

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

CARVEL A. WATTS,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 2003-03-003
)	
MARC C. MATHIS,)	
)	
Defendant.)	

Submitted: June 15, 2004
Decided: June 18, 2004

**DECISION ON PLAINTIFF'S
MOTION TO COMPEL**

COMES NOW, the Court finds as follows:

1. On March 4, 2003, plaintiff brought these proceedings in this Court and the defendant filed his answer on March 26, 2003.
2. On January 23, 2004 this Court entered judgment against defendant for failing to comply with a discovery order, previously entered by the Court.
3. On April 1, 2004, this Court received notice from the Office of the Prothonotary that the case had been appealed to the Superior Court.

4. On May 21, 2004, plaintiff filed a motion in this Court to compel defendant to appear for a deposition in aid of execution of judgment. A hearing was held on the motions June 4, 2004 after which the Court ordered written submissions.

5. Plaintiff moves the Court for an order demanding defendant to appear for deposition in aid of execution and for attorney fees and costs incurred by the plaintiff for the Court Reporter.

6. Defendant resists the motion arguing that this Court lacks jurisdiction because the matter is pending in the Superior court.

7. It is settled law that an appeal filed and docketed in a higher court divests the lower court of jurisdiction except in certain exceptional circumstances. Plaintiff relies on CCP Rule 69 arguing that those provisions are promulgated to assist a judgment creditor in collecting on a valid judgment. There is no dispute that a valid judgment presently exists in the Court of Common Pleas. However, this Court lacks jurisdiction to hear any motion except where provided by statute. (See, 10 Del. C. § 1325(c)). If I were to conclude otherwise, there would be proceedings in both courts which would lead to confusion and difficult case management.

Accordingly, since I conclude this Court lacks jurisdiction to hear the motion, the motion is hereby Dismissed.

SO ORDERED this 18th day of June, 2004

Alex J. Smalls
Chief Judge

Watts-OP Jun 04