

November 6, 2007

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**Re: *Lidia Vela v. Cesar Ramirez and Miledy Ramirez*
C.A. No.: 2007-03-129**

Date Submitted: October 26, 2007

Date Decided: November 6, 2007

**MEMORANDUM OPINION
CO-DEFENDANTS' MOTION TO DISMISS FOR LACK OF JURISDICTION:
GRANTED**

Dear Counsel:

On or about July 3, 2007 co-defendants-below, appellees Cesar Ramirez and Miledy Ramirez (hereinafter co-defendants) filed a Motion for Dismiss for Lack of Jurisdiction and to Extend the Time to Answer or Plea to Defend the Plea on Appeal from Magistrate's Court (the "Motion"). *See CCP Civ. R. 72.2(c)*. On Friday, October 26, 2007, after several continuances, the Court heard argument on that Motion. This is the Court's Decision and Order on Co-Defendants' Motion to Dismiss and For Time to Answer or Plead.¹

I. The Facts.

On or about September 7, 2006 Miledy Ramirez ("Ms. Ramirez") individually filed a debt action in the amount of \$1,200.00 against Lidia Vela ("Vela") in the Justice of the Peace Court No.

¹ Since the Motion to Dismiss is granted, the Motion for Time to File an Answer is Moot.

12. That Action was Civil Action No.: JP12-06-10003412 and sought monies for loss of personal belongings for a rental unit. In the Complaint Ms. Ramirez plead the following facts:

“She (Landlord) enter in the house clean the back yard and the front and we lost everything like four chairs. 1-BBQ, 1- Pool Tools, 1 Mosquito Repellent Lamps, 1 - wireless phones. She doesn’t want to give me mi [sic] deposit back. (Rest is illegible).” (JP C.A. No.: J06-10-0034012).

Ms. Ramirez sought \$1,200.00 in money damages in her Complaint plus \$30.00 in court costs.

On or about November 1, 2006 James A. Landon filed an Answer in Magistrate’s Court Landon on behalf of Vela counter-claimed asserting that Ramirez damaged the rental unit in the amount of \$6,967.83 and asked for judgment on the counter-claim. Landon also denied plaintiff’s allegation in her Complaint.

On November 6, 2006 Vela filed action number JP12-06-000265 against Cesar Ramirez (“Mr. Ramirez”) in the amount of \$6,967.83 for damages to the rental unit, the exact amount complained against Ms. Ramirez.

On November 14, 2006 Landon, on behalf of Vela, filed a Motion to Consolidate the two Justice of the Peace Court actions alleging the two actions pertaining to the same facts and circumstances and that it was “judicially efficient” to consolidate.

On January 11, 2007 an alias debt action in the amount of \$3,979.17 was filed by both Mr. and Ms. Ramirez against Vela. In this action the record, according to plaintiff’s counsel, which is correct, was no counter-claim was filed by Vela to this “alias complaint”.

On February 26, 2007 the Justice of the Peace Court granted Vela’s Motion to Consolidate held a consolidated hearing, and entered a Judgment following a hearing in each case. The Honorable Kathleen C. Lucas entered an Order and Judgment in favor of Miledy and Cesar Ramirez and against Lidia Vela for the balance of their \$500.00 security deposit or \$350.00 plus \$50.00 court

costs, plus 11.25% post judgment interest per annum. Judge Lucas found plaintiffs were unable to prove that Ms. Vela or anyone acting under her direction is responsible for the loss of computer and any of the items sought in the complaint.

In the Courts First Part of its July 26, 2007 decision in *Vela v. Ramirez*, Judge Lucas awarded \$100.00 for carpet (¶1), \$50.00 award for labor to clean, etc the kitchen floor beyond normal wear and the carpet claim was denied (¶2). In paragraph 3 of *Vela v. Ramirez* Judge Lucas was has entered Judgment for Defendants' Ramirez on "token damages for the yard". On March 9, 2007 Vela, through her counsel, Mr. Landon appealed to the Court of Common Pleas pursuant to 10 *Del.C.* §9571 *et seq.* On May 18, 2007 a Motion for Default Judgment was entered against Mr. and Ms. Ramirez. On June 25, 2007 the Court vacated the Default Judgment after oral argument and the filing of a Motion to Vacate and subsequent Stipulation by the parties.²

In the Complaint filed on appeal in this Court, Vela names Cesar Ramirez and Miledy Ramirez as defendants-below, appellees. Vella alleges she owned the subject property at 70 Three Rivers Drive, Newark, Delaware 19702. In paragraph four of the complaint Vela alleges that defendants rented to property from the plaintiff and in paragraph five Vela alleges both Cesar Ramirez and Miledy Ramirez caused damages to the property in the amount of \$6,967.83.

The Complaint on Appeal seeks judgment against co-defendants in the amount of 6,967.83 plus pre and post judgment interest and "all other further relief the Court deems just and proper."

Cesar and Miledy Ramirez filed a Motion to Dismiss for Lack of Jurisdiction and to Extend the Time to Answer or Plead (the "Motion") on July 16, 2007. Vela has filed an Answer to that Motion.

² Mr. Landon's Notice of Appeal filed March 6, 2007 indicated Lidia Vela, plaintiff-below, appellant . . . [g]ives notice pursuant to 10 *Del. C.* §9571 of an appealed decision of the Justice of the Peace Court No.: 12 by the Honorable H. Kathleen C. Lucas, Civ. A. Nos.: J06-10-0034-12 and JP12-06-000265, dated February 26, 2007.

II. Discussion.

Co-defendants in this Court in their Motion argue that Court of Common Pleas 72.3(c) mandates that “[a]n 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 dismissal on jurisdictional grounds.” (§ 9, Motion to Dismiss). In essence, co-defendants argue that the matter as captioned in the Court of Common Pleas seeks an appeal “from a matter that was not before the Court below”. Co-defendant asserts the actions below began as a debt action brought by Ramirez against Vela alleging loss of personal belongings and as a result of the counter-claim, complaint by Vela and “alias complaint” by Mr. and Ms. Ramirez, came to include a debt action for damages to Vela’s property and a request for the return of Mr. and Ms. Ramirez’s security deposit (§ 11, Motion to Dismiss).

Co-defendants in this Court argued the appeal as captioned is erroneous as there was “no such case below” and “it totally ignores the debt actions filed by Mr. and Ms. Ramirez”. (§ 12, Motion to Dismiss).

Finally, co-defendants in this Court argue that the Complaint filed in this matter clearly show there is no case in which Vela was a plaintiff and Mr. and Ms. Ramirez were joint defendants. As such identical issues are not before this Court, co-defendants assert that the appeal must be dismissed for lack of subject matter jurisdiction in this Court.

III. The Law.

As set forth in *Hicks v. Taggart*, 1999 Del. Super., LEXIS 165, Ridgely (April 12, 1999) the Superior Court set forth the law which applies in this case.

“In order for the [Court of Common Pleas] to have jurisdiction of *appeal de novo* from the Justice of the Peace Court, the parties below and on appeal must be identical in name, number, and/or character, or right in which they are sued.”

“Any variance from the lower proceeding strips the Court of jurisdiction [to hear the appeal]. In this case, the conclusion of *Brown*

as an additional defendant on appeal deprive the Court of Common Pleas of jurisdiction to hear and decide Hicks' appeal. Thus, the Court of Common Pleas was correct when it dismissed the appeal upon this ground..."

In *Barry Fossett and Judith Strock v. Dalco Construction*, Del. Supr., 2004 WL 1965141, Steele, J. (August 20, 2004) these principles were reaffirmed as follows:

In *Fossett*, the Supreme Court noted as follows in Footnote 1:

6 *Del.* 467 Hous. 467 (Del. Super. 1857) "If the declaration in appeal from a justice of the peace fails to correspond with the transcript of the suit below, in the names and number of the parties, the character or right in which they sue, or in the cause or form of action, the proper mode to take advantage of it is by motion to set it aside for irregularity. . ." See also *Freedman v. Aronoff*, 1994 Del. Super. LEXIS 467, 1994 WL 555429 at *2 (Del. Super.) (requiring that same original parties appear in caption, but not necessarily ancillary information.

In Footnote 7 of the *Fossett* decision, the Supreme Court directed the Court of Common Pleas "to determine as promptly as practicable whether the mirror image rule has continued efficacy; and if so, to adopt formally a civil rule that is sufficiently clear to put all parties taking an appeal from the Justice of the Peace Court on notice that failure to comply with a codified mirror image rule will result in a jurisdictional defect and in dismissal of the appeal."

In response to the Supreme Court's instructions to Court of Common Pleas promulgated CCP Civ. R. 73C, which is now codified 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 shall result in dismissal on jurisdictional grounds. (Effective November 29, 2004).

IV. Opinion and Order.

In co-defendants' Motion they include as an attachment their Motion Exhibit G and represent in paragraph 6 that after the Motion to Consolidate was granted a hearing was held and judgments were entered in each case. The co-defendants are correct. In Exhibit G to co-

defendants' Motion to Dismiss (attached hereto as Exhibit "A" to this decisions) the Court lists in its February 26, 2007 disposition by the Magistrate Court both civil actions at the top of the Final Disposition.

Clearly, Judge Lucas held a consolidated trial hearing on JP Action 12-06-0000265 and JP 610003412. Clearly this disposition indicated the Motion to Consolidate was granted and a single trial was held in both actions on February 26, 2007. Clearly appellant in this court has appealed only part of that filed disposition.

In fact, the money judgment sought on appeal in this Court *de novo* constitutes the counterclaim against Miledy Ramirez in the first Justice of the Peace action, and the same names sought in separate action filed November 6, 2007 in JP12-0601265 against Cesar Ramirez. The entitled parties in this Court in the appeal *de novo* complaint were never joined below, and were in fact two separate civil actions.

Under the heading "Notice of Court Action" the Magistrate Court No.: 12 provides as follows: "The Court has entered a judgment or Order in the following form;" and lists only *Vela v. Ramirez* and only one co-defendant. Below that in a separate paragraph the Court lists *Ramirez v. Vela* as noted above in the *Vela v. Ramirez* action number the Court awarded in paragraph 1 \$100.00 for carpet which was well beyond its depreciated value. In paragraph 2 of *Vela v. Ramirez* the Court awarded \$50.00 for labor to clean beyond normal wear and tear. In paragraph 3 of *Vela v. Ramirez* the Court awarded nothing for token damages for the yard and entered judgment for co-defendants Ramirez. Clearly the actions below did not include both co-defendants in one caption and did not allege the same factual and legal assets that Vela has now asserted in her complaint *de novo* filed pursuant to 10 *Del C.* §9590 *et seq.* in the Court of Common Pleas. No identical parties or issues of law or facts are asserted in this *de novo* complaint filed in this Court.

In the February 26, 2007 decision under *Ramirez v. Vela* the Court notes that “plaintiff essentially is unable to prove that Ms. Vela or anyone acting under her direction is responsible for the loss of computer or any other of the items claimed.” The disposition notes that “Judgment is entered in favor of Miledy and Cesar Ramirez and against Lidia Vela for the balance of their \$500.00 security deposit or \$350.00 plus \$50.00 court costs plus 11.25% post judgment interest per annum.”

In the Notice of Appeal and certified record, the Court notes that a March 13, 2007 certified copy of the judgment was signed by Judge Kathleen C. Lucas which lists as the caption: *Miledy Ramirez v. Lidia Vela* c/o James A. Landon, Esquire, C.A. No.: J06-10003412 and notes as follows: “On FEBRUARY 26, 2007 judgment was entered by Justice of the Peace Court No.: 12 in favor of Miledy Ramirez and Cesar Ramirez and against Lidia Vela for \$400.00 with interest from February 26, 2007.”

Having ruled the same, it is clear that the instant *de novo* complaint on appeal in this Court, attached to the Notice of Appeal filed pursuant to 10 *Del. C.* §9571 alleges co-defendants caused damage to the property [of the plaintiff] in the amount of \$6,967.83. Reviewing carefully the certified copy of judgment and the “Notice of Court Action” and judgment entered on February 26, 2007 by Judge Kathleen C. Lucas, Magistrate Court No.: 12, it is clear that the plead facts in both actions below include numerous claims and issues of fact that are not filed as part of the Complaint on appeal to this Court, nor are the parties identical in this *de novo* action. Therefore under the *Mirror Image Rule* the instant Complaint shall be dismissed for failure to comply with the *Mirror Image Rule*, See 10 *Del. C.* §9571 and the Supreme Court’s ruling in *Fossett*.

IT IS SO ORDERED this 6TH day of November, 2007

John K. Welch
Judge

/jb
cc: Rebecca A. Dutton, Case Processor
CCP Civil Division