IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

RITA CARNEVALE,	)	
Plaintiff,	)	
	)	
v.	)	**C.A. No. CPU4-11-002141**
	)	
MICHELLE GAEGER,	)	
STEVE GRIMES AND	)	
ERIKA GRAHAM,	)	
Defendants.	)	

Rita M. Carnevale
717 N. Union Street
Wilmington, DE 19805
Pro-Se Plaintiff

Donald R. Roberts, Esq.
Roberts' Law, LLC
900 Kirkwood Highway
Elsmere, DE 19805
Attorney for Defendants

ORDER AND OPINION ON PLAINTIFF'S MOTION TO REOPEN

Plaintiff Rita Carnevale ("Plaintiff") moves this Court to "Reopen," i.e. reconsider its ruling of August 19, 2011 dismissing Plaintiff's claims with prejudice as barred by the doctrine of *res judicata*. The Court finds that oral argument is not necessary. This is the Court's decision on Plaintiff's motion.

Facts and Procedural History

On July 12, 2010, Plaintiff filed a landlord/tenant suit in the Justice of the Peace Court against Defendants, Michelle Gaeger, Steve Grimes and Ericka Graham ("Defendants") seeking summary possession of a rental unit (JP13-10-010432). On September 22, 2010, following a trial on the merits, The Honorable Katharine Ross entered judgment in favor of Defendants, concluding that Plaintiff failed to follow the lease termination procedures prescribed by the Landlord Tenant Code, specifically 25 *Del. C.* § 5513(a). Plaintiff timely appealed the matter to

a Three Judge Panel in the Justice of the Peace Court. Following the *de novo* trial, the Panel issued a written order dated November 24, 2010 finding in favor of Defendants. The Panel determined that Plaintiff had failed to meet her burden of proof that the lease violations constituted material breaches of the agreement to justify the relief sought. The Panel further held that Plaintiff's additional claim for unpaid rent could not be sustained on appeal. Plaintiff failed to provide the statutorily mandated notice of intent to raise this new claim on appeal and, as such, the Panel declined to consider it.

On November 30, 2010, Plaintiff filed a second summary possession action in the Justice of the Peace Court. Her prayer for relief presented a combined claim for possession and related issues for monetary relief, including back rent, money damages for lease violations, physical damage to the unit, late fees, court costs and interest (JP13-10-017937). On January 11, 2011, The Honorable Robert Lopez dismissed the action due to Plaintiff's failure to comply with proof of mailing requirements prescribed by the Landlord Tenant Code. Along with the Notice of Dismissal, the Court included a Notice of Appeal Rights explaining the deadlines for appeals to the Court of Common Pleas (15 days) or to a Three Judge Panel in the Justice of the Peace Court (5 days) "if the judgment involves an action for summary possession . . . ." The Court noted in its written order "Plaintiff walked out in middle of proceedings." On January 18, 2011, Plaintiff timely noticed an appeal of the final judgment entered on January 12, 2011 to a Three Judge Panel per 25 *Del. C.* § 5717, but later withdrew that request on February 3, 2011.

Neither a Notice of Appeal nor any other indication of intent to appeal was filed with this Court within the required period. However, on March 31, 2011 Plaintiff filed a debt action in this Court seeking damages for unpaid rent, property damage to the rental unit requiring repair, interest and costs. The Complaint did not seek summary possession. It should be noted that,

while Plaintiff did not follow proper filing procedures and did not file her Notice of Appeal or Complaint within the required deadline, Plaintiff referred to the parties in her caption as "Plaintiff Below" and "Defendants Below."

On July 15, 2011, Defendants moved for summary judgment. On August 19, 2011, this Court dismissed the action with prejudice, holding that the doctrine of *res judicata* barred Plaintiff's action in this Court. On August 25, 2011, Plaintiff filed the present "Motion to Reopen."

Discussion

Under Delaware law, "[a] motion for reargument is the proper device for seeking reconsideration by the Trial Court of its findings of fact, conclusions of law or judgment . . . ."[1] The manifest purpose underlying Rule 59 motions is to afford the Trial Court an opportunity to correct errors prior to appeal.[2] Here, for analytical purposes, because Plaintiff essentially seeks reconsideration of this Court's decision to dismiss her claims, the Court will treat Plaintiff's "Motion to Reopen" as a Motion for Reargument filed pursuant to CCP Civ. R. 59(e). CCP Civ. R. 59(e) provides:

> (e) Reargruments. -- A motion for reargument shall be served and filed within 5 days after the filing of the Court's opinion or decision. The motion shall briefly and distinctly state the grounds therefor. Within 5 days after service of such motion, the opposing party may serve and file a brief answer to each ground asserted in the motion. The Court will determine from the motion and answer whether reargument will be granted. A copy of the motion and answer shall be furnished forthwith by the respective parties serving them to the Judge involved.

[1] *Hessler v. Farrell,* 260 A.2d 701 (Del. 1969).
[2] *Beatty v. Smedley,* 2003 WL 2335349, at *1 (Del. Super. Ct.) (citing *Cummings v. Jimmy Grille, Inc.*, 2000 WL 1211167, at *1 (Del. Super. Ct.)).

The applicable standard of review for a Rule 59(e) motion for reargument is well-established.[3] A motion for reargument will be denied unless the Court has "overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision"[4] A motion for reargument should not be used to "rehash the arguments already decided by the Court, nor will the Court consider new arguments that the movant could have previously raised."[5] The movant shoulders "the burden of demonstrating newly discovered evidence, a change in the law or manifest injustice."[6] The granting or denial of a Rule 59(e) motion rests within the sound discretion of the trial court.[7]

By her motion, Plaintiff contends that "[o]nly a small fraction of what is currently being sought was previously sought in JP Court. The majority of the current issues are <u>new</u> issues that are irrelevant to the former issues"[8] -- the key words being "small fraction" and "majority." By virtue of this statement, Plaintiff appears to concede that a portion of her pending action was litigated previously in the lower court. However, notwithstanding this observation, the Court infers that Plaintiff believes it should permit the claim to continue since Plaintiff failed to sue for all of her damages in either of the two prior lower court proceedings which involved the same issues.

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[3] *London v. Alpine Contractors*, 2010 WL 1138818, at *1 (Del. Super. Ct.)(citing *Reid v. Hindt*, 2008 WL 2943373, at *1 (Del. Super. Ct.)).
[4] *Reid v. Hindt*, 2008 WL 435085 at *1 (citing *Lamourine v. Mazda Motor of Am.*, 2007 WL 3379048 (Del. Super. Ct.))
[5] *Id.* (citing *State v. Brooks*, 2008 WL 435085, at *1 (Del. Super. Ct.); *Steadfast Ins. Co. v. Eon Labs MFG., Inc.*, 1999 WL 743982 (Del. Super. Ct.).
[6] *Id.*
[7] *Brown v. Weiler*, 719 A.2d 489 (Del. 1998).
[8] Plaintiff's Motion to Reopen Case submitted to this Court on August 25, 2011.

Conversely, Defendants advance two compelling arguments. First, they contend that Plaintiff failed to satisfy the threshold requirement by identifying how this Court misapprehended the law or facts in a manner that would alter the outcome of its decision had it been correctly or fully informed. Second, Defendants reiterate the position argued at the hearing that Plaintiff's present claims are barred by the doctrine of *res judicata.* This Court agrees on both counts and, in reviewing the record, this Court finds no basis to disturb its previous ruling.

As a preliminary matter, Defendant is correct that Plaintiff has not alleged, much less substantiated, that this Court overlooked any controlling precedent or legal principles, or otherwise misapprehended the law or facts such that its decision would be different had it been correctly informed. Likewise, Plaintiff has simply reiterated her previous argument presented to this Court on August 22, 2011, which now is distilled to a one paragraph submission.

Second, notwithstanding this technical defect, as a threshold matter, this Court is of the opinion that it lacks subject-matter jurisdiction in this case. The Rules of procedure are to be administered so as to secure the just determination of every proceeding.[9] Under Delaware law, subject-matter jurisdiction is "an indispensable ingredient of a judicial proceeding."[10] Indeed, it is a question of law that can be raised by the Court *sua sponte* at any time,[11] and it can neither be waived nor conferred by consent of the parties.[12]

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[9] *Nti v. Hall*, 2007 WL 3231601, at *1 (Del. Com. Pl. Aug. 24, 2007).
[10] *Textel v. Commercial Fiberglass, et al.*, 1987 WL 19717, at *1 (Del. Super. Ct. Nov. 3, 1987).
[11] *See* CCP Civ. R. 41(e) wherein this Court may "order a complaint, petition or appeal dismissed, sua sponte, without notice, notwithstanding the provisions of Rule 41(e), when such complaint, petition or appeal manifestly fails on its face to invoke the jurisdiction of this Court and where the Court concludes, in the exercise of its discretion, that the giving of notice would serve no meaningful purpose and that any response would be of no avail."
[12] *Textel*, 1987 WL 19717 at *2; *Mehiel v. Solo Cup Co*, 2005 WL 1252348, at *6 (Del. Ch. May 13, 2005)(although neither party questioned the Court's jurisdiction, the Court expressed "confiden[ce] in its ability to dismiss an action *sua sponte* when it discovers it lacks subject-matter jurisdiction.").

It should be noted that Plaintiff is no stranger to the court system and is a savvy litigant. As an aggrieved party in a summary possession case, Plaintiff may request in writing within five (5) days after judgment a trial *de novo* before a special court comprised of three Justices of the Peace, other than those who presided at trial.[13] Said notification is included *pro forma* in the Court Order. Moreover, under section 5717(b) of Title 25, Plaintiff may include claims not raised in the initial proceeding, provided that the proper notice is afforded. It would be difficult for this Court to believe that Plaintiff is not aware of this right, since she exercised it twice before. The first time Plaintiff lost on appeal to the Panel, and the second time she withdrew her notice of appeal to the Panel before it could hear the matter. Absent any other logical explanation, Plaintiff appears to have made a conscious decision to deviate from the statutorily prescribed rights afforded to her in an action primarily seeking possession, despite the existence of the dual debt and damage claims. The proper venue for an appeal from the magistrate's decision to dismiss her summary possession and related damages claims was with a Three Judge panel, not with the Court of Common Pleas.

As an aside, Plaintiff also had the right to file a petition in *certiorari* to the Superior Court to review errors of law and to determine whether the Justice of the Peace Court exceeded its jurisdiction.[14] On a *certiorari* petition, the Superior Court may not correct mistakes of fact or an erroneous conclusion from the facts, even though the interpretation given to the facts or the law by the lower court may have been erroneous.[15] This Court assumes that Plaintiff did not exercise that right upon dismissal of her second claim in the Justice of the Peace Court. .

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[13] 25 *Del. C.* § 5717(a) Stay of proceedings on appeal; *Cochran v. Stigler*, 2008 WL 5176550, at *1 (Del. Com. Pl. Oct. 30, 2008).
[14] *Justice of the Peace Court No. 1 v. Leon N. Weiner & Assoc.*, 1990 WL 123437, at *2-3 (Del. Super. Ct. Aug. 10, 1990).
[15] *Id.* at *3.

Finally, even if this Court were of the opinion that jurisdiction is proper, Plaintiff's claims before this Court are barred by the doctrine of *res judicata*. Plaintiff opted to withdraw her timely filed appeal to the Panel, and then waited almost two months to file essentially the same cause of action disguised as a debt action, clearly an effort to circumvent the fatal timing and jurisdictional defects.[16] As stated previously, Plaintiff's Complaint filed in this Court identifies the litigants as "Plaintiff Below" and "Defendants Below." Captioning the suit in this manner further evidences an intent by Plaintiff to resurrect a final judgment through the process of appeal.

Under Delaware law, *res judicata* operates to bar a claim where a five-part test has been satisfied: 1) the original court had jurisdiction over the subject matter and the parties; 2) the parties to the original action were the same as those parties, or in privity in the case at bar; 3) the original cause of action on the issues necessarily decided, as in the present action, were the same as in the present action; 4) the issues in the prior action must have been decided adversely to the plaintiffs in the case at bar; and 5) the decree in the prior action was a final decree.[17] *Res judicata* is "judicially-created and is based on public policy requiring a definite end to litigation."[18] This doctrine exists "for many reasons, but among the most important are to prevent vexatious litigation and to promote the stability and finality of judicial decrees."[19] The Delaware Supreme Court has observed that "the procedural 'bar of *res judicata* extends to all issues which might have been raised and decided in the first suit as well as to all issues that actually were

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[16] As stated in *Jarmon v. Owner's Management Co,, 2004 WL 1859988, *1, * 2 (Del. Com. Pl. May 17, 2004), "an appellant cannot sever the rent claim for an appeal to this Court merely because he did not obtain the desired result in the court below."*

[17] *Dover Historical Society, Inc v. City of Dover Planning Commission,* 902 A.2d 1084, 1092 (Del. 2006).

[18] *Maldonado v. Flynn,* 417 A.2d 378, 381 (Del. Ch. 1980).

[19] *Id.*

decided.'".[20] Applying the foregoing principles to the facts presented, this Court holds that a sufficient basis existed to find that Plaintiff's claims alleged in this matter should be precluded by the doctrine of *res judicata.*

First, the Delaware legislature has vested exclusive jurisdiction of landlord tenant controversies, most specifically summary possession proceedings, in the Justice of the Peace Courts.[22] Even though this Plaintiff combines claims for possession, unpaid rent and other related matters, the Justice of the Peace Court possessed proper jurisdiction. There was no separate debt action.[23]

Second, this Plaintiff was a party to both actions below, as were the Defendants.

Third, the original cause of action and the allegations contained therein which were dismissed by the Justice of the Peace Court, are substantively the same issues set forth in the action filed in this Court. The record below reflects that, as part of her appeal to the Panel, she filed a Bill of Particulars on January 21, 2011. That Bill of Particulars identifies claims for summary possession, unpaid rent and associated late fees, additional rent for property damage, false criminal allegations and misdemeanor harassment conviction, court costs and interest. .

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[20] *Cassidy v. Cassidy*, 689 A.2d 1182, 1185 (Del. 1997)(quoting *Foltz v. Pullman, Inc.*, 319 A.2d 38, 40 (Del. Super. Ct. 1974))..,

[22] 25 *Del. C.* § 5701*; Bomba's Restaurant & Cocktail Lounge, Inc. v. Lord De La Warr Hotel*, 389 A.2d 766, 768 (Del. 1978).

[23] A party may appeal the summary possession issues to a three-judge panel, but he or she may not further appeal to the Superior Court for a review of the Justice of the Peace Court's substantive rulings. *Capano Investments v. Levenberg*, 564 A.2d 1130 (Del. 1989). If other issues along with the summary possession issues are presented and appealed pursuant to section 5717, then no further right to appeal to the Superior Court exists. *See Dorsey v. Cochran,* 2011 WL 809854, *2 (Del. Com. Pl. Jan. 31, 2011) (citing *Maddrey v. Justice of the Peace Court 13*, 965 A.2d 1204, 1206 (Del. 2008)).

Fourth, the Court's decision to enter a judgment dismissing Plaintiff's claim was adverse to the Plaintiff in this case. Plaintiff failed to follow the prescribed avenue for appeal to the Panel.

Finally, as to the fifth element, the decree in the prior action was a final decree. The Court's Order dated January 12, 2011 was final and dismissed the claims against Defendants with prejudice. The Order also outlined Plaintiff's rights on appeal. Finality of the Court's ruling is further evidenced by Plaintiff's notice of appeal executed by her on January 18, 2011, which states that she seeks an appeal of "final judgment entered in this case on January 12, 2011." Moreover, the "Notice of Hearing on Appeal" issued by the Court to all parties on February 1, 2011 states "[t]he final judgment entered in this case on[sic] has been appealed." Plaintiff chose to withdraw her timely filed appeal.

Accordingly, the facts before the Court warranted application of this doctrine to bar Plaintiff's claims.

Conclusion

This Court finds that Plaintiff has failed to articulate a sufficient basis that it overlooked any controlling precedent or legal principles, or otherwise misapprehended the law or facts such that the Court's decision would be different had it been correctly informed. The Court believes that it extended every possible courtesy to ensure that Plaintiff had a full and fair opportunity to be heard. Plaintiff chose to lose her composure and storm out of the courtroom. Plaintiff should be mindful of the fact that self representation does not exempt a litigant from the requirement of courtesy and decorum when appearing before this Court.

For the foregoing reasons, this Court finds no basis to reconsider its previous ruling in this matter dismissing Plaintiff's claims with prejudice. Accordingly, Plaintiff's Motion for Reconsideration is hereby **DENIED.**

IT IS SO ORDERED this 28th day of November, 2011.

/S/ Joseph F. Flickinger III
The Honorable Joseph F. Flickinger, III

cc: Tamu White, Civil Department Supervisor