SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

Mr. Loren Lorenzetti
255 Missing Link Road
Rockingham, VT 05101

John E. Tarburton, Esquire
420 Pennsylvania Avenue
Suite 2
Seaford, DE 19973

RE: ***Lorenzetti v. Hodges***
C.A. No. S10C-07-007 RFS

Submitted: November 18, 2011
Decided: January 27, 2012

Dear Mr. Lorenzetti and Mr. Tarburton:

This is the case of Loren Lorenzetti v. Dorothea Hodges, Tamara Hodges, Michael Bagley, and John Doe No. 1.

Background

Loren Lorenzetti ("Lorenzetti") and Dorothea Farrell Hodges ("Hodges") began a relationship in 1998.[1] Over time, they lived in Vermont, Florida, and Delaware. Following differences in 2003, Lorenzetti permitted Hodges to live in a house owned by

[1]Lorenzetti knew Hodges as Dorothea Anne Farrell. At some point, she assumed the name "Hodges," in apparently legal fashion. She is referred to as "Hodges" throughout this Opinion.

him in Dagsboro, Delaware. During the relationship with Hodges, Lorenzetti was involved in divorce proceedings in New Jersey, and Hodges assisted him.

On July 20, 1998, Lorenzetti executed a durable power of attorney to Hodges. On July 3, 2001, Lorenzetti prepared a will. He left his real and personal property to Hodges, naming her as Executrix.

On December 10, 2004, he deeded the Dagsboro house to Hodges.[2] He also executed an agreement which stated that in consideration of Hodges' past support of Lorenzetti, the properties owned by him in Delaware and Vermont would be conveyed to her. The past support was calculated to be $200,000, reflecting 8 years support at $25,000 per year. The Delaware deed recited $150,000 as consideration. Transfer tax on the $150,000 was paid. The Vermont property was to stand for the balance but a deed was not done. The Delaware home was furnished with Lorenzetti's personal property.

In October 2006, Hodges conveyed the Dagsboro property to herself, reflecting her assumption of the name of Hodges rather than Farrell.

---

[2]The deed is signed by Lorenzetti on December 10, 2004. It is acknowledged by a notary public in Vermont. The grantor is Lorenzetti, party of the first part. The grantee is Farrell, party of the second part. She signed the deed before a Delaware notary public on December 21, 2004. The deed was recorded on January 24, 2005 and by its terms is returned to Dorothea Hodges at the Dagsboro address, which is part of the subject matter in litigation. The conveyance language states: "WITNESSETH, that the said parties of the first part, for and in consideration of the sum of $150,000 and other good and valuable consideration, the receipt whereof is hereby acknowledged, hereby grant and convey into the said parties of the second part, as tenants-in-common. . . ."

If a tenancy in common was the objective, then Lorenzetti and Hodges would have inheritable interests. Usually, when a deed is conveyed, the person receiving a fee simple interest is not required to sign the deed where a joint tenancy is not involved. 25 *Del. C.* § 121, § 701.

In this litigation, Lorenzetti claims that the Delaware property conveyed in 2004 was subject to two conditions: (1) that Hodges was to execute a reciprocal will, leaving her real and personal property to him and (2) that she would pay rent in the amount of $300 per month.

Through August 2008, Lorenzetti received approximately 50 rent checks from Hodges. No payments have been made since September 2008. When going through his papers in June or July of 2006, Lorenzetti realized he did not have a copy of Hodges' will, and he spoke to her about it. On August 19, 2006, he received a will from Hodges, which was signed by Hodges on August 14, 2006. It devised the Dagsboro real property to Lorenzetti, if he survived her death. Four residual beneficiaries were named, including her daughter, Tamara Leigh Hodges.

In September 2008, Lorenzetti and Hodges argued to the point where police assistance was required. Hodges sought a Protection from Abuse Order. In addition to arguing about the personal property, Lorenzetti and Hodges disagreed about Hodges' use of the power of attorney. In 2008, Lorenzetti learned that Hodges could not account for $10,000 that was left in her care in previous years. Also, Lorenzetti wanted Hodges' daughter, Tamara Hodges, to take title to a sail boat on his behalf. She refused. In 2007, he left either $14,250 or $15,250 with Hodges for the purchase of buying a sail boat. Whatever the exact amount, everything was repaid in December of 2008 but for $763.33.

In October 2008, Hodges told Lorenzetti to remove his personal property from the house. She arranged to ship the property to Vermont at his expense. She told Lorenzetti that if he did not accept this offer, she would dispose of the personal property. Lorenzetti believed that Hodges rented the personal property and that she should be responsible for the expense. They previously tried to resolve this issue, but without success.

In December 2008, Lorenzetti hired a Delaware lawyer, who sought injunctive relief in Chancery Court to prevent Hodges from disposing of the property or, in the alternative for damages. An exhibit to the complaint listed Lorenzetti's property, which was valued at $150,000. The property included a 1959 vintage racing car that Lorenzetti had restored. It was located in the living room of the Dagsboro property. Upon filing of the complaint, an *ex parte* restraining order was entered. Hodges was served with the complaint with notice to appear for hearing on January 2, 2009 on whether the order would remain in place pending trial.

At the hearing, Lorenzetti's lawyer appeared but Lorenzetti was on a sailing trip to Florida for his health. Hodges opposed the relief, disclosing that she changed the will in August 2006, leaving the property to her children, instead of Lorenzetti. She claimed that Lorenzetti coerced her into making the earlier will.

The Chancellor found that equity did not have subject matter jurisdiction because a replevin action for the return of Lorenzetti's personal property was available in the Superior Court as an adequate remedy at law. Lorenzetti's lawyer was given permission

to transfer the case to the Superior Court under the provisions of 10 *Del.C.* § 1902.

In April 2009, Lorenzetti revoked his will leaving his real and personal property to Hodges. On August 27, 2008, Hodges deeded the Dagsboro property to herself and Michael Bagley.

On January 29, 2010, Hodges sold the Dagsboro property to neighbors named Cropper for $390,000. Two deeds were needed to close the transaction. First, a deed conveyed Bagley's and Hodges' joint interest to Hodges. Then Hodges conveyed the property to the Croppers. The property was the same as conveyed by Lorenzetti in 2004. The personal property in the Dagsboro home belonging to Lorenzetti was stored by Hodges.

In the meantime, in February 2010, Hodges filed an action in the Justice of the Peace Court against Lorenzetti. The complaint alleged that Lorenzetti's personal property was abandoned and sought an order allowing her to dispose of it. The property was the same as listed in the Chancery Complaint, including the 1959 vintage racing car.

On June 4, 2010, Lorenzetti's lawyer withdrew as counsel effective with the Chancellor's approval. On the Chancellor's order, Lorenzetti filed the case in Superior Court on July 7, 2010.

On July 1, 2010, the Magistrate Court issued a written judgment after a contested hearing on June 23, 2010. The justice found that the property was abandoned. Lorenzetti was advised of his right to file an appeal by July 15, 2010. The Court of Common Pleas

dismissed Lorenzetti's appeal on August 19, 2010. Lorenzetti did not appeal the dismissal to the Superior Court. He now argues that the transfer from Chancery to Superior Court is an appeal. This argument does not stand because the Superior Court proceedings commenced with the filing of the Chancery record on July 7, 2010.

On July 30, 2010, Lorenzetti filed a complaint that was answered by the defendants. A motion to dismiss was converted to one of summary judgment. A Scheduling Order was entered with trial scheduled for April 16, 2012. Briefing on the summary judgment motion was completed in July 2011, and the final submission was received on November 18, 2011.

Lorenzetti's Pro Se Status

Because Lorenzetti appears pro se, his pleadings will not be rejected because of lack of legal sophistication. However, the defendants' rights will not be adversely affected by departure from the procedures and standards required of all litigants. Courts are open for relief, and the rules are applied to provide justice for both parties.[3]

The complaint should include a short and plain statement of each claim, as required. Adequate notice of the time, place and nature of the claim is necessary to permit defenses.[4]

---

[3] *Aliston v. DiPasquale*, 2001 WL 34083824 (Del. Super.); *NKS Distributors, Inc. v. Tigani*, 2010 WL 2178520 (Del. Ch.).

[4] Super. Ct. Civ. R. 8.

The Chancery Court Case Was Timely Filed in This Court

Defendants argue for dismissal because the case was not transferred within the 60-day period required by the transfer statute, 10 *Del.C.* § 1902. That section provides that when a court lacks subject matter jurisdiction over an action, the case "may be transferred to an appropriate court for hearing and determination, provided that the party otherwise adversely affected, within 60 days after the order denying the jurisdiction of the first court has become final, files in that court a written election of transfer. . . ."[5]

Defendants contend the case was effectively dismissed with prejudice on March 3, 2009, 60 days from the Chancellor's January 2009 verbal direction that the case would be dismissed with prejudice if it was not timely transferred to the Superior Court. Based on this contention, defendants argue that Lorenzetti cannot make any claims concerning the return or loss of his personal property and associated damages.[6]

The record shows that a judicial action form was filed by the clerk that reflected the results of the Chancery hearing on January 2, 2009. While it bears a stamped signature of the Chancellor, the judicial action form is not a final judgment. In his June 10, 2010 order, the Chancellor found that Lorenzetti's lawyer did not submit the written order that was required to effectuate a transfer. A judge must sign a written order to

---

[5]Title 10 *Del. C.* § 1902.

[6]A case that is dismissed with prejudice operates as an adjudication on the merits,*Kaufman v. Nisky*, 2011 WL 7062500, at *1 (Del. Super.), and the principles of *res judicata* and collateral estoppel would take effect.

create a final judgment for transfer purposes.[7] Judges have discretion to manage dockets by court rule and inherent authority.[8] The Chancellor exercised this authority with the June 10, 2010 order. This order is a final judgement, and transfer was completed on July 7, 2010, well within the 60-day time frame. Defendants' argument for dismissal is denied.

The Superior Court Process

Upon transfer to the Superior Court, the Chancery Court record is filed with the Prothonotary. The Chancery Court complaint is the springboard for legal action. Chancery pleadings do not have to be refiled or reserved.[9] The Chancery complaint was lodged on July 7, 2010. Hodges did not file an answer.

Lorenzetti was informed by a clerical letter that a new civil action began in the Superior Court and that he was required to file a complaint. In fact, although a new civil action number would be assigned, Lorenzetti was not required to file another complaint. Upon notice of the transfer, Hodges should have answered the transferred complaint,

---

[7] *Wilmington Trust Company v. Schneider, Jr.*, 342 A.2d 240, 241 (Del. 1995). The transfer period runs from the date of an order denying the jurisdiction of the first court. A two-step process is involved. First, the court must sign a written order denying jurisdiction with leave to transfer. Second, the party electing transfer must move to effect the change within 60 days. Possibly the obligation was on Hodges to supply the order that dismissed the Chancery case as she was the successful party. She was pro se, and Lorenzetti's attorney was expected to provide the order, which was well within a judge's discretion.

[8] *Meck v. Christiana Care Health Services, Inc.*, 2011 WL 1226456, at *4 (Del.Super.)(citing *Coleman v. PricewaterhouseCoopers, LLC*, 902 A.2d 1102, 1106 (Del. 2006).

[9] *Maloney-Refaie v. Bridge at School, Inc.*, 2008 WL 2679792 (Del. Ch.).

followed by entry of a scheduling order.

In any event, Lorenzetti filed his complaint on July 30, 2010. Service of process took time but defendants answered the complaint. Because Lorenzetti complied with the direction to file a complaint, I will read the July 30 complaint in context with the Chancery complaint in the interest of justice. Defendants' objections apply.

Legal Standards

The defendants have filed a motion to dismiss for failure to state a claim. A motion to dismiss cannot be granted unless plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof. A complaint may not be dismissed unless it is clearly without merit as a matter of law or fact.[10]

With notice to the parties, the motion has been converted to one for summary judgment. The parties have engaged in discovery and have supplemented the record. A motion for summary judgment will be granted where there are no issues of material fact and judgment should be entered as a matter of law.[11] The summary judgment motion principally concerns whether a cause of action has been stated and whether the doctrines of *res judicata* and collateral estoppel bar reconsideration of the subject matter jurisdiction exercised by the Justice of the Peace court.

---

[10] *Aliston v. DiPasquale, supra.*

[11] *Lorenzetti v. Enterline*, 2011 WL 5966726 (Del. Super.).

A Cause of Action Has Been Stated

The Chancery complaint presented a claim for the return of the personal property as listed in the exhibit. The complaint asserts Lorenzetti's ownership, a value of at least $150,000, and Hodges' intentions to dispose the property. Damages are requested for items that cannot be returned.

The Superior Court complaint alleges that Hodges breached the duty of loyalty under the 1998 durable power of attorney, thus enriching herself by breach of trust. Lorenzetti claims that the misuse resulted in $10,000 being taken from him between 1998 and 2003; that $15,250 was taken as money intended to fund a purchase of a boat; that he was deprived of his Delaware properties; and that $23,000 in rental income was lost to him from 2003 through the date of the complaint. Lorenzetti seeks restitution for the alleged breaches of fiduciary duties and creation of a constructive trust for the real and personal property, pursuant to *Schock v. Nash*[12] and *Lingo v. Lingo*.[13]

This Court does not have subject matter jurisdiction to impose a constructive trust or to hear claims of a breach of fiduciary duty, including those arising out of alleged misuse of a power of attorney.[14] This Court does not hear equitable claims even when

[12]732 A.2d 217 (Del. 1994).

[13]2009 WL 623720 (Del. Ch.).

[14]*Id.; Lorenzetti v. Enterline, supra.*

monetary damages are sought.[15]

However, in relation to the transferred case and for return of his personal property, Lorenzetti makes a replevin claim with associated damages.

Lorenzetti also claims slander, alleging that a friend of Hodges inaccurately told a museum curator that a restraining order was in effect against Lorenzetti.

Both the Chancery Court and Superior Court papers reflect for two months in 2008 Lorenzetti wanted to donate the racing car to the Boston Museum of Transportation. The director of the museum, Mr. Mike Iandoli, said he was contacted by telephone by a man representing himself as Hodges' attorney (but who would not give him his name or any contact information) who informed him that there was a restraining order prohibiting Lorenzetti from coming within 100 yards of the premises. Lorenzetti alleges that this was an untrue, slanderous statement made by the John Doe Defendant.

Delaware courts do not favor suits for libel and slander and impose stricter pleading requirements for slander.[16] Slander requires proof of the following elements: (1) the defamatory character of the communication; (2) publication; (3) that the communication refers to the plaintiff; (4) the third party's understanding of the communication's defamatory character; and (5) injury.[17] Special damages must be pled in

---

[15]*Estate of Buonamici v. Morici, CPA*, 2009 WL 792390 (Del. Super.).

[16]*Better v. Mitchell*, 2004 WL 3312524 (Del. Com. Pl.).

[17]*Id.*

a claim of slander except for statements that malign one in a trade, business or profession, impute a crime, imply that one has a loathsome disease or impute the chastity of a woman.[18]

Taking Lorenzetti's factual allegations as true, a slander claim could be made. The restraining order statement, which was published to the curator, can be seen as imputing a crime. The nature of the statement would be understood as defamatory.

However, Lorenzetti does not allege the identity of the slanderer. He attempts to satisfy this requirement by use of a John Doe defendant, which is not generally available in Delaware.[19] Civil Rule 10(a) provides that every complaint shall contain the names of all the parties. The filing against a fictitious name does not toll the statute of limitations.[20] This is so, even if discovery efforts have been frustrated.[21] A plaintiff is not entitled to conduct discovery concerning whether he was slandered.[22] The objective of discovery is

---

[18] *Id.*

[19] *Johnson v. Paul's Plastering, Inc.*, 1999 WL 744427 (Del. Super.); *Clark v. Delaware Psychiatric Center*, 2011 WL 3762038 (Del. Super.)(citing *Hutchinson v. Fish Engineering Corp.*, 153 A.2d 594, 595 (Del. 1959)(*appeal dismissed*, 162 A.2d 722 (Del. 1960)). The *Clark* Court referred to compelling or unusual circumstances that would warrant a fictitious designation, and cited to a child abuse case which presents good reason to protect a plaintiff from embarrassment.

[20] *Id.; Mergenthaler v. Asbestos Corp. of America*, 500 A.2d 1357 (Del. Super. 1985).

[21] *Id.*

[22] *Abrahams v. Young & Rubicam*, 979 F.Supp. 122, 128 (D.Conn. 1997).

to flesh out facts about a well pleaded claim, not whether one exists.[23] Therefore, the claims based solely on a John Doe basis are not legally effective.

Lorenzetti also raises a breach of contract claim[24] for $23,000, alleging that Hodges agreed to pay rent for the furnishings at $300 per month and that this amount was raised at a later time. As stated previously, the record shows that Lorenzetti received rent checks from Hodges until September 1, 2008. Whether or not there was a rental contract is a question of fact subject to defenses set forth in the defendants' answers.

The Action Is Not Barred by *Res Judicata* or Collateral Estoppel

Defendants argue that the doctrines of *res judicata* and collateral estoppel bar the Superior Court action because the both Chancery Court and Justice of the Peace resulted in final judgments.

Res judicata applies when five factors are met: (1) the prior court had jurisdiction over the subject matter and the parties; (2) the parties in both actions are the same and are in privity with one another; (3) the cause of action is the same in both cases or the issues decided in the prior action must be the same as those raised in the present case; (4) the issues in the prior action must be decided adversely to the parties contention in the instant

[23] *Id.*

[24] The elements for this cause of action are (1) the existence of a contract; (2) the breach of an obligation imposed by that contract; and (3) resulting damages to plaintiff. *Spanish Tiles, Ltd. v. Hensey*, 2005 WL 3981740, at *3 (Del. Super.).

case; and (5) the prior adjudication must be final.[25]

Collateral estoppel arises when questions of fact essential to the judgment, are litigated, and determined by a valid and final judgment.[26]

I previously determined that the transfer from Chancery to Superior Court was sufficient and that a *res judicata* and collateral estoppel objection could not be made on that basis. That decision stands.

Jurisdiction

On Hodges' complaint in the Justice of the Peace Court, the magistrate found that Lorenzetti had abandoned his property. Lorenzetti contends that the action exceeded the jurisdictional limit of $15,000. The Court addresses this issue under Delaware law and the Restatement (Second) of Judgments. The results are consistent.

If the judgment is valid, the principles of *res judicata* and collateral estoppel would preclude Lorenzetti from bringing any personal property and damage related claims, as explained, *supra*. The legislature gave the Justice of the Peace Court, Court of Common Pleas, and Superior Court concurrent jurisdiction over abandoned property claims.[27] The jurisdictional limits of the courts regulate the exercise of each court's actions. The Justice of the Peace Court's jurisdiction is generally limited to $15,000 of

---

[25]*Pilot Point Assoc. of Owners v. City of Lewes Bldg. Inspector*, 2011 WL 5326296 (Del. Super.)

[26]*Id.*

[27]Title 25 *Del.C.* § 4007.

the amount in controversy.[28] Examples of unrestricted limits include proceedings for liens against garage owners and for summary possession, actions over which the Justice of the Peace Court has exclusive jurisdiction.[29]

Under 25 *Del.C.* § 4007, a litigant can chose to bring a claim in one of the three courts. The Justice of the Peace Court system may be quicker, simpler and less expensive. A plaintiff may want to seek the benefit of law trained judges in the Court of Common Pleas and the Superior Court. An action in Superior Court may result in a jury trial. While all three courts can adjudicate claims of $15,000 or less, the Magistrate's Court cannot exceed the $15,000 limit.[30] If the General Assembly intended for the Justice of the Peace Court to have unfettered jurisdiction regardless of value, it would have said so.

Collateral attacks are permitted against prior judgments that lack subject matter jurisdiction.[31] Judgments of this nature are a nullity and of no consequence. Usually, the

---

[28]Title 10 *Del. C.* § 9301.

[29]Exclusive jurisdiction regardless of the amount claimed by the lienholder is given to the Justice of the Peace Court under 25 *Del. C.* § 3909. For summary possession actions, the magistrate's court has sole jurisdiction. 25 *Del. C.* § 5701; *Bomba's Restaurant & Cocktail Lounge, Inc. v. Lord De La Ware Hotel, Inc.*, 389 A.2d 766 (Del. 1978).

[30]Traditionally, the magistrate court's jurisdiction is limited with authority determined solely by statute. *Bomba*, at 770.

[31]*Husband (G.T.B.) v. Wife (G.R.)*, 424 A.2d 12, 15 (Del. 1980)(citing *E.J Hollingsworth Co. v. Cesarini*, 129 A.2d 768 (Del. Super.1957) and stating that "a void judgment, as distinguished from a voidable judgment, may be collaterally attacked at any time regardless of the running of an otherwise applicable statute of limitations.").

question is decided by a motion or complaint to vacate the judgment. The subject is discussed by one court as follows:

> 'Where a judgment of a domestic court of record of general jurisdiction is void for want of jurisdiction apparent upon the record it is, in legal effect, no judgment. In legal contemplation it has never had lawful existence. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars anyone. All acts performed under it, and all claims flowing out of it, are void. It cannot be the basis of an execution, or the foundation of a valid title to property purchased at a sale thereunder. No action on the part of the plaintiff, no inaction on the part of the defendant, can invest it with any of the elements of power or of vitality. It is unavailing for any purpose. It can be taken advantage of at any time, and in any court where it is offered as a conclusive adjudication between the parties; for an inspection shows that it is not such, because the court had no power, for manifest want of jurisdiction, to make an adjudication. Such a judgment, when collaterally drawn in question, may be disregarded and treated as a nullity, and need not adjudged to be such by a formal and direct proceeding for its vacation or reversal.'[32]

Here, judicial notice was taken of the prior judicial proceedings. Defendants were given the opportunity to comment on them and on Lorenzetti's challenge to subject matter jurisdiction. Defendants' intent was to introduce the documents at trial.

Defendants agree that magistrate's court has a $15,000 jurisdictional limit, but they argue that Lorenzetti failed to present evidence at the hearing that the property was worth more than $15,000.[33] Further, they argue Lorenzetti's failure to perfect an appeal to the

---

[32]*E.J. Hollingsworth Co. v. Cesarini*, 129 A.2d 768, 769 (Del. Super. 1957)(quoting *Frankel v. Satterfield*, 19 A. 898, 900 (Del. Super. 1890)), as recognized in *Husband (G.T.B.) v. Wife (G.R.)*, n. 31, *supra*; *Ostroff v. Brandywine Lock & Safe Co.*, 428 A.2d 8 (Del. 1981).

[33]Letter from John E. Tarburton, Esquire, to this Court, dated November 9, 2011, stating that at trial, "no evidence was presented by Mr. Lorenzetti to suggest that the property was worth

Court of Common Pleas should end this matter.

Under the abandoned property statute, a petition is required to state the value of the property that is claimed to be abandoned.[34] This is a guidepost for the monetary limitations of a particular court's jurisdiction. The value for the listed property and for the vintage racing car was typewritten as "unknown." The record reflects that Lorenzetti questioned whether the Justice of the Peace action was the appropriate venue because of the large dollar claims arising from Hodges' alleged misuse of the durable power of attorney. Reasonably understood, Lorenzetti also challenged the $15,000 limit.

In the written order, the judge found Lorenzetti's references to value were not relevant because the abandoned property claim was distinct from power of attorney issues. The judge denied Lorenzetti's request to record the proceedings because a *de novo* appeal to the Court of Common Pleas was available.

The magistrate's judgment does not state that the value of the abandoned property was $15,000 or less or provide any basis to permit this conclusion. When Lorenzetti raised the issue post-trial, he received a letter stating that the trial judge does not recollect that the issue was raised.[35]

---

more than $15,000.00."

[34]Title 25 *Del.C.* § 4003 (a)(6).

[35]Letter from Sheila G. Blakely, Deputy Chief Magistrate for Sussex County, dated December 1, 2010, in response to Lorenzetti's post-trial query, stating that the trial judge did not recollect that Lorenzetti raised the jurisdictional limit of $15,000 at trial.

In *Arnona v. Arnona*,[36] the amount of rent paid determined jurisdiction, but the spaces on the pleadings for filling in the amount were left blank. The court found that subject matter jurisdiction was not established, and the judgment was an "absolute nullity."[37] In this case, if Hodges had alleged the value of the property to be $15,000 or less, as required, then the judgment would implicitly find the amount even if it were not stated in the magistrate's opinion.

The basis of a court's jurisdiction must affirmatively appear on the record, the pleadings, docket or judgment.[38] The record shows that the jurisdictional basis did not appear on the record in the magistrate's proceedings.

This conclusion is consistent with Restatement (Second) of Judgments. The Restatement discusses the issue in terms of the principles of finality, validity, and other competing public and private interests.[39] According to the Restatement, more emphasis

---

[36]477 So.2d 120 (La. Ct. App. 1985).

[37]*Id.* at 122.

[38]*Johnson v. Jones*, 151 A. 717 (Del. Super. 1930); *Johnson v. Hamilton*, 185 A.2d 70 (Del. Super. 1962). A justice of the peace court does not benefit from presumptions in favor of jurisdiction. The general rule requires essential jurisdictional facts to appear on the face of the record in order to affirmatively show that the court has subject matter jurisdiction. 51 C.J.S. Justices of the Peace § 58. A plaintiff should allege the value of the property in controversy, which is typically the amount claimed in the pleadings or summons. *Id.*; 51 C.J.S. Justices of the Peace § 70. Where the record shows on its face that the amount of a claim is not within the court's subject matter jurisdiction, any judgment entered is subject to collateral attack. 47 Am. Jur. 2d. Justices of the Peace § 44.

[39]The Restatement (Second) of Judgments § 12 provides as follows:
When a court has rendered a judgment in a contested action, the judgment precludes the parties from litigating the question of the court's subject matter jurisdiction in subsequent litigation

was given to validity in the past than to judgments that were entered without subject matter jurisdiction and were thus deemed to be void and subject to later collateral attack. The Restatement suggests that other interests should sway a court's decision as whether concerns over validity and finality are equivalent.[40]

Here, the Court finds predominant four interests to be considered in the finality/validity analysis. One is the public interest in the magistrate's court adhering to its jurisdictional bounds. Another factor is that less deference is afforded to a judgment where no third party interests to consider. Third, the Restatement (Second) of Judgments states that a challenge to the court's subject matter jurisdiction is free from the door-closing procedural rules that apply to other kinds of issues.[41] Fourth, as stated in § 12, where the judgment substantially infringes upon the exercise of another court's jurisdiction, which is likely in this case, then it is subject to attack.

As stated previously, Hodges failed to list value on her complaint in Justice of the Peace Court. She was aware that the value of Lorenzetti's personal property was in dispute. The Chancery complaint, which she received, alleged a value of $150,000. In

---

except if:

> (1) The subject matter of the action was so plainly beyond the court's jurisdiction that its entertaining the action was a manifest abuse of authority; or
>
> (2) Allowing the judgment to stand would substantially infringe the authority of another tribunal or agency of government. . . .

[40] *Id.* cmt. a.

[41] *Id.* cmt b.

the magistrate's action, Hodges bore the burden to state a figure and to present an evidentiary basis for it.[42] It is unclear whether the question came up at the hearing. Although the magistrate's Notice of Judgment states that Lorenzetti said he did not want possession of the personal property,[43] Lorenzetti asserted to this Court that he told the magistrate that he did not want the property if he had to "pay a ransom for it."[44] This statement falls short of establishing jurisdiction. Hodges knew the value of the property was disputed and that the racing car had a substantial value.

Indeed, shortly after the magistrate's proceedings the car was listed for sale on Ebay for a value exceeding $18,000.[45] The exercise by the Justice of the Peace of

---

[42]A plaintiff always bears the burden to show subject matter jurisdiction even in courts with limited but powerful authority, like the federal district courts. *See Hunter v. District of Columbia*, 384 F. Supp. 2d 257 (D.D.C. 2005); *Fritz Warner-Lambert Pharmaceutical Company*, 349 F.Supp. 1250 (E.D.N.Y. 1972).

[43]*Hodges v. Lorenzetti*, Notice of Judgment/Order, (July 1, 2010, J.P. Court).

[44]Transcript of Proceedings, April 15, 2011, at 34.

[45]Hodges was warned by the circumstances that the judgment may lack validity and did not warrant justifiable reliance. Cmt c of the Restatement (Second) Judgments § 69 (1982) states as follows:

> c. *Denial of relief.* Assuming that the conditions stated in § 12 are met, relief from the judgment ought to be granted under almost all circumstances. The conditions stated in § 12 are defined in terms of conduct that usually is clearly manifested, i.e., plain excess of authority or substantial infringement of the authority of another tribunal or agency. Such violations of authority ordinarily import warning, or at least circumstances that reasonably require inquiry, as to the possibility that the judgment may lack validity. Such a warning in turn militates against there being justifiable interests of reliance on the judgment. Only the protection of such an interest of reliance, and not delay in seeking relief of itself, would justifiably refused to set aside a judgment where the rendering tribunal's authority was so clearly lacking.

jurisdiction substantially infringes upon the authority of the other courts given concurrent jurisdiction and Delaware's legal framework of circumscribing monetary limits among the courts.

Consequently, both under precedent and the Restatement, I find the magistrate's judgment is void for lack of subject matter jurisdiction, and it will not have preclusive effect.

Motion for Default and Motion to Strike

Lorenzetti previously requested a default judgment be entered against Tamara Hodges. She was served on December 4, 2010 and mailed her answer to Lorenzetti on December 24, 2010. He did not open it, believing it might contain a video. Following a scheduling conference in February, he complained that he never received her answer by mail.

Based on Tamara Hodges' affidavit and Lorenzetti's responses, I find that the mailing was done, and Lorenzetti marked the envelope marked "return to sender" ("RTS"). The motion for default is denied.

Lorenzetti also filed a motion to strike additional information portions of the answer filed by Tamara Hodges. The motion was filed on April 8, 2011. Hodges' answer was served on Lorenzetti between December 24, 2010 and the date the RTR envelope was received by her on January 3, 2011. The motion to strike is not timely under Rule 12(f). It is more than 20 days from the service. It is denied.

Motions to Amend

Lorenzetti's request to amend by a filing captioned "corrected amended complaint" was filed on April 14, 2011. In fact, it is a second filing claiming to correct an earlier request to amend. It is opposed by defendants. For the sake of judicial economy, the Court will focus on the second filing.

Motions to amend are freely granted in the interest of justice. The amended complaint needs to draw attention to the amended parts. The claim in the amended pleading must arise out of the conduct, transaction, or occurrence set forth originally. If a party is to be added, the party must have had notice of the lawsuit and knew or should have known that he or she would have been named as a defendant within the period allowed for service of process of the original complaint. This period for service of process is 120 days.[46]

As between parties to suit, litigants may amend their pleadings to state additional claims, to assert additional defenses, or to drop claims or defenses.[47] This is common fodder in the courts. An amendment of a pleading relates back to the date of the original pleading when the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading. The purpose of the rule is to encourage the disposition of litigation on the

[46]Super. Ct. Civil R. 15.

[47] 6 Wright, Miller & Kane, Federal Practice and Procedure § 1474, 619-622 (3d ed.).

merits. It is the general policy of Delaware to be liberal in permitting amendments.[48] Amendments that would be futile or unfairly prejudicial may be denied.[49]

With these principles in mind, the motion to amend is granted with the following exceptions:

(1) Paragraphs 1 and 2 and Count 1 are breach of fiduciary duty claims; they arise from an alleged misuse of the power of attorney. This Court does not have subject matter jurisdiction for them, and defendants need not answer them;

(2) the John Doe designations, references, and slander claims need no response as this practice is not legally effective;

(3) defendants will not be unfairly prejudiced by the amendment. The bulk of the claims arise out of the conduct, transaction or occurrence that was attempted to be set forth originally. The references to Hodges' former legal name are insignificant. The parties have proceeded through discovery and further preparation will not be required. I understand the defendants argue that Lorenzetti has misunderstood concepts of law. If so, the trial will straighten things out;

(4) the request to add an additional party, Zach Taylor Hodges III, is denied. He is Dorothea's son, and Lorenzetti knew about him at the time of the filings in the Superior

---

[48] *Legatski v. Bethany Forest Assoc., Inc.*, 2005 WL 2249598, at *1 (Del. Super.)(stating that under both Civ. Rule 15(a) and Delaware case law "leave of court [to amend] should be freely given unless there is evidence of undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies, prejudice, futility or the like.").

[49] *Id.*; 6 Wright, Miller & Kane, § 1487.

Court on July 30, 2010 and last April when the two additional amendments were filed. If he were added, there would have to be more discovery, and the defendants would incur more expense. Adding him would result in the delay of trial. Further, there has been no showing that he knew, but for a mistake that he would have been a party within the appropriate times to prevent the running of the 2-year statute of limitations required for slander claims.[50] The amendment would be futile. Defendants need not respond to allegations pertaining to him.

Lorenzetti filed a third motion to amend on December 12, 2011. The Scheduling Order provided that motions to amend be filed on August 22, 2011 and discovery ended on August 26, 2011. This motion is too late. It also appears to add arguments involving constructive fraud that are equitably driven. The defendants would be unfairly prejudiced. This amendment will not be permitted.

Defendants shall answer the second amended complaint on or before Monday, February 20, 2012. The response may include the matters that defendants requested in their motion to amend the answer filed on April 25, 2011.

As to any pending motions to compel discovery, the parties shall respond to them on or before Monday, February 20, 2012. The submissions shall address matters requested by defendants by letter dated December 20, 2011.

---

[50] *Clark v. Delaware Psychiatric Center,* 2011 WL 3762038, at *1 (Del. Super.).

Defendants have pending motions for sanctions. These matters will be determined after the trial.

Except as provided herein, the Scheduling Order is not modified and the case will proceed to trial in April.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

RFS/cv
cc: Prothonotary