim were thereafter scheduled for September 9, 2010. The Defendants filed a second counterclaim on September 7, 2010 (many of the issues contained therein are the same as the Defendants original counterclaim). Thereafter, Defendant Dianne Hayes submitted a continuance request⁶ which was granted, and the trial *de novo* was rescheduled for September 16, 2010. The Court on its own initiative continued that trial and rescheduled said trial for September 21, 2010.

⁴ *Mast Properties, LLC., v. Hayes et al*, Del. J.P., C.A. No. JP16-10-003385, Plack, J. (Aug. 23, 2010). The Defendants counterclaim was dismissed in part without prejudice for lack of jurisdiction (\$7000.00). The Defendants failed to prevail at trial to the remaining balance of the claim.

⁵ Upon review of the Defendant's Motion to Appeal, the Court notes that the Defendants entered a final judgment date of July 23, 2010. Said appeal was timed stamped by this court on August 27, 2010 which would be well beyond the statutory five day requirement to file an appeal. Review of the court's docket reveals that no hearing was held on or about the 23rd of July, however, a hearing was held on August 23, 2010. The Court shall assume the *pro se* Defendants inadvertently indicated final judgment occurred on July 23rd instead of the correct date of August 23, 2010. A final judgment date of August 23, 2010 meets the five day statutory requirement to file an appeal.

⁶ Defendant Dianne Hayes asserted in her request for continuance that it was necessary due to medical issues of her husband.

Motion to Dismiss

The Court convened trial some 20-25 minutes⁷ beyond the scheduled time for which this trial was to commence. The Court summoned the parties into the courtroom via the court's public address system. The Defendants failed to respond to the Court's announcement, further review with court staff indicated that the Defendants never checked in with the court clerk and were not in the courthouse at the scheduled time for trial. As a result of the Defendants failure to appear, Plaintiff's counsel motioned the Court to dismiss the Defendant's appeal and counterclaims as they failed to appear and prosecute them.

Review of Service

Upon judicial review of the court's docket and file, service of the notice for said trial was mailed upon the Defendants via the United States Postal Service. Trial notice was mailed to the address (109 Mast Circle, Dover, DE 19901) as provided by the Defendants to the Court in their Notice of Appeal. The Court has not received any notification from the Postal Service stating that they were undeliverable. Therefore, the

⁷ Policy Directive 80-008 (REVISED) addresses the appropriate wait time for the arrival of parties to appear for trial. Pursuant to this Directive, the Court allows an additional 15 minutes from the scheduled time for trial for parties to appear. i.e. parties scheduled for an 8:15am trial time would be given until 8:30am to appear for trial before the court commenced trial and/or took any action. (nonsuit, default judgment, dismissal)

Defendants have been properly served with notice of today's trial and have failed to appear and prosecute their appeal and counterclaims.

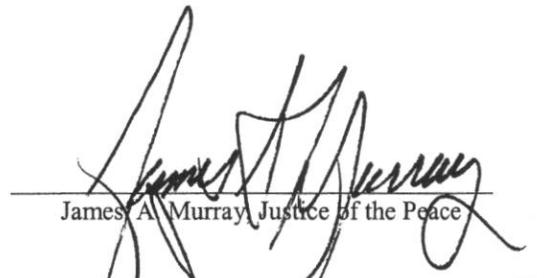
Conclusion

Based on the foregoing unanimously by the Court, the Plaintiff's Motion to Dismiss is hereby **GRANTED**. The Defendants' appeal pursuant to § 5717(a) and their counterclaims are **DISMISSED WITH PREJUDICE** for failing to appear and prosecute after proper notice. Pursuant to Justice of the Peace Civil Court Rule 72.1(f)⁸ the *Judgment*⁹ entered on August 23, 2010, **shall stand**.

IT IS SO ORDERED, this 21st day of September, 2010.



Debora Foor, Justice of the Peace



James A. Murray, Justice of the Peace



Dwight D. Dillard, Justice of the Peace

⁸ J.P.Civ R. 72.1(f). *Failure of a party to appear on appeal*. "In either an appeal by trial *de novo* or an appeal on the record, if the appellant (or both parties) fails to appear for trial of the appeal, the judgment below shall stand...."

⁹ "... [j]udgment is in favor of the PLAINTIFF in the amount of \$1,275.34, court costs and possession of the unit."