

May 28, 2002

Mr. Frederick Pratt
50 Rose Hill Lane
New Castle, Delaware 19720

Michael W. Modica, Esquire
715 King Street; Suite 300
Wilmington, Delaware 19801

Re: *Frederick Pratt v. L & E Automotive*
Civil Action No. 2001-10-011
Letter-Opinion on Motion for Reargument

Gentlemen:

L & E Automotive, through counsel, has filed a Motion for Reargument pursuant to CCP Civ. R. 59(e).¹ The matter has been fully briefed. This is the Court's Letter-Opinion.

Procedural Posture

L & E Automotive raises two (2) issues in its Motion for Reargument filed with the Clerk of Court on April 25, 2002. First, L & E notes that by Letter-Opinion the Court granted appellant Frederick Pratt's Motion to Dismiss because L & E Automotive Complaint was not filed within 20 days of service of process on appeal. The Court found in its Letter-Opinion that appellant [Pratt] timely filed the appeal to this Court on October 2, 2001. L & E argues that Justice of the Peace Court 13 held a trial on September 14, 2001 and issued a judgment in favor of the plaintiff [L & E] "on that date." L & E therefore argues Pratt had 15 days to file the appeal de novo in the Court of Common Pleas and October 1, 2001 was the last date that Pratt could then file his appeal. Pratt's appeal was filed on October 2, 2001.

¹ L & E is plaintiff-below, appellee in this Court. Frederick Pratt is defendant-below, appellant in this Court. The parties shall be referred to as "L & E" and "Pratt."

However, a review of the Magistrate Court 13 docket indicates that no formal letter or bench ruling opinion was docketed by the Magistrate Court below on September 14, 2001. No entry can be found that the Magistrate issued an order or letter opinion on September 14, 2001. A review of the civil docket of Court 13 indicates that on October 2, 2001 the matter was appealed to this Court and on August 22, 2001 there was a "notice generated for trial" for September 14, 2001. The only docket entry that appears in the Magistrate's certified record is a "True and Correct Transcript of the Judgment" dated October 3, 2001 indicating trial was held on September 14, 2001. The Court cannot locate an order or letter-opinion prior to the October 3, 2001 certified copy of the judgment in the docket. Therefore, absent any docket entry indicating either a bench order or letter opinion in Magistrate Court 13 in this action, the final order appears not to have been rendered until October 3, 2001. The appeal was, therefore, filed timely by Pratt. Reargument is therefore DENIED on this issue.

Second, L & E argues in its Motion for Reargument that service of process was not perfected on L & E as a corporate entity because it was not properly served with a summons and complaint as required by CCP Civ. R. (I.I.I.).² L & E details a summons was left with Tony Brown, Manager on duty, and no one is employed in that capacity at L & E. L & E notes that it has an employee named Tony Martin, but he is not a manager or officer of the corporation.

The Court therefore grants L & E's Motion for Reargument pursuant to CCP Civ. R. 59(e) on the issue of Pratt failing to perfect service by serving an officer of the corporation or its Chief Executive Officer. CCP Civ. R. 4(iii). *Hessler, Inc. v. Farrell*, Del. Supr., 260 A.2d 701 (1969). Because L & E was not properly served with the appeal, the Court vacates its Letter-Opinion dated April 18, 2002. L & E, however, has timely filed the Complaint on appeal but apparently has not waived formal service of process of the appeal. Pratt is therefore directed to serve L & E as a proper defendant anew pursuant to CCP Civ. R.

² CCP Civ. R. 4(I.I.I.) requires, *inter alia*, "delivering a copy of the summons, complaint and affidavit, if any, to the Chief Executive Officer thereof or by serving copies thereof in the manner prescribed by law for the service of summons upon such defendant."

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4(I.I.I.). L & E shall then refile its Complaint within the next 20 days and serve Pratt. The matter shall therefore proceed through pretrial scheduling and trial with notice to the parties of record.

IT IS SO ORDERED this 28th day of May, 2002.

John K. Welch
Associate Judge

JKW/vh

cc: Ms. Barbara Dooley, Civil Division