

**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

<b>ASSET RECOVERY SERVICES, LLC</b>	:	
	:	
<b>Defendant Below, Appellant</b>	:	
	:	
<b>v.</b>	:	<b>C.A. No. 2002-03-384</b>
	:	
	:	
<b>12<sup>th</sup> STREET ASSOCIATES, L.P.</b>	:	
	:	
	:	
<b>Plaintiff Below, Appellee</b>	:	

Elwood T. Eveland, Jr., Esquire  
715 N. King Street, Suite 200  
Wilmington, DE 19801  
Attorney for Defendant  
Below, Appellant

Steven T. Davis, Esquire  
Obermayer Rebman Maxwell &  
Hippel LLP  
One Penn Center, 19<sup>th</sup> Fl.  
1617 John F. Kennedy Boulevard  
Philadelphia, PA 19103  
and  
716 Tatnall Street  
Wilmington, DE 19801  
Attorney for Plaintiff Below,  
Appellee

**Submitted: February 14, 2003**  
**Decided: March 6, 2003**

**DECISION AND ORDER**

This is the Court’s decision on Plaintiff Below, Appellee’s, Motion to Dismiss the Appeal filed by the Defendant Below, Appellant.

Plaintiff Below, Appellee, (herein “12<sup>th</sup> Street”) leased property in Wilmington, Delaware, to Defendant Below, Appellant (herein “Asset”). In October, 2001, 12<sup>th</sup> Street

filed a complaint in the Justice of the Peace Court seeking 1) summary possession of the leased premises and 2) unpaid back rent. After trial, the Justice of the Peace Court entered a judgment on March 4, 2002, awarding 12<sup>th</sup> Street its claim for rent and granting it summary possession of the leased property, together with court costs and interest on the award.

Asset filed an appeal of this judgment, prior to March 21, 2002, to a three judge panel of Justices of the Peace pursuant to 25 Del.C. §5717. The notice of the hearing (trial de novo) on this appeal recites that “The final judgement entered in this case on March 4, 2002, has been appealed. ...”. There was no delineation or severance in the appeal between the rent claim and the summary possession covered by the judgment. On April 18, 2002, this appeal was dismissed.

Asset also filed an appeal in the Court of Common Pleas on March 19, 2002. The notice of appeal recites that “... pursuant to 10 Del.C. §9571 ...” Asset was appealing “... the decision of the Justice of the Peace Court ... dated March 4, 2002.” This notice has no delineation or severance in the appeal between the rent claim and the summary possession covered by the judgment. 12<sup>th</sup> Street has moved to dismiss this appeal.

Asset has urged that its appeal to this Court covers only the award of rent. Examination of the notices both in the Justice of the Peace Court and in this Court does not support this premise. Both appeal notices are from the whole judgment entered by the Justice of the Peace Court on March 4, 2002.

Preliminarily, the Court concludes that Asset’s argument that the appeal to the three judge panel was never perfected because it did not file a bond is inappropriate to this proceeding. There is nothing in the record of this appeal which would bring this

issue before this Court and, at the threshold, the failure to post bond would not defeat the right to appeal to a three judge panel for hearing de novo. (See 25 Del.C. §5717).

Asset's argument that it should have the right to sever and to appeal the issue of the rent claim separate from the summary possession claim cannot be accepted by the Court since the Court finds no basis for the argument in the statutes governing landlord/tenant relations, in rules governing appeals to this Court, or in prior decisions of courts that have dealt with similar issues.

A party's right of appeal must be granted and governed either by statute or by rule of court adopted pursuant to such statute. Asset cannot point to any such statutory authority.

Asset's arguments are largely answered by the decision in Smith v. Justice of the Peace Court No. 1, et al, Del. Super., CA No. 89A-SE2, Lee, J., (1990). This decision traces in detail the history and legal issues which result in the conclusion this Court must reach. The decision draws on the reasoning of prior Delaware cases which analyzed and answered the arguments presented by Asset. See Marcopulos v. Eastburn et al, Del. Super. CA No. 84C-FE-39, Stiftel, J. (1985) and Woodlawn Trustees v. Billips, Del. Super. CA No. 5415 Quillan, J. (1972).

Asset bases its argument, principally, on the language in Bomba's Restaurant & Cocktail Lounge, Inc. v. Lord De La Warr Hotel Inc., Del. Supr., 398 A.2d 766 (1978). However, this Court must also consider and be guided by the decisions in Smith, decided in 1990, and in Marcopulos, decided in 1985 and the decision affirming that case, Marcopulos v. Eastburn, et al, Del. Supr. No. 73, 1985 Del. Lexis 443 (1985). The Court

also must note that the landlord/tenant code was amended by the Delaware Legislature in 1980 and the statutory scheme as it exists today, in pertinent part, was then fashioned.

There may be merit in Asset's argument that it is at the mercy of the landlord who can combine a possession and a rent claim in one action and frustrate the full substantive and procedural rights the tenant might otherwise be able to exercise as to the rent claim. But this is a matter which must be addressed by statute or by rule based on statutory authority and not by the Court.

Asset has argued that if the Court finds the appeal must be dismissed that the matter should be remanded to the Justice of the Peace Court for proceedings before a three judge panel. This argument fails since the Court finds that there is no jurisdiction for the appeal.

The motion to dismiss this appeal for lack of jurisdiction is granted.

**IT IS SO ORDERED.**

---

**J., Fraczkowski<sup>1</sup>**

---

<sup>1</sup> Sitting by appointment pursuant to Del. Const., Art.IV, §38 and 29 Del.C. §5610.