

**IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY
COURT NO. 17**

**COURT ADDRESS:
23730 SHORTLY ROAD
GEORGETOWN DE 19947**

CIVIL ACTION NO: JP17-12-000925

BETTER HOMES OF LAUREL VS LESLI JOHNSON

**SYSTEM ID: @2519
BETTER HOMES OF LAUREL T/A CARVEL GARDENS
PO BOX 635
LAUREL DE 19956**

Appearances: Michael P. Morton, Esquire represented the plaintiff
Defendant appeared *pro se*.

Submitted: April 9, 2012
Decided: April 12, 2012

NOTICE OF JUDGMENT/ORDER

The Court has entered a judgment or order in the following form:

ORDER OF THE THREE JUDGE PANEL

A trial *de novo* was held before a three judge panel consisting of the Honorable Sheila G. Blakely, the Honorable Larry R. Sipple and the Honorable Christopher A. Bradley.

On February 20, 2012, the plaintiff as landlord filed this action against the defendant seeking possession of the rental unit located at 1702 Daniel Street, Carvel Gardens Apartments, Laurel, Delaware for an alleged material breach of the rental agreement, rules and regulations and the Residential Landlord Tenant Code involving an alleged stabbing on the Carvel Gardens apartment complex concerning a guest and/or an unauthorized occupant of the defendant.

On March 16, 2012, after a trial had been held on the previous day, the Honorable John C. Martin issued a decision awarding the plaintiff possession of the rental unit along with \$40.00 court costs.

Prior to beginning the trial *de novo*, the plaintiff's attorney made a motion to dismiss the defendant's appeal of the Court's March 16th decision for lack of jurisdiction, since the appeal request was filed on March 27th, more than 5 days from the date of judgment, as required under 25 Del. Code, Sec. 5717(a).

The defendant also asked the panel to consider that there was a delay in her knowing about the judgment for the case as she had been in the hospital and had not had her mail checked during that time.

In reviewing the defendant's appeal request dated March 27, 2012, the panel found that the defendant had listed that judgment had been entered by the Court on "March 20, 2012" rather than the actual judgment date of March 16, 2012.

While considering the arguments of the parties on whether to dismiss the defendant's appeal, the panel weighed whether Justice of the Peace Court Civil Rule 6 (e) regarding extra time for mailing could be applied to the time limits of an appeal, when the judgment is sent out by mail. However, even if the three extra days for mailing were added to the five day appeal period, making the appeal period eight days, the panel found that this would not assist the defendant in meeting her appeal deadline, as again, under Rule 6, an eight day appeal period would require weekends to be counted.

Accordingly, the panel granted the plaintiff's motion to dismiss the defendant's appeal as untimely and as a result, the judgment of March 16, 2012 for this case remains in effect.

IT IS SO ORDERED this 12th day of April, 2012

C. Bradley by WPU (SEAL)
Justice of the Peace/Court Official



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Plaintiff Parties:

ATTORNEY FOR PLAINTIFF
SYSTEM ID: 002492
MICHAEL P MORTON PA.
1203 NORTH ORANGE STREET
WILMINGTON, DE 19801

Defendant Parties:

DEFENDANT
SYSTEM ID: @2469842
LESLI JOHNSON
1702 DANIEL STREET
LAUREL, DE 19956

PLAINTIFF

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LAW OFFICE ROBERT J. VALIHURA
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JUSTICE OF THE PEACE COURT CIVIL POST-JUDGMENT PROCEDURES

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Default judgments are normally entered against a defendant who fails to appear in court on the scheduled trial date or to provide a written answer to a complaint as required by the summons. If a default judgment has been entered, the defendant has 15 calendar days, starting the day after the judgment is ordered by the court, to enter a motion asking that the judgment be vacated and the case be reopened so the defendant may present evidence on the case. If service was made by certified mail, return receipt requested, and the certified mail was returned unclaimed, the defendant has 30 calendar days to file a motion to vacate a default judgment. This motion must be in writing and should briefly state the reason for the request to vacate the judgment as provided by 10 Del. C. § 9538. (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) The time allowed to appeal a judgment continues to run even after a motion to vacate the default judgment is filed (see below for additional information on appeal procedures). **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

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Non-suit judgments are entered against a plaintiff who fails to appear in court on the scheduled trial date. Non-suit judgments against the plaintiff are similar to default judgments against the defendant. (See above section.) If a non-suit judgment has been entered, the plaintiff has 15 calendar days, starting the day after the judgment is ordered by the court, to enter a motion requesting that the judgment be vacated and the case reopened so the plaintiff may present evidence on the case. This motion must be in writing and should briefly state the reasons for the request, as provided by 10 Del. C. § 9539. (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

APPEALS - Either party has 15 calendar days, starting the day after the judgment is ordered by the court, to appeal the judgment to the Court of Common Pleas for a trial de novo (new trial). 10 Del. C. § 9571. To file an appeal, the appellant (party seeking the appeal) must go to the Court of Common Pleas, fill out the appeal form and comply with other Court of Common Pleas requirements, within 15 days after the judgment is entered. A certified transcript of the Justice of the Peace Court record and the filing fee of \$125.00 must be filed by the appellant with the Court of Common Pleas within 10 days after the appeal was filed (within 25 days after the Justice of the Peace Court judgment). A certified transcript of Justice of the Peace Court record may be obtained from the Justice of the Peace Court which ordered the judgment at least five (5) days prior to the final date of filing the transcript with the Court of Common Pleas. **A FEE OF \$10.00 MUST ACCOMPANY A CERTIFIED TRANSCRIPT REQUEST.** To prevent execution on the judgment during the time of the appeal, an appellant must apply to the Court of Common Pleas for a bond to stay the execution.

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6CF14J (Rev. 9/15/04)

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Non-suit judgments are entered against a plaintiff who fails to appear in court on the scheduled trial date. Non-suit judgments against the plaintiff are similar to default judgments against the defendant. (See above section.) If a non-suit judgment has been entered, the plaintiff has 15 calendar days, starting the day after the judgment is ordered by the court, to enter a motion requesting that the judgment be vacated and the case reopened so the plaintiff may present evidence on the case. This motion must be in writing and should briefly state the reasons for the request, as provided by 10 Del. C. § 9539. (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

APPEALS - Either party has 15 calendar days, starting the day after the judgment is ordered by the court, to appeal the judgment to the Court of Common Pleas for a trial de novo (new trial). 10 Del. C. § 9571. To file an appeal, the appellant (party seeking the appeal) must go to the Court of Common Pleas, fill out the appeal form and comply with other Court of Common Pleas requirements, within 15 days after the judgment is entered. A certified transcript of the Justice of the Peace Court record and the filing fee of \$125.00 must be filed by the appellant with the Court of Common Pleas within 10 days after the appeal was filed (within 25 days after the Justice of the Peace Court judgment). A certified transcript of Justice of the Peace Court record may be obtained from the Justice of the Peace Court which ordered the judgment at least five (5) days prior to the final date of filing the transcript with the Court of Common Pleas. **A FEE OF \$10.00 MUST ACCOMPANY A CERTIFIED TRANSCRIPT REQUEST.** To prevent execution on the judgment during the time of the appeal, an appellant must apply to the Court of Common Pleas for a bond to stay the execution.

MOTION FOR A NEW TRIAL - Either party has 10 days, starting the day after the judgment is signed by the judge, to file a motion for a new trial as provided under Justice of the Peace Court Civil Rule 59. This motion shall be in writing and shall briefly state the reasons for the request. A motion for a new trial will be heard by the Justice of the Peace who originally heard the case. The ability of the Justice of the Peace to grant a motion for a new trial is limited. For example, the reason given for requesting a new trial may be newly discovered evidence. However, for a judge to grant a motion for a new trial based upon newly discovered evidence, the party requesting the new trial must show all of the following: (1) the newly discovered evidence is important enough to change the result in the case; (2) the evidence could not have been discovered prior to the original trial with reasonable investigation; and (3) the evidence does not merely repeat or dispute evidence presented in the original trial. **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.**

In civil cases, if a motion for a new trial is filed after 10 days from the date of judgment, the time for filing the appeal continues to run and the 15 days allowed for the appeal may pass before any action is taken by the Court. If that happens, the party may be unable to file an appeal. If the motion is filed within 10 days from the date of judgment, the 15-day time for appeal does not include the days between the filing of the motion for a new trial and the judge's decision on the motion.

FOR LANDLORD/TENANT POSSESSION ACTIONS:

APPEALS

FOR POSSESSION OF RENTAL UNIT - Either party has five (5) business days, starting the day after the judgment is signed by the judge, to appeal the judgment of a Justice of the Peace which relates to the possession of a rental unit and other rental matters (including back rent due) to a special Justice of the Peace court. The special court trial will be a completely new trial before three other Justices of the Peace, unless the original trial was a jury trial. The appellant (seeking to appeal to the three-judge special court) must appear in the originating Justice of the Peace Court and make the appeal in writing. **A FEE OF \$50.00 MUST ACCOMPANY THIS MOTION.** To prevent execution on the judgment during the time of the appeal, the appellant must provide a bond or other assurances, as required by the court, to demonstrate the ability to pay all court costs, money damages, and other payments ordered by the court.

FOR DEBT (Rent Only) - The procedures for appealing or filing a motion for a new trial in a civil debt action explained above apply to an appeal of a landlord/tenant action involving rent or money damages only (and not possession of the rental unit).

DEFAULT OR NON-SUIT JUDGMENTS - If the possession of the rental unit was obtained by default judgment or nonsuit in a landlord/tenant possession action, the motion to vacate the default judgment or nonsuit must be filed within 10 days from the date the judgment was entered. **A FEE OF \$10.00 MUST ACCOMPANY THIS MOTION.** (This applies only to cases filed after July 17, 1996. Motions to vacate a default judgment or nonsuit in cases filed before July 17, 1996 must comply with the same time periods as for default and nonsuit judgments in civil actions in debt, trespass or replevin (see front page).)

**IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY
COURT NO. 17**

**COURT ADDRESS:
23730 SHORTLY ROAD
GEORGETOWN DE 19947**

CIVIL ACTION NO: JP17-12-000925

BETTER HOMES OF LAUREL VS LESLI JOHNSON

**SYSTEM ID: @2469842
LESLI JOHNSON
1702 DANIEL STREET
LAUREL DE 19956**

Appearances: Michael P. Morton, Esquire represented the plaintiff
Defendant appeared *pro se*.

Submitted: April 9, 2012
Decided: April 12, 2012

NOTICE OF JUDGMENT/ORDER

The Court has entered a judgment or order in the following form:

ORDER OF THE THREE JUDGE PANEL

A trial *de novo* was held before a three judge panel consisting of the Honorable Sheila G. Blakely, the Honorable Larry R. Sipple and the Honorable Christopher A. Bradley.

On February 20, 2012, the plaintiff as landlord filed this action against the defendant seeking possession of the rental unit located at 1702 Daniel Street, Carvel Gardens Apartments, Laurel, Delaware for an alleged material breach of the rental agreement, rules and regulations and the Residential Landlord Tenant Code involving an alleged stabbing on the Carvel Gardens apartment complex concerning a guest and/or an unauthorized occupant of the defendant.

On March 16, 2012, after a trial had been held on the previous day, the Honorable John C. Martin issued a decision awarding the plaintiff possession of the rental unit along with \$40.00 court costs.

Prior to beginning the trial *de novo*, the plaintiff's attorney made a motion to dismiss the defendant's appeal of the Court's March 16th decision for lack of jurisdiction, since the appeal request was filed on March 27th, more than 5 days from the date of judgment, as required under 25 Del. Code, Sec. 5717(a).

The defendant also asked the panel to consider that there was a delay in her knowing about the judgment for the case as she had been in the hospital and had not had her mail checked during that time.

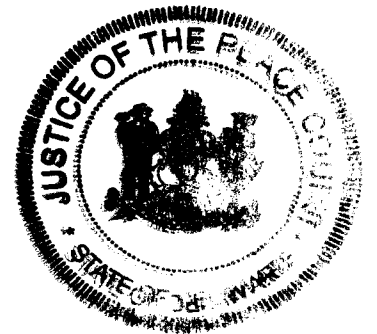
In reviewing the defendant's appeal request dated March 27, 2012, the panel found that the defendant had listed that judgment had been entered by the Court on "March 20, 2012" rather than the actual judgment date of March 16, 2012.

While considering the arguments of the parties on whether to dismiss the defendant's appeal, the panel weighed whether Justice of the Peace Court Civil Rule 6 (e) regarding extra time for mailing could be applied to the time limits of an appeal, when the judgment is sent out by mail. However, even if the three extra days for mailing were added to the five day appeal period, making the appeal period eight days, the panel found that this would not assist the defendant in meeting her appeal deadline, as again, under Rule 6, an eight day appeal period would require weekends to be counted.

Accordingly, the panel granted the plaintiff's motion to dismiss the defendant's appeal as untimely and as a result, the judgment of March 16, 2012 for this case remains in effect.

IT IS SO ORDERED this 12th day of April, 2012

C. Bradley by [Signature] (SEAL)
Justice of the Peace/Court Official



NOTICE OF APPEAL RIGHTS

Any party has 15 days starting the day after the judgment is signed by the judge to appeal the judgment of the Justice of the Peace Court to the Court of Common Pleas of the above county. If the judgment involves an action for summary possession in a landlord/tenant case, then either party has 5 business days, starting the day after the judgment is signed by the judge, to appeal the judgment to a three judge panel at the Justice of the Peace Court where the judgment was ordered. You must complete all of the appeal requirements within those periods. To prevent dismissal, the appeal must name all of the parties as they were originally named in the Justice of the Peace Court action. (This applies even if the action was dismissed in the Justice of the Peace Court against one or more of the parties.) Additional information on appeal procedures is found in the attached sheet entitled "Justice of the Peace Courts Civil Post-Judgment Procedures". (J.P. Civ. Form No. 14A) If no appeal is filed, parties may remove all exhibits from the Court no sooner than 16 days and no later than 30 days, from the date of this judgment. If not removed, the Court may dispose of the exhibits without further notice to the parties.

Final Date of Appeal of a Civil Case to the Court of Common Pleas is 15 days from the judgment.

Final Date for Appeal of a Landlord/Tenant case to a 3 Judge Panel is 5 days from the judgment.

IN THE JUSTICE OF THE PEACE COURT OF
THE STATE OF DELAWARE, IN AND FOR SUSSEX COUNTY
COURT NO. 17

COURT ADDRESS:
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GEORGETOWN DE 19947

CIVIL ACTION NO: JP17-12-000925

BETTER HOMES OF LAUREL T/A CARVEL GARDENS, PLAINTIFF
VS.
LESLI JOHNSON, DEFENDANT

Plaintiff Parties:

ATTORNEY FOR PLAINTIFF
SYSTEM ID: 002492
MICHAEL P MORTON PA.
1203 NORTH ORANGE STREET
WILMINGTON, DE 19801

Defendant Parties:

DEFENDANT
SYSTEM ID: @2469842
LESLI JOHNSON
1702 DANIEL STREET
LAUREL, DE 19956

PLAINTIFF
SYSTEM ID: @2519
BETTER HOMES OF LAUREL T/A
CARVEL GARDENS
PO BOX 635
LAUREL, DE 19956

ATTORNEY FOR PLAINTIFF
SYSTEM ID: 002638
ROBERT J VALIHURA JR..
LAW OFFICE ROBERT J. VALIHURA
1203 N. ORANGE STREET
WILMINGTON, DE 19801

PLAINTIFF
SYSTEM ID: @2519
BETTER HOMES OF LAUREL T/A
CARVEL GARDENS
901 DANIEL STREET
LAUREL, DE 19956

Other Case Parties:

JUSTICE OF THE PEACE COURT CIVIL POST-JUDGMENT PROCEDURES

[This information is not legal advice and not a substitute for seeking legal advice from an attorney. This information is not binding on the court if incorrect or misunderstood. It relates to frequently asked questions concerning post-judgment procedures but does not address all of the possible procedures and may not apply in your particular case. Forms for these procedures may be obtained from any Justice of the Peace Civil Court. All motions must include the name of the court, the names of the parties, the case number, the date the motion is filed with the Justice of the Peace Court and a title indicating the reason for the motion. Court costs or fees must accompany the motion, unless the person has requested, and the court determined, that the person may proceed in forma pauperis (without paying costs or fees because they have no money to pay).]

FOR CIVIL ACTIONS IN DEBT, TRESPASS OR REPLEVIN:

DEFAULT JUDGMENTS

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