

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

P.O. BOX 746
COURTHOUSE
GEORGETOWN, DE 19947

By facsimile and regular mail

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Date Submitted: September 11, 2003
Date Decided: October 10, 2003

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

Dear Counsel:

On September 3, 2003, the Court found that plaintiff was entitled to judgment in this ejectment suit. Plaintiff has exclusive ownership to the property by deed but remains out of possession. Because defendant's pleadings asserted an equitable claim of ownership, execution on the judgment was stayed pending transfer of this subject matter to the Court of Chancery. Thereafter, plaintiff sought reargument or clarification of the decision. This subject was discussed informally with counsel last week and on the record this morning.

As indicated, if the equitable claims have merit, defendant may well have a right of possession as a partial owner (through specific performance of an alleged contract of sale between the parties). Defendant may also then be able to partition the property. These are equitable remedies beyond the jurisdiction of the Superior Court.

When specifically enforcing a conditional sales contract, the Court of Chancery has enjoined a litigant from prosecuting a writ of possession and an ejectment action, *see Clements v. Castle Mortgage Service Company*, 382 A.2d 1367 (Del.Ch. 1977). Here, the defendant has the burden to establish her equitable claims. If the case is transferred, she can seek an injunction to permit her continued occupation of the property.

The parties discussed the setting of a bond in the Superior Court to stay the writ of possession. Its purpose would be to indemnify plaintiff from any loss until final determination of the various claims. Certainly, a bond would be the subject of an injunction action. The Chancellor can better weigh the competing equities, whether irreparable harm exists, and the likelihood of success presented by the equitable claims. The bond should follow her burden.

In conclusion, the motion for reargument is denied as the Court did not overlook applicable principles of law. Upon consideration of the foregoing, the request for clarification is granted. Execution of the ejectment action shall proceed forthwith through the immediate issuance of a writ of possession.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary