IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

RITA CARNEVALE, Plaintiff Below/Appellant,	)	
v.	)	C.A. No.: 11A-12-002 FSS **(E-FILED)**
MICHELLE GAEGER, STEVE GRIMES, and ERIKA GRAHAM, Defendants Below/Appellees.	)	

Submitted: April 3, 2012
Decided: July 31, 2012

ORDER

Upon Appeal from the Court of Common Pleas - *AFFIRMED, in part, REVERSED AND REMANDED, in part.*

Landlord sued her tenants for rent in Justice of the Peace Court. She was *pro se* and her case was dismissed. Allegedly, Landlord then discovered new damage to the rental unit. So, she filed suit in the Court of Common Pleas, reasserting her original claims and adding new damages.

The Court of Common Pleas dismissed the entire complaint as barred by *res judicata*, former adjudication. While the dismissal as to the original claim and any claim that could have been included in it was correct, the second complaint seemingly includes claims about damage after the first complaint's final amendment

and dismissal. Accordingly, to the extent a claim in the second complaint was truly new, it was not barred. On remand, the Court of Common Pleas must get to the bottom of that.

I.

Appellant, Rita Carnevale, appeals the Court of Common Pleas's November 28, 2011, order denying reargument. The Court of Common Pleas had concluded *res judicata* barred Appellant's entire claim.

More specifically, on July 12, 2010, Appellant, a landlord, moved for summary possession in the Justice of the Peace Court, claiming Appellees, Michelle Gaeger and Steve Grimes, Appellant's then-tenants, were damaging the rental unit and were behind on rent. On September 22, 2010, the Justice of the Peace Court dismissed because Appellant had failed to give Appellees adequate time to remedy the alleged violations.[1] Appellant then appealed to a three Justice of the Peace panel.[2] On November 24, 2010, the panel upheld the dismissal because, as to the *en banc* appeal, Appellant sought new damages without filing the required bill of particulars.[3]

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[1] 25 *Del. C.* § 5513(a) ("If the tenant breaches any rule or covenant which is material to the rental agreement, the landlord . . . shall allow at least 7 days after such notice for remedy.").

[2] *Id.* § 5717(a) ("With regard to nonjury trials, a party . . . may request in writing, within 5 days after judgment, a trial de novo before . . . 3 justices of the peace.").

[3] *Id.* § 5717(b) ("An appeal taken pursuant to subsection (a) may also include claims not raised in the initial proceeding; provided, that within 5 days of filing, the claimant also files a bill of particulars.").

On November 30, 2010, Appellant again moved for summary possession. This time, however, Appellant also included a damage claim. On January 5, 2011, Appellant submitted a bill of particulars, adding even more damages.

On January 11, 2011, the Justice of the Peace Court dismissed Appellant's November 30, 2010 claim for failing to give timely notice pursuant to 25 *Del. C.* §5502 and because she defiantly left court during the proceedings.[4] As Appellant would later explain to the Court of Common Pleas:

> Well I was in the middle of the trial and I personally don't have a lot of respect for J.P. Court judges. The judge did - was on the verge of making the verdict that the defendants did have to pay the rent to me or they'd leave within ten days but one of the defendants piped up and said, "Your Honor, I don't have a job and if you put me out in 10 days me and my children will be out on the streets." And then the judge . . . took a recess, and [] said there's a technicality of some sort and that he was going to allow the defendants to continue to stay without paying. I thought [it was] ridiculous, got up and walked out.[5]

Appellant appealed the January 11, 2011 dismissal to another three Justice of the Peace panel. On February 3, 2011, Appellant voluntarily dismissed that

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[4] *Rita Carnevale v. Steve Grimes, et al.,* C.A. No. JP-13-10-017937 (Del. J.P. Jan. 11, 2011) ("Trial case dismissed based on Landlord/Tenant code 5502 as there was no proof of mailing. In addition, [Carnevale] walked out in middle of proceedings.").

[5] Court of Common Pleas Mot. for. Summ. J. Hr'g Tr. 12:20-13:9, Aug. 9, 2011.

appeal because "it appeared that the Appellees were moving out before the date of the appeal trial." Indeed, Appellees vacated the apartment on February 4, 2011. As discussed below, Appellant's walk-out and her subsequent voluntary dismissal cut-off forever her right to seek damages arising from her November 30, 2010 Justice of the Peace case, including the serial amendments as to damages. The January 11, 2011 dismissal was then final as to those claims, and it still is.

On March 31, 2011, Appellant, still *pro se*, filed a new complaint in the Court of Common Pleas, seeking the same damages and back rent as in her unsuccessful November 30, 2010 Justice of the Peace case. Appellant also sought money for damage found after Appellees vacated.[6] Specifically, Appellant asked for costs associated with unpaid utility bills, electrical and kitchen repairs, and general unit maintenance.[7]

On July 12, 2011, Appellees, through counsel, moved for summary judgment, claiming *res judicata* barred Appellant's relitigating her November 30, 2010 Justice of the Peace case. On August 19, 2011, the Court of Common Pleas heard oral argument and granted Appellees' motion. On August 25, 2011, Appellant

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[6] *See* Pl.'s Mar. 31, 2011 Court of Common Pleas Complaint ¶8 ("Upon inspection of the vacant premises, Plaintiff found several damaged and destroyed items for which Plaintiff is entitled to reimbursement.").

[7] *See* 25 *Del. C.* § 5513(a)(2) ("If tenant's breach can be remedied by the landlord, as by cleaning, repairing, replacing the damaged item or the like, the landlord may so remedy the tenant's breach and bill the tenant for the actual and reasonable costs of such remedy.").

moved to reargue because "only a fraction of what is currently being sought was previously sought in JP Court. The majority of the current issues are new issues that are irrelevant to the former issues." The court denied reargument on November 28, 2011.[8] On December 6, 2011, Appellant timely appeal to this court.

II.

Court of Common Pleas appeals "shall be reviewed on the record and shall not be tried de novo."[9] The review standard is whether there is legal error, and whether the Court of Common Pleas's factual findings are supported by the record and reflect an orderly and logical reasoning process.[10] Supported factual findings will be upheld even if, acting independently, the Superior Court would have reached a contrary result.[11]

III.

A.

As mentioned, the Court of Common Pleas dismissed Appellant's entire claim on *res judicata* grounds, holding:

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[8] *Carnevale v. Gaeger, et al.,* C.A. CPU4-11-002141 (Del. Com. Pl. Nov. 28, 2011) (Flickinger, J.).

[9] 10 *Del. C.* § 1326(c).

[10] *Hicklin v. Onyx Acceptance Corp.,* 970 A.2d 244, 248 (Del. 2009).

[11] *Id.*

> [Appellant's] damages claims arise out of the same summary possession transaction. Had [Appellant] appealed the debt part [of her case] to this court, it would've been an ongoing action in this court. [Appellant] had the opportunity to do that and didn't. All five *res judicata* [elements] have been met.[12]

Essentially, the Court of Common Pleas lumped together Appellant's Justice of the Peace claims and her post-inspection claims and dismissed them all.

Res judicata bars a claim where: (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, here; (3) the cause of action is the same in both cases or the issues decided were the same; (4) the issues were decided adversely to the appellant; and (5) they were finally decided.[13]

The Court of Common Pleas correctly held that all *res judicata* elements are present for Appellant's Justice of the Peace claims. The Justice of the Peace Court had jurisdiction over landlord-tenant summary possession matters.[14] The Justice of the Peace claims involved the same parties and the same issues as the Court

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[12] Mot. for. Summ. J. Hr'g Tr. 22:16-19; 23:7-10; 24:20-22, Aug. 9, 2011.

[13] *See Dover Historical Soc., Inc. v. City of Dover Planning Comm'n,* 902 A.2d 1084, 1092 (Del. 2006).

[14] 25 *Del. C.* § 5701 ("An action for summary possession in accordance with § 5702 of this title shall be maintained in the Justice of the Peace Court.").

of Common Pleas lawsuit. The Justice of the Peace dismissed Appellant's claim, and it was finally decided when Appellant voluntary dismissed her appeal. Therefore, again, the Court of Common Pleas correctly dismissed Appellant's Justice of the Peace claims, including all pending damages and all damages that could have been litigated as part of the Justice of the Peace Court case up to its dismissal.

B.

Here, as below, Appellant argues the post-inspection damages do not "arise out of the original action," precluding *res judicata*. Appellant argues, "[W]hen a tenant moves out, the landlord has a right to go in and assess the damage to the apartment. And, that's what I've done."[15] The Court of Common Pleas rejected Appellant's argument, stating, "[Y]ou, in November 2010, filed a suit to take care of all of that in the Justice of the Peace Court and then didn't follow through on it."[16]

The Court of Common Pleas erred, as a matter of law, by summarily dismissing Appellant's post-inspection damages as the same "cause of action" as Appellant's Justice of the Peace claims. In the Court of Common Pleas, in-part Appellant sought damages incurred after Appellees broke their lease. This claim potentially differs substantively from her Justice of the Peace claims and is not barred

[15] Mot. for. Summ. J. Hr'g Tr. 20:2-5.

[16] *Id.* 20:6-8.

by *res judicata.*[17] While the November 2010 Justice of the Peace Court case and the March 2011 Court of Common Pleas case have a nexus, Appellees' tenancy, they are potentially distinct.

On remand, Appellees may establish that the alleged damage to the unit and unpaid bills were part of the amended November 2010 case. If, for example, Appellant alleged or could have alleged damage to a particular electric fixture in the dismissed case, she is barred from including it in her January 2011 case. That claim was dismissed. If, on the other hand, the damage only occurred after Appellant dropped the Justice of the Peace case and, therefore, was then unknowable, it is a new claim. In other words, Appellant may litigate over something Appellees did or did not do after February 3, 2011. That is a very small window. Again, Appellant should have marshaled her damage claim before deciding to drop the November 2010 case forever. Appellant lost forever any claim she knew or should have known about when she abandoned her Justice of the Peace Court case. It may turn-out on remand that there is nothing left of Appellant's claim.

Finally, the court apprehends but does not sympathize with Appellant's frustration, because it is of her own making. Appellant runs a business. Because a

[17] 25 *Del. C.* § 5507. *See also id.* § 5117 ("For any violation of the rental agreement or this Code, . . . the injured party shall have a right to maintain a cause of action in any court of competent civil jurisdiction.").

landlord has a right to represent herself in court, that does not mean it is something to be done. In any event, the shifting way Appellant has let her claim evolve is frustrating to everyone.

IV.

For the foregoing reasons, the Court of Common Pleas's November 28, 2011 decision is **AFFIRMED**, ***in part***, and **REVERSED AND REMANDED**, ***in part*****,** for proceedings consistent with this opinion.

IT IS SO ORDERED.

/s/ Fred. S. Silverman
Judge

cc: Prothonotary
Ms. Rita Carnevale, *Pro Se*
Donald R. Roberts, Esquire