

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

Meera Management, LLC,	:	Case No. 04-10-0058AP
	:	
Plaintiff Below,	:	
Appellant,	:	
	:	
vs.	:	
	:	
Jeff S. Neitzelt,	:	
	:	
Defendant Below,	:	
Appellee.	:	

Upon Defendant's Motion to Dismiss

Date submitted: December 22, 2004

Date decided: January 11, 2005

Defendant's Motion to Dismiss is denied.

**Thomas J. Eastburn, Esquire, Allmond and Eastburn, 1400 N. Market Street,
Wilmington, Delaware 19801, Attorney for Plaintiff Below/Appellant.**

**Scott E. Chambers, Esquire, Schmittinger & Rodriguez, P.A., 414 South State
Street, Post Office Box 497, Dover, Delaware 19903, Attorney for Defendant
Below/Appellee.**

Trader, J.

In this civil appeal from the Justice of the Peace Court I hold that the landlord may appeal his claim for utilities directly to this court. Although a claim for summary possession cannot be appealed to this court, where there is a claim for rent or damages and no appeal is taken to the three-judge court, the claim can be appealed directly to this court.

The relevant facts are as follows: On April 15, 2003 Meera Management (landlord) filed a complaint in summary possession together with a debt action for the payment of utility charges for water, sewer, and electric. On September 30, 2004 the magistrate granted Jeff S. Neitzelt's (tenant) pretrial motion to dismiss the complaint. On October 13, 2004 the landlord filed a notice of appeal, complaint and praecipe with this court. The tenant has filed a motion to dismiss the appeal on the grounds that this court lacks subject matter jurisdiction and oral argument was held on this matter on December 22, 2004.

The tenant contends that the landlord may not sever a rent claim from a claim for possession and take a direct appeal to this court on the issue of the rent claim only. The tenant argues that the landlord must appeal the rent claim along with the claim for summary possession to the three-judge court pursuant to 25 Del.C. Sec. 5717. The tenant's contention is incorrect.

The seminal case on summary possession proceedings is *Bomba's Restaurant & Cocktail Lounge v. Lord De La Warr Hotel*, 389 A.2d 766 (Del. Supr. 1978). *Bomba* held that the Superior Court did not have jurisdiction over an appeal from a magistrate court in a case involving a summary action for possession of real property. In *Bomba*, Justice Duffy opined "that proceeding may be broadened by a party who invokes 10

Del.C. Sec. 9301, which gives the Justice of the Peace jurisdiction to hear and determine a controversy when the matter in issue does not exceed \$1500.00.”

In *Capano Investments v. Levenberg*, 564 A.2d 1130 (Del. Supr. 1989), the Supreme Court held that 25 *Del.C. Sec. 5717* does not confer a right of appeal to a superior court in summary possession proceedings, particularly in light of the language regarding “final judgment.” In its opinion, *Capano*, *supra* cited *Marcopulos v. Eastburn*, Del. Super., C.A. No. 84C-FE-39, 1985 LEXIS 1189 *4 (Del. Super. 1985) (Stiftel, J.) In *Marcopulos*, the Delaware Superior Court held that there is no appeal from the three-judge panel to the Superior Court in a summary possession proceeding that included a claim for damages.

Both *Capano* and *Marcopulus* involve appeals in a summary possession proceeding from a final judgment in the three-judge court.. Neither of these cases involves an appeal of a rent claim where neither the summary possession proceeding nor the rent claim was appealed to the three-judge court. In *Asset Recovery Services v. 12th Street Associates*, 2003 WL 1848661 (Del. Com. Pl. 2003), the tenant attempted an appeal to the three-judge court before he appealed the case to the Court of Common Pleas. In *Jarmon v. Owner’s Management Co.*, C.A. No. 04-03-0190AP, unreported opinion of Trader, J. (May 17, 2004), the defendant attempted to appeal both the summary possession claim and rent claim to this Court. But in the *Seaford Doughnut Company v. Wheeler*, 1993 WL 331090 (Del. Super.), Judge Graves held that where the landlord seeks both possession and rent and he does not appeal the rent issue to the three-judge panel, he may appeal it directly to the Superior Court.

All of the above cases except the *Seaford Doughnut* case are distinguishable from the case before me on the facts. The *Seaford Doughnut* case is the only Superior Court case directly applicable to the facts before me and I will follow the holding in *Seaford Doughnut* and will permit the landlord to appeal his damage claim directly to this court.

Since I conclude that I have jurisdiction over the appeal, the defendant's motion to dismiss is denied. The defendant has twenty days to file an answer to the complaint.

IT IS SO ORDERED.

Merrill C. Trader
Judge