

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

FLOYD WHITE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Jdg. No. 01J-06-274
	)	Dkt. No. P-19412
	)	
WILLIAM PINERA and PINERA	)	
CONSTRUCTION, INC.,	)	
	)	
Defendants.	)	

***ORDER***

*Upon Defendant's Motion to Quash Levy and Vacate Judgment --  
**DENIED And Remanded to the Justice of the Peace Court***

Defendants filed a motion to quash an impending Sheriff's sale, vacate the levy, reopen the underlying judgment and set it aside. At a hearing on July 12, 2002, the court agreed to stay the Sheriff's sale and vacate the levy. Basically, the court was not satisfied that the personal property was owned exclusively by the debtors. So it is not subject to levy and sale. The court declined to consider the motion to set aside the underlying judgment.

The judgment in question was obtained in the Justice of the Peace Court, by default. Plaintiff transferred the judgment through the Court of Common Pleas to the Superior Court and it now is recorded. Defendants claim that the default

judgment should be vacated due to lack of service and other defects in the Justice of the Peace Court proceedings. Because the judgment was transferred to the Superior Court, those claims were never considered by a Justice of the Peace.

In this case, the decision whether to vacate the default judgment should be heard in the Justice of the Peace Court. The decision will turn on the Justice of the Peace Court's rules and procedures. The decision whether to vacate a Justice of the Peace Court judgment is best left to the Justice of the Peace who entered the judgment, insofar as practical.

For the foregoing reasons, this case is **REMANDED** to the Justice of the Peace Court for consideration of Defendant's motion to set aside the default judgment. Meanwhile, the judgment will remain in the Superior Court's judgment records.

If Defendants do not act promptly to lift the judgment, presumably Plaintiff will ask the Justice of the Peace to dismiss the motion to vacate. In any event, until the Justice of the Peace Court vacates its judgment, it will remain of record here. Upon notice that the judgment has been vacated, the Superior Court will

trike it from its judgment records.

For the foregoing reasons, the Prothonotary shall return the case to the Justice of the Peace Court.

**IT IS SO ORDERED.**

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Judge

oc: Prothonotary (Civil Division)  
pc: Douglas Shachtman, Esquire