

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

LYNN PRICE, :  
 : C.A. No. 02-08-0102AP  
 :  
 Plaintiff Below, :  
 Appellee. :  
 :  
 v. :  
 :  
 CATHERINE C. MILLER, :  
 :  
 Defendant Below, :  
 Appellant, :  
 :  
 :

Submitted: December 9, 2002

Decided: December 9, 2002

**Decision on appeal from the Justice of the Peace Court**

**Plaintiff's civil action is dismissed for lack of jurisdiction.**

Lynn Price, 4050 Holletts Corner Road, Clayton, Delaware 19938, Plaintiff Below-Appellee, Pro Se.

Catherine C. Miller, 445 E. Denneys Road, Dover, Delaware 19901, Defendant Below-Appellant, Pro Se.

In this civil appeal from the Justice of the Peace Court, the plaintiff has filed a replevin action for the repossession of a mobile home from the defendant. Because the defendant is an occupant of the premises pursuant to a conditional sales contract, she is treated as a tenant under 25 Del. C. Sec. 5102 (11). Since the defendant is a tenant this case is governed by the landlord-tenant code. The plaintiff must proceed by an action for summary possession and this court has no jurisdiction over such a proceeding.

The relevant facts are as follows: On July 11, 2002 the plaintiff filed a civil action for a writ of replevin in the Justice of the Peace Court #16. After a trial on August 9, 2002, the Justice of the Peace entered judgment in behalf of the plaintiff for possession of the trailer. On August 23, 2002 the defendant filed a praecipe and notice of appeal with this court. She also filed a motion to proceed in *forma pauperis*, and this motion was granted by the court. The plaintiff filed a photocopy of the complaint that she filed with the Justice of the Peace Court, but she has not yet filed a complaint with this court.

In the court below, the plaintiff alleged that she was selling a mobile home to the defendant for the sum of \$5000.00 pursuant to a conditional sales contract. The defendant made a \$3000.00 down payment and thereafter was to make ten payments of \$200.00 each month commencing on January 10, 2002. However, the defendant has defaulted in her payments and the plaintiff has filed a complaint in replevin for the repossession of the mobile home.

The seminal question is whether this court has jurisdiction to hear this case? Although the plaintiff has brought a replevin action to obtain possession of the mobile home, I conclude that this civil action case must be brought under the landlord-tenant code. This code determines “all rights and remedies” of the parties. 25 Del. C. Sec. 5103.

25 Del. C. Sec. 5102 (11) defines a tenant in pertinent part as follows: “An occupant of any premises pursuant to a conditional sales agreement.” Pursuant to this section and Sec. 5103 the plaintiff cannot file a complaint in replevin to obtain possession of the mobile home. The plaintiff’s sole remedy is to file an action for summary possession in the Justice of the Peace Court. I have previously held that the Court of Common Pleas has no jurisdiction to consider an action for summary possession. *Goldinger Brothers v. Warren*, C.A. No. 0025-04-78, Trader, J. (1978). Since this court has no jurisdiction to consider an action for summary possession, the above-captioned civil action is hereby dismissed.

**IT IS SO ORDERED.**

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**Merrill C. Trader**  
**Judge**