

I. Position of the Parties

a) Southgate's Contentions.

Southgate alleges in the instant Motion to Dismiss pursuant to *CCP Civ. R. 12(b)(1) & (6)* and *CCP. Civ. R. 72.3(c)* that Kelly Ham, plaintiff/appellant's ("Ham") *appeal de novo* should be dismissed. In support of its argument Southgate points out that Ham filed a complaint in the Justice of the Peace Court below on or about October 9, 2008. Southgate thereafter filed its responsive pleading and/or answer. According to Southgate, plaintiff alleged in the complaint below that there was a "flood" in her apartment "sometime during the summer of 2005" in which some of her personal property was allegedly damaged. *See J.P. Ct. Complaint, Exhibit A to the Motion.* According to Southgate, throughout the course of the Justice of the Peace action Ham alleged the incident in question occurred only in August 2005.

Now, according to Southgate, in Ham's complaint on *appeal de novo* in this Court, Ham maintains the purported flooding began in June 2005 and "continued through the remainder of her tenancy". (Southgate's Motion, ¶ 3); Complaint on Appeal, ¶ 19. According to Southgate, this is a "departure" from what Ham pled in her initial Justice of the Peace Complaint and exhibits a "clear effort to try and circumvent the claim[s] from being barred under the [applicable] statute of limitations."

Southgate therefore urges this Court to dismiss the complaint on appeal for a lack of subject matter jurisdiction under the “Mirror-Image Rule”. *See CCP Civ. R. 72.3(c)*.¹

b. Ham’s Contentions.

In Ham’s responsive pleading to Southgate’s Motion, she points out that she initially pled in her Justice of the Peace complaint that there was a “flood” in her apartment during the summer of 2005. According to Ham, the initial complaint refers to at least two (2) occasions in which her apartment flooded. (*Exhibit A to Ham’s Responsive Pleading*). According to Ham, the first paragraph of the continuation sheet of the Justice of the Peace Court Complaint states, *inter alia*... “[D]ue to the negligence of Southgate Garden Apartments to comply with Delaware building codes, my apartment flooded.” According to Ham, later in her Magistrate’s complaint filed below, she alleged, “three weeks later there was an even worse storm and my apartment flooded again.”

According to Ham, in her responsive pleading, the complaint also sets forth that Ham sustained losses due to water damage from “repeated flooding”. Finally, Ham asserts that the Justice of the Peace Court’s Order [from Court 11] following trial refers to “numerous occasions when her property was damaged due to the conditions.” *Exhibit B to Ham’s Responsive Pleading*. According to Ham, the Final Order from the Magistrate reflects that there were also “water infiltration events”.

¹ Court of Common Pleas Civ. R. 72.3(c) provides as follows: “(c). Jurisdiction. An appeal to this Court that fails to join the identical parties and raise the same issues that were before the court below should result in dismissal on jurisdictional grounds.”

II. The Law

Both parties correctly point out that the Mirror Image Rule is a ... “longstanding jurisdictional rule governing appeals from the Justice of the Peace Courts to the Court of Common Pleas.” *See e.g., Pavetto v. Hansen*, Del. Super., LEXIS 349, at *3 (Del. Supr., September 29, 2004)(citing *McDowell v. Simpson*, 6 Del. 467 1 Houst.467 (Del.Super., 19857).

Both parties also agree... “[a] party appealing from the Justice of the Peace Court to the Court of Common Pleas ‘must’ join the identical parties and raise the same issues that were before the Court below” or the case shall be dismissed on jurisdictional ground. *See CCP Civ. R. 72.3(c)*. “Any variance from below or proceedings strips [the Court of Common Pleas] of jurisdiction to hear the appeal.” *Biddle v. Mellow*, 2007 Del. C.P. LEXIS 4 (Del.Com.Pl., Feb. 13, 2007).

As stated in *Pavetto v. Hansen*, 2004 Del. Super., LEXIS 349, ... “[t]he Mirror-Image Rule prevents the Court from acquiring subject matter jurisdiction over an *appeal de novo*, unless the following are identical from the Court below; 1) the names of the parties; 2) the number of the parties; 3) the character and of the right in which the parties are sued; and 4) the cause and form of the action.” *Panzer Management Co. v. Farrall*, 1987 Del. Super., LEXIS 1063, 1987, WL 8223 (Del. Super., 1987). To state the requirements in a different manner... “[I]n order for the [Court of Common Pleas] to have jurisdiction of an *appeal de novo* from the Justice of Peace Court, the parties below and an appeal must be identical in name, number, character, or right, in

which they are being sued.” *Hicks v. Taggart*, 1999 Del. Super., LEXIS 165, Ridgely, J. (April 12, 1999); *Vailati v. Berman*, 1991, Del. Supr., LEXIS 264, Graves, J. (June 28, 1991)(Mem.Op.); *Cooper’s Home Furnishings, Inc. v. Smith*, 250 A.2d 507 (Del. Super., 1969).

III. Discussion

The dispositive issue in the instant motion filed by Southgate is whether the four (4) elements listed above have been satisfied in Ham’s Complaint on appeal. Further, the Court will be called upon at trial to determine, what, if any damages were caused by defendants’ actions and as Southgate asserts whether these claims are barred by the applicable statute of limitations. As Judge Witham noted in *Fossett v. Dalco Construction Co.*, 2004 LEXIS 342, 2004 WL 1965141 (Del. 2004), the Delaware Supreme Court’s reasoning for application of the Mirror-Image Rule in the Court is as follows:

The Rule provides for an adequate and fair hearing of the entire *de novo* by affording all parties to the Justice of the Peace proceeding an opportunity to argue their version of the law’s application to those facts and to ensure the *de novo* review Court that all relevant court could be presented and can be heard. *Fossett* at 1.

There is no doubt that once Ham filed the instant complaint on appeal in the Court of Common Pleas that she set more fully pled allegations which were made by counsel of record. See *Ceccotti v. Leight*, 2007 Del.C.P. LEXIS 15 (Del.Com.Pl. Feb. 23, 2007) (The Mirror-Image Rule and *CCP Civ. R. 72.3(c)*) are satisfied “[i]f the

complaint on appeal presents no parties or issues other than those presented by the original complaint below.”

Southgate argues that by alleging what Southgate asserts is a departure in the dates of the flooding, Ham, in her complaint on appeal, is trying to circumvent the instant claims being barred under the applicable statute of limitations. In essence, Southgate argues the nature of the cause of action is now in the nature of an ongoing problem previously was pled from an isolated incident in Ham’s original Justice of the Peace complaint; a new complaint.

IV. Final Order and Opinion

It is clear that in her complaint *de novo* in this Court on appeal, Ham pled a more particularized factual cause of action. However, as Ham notes in her responsive pleading to Southgate’s Motion, as outlined above, Ham set forth *pro-se* numerous allegations of flooding below and did not particularize or limit her underlying Magistrate’s complaint to only one incident. Even the Magistrate below in his Order noted as set forth above that numerous occasions were cited by Ham in the Justice of the Peace action, as well as the paragraph cited by Ham’s counsel and his responsive pleading, paragraph 2. As outlined in the opinion above in Ham’s Contentions, both the judge below and the complaint below cited various occasions of alleged floodings.

In this case the Court notes that Ham was *pro-se* Justice of the Peace Court Number 11 and Mr. Sullivan entered his appearance and perfected an appeal to this Court pursuant to 10 *Del.C.* §9571 *et seq.* on February 25, 2009. Mr. Sullivan

particularized the cause of action in this complaint on appeal. However, the Court notes the issues of flooding by Ham were pled below; discussed below at trial; and ruled upon by the Magistrate below in his Final Decision and Order.

For all these reasons, the Court finds this Court shall retain subject matter jurisdiction of Ham's Complaint on appeal and that the four predicate elements of a *CCP Civ.R. 72.3(c)* to this Court have been satisfied. The Court finds there is no subterfuge in her complaint *de novo* from the Magistrate below to this Court to circumvent a statute of limitations problem by Ham by alleging new, non-pled allegations of flooding below and raising new allegations of flooding in her Complaint *de novo* in this Court.

As the Court in *Cecotti* concluded, there is no violation of the Mirror-Image Rule when the complaint on appeal "sets forth more specific claims" than those made in the original complaint, "but does not alter the subject matter of the case below." 2000 WL 33653441 (Del.Com.Pl.). Interpreting several Mirror Image cases including *Cross*, the Court in *Silverview Forum Inc. v. Laushey*, 2006 WL 1112911 (Del.Com.Pl.) concluded that the Mirror-Image Rule and *CCP Civ. R. 72.3(c)* "are satisfied if the complaint on appeal presents no parties or issues other than those presented by the original complaint below." Nor can this Court conclude that element number three (3) of the Mirror-Image Rule; character and the right in which the parties are sued or element four (4); the cause and form of the action have been deviated from the complaint below.

The Court therefore DENIES Southgate's Motion to Dismiss the Complaint on Appeal. The matter shall be set for trial at the earliest convenience of the parties.

IT IS SO ORDERED this 26th day of May, 2009.

John K. Welch, Judge

cc.: Jose Beltran, CCP Civil Case Processor