IN THE PHILADELPHIA MUNICIPAL COURT

LUCK ENTERPRISES LLC	:	
	:	
v.	:	LT-09-11-03-3436
	:	
DAVID and EVELYN MELTON	:	

OPINION

MOSS, J. June 30, 2011

Tenants David and Evelyn Melton seek to set aside a writ of execution by which landlord Luck Enterprises, LLC sought to attach and levy property owned by the Meltons and held by Citizens Bank. The facts are not in dispute. Based on its finding that the tenants had failed to pay rent, the court entered a judgment awarding $3,498.73 and granting possession to the landlord. Twelve days after the entry of the judgment, the landlord filed a praecipe requesting that a writ of attachment be issued to Citizens Bank.

Twenty-eight days after the entry of the judgment, the tenants filed a notice of appeal. The tenants used a notice of appeal form supplied by the court of common pleas. The form provides an appellant with the following choices:

[ ] Money Judgment Only (30 days)

[ ] Landlord-Tenant, residential lease: possession only or possession and money judgment (10 days)

[ ] Supersedeas is requested [ ] Supersedeas is not requested

[ ] Landlord-Tenant, residential lease, money judgment only (30 days)

[ ] Landlord-Tenant, non-residential lease, possession or possession and money judgment (30 days)

[ ] Supplementary Orders (30 days)

Although it was a landlord-tenant action, the tenants checked off only the first box (money judgment only) instead of the third box (landlord-tenant, residential lease, money judgment only). The error, however, is inconsequential in deciding this case because there is no dispute that the tenants sought to challenge only the court's award of $3,498.73 and not the court's award of possession of the property to the landlord.

The parties agree that this case involves a residential lease and that possession is not an issue on appeal because the tenants vacated the premises sometime after the entry of the judgment and prior to filing the notice of appeal. Additionally, neither party contends that a victim of domestic violence is involved in this case.

The issue is whether the tenants had ten or thirty days to take an appeal from the date that the court entered the judgment. The tenants argue that the writ of execution should be set aside because the landlord prematurely filed the praecipe before the time to take an appeal had expired. The landlord contends that it was entitled to the issuance of a writ of execution because the tenants had failed to take an appeal within ten days of the entry of the judgment.

I. Discussion

The tenants first rely on the language of the form that they used to file their appeal and on Philadelphia Civil Rule *1001(c). In a situation in which a judgment provides an award of money and possession, the rule, like the form, provides a residential tenant with thirty days to appeal "if the appeal is only for the money judgment." That rule provides the following:

> **Time to File the Notice of Appeal**. A Notice of Appeal shall be filed as follows:
>
> (1) Judgment only: within 30 days after the date of the entry of a judgment for money on the dockets of the Municipal Court.
>
> (2) Tenant, residential lease, possession: within ten (10) days after the date of the entry of a judgment of possession of real property on the dockets of the Municipal Court, if the appeal is for possession of real property only or for both possession and money judgment arising out of a residential lease.
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> (3) Tenant, residential lease, money judgment: within thirty (30) days after the date of the entry of a judgment of possession on the dockets of the Municipal Court, if the appeal is only for the money judgment arising out of a residential lease.
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> (4) Tenant, non-residential lease: within 30 days after the date of the entry on the dockets of the Municipal Court of judgment for money, or a judgment for possession of real property arising out of a nonresidential lease.

Philadelphia Civil Rule *1001, however, is inconsistent with Section 513(b) of the Landlord and Tenant Act of 1951 ("Act"), Act of April 6, 1951, P.L. 69, as amended, 68 P.S. § 250.513(b). Section 513(b) specifies the timing for the taking of an appeal to the court of common pleas. It provides the following:

> (b) Within ten days after the rendition of judgment by a lower court arising out of residential lease or within thirty days after a judgment by a lower court arising out of a nonresidential lease or a residential lease involving a victim of domestic violence, either party may appeal to the court of common pleas and the appeal by the tenant shall operate as a supersedeas only if the tenant pays in cash or bond the amount of any judgment rendered by the lower court or is a victim of domestic violence and pays, in cash, any rent which becomes due during the court of common pleas proceedings within ten days after the date each payment is due into an escrow account with the prothonotary or the supersedeas shall be summarily terminated.

Unlike Rule *1001, Section 513(b) envisions three situations applicable to the timing for taking an appeal in a landlord-tenant action. One situation is when a judgment

arises out of a residential lease, another is when a judgment arises out of a nonresidential lease, and the third situation is when a judgment arises out of a residential lease in which a victim of domestic violence is involved. In the first situation, there are ten days within which to take an appeal. In the second and third situations, there are thirty days within which to take an appeal.[1]

One reason for the inconsistency between Section 513(b) and Philadelphia Civil Rule *1001 is that the authors of Rule *1001 appear to have incorrectly assumed that there may be two judgments, a money judgment and a judgment granting possession, and that an appeal may be taken from only one of them. Rather, there is only one judgment, which may contain a monetary award and grant possession of the leasehold to

[1] Section 503(b) of the Act concerns the timing for the issuance of writs. It requires that the process to attach and levy upon property of the tenant to satisfy unpaid rent may not be started earlier than five days after the entry of the judgment. Section 503(b) provides the following timing for the issuance of a writ:

> (b) At the request of the landlord, the justice of the peace shall, after the fifth day after the rendition of the judgment, issue a writ of possession directed to the writ server, constable or sheriff, commanding him to deliver forthwith actual possession of the real property to the landlord and to levy the costs and amount of judgment for damages and rent, if any, on the tenant, in the same manner as judgments and costs are levied and collected on writs of execution. The writ is to be served within no later than forty-eight hours and executed on the eleventh day following service upon the tenant of the leased premises. Service of the writ of possession shall be served personally on the tenant by personal service or by posting the writ conspicuously on the leased premises.

Section 503(b) uses certain terms from 1951 when the Act was written. First, it refers to a "justice of the peace." The Philadelphia Municipal Court was not in existence in 1951. The court now has jurisdiction over landlord-tenant matters in Philadelphia that justices of the peace had in 1951. Second, Section 503(b) refers to the "rendition" of the judgment. The court assumes that the rendition of a judgment is the same as the entry of a judgment.

the landlord.[2] Therefore, any appeal is from one judgment and cannot be parsed at the will of the party taking the appeal.

Prior to the adoption of Section 513 to the Act on July 6, 1995, Sections 504 and 506 of the Act had provided for five days after the entry of a judgment within which to take an appeal regardless of whether or not the case involved a residential lease or a victim of domestic violence.[3] Section 513 was to have become effective ninety days after its enactment. Before it became effective, however, the Supreme Court issued a per curiam Administrative Order on September 1, 1995 that "suspended [Section 513] for a period of 120 days insofar as…[it is] inconsistent with the Rules of Civil Procedure Governing Actions and Proceedings Before District Justices."

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[2] A review of the landlord-tenant statutes in Pennsylvania that describe the time within which to take an appeal consistently demonstrates that there has always been one judgment that awarded money and/or possession. Each of those statutes uses judgment in the singular as opposed to judgments in the plural. For example, Section 1 of the Act of April 3, 1830 provided a tenant with five days within which to take an appeal from a judgment. It provided that: "No writ of possession shall be issued by the said aldermen or justices for five days after the rendition of **judgment**, and if within the said five days the tenant shall give good, sufficient, and absolute security, by recognizance, for all costs that may have and may accrue, in case the judgment shall be affirmed, and also for all rent that has accrued or may accrue, up to the time of final judgment, then the tenant shall be entitled to an appeal to the next court of common pleas." (emphasis added).

Sections 504 and 506 of the Act at the time that it was adopted in 1951also referred to judgment in the singular. Section 506 originally provided that "[w]ithin five days after the rendition of **judgment**, either party may appeal to the next court of common pleas upon filing in that court a bond." (emphasis added). Section 504 originally provided that a judgment against a tenant could include a monetary amount and possession. It provided that the justice of the peace could "enter **judgment** against the tenant that the real property be delivered up to the landlord and for damages, if any, for the unjust detention of the demised premises, as well as for the amount of rent, if any, which remains due and unpaid and for costs of the proceeding." (emphasis added).

Sections 504 and 506 of the Act remained the law in Pennsylvania until they were repealed by the Judiciary Act Repealer Act, Act of April 28, 1978, P.L. 202. The effective date of the repeal of Section 504 was June 27, 1982 and the effective date of the repeal of Section 506 was June 27, 1980.

[3] The court is unable to find what statute specified the time that a party to a landlord-tenant action had to take an appeal during the period of 1980 to 1995.

The tenants in the present case contend that the amendments that the Supreme Court subsequently adopted to Rule 1002 of the Rules of Civil Procedure governing actions and proceedings before district justices support their argument that they had thirty days to take an appeal. For the reasons that follow, the court does not find the tenants' contention convincing.

The Supreme Court suspended Section 513, but did not declare that it was unconstitutional. The September 1, 1995 Order was amended a number of times by the Supreme Court to modify the period of the suspension and to include that Section 513 was also suspended insofar as it was inconsistent with the Philadelphia Municipal Court Rules of Civil Procedure. See Amendatory Orders dated September 14, 1995, October 23, 1995, December 28, 1995, February 28, 1996, two of which may be found in the Pennsylvania Bulletin at 26 Pa.B. 159 and 26 Pa.B. 1129. The final Amendatory Order of February 28, 1996 provided for a thirty-day suspension. Section 513, therefore, has been in effect since April of 1996.

Between December 28, 1995 and February 28, 1996, the Minor Court Rules Committee published proposed changes to the rule concerning the time and method for taking an appeal in a landlord-tenant matter before magisterial district judges. See 26 Pa.B.312. The Committee explained that:

> The proposed amendments are intended to establish a more streamlined procedure in the process and management of landlord complaints for the recovery of possession of real property, and to conform to existing Legislation the time for taking appeals from judgments. The recommendations for amendment were prompted by amendments to the Landlord and Tenant Act of 1951 promulgated by Acts 33 and 36 of 1995, both approved July 6, 1995. The proposed amendments would, it is believed, establish a sound basis upon which the Legislative amendments to the Landlord/Tenant Act of 1951 can be implemented, in so far as is procedurally consistent with existing Rules and standards of due process.

On March 28, 1996, the Supreme Court approved proposed Rule 1002 of the Rules of Civil Procedure governing practice before magisterial district courts with minor modifications.[4] See 26 Pa.B. 1691. The Official Note[5] to Rule 1002 provides that the intention in promulgating a ten-day appeal period in paragraph B of Rule 1002 was to "implement the time for appeal set forth in § 513 of the Landlord and Tenant Act of 1951." Rule 1002, as approved, is set forth below. The words in bold below are new language that was added to the existing rule.

> A. A party aggrieved by a judgment **for money, or a judgment affecting the delivery of possession of real property arising out of a nonresidential lease,** may appeal therefrom within thirty (30) days after

[4] The exclusive authority of the Supreme Court to promulgate procedural rules comes from Article V, § 10(c) of the Pennsylvania Constitution. It provides that: "The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts, … if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitation or repose. All laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions." See also Commonwealth v. McMullen, 599 Pa. 435, 444, 961 A.2d 842, 847 (Pa. 2008); Payne v. Commonwealth Department of Corrections, 582 Pa. 375, 871 A.2d 795, 801 (Pa. 2005) ("Because this Court's rulemaking authority extends only to procedural law, the threshold inquiry in whether a …statute violates Article V, [§] 10(c) is whether the statute is procedural or substantive") While the legislature cannot enact procedural law, it can enact substantive law. Id. As a general rule, substantive law creates, defines, and regulates rights; procedural law addresses the method by which those rights are enforced. Id.

In McMullen, the Court addressed the issue of what, if any, effect the absence of a Supreme Court adopted rule has on a procedural statute. The Court found that it was unnecessary for a procedural statute and a rule to be inconsistent in order to strike down a procedural statute as unconstitutional. Citing Payne, the Court noted that as a general proposition, it has struck statutes where they have been inconsistent with our procedural rules. The Court explained that Article V, § 10(c) states two relevant principles. First, the Supreme Court has the exclusive power to enact procedural rules. Second, a law inconsistent with such a rule is suspended.

Therefore, a procedural statute conflicting with a rule is suspended under Article V, § 10(c). If, however, the legislature enacts a procedural statute, that statute is unconstitutional. Otherwise, a clearly unconstitutional procedural statute would be constitutional unless the Supreme Court promulgated a rule inconsistent with it. Applying the above to the present case, the Supreme Court might have ruled that the ten-day appeal period provided by Section 513(b)of the Act was procedural and unconstitutional. Rather, the Supreme Court embraced the ten-day appeal period and promulgated Rule 1002 to be consistent with Section 513(b).

[5] The Official Notes are prepared by the Minor Court Rules Committee for the convenience of the bench and bar. They do not constitute part of the rules and are not officially adopted or promulgated by the Supreme Court. See Explanatory Comments and Notes following the index to the Rules.

the date of the entry of the judgment by filing with the prothonotary of the court of common pleas a notice of appeal on a form which shall be prescribed by the State Court Administrator **together with a copy of the Notice of Judgment issued by the district judge.** The Prothonotary shall not accept an appeal from an aggrieved party which is presented for filing more than thirty (30) days after the date of entry of judgment without leave of Court and upon good cause shown.

B. A party aggrieved by a judgment for the delivery of possession of real property arising out of a residential lease may appeal therefrom within ten (10) days after the date of the entry of judgment by filing with the prothonotary of the court of common pleas a notice of appeal on a form which shall be prescribed by the State Court Administrator, together with a copy of the Notice of Judgment issued by the district judge. The prothonotary shall not accept an appeal from an aggrieved party which is presented for filing more than ten (10) days after the date of entry of judgment without leave of court and upon good cause shown.

Official Note

The thirty day limitation in **subdivision A** of this rule is the same as that found in the Judicial Code § 5571(b), 42 Pa.C.S. § 5571(b), as amended by § 10(67) of the Judiciary Act Repealer Act, Act of April 28, 1978, P. L. 202, No. 53. **The ten day limitation in subdivision B of this rule is designed to implement the time for appeal set forth in § 513 of the Landlord and Tenant Act of 1951 (Act No. 1995-33, approved July 6, 1995). The two subdivisions of this rule are intended to clarify that where the right of possession of residential real estate is at issue, the shorter, ten day period for appeal applies; where the appeal is taken from any judgment for money, or a judgment affecting a nonresidential lease, under these rules, the thirty day period of time for appeal applies.**

The court does not agree with the tenants in the present case that Rule 1002 supports their position. The authors of all of the court rules set forth above intended that the rules be consistent with the 1995 amendment that added Section 513(b) to the

Landlord and Tenant Act of 1951. None of the rules, however, uses the same language[6] as Section 513(b) and the Supreme Court in promulgating Rule 1002 suggested that it is Section 513(b) which controls. While Rule 1002 can be read in a manner that is consistent with Section 513(b), Rule *1001 cannot.

As previously explained, Section 513(b) of the Act refers to only one judgment and not, as Philadelphia Civil Rule *1001 does, to two judgments - one judgment concerning possession and another judgment concerning money. Additionally, Section 513(b) refers to only three situations. One situation is a judgment arising out of a residential lease, another situation is a judgment arising out of a nonresidential lease, and the third situation is a judgment arising out of a residential lease involving a victim of domestic violence.

Section 513(b) does not define the vantage point of an appeal as being from that of the party taking an appeal. The genesis of the confusion on the part of the tenants in the present case and the authors of Rule *1001 may have come from the use of the word "aggrieved" in Rule 1002. "Aggrieved" does not appear in Section 513(b) of the Act. In order for Rule 1002 and Philadelphia Civil Rule *1001 to be read consistently, the word

[6] In addition to Rule 1002 and Rule *1001, the Philadelphia Municipal Court has a rule for the time within which to take an appeal in a landlord-tenant action. The Philadelphia Municipal Court's rule is Rule 124 and its language more closely resembles the language of Section 513(b) of the Act than the other two rules. Rule 124 provides the following:

> a. A party aggrieved by a judgment for money or a judgment for possession of real property arising out of a nonresidential lease, may appeal therefrom within 30 days after the date of the entry of the judgment….
>
> b. A party aggrieved by a judgment for possession of real property arising out of a residential lease, may appeal therefrom within 10 days after the date of the entry of the judgment….

aggrieved" would have to be read to permit the appealing party to decide whether or not it has been "aggrieved" and to take an appeal from only part of a judgment.

Rule 1002, however, must be read consistently with Section 513(b) of the Act. Therefore, the court holds that "aggrieved" as used in Rule 1002 means the state that a party is in after having had a judgment entered against it regardless of whether the party disagrees with only part of the judgment. By understanding "aggrieved" in this way, Rule 1002 is consistent with Section 513(b) of the Act and inconsistent with Philadelphia Civil Rule *1001.

Unlike the somewhat confusing language in the court rules, Section 513(b) provides simpler language for determining whether a party has ten or thirty days within which to appeal. Section 513(b) requires that one determine whether the judgment arose from a residential or a nonresidential lease. If a judgment arises from a nonresidential lease, then a landlord or tenant wishing to take an appeal has thirty days from the entry of the judgment. If a judgment arises from a residential lease, then the landlord or tenant wishing to take an appeal has ten days from the entry of the judgment, unless a victim of domestic violence is involved in which case the time to appeal is extended to thirty days from the entry of the judgment.

Philadelphia Civil Rule *1001 and its form are inconsistent with Section 513(b) and Rule 1002. The rule and form permit a party taking an appeal from a judgment in a case involving a residential lease that includes money damages and possession to have thirty days to take an appeal if that party decides that it is not concerned with the possession part of the judgment.

In a case like the one presently before the court where there is a judgment which provides for an award of money and possession, a party must take an appeal within ten days regardless of whether or not the tenant has vacated the premises after the entry of the judgment. To hold otherwise would require a landlord to wait thirty days from the entry of a judgment that included possession and an award of money in order to give the tenant the opportunity to vacate the premises and challenge only the money portion of the judgment.[7]

In the 2001 Explanatory Comment that was issued at the time of the amendments to Rule 1002, the Minor Court Rules Committee also appeared to mistakenly believe that there could be two separate judgments entered in a landlord-tenant action when it explained that:

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[7] There is one situation that is not before the court that bears consideration. A landlord starts a landlord-tenant action against a tenant who is in possession of the property and allegedly has failed to pay rent. The case concerns a residential lease and there is no victim of domestic violence. The landlord seeks a judgment that includes an award of money and possession. Prior to trial, the tenant vacates the property. At trial, the landlord withdraws its request for possession and, therefore, seeks the entry of only a money judgment in the amount of the alleged unpaid rent. The landlord prevails at trial and the court enters only a money judgment.

In the above situation, the time to take an appeal would be thirty days from the entry of the money judgment. Rule 1002(A) provides for a thirty-day appeal period when "[a] party [is] aggrieved by a judgment for money." The Official Note to Rule 1002 explains that "[t]he thirty day limitation in subdivision A of this rule is the same as that found in the Judicial Code § 5571(b), 42 Pa.C.S. § 5571(b)." Section 5571 is titled "Appeal Generally" and subsection b provides the following:

> (b) OTHER COURTS.-- Except as otherwise provided in subsections (a) [relating to appeals to the Superior, Commonwealth and Supreme Courts] and (c) [relating to appeals in election, financing, probate cases and execution matter] and in section 5571.1 (relating to appeals from ordinances, resolutions, maps, etc.), an appeal from a tribunal or other government unit to a court or from a court to an appellate court must be commenced within 30 days after the entry of the order from which the appeal is taken, in the case of an interlocutory or final order.

Therefore, in this one situation, the Supreme Court appears to have used its rulemaking power to provide thirty days from the entry of a money judgment only even though the case involves a residential lease instead of the ten days provided for in Section 513(b) to take an appeal. By doing so, the Supreme Court made the time for an appeal the same as any other appeal from a money judgment.

> The separate entry of the judgment for money should be treated the same as a judgment in a civil action and there are no additional exigencies requiring an accelerated appeal period. The ten (10) day appeal period should only be applicable to the possession judgment and not to the money judgment.
>
> The purpose of this amendment to the Note and this Explanatory Comment is to clarify the intent of the Rule to permit an appeal of the money judgment only within the thirty (30) day appeal period. See *Cherry Ridge Development v. Chenoga*, 703 A.2d 1061 (Pa.Super. 1997).

In Cherry Ridge, a magisterial district judge entered a judgment in favor of a landlord "for possession of the premises and $297.48." The Superior Court held that the tenant had ten days and not thirty days to take an appeal. The amendments to Rule 1002 were intended to clarify that if only a money judgment is entered in a landlord-tenant action, then either party has thirty days to take an appeal. See footnote 7. It was not intended, as the tenants contend, to provide thirty days to take an appeal if the granting of possession was part of the relief provided by the court in the judgment that it enters in a landlord-tenant action.

II. Conclusion

In the present case, the tenants followed Philadelphia Civil Rule *1001 even though Rule *1001 is inconsistent in this instance with Section 513(b) of the Act. Having followed a local court rule, it would be unfair to penalize the tenants by not setting aside the writ of execution. In the future, however, parties are on notice of this court's holding that Rule *1001 is inconsistent with Section 513(b) and should act in accordance with

this decision.[8]

BY THE COURT:

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BRADLEY K. MOSS, J.

[8] This court will forward a copy of this Opinion to the Philadelphia Municipal Court, the Minor Court Rules Committee and the Court of Common Pleas of Philadelphia County so that they might review their rules to determine whether or not to refine the language of their rules.