

April 17, 2002

Mr. Frederick Pratt
50 Rose Hill Lane
New Castle, Delaware 19720

L & E Automotive
1916 West Fourth Street
Wilmington, Delaware 19805

Michael W. Modica, Esquire
715 King Street; Suite 300
Wilmington, Delaware 19801

**Re: *Frederick Pratt v. L & E Automotive*
Civil Action No. 2001-10-011
Letter-Opinion on Motion to Dismiss**

Gentlemen:

A hearing was held on Frederick Pratt's ("Pratt") Motion to Dismiss ("the Motion") on April 12, 2002. This is a de novo appeal from Magistrate Court filed pursuant to 10 Del. C. § 9570 et seq. Neither Mr. Modica nor L & E Automotive ("L & E") appeared to defend the Motion or otherwise plead. The record indicates a copy of the Notice of Motion and Order was mailed by Pratt to L & E Automotive at 1916 West Fourth Street, Wilmington, Delaware 19805 on March 15, 2002. The record also reflects that on April 11, 2002 Mr. Modica entered his appearance by filing L & E's Complaint on appeal from Magistrate's Court with the Clerk of this Court.

Oral argument was heard on Motion, given due notice was provided to appellee-plaintiff below, L & E. The basis of Pratt's Motion is that he requests dismissal of the appeal de novo from Magistrate Court because L & E received a summons and "did not respond to it."

Facts

The record indicates the summons on appeal from Magistrate's Court was personally received on October 26, 2001 by Tony Brown at L & E Automotive at 1916 West Fourth Street, Wilmington, Delaware 19805. L & E, therefore, as the appellee plaintiff-below, had

the duty of filing the Complaint on appeal as requested by the Summons “within 20 days after service upon appellee, exclusive of the day of service.” *Id.* It is also clear from the record herein that the instant appeal was filed timely by Pratt as appellant, defendant-below on October 2, 2001 pursuant to 10 Del. C. § 9571 within fifteen (15) days of the final Order by the Magistrate’s Court. The Magistrate’s Court final Order was dated September 16, 2001. *See*, 10 Del. C. § 9571(b); CCP Civ. R. 72.3. L & E, pursuant to CCP Civ. R. 72.3 is the appellee and had a duty of filing the Complaint on appeal “within 20 days after service of process on the appeal.” *Id.* Mr. Modica, on behalf of L & E, filed the Complaint on appeal with the Clerk of Court on April 11, 2002. The Complaint is untimely and this Court therefore lacks jurisdiction to entertain this appeal.

Opinion and Order

Based upon the record before it, the Court must therefore enter judgment in favor of Pratt. Pratt’s Motion and Order requests a remand of the matter to Magistrate Court which apparently entered judgment for Seven Hundred Sixty-Three Dollars (\$763.00) against him on September 14, 2001. The Court therefore remands the matter back to Magistrate Court. Because L & E failed to answer or defend the Motion for Dismissal and/or file the Complaint on Appeal within 20 days of having been served a copy of the Complaint, judgment is therefore directed to be entered in Magistrate Court IN FAVOR of Pratt. Each party shall bear their own costs.

IT IS SO ORDERED this 17th day of April, 2002.

John K. Welch
Associate Judge

JKW/vh

cc: Ms. Barbara Dooley, Civil Division