

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

P.O. BOX 746
COURTHOUSE
GEORGETOWN, DE 19947

September 3, 2003

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Re: ***Scott Woogen v. Lori Hamilton***
C.A. No. 03C-04-008-RFS

Dear Counsel:

This is my decision on Plaintiff's Motion for a Writ of Immediate Possession. After considering the submissions of the parties and hearing argument on the matter, summary judgment is granted in favor of Plaintiff but execution of the writ of possession is stayed. Defendant may elect to have her remaining equitable counterclaims transferred to the Court of Chancery for a determination of whether equitable relief is appropriate based upon the deposit and alleged contract. The Court of Chancery may also exercise its ancillary jurisdiction to resolve Defendant's claims for monetary damages. Alternatively, Defendant may also choose to forego these equitable claims and seek solely monetary damages in this Court.

The complaint filed seeks relief under section 6701 as an action in ejectment. 10 *Del. C.* § 6701. Plaintiff also seeks double damages for any waste committed pursuant to sections 901 and 909. 25 *Del. C.* § 901, 909. Plaintiff further requests a writ of estrepement to prevent further waste to the property during the pendency of this ejectment action. 25 *Del. C.* § 910. Defendant asserts that she is a part owner of the property, and, therefore, Plaintiff is not entitled to possession of the property.

Defendant currently resides at 9955 Middleford Rd., Seaford DE 19973. Defendant has refused to vacate the property despite repeated requests by Plaintiff to surrender possession of the property. Plaintiff is the record title owner of the property as evidenced by the deed recorded in Deed Book 2433 at Page 78. In order “[t]o prevail in an action for ejectment, the Plaintiffs must prove ownership of the property and be out of possession.” *Furness v. Patterson*, Del. Super., C.A. No. 98C-07-246, Quillen, J. (Sept. 28, 1998). Plaintiff is entitled to ejectment if he offers proof of exclusive ownership. *Enuha v. Enuha*, 694 A.2d 844 (Del. 1997). Here, the deed establishes Plaintiff’s exclusive ownership. Moreover, it is undisputed that Plaintiff is out of possession of the property. Although, Defendant alleges an equitable interest in the property, this court does not have jurisdiction over that claim, which should properly be brought before the Court of Chancery. *Enuha v. Enuha*, *supra*.

Accordingly, Plaintiff’s application for ejectment is granted. However, the execution will be stayed pending Defendant’s election to either transfer the equitable counterclaims to the Court of Chancery or forego the equitable claims and resolve the claims for monetary damages in this Court.¹ The court need not address Plaintiff’s motion for a writ of estrepement since it is rendered moot by the grant of ejectment, and there has been no showing of continuing waste (understood as spoliation) to the property. *Furness v. Patterson*, Del. Super., C.A. No. 98C-07-246, Quillen, J. (Sept. 28, 1998).

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary

ENDNOTE

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1. The election to transfer must be made under the provisions of 10 *Del. C.* § 1902. The substance of the answer, counterclaim and amended counterclaim alleges equitable title arising from Defendant's purported purchase of part of the property. In essence, specific performance is sought which only the Court of Chancery may grant. *See Eddington v. Turner*, 38 A.2d 738 (Del. 1944). This is not a case where legal title is genuinely at issue as Plaintiff has record title in 1999. Defendant cannot claim legal ownership by virtue of adverse possession as the required 20 year period has not elapsed. *See Knight v. Knight*, 89 A. 595 (Del. Ch. 1914). The answer refers to an equitable interest in the property, and the original and amended counterclaims request partition. Partition is an equitable remedy. *See 25 Del. C.* § 721. This may be the end result if Defendant is successful in the Court of Chancery. Defendant may reap the fruits of equitable title and be declared to be a part owner, thus permitting partition. Should Defendant forego this route, however, then certain monetary damage claims can be determined here for sums allegedly due for the training of horses and related matters, including the costs of building two running sheds (paragraphs 12 and 14 of the original and amended counterclaims respectively). Defendant shall make the election within 60 days or within that time inform the Court if only legal damage claims will be sought. In that event, Plaintiff's damage claims arising from the loss of possession would be considered at one time. If the Defendant does nothing, the counterclaim shall be dismissed with prejudice, without further notice, and the stay shall be vacated. The parties shall submit a status report by Friday, November 7, 2003. This litigation presents a mixed bag of apples and oranges. I recall the observation of another judge: "It is regrettable that litigants cannot be afforded appropriate relief in a single court, but this is the product of the bifurcated judicial system which is in effect in Delaware." *Voss v. Green*, 389 A.2d 273, 275 (Del. Super. Ct. 1978).