

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

Bombay Bistro, Inc.	:	C.A. No. 04-03-0114 AP
	:	
Defendant below/ Appellant,	:	
	:	
v.	:	
	:	
Meera Management, LLC	:	
	:	
Plaintiff below/ Appellee.	:	

Submitted: May 19, 2004

Decided: May 19, 2004

Decision on appeal from the Justice of the Peace Court.

Appellant's appeal is dismissed for lack of subject matter jurisdiction.

John L. Williams, Esquire, 1201 Orange Street, Suite 600, Wilmington, Delaware 19801, Attorney for Appellant.

Thomas J. Eastburn, Esquire, 1400 Market Street, Wilmington, Delaware 19801, Attorney for Appellee.

Trader, J.

In this appeal from the Justice of the Peace Court, this civil action is dismissed for lack of subject matter jurisdiction since the parties on appeal are not identical with the parties that were before the Justice of the Peace Court. Additionally, a summary possession proceeding is not appealable to the Court of Common Pleas.

The relevant facts are as follows: On July 14, 2003 the plaintiff, Meera Management, initiated a summary possession proceeding in Justice of the Peace Court #16 against Kamal Kalra and Bombay Bistro. On October 8, 2003 judgment by default was entered against Kamal Kalra and Bombay Bistro for possession and back rent in the amount of \$41,545.04. On the same date, the judgment was modified to \$15,000.00 against each of the above-named defendants. On December 11, 2003, Bombay Bistro filed a motion to vacate the default judgment entered against it and on February 2, 2004, Bombay Bistro's motion was granted and the case was scheduled for trial. On March 3, 2004, the magistrate dismissed the plaintiff's civil action against Bombay Bistro with prejudice. On March 15, 2004, Bombay Bistro filed a notice of appeal with this court. On appeal the plaintiff, Meera Management, did not file a complaint but filed a statement of no contest. Bombay Bistro filed a motion to permit it to file a counterclaim in the amount of \$50,000.00.

The initial issue is whether this court has subject matter jurisdiction to hear this appeal. This civil action was commenced as a summary possession proceeding in the Justice of the Peace Court. Under 25 Del.C. Sec. 5701, the Justice of the Peace Court has jurisdiction over summary possession proceedings. Under 25 Del. C. Sec. 5717, the litigants in summary possession proceedings have a right to a trial *de novo* before a

special court comprised of three justices of the peace. 25 Del.C. Sec. 5717 is silent as to further appeals.

It has been held that the judgment of the magistrate is final and non-appealable. *Bomba's Restaurant & Cocktail Lounge v. Lord de la Warr Hotel*, 389 A.2d 766 (Del. 1978). Therefore, the summary possession proceeding in this case is not appealable to the Court of Common Pleas.

Additionally, the case should be dismissed for violation of the mirror image rule. *Cooper's Home Furnishings v. Smith*, Del. Super., 250 A.2d 507, 508 (1969). In *Dzedzej v. Prusinski*, Del. Super., 259 A.2d 384 (1969), the defendant's failure to join the co-defendant in the appeal did not comply with the mirror image rule and the appeal was dismissed. Subsequent cases have held that the matter on appeal from the Justice of Peace Court must consist of identical parties. *Freedman v. Aronoff*, Del. Super., 994 WL 555429 at *2 (1994); *Sulla v. Quillen*, 1987 WL 18425 at *1 (Del. Super. Ct.). Additionally, the jurisdiction of this court is limited to those claims that are brought before the magistrate. *Gaster v. Belak*, 318 A.2d 628 (Del. Super.Ct. 1974).

Since this court is without subject matter jurisdiction, the motion to permit the filing of a counterclaim is denied and the appeal is dismissed.

IT IS SO ORDERED.

Merrill C. Trader
Judge