

**IN THE COURT OF COMMON PLEAS
OF THE STATE OF DELAWARE
NEW CASTLE COUNTY**

MARILYN COCHRAN)	
& JOHN COCHRAN,)	
Defendants Below/Appellants,)	No: 2008-07-472
)	
v.)	
)	
MICHAEL STIGLER,)	
Plaintiff Below/Appellee.)	

Date Submitted: October 3, 2008
Date Decided: October 30, 2008

Michael Stigler
1201 Wilmington Rd., 1st Floor
New Castle, Delaware 19720
Plaintiff Below/Appellee, Pro Se

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**FINAL ORDER AND OPINION ON
DEFENDANT BELOW/APELLANT'S MOTION TO DISMISS
AND MOTION FOR DECLARATORY JUDGMENT**

This is a Final Order and Opinion on Defendants Below/Appellants' Motion to Dismiss and Counterclaim for Declaratory Judgment and Request for Rent From Plaintiff as a Holdover Tenant. Because this Court lacks subject matter jurisdiction over appeals from final judgments in summary possession proceedings from the Magistrate's Court, this action is dismissed.

The Facts

Defendants Below/Appellants Marilyn and John Cochran ("the Cochrans") purchased a parcel of real estate located at 1201 Wilmington Road, New Castle,

DE 19720 ("Property"). At the time, Plaintiff Below/Appellee Michael Stigler ("Stigler") was a tenant residing on the Property. At some point, a dispute arose between the parties regarding the condition of the rental premises. Stigler notified the Delaware Attorney General's Office and Licensing and Inspection Department about complaints regarding these issues. On or about March 17, 2008, the Cochrans formally notified Stigler that his lease, which expired on May 30, 2008, would not be renewed.

On March 26, 2008, Stigler initiated this action in Justice of the Peace Court No. 13, claiming that the Cochrans had allegedly evicted him in retaliation for his notification of state authorities about the condition of the rental premises. On July 16, 2008, the Justice of the Peace Court found in favor of Stigler and awarded him possession. On July 23, 2008, the Cochrans appealed the decision to this Court.

Two pending civil motions are now before the Court. First, the Cochrans filed a Motion to Dismiss Stigler's complaint on appeal for failure to state a claim upon which relief can be granted pursuant to Court of Common Pleas Civil Rule 12(b)(6). The Cochrans assert that the allegations in the complaint are inartfully drafted and cannot be understood. Second, the Cochrans filed a "Counterclaim for Declaratory Judgment," requesting that this Court declare that Stigler's eviction was not retaliatory, and also requesting rent from Stigler as a holdover tenant.

Opinion and Order

Before considering either motion, this Court must determine whether it has jurisdiction over this matter. Title 25, Chapter 57 of the Delaware Code governs Summary Possession proceedings, which are special hearings designed to promptly resolve disputes between a landlord and tenant over the right possession of a rental unit.¹ A party aggrieved by a judgment in such a proceeding must appeal to a three-judge panel in the Justice of the Peace Court within five days of the judgment.² The Court of Common Pleas does not have jurisdiction over appeals of final judgments in summary possession proceedings.³

Judging by the four corners of the complaint below and the parties' prayers for relief, this appears to this Court to be a summary possession proceeding. On his Justice of the Peace Court complaint, Stigler indicated on the cover sheet that it was an action for summary possession. In addition, both parties request possession of the rental unit in this Court and the court below.

The Cochrans, however, argue that the action filed below was not a summary possession proceeding, but, in fact, was a Declaratory Judgment action seeking a judicial determination that Stigler should remain in possession of the apartment because the Cochrans had decided not to renew Stigler's lease in retaliation for his complaints regarding the repairs. This argument relies on the

¹ See *Bomba's Restaurant & Cocktail Lounge, Inc. v. Lord De La Warr Hotel, Inc.*, 389 A.2d 766 (Del. Super. 1978)

² See 25 Del. C. §5717(a) (this is an accepted departure from the general appeals statute, 10 Del. C. §9571, which governs most civil appeals from the Justice of the Peace Courts)

³ *Howell v. Del. St. Housing Authority*, 2007 WL 1248446 (Del. Com. Pl.)

grounds for a statutory cause of action for Summary Possession outlined in 25 Del. C. §5702. The Cochrans assert that under the language of that section, the only instance in which a tenant can petition for possession is when the landlord has “wrongfully ousted” the tenant.⁴ They claim that because Stigler had not yet been ousted from the rental unit at the time he filed his complaint, the proceeding below could not have been a summary possession hearing. In a similar case, the Superior Court of Delaware rejected such reasoning, noting that:

The General Assembly enacted an entire chapter devoted to the subject of summary proceedings, which vests jurisdiction in the JP Court over summary possession proceedings...There is nothing in the statute that suggests that jurisdiction will not lie where a... Plaintiff that files for possession is already in possession.⁵

It is therefore clear that the matter below was a Summary Possession proceeding. As such, the proper venue for an appeal from the judgment was with the three-judge panel in the Justice of the Peace Court, not with the Court of Common Pleas.

There is a final question regarding the consequences of this dismissal. “Should an appeal be filed in the wrong court, the order dismissing it can provide for transfer to the body having subject matter jurisdiction . . . [provided] that the appeal was filed within the prescribed time.”⁶ Here, the judgment was entered on July 16, 2008, and the appeal to this Court was filed on July 23, 2008. Because

⁴ See 25 Del. C. §5702(6)

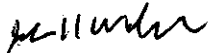
⁵ *El Di v. Justice of the Peace Court of the State of Delaware, In and For Sussex County, Court No. 17*, 1998 WL 109823 (Del.Super.) (unpublished).

⁶ *Manufactured Home Communities, Inc. v. Brown*, 1999 WL 1847440 (Del. Com Pl.)

the appeal was filed outside of the five-day period under 25 Del. C. §5717, this Court concludes that it cannot transfer the appeal.

Because this Court lacks subject matter jurisdiction, this case is hereby dismissed. Costs shall be born equally between the parties.

IT IS SO ORDERED this 30th day of October, 2008.



JOHN K. WELCH
ASSOCIATE JUDGE

Cc: Jose Beltran, Case Manager
CCP Civil Division