

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

Reybold Realty Association)	
Plaintiff,)	
)	
v.)	Civil Action No. 2004-05-198
)	
Janet Reihart,)	
Defendant,)	
)	
Janet Reihart,)	
Third Party Plaintiff-Below)	
Appellee,)	
)	
v.)	
)	
Reybold Homes, Inc.,)	
Third Party Defendant-Below/)	
Appellant)	
)	

Michael P. Morton, Esquire
Michael P. Morton, P.A.
1203 North Orange Street
Wilmington, DE 19801
Attorney for Third Party
Defendant/Below Appellant

Legal Services Corporation of Delaware, Inc.
Jane W. Evans, Esquire #2153
100 W. 10th Street, Suite 203
Wilmington, DE 19801
Attorney for Third Party
Plaintiff, Below, Appellee

Date Submitted: August 27, 2004
Date Decided: September 15, 2004

OPINION AND ORDER

Reybold Realty Association (hereinafter Association) filed a complaint in the Justice of the Peace Court against Jane Reihart (hereinafter Reihart) for summary possession of a mobile home lot plus rental. In the same action Reihart filed a Third Party complaint against Reybold Homes, Inc. (hereinafter Reybold) for damages allegedly caused to her home which was on the lot subject to the summary possession action.

On May 4, 2004, a judgment by admission was entered in favor of Association against Reihart for possession and rent. At the same time a finding was made and a judgment was entered in favor of Reihart against Reybold for damages.

Reybold appealed the judgment against it in a timely manner. In the appeal, Reybold used the caption which was used in the Justice of the Peace Court, i.e.: Reybold Realty Association, Plaintiff, vs. Reihart, Defendant and Reihart, Defendant and Third Party Plaintiff (now appellee) vs. Reybold Homes, Inc., Third Party Defendant (now appellant). Reihart has moved to dismiss the appeal, arguing that under the statute (25 Del. C. §5717(a)) the appeal should have been taken to a three judge panel in the Justice of the Peace Court and could not legally be filed as an appeal for a trial de novo in this Court. Reybold argues to the contrary.

Reihart is correct in arguing that a summary possession matter must be appealed to a Three Judge Panel and must carry with it any decision and order concerning rental damages if such relief was part of the complaint. But her reliance on Asset Recovery Services LLC v. 12th Street Associates, L.P., Del. CCP, No. 2002-03-384 (2003) is misplaced in this case. In Asset Recovery the issue of possession and rent was part and parcel of one proceeding (not unlike the issue in this case between Association and

Reihart), but in this proceeding there are two separate issues – the initial proceeding formed in Association vs. Reihart for possession and rent and the second proceeding formed in Reihart vs. Reybold for damages. The initial proceeding was resolved by a judgment by admission, while the second was resolved by a finding of damages and judgment thereon. The two proceedings, while properly joined, were certainly distinct.

The judgment by admission or consent by Reihart could not be appealed – not to a three judge panel nor to this Court. Maddox v. Justice of the Peace Court #19 et al., Del. Super., C.A.No. 90A-JA7, (1991). The Maddox case clearly shows that a judgment by admission is tantamount to a settlement, and, notwithstanding how characterized, this type of judgment is not subject to an appeal process. This does not, however, preclude the appeal of the Third Party action which was distinct and separate for the initial claim and except for the general subject matter similarity (the lot and the house on it) involved distinct albeit related corporate entities.

Recognizing the stricture of the mirror image rule, Reybold filed the appeal in the exact same fashion as the case was captioned in the Justice of the Peace Court. See Fosset v. DALCO Constr., Del. Super., C.A. No. 02-09-012-FSS (2003), aff'd Del. Supr., No. 607,2003, 2004 Del. Lexis 362 (2004); Hicks v. Taggart, Del. Super., No. 98A-05-002)1999). Reybold's care to follow a rule should not be used against it. It is significant that Reybold anticipated the possible dilemma it might face by requesting that the third party action be heard separate from the initial action in the Justice of the Peace Court. The request was denied and the matter was resolved in an integrated hearing.

Reybold did all that it could to preserve its right to an appeal. Had the third party action been severed, and treated as a separate and distinct case, the present issue would

not be before the Court. By analogy to the reasoning in Petrucelli v. McFarland, Lexis 167, Del. Super., C.A. No. 88C-AP-183 (1989), when a party “has done all that is required of him” to preserve his appeal right but an apparent default is occasioned by court personnel action, “his petition for review will not be denied”.

The caption of the case in this Court meets the rigid requirements of the mirror image rule, and, although the issue of possession is a nullity in this Court, the issue of damages allegedly caused by Reybold to Reihart’s house is viable and should be resolved by a trial de novo.

The motion to dismiss the appeal is denied.

IT IS SO ORDERED.

J, Retired¹

¹ Sitting by appointment pursuant to Del. Const.; Art IV §38 and 29 Del. C. §5610.