

**IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY  
COMMONWEALTH OF PENNSYLVANIA  
CIVIL DIVISION - LAW**

**CAROVA ACQUISITIONS, L.P.,**

**Plaintiff,**

**vs.**

**DOUG CARR, JR. and CARMEN CARR,**

**Defendants.**

**No.: C-48-CV-2013-4276**

**PENNSYLVANIA RULE OF APPELLATE PROCEDURE  
1925(a) STATEMENT**

**AND NOW**, this 21<sup>st</sup> day of April, 2015, the court issues the following statement:

On February 18, 2015, Defendants Doug Carr, Jr. and Carmen Carr ("Defendants") filed a timely Notice of Appeal to the Superior Court of Pennsylvania from the Order of Court dated January 20, 2015. Defendants did not serve the Notice of Appeal upon this court until March 5, 2015. On March 30, 2015, pursuant to our request under Pennsylvania Rule of Appellate Procedure 1925(b), we received Defendants' "Concise Statement of Errors Complained of on Appeal."

For the reasons that follow, we respectfully suggest that Defendants' appeal lacks merit and should be dismissed.<sup>1</sup>

## **BACKGROUND**

### **I. Landlord and Tenant Complaint**

On January 23, 2013, Plaintiff Carova Acquisitions, L.P. ("Plaintiff") filed a Landlord and Tenant Complaint against Defendants with the office of Magisterial District Judge Patricia Romig-Passaro. See Landlord and Tenant Complaint, *Carova Acquisitions v. Carr*, No. MJ-3211-LT-21-2013 (M.J. Northampton Co. Jan. 23, 2013) ("Complaint"). The Complaint alleged that Defendants were in breach of their lease in the amount of \$12,000 and sought possession of the leased premises, located at 637 William Street, Bethlehem, Pennsylvania, 18015. See *id.*

That same day, following the filing of the Complaint, the Magisterial District Judge sent a Notice to the Defendants of a Real Property Hearing Scheduled for February 4, 2013. See Recovery of Real Property Hearing Notice, No. MJ-3211-LT-21-2013 (M.J. Northampton Co. Jan 23, 2013) ("Hearing Notice"). The Hearing Notice informed the Defendants that the Complaint had been filed against them and if Defendants did not appear at

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<sup>1</sup> Arguably, because the Order of Court dated January 20, 2015 did not refuse to open or strike judgment against Defendants, this appeal is not properly brought under Pa.R.A.P. 311(a)(1). Pa.R.A.P. 311(a)(1) allows a party to appeal from a denial of a petition to open or strike judgment, presumably because this denial precludes the filing of a second petition. Here, the court did not deny Defendants' petitions, but simply struck the petitions from the record, as if they had not been filed in the first place. There is nothing to preclude Defendants from filing a second petition. Therefore, this appeal could be quashed pursuant to Pa.R.A.P. 311(a)(1) and *Mother's Restaurant, Inc. v. Krystkiewicz*, 861 A.2d 327 (Pa. Super. 2004).

the hearing scheduled for February 4, 2013, "a judgment for possession and costs, and for damages and rent, if claimed, may nevertheless be entered against you." See Hearing Notice. Defendants did not appear at the scheduled hearing. See Notice of Judgment/Transcript Residential Lease, No. MJ-3211-LT-21-2013 (M.J. Northampton Co. Jan. 23, 2013) ("Default Judgment"). On February 11, 2013, the Magisterial District Judge entered judgment in favor of Plaintiff in the amount of \$12,182.65. See Default Judgment.

On May 8, 2013, Plaintiff filed a Praecipe to Enter Judgment in the amount of \$12,182.65, plus interest at the per diem rate of \$2.00, with the Prothonotary in the Northampton County Court of Common Pleas. See Praecipe to Enter Judgment, *Carova Acquisitions v. Carr*, No. C-48-CV-2013-4276 (C.P. Northampton Co. May 8, 2013).

## II. Plaintiff's Motion for Sanctions

Following the entry of judgment in the Northampton Court of Common Pleas against the Defendants, Plaintiff served Interrogatories upon the Defendants on June 11, 2013. See Plaintiff's Motion to Compel, *Carova Acquisitions v. Carr*, No. C-48-CV-2013-4276 (C.P. Northampton Co. Sept. 4, 2013) ("Motion to Compel"). The Defendants did not reply to Plaintiff's request for Interrogatories and, subsequently, Plaintiff filed a Motion to Compel on September 4, 2013. See Motion to Compel. Plaintiff's Motion to Compel was granted by Order of Court on the same day, and Defendants

were ordered to respond to Plaintiff's Interrogatories within twenty days. See Order of Court dated September 4, 2013, *Carova Acquisitions v. Carr*, No. C-48-CV-2013-4276 (C.P. Northampton Co. Sept. 4, 2013) ("September 2013 Order").

Defendants did not respond to Plaintiff's Interrogatories within the twenty day period, and on December 9, 2013, Plaintiff filed a Motion for Sanctions. See Plaintiff's Motion for Sanctions, *Carova Acquisitions v. Carr*, No. C-48-CV-2013-4276 (C.P. Northampton Co. Dec. 9, 2013). Plaintiff's Motion for Sanctions was granted, and Defendants were ordered to pay a daily fine of twenty-five dollars per day until they complied with the September 2013 Order. See Order of Court dated December 9, 2013, *Carova Acquisitions v. Carr*, No. C-48-CV-2013-4276 (C.P. Northampton Co. Dec. 9, 2013) ("December 2013 Order"). In May 2014, following Defendants continued failure to comply with the September 2013 Order and failure to pay the fines mandated by the December 2013 Order, Plaintiff filed a Motion for Contempt. See Plaintiff's Motion for Contempt, *Carova Acquisitions v. Carr*, No. C-48-CV-2013-4276 (C.P. Northampton Co. May 5, 2014). The court granted Plaintiff's request and found the Defendants in contempt. See Order of Court dated May 5, 2014, *Carova Acquisitions v. Carr*, No. C-48-CV-2013-4276 (C.P. Northampton Co. May 5, 2014). Defendants have yet to comply with the September 2013 Order or the December 2013 Order. See

Notes of Testimony, *Carova Acquisitions v. Carr*, No. C-48-CV-2013-4276 (C.P. Northampton Co. Jan. 20, 2015) (“N.T.”).

### III. Defendants’ Petition for a Rule to Show Cause

In June of 2014, Defendants filed a Petition for a Rule to Show Cause containing: (1) a Motion to Strike Judgment; (2) a Motion to Open Judgment; and (3) a Motion to Rescind Order for Sanctions for Civil Contempt.<sup>2</sup> See Petition for a Rule to Show Cause why the Judgment Should Not be Stricken or Opened and Order of Court Imposing Sanctions for Contempt Should Not be Lifted, *Carova Acquisitions v. Carr*, No. C-48-CV-2013-4276 (C.P. Northampton Co. June 25, 2014) (collectively “Petition for Rule to Show Cause”).

In their Petition to Strike Judgment, the Defendants argued that the judgment entered at the court of common pleas must be stricken because:

“(1) the judgment amount set forth in the Praecipe exceeds the jurisdictional limit for a judgment entered upon a [Magisterial District Judge] award; (2) [Plaintiff] has calculated interest upon a principal amount greater than the jurisdictional limit for a judgment entered upon a [Magisterial District Judge] award[;] and (3) [Plaintiff] has calculated interest upon court costs in its Praecipe.”

See Petition to Strike Judgment at ¶¶ 8-23.

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<sup>2</sup> In their June 23, 2014 Petition, Defendants incorrectly identified their requests that the court either open the default judgment or strike the judgment as a “Motion to Open Judgment” and as a “Motion to Strike Judgment,” respectively. A request to open or strike a judgment must be done by way of petition. See Pa.R.C.P. No. 206.1(a)(1); Local Rule 1037(a); see *also* Pa.R.C.P. No. 237.3. For this reason, the court will hereinafter refer to the filings as a “Petition to Open Judgment” and as a “Petition to Strike Judgment,” respectively.

Defendants' Petition to Strike Judgment did not include a petition to strike the default judgment entered by the Magisterial District Court. *See id.*

Additionally, Defendants asked the court for a Rule to Show Cause on their Petition to Open Judgment at the district court level. *See* Petition for Rule to Show Cause. In the Defendants' Petition to Open Judgment, the Defendants argued that the default judgment should be opened because the complaint was incorrectly filed as a landlord-tenant action instead of a civil action, causing service of the Complaint to be inadequate. *See* Petition for Rule to Show Cause at ¶¶ 35-36. Defendants supported this claim by averring the following:

25. Doug Carr, Jr. was transferred to Western Pennsylvania by his employer without prior notice in January 2013.
26. Mr. and Mrs. Carr vacated the premises at 637 William Street and sent Samantha Dellatore (Dellatore), the rental agent for Carova, an email stating that the leased premises were vacant. The exact text of the email was:

From: "Carmen Carr" <carmenlcarr@gmail.com>  
Date: Jan 17, 2013 7:07 PM  
Subject: 637 William st Bethlehem pa  
To: "samantha dellatore" <sam.carova@gmail.com>  
Cc:

Samantha,

Doug got laid off work out here and we are ring [sic] transferred to Pittsburgh we have very little notice and even less options for work making what he does. I left the keys on the counter and te [sic] house is vacant.

Thank you

Carmen carr

27. After departing the leased premises, Mrs. Carr received the following email in response from Dellatore. The exact text of the email, including the prior email from Mrs. Carr, was:

From: "Samantha" <sam.carova@gmail.com>  
Date: Jan 18, 2013 7:31 AM  
Subject: Re: 637 William st Bethlehem pa  
To: "Carmen Carr" <carmenlcarr@gmail.com>  
Cc:

We will be taking full legal action against you.

Sent from my iPhone

On Jan 17, 2013, at 7:07 PM, Carmen Carr <carmenlcarr@gmail.com> wrote:

> Samantha,  
>  
> Doug got laid off work out here and we are ring [sic] transferred to Pittsburg we have very little notice and even less options for work making what he does. I left the keys on the counter and te [sic] house is vacant.  
>  
> Thank you  
> Carmen carr

28. No further email exchanges occurred between Mr. and Mrs. Carr and any representative of Carova, including Dellatore, despite the fact that Mrs. Carr continued to maintain the same email address.

29. Thus, on or before January 18, 2013, Dellatore knew that Mr. and Mrs. Carr has departed the leased premises at 637 William Street.

30. Although Samantha Dellatore knew that the leased premises were vacant at the time she read Mrs. Carr's email dated January 17, 2013, Carova brought an Action for the Recovery of Real Property under Rule 501 et seq. of the "Rules of Civil Procedure Governing Actions and Proceedings before Magisterial District Judges." . . .

35. The cause of action for payment of rent only, without recovery of possession, should have been brought as a Civil Action under Rule 301 *et seq.*, not a Landlord-Tenant Action, under Rule 501 *et seq.*
36. Because Mr. and Mrs. Carr had moved away on January 17, they could not be validly served at 637 William Street on or after January 23, when the Complaint was filed under Rule 506 (Landlord-Tenant) or under Rule 308 (Civil Action).
37. Since there was not service, there could be no judgment entered against them by the Magisterial District Judge.

Petition for Rule to Show Cause at ¶¶ 25-37.

Finally, the Petition for a Rule to Show Cause contained a Motion to Rescind Order for Sanctions for Civil Contempt. See Petition for Rule to Show Cause at ¶¶ 48-50. Defendants argued that they did not receive a copy of the Motions and Orders of Court requiring answers to interrogatories and imposing sanctions, and therefore they could not be sanctioned with arrest. *See id.*

The Defendants' Petition for Rule to Show Cause was granted on June 25, 2014. See Order of Court dated June 25, 2014, *Carova Acquisitions v. Carr*, No. C-48-CV-2013-4276 (C.P. Northampton Co. June 25, 2014) ("June 2014 Rule to Show Cause"). The June 2014 Rule to Show Cause stated as follows;

- (1) Respondent Carova Acquisitions, L.P. shall file an Answer to the Petition within twenty (20) days of service of the Petition upon Respondent;
- (2) [t]he Petition shall be decided under Pa. R.C.P. No. 206.7;
- (3) discovery shall be completed within sixty (60) days of this date;
- (4) argument shall be scheduled by praecipe upon completion of discovery with the

Prothonotary; (5) notice of entry of this Order shall be provided to all parties by the Petitioners; and (6) all proceedings in the above-captioned case shall be stayed in the meantime.

June 2014 Rule to Show Cause.

Plaintiff responded to Defendants' Petition for Rule to Show Cause on July 22, 2014. See Plaintiff's Reply to Defendants' Petition to Open/Strike, *Carova Acquisitions v. Carr*, No. C-48-CV-2013-4276 (C.P. Northampton Co. July 22, 2014) ("Plaintiff's Reply"). In relevant part, Plaintiff's Reply averred that:

26. Admitted in part and Denied in part. Admitted only that Defendants vacated the premises prior to the expiration of the lease term.

27. Denied to the extent that the e-mail message is not attached as an exhibit.

28. Plaintiff had no obligation to send e-mails to Defendants. By way of further answer, Defendant's [sic] did not communicate with Plaintiff, despite the fact that Plaintiff continued to maintain the same phone, mail, and e-mail address.

29. Admitted.

30. Denied. The legal action are [sic] documents of record which speak for themselves. . . .

35. Denied as a conclusion of law. To the contrary, suit was brought pursuant to the correct Rule.

36. Denied as a conclusion of law. To the contrary, service was properly perfected.

37. Denied as a conclusion of law. To the contrary, judgment was properly perfected.

Plaintiff's Reply at ¶¶ 26-30, 35-37. Following the filing of the Petition for Rule to Show Cause on June 25, 2015, the Defendants took no further steps in relation to the June 2014 Rule to Show Cause. See N.T. at 3.

#### IV. Plaintiff's Motion to Strike

Based upon Defendants' failure to take action on their Petition to Strike Judgment and Petition to Open Judgment, Plaintiff filed a Motion to Strike the Defendants' Petition to Open/Strike pursuant to Northampton County local rule N2959 and Pa. R.C.P. 206.7(c). See Plaintiff's Motion to Strike, *Carova Acquisitions v. Carr*, No. C-48-CV-2013-4276 (C.P. Northampton Co. Jan. 20, 2015) ("Plaintiff's Motion to Strike").<sup>3</sup> That same day, Plaintiff presented the Petition to Strike to the Honorable Michael J. Koury, Jr. in Northampton County's Motions Court. See N.T.

Plaintiff argued that pursuant to local rule N2959, the Defendants had thirty days from the issuance of the June 2014 Rule to Show Cause to take depositions or other discovery, or the Defendants' Petition to Open/Strike was required to be stricken upon a written motion to the Court. See N.T. at 2. Additionally, Plaintiff argued that because the Defendants had not completed discovery within the required time frames, under Pa.R.C.P. 206.7

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<sup>3</sup> In the Motion it filed on January 20, 2015, Plaintiff incorrectly identified its request that the court strike Defendants' Petitions to Open or Strike Judgment as a "Motion to Strike." As stated before, a request to strike a default judgment must be done by way of petition. See Pa.R.C.P. No. 206.1(a)(1); N.C.R. Civ. P. No. N1037(a); see also Pa.R.C.P. No. 237.3. For this reason, the court will hereinafter refer to the filing as "Plaintiff's Petition to Strike."

all averments of fact in Plaintiff's answers should be deemed admitted and the Defendant's Petition to Open/Strike should be stricken. *See id.* at 2-3.

In response, Defendants did not dispute that discovery was not taken during the required time frames. *See id.* at 3. However, Defendants argued that local rule N2959 would only apply to a situation that required depositions. *See id.* at 4. Defendants did not believe that this situation required depositions based on the admissions of both parties and an affidavit completed by Mr. Carr. *See id.* Specifically, Defendants argued that it was uncontroverted that the Defendants did not receive notice of the default judgment entered against them and that Defendants gave up possession of the property before the landlord-tenant action was initiated. *See id.* at 8. However, when pressed, the Defendants' attorney admitted that although Plaintiff's representative knew the Defendants were vacating the premises, Plaintiff's representative did not indicate Plaintiff would accept the surrender of the property and did not agree that the Defendants could leave. *See id.* at 9. Plaintiff denied that these facts were uncontroverted, and averred that these were issues of fact that would require additional discovery. *See id.* at 8.

Following the arguments of the parties, the court entered Plaintiff's proposed Order striking Defendants' Petition to Open/Strike and lifting the stay of proceedings in the matter. *See* Order of Court dated Jan. 20, 2015,

*Carova Acquisitions v. Carr*, No. C-48-CV-2013-4276 (C.P. Northampton Co. Jan. 20, 2015) (“January 2015 Order”).

V. Defendants’ Appeal

On February 18, 2015, Defendants filed a Notice of Appeal to the Superior Court of Pennsylvania. See Notice of Appeal, *Carova Acquisitions v. Carr*, No. C-48-CV-2013-4276 (C.P. Northampton Co. Feb. 18, 2015).

On appeal, Defendants contend that:

- 1) The Motion to Strike Defendant/Appellant’s Petition to Strike a Judgment should not be granted as a matter of course, for failure of the Defendant/Appellant to take depositions under Northampton County Local Rule N2959, which provides only that a petition to open judgment shall be stricken for failure of Plaintiff to take depositions.
- 2) The Motion to Strike Defendant/Appellant’s Petition to Strike a Judgment should not be granted, as a matter of course, for failure of the Defendant/Appellant to take depositions under Pennsylvania Rule of Civil Procedure 206.7, since a motion to strike does not depend upon facts outside the documents of record.
- 3) The Motion to Strike Defendant/Appellant’s Petition to Rescind an Order for Sanctions for Civil Contempt should not be granted, as a matter of course, for failure of the Defendant/Appellant to take depositions under Northampton County Local Rule N2959, which

provides only that a petition to open judgment shall be stricken for failure of Plaintiff to take depositions.

- 4) The Motion to strike Defendant/Appellant's Petition to Rescind an Order for Sanctions for Civil Contempt should not be granted, as a matter of course, for failure for Defendant/Appellant to take depositions under Pennsylvania Rule of Civil Procedure 206.7, since a motion to rescind such an order for sanctions may be granted upon the record without the taking of depositions.
- 5) The Motion to Strike Defendant/Appellant's Petition to Open Judgment should not be granted, as a matter of course, for failure of the Defendant/Appellant to take depositions under Northampton County Local Rule N2959 without a determination whether the Petition to Open Judgment could be granted upon facts averred in the Petition and admitted in the Answer.
- 6) The Motion to Strike Defendant/Appellant's Petition to Open Judgment should not be granted, as a matter of course, for failure of the Defendant/Appellant to take depositions under Pennsylvania Rule of Civil Procedure 206.7, since a petition to open judgment may be granted upon facts averred in the Petition and admitted in the Answer.
- 7) The Motion to Strike Defendant/Appellant's Petition to Open Judgment should not be granted for failure of the

Defendant/Appellant to take depositions under Northampton County Local Rule N2959 and Pennsylvania Rule of Civil Procedure 206.7, as a matter of course, when the Magisterial District Court Documents attached to the Defendant/Appellants' Petition as Exhibit A and the admissions made to the Defendant/Appellants' Petition in its Answer to Paragraphs 26, 27, 28, and 29 establish facts sufficient that a court could find that:

- a. The Landlord-Tenant Complaint was filed on January 23, 2013;
- b. Defendant Carmen Carr sent an email to Plaintiff's property manager on January 17, 2013 stating that the premises were empty;
- c. Plaintiff's property manager knew that the premises were vacant before the date of filing of the Recovery of Possession Complaint.

8) The Motion to Strike Defendant/Appellant's Petition to Open Judgment should not be granted for failure of the Defendant/Appellant to take depositions under Northampton County Local Rule N2959 and the Pennsylvania Rule of Civil Procedure 206.7, as a matter of course, when the Magisterial District Court Documents attached to the Defendant/Appellants' Petition as Exhibit A and the admissions made to the Defendant/Appellants' Petition in its Answer to Paragraphs 26, 27, 28, and 29 establish facts sufficient

that a court could reach the legal conclusions that:

- a. The Magisterial District Judge lacked jurisdiction to grant relief under a Recovery of Possession Complaint;
- b. Service of a Complaint brought under Rule 506 of the Rules of Civil Procedure Governing Actions and Proceedings before Magisterial District Judges were defective because service of Process of a Complaint for Recovery of Possession under Rule 506 is more lenient than those applicable in a Civil Action filed under Rule 308, which was the correct cause of action when the premises are vacant.

See Concise Statement of Errors Complained of on Appeal, *Carova Acquisitions v. Carr*, No. C-48-CV-2013-4276 (C.P. Northampton Co. March 30, 2015) (“Defendant’s Statement of Errors”).

## **DISCUSSION**

### I. Petition to Open

“It is well settled that a petition to open a default judgment is an appeal to the equitable powers of the court.” *U.S. Bank N.A. v. Mallory*, 982 A.2d 986, 994 (Pa. Super. 2009) (quoting *A.B.G. Promotions v. Parkway Publ’g, Inc.*, 834 A.2d 613, 615-16 (Pa. Super. 2003) (en banc)). To have a judgment opened, the petitioner must present sufficient reasons to appeal to the conscience of the court and convince it that an injustice has been done. *Williams v. Allegheny Union Plaza, Inc.*, 332 A.2d 493, 495 (Pa. Super.

1974). “[A] default judgment may be opened when the moving party establishes three requirements: (1) a prompt filing of a petition to open the default judgment; (2) a meritorious defense; and (3) a reasonable excuse or explanation for its failure to file a responsive pleading.” *Smith v. Morrell Beer Distribs., Inc.*, 29 A.3d 23, 25 (Pa. Super. 2011).

A request to open a judgment must be done by way of a petition. See Pa.R.C.P. No. 206.1(a)(1); see also Pa.R.C.P. No. 237.3. After a petition to open a judgment is presented to the court, Pa.R.C.P. 206.4 requires that “a petition shall proceed upon a rule to show cause” and that the “procedure following issuance of the rule to show cause shall be in accordance with Rule 206.7.” See Pa.R.C.P. 206.4. Additionally, in Northampton County, following the issuance of a rule to show cause, the petition to open is governed by N.C.R. Civ.P. No. N2959;

Where a petition is filed to open a judgment, the petitioner *shall* within thirty (30) days from the time the rule to show cause issues proceed to the taking of depositions where the allegations raise questions of fact which make such steps necessary; unless the petitioner within thirty (30) days makes such application for the taking of depositions, the petition to open judgment *shall* be stricken from the record upon a written motion to the Court setting forth such fact.

N.C.R. Civ. P. No. N2959 (emphasis added).

A. Allegation That Matter Lacks Material Issues of Fact

Defendants argue that Plaintiff's Petition to Strike Defendants' Petition to Open Judgment should not have been granted for failure of the Defendants to take depositions under Northampton County local rule N2959 or Pennsylvania Rule of Civil Procedure 206.7 because Defendants' Petition to Open Judgment could be granted upon facts averred in their Petition to Open Judgment and admitted Plaintiff's Reply. See Defendants' Statement of Errors at ¶ 5, 7, 8. We disagree.

Northampton County local rule N2959 provides that petitioner shall take depositions where "the allegations raise questions of fact which make such steps necessary." N.C.R. Civ. P. No. N2959. Although the local rule does not specifically delineate when questions of fact make such steps necessary, an examination of the transcript from the hearing on Plaintiff's Petition to Strike, clearly indicates that Defendants have not established the required record to determine the Defendants' Petition to Open Judgment without depositions.

The testimony from the hearing on Plaintiff's Petition to Strike indicates that both parties were aware of the potential application of local rule N2959, although Defendants did not believe it applied in this situation. See N.T. at 4. Defendants indicated that they believed Defendants' Petition to Open Judgment could be determined solely on the fact that Plaintiff's representative admitted in Plaintiff's reply that they knew that the Defendants were planning to vacate the premises before the filing of the

Complaint. *See id.* at 9. However, the Defendants' attorney admitted that Defendants did not have permission from Plaintiff's agent to vacate the premises, thereby confirming that the surrender of the premises was a contested issue. *See id.* at 9. Based upon the fact that there was a contested issue outstanding, we determined that raised questions of fact which made depositions necessary, and therefore warranted the issuance of the January 2015 Order, striking of the Defendants' Petition to Open Judgment under local rule N2959.

The court would also note that its actions in striking Defendants' Petition to Open Judgment under local rule N2959 did not preclude Defendants from filing a second Petition to Open Judgment. *See N.C.R. Civ. P. No. N2959.* Rather, the rule simply authorizes the court to strike the petition from the record as if the petition had not been filed in the first place. *See N.C.R. Civ. P. No. N2959.* An analysis of the equitable principles surrounding petitions to open, reveals that this local rule is rooted in equity, and simply penalizes petitioners for their failure to take prompt action by requiring them to file their petitions again. A petitioner should not be allowed to file a petition to open a judgment and then take no action, behavior that would effectively render the equitable proceedings surrounding petitions to open pointless.

B. Allegation that Court Misapplied Pa.R.C.P. 206.7

Next, Defendants alleged that the court erred by granting Plaintiff's Petition to Strike the Defendants' Petition to Open Judgment under Pa.R.C.P. 206.7, because Defendants' Petition to Open Judgment could be granted upon facts averred in the Petition to Open Judgment and admitted in Plaintiff's Reply. See Defendant's Statement of Errors at ¶ 6. We disagree.

As discussed above, Pa.R.C.P. 206.7 governs the procedure after the issuance of a rule to show cause and provides that:

(a) If an answer is not filed, all averments of fact in the petition may be deemed admitted for the purposes of this subdivision and the court shall enter an appropriate order.

(b) If an answer is filed raising no disputed issues of material fact, the court on request of the petitioner shall decide the petition on the petition and answer.

(c) If an answer is filed raising disputed issues of material fact, the petitioner may take depositions on those issues, or such other discovery as the court allows, within the time set forth in the order of court. If the petitioner does not do so, the petition shall be decided on petition and answer and all averments of fact responsive to the petition and properly pleaded in the answer shall be deemed admitted for the purpose of this subdivision.

(d) The respondent may take depositions, or such other discovery as the court allows.

Pa.R.C.P. 206.7. As a state rule, Pa.R.C.P. 206.7 must be read in conjunction with any local rules courts of common pleas may enact, as long as such local rules do not abridge, enlarge, or modify the substantive rights of a litigant. See *Zelenak v. Mikula*, 911 A.2d 542 (Pa. Super. 2006).

Accordingly, a party in Northampton County has to abide by local rule N2959, as well as Pa.R.C.P. 206.7, when analyzing their duty as a party

pursuing a petition to open. Here, it appears that the Defendants wish to view our actions relating to Pa.R.C.P. 206.7 in isolation. However, because Pa.R.C.P. 206.7 must be read in conjunction with local rule N2959, this cannot be done.

As discussed above, we determined that there were material issues of fact in the case following Plaintiff's Reply to the Defendants' Petition to Open Judgment. Therefore, the correct section of Pa.R.C.P. 206.7 to guide the parties in this case is Pa.R.C.P. 206.7(c). Section (c) provides that a petitioner "may" take depositions in relation to a petition. See Pa.R.C.P. 206.7(c). However, local rule N2959 mandates that a petitioner "shall" take depositions within thirty days or have his petition stricken from the record upon the motion of the respondent. N.C.R. Civ. P. No. N2959. This dual responsibility of the party effectively changes the duty of the party under Pa.R.C.P. 206.7(c), and requires that a petitioner in Northampton County take depositions within thirty days or have his petition stricken from the record. Therefore, under Pa.R.C.P. 206.7(c), as modified by N2969, it was appropriate for us to strike the Defendants' Petition to Open Judgment because the Defendants did not take depositions within the required thirty day time frame.

## II. Petition to Rescind Order for Sanctions

Defendants next argue that their Motion to Rescind an Order for Sanctions for Civil Contempt should not have been stricken for the Defendants' failure to take depositions under Northampton County local rule N2959 and Pennsylvania Rule of Civil Procedure 206.7. See Defendants' Statement of Errors at ¶¶ 3, 4. Because the Court did not at any time rule on the Defendants' Motion to Rescind an Order of Sanctions for Civil Contempt, this argument is without merit.

We believe Defendants erred because the Motion to Rescind an Order for Sanctions for Civil Contempt was filed in the same document as the Defendants' Petition to Open Judgment and the Defendants' Petition to Strike Judgment. See Petition for Rule to Show Cause. Additionally, the June 2014 Rule to Show Cause was issued on the Motion to Rescind an Order for Sanctions for Civil Contempt as well as the Petition to Open Judgment and the Petition to Strike Judgment. See June 2014 Rule to Show Cause. However, a thorough analysis of the record before the court clarifies that the Defendants' Motion to Rescind an Order for Sanctions for Civil Contempt was not before the court at the time it entered the January 20, 2015 Order.

The petition presented by Plaintiff to the court on January 20, 2015 was entitled "Plaintiff's Motion to Strike." See Plaintiff's Petition to Strike. Plaintiff did not ask the court to strike or otherwise determine Defendants' Motion to Rescind Order for Sanctions for Civil Contempt in Plaintiff's Petition

to Strike. See Plaintiff's Petition to Strike. Likewise, the January 20, 2015 Order does not in any way dispose of the Defendants' Motion to Rescind Order for Sanctions for Civil Contempt. See January 2015 Order. At no time during the January 20, 2015 hearing did the court have knowledge that the Motion to Rescind an Order for Civil Contempt was still outstanding, or that Defendants believed that the court's determination of the Plaintiff's Petition to Strike would have any impact on the Motion to Rescind Order for Sanctions for Civil Contempt. See N.T. Therefore, because a court cannot rule on a petition that is not before it, and because the January 20, 2015 Order does not in any way dispose of the Defendants' Motion to Rescind Order for Sanctions for Civil Contempt, we respectfully suggest that Defendants' alleged errors three and four are without merit.

### III. Petition to Strike

A petition to strike or open a default judgment is governed by Pa.R.C.P. 206.1.

Rule 206.1 Petition. Definition. Content. Form.

(a) As used in this chapter, "petition" means

(1) an application to strike and/or open a default judgment or a judgment of non pros. . . .

(b) A petition shall specify the relief sought and state the material facts which constitute the grounds therefore. All grounds for relief, whether to strike or open a default judgment, shall be asserted in a single petition.

Pa.R.C.P. 206.1; accord *Acquillino v. Philadelphia Catholic Archdiocese*, 884 A.2d 1269, 1280 (Pa. Super. 2005).

With regard to a motion to strike a default judgment, “[a] court may only look at the facts of the record at the time judgment was entered to decide if the record supports the judgment. A petition to strike does not involve the discretion of the court.” *Erie Ins. Co. v. Bullard*, 839 A.2d 383, 386 (Pa. Super. 2003) (quoting *Triangle Printing Co. v. Image Quest*, 730 A.2d 998, 999 (Pa. Super. 1999)). “A petition to strike a judgment will not be granted unless a fatal defect in the judgment appears on the face of the record. Matters outside of the record will not be considered, and if the record is self-sustaining, the judgment will not be stricken.” *Cargitlada v. Binks Mfg. Co.*, 837 A.2d 547, 549-50 (Pa. Super. 2003) (citation omitted).

*Aquilino*, 884 a.2d at 1280; *Wells Fargo Bank, N.A. v. Vanmeter*, 67 A.3d 14, 17 (Pa. Super. 2013).

Upon presentation of a petition to strike or open a judgment to the court, the issuance of a rule to show cause is governed by Pa.R.C.P. 206.4.

Rule 206.4. Rule to Show Cause. Alternative Procedures. Exception.

(a)(1) Except as provided by subparagraph (2), a petition shall proceed upon a rule to show cause, the issuance of which shall be discretionary with the court as provided by Rule 206.5 unless the court by local rule adopts the procedure of Rule 206.6 providing for issuance as of course.

(2) A judgment shall be stricken without the issuance of a rule to show cause when there is a defect on the face of the record that constitutes a ground for striking a default judgment.

(b) The procedure following issuance of the rule to show cause shall be in accordance with Rule 206.7.

Pa.R.C.P. 206.4. Here, the Defendants properly presented their petitions to strike or open a default judgment to the court in a single petition in

accordance with Pa.R.C.P. 206.1 on June 25, 2014. See Petition for Rule to Show Cause. However, the Defendants' Petition for Rule to Show Cause requested that the court grant a Rule to Show Cause for their Petition to Strike Judgment, as well as their Petition to Open Judgment. See Petition for Rule to Show Cause. Upon the request of the Defendants, the court signed the Defendants' proposed order granting the June 2014 Rule to Show Cause for both the Petition to Strike Judgment and their Petition to Open Judgment. See Petition for Rule to Show Cause; June 2014 Rule to Show Cause. However, the Defendants' Petition to Strike Judgment should have been decided at the time of the presentation of their Petition to Strike Judgment, as a petition to strike only relies on the record at the time the judgment was entered. Despite this error, the Defendants' Petition to Strike Judgment proceeded along with their Petition to Open Judgment under the June 2014 Rule to Show Cause, where it was ultimately disposed of by this court on January 20, 2015.

A. Alleged Error Under N2959

Defendants allege that the court erred by granting Plaintiff's Petition to Strike the Defendants' Petition to Strike Judgment under Northampton County Local Rule N2959 because a petition to strike is not governed by N2959.<sup>4</sup> See Defendants' Statement of Errors at ¶ 1. We agree.

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<sup>4</sup> Defendants' Statement of Errors states that Local Rule N2959 "provides only that a petition to open judgment shall be stricken for failure of *Plaintiff* to take depositions." **[FOOTNOTE CONTINUED ON NEXT PAGE]**

Northampton County local rule N2959 provides that:

Where a petition is filed to open a judgment, the petitioner shall within thirty (30) days from the time the rule to show cause issues proceed to the taking of depositions where the allegations raise questions of fact which make such steps necessary; unless the petitioner within thirty (30) days makes such application for the taking of depositions, the petition to open judgment shall be stricken from the record upon a written motion to the Court setting forth such fact.

N.C.R.Civ.P. No. N2959. The local rule is clear that only a petition to open judgment shall be stricken for the failure of petitioner to take depositions.

Although, as discussed above, Defendants' Petition to Strike Judgment should not have proceeded under the June 2014 Rule to Show Cause, when the Plaintiff's Petition to Strike was presented to the Court on January 20, 2015, the court should not have granted Plaintiff's Petition to Strike Defendants' Petition to Strike Judgment under Local Rule N2959. Therefore, we agree with the Defendants.

B. Alleged Error Under Pa.R.C.P. 206.7

Defendants allege that the court erred by granting Plaintiff's Petition to Strike the Defendants' Petition to Strike Judgment under Pennsylvania Rule of Civil Procedure 206.7 because a petition to strike does not depend upon

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**[FOOTNOTE CONTINUED FROM LAST PAGE]**

See Defendants' Statement of Errors at ¶ 1 (emphasis added). In the context of their argument, we assumed that Defendants were referring to the local rule which depends upon the failure of the *petitioner* to take depositions, not the *Plaintiff*. Therefore, we crafted our argument assuming that Defendants intended to refer to a petitioner, rather than a Plaintiff.

facts outside the record. See Defendants' Statement of Errors at ¶ 2. We agree.

Pa.R.C.P. 206.7 governs the procedure after the issuance of a rule to show cause and provides that:

(a) If an answer is not filed, all averments of fact in the petition may be deemed admitted for the purposes of this subdivision and the court shall enter an appropriate order.

(b) If an answer is filed raising no disputed issues of material fact, the court on request of the petitioner shall decide the petition on the petition and answer.

(c) If an answer is filed raising disputed issues of material fact, the petitioner may take depositions on those issues, or such other discovery as the court allows, within the time set forth in the order of court. If the petitioner does not do so, the petition shall be decided on petition and answer and all averments of fact responsive to the petition and properly pleaded in the answer shall be deemed admitted for the purpose of this subdivision.

(d) The respondent may take depositions, or such other discovery as the court allows.

Pa.R.C.P. 206.7. Here, although the June 2014 Rule to Show Cause was improperly issued for the Defendants' Petition to Strike Judgment, the June 2014 Rule to Show Cause provided that Defendants' Petition to Strike Judgment should be decided under Pa. R.C.P. No. 206.7. See June 2014 Rule to Show Cause. Plaintiff proceeded under Pa.R.C.P. No. 206.7 and filed an answer to the Defendants' Petition for a Rule to Show Cause on July 22, 2014. See Plaintiff's Reply. Defendants did not complete any discovery after filing the Petition for Rule to Show Cause in June 2014. See N.T. at 3. However, despite the Defendants' lack of diligence, the court was not

permitted under the provisions of Pa.R.C.P. 206.7 to strike Defendants' Petition to Strike Judgment from the record. Therefore, the court agrees with Defendants.

C. Harmless Error

While we agree that granting Plaintiff's Petition to Strike Defendants' Petition to Strike Judgment was not the proper procedure, we find that the Defendants' Petition to Strike Judgment is without merit, and therefore the court's actions in striking the judgment constituted harmless error.

i. Merits of Motion to Strike Judgment

As discussed above, a petition to strike a judgment entered in the court of common pleas "will not be granted unless a fatal defect in the judgment appears on the face of the record. Matters outside of the record will not be considered, and if the record is self-sustaining, the judgment will not be stricken." *Cargitlada v. Binks Mfg. Co.*, 837 A.2d 547, 549-50 (Pa. Super. 2003) (citation omitted). If an alleged defect is based upon a matter outside the record, the proper remedy is not a motion to strike, but a motion to open the judgment. *See In re McCauley's Estate*, 385 A.2d 1324, 1326 (Pa. Super. 1978).

a. *Jurisdictional Limit for Magisterial District Judge*

The Defendants argue that the \$12,182.65 entered by Plaintiff's Praecepto to Enter exceeds the jurisdictional limit for a judgment entered by a Magisterial District Judge and that this, and Plaintiff's calculation of interest

upon this amount, constitutes a fatal defect in the judgment entered by the court of common pleas. See Petition for Rule to Show Cause at ¶¶ 10-23.

We disagree.

42 Pa.C.S.A. § 1515 governs the jurisdiction of magisterial district judges, and provides in relevant part:

(a) Jurisdiction – Except as otherwise prescribed by general rule adopted pursuant to section 503 (relating to reassignment of matters), magisterial district judges shall, under procedures prescribed by general rule, have jurisdiction of all of the following matters: . . . .

(2) Matters arising under the act of April 6, 1951 (P.L. 69, No. 20), known as the Landlord and Tenant Act of 1951, which are stated therein to be within the jurisdiction of a magisterial district judge.

(3) Civil claims, except claims against a Commonwealth party as defined by section 8501 (relating to definitions), wherein the sum demanded does not exceed \$12,000, *exclusive of interest and costs*, in the following classes of actions:

(i) In assumpsit, except in cases of real contract where the title to real estate may be in question.

(ii) In trespass, including all forms of trespass and trespass on the case.

(iii) For fines and penalties by any government agency.

42 Pa.C.S.A. § 1515(a)(2)-(3) (emphasis added).

Plaintiff's Complaint clearly falls under the purview of the Landlord and Tenant Act of 1951. See Landlord and Tenant Complaint; 68 P.S. § 250.501(a)(3) ("A landlord desirous of repossessing real property from a tenant. . . may notify, in writing, the

tenant to remove from the same at the expiration of the time specified in the notice . . . upon the failure of the tenant, upon demand, to satisfy any rent reserved and due.”). Therefore, the Magisterial District Judge had jurisdiction over the subject matter of the action under 42 Pa.C.S.A § 1515(2).

Additionally, while Defendants argue that the Magisterial District Judge lacked jurisdiction because judgment exceeded \$12,000, in violation of 42 Pa.C.S.A. § 1515(3), the amount that exceeds \$12,000 in the Default Judgment, is clearly designated as costs and interest, which are allowable by statute. See 42 Pa.C.S.A. § 1515(3) (“wherein the sum demanded does not exceed \$12,000, exclusive of interest and costs. . . .”); see *also* Default Judgment. Thus, contrary to Defendants’ assertion, the Magisterial District Judge did have jurisdiction to enter an award in excess of \$12,000 including costs, and Plaintiff’s inclusion of this amount in the Praecipe to Enter and calculation of interest based on this amount does not constitute a defect on the Praecipe to Enter. Because there was no fatal defect apparent on the face of the judgment, we respectfully submit that Defendants’ Petition to Strike Judgment would have been properly denied, and therefore the actions of the Court in striking Defendants’ Petition to Strike Judgment constituted harmless error.

**CONCLUSION**

For the reasons set forth above, we respectfully suggest that Defendants' appeal lacks merit and should be dismissed.

**BY THE COURT:**

/s/ Michael J. Koury, Jr.

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**MICHAEL J. KOURY, JR., J.**