

**IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE  
IN AND FOR SUSSEX COUNTY  
COURT NO. 17**

**COURT ADDRESS:  
23730 SHORTLY ROAD  
GEORGETOWN DE 19947**

**CIVIL ACTION NO: JP17-11-002155**

**RICHARD K SYVA ET AL VS TERRY L FAGG ET AL**

**SYSTEM ID: 002977  
JOHN F BRADY  
JOHN F. BRADY, P.A.  
18388 COASTAL HIGHWAY  
UNIT 9  
LEWES DE 19958**

**Submitted:** June 13, 2011

**Decided:** June 20, 2011

**Appearances:**

Richard Syva and Deborah Syva *pro se*  
John F. Brady, Esquire, Rehoboth Beach, for Defendants

**Before:** Comly, Martin and Sipple; Justices of the Peace

Comly for the Court, Sipple concurring, Martin dissenting

**NOTICE OF JUDGMENT/ORDER**

The Court has entered a judgment or order in the following form:

**ORDER**

This action is an appeal of a summary possession action pursuant to 25 *Del. C.* § 5717(a).

Richard and Deborah Syva, hereinafter landlords, filed a summary possession action seeking a judgment for unpaid rent and possession of a rental unit known as 19951 Wil King Road, Lewes, Delaware pursuant to 25 *Del. C.* § 5702(2). Terry L. and James W. Fagg, hereinafter tenants, deny that there is a landlord-tenant relationship and dispute the Syva's right to possession of the property.

**Facts**

On June 25, 2004 the landlords purchased the property in question from D & S Investment Company  
6CF14J (Rev. 9/15/04)

L.L.P. At the time of the purchase the tenants were residing at the residence. Deborah Syva and Terry L .Fagg are sisters. The landlords purchased the property to help the tenants because the tenants could not obtain financing needed to purchase the property themselves. The tenants agreed to pay the landlords \$500.00 per month to cover the cost of the mortgage. At some point it was the intention of the parties that the tenants would be able to obtain financing and would purchase the property from the landlords. The tenants paid the agreed upon amount until September 2010. At that point they stopped making payments. On March 10, 2011 the landlords sent the tenants a notice that they owed \$3,000.00 in unpaid rent and that they had five (5) days to cure the default or the landlords would terminate the lease and file an action for summary possession and unpaid rent. The notice was sent to each of the tenants at the rental address via first class mail with a certificate of mailing. The landlords filed the summary possession action on April 21, 2011.

### **Discussion**

The tenants do not deny that they have not made any payments to the landlords since October 2010. They argue that there is not a landlord-tenant relationship and therefore this Court lacks jurisdiction on the issue of possession.

It is undisputed that Richard and Deborah Syva own the property known as 19951 Wil King Road, Lewes, Delaware. Under the definitions found at 25 *Del. C.* § 5141 Landlord shall mean, among others things, the owner of a rental unit, see 25 *Del. C.* § 5141(13)(a). The pertinent part of 25 *Del. C.* 5141(29) states, a 'Tenant' shall mean a person entitled under a rental agreement to occupy a rental unit to the exclusion of others a. To determine if the parties are landlord and tenant we must look at what constitutes a rental unit. A rental unit is defined at 25 *Del. C.* § 5141 (23). In pertinent part it states, p'Rental unit' shall mean any house building, structure or portion thereof, which is occupied, rented or leased as the home or residence of 1 or more persons.l Again it is undisputed, that Terry L. Fagg and James W. Fagg occupy the structure in question and that it is there residence. Therefore, 19951 Wil King Road, Lewes, Delaware fits the definition of a arental uniti . Since it is owned by Richard and Deborah Syva they satisfy the definition of landlord. We next need to look at what constitutes a hrental agreementl . A aRental agreementh is defined at 25 *Del. C.* § 5141(22) which states; 2'Rental agreement' shall mean and include all agreements, written or oral which establish or modify the terms, conditions, rules, regulations or any other provision concerning the use and occupancy of a rental unit.c There is no written agreement or lease. The testimony was that

the Faggs agreed to pay the Syvas \$500.00 to cover the cost of the mortgage until they could purchase the property. As long as they made the \$500.00 per month payment they were permitted to occupy the property. This oral agreement fits the definition of a rental agreement. Since the property satisfies the definition of a rental unit, the oral agreement satisfies the definition of a rental agreement, the Faggs occupy the rental unit and there is no evidence there are other persons occupying the rental unit or claiming the right to occupy the rental unit the Faggs are tenants.

We next look at whether the \$500.00 per month payment should be considered rent. The Delaware Code does not define rent. *Black's Law Dictionary*, seventh edition, West Group, 1999, defines rent as; consideration paid usually periodically for the use or occupancy of property (esp. real property). Monthly is periodically, \$500.00 is consideration and as long as these monthly payments were made the tenants were permitted to occupy the rental unit. Therefore the \$500.00 per month payments were rent.

A landlord may demand payment of rent anytime after it is due and give the tenant(s) at least five (5) days after the date the notice is given to pay the rental arrearage. If the tenants fail to cure the default, the landlord may terminate the rental agreement and bring an action for summary possession, see 25 Del. C. § 5502. The March 10, 2011 letter from the landlord to the tenants satisfies the notice required by subsection 5502. Sending the notice by first class mail with certificate of mailing satisfies the service of notice requirement found at 25 Del. C. § 5113(b).

Does this Court have jurisdiction to hear this action? The owner or landlord of a rental unit may initiate a proceeding for summary possession, see 25 Del. C. § 5703. The Syvas are the owners of the rental unit and therefore are a proper party to bring this type of action. A summary possession action may be maintained under Chapter 57 if the tenant wrongfully fails to pay rent, see 25 Del. C. § 5702(2). Under the oral agreement the tenants were to pay rent of \$500.00 per month. The tenants owe rent from October 1, 2010 to the present. The tenants offered no reason why they should not have to pay the rent. Therefore the tenants wrongfully failed to pay rent. Therefore the landlords had a statutory basis for filing the summary possession action. In speaking of jurisdiction and venue 25 Del. C. § 5701 states in part, An action for summary possession in accordance with § 5702 of this title shall be maintained in the Justice of the Peace Court which hears civil cases in the county in which the premises or commercial unit is located. The rental unit is located in Sussex County,

Delaware and Justice of the Peace Court No. 17 is the only Justice of the Peace Court in Sussex County, Delaware that hears civil cases. The case was filed in the proper court and this Court has subject matter jurisdiction under the statute.

The tenants were to pay rent of \$500.00 per month. They owe rent for eight full months, October 2010 through May 2011 and on a per diem basis for the month of June 2011. The per diem rate is \$16.67; through June 20, 2011 the rent due for June is \$333.40. The total rent due and unpaid is \$4,333.40.

### **Conclusions**

The tenants owe \$4,333.40 in unpaid rent. Therefore a judgment in the sum of \$4,333.40 plus \$40.00 court costs is granted to Richard and Deborah Syva and against Terry L. and James W. Fagg. Possession of the rental unit is also granted to the Plaintiff-landlords pursuant to 25 *Del. C.* § 5702(2). Rent continues to accrue at the rate of \$16.67 per day until the landlords obtain actual possession of the rental unit. Post judgment interest at the current legal rate of 5.75% per year.

IT IS SO ORDERED this 20th day of June, 2011

/s/ Larry Sipple

/s/ Richard Comly (SEAL)

Justice of the Peace/Court Official

### **NOTICE OF APPEAL RIGHTS**

Any party has 15 days starting the day after the judgment is signed by the judge to appeal the judgment of the Justice of the Peace Court to the Court of Common Pleas of the above county. If the judgment involves an action for summary possession in a landlord/tenant case, then either party has 5 business days, starting the day after the judgment is signed by the judge, to appeal the judgment to a three judge panel at the Justice of the Peace Court where the judgment was ordered. You must complete all of the appeal requirements within those periods. To prevent dismissal, the appeal must name all of the parties as they were originally named in the Justice of the Peace Court action. (This applies even if the action was dismissed in the Justice of the Peace Court against one or more of the parties.) Additional information on appeal procedures is found in the attached sheet entitled "Justice of the Peace Courts Civil Post-Judgment Procedures". (J.P. Civ. Form No. 14A) If no appeal is filed, parties may remove all exhibits from the Court no sooner than 16 days and no later than 30 days, from the date of this judgment. If not removed, the Court may dispose of the exhibits without further notice to the parties.

Final Date of Appeal of a Civil Case to the Court of Common Pleas is 15 days from the judgment.

Final Date for Appeal of a Landlord/Tenant case to a 3 Judge Panel is 5 days from the judgment.

**IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE  
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**COURT ADDRESS:  
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**CIVIL ACTION NO: JP17-11-002155**

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**SYSTEM ID: 002977  
JOHN F BRADY  
JOHN F. BRADY, P.A.  
18388 COASTAL HIGHWAY  
UNIT 9  
LEWES DE 19958**

**NOTICE OF JUDGMENT/ORDER**

The Court has entered a judgment or order in the following form:

Dissent:

The only issue in dispute in this case is whether or not a landlord-tenant relationship exists between the parties. As stated in the majority opinion, one of the plaintiffs and one of the defendants are sisters. The plaintiffs purchased this property to help the defendants because the defendants could not obtain financing to purchase the property themselves. The defendants paid \$500.00 per month for six years to cover the cost of the mortgage. The defendants, through argument of their counsel, denied that they were ever tenants of the plaintiffs. Mrs. Syva, a plaintiff, testified as follows:

This property was not purchased as a rental property. We weren't renting to my sistery She paid me to pay the mortgage until they could obtain a mortgage later. So it was never intended to be anything of a rental, nothing to that effect at allt The reason that it's become a rental now is because of how the Court's required me to address possession of it for non-payment.

There are many reasons why parties can enter into an agreement for the occupancy of a house that involves the exchange of money. They do not all create a landlord-tenant relationship. The testimony of one of the plaintiffs is crystal clear that recently declaring this property a rental was simply a fiction to allow this Court to rule on the issue of possession. The Justice of the Peace Court is one of limited jurisdiction that hears landlord-tenant cases. There is certainly a remedy for the plaintiffs in this matter but the remedy does not lie in this Court because there is no landlord-tenant relationship between the parties.

IT IS SO ORDERED this 20th day of June, 2011

/s/ John Martin (SEAL)  
Justice of the Peace/Court Official

**IN THE JUSTICE OF THE PEACE COURT OF  
THE STATE OF DELAWARE, IN AND FOR SUSSEX COUNTY  
COURT NO. 17**

**COURT ADDRESS:  
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**CIVIL ACTION NO: JP17-11-002155**

**RICHARD SYVA, DEBORAH A SYVA, PLAINTIFF**

**VS**

**TERRY L FAGG, JAMES W FAGG, DEFENDANT**

**Plaintiff Parties:**

PLAINTIFF  
SYSTEM ID: @848335  
RICHARD SYVA  
84 HOLLETTS CORNER RD  
CLAYTON, DE 19938

PLAINTIFF  
SYSTEM ID: @2376391  
DEBORAH A SYVA  
84 HOLLETTS CORNER ROAD  
CLAYTON, DE 19938

**Defendant Parties:**

DEFENDANT  
SYSTEM ID: @2376393  
TERRY L FAGG  
19951 WIL KING ROAD  
LEWES, DE 19958

DEFENDANT  
SYSTEM ID: @2376394  
JAMES W FAGG  
19951 WIL KING ROAD  
LEWES, DE 19958

ATTORNEY FOR DEFENDANT  
SYSTEM ID: 002977  
JOHN F BRADY  
JOHN F. BRADY, P.A.  
18388 COASTAL HIGHWAY  
UNIT 9  
LEWES, DE 19958

**Other Case Parties:**

## JUSTICE OF THE PEACE COURT CIVIL POST-JUDGMENT PROCEDURES

*[This information is not legal advice and not a substitute for seeking legal advice from an attorney. This information is not binding on the court if incorrect or misunderstood. It relates to frequently asked questions concerning post-judgment procedures but does not address all of the possible procedures and may not apply in your particular case. Forms for these procedures may be obtained from any Justice of the Peace Civil Court. All motions must include the name of the court, the names of the parties, the case number, the date the motion is filed with the Justice of the Peace Court and a title indicating the reason for the motion. Court costs or fees must accompany the motion, unless the person has requested, and the court determined, that the person may proceed in forma pauperis (without paying costs or fees because they have no money to pay).]*

### **FOR CIVIL ACTIONS IN DEBT, TRESPASS OR REPLEVIN:**

#### **DEFAULT JUDGMENTS**

Default judgments are normally entered against a defendant who fails to appear in court on the scheduled trial date or to provide a written answer to a complaint as required by the summons. If a default judgment has been entered, the defendant has 15 calendar days, starting the day after the judgment is ordered by the court, to enter a motion asking that the judgment be vacated and the case be reopened so the defendant may present evidence on the case. If service was made by certified mail, return receipt requested, and the certified mail was returned unclaimed, the defendant has 30 calendar days to file a motion to vacate a default judgment. This motion must be in writing and should briefly state the reason for the request to vacate the judgment as provided by 10 Del. C. § 9538. (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) The time allowed to appeal a judgment continues to run even after a motion to vacate the default judgement is filed (see below for additional information on appeal procedures). **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

#### **NON-SUIT JUDGMENTS**

Non-suit judgments are entered against a plaintiff who fails to appear in court on the scheduled trial date. Non-suit judgments against the plaintiff are similar to default judgments against the defendant. (See above section.) If a non-suit judgment has been entered, the plaintiff has 15 calendar days, starting the day after the judgment is ordered by the court, to enter a motion requesting that the judgment be vacated and the case reopened so the plaintiff may present evidence on the case. This motion must be in writing and should briefly state the reasons for the request, as provided by 10 Del. C. § 9539. (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

**APPEALS** - Either party has 15 calendar days, starting the day after the judgment is ordered by the court, to appeal the judgment to the Court of Common Pleas for a trial de novo (new trial). 10 Del. C. § 9571. To file an appeal, the appellant (party seeking the appeal) must go to the Court of Common Pleas, fill out the appeal form and comply with other Court of Common Pleas requirements, within 15 days after the judgment is entered. A certified transcript of the Justice of the Peace Court record and the filing fee of \$125.00 must be filed by the appellant with the Court of Common Pleas within 10 days after the appeal was filed (within 25 days after the Justice of the Peace Court judgment). A certified transcript of Justice of the Peace Court record may be obtained from the Justice of the Peace Court which ordered the

judgment at least five (5) days prior to the final date of filing the transcript with the Court of Common Pleas. **A FEE OF \$10.00 MUST ACCOMPANY A CERTIFIED TRANSCRIPT REQUEST.** To prevent execution on the judgment during the time of the appeal, an appellant must apply to the Court of Common Pleas for a bond to stay the execution.

**MOTION FOR A NEW TRIAL** - Either party has 10 days, starting the day after the judgment is signed by the judge, to file a motion for a new trial as provided under Justice of the Peace Court Civil Rule 59. This motion shall be in writing and shall briefly state the reasons for the request. A motion for a new trial will be heard by the Justice of the Peace who originally heard the case. The ability of the Justice of the Peace to grant a motion for a new trial is limited. For example, the reason given for requesting a new trial may be newly discovered evidence. However, for a judge to grant a motion for a new trial based upon newly discovered evidence, the party requesting the new trial must show all of the following: (1) the newly discovered evidence is important enough to change the result in the case; (2) the evidence could not have been discovered prior to the original trial with reasonable investigation; and (3) the evidence does not merely repeat or dispute evidence presented in the original trial. **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

In civil cases, if a motion for a new trial is filed after 10 days from the date of judgment, the time for filing the appeal continues to run and the 15 days allowed for the appeal may pass before any action is taken by the Court. If that happens, the party may be unable to file an appeal. If the motion is filed within 10 days from the date of judgment, the 15-day time for appeal does not include the days between the filing of the motion for a new trial and the judge's decision on the motion.

#### **FOR LANDLORD/TENANT POSSESSION ACTIONS:**

##### **APPEALS**

**FOR POSSESSION OF RENTAL UNIT** - Either party has five (5) business days, starting the day after the judgment is signed by the judge, to appeal the judgment of a Justice of the Peace which relates to the possession of a rental unit and other rental matters (including back rent due) to a special Justice of the Peace court. The special court trial will be a completely new trial before three other Justices of the Peace, unless the original trial was a jury trial. The appellant (seeking to appeal to the three-judge special court) must appear in the originating Justice of the Peace Court and make the appeal in writing. **A FEE OF \$50.00 MUST ACCOMPANY THIS MOTION.** To prevent execution on the judgment during the time of the appeal, the appellant must provide a bond or other assurances, as required by the court, to demonstrate the ability to pay all court costs, money damages, and other payments ordered by the court.

**FOR DEBT (Rent Only)** - The procedures for appealing or filing a motion for a new trial in a civil debt action explained above apply to an appeal of a landlord/tenant action involving rent or money damages only (and not possession of the rental unit).

**DEFAULT OR NON-SUIT JUDGMENTS** - If the possession of the rental unit was obtained by default judgment or nonsuit in a landlord/tenant possession action, the motion to vacate the default judgment or nonsuit must be filed within 10 days from the date the judgment was entered. **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.** (This applies only to cases filed after July 17, 1996. Motions to vacate a default judgment or nonsuit in cases filed before July 17, 1996 must comply with the same time periods as for default and nonsuit judgments in civil actions in debt, trespass or replevin (see front page).)



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**CIVIL ACTION NO: JP17-11-002155**

**RICHARD K SYVA ET AL VS TERRY L FAGG ET AL**

**SYSTEM ID: @848335  
RICHARD SYVA  
84 HOLLETT'S CORNER RD  
CLAYTON DE 19938**

**Submitted: June 13, 2011  
Decided: June 20, 2011**

**Appearances:**

Richard Syva and Deborah Syva *pro se*  
John F. Brady, Esquire, Rehoboth Beach, for Defendants

**Before:** Comly, Martin and Sipple; Justices of the Peace

Comly for the Court, Sipple concurring, Martin dissenting

**NOTICE OF JUDGMENT/ORDER**

The Court has entered a judgment or order in the following form:

**ORDER**

This action is an appeal of a summary possession action pursuant to 25 *Del. C.* § 5717(a).

Richard and Deborah Syva, hereinafter landlords, filed a summary possession action seeking a judgment for unpaid rent and possession of a rental unit known as 19951 Wil King Road, Lewes, Delaware pursuant to 25 *Del. C.* § 5702(2). Terry L. and James W. Fagg, hereinafter tenants, deny that there is a landlord-tenant relationship and dispute the Syva's right to possession of the property.

**Facts**

On June 25, 2004 the landlords purchased the property in question from D & S Investment Company L.L.P. At the time of the purchase the tenants were residing at the residence. Deborah Syva and

Terry L. Fagg are sisters. The landlords purchased the property to help the tenants because the tenants could not obtain financing needed to purchase the property themselves. The tenants agreed to pay the landlords \$500.00 per month to cover the cost of the mortgage. At some point it was the intention of the parties that the tenants would be able to obtain financing and would purchase the property from the landlords. The tenants paid the agreed upon amount until September 2010. At that point they stopped making payments. On March 10, 2011 the landlords sent the tenants a notice that they owed \$3,000.00 in unpaid rent and that they had five (5) days to cure the default or the landlords would terminate the lease and file an action for summary possession and unpaid rent. The notice was sent to each of the tenants at the rental address via first class mail with a certificate of mailing. The landlords filed the summary possession action on April 21, 2011.

### **Discussion**

The tenants do not deny that they have not made any payments to the landlords since October 2010. They argue that there is not a landlord-tenant relationship and therefore this Court lacks jurisdiction on the issue of possession.

It is undisputed that Richard and Deborah Syva own the property known as 19951 Wil King Road, Lewes, Delaware. Under the definitions found at 25 *Del. C.* § 5141 Landlord shall mean, among others things, the owner of a rental unit, see 25 *Del. C.* § 5141(13)(a). The pertinent part of 25 *Del. C.* 5141(29) states, a 'Tenant' shall mean a person entitled under a rental agreement to occupy a rental unit to the exclusion of others a. To determine if the parties are landlord and tenant we must look at what constitutes a rental unit. A rental unit is defined at 25 *Del. C.* § 5141 (23). In pertinent part it states, p'Rental unit' shall mean any house building, structure or portion thereof, which is occupied, rented or leased as the home or residence of 1 or more persons.<sup>1</sup> Again it is undisputed, that Terry L. Fagg and James W. Fagg occupy the structure in question and that it is there residence. Therefore, 19951 Wil King Road, Lewes, Delaware fits the definition of a rental unit. Since it is owned by Richard and Deborah Syva they satisfy the definition of landlord. We next need to look at what constitutes a rental agreement<sup>1</sup>. A rental agreement is defined at 25 *Del. C.* § 5141(22) which states; 2'Rental agreement' shall mean and include all agreements, written or oral which establish or modify the terms, conditions, rules, regulations or any other provision concerning the use and occupancy of a rental unit.<sup>c</sup> There is no written agreement or lease. The testimony was that the Faggs agreed to pay the Syvas \$500.00 to cover the cost of the mortgage until they could

purchase the property. As long as they made the \$500.00 per month payment they were permitted to occupy the property. This oral agreement fits the definition of r Rental agreement . Since the property satisfies the definition of eRental unit , the oral agreement satisfies the definition of pRental agreementtp, the Faggs occupy the rental unit and there is no evidence there are other persons occupying the rental unit or claiming the right to occupy the rental unit the Faggs are tenants.

We next look at whether the \$500.00 per month payment should be considered rent. The Delaware Code does not define rent. *Blacks Law Dictionary*, seventh edition, West Group, 1999, defines rent as; vConsideration paid usually periodically for the use or occupancy of property (esp. real property).d Monthly is periodically, \$500.00 is consideration and as long as these monthly payments were made the tenants were permitted to occupy the rental unit. Therefore the \$500.00 per month payments were rent.

A landlord may demand payment of rent anytime after it is due and give the tenant(s) at least five (5) days after the date the notice is given to pay the rental arrearage. If the tenants fail to cure the default, the landlord may terminate the rental agreement and bring an action for summary possession, see 25Del. C. § 5502. The March 10, 2011 letter from the landlord to the tenants satisfies the notice required by subsection 5502. Sending the notice by first class mail with certificate of mailing satisfies the service of notice requirement found at 25 Del. C. § 5113(b).

Does this Court have jurisdiction to hear this action? The owner or landlord of a rental unit may initiate a proceeding for summary possession, see 25 Del. C. § 5703. The Syvas are the owners of the rental unit and therefore are a proper party to bring this type of action. A summary possession action may be maintained under Chapter 57 if the tenant wrongfully fails to pay rent, see 25 Del. C. § 5702(2). Under the oral agreement the tenants were to pay rent of \$500.00 per month. The tenants owe rent from October 1, 2010 to the present. The tenants offered no reason why they should not have to pay the rent. Therefore the tenants wrongfully failed to pay rent. Therefore the landlords had a statutory basis for filing the summary possession action. In speaking of jurisdiction and venue 25 Del. C. § 5701 states in part, An action for summary possession in accordance with § 5702 of this title shall be maintained in the Justice of the Peace Court which hears civil cases in the county in which the premises or commercial unit is located.e The rental unit is located in Sussex County, Delaware and Justice of the Peace Court No. 17 is the only Justice of the Peace Court in Sussex

6CF14J (Rev. 9/15/04)

County, Delaware that hears civil cases. The case was filed in the proper court and this Court has subject matter jurisdiction under the statute.

The tenants were to pay rent of \$500.00 per month. They owe rent for eight full months, October 2010 through May 2011 and on a per diem basis for the month of June 2011. The per diem rate is \$16.67; through June 20, 2011 the rent due for June is \$333.40. The total rent due and unpaid is \$4,333.40.

### **Conclusions**

The tenants owe \$4,333.40 in unpaid rent. Therefore a judgment in the sum of \$4,333.40 plus \$40.00 court costs is granted to Richard and Deborah Syva and against Terry L. and James W. Fagg. Possession of the rental unit is also granted to the Plaintiff-landlords pursuant to 25 *Del. C.* § 5702(2). Rent continues to accrue at the rate of \$16.67 per day until the landlords obtain actual possession of the rental unit. Post judgment interest at the current legal rate of 5.75% per year.

IT IS SO ORDERED this 20th day of June, 2011  
/s/ Larry Sipple  
/s/ Richard Comly(SEAL)  
Justice of the Peace/Court Official

### **NOTICE OF APPEAL RIGHTS**

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84 HOLLETT'S CORNER RD  
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**NOTICE OF JUDGMENT/ORDER**

The Court has entered a judgment or order in the following form:

Dissent:

The only issue in dispute in this case is whether or not a landlord-tenant relationship exists between the parties. As stated in the majority opinion, one of the plaintiffs and one of the defendants are sisters. The plaintiffs purchased this property to help the defendants because the defendants could not obtain financing to purchase the property themselves. The defendants paid \$500.00 per month for six years to cover the cost of the mortgage. The defendants, through argument of their counsel, denied that they were ever tenants of the plaintiffs. Mrs. Syva, a plaintiff, testified as follows:

This property was not purchased as a rental property. We weren't renting to my sistery She paid me to pay the mortgage until they could obtain a mortgage later. So it was never intended to be anything of a rental, nothing to that effect at allt The reason that it's become a rental now is because of how the Court's required me to address possession of it for non-payment.

There are many reasons why parties can enter into an agreement for the occupancy of a house that involves the exchange of money. They do not all create a landlord-tenant relationship. The testimony of one of the plaintiffs is crystal clear that recently declaring this property a rental was simply a fiction to allow this Court to rule on the issue of possession. The Justice of the Peace Court is one of limited jurisdiction that hears landlord-tenant cases. There is certainly a remedy for the plaintiffs in this matter but the remedy does not lie in this Court because there is no landlord-tenant relationship between the parties.

IT IS SO ORDERED this 20th day of June, 2011

/s/ John Martin (SEAL)  
Justice of the Peace/Court Official

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**Other Case Parties:**

## JUSTICE OF THE PEACE COURT CIVIL POST-JUDGMENT PROCEDURES

*[This information is not legal advice and not a substitute for seeking legal advice from an attorney. This information is not binding on the court if incorrect or misunderstood. It relates to frequently asked questions concerning post-judgment procedures but does not address all of the possible procedures and may not apply in your particular case. Forms for these procedures may be obtained from any Justice of the Peace Civil Court. All motions must include the name of the court, the names of the parties, the case number, the date the motion is filed with the Justice of the Peace Court and a title indicating the reason for the motion. Court costs or fees must accompany the motion, unless the person has requested, and the court determined, that the person may proceed in forma pauperis (without paying costs or fees because they have no money to pay).]*

### **FOR CIVIL ACTIONS IN DEBT, TRESPASS OR REPLEVIN:**

#### **DEFAULT JUDGMENTS**

Default judgments are normally entered against a defendant who fails to appear in court on the scheduled trial date or to provide a written answer to a complaint as required by the summons. If a default judgment has been entered, the defendant has 15 calendar days, starting the day after the judgment is ordered by the court, to enter a motion asking that the judgment be vacated and the case be reopened so the defendant may present evidence on the case. If service was made by certified mail, return receipt requested, and the certified mail was returned unclaimed, the defendant has 30 calendar days to file a motion to vacate a default judgment. This motion must be in writing and should briefly state the reason for the request to vacate the judgment as provided by 10 Del. C. § 9538. (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) The time allowed to appeal a judgment continues to run even after a motion to vacate the default judgement is filed (see below for additional information on appeal procedures). **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

#### **NON-SUIT JUDGMENTS**

Non-suit judgments are entered against a plaintiff who fails to appear in court on the scheduled trial date. Non-suit judgments against the plaintiff are similar to default judgments against the defendant. (See above section.) If a non-suit judgment has been entered, the plaintiff has 15 calendar days, starting the day after the judgment is ordered by the court, to enter a motion requesting that the judgment be vacated and the case reopened so the plaintiff may present evidence on the case. This motion must be in writing and should briefly state the reasons for the request, as provided by 10 Del. C. § 9539. (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

**APPEALS** - Either party has 15 calendar days, starting the day after the judgment is ordered by the court, to appeal the judgment to the Court of Common Pleas for a trial de novo (new trial). 10 Del. C. § 9571. To file an appeal, the appellant (party seeking the appeal) must go to the Court of Common Pleas, fill out the appeal form and comply with other Court of Common Pleas requirements, within 15 days after the judgment is entered. A certified transcript of the Justice of the Peace Court record and the filing fee of \$125.00 must be filed by the appellant with the Court of Common Pleas within 10 days after the appeal was filed (within 25 days after the Justice of the Peace Court judgment). A certified transcript of Justice of the Peace Court record may be obtained from the Justice of the Peace Court which ordered the

judgment at least five (5) days prior to the final date of filing the transcript with the Court of Common Pleas. **A FEE OF \$10.00 MUST ACCOMPANY A CERTIFIED TRANSCRIPT REQUEST.** To prevent execution on the judgment during the time of the appeal, an appellant must apply to the Court of Common Pleas for a bond to stay the execution.

**MOTION FOR A NEW TRIAL** - Either party has 10 days, starting the day after the judgment is signed by the judge, to file a motion for a new trial as provided under Justice of the Peace Court Civil Rule 59. This motion shall be in writing and shall briefly state the reasons for the request. A motion for a new trial will be heard by the Justice of the Peace who originally heard the case. The ability of the Justice of the Peace to grant a motion for a new trial is limited. For example, the reason given for requesting a new trial may be newly discovered evidence. However, for a judge to grant a motion for a new trial based upon newly discovered evidence, the party requesting the new trial must show all of the following: (1) the newly discovered evidence is important enough to change the result in the case; (2) the evidence could not have been discovered prior to the original trial with reasonable investigation; and (3) the evidence does not merely repeat or dispute evidence presented in the original trial. **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

In civil cases, if a motion for a new trial is filed after 10 days from the date of judgment, the time for filing the appeal continues to run and the 15 days allowed for the appeal may pass before any action is taken by the Court. If that happens, the party may be unable to file an appeal. If the motion is filed within 10 days from the date of judgment, the 15-day time for appeal does not include the days between the filing of the motion for a new trial and the judge's decision on the motion.

#### **FOR LANDLORD/TENANT POSSESSION ACTIONS:**

##### **APPEALS**

**FOR POSSESSION OF RENTAL UNIT** - Either party has five (5) business days, starting the day after the judgment is signed by the judge, to appeal the judgment of a Justice of the Peace which relates to the possession of a rental unit and other rental matters (including back rent due) to a special Justice of the Peace court. The special court trial will be a completely new trial before three other Justices of the Peace, unless the original trial was a jury trial. The appellant (seeking to appeal to the three-judge special court) must appear in the originating Justice of the Peace Court and make the appeal in writing. **A FEE OF \$50.00 MUST ACCOMPANY THIS MOTION.** To prevent execution on the judgment during the time of the appeal, the appellant must provide a bond or other assurances, as required by the court, to demonstrate the ability to pay all court costs, money damages, and other payments ordered by the court.

**FOR DEBT (Rent Only)** - The procedures for appealing or filing a motion for a new trial in a civil debt action explained above apply to an appeal of a landlord/tenant action involving rent or money damages only (and not possession of the rental unit).

**DEFAULT OR NON-SUIT JUDGMENTS** - If the possession of the rental unit was obtained by default judgment or nonsuit in a landlord/tenant possession action, the motion to vacate the default judgment or nonsuit must be filed within 10 days from the date the judgment was entered. **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.** (This applies only to cases filed after July 17, 1996. Motions to vacate a default judgment or nonsuit in cases filed before July 17, 1996 must comply with the same time periods as for default and nonsuit judgments in civil actions in debt, trespass or replevin (see front page).)



**IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE  
IN AND FOR SUSSEX COUNTY  
COURT NO. 17**

**COURT ADDRESS:  
23730 SHORTLY ROAD  
GEORGETOWN DE 19947**

**CIVIL ACTION NO: JP17-11-002155**

**RICHARD K SYVA ET AL VS TERRY L FAGG ET AL**

**SYSTEM ID: @2376391  
DEBORAH A SYVA  
84 HOLLETT'S CORNER ROAD  
CLAYTON DE 19938**

**Submitted: June 13, 2011**

**Decided: June 20, 2011**

**Appearances:**

Richard Syva and Deborah Syva *pro se*  
John F. Brady, Esquire, Rehoboth Beach, for Defendants

**Before:** Comly, Martin and Sipple; Justices of the Peace

Comly for the Court, Sipple concurring, Martin dissenting

**NOTICE OF JUDGMENT/ORDER**

The Court has entered a judgment or order in the following form:

**ORDER**

This action is an appeal of a summary possession action pursuant to 25 *Del. C.* § 5717(a).

Richard and Deborah Syva, hereinafter landlords, filed a summary possession action seeking a judgment for unpaid rent and possession of a rental unit known as 19951 Wil King Road, Lewes, Delaware pursuant to 25 *Del. C.* § 5702(2). Terry L. and James W. Fagg, hereinafter tenants, deny that there is a landlord-tenant relationship and dispute the Syva's right to possession of the property.

**Facts**

On June 25, 2004 the landlords purchased the property in question from D & S Investment Company L.L.P. At the time of the purchase the tenants were residing at the residence. Deborah Syva and

Terry L. Fagg are sisters. The landlords purchased the property to help the tenants because the tenants could not obtain financing needed to purchase the property themselves. The tenants agreed to pay the landlords \$500.00 per month to cover the cost of the mortgage. At some point it was the intention of the parties that the tenants would be able to obtain financing and would purchase the property from the landlords. The tenants paid the agreed upon amount until September 2010. At that point they stopped making payments. On March 10, 2011 the landlords sent the tenants a notice that they owed \$3,000.00 in unpaid rent and that they had five (5) days to cure the default or the landlords would terminate the lease and file an action for summary possession and unpaid rent. The notice was sent to each of the tenants at the rental address via first class mail with a certificate of mailing. The landlords filed the summary possession action on April 21, 2011.

### **Discussion**

The tenants do not deny that they have not made any payments to the landlords since October 2010. They argue that there is not a landlord-tenant relationship and therefore this Court lacks jurisdiction on the issue of possession.

It is undisputed that Richard and Deborah Syva own the property known as 19951 Wil King Road, Lewes, Delaware. Under the definitions found at 25 *Del. C.* § 5141 Landlord shall mean, among others things, the owner of a rental unit, see 25 *Del. C.* § 5141(13)(a). The pertinent part of 25 *Del. C.* 5141(29) states, a 'Tenant' shall mean a person entitled under a rental agreement to occupy a rental unit to the exclusion of others a. To determine if the parties are landlord and tenant we must look at what constitutes a rental unit. A rental unit is defined at 25 *Del. C.* § 5141 (23). In pertinent part it states, p'Rental unit' shall mean any house building, structure or portion thereof, which is occupied, rented or leased as the home or residence of 1 or more persons.l Again it is undisputed, that Terry L. Fagg and James W. Fagg occupy the structure in question and that it is there residence. Therefore, 19951 Wil King Road, Lewes, Delaware fits the definition of a arental uniti . Since it is owned by Richard and Deborah Syva they satisfy the definition of landlord. We next need to look at what constitutes a hrental agreementl . A aRental agreementh is defined at 25 *Del. C.* § 5141(22) which states; 2'Rental agreement' shall mean and include all agreements, written or oral which establish or modify the terms, conditions, rules, regulations or any other provision concerning the use and occupancy of a rental unit.c There is no written agreement or lease. The testimony was that the Faggs agreed to pay the Syvas \$500.00 to cover the cost of the mortgage until they could

purchase the property. As long as they made the \$500.00 per month payment they were permitted to occupy the property. This oral agreement fits the definition of r Rental agreement . Since the property satisfies the definition of e Rental unit , the oral agreement satisfies the definition of p Rental agreementp, the Faggs occupy the rental unit and there is no evidence there are other persons occupying the rental unit or claiming the right to occupy the rental unit the Faggs are tenants.

We next look at whether the \$500.00 per month payment should be considered rent. The Delaware Code does not define rent. *Blacks Law Dictionary*, seventh edition, West Group, 1999, defines rent as; vConsideration paid usually periodically for the use or occupancy of property (esp. real property).d Monthly is periodically, \$500.00 is consideration and as long as these monthly payments were made the tenants were permitted to occupy the rental unit. Therefore the \$500.00 per month payments were rent.

A landlord may demand payment of rent anytime after it is due and give the tenant(s) at least five (5) days after the date the notice is given to pay the rental arrearage. If the tenants fail to cure the default, the landlord may terminate the rental agreement and bring an action for summary possession, see 25Del. C. § 5502. The March 10, 2011 letter from the landlord to the tenants satisfies the notice required by subsection 5502. Sending the notice by first class mail with certificate of mailing satisfies the service of notice requirement found at 25 Del. C. § 5113(b).

Does this Court have jurisdiction to hear this action? The owner or landlord of a rental unit may initiate a proceeding for summary possession, see 25 Del. C. § 5703. The Syvas are the owners of the rental unit and therefore are a proper party to bring this type of action. A summary possession action may be maintained under Chapter 57 if the tenant wrongfully fails to pay rent, see 25 Del. C. § 5702(2). Under the oral agreement the tenants were to pay rent of \$500.00 per month. The tenants owe rent from October 1, 2010 to the present. The tenants offered no reason why they should not have to pay the rent. Therefore the tenants wrongfully failed to pay rent. Therefore the landlords had a statutory basis for filing the summary possession action. In speaking of jurisdiction and venue 25 Del. C. § 5701 states in part, An action for summary possession in accordance with § 5702 of this title shall be maintained in the Justice of the Peace Court which hears civil cases in the county in which the premises or commercial unit is located.e The rental unit is located in Sussex County, Delaware and Justice of the Peace Court No. 17 is the only Justice of the Peace Court in Sussex

County, Delaware that hears civil cases. The case was filed in the proper court and this Court has subject matter jurisdiction under the statute.

The tenants were to pay rent of \$500.00 per month. They owe rent for eight full months, October 2010 through May 2011 and on a per diem basis for the month of June 2011. The per diem rate is \$16.67; through June 20, 2011 the rent due for June is \$333.40. The total rent due and unpaid is \$4,333.40.

### **Conclusions**

The tenants owe \$4,333.40 in unpaid rent. Therefore a judgment in the sum of \$4,333.40 plus \$40.00 court costs is granted to Richard and Deborah Syva and against Terry L. and James W. Fagg. Possession of the rental unit is also granted to the Plaintiff-landlords pursuant to 25 *Del. C.* § 5702(2). Rent continues to accrue at the rate of \$16.67 per day until the landlords obtain actual possession of the rental unit. Post judgment interest at the current legal rate of 5.75% per year.

IT IS SO ORDERED this 20th day of June, 2011

/s/ Larry Sipple

/s/ Richard Comly (SEAL)

Justice of the Peace/Court Official

### **NOTICE OF APPEAL RIGHTS**

Any party has 15 days starting the day after the judgment is signed by the judge to appeal the judgment of the Justice of the Peace Court to the Court of Common Pleas of the above county. If the judgment involves an action for summary possession in a landlord/tenant case, then either party has 5 business days, starting the day after the judgment is signed by the judge, to appeal the judgment to a three judge panel at the Justice of the Peace Court where the judgment was ordered. You must complete all of the appeal requirements within those periods. To prevent dismissal, the appeal must name all of the parties as they were originally named in the Justice of the Peace Court action. (This applies even if the action was dismissed in the Justice of the Peace Court against one or more of the parties.) Additional information on appeal procedures is found in the attached sheet entitled "Justice of the Peace Courts Civil Post-Judgment Procedures". (J.P. Civ. Form No. 14A) If no appeal is filed, parties may remove all exhibits from the Court no sooner than 16 days and no later than 30 days, from the date of this judgment. If not removed, the Court may dispose of the exhibits without further notice to the parties.

Final Date of Appeal of a Civil Case to the Court of Common Pleas is 15 days from the judgment.

Final Date for Appeal of a Landlord/Tenant case to a 3 Judge Panel is 5 days from the judgment.

**IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE  
IN AND FOR SUSSEX COUNTY  
COURT NO. 17**

**COURT ADDRESS:  
23730 SHORTLY ROAD  
GEORGETOWN DE 19947**

**CIVIL ACTION NO: JP17-11-002155**

**RICHARD K SYVA ET AL VS TERRY L FAGG ET AL**

**SYSTEM ID: @2376391  
DEBORAH A SYVA  
84 HOLLETTS CORNER ROAD  
CLAYTON DE 19938**

**NOTICE OF JUDGMENT/ORDER**

The Court has entered a judgment or order in the following form:

**Dissent:**

The only issue in dispute in this case is whether or not a landlord-tenant relationship exists between the parties. As stated in the majority opinion, one of the plaintiffs and one of the defendants are sisters. The plaintiffs purchased this property to help the defendants because the defendants could not obtain financing to purchase the property themselves. The defendants paid \$500.00 per month for six years to cover the cost of the mortgage. The defendants, through argument of their counsel, denied that they were ever tenants of the plaintiffs. Mrs. Syva, a plaintiff, testified as follows:

This property was not purchased as a rental property. We weren't renting to my sistery She paid me to pay the mortgage until they could obtain a mortgage later. So it was never intended to be anything of a rental, nothing to that effect at allt The reason that it's become a rental now is because of how the Court's required me to address possession of it for non-payment.

There are many reasons why parties can enter into an agreement for the occupancy of a house that involves the exchange of money. They do not all create a landlord-tenant relationship. The testimony of one of the plaintiffs is crystal clear that recently declaring this property a rental was simply a fiction to allow this Court to rule on the issue of possession. The Justice of the Peace Court is one of limited jurisdiction that hears landlord-tenant cases. There is certainly a remedy for the plaintiffs in this matter but the remedy does not lie in this Court because there is no landlord-tenant relationship between the parties.

IT IS SO ORDERED this 20th day of June, 2011

/s/ John Martin (SEAL)

Justice of the Peace/Court Official

**IN THE JUSTICE OF THE PEACE COURT OF  
THE STATE OF DELAWARE, IN AND FOR SUSSEX COUNTY  
COURT NO. 17**

**COURT ADDRESS:  
23730 SHORTLY ROAD  
GEORGETOWN DE 19947**

**CIVIL ACTION NO: JP17-11-002155**

**RICHARD SYVA, DEBORAH A SYVA, PLAINTIFF**

**VS**

**TERRY L FAGG, JAMES W FAGG, DEFENDANT**

**Plaintiff Parties:**

PLAINTIFF  
SYSTEM ID: @848335  
RICHARD SYVA  
84 HOLLETTS CORNER RD  
CLAYTON, DE 19938

PLAINTIFF  
SYSTEM ID: @2376391  
DEBORAH A SYVA  
84 HOLLETTS CORNER ROAD  
CLAYTON, DE 19938

**Defendant Parties:**

DEFENDANT  
SYSTEM ID: @2376393  
TERRY L FAGG  
19951 WIL KING ROAD  
LEWES, DE 19958

DEFENDANT  
SYSTEM ID: @2376394  
JAMES W FAGG  
19951 WIL KING ROAD  
LEWES, DE 19958

ATTORNEY FOR DEFENDANT  
SYSTEM ID: 002977  
JOHN F BRADY  
JOHN F. BRADY, P.A.  
18388 COASTAL HIGHWAY  
UNIT 9  
LEWES, DE 19958

**Other Case Parties:**

## JUSTICE OF THE PEACE COURT CIVIL POST-JUDGMENT PROCEDURES

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### **FOR CIVIL ACTIONS IN DEBT, TRESPASS OR REPLEVIN:**

#### **DEFAULT JUDGMENTS**

Default judgments are normally entered against a defendant who fails to appear in court on the scheduled trial date or to provide a written answer to a complaint as required by the summons. If a default judgment has been entered, the defendant has 15 calendar days, starting the day after the judgment is ordered by the court, to enter a motion asking that the judgment be vacated and the case be reopened so the defendant may present evidence on the case. If service was made by certified mail, return receipt requested, and the certified mail was returned unclaimed, the defendant has 30 calendar days to file a motion to vacate a default judgment. This motion must be in writing and should briefly state the reason for the request to vacate the judgment as provided by 10 Del. C. § 9538. (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) The time allowed to appeal a judgment continues to run even after a motion to vacate the default judgement is filed (see below for additional information on appeal procedures). **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

#### **NON-SUIT JUDGMENTS**

Non-suit judgments are entered against a plaintiff who fails to appear in court on the scheduled trial date. Non-suit judgments against the plaintiff are similar to default judgments against the defendant. (See above section.) If a non-suit judgment has been entered, the plaintiff has 15 calendar days, starting the day after the judgment is ordered by the court, to enter a motion requesting that the judgment be vacated and the case reopened so the plaintiff may present evidence on the case. This motion must be in writing and should briefly state the reasons for the request, as provided by 10 Del. C. § 9539. (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

**APPEALS** - Either party has 15 calendar days, starting the day after the judgment is ordered by the court, to appeal the judgment to the Court of Common Pleas for a trial de novo (new trial). 10 Del. C. § 9571. To file an appeal, the appellant (party seeking the appeal) must go to the Court of Common Pleas, fill out the appeal form and comply with other Court of Common Pleas requirements, within 15 days after the judgment is entered. A certified transcript of the Justice of the Peace Court record and the filing fee of \$125.00 must be filed by the appellant with the Court of Common Pleas within 10 days after the appeal was filed (within 25 days after the Justice of the Peace Court judgment). A certified transcript of Justice of the Peace Court record may be obtained from the Justice of the Peace Court which ordered the

judgment at least five (5) days prior to the final date of filing the transcript with the Court of Common Pleas. **A FEE OF \$10.00 MUST ACCOMPANY A CERTIFIED TRANSCRIPT REQUEST.** To prevent execution on the judgment during the time of the appeal, an appellant must apply to the Court of Common Pleas for a bond to stay the execution.

**MOTION FOR A NEW TRIAL** - Either party has 10 days, starting the day after the judgment is signed by the judge, to file a motion for a new trial as provided under Justice of the Peace Court Civil Rule 59. This motion shall be in writing and shall briefly state the reasons for the request. A motion for a new trial will be heard by the Justice of the Peace who originally heard the case. The ability of the Justice of the Peace to grant a motion for a new trial is limited. For example, the reason given for requesting a new trial may be newly discovered evidence. However, for a judge to grant a motion for a new trial based upon newly discovered evidence, the party requesting the new trial must show all of the following: (1) the newly discovered evidence is important enough to change the result in the case; (2) the evidence could not have been discovered prior to the original trial with reasonable investigation; and (3) the evidence does not merely repeat or dispute evidence presented in the original trial. **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

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#### **FOR LANDLORD/TENANT POSSESSION ACTIONS:**

##### **APPEALS**

**FOR POSSESSION OF RENTAL UNIT** - Either party has five (5) business days, starting the day after the judgment is signed by the judge, to appeal the judgment of a Justice of the Peace which relates to the possession of a rental unit and other rental matters (including back rent due) to a special Justice of the Peace court. The special court trial will be a completely new trial before three other Justices of the Peace, unless the original trial was a jury trial. The appellant (seeking to appeal to the three-judge special court) must appear in the originating Justice of the Peace Court and make the appeal in writing. **A FEE OF \$50.00 MUST ACCOMPANY THIS MOTION.** To prevent execution on the judgment during the time of the appeal, the appellant must provide a bond or other assurances, as required by the court, to demonstrate the ability to pay all court costs, money damages, and other payments ordered by the court.

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**DEFAULT OR NON-SUIT JUDGMENTS** - If the possession of the rental unit was obtained by default judgment or nonsuit in a landlord/tenant possession action, the motion to vacate the default judgment or nonsuit must be filed within 10 days from the date the judgment was entered. **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.** (This applies only to cases filed after July 17, 1996. Motions to vacate a default judgment or nonsuit in cases filed before July 17, 1996 must comply with the same time periods as for default and nonsuit judgments in civil actions in debt, trespass or replevin (see front page).)



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TERRY L FAGG  
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**Submitted: June 13, 2011  
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**Appearances:**

Richard Syva and Deborah Syva *pro se*  
John F. Brady, Esquire, Rehoboth Beach, for Defendants

**Before:** Comly, Martin and Sipple; Justices of the Peace

Comly for the Court, Sipple concurring, Martin dissenting

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**Facts**

On June 25, 2004 the landlords purchased the property in question from D & S Investment Company L.L.P. At the time of the purchase the tenants were residing at the residence. Deborah Syva and

Terry L. Fagg and Deborah Syva are sisters. The landlords purchased the property to help the tenants because the tenants could not obtain financing needed to purchase the property themselves. The tenants agreed to pay the landlords \$500.00 per month to cover the cost of the mortgage. At some point it was the intention of the parties that the tenants would be able to obtain financing and would purchase the property from the landlords. The tenants paid the agreed upon amount until September 2010. At that point they stopped making payments. On March 10, 2011 the landlords sent the tenants a notice that they owed \$3,000.00 in unpaid rent and that they had five (5) days to cure the default or the landlords would terminate the lease and file an action for summary possession and unpaid rent. The notice was sent to each of the tenants at the rental address via first class mail with a certificate of mailing. The landlords filed the summary possession action on April 21, 2011.

### **Discussion**

The tenants do not deny that they have not made any payments to the landlords since October 2010. They argue that there is not a landlord-tenant relationship and therefore this Court lacks jurisdiction on the issue of possession.

It is undisputed that Richard and Deborah Syva own the property known as 19951 Wil King Road, Lewes, Delaware. Under the definitions found at 25 *Del. C.* § 5141 Landlord shall mean, among others things, the owner of a rental unit, see 25 *Del. C.* § 5141(13)(a). The pertinent part of 25 *Del. C.* 5141(29) states, a 'Tenant' shall mean a person entitled under a rental agreement to occupy a rental unit to the exclusion of others a. To determine if the parties are landlord and tenant we must look at what constitutes a rental unit. A rental unit is defined at 25 *Del. C.* § 5141 (23). In pertinent part it states, p'Rental unit' shall mean any house building, structure or portion thereof, which is occupied, rented or leased as the home or residence of 1 or more persons.<sup>1</sup> Again it is undisputed, that Terry L. Fagg and James W. Fagg occupy the structure in question and that it is there residence. Therefore, 19951 Wil King Road, Lewes, Delaware fits the definition of a rental unit. Since it is owned by Richard and Deborah Syva they satisfy the definition of landlord. We next need to look at what constitutes a rental agreement<sup>1</sup>. A rental agreement is defined at 25 *Del. C.* § 5141(22) which states; 2'Rental agreement' shall mean and include all agreements, written or oral which establish or modify the terms, conditions, rules, regulations or any other provision concerning the use and occupancy of a rental unit.<sup>c</sup> There is no written agreement or lease. The testimony was that the Faggs agreed to pay the Syvas \$500.00 to cover the cost of the mortgage until they could

purchase the property. As long as they made the \$500.00 per month payment they were permitted to occupy the property. This oral agreement fits the definition of r Rental agreement . Since the property satisfies the definition of e Rental unit , the oral agreement satisfies the definition of p Rental agreementp, the Faggs occupy the rental unit and there is no evidence there are other persons occupying the rental unit or claiming the right to occupy the rental unit the Faggs are tenants.

We next look at whether the \$500.00 per month payment should be considered rent. The Delaware Code does not define rent. *Blacks Law Dictionary*, seventh edition, West Group, 1999, defines rent as; vConsideration paid usually periodically for the use or occupancy of property (esp. real property).d Monthly is periodically, \$500.00 is consideration and as long as these monthly payments were made the tenants were permitted to occupy the rental unit. Therefore the \$500.00 per month payments were rent.

A landlord may demand payment of rent anytime after it is due and give the tenant(s) at least five (5) days after the date the notice is given to pay the rental arrearage. If the tenants fail to cure the default, the landlord may terminate the rental agreement and bring an action for summary possession, see 25Del. C. § 5502. The March 10, 2011 letter from the landlord to the tenants satisfies the notice required by subsection 5502. Sending the notice by first class mail with certificate of mailing satisfies the service of notice requirement found at 25 Del. C. § 5113(b).

Does this Court have jurisdiction to hear this action? The owner or landlord of a rental unit may initiate a proceeding for summary possession, see 25 Del. C. § 5703. The Syvas are the owners of the rental unit and therefore are a proper party to bring this type of action. A summary possession action may be maintained under Chapter 57 if the tenant wrongfully fails to pay rent, see 25 Del. C. § 5702(2). Under the oral agreement the tenants were to pay rent of \$500.00 per month. The tenants owe rent from October 1, 2010 to the present. The tenants offered no reason why they should not have to pay the rent. Therefore the tenants wrongfully failed to pay rent. Therefore the landlords had a statutory basis for filing the summary possession action. In speaking of jurisdiction and venue 25 Del. C. § 5701 states in part, An action for summary possession in accordance with § 5702 of this title shall be maintained in the Justice of the Peace Court which hears civil cases in the county in which the premises or commercial unit is located.e The rental unit is located in Sussex County, Delaware and Justice of the Peace Court No. 17 is the only Justice of the Peace Court in Sussex

County, Delaware that hears civil cases. The case was filed in the proper court and this Court has subject matter jurisdiction under the statute.

The tenants were to pay rent of \$500.00 per month. They owe rent for eight full months, October 2010 through May 2011 and on a per diem basis for the month of June 2011. The per diem rate is \$16.67; through June 20, 2011 the rent due for June is \$333.40. The total rent due and unpaid is \$4,333.40.

### **Conclusions**

The tenants owe \$4,333.40 in unpaid rent. Therefore a judgment in the sum of \$4,333.40 plus \$40.00 court costs is granted to Richard and Deborah Syva and against Terry L. and James W. Fagg. Possession of the rental unit is also granted to the Plaintiff-landlords pursuant to 25 *Del. C.* § 5702(2). Rent continues to accrue at the rate of \$16.67 per day until the landlords obtain actual possession of the rental unit. Post judgment interest at the current legal rate of 5.75% per year.

IT IS SO ORDERED this 20th day of June, 2011

/s/ Larry Sipple

/s/ Richard Comly (SEAL)

Justice of the Peace/Court Official

### **NOTICE OF APPEAL RIGHTS**

Any party has 15 days starting the day after the judgment is signed by the judge to appeal the judgment of the Justice of the Peace Court to the Court of Common Pleas of the above county. If the judgment involves an action for summary possession in a landlord/tenant case, then either party has 5 business days, starting the day after the judgment is signed by the judge, to appeal the judgment to a three judge panel at the Justice of the Peace Court where the judgment was ordered. You must complete all of the appeal requirements within those periods. To prevent dismissal, the appeal must name all of the parties as they were originally named in the Justice of the Peace Court action. (This applies even if the action was dismissed in the Justice of the Peace Court against one or more of the parties.) Additional information on appeal procedures is found in the attached sheet entitled "Justice of the Peace Courts Civil Post-Judgment Procedures". (J.P. Civ. Form No. 14A) If no appeal is filed, parties may remove all exhibits from the Court no sooner than 16 days and no later than 30 days, from the date of this judgment. If not removed, the Court may dispose of the exhibits without further notice to the parties.

Final Date of Appeal of a Civil Case to the Court of Common Pleas is 15 days from the judgment.

Final Date for Appeal of a Landlord/Tenant case to a 3 Judge Panel is 5 days from the judgment.

**IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE  
IN AND FOR SUSSEX COUNTY  
COURT NO. 17**

**COURT ADDRESS:  
23730 SHORTLY ROAD  
GEORGETOWN DE 19947**

**CIVIL ACTION NO: JP17-11-002155**

**RICHARD K SYVA ET AL VS TERRY L FAGG ET AL**

**SYSTEM ID: @2376393  
TERRY L FAGG  
19951 WIL KING ROAD  
LEWES DE 19958**

**NOTICE OF JUDGMENT/ORDER**

The Court has entered a judgment or order in the following form:

Dissent:

The only issue in dispute in this case is whether or not a landlord-tenant relationship exists between the parties. As stated in the majority opinion, one of the plaintiffs and one of the defendants are sisters. The plaintiffs purchased this property to help the defendants because the defendants could not obtain financing to purchase the property themselves. The defendants paid \$500.00 per month for six years to cover the cost of the mortgage. The defendants, through argument of their counsel, denied that they were ever tenants of the plaintiffs. Mrs. Syva, a plaintiff, testified as follows:

This property was not purchased as a rental property. We weren't renting to my sistery She paid me to pay the mortgage until they could obtain a mortgage later. So it was never intended to be anything of a rental, nothing to that effect at all The reason that it's become a rental now is because of how the Court's required me to address possession of it for non-payment.

There are many reasons why parties can enter into an agreement for the occupancy of a house that involves the exchange of money. They do not all create a landlord-tenant relationship. The testimony of one of the plaintiffs is crystal clear that recently declaring this property a rental was simply a fiction to allow this Court to rule on the issue of possession. The Justice of the Peace Court is one of limited jurisdiction that hears landlord-tenant cases. There is certainly a remedy for the plaintiffs in this matter but the remedy does not lie in this Court because there is no landlord-tenant relationship between the parties.

IT IS SO ORDERED this 20th day of June, 2011

/s/ John Martin (SEAL)  
Justice of the Peace/Court Official

**IN THE JUSTICE OF THE PEACE COURT OF  
THE STATE OF DELAWARE, IN AND FOR SUSSEX COUNTY  
COURT NO. 17**

**COURT ADDRESS:  
23730 SHORTLY ROAD  
GEORGETOWN DE 19947**

**CIVIL ACTION NO: JP17-11-002155**

**RICHARD SYVA, DEBORAH A SYVA, PLAINTIFF**

**VS**

**TERRY L FAGG, JAMES W FAGG, DEFENDANT**

**Plaintiff Parties:**

PLAINTIFF  
SYSTEM ID: @848335  
RICHARD SYVA  
84 HOLLETT'S CORNER RD  
CLAYTON, DE 19938

PLAINTIFF  
SYSTEM ID: @2376391  
DEBORAH A SYVA  
84 HOLLETT'S CORNER ROAD  
CLAYTON, DE 19938

**Defendant Parties:**

DEFENDANT  
SYSTEM ID: @2376393  
TERRY L FAGG  
19951 WIL KING ROAD  
LEWES, DE 19958

DEFENDANT  
SYSTEM ID: @2376394  
JAMES W FAGG  
19951 WIL KING ROAD  
LEWES, DE 19958

ATTORNEY FOR DEFENDANT  
SYSTEM ID: 002977  
JOHN F BRADY  
JOHN F. BRADY, P.A.  
18388 COASTAL HIGHWAY  
UNIT 9  
LEWES, DE 19958

**Other Case Parties:**

## JUSTICE OF THE PEACE COURT CIVIL POST-JUDGMENT PROCEDURES

*[This information is not legal advice and not a substitute for seeking legal advice from an attorney. This information is not binding on the court if incorrect or misunderstood. It relates to frequently asked questions concerning post-judgment procedures but does not address all of the possible procedures and may not apply in your particular case. Forms for these procedures may be obtained from any Justice of the Peace Civil Court. All motions must include the name of the court, the names of the parties, the case number, the date the motion is filed with the Justice of the Peace Court and a title indicating the reason for the motion. Court costs or fees must accompany the motion, unless the person has requested, and the court determined, that the person may proceed in forma pauperis (without paying costs or fees because they have no money to pay).]*

### **FOR CIVIL ACTIONS IN DEBT, TRESPASS OR REPLEVIN:**

#### **DEFAULT JUDGMENTS**

Default judgments are normally entered against a defendant who fails to appear in court on the scheduled trial date or to provide a written answer to a complaint as required by the summons. If a default judgment has been entered, the defendant has 15 calendar days, starting the day after the judgment is ordered by the court, to enter a motion asking that the judgment be vacated and the case be reopened so the defendant may present evidence on the case. If service was made by certified mail, return receipt requested, and the certified mail was returned unclaimed, the defendant has 30 calendar days to file a motion to vacate a default judgment. This motion must be in writing and should briefly state the reason for the request to vacate the judgment as provided by 10 Del. C. § 9538. (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) The time allowed to appeal a judgment continues to run even after a motion to vacate the default judgement is filed (see below for additional information on appeal procedures). **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

#### **NON-SUIT JUDGMENTS**

Non-suit judgments are entered against a plaintiff who fails to appear in court on the scheduled trial date. Non-suit judgments against the plaintiff are similar to default judgments against the defendant. (See above section.) If a non-suit judgment has been entered, the plaintiff has 15 calendar days, starting the day after the judgment is ordered by the court, to enter a motion requesting that the judgment be vacated and the case reopened so the plaintiff may present evidence on the case. This motion must be in writing and should briefly state the reasons for the request, as provided by 10 Del. C. § 9539. (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

**APPEALS** - Either party has 15 calendar days, starting the day after the judgment is ordered by the court, to appeal the judgment to the Court of Common Pleas for a trial de novo (new trial). 10 Del. C. § 9571. To file an appeal, the appellant (party seeking the appeal) must go to the Court of Common Pleas, fill out the appeal form and comply with other Court of Common Pleas requirements, within 15 days after the judgment is entered. A certified transcript of the Justice of the Peace Court record and the filing fee of \$125.00 must be filed by the appellant with the Court of Common Pleas within 10 days after the appeal was filed (within 25 days after the Justice of the Peace Court judgment). A certified transcript of Justice of the Peace Court record may be obtained from the Justice of the Peace Court which ordered the

judgment at least five (5) days prior to the final date of filing the transcript with the Court of Common Pleas. **A FEE OF \$10.00 MUST ACCOMPANY A CERTIFIED TRANSCRIPT REQUEST.** To prevent execution on the judgment during the time of the appeal, an appellant must apply to the Court of Common Pleas for a bond to stay the execution.

**MOTION FOR A NEW TRIAL** - Either party has 10 days, starting the day after the judgment is signed by the judge, to file a motion for a new trial as provided under Justice of the Peace Court Civil Rule 59. This motion shall be in writing and shall briefly state the reasons for the request. A motion for a new trial will be heard by the Justice of the Peace who originally heard the case. The ability of the Justice of the Peace to grant a motion for a new trial is limited. For example, the reason given for requesting a new trial may be newly discovered evidence. However, for a judge to grant a motion for a new trial based upon newly discovered evidence, the party requesting the new trial must show all of the following: (1) the newly discovered evidence is important enough to change the result in the case; (2) the evidence could not have been discovered prior to the original trial with reasonable investigation; and (3) the evidence does not merely repeat or dispute evidence presented in the original trial. **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

In civil cases, if a motion for a new trial is filed after 10 days from the date of judgment, the time for filing the appeal continues to run and the 15 days allowed for the appeal may pass before any action is taken by the Court. If that happens, the party may be unable to file an appeal. If the motion is filed within 10 days from the date of judgment, the 15-day time for appeal does not include the days between the filing of the motion for a new trial and the judge's decision on the motion.

#### **FOR LANDLORD/TENANT POSSESSION ACTIONS:**

##### **APPEALS**

**FOR POSSESSION OF RENTAL UNIT** - Either party has five (5) business days, starting the day after the judgment is signed by the judge, to appeal the judgment of a Justice of the Peace which relates to the possession of a rental unit and other rental matters (including back rent due) to a special Justice of the Peace court. The special court trial will be a completely new trial before three other Justices of the Peace, unless the original trial was a jury trial. The appellant (seeking to appeal to the three-judge special court) must appear in the originating Justice of the Peace Court and make the appeal in writing. **A FEE OF \$50.00 MUST ACCOMPANY THIS MOTION.** To prevent execution on the judgment during the time of the appeal, the appellant must provide a bond or other assurances, as required by the court, to demonstrate the ability to pay all court costs, money damages, and other payments ordered by the court.

**FOR DEBT (Rent Only)** - The procedures for appealing or filing a motion for a new trial in a civil debt action explained above apply to an appeal of a landlord/tenant action involving rent or money damages only (and not possession of the rental unit).

**DEFAULT OR NON-SUIT JUDGMENTS** - If the possession of the rental unit was obtained by default judgment or nonsuit in a landlord/tenant possession action, the motion to vacate the default judgment or nonsuit must be filed within 10 days from the date the judgment was entered. **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.** (This applies only to cases filed after July 17, 1996. Motions to vacate a default judgment or nonsuit in cases filed before July 17, 1996 must comply with the same time periods as for default and nonsuit judgments in civil actions in debt, trespass or replevin (see front page).)



**IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE  
IN AND FOR SUSSEX COUNTY  
COURT NO. 17**

**COURT ADDRESS:**  
**23730 SHORTLY ROAD**  
**GEORGETOWN DE 19947**

**CIVIL ACTION NO: JP17-11-002155**

**RICHARD K SYVA ET AL VS TERRY L FAGG ET AL**

**SYSTEM ID: @2376394**  
**JAMES W FAGG**  
**19951 WIL KING ROAD**  
**LEWES DE 19958**

**Submitted:** June 13, 2011

**Decided:** June 20, 2011

**Appearances:**

Richard Syva and Deborah Syva *pro se*  
John F. Brady, Esquire, Rehoboth Beach, for Defendants

**Before:** Comly, Martin and Sipple; Justices of the Peace

Comly for the Court, Sipple concurring, Martin dissenting

**NOTICE OF JUDGMENT/ORDER**

The Court has entered a judgment or order in the following form:

**ORDER**

This action is an appeal of a summary possession action pursuant to 25 *Del. C.* § 5717(a).

Richard and Deborah Syva, hereinafter landlords, filed a summary possession action seeking a judgment for unpaid rent and possession of a rental unit known as 19951 Wil King Road, Lewes, Delaware pursuant to 25 *Del. C.* § 5702(2). Terry L. and James W. Fagg, hereinafter tenants, deny that there is a landlord-tenant relationship and dispute the Syva's right to possession of the property.

**Facts**

On June 25, 2004 the landlords purchased the property in question from D & S Investment Company L.L.P. At the time of the purchase the tenants were residing at the residence. Deborah Syva and

Terry L. Fagg are sisters. The landlords purchased the property to help the tenants because the tenants could not obtain financing needed to purchase the property themselves. The tenants agreed to pay the landlords \$500.00 per month to cover the cost of the mortgage. At some point it was the intention of the parties that the tenants would be able to obtain financing and would purchase the property from the landlords. The tenants paid the agreed upon amount until September 2010. At that point they stopped making payments. On March 10, 2011 the landlords sent the tenants a notice that they owed \$3,000.00 in unpaid rent and that they had five (5) days to cure the default or the landlords would terminate the lease and file an action for summary possession and unpaid rent. The notice was sent to each of the tenants at the rental address via first class mail with a certificate of mailing. The landlords filed the summary possession action on April 21, 2011.

### **Discussion**

The tenants do not deny that they have not made any payments to the landlords since October 2010. They argue that there is not a landlord-tenant relationship and therefore this Court lacks jurisdiction on the issue of possession.

It is undisputed that Richard and Deborah Syva own the property known as 19951 Wil King Road, Lewes, Delaware. Under the definitions found at 25 *Del. C.* § 5141 Landlord shall mean, among others things, the owner of a rental unit, see 25 *Del. C.* § 5141(13)(a). The pertinent part of 25 *Del. C.* 5141(29) states, a 'Tenant' shall mean a person entitled under a rental agreement to occupy a rental unit to the exclusion of others a. To determine if the parties are landlord and tenant we must look at what constitutes a rental unit. A rental unit is defined at 25 *Del. C.* § 5141 (23). In pertinent part it states, p'Rental unit' shall mean any house building, structure or portion thereof, which is occupied, rented or leased as the home or residence of 1 or more persons.l Again it is undisputed, that Terry L. Fagg and James W. Fagg occupy the structure in question and that it is there residence. Therefore, 19951 Wil King Road, Lewes, Delaware fits the definition of a arental uniti . Since it is owned by Richard and Deborah Syva they satisfy the definition of landlord. We next need to look at what constitutes a hrental agreementl . A aRental agreementh is defined at 25 *Del. C.* § 5141(22) which states; 2'Rental agreement' shall mean and include all agreements, written or oral which establish or modify the terms, conditions, rules, regulations or any other provision concerning the use and occupancy of a rental unit.c There is no written agreement or lease. The testimony was that the Faggs agreed to pay the Syvas \$500.00 to cover the cost of the mortgage until they could

purchase the property. As long as they made the \$500.00 per month payment they were permitted to occupy the property. This oral agreement fits the definition of r Rental agreement . Since the property satisfies the definition of e Rental unit , the oral agreement satisfies the definition of p Rental agreementp, the Faggs occupy the rental unit and there is no evidence there are other persons occupying the rental unit or claiming the right to occupy the rental unit the Faggs are tenants.

We next look at whether the \$500.00 per month payment should be considered rent. The Delaware Code does not define rent. *Blacks Law Dictionary*, seventh edition, West Group, 1999, defines rent as; vConsideration paid usually periodically for the use or occupancy of property (esp. real property).d Monthly is periodically, \$500.00 is consideration and as long as these monthly payments were made the tenants were permitted to occupy the rental unit. Therefore the \$500.00 per month payments were rent.

A landlord may demand payment of rent anytime after it is due and give the tenant(s) at least five (5) days after the date the notice is given to pay the rental arrearage. If the tenants fail to cure the default, the landlord may terminate the rental agreement and bring an action for summary possession, see 25*Del. C.* § 5502. The March 10, 2011 letter from the landlord to the tenants satisfies the notice required by subsection 5502. Sending the notice by first class mail with certificate of mailing satisfies the service of notice requirement found at 25 *Del. C.* § 5113(b).

Does this Court have jurisdiction to hear this action? The owner or landlord of a rental unit may initiate a proceeding for summary possession, see 25 *Del. C.* § 5703. The Syvas are the owners of the rental unit and therefore are a proper party to bring this type of action. A summary possession action may be maintained under Chapter 57 if the tenant wrongfully fails to pay rent, see 25 *Del. C.* § 5702(2). Under the oral agreement the tenants were to pay rent of \$500.00 per month. The tenants owe rent from October 1, 2010 to the present. The tenants offered no reason why they should not have to pay the rent. Therefore the tenants wrongfully failed to pay rent. Therefore the landlords had a statutory basis for filing the summary possession action. In speaking of jurisdiction and venue 25 *Del. C.* § 5701 states in part, An action for summary possession in accordance with § 5702 of this title shall be maintained in the Justice of the Peace Court which hears civil cases in the county in which the premises or commercial unit is located.e The rental unit is located in Sussex County, Delaware and Justice of the Peace Court No. 17 is the only Justice of the Peace Court in Sussex

County, Delaware that hears civil cases. The case was filed in the proper court and this Court has subject matter jurisdiction under the statute.

The tenants were to pay rent of \$500.00 per month. They owe rent for eight full months, October 2010 through May 2011 and on a per diem basis for the month of June 2011. The per diem rate is \$16.67; through June 20, 2011 the rent due for June is \$333.40. The total rent due and unpaid is \$4,333.40.

### **Conclusions**

The tenants owe \$4,333.40 in unpaid rent. Therefore a judgment in the sum of \$4,333.40 plus \$40.00 court costs is granted to Richard and Deborah Syva and against Terry L. and James W. Fagg. Possession of the rental unit is also granted to the Plaintiff-landlords pursuant to 25 *Del. C.* § 5702(2). Rent continues to accrue at the rate of \$16.67 per day until the landlords obtain actual possession of the rental unit. Post judgment interest at the current legal rate of 5.75% per year.

IT IS SO ORDERED this 20th day of June, 2011  
/s/ Larry Sipple  
/s/ Richard Comly (SEAL)

Justice of the Peace/Court Official

### **NOTICE OF APPEAL RIGHTS**

Any party has 15 days starting the day after the judgment is signed by the judge to appeal the judgment of the Justice of the Peace Court to the Court of Common Pleas of the above county. If the judgment involves an action for summary possession in a landlord/tenant case, then either party has 5 business days, starting the day after the judgment is signed by the judge, to appeal the judgment to a three judge panel at the Justice of the Peace Court where the judgment was ordered. You must complete all of the appeal requirements within those periods. To prevent dismissal, the appeal must name all of the parties as they were originally named in the Justice of the Peace Court action. (This applies even if the action was dismissed in the Justice of the Peace Court against one or more of the parties.) Additional information on appeal procedures is found in the attached sheet entitled "Justice of the Peace Courts Civil Post-Judgment Procedures". (J.P. Civ. Form No. 14A) If no appeal is filed, parties may remove all exhibits from the Court no sooner than 16 days and no later than 30 days, from the date of this judgment. If not removed, the Court may dispose of the exhibits without further notice to the parties.

Final Date of Appeal of a Civil Case to the Court of Common Pleas is 15 days from the judgment.

Final Date for Appeal of a Landlord/Tenant case to a 3 Judge Panel is 5 days from the judgment.

**IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE  
IN AND FOR SUSSEX COUNTY  
COURT NO. 17**

**COURT ADDRESS:  
23730 SHORTLY ROAD  
GEORGETOWN DE 19947**

**CIVIL ACTION NO: JP17-11-002155**

**RICHARD K SYVA ET AL VS TERRY L FAGG ET AL**

**SYSTEM ID: @2376394  
JAMES W FAGG  
19951 WIL KING ROAD  
LEWES DE 19958**

**NOTICE OF JUDGMENT/ORDER**

The Court has entered a judgment or order in the following form:

Dissent:

The only issue in dispute in this case is whether or not a landlord-tenant relationship exists between the parties. As stated in the majority opinion, one of the plaintiffs and one of the defendants are sisters. The plaintiffs purchased this property to help the defendants because the defendants could not obtain financing to purchase the property themselves. The defendants paid \$500.00 per month for six years to cover the cost of the mortgage. The defendants, through argument of their counsel, denied that they were ever tenants of the plaintiffs. Mrs. Syva, a plaintiff, testified as follows:

This property was not purchased as a rental property. We weren't renting to my sistery She paid me to pay the mortgage until they could obtain a mortgage later. So it was never intended to be anything of a rental, nothing to that effect at allt The reason that it's become a rental now is because of how the Court's required me to address possession of it for non-payment.

There are many reasons why parties can enter into an agreement for the occupancy of a house that involves the exchange of money. They do not all create a landlord-tenant relationship. The testimony of one of the plaintiffs is crystal clear that recently declaring this property a rental was simply a fiction to allow this Court to rule on the issue of possession. The Justice of the Peace Court is one of limited jurisdiction that hears landlord-tenant cases. There is certainly a remedy for the plaintiffs in this matter but the remedy does not lie in this Court because there is no landlord-tenant relationship between the parties.

IT IS SO ORDERED this 20th day of June, 2011

/s/ John Martin (SEAL)

Justice of the Peace/Court Official

**IN THE JUSTICE OF THE PEACE COURT OF  
THE STATE OF DELAWARE, IN AND FOR SUSSEX COUNTY  
COURT NO. 17**

**COURT ADDRESS:  
23730 SHORTLY ROAD  
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**CIVIL ACTION NO: JP17-11-002155**

**RICHARD SYVA, DEBORAH A SYVA, PLAINTIFF**

**VS**

**TERRY L FAGG, JAMES W FAGG, DEFENDANT**

**Plaintiff Parties:**

PLAINTIFF  
SYSTEM ID: @848335  
RICHARD SYVA  
84 HOLLETT'S CORNER RD  
CLAYTON, DE 19938

PLAINTIFF  
SYSTEM ID: @2376391  
DEBORAH A SYVA  
84 HOLLETT'S CORNER ROAD  
CLAYTON, DE 19938

**Defendant Parties:**

DEFENDANT  
SYSTEM ID: @2376393  
TERRY L FAGG  
19951 WIL KING ROAD  
LEWES, DE 19958

DEFENDANT  
SYSTEM ID: @2376394  
JAMES W FAGG  
19951 WIL KING ROAD  
LEWES, DE 19958

ATTORNEY FOR DEFENDANT  
SYSTEM ID: 002977  
JOHN F BRADY  
JOHN F. BRADY, P.A.  
18388 COASTAL HIGHWAY  
UNIT 9  
LEWES, DE 19958

**Other Case Parties:**

## JUSTICE OF THE PEACE COURT CIVIL POST-JUDGMENT PROCEDURES

*[This information is not legal advice and not a substitute for seeking legal advice from an attorney. This information is not binding on the court if incorrect or misunderstood. It relates to frequently asked questions concerning post-judgment procedures but does not address all of the possible procedures and may not apply in your particular case. Forms for these procedures may be obtained from any Justice of the Peace Civil Court. All motions must include the name of the court, the names of the parties, the case number, the date the motion is filed with the Justice of the Peace Court and a title indicating the reason for the motion. Court costs or fees must accompany the motion, unless the person has requested, and the court determined, that the person may proceed in forma pauperis (without paying costs or fees because they have no money to pay).]*

### **FOR CIVIL ACTIONS IN DEBT, TRESPASS OR REPLEVIN:**

#### **DEFAULT JUDGMENTS**

Default judgments are normally entered against a defendant who fails to appear in court on the scheduled trial date or to provide a written answer to a complaint as required by the summons. If a default judgment has been entered, the defendant has 15 calendar days, starting the day after the judgment is ordered by the court, to enter a motion asking that the judgment be vacated and the case be reopened so the defendant may present evidence on the case. If service was made by certified mail, return receipt requested, and the certified mail was returned unclaimed, the defendant has 30 calendar days to file a motion to vacate a default judgment. This motion must be in writing and should briefly state the reason for the request to vacate the judgment as provided by 10 Del. C. § 9538. (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) The time allowed to appeal a judgment continues to run even after a motion to vacate the default judgement is filed (see below for additional information on appeal procedures). **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

#### **NON-SUIT JUDGMENTS**

Non-suit judgments are entered against a plaintiff who fails to appear in court on the scheduled trial date. Non-suit judgments against the plaintiff are similar to default judgments against the defendant. (See above section.) If a non-suit judgment has been entered, the plaintiff has 15 calendar days, starting the day after the judgment is ordered by the court, to enter a motion requesting that the judgment be vacated and the case reopened so the plaintiff may present evidence on the case. This motion must be in writing and should briefly state the reasons for the request, as provided by 10 Del. C. § 9539. (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

**APPEALS** - Either party has 15 calendar days, starting the day after the judgment is ordered by the court, to appeal the judgment to the Court of Common Pleas for a trial de novo (new trial). 10 Del. C. § 9571. To file an appeal, the appellant (party seeking the appeal) must go to the Court of Common Pleas, fill out the appeal form and comply with other Court of Common Pleas requirements, within 15 days after the judgment is entered. A certified transcript of the Justice of the Peace Court record and the filing fee of \$125.00 must be filed by the appellant with the Court of Common Pleas within 10 days after the appeal was filed (within 25 days after the Justice of the Peace Court judgment). A certified transcript of Justice of the Peace Court record may be obtained from the Justice of the Peace Court which ordered the

judgment at least five (5) days prior to the final date of filing the transcript with the Court of Common Pleas. **A FEE OF \$10.00 MUST ACCOMPANY A CERTIFIED TRANSCRIPT REQUEST.** To prevent execution on the judgment during the time of the appeal, an appellant must apply to the Court of Common Pleas for a bond to stay the execution.

**MOTION FOR A NEW TRIAL** - Either party has 10 days, starting the day after the judgment is signed by the judge, to file a motion for a new trial as provided under Justice of the Peace Court Civil Rule 59. This motion shall be in writing and shall briefly state the reasons for the request. A motion for a new trial will be heard by the Justice of the Peace who originally heard the case. The ability of the Justice of the Peace to grant a motion for a new trial is limited. For example, the reason given for requesting a new trial may be newly discovered evidence. However, for a judge to grant a motion for a new trial based upon newly discovered evidence, the party requesting the new trial must show all of the following: (1) the newly discovered evidence is important enough to change the result in the case; (2) the evidence could not have been discovered prior to the original trial with reasonable investigation; and (3) the evidence does not merely repeat or dispute evidence presented in the original trial. **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

In civil cases, if a motion for a new trial is filed after 10 days from the date of judgment, the time for filing the appeal continues to run and the 15 days allowed for the appeal may pass before any action is taken by the Court. If that happens, the party may be unable to file an appeal. If the motion is filed within 10 days from the date of judgment, the 15-day time for appeal does not include the days between the filing of the motion for a new trial and the judge's decision on the motion.

#### **FOR LANDLORD/TENANT POSSESSION ACTIONS:**

##### **APPEALS**

**FOR POSSESSION OF RENTAL UNIT** - Either party has five (5) business days, starting the day after the judgment is signed by the judge, to appeal the judgment of a Justice of the Peace which relates to the possession of a rental unit and other rental matters (including back rent due) to a special Justice of the Peace court. The special court trial will be a completely new trial before three other Justices of the Peace, unless the original trial was a jury trial. The appellant (seeking to appeal to the three-judge special court) must appear in the originating Justice of the Peace Court and make the appeal in writing. **A FEE OF \$50.00 MUST ACCOMPANY THIS MOTION.** To prevent execution on the judgment during the time of the appeal, the appellant must provide a bond or other assurances, as required by the court, to demonstrate the ability to pay all court costs, money damages, and other payments ordered by the court.

**FOR DEBT (Rent Only)** - The procedures for appealing or filing a motion for a new trial in a civil debt action explained above apply to an appeal of a landlord/tenant action involving rent or money damages only (and not possession of the rental unit).

**DEFAULT OR NON-SUIT JUDGMENTS** - If the possession of the rental unit was obtained by default judgment or nonsuit in a landlord/tenant possession action, the motion to vacate the default judgment or nonsuit must be filed within 10 days from the date the judgment was entered. **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.** (This applies only to cases filed after July 17, 1996. Motions to vacate a default judgment or nonsuit in cases filed before July 17, 1996 must comply with the same time periods as for default and nonsuit judgments in civil actions in debt, trespass or replevin (see front page).)