

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

SCOTT A. MacWILLIAMS,)	
)	
Plaintiff/Appellee,)	
)	
v.)	Civil Action No.: 2006-07-484
)	
C. DRUE CHICHI,)	
)	
Defendant/Appellant.)	

**Submitted: August 10, 2007
Decided: January 9, 2008**

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ORDER
ON DEFENDANT’S MOTION FOR REARGUMENT
ON DEFENDANT’S MOTION FOR LEAVE TO AMEND
ON PLAINTIFF’S MOTION FOR CONDITIONAL LEAVE TO AMEND THE
COMPLAINT
ON DEFENDANT’S MOTION FOR JUDGMENT ON THE PLEADINGS
ON PLAINTIFF’S MOTION TO DISMISS DEFENDANT’S APPEAL

This matter is back before the Court on several motions following the Court’s opinion rendered on June 29, 2007. The subject matter of these proceedings arises out of an appeal from the Justice of Peace Court in which the dispute centers upon a sale of residential property from the defendant-below/appellant, C. Drue Chichi (hereinafter “Chichi”) to plaintiff-below/appellee, Scott A. MacWilliams (hereinafter

“MacWilliams”), and his wife, Julia D. MacWilliams. According to the complaint, at the time of closing, Chichi allegedly failed to properly disclose under the Seller’s Disclosure document executed as part of the sale. Plaintiff brought the action in the Justice of the Peace Court. The Justice of the Peace Court on July 13, 2006 following trial on the merits, entered judgment for the plaintiff in the amount of \$4,454.08, plus costs and interest. On July 28, 2006, defendant appealed to this Court.

This case is back before this Court on the following motions:

1. Appellant Chichi moves this Court pursuant to *Court of Common Pleas Civil Rule 59(e)* for reargument of its decision rendered on June 29, 2007. In the prior motion, Chichi argued this Court lacked subject matter jurisdiction because Appellee failed to join an indispensable party, namely Julia D. MacWilliams, (hereinafter “Julia”), who purchased the property jointly with MacWilliams. This Court thereafter held appellant’s argument lacked merit because MacWilliams and Julia D. MacWilliams (hereinafter “Julia”) purchased the property as husband and wife. Because the parties were spouses, Julia would be collaterally estopped from bringing any future claims against Chichi. Therefore, she was not considered an indispensable party for the nature of these proceedings.

A motion for reargument is the proper device for seeking reconsideration by the Trial Court of its findings of fact, conclusions of law or judgment, after a non-jury trial. *Hessler v. Farrell*, 260 A.2d 701 (Del.Supr. 1969). In considering the motion under Civil Rule 59(e), a court must consider whether it “overlooked a precedent or legal principle that would have a controlling effect, or that it has misapprehended the law or facts such as would effect the outcome of the decision.” *Gass v. Truax*, 2002 WL 1426537, *1

(Del. Super. Ct. 2002)(citing *Monsanto Co. v. Aetna Cas. and Sur. Co.*, 1993 WL 5632461, *2 (Del. Super. Ct. 1993), *aff'd*, 653 A.2d 305 (Del. 1994).

Chichi also argues in her motion that the Court misapprehended the facts because it attributed the lack of subject matter jurisdiction to her when it was MacWilliams who made the argument. Given the posture of these proceedings, even if the Court in error attributed the argument, I find it of little consequence because this case is before this Court on *de novo* appeal which is an entirely new trial.

Chichi also argues that the Court did not understand and, as a result, misapplied the economic loss doctrine in these proceedings. The arguments made by Chichi in the motion for reargument were considered by the Court in its first opinion. I see no basis to revisit the issue here since no new argument is put forth.

After thorough review of the record, it is clear that all of the arguments in the motion were previously considered by the Court and, while they may be restructured here, they do not raise any new issue or any new facts not previously considered by the Court in the previous opinion. Accordingly, defendant's motion is DENIED.

2. Chichi moves this Court pursuant to *Civil Rule 15(a)* for leave to amend the Answer on appeal to add affirmative defenses. MacWilliams contends these defenses were not previously raised at the Justice of the Peace Court, and are now barred. Chichi's argument is that when the Justice of the Peace Court entered judgment on MacWilliams' claims, the Court implicitly decided Chichi's defenses, including the affirmative defenses for which the amendment of the Answer is sought. Chichi further argues if the motion is granted, amending the Answer will have no "impact on the facts or issues already before the Court".

In MacWilliams' response to Appellant's motion, he argues Chichi's defenses were never presented at the Justice of the Peace Court and therefore could neither have been heard nor decided. MacWilliams grounds his argument in the fact that the court below never acknowledged Chichi's defenses in the written memorandum it issued finding in favor of appellee. MacWilliams also argues if this Court does grant appellant's motion, Chichi would prevail as a matter of law, thereby significantly impacting MacWilliams' claims. He further argues that Chichi's presentation of new defenses before this Court would divest this Court of jurisdiction over the appeal based upon the application of the mirror image rule.

Appeals from judgments rendered in the Justice of the Peace Court to this Court are heard *de novo*. The critical issue for this Court to decide regarding Chichi's motion is whether allowing Chichi to amend the Answer on appeal to add affirmative defenses not previously raised at the Justice of the Peace Court would expand the sphere of issues involved in this appeal and thereby violate the mirror image rule. The provisions of the mirror image rule are found in *Court of Common Pleas Civil Rule 72.3(c)* provide: "An appeal to this court that fails to join the identical parties and raise the same issues that were before the court below shall result in a dismissal on jurisdictional grounds." Therefore, if the issues and/or parties presented to this Court on appeal, are different than those included in the Court below, the appeal must be dismissed for lack of jurisdiction.

In the instant matter, the mirror image rule is to be read in conjunction with *Justice of the Peace Civil Rule 12*, concerning defenses. This rule is a flexible device which allows parties to raise any and all defenses until the time of trial. If parties wish to raise defenses at the time of trial, the court will grant a motion to continue the trial so that

the opposing party is not prejudiced. Implicit in this rule is that if defenses are not raised in the Justice of the Peace Court before or at the time of trial, then those defenses are deemed waived.

In the instant matter, there is nothing in the record indicating Chichi raised any affirmative defenses in the Justice of the Peace Court. Because Chichi failed to raise these defenses in the court below, the defenses were thereby waived. Any attempt by Chichi to cure this waiver on appeal to add those defenses directly violates the mirror image rule. Even if I were to conclude otherwise, an amendment at this stage of the proceedings is inappropriate. Therefore, Chichi's motion to amend her Answer on appeal is hereby DENIED.

3. MacWilliams also moves to amend his Complaint on appeal. MacWilliams contends that if this Court grants Chichi's motion to amend pleadings, Appellee should also be afforded the same opportunity. He seeks to add a breach of contract claim that was not included in the Justice of the Peace Court pleadings. Based on the above stated-reasoning, granting MacWilliams' motion to amend the complaint on appeal to add claims not previously raised in the Justice of the Peace Court, would violate the mirror image rule. Therefore MacWilliams' motion to amend the Complaint on Appeal is also hereby DENIED.

4. Appellant Chichi also moves this Court pursuant to *Court of Common Pleas Civil Rule 12(c)* for judgment on the pleadings. The motion alleges Chichi is entitled to judgment as matter of law because the alleged material defects of the property in question occurred after final settlement, and therefore, according to case law, MacWilliams is not entitled to recovery. Chichi also argues judgment is appropriate

because MacWilliams' claims are time-barred under the applicable three-year statute of limitations. MacWilliams opposes the motions.

A motion brought under *Court of Common Pleas Civil Rule 12(c)* for judgment on the pleadings admits for purposes of the motion, that the allegations of the opposing party are true, but contends that the allegations are insufficient as a matter of law for the relief claimed. Therefore, such motion cannot be granted where the pleadings raise issues of material fact or there is any conceivable basis for which the plaintiff may recover. *Clever v. Roberts*, 203 A.2d 63 (Del.Supr. 1964). Additionally, for purposes of a motion brought under this rule, all allegations in the complaint must be accepted as true. *State-Use-of Tweed-Product Corporation v. Pacific Insurance Co.*, 389 A.2d 777 (Del.Supr. 1978).

In the instant matter, the dispute stems from the sale of residential property. MacWilliams' complaint alleges Chichi's failure to disclose on the seller's disclosure form, repairs on the property without proper permits and the existence of open permits. Chichi, however, argues the alleged defects did not occur until after final settlement, and thereby disclaims liability. These are clearly issues of material fact that must be resolved at trial. Furthermore, Chichi does not accept the statements made in the complaint on appeal as true, as required by the rule. The motion argues Chichi's claim that the defects did not arise until after final settlement. This argument directly contradicts MacWilliams' allegations. Therefore, for the above-stated reasons, this motion is DENIED.

5. Plaintiff MacWilliams moves this Court pursuant to *Court of Common Pleas Civil Rule 72.3(c)* to dismiss defendant's appeal. MacWilliams states defendant is

raising new issues on appeal that were not considered in the court below, in violation of the mirror image rule. He argues that because Chichi moved for summary judgment on the basis of the economic loss doctrine and plaintiff's wife being an indispensable party, she has raised two new claims not considered by the Justice of the Peace Court, in violation of the rule. He supports this argument by reference to Chichi's post-trial submission in the Justice of Peace Court.

When considering a motion to dismiss, the facts must be viewed in a light most favorable to the non-moving party and all reasonable inferences are considered most strongly in favor of plaintiff. *Graham v. State Farm Mutual Insurance Company*, 2006 WL 1600949, at *1 (Del.Super. 2006).

After review of the complaint on appeal, I am satisfied that because appellant's previous motion to amend the pleadings to add new issues was denied, I am satisfied that the current claims presented do not violate the mirror image rule. Accordingly, appellee's motion to dismiss is hereby DENIED.

SO ORDERED

Alex J. Smalls
Chief Judge