

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PETER KOSTYSHYN, <i>et al.</i> ,	§
	§ No. 421, 2013
Defendants Below-	§
Appellants,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
CITY OF WILMINGTON,	§ in and for New Castle County
	§ C.A. Nos. N13J-01723 and
Plaintiff Below-	§ N13J-01724
Appellee.	§

Submitted: August 26, 2013
Decided: August 29, 2013

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 29th day of August 2013, it appears to the Court that:

(1) On August 8, 2013, the Court received a notice of appeal on behalf of “Peter Kostyshyn ETAL”¹ from orders of a Commissioner of the Superior Court, dated August 8, 2013, which denied the defendants’ motions to stay Sheriff’s sales in two separate cases. The same day, the Clerk of this Court issued a notice to defendants to show cause why the appeal should not be dismissed for this Court’s lack of jurisdiction to consider an appeal from a Commissioner’s order.

¹ We note that the notice of appeal failed to comply with Supreme Court Rule 7(a) because it failed to identify the parties taking the appeal and because it failed to include the original signature of each party on behalf of whom the appeal was taken as required by Rule 12(a).

(2) After filing numerous nonresponsive documents requesting various forms of relief, one of the defendants filed a document, which this Court deems to be a response to the Notice to Show Cause. Although it is not entirely clear, the document appears to request that this appeal be stayed until the defendants can obtain review of the Commissioner's order from a judge of the Superior Court.

(3) We find this response to no avail. It is well-settled that this Court is without jurisdiction to hear an appeal directly from any action taken by a Master or Commissioner of a trial court.² The right to review of a Commissioner's order is to a judge of the Superior Court.³ To the extent the defendants are seeking further review of the Commissioner's order by a Superior Court judge, they may file a proper notice of appeal once a final order is entered by the judge. If the defendants have failed to timely pursue their right to further review by a Superior Court judge, then they shall be deemed to have waived the right to further review of the Commissioner's order by this Court.⁴

(4) Furthermore, we note that the defendants failed to file a motion to proceed *in forma pauperis* as directed by the Court on August 13, 2013. We take further notice that this Court, relying upon factual findings made by the Superior Court, previously has determined that Peter Kostyshyn is not entitled to *in forma*

² See *Johnson v. State*, 884 A.2d 475, 479 (Del. 2005).

³ See Del. Super. Ct. Civ. R. 132(a) (2013).

⁴ See *In re Estate of Webb*, 2011 WL 4838972 (Del. Oct. 12, 2011).

pauperis status because of his financial resources, which include an escrow account worth more than \$70,000 that is held in his name by the Superior Court.⁵ Accordingly, the Clerk of this Court is directed to refuse to docket any future *pro se* notice of appeal or extraordinary writ filed by Peter Kostyshyn unless the notice of appeal or writ is also accompanied by the required filing fee.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(b), that the within appeal is DISMISSED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁵ See *Kostyshyn v. State*, 2013 WL 2636025 (Del. June 11, 2013). Moreover, even if Peter Kostyshyn lacked the financial means to pay the required fees, he still would not necessarily be entitled to *in forma pauperis* status in this Court. Kostyshyn is an inmate who has filed countless complaints, petitions, appeals, and writs in both the state and federal courts in Delaware. Nearly all of these actions have been dismissed for failing to state any claim for relief. Pursuant to 10 Del. C. § 8804(f), with a few exceptions, a court may deny *in forma pauperis* status to any prisoner filing a civil action or appeal if the prisoner has, “on 3 or more prior occasions while incarcerated” brought an action that was dismissed as frivolous, malicious, or failed to state a claim. Kostyshyn has far exceeded his “three strikes.”