

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

DENISE TRADER,	)	
	)	
Defendant Below/Appellant,	)	
	)	
v.	)	C.A. No.: CPU4-11-004070
	)	
GREENTREE VILLAGE	)	
APARTMENTS,	)	
	)	
Plaintiff Below/Appellee.	)	

Submitted: December 23, 2011
Decided: March 12, 2012

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Greentree Village Apartments
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Plaintiff Below/Appellee

DECISION OF PLAINTIFF'S APPEAL
ON DENIAL OF MOTION TO VACATE

Denise Trader ("Trader") appeals the decision of the Justice of the Peace Court dated June 13, 2011 which denied her motion to vacate judgment for Greentree Village Apartments ("Greentree") granting possession of a rental unit and damages in the amount of \$2,209.00. She now moves for a default judgment pursuant to *Court of Common Pleas Civil Rule* 60(b) and *Rule* 55(b) and (bb2).

This dispute was originally filed as a landlord-tenant summary possession action on June 6, 2009 in Case #JP13-09-009338. Therein, Greentree brought an action for possession of a rental unit on the basis Trader failed to pay rent and gas in the amount of \$1,079.86. In a decision rendered July 7, 2009, the Justice of the Peace Court held for Greentree, and entered judgment for \$1,637.32, court cost and possession. However, the Court pursuant to *25 Del. C. § 716* stayed possession concluding there was a good faith dispute regarding the rent due at the time of the default. At all times during these proceedings, Trader was unrepresented. Also, while unrepresented, Trader on July 24, 2008 agreed to a stipulated judgment in the amount of \$1,875.49, plus costs, agreeing to pay \$100 on the 10th and 15th of each month until the outstanding balance was paid in full.

On February 8, 2011, approximately two years after the Justice of the Peace Court decision with the assistance of counsel, Trader moved pursuant to Justice of the Peace 60(b) to vacate the judgment. The motion alleged Greentree engaged in a pattern of unlawful billing practices by failing to comply with the provisions of *25 Del. C. § 5312*. Specifically, Trader alleged the judgment which the Court entered for past-due rent in the original proceeding was based in part on gas billing which was unlawful. Trader argued that Section 5312(a) requires approval by the State of Delaware Department of Agriculture, Division of Weights and Measures whenever a landlord desires to use its own meters, and Greentree never obtained the required approval. Therefore, Trader argues the Court is without a basis to grant judgment where the amount alleged in the complaint is based upon an illegal metering system.

The Justice of the Peace Court in an opinion dated June 13, 2011, denied Trader's motion to vacate the judgment. The Court, however, found that Trader was unrepresented during the initial proceeding. Additionally, that the lease provided that utility metering was to be provided by a public utility agency, when in fact, in violation of the lease, it was done by Greentree's own meters and the meters were not approved by the Division of Weights and Measures. Notwithstanding, the Court concluded that the utility amounts would be still owed. The Court then concluded that these facts, even while accurate and undisputed, did not rise to the level of extraordinary circumstances to justify relief from judgment. The Court also stated two years was unreasonable delay in bringing the motion to vacate.

DISCUSSION

Trader filed this appeal on June 28, 2011. Greentree was served on September 6, 2011, but did not file a responsive pleading. Trader filed a motion for default on November 8, 2011, and the motion was scheduled for a hearing on November 17, 2011. Greentree failed to file any pleading or appear at the hearing. The Court declined to rule on motions and directed Greentree to file a response by December 16, 2011. Greentree did not comply with the Court's instructions and as of date, has not filed any pleading in response to the appeal.

Greentree did not challenge the validity of Trader's position regarding the illegality of the metering in the Justice of the Peace Court. Therefore, this Court

treats its failure to respond in these pleadings as not contesting the allegations at these proceedings.

Trader alleges herein most of the positions put forth in the Justice of the Peace Court. The essence of these arguments is that the landlord is prohibited from enforcing a rental agreement that “conflicts with” or is not expressly authorized by the Code. Additionally, she argues the judgment is based upon rental amounts, which is illegal.

An appeal from a denial of a motion to vacate judgment is limited to review of the decision denying the motion, and does not bring the case for *de novo* trial. *Ney v. Polite*, Del. Supr. 399 A.2d 527 (1979). As such, review is limited to whether the Justice of the Peace Court abused its discretion when denying the motion. The essence of judicial discretion is the exercise of judgment by conscience and reason as opposed to capricious and arbitrary action. Where a court has not exceeded the bounds of reason in view of the circumstances and has not ignored recognized rules of law or practice so as to produce injustice, its legal discretion has not been abused. *Pitts v. White*, Del. Supr., 109 A.2d 786 (1954).

The Justice of the Peace Court’s decision denying the motion to vacate concluded that the lease required utility metering be provided by a public agency, which was violated when Greentree used its own meters. Also, the Court concluded that Greentree’s meters were not approved as required. Even in light of these conclusions, the Court held that Greentree’s practices did not rise to the level of extraordinary.

I share the Justice of the Peace Court's concern regarding the two-year delay in bringing the motion. However, Trader was pro se at the time of the initial trial, and after being evicted, the pleadings state she was homeless. Additionally, the pleadings allege she sought assistance from Community Legal Society, Inc. and Legal Services Corporation of Delaware. Trader's representation in these proceedings is pro bono; therefore, I do not find a basis to conclude that she was neglectful in bringing the motion to vacate.

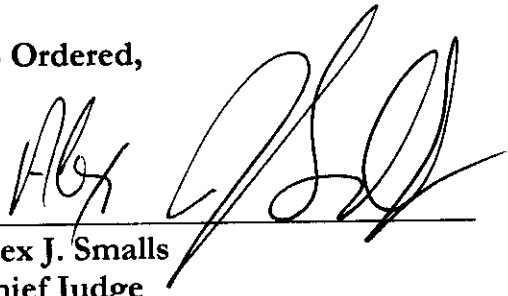
To permit a landlord to recover rent based upon a system which expressly violates a statute is really the equivalent of sanctioning failure to comply with the law. A court abuses its discretion when it does not require compliance with express statutory provision. Here, the statute provides that the metering system must be approved by the Division of Weights and Measures; it does not grant any leeway. Failure to comply means that there can be no billing with such a system and where billing is based upon such a system, it is improper.

A judgment which is granted and based in part on amounts generated in violation of a statute, no matter how well intended conflicts with the law and cannot be permitted to stand. A court abuses its discretion when it fails to vacate a judgment where the amount upon which the judgment is based in part is upon the facts and application of a calculation which violates the express provisions of the statute.

Accordingly, the Decision of the Justice of the Peace Court denying the motion to vacate is Reversed and the judgment entered for Greentree on July 9, 2009 is Vacated.

For failure to comply with Court's Order, Greentree is assessed costs of these proceedings, and counsel may submit application for any cost associated with any pleadings generated as a result of Greentree's failure.

So Ordered,



Alex J. Smalls
Chief Judge

cc: Justice of the Peace Court #13

Trader-OP March 2012