

April 24, 2007

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Waterford Estates*

**Re: *TD Banknorth, N.A., v. MHC, Inc. t/a Waterford Estates***  
**Case No.: 2007-02-042 and 2007-02-043**  
**Oral Motion to Dismiss for Lack of Subject Matter Jurisdiction (both actions); TD Banknorth America's Motions for Stay of Execution; Motion to Dismiss (both actions) and Motions for Consolidation**

**Date Submitted: Friday, April 13, 2007**

**Date Decided: April 24, 2007**

**LETTER OPINION**

Dear Counsel:

The Court heard oral argument on the above referenced Civil Motions on Friday, April 13, 2007 at 9:00 a.m. at the Court of Common Pleas, New Castle County Courthouse.

Following oral argument the Court granted Defendant, TD Banknorth America, NA's Motions for Consolidation of Civil Action Nos.: 2007-02-042 and 2007-02-043. As to the remaining Civil Motions listed above, the Court reserved decision. Before ruling on Mr. Erhart's Motion for Stay of Execution in both Civil Action Numbers, as well as his Motion to Dismiss the consolidated Civil Actions, without objection, Mr. Morton presented an oral Motion to Dismiss for lack of subject matter jurisdiction. This is the Court's Final Decision following oral argument on all the above-reference civil motions. As the parties will note, the granting of Mr.

Morton's Motion to Dismiss for lack of subject matter jurisdiction renders moot the balance of all other Civil Motions pending before this Court.

### **THE FACTS**

Initially there was an issue as to whether Mr. Erhart's client had complied with the requirements of CCP Civ. R. §72.3(b) by filing the Certified Copy of the Judgment below. Mr. Morton consented that both Certified Judgment Orders in the two actions pending were correct and there was no dispute as to compliance with CCP Civ. R. 72.3(b). In fact, Mr. Erhart represented that the Magistrate Court filed the Certified Judgment in both civil actions. *See e.g. 10 Del. C. §9570 et seq.* It is also clear after a review of both civil actions that both civil actions now pending before the Court of Common Pleas were summary possession and rent claims below. Once the matters were appealed directly to this Court, absent any filing before any three (3) judge panel of the Magistrate Court pursuant to *25 Del. C. §5717*, the record in the Court of Common Pleas Court indicates Mr. Morton re-filed a new complaint in this Court notwithstanding his oral Motion to Dismiss in the Court of Common Pleas for Lack of Subject Matter Jurisdiction. *See, 25 Del. C. Ch. 57.*

### **THE LAW**

The factual basis for Mr. Morton's oral Motion to Dismiss both Civil Actions for Lack of Subject Matter Jurisdiction is set forth in the legal authority he presented to the Court on the April 13, 2007 Civil Motion calendar. *See, Manufactured Home Communities, Inc. v. Elmer Brown*, 1999 WL 1847440 (Del. Com. Pl.) January 22, 1999. Mr. Morton asserts this case law clearly appears to apply to the instant action and provides that when both Summary Possession and rent actions are filed in the Magistrate's Court below, the claim should be asserted under the

landlord tenant code in one suit and the appeal lies directly with a three (3) Judge Magistrate Panel. 25 Del. C. §5700 *et seq.* That case provided as follows:

When a combined action for possession and rent is filed, this claim may be asserted under the Landlord/Tenant Code in one suit. A 'judgment' in a summary possession determines the rates of the parties. As claims for rent are includable with possession actions, the appeal is necessarily covered by the summary possession section, not the general appeals statute. This conclusion is consistent, if not mandated by the Superior Court precedent. Combined claims of rent and possession were determined to exceed its then subject matter jurisdiction. These decisions are analogous as the general appellate jurisdiction merely substituted this Court for the Superior Court in 1995.

*See 25 Del. C. §5707(5); 25 Del. C. §5715(d); 25 Del. C. §5717(a)(c); 25 Del. C. §5711(a); Woodlawn Trustees, Inc. v. Billips, Del. Super., C.A. No.: 5415, Quillen, J. (Dec. 26, 1972) Slip op. at 1; Marcopulos v. Eastburn, Del. Super., C.A. No.: 84C-FE-39, Stiftel, J. (Jan. 28, 1985) Slip op. at 4-5; Green Meadow Realty v. Lewis Rodriguez Calvente, Del. Super., C.A. No.: 91C-01-19, Hurlihy, J. (Sept. 20, 1991); Lisa Gibson v. North Delaware Realty Co., Stoneybrook Homes, Supra. Hence, the authority Mr. Morton cites, including all case law listed above, precedes that the appeal of both underlying Justice of the Peace Civil actions lies within the exclusive authority of a three (3) Judge Magistrate Panel. 25 Del.C. Ch. 57 *et seq.**

### **OPINION AND ORDER**

It is clear in both appeals brought before this Court pursuant to 10 Del. C. §9570 *et seq.* that the Justice of the Peace Court 12 judgments below were both summary possession and rent claims. A review of the Certified Copy of the Judgments in both actions as well as the underlying complaints filed in Magistrate Court No.12 causes this Court to conclude that the summary possession and rent were sought by plaintiffs below MHC, Inc. t/a Waterford Estates in both civil actions, 2007-02-042 and 2007-02-043 in this Court. Defendant did not file a Notice

of Appeal pursuant to the applicable statute, 25 *Del. C.* §5717 to a three judge panel of the Justice of the Peace Court. Defendants did, however, file pursuant to 10 *Del. C.* §9570 *et seq.* a civil appeal to this Court and both actions involve summary possession claims.

Hence this Court lacks subject matter jurisdiction in both civil appeals and grants Mr. Morton's oral Motions to Dismiss for lack of subject matter jurisdiction.

As to the balance of the Motions, excluding the consolidated Motions, which were signed by the Court, this Court finds the remaining Civil Motions listed above moot. The Court dismisses without prejudice both appeals for lack of subject matter jurisdiction. Pursuant to 10 *Del. C.* §1902 counsel for T.D. Banknorth N.A. may file a Motion to Transfer. The Court notes as Judge Stokes provided in his ruling in the case law cited above that in order to transfer the instant appeal filed pursuant to 10 *Del. C.* §1902 *et seq.*, counsel must have filed the Notice of Appeal within the parameters of time set forth in 25 *Del. C.* Ch. 57 *et seq.*; 5 day appeal limit. The certified record indicates Judge Tull's Final Order in Court 12 was January 22, 2007 and both appeals were filed in this Court February 2, 2007. *See, Manufactured Home Communities, Inc. v. Elmer Brown*, 1999 WL 1847440, Del. Com. Pl., January 22, 1999. However, absent this finding, counsel is free to make application for leave to transfer pursuant to 10 *Del.C.* §1902 if counsel is aware of any further controlling legal authority.

**IT IS SO ORDERED** this 24<sup>th</sup> day of April, 2007.

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John K. Welch  
Judge

/jb  
cc: Rebecca Dutton, Case Processor  
CCP, Civil Division