

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

JANET MILNAMOW, and)	
JAMES MILNAMOW)	
Plaintiffs Below/)	
Appellants,)	
)	
v.)	C.A. No. CPU4-12-001077
)	
IRON HILL APARTMENTS, and)	
JAMISSHA HARPER)	
)	
Defendants Below/)	
Appellees.)	
)	

OPINION AND ORDER ON DEFENDANT’S
MOTION TO DISMISS APPEAL AND PLAINTIFF’S
MOTION TO AMEND THE COMPLAINT ON APPEAL

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Date Submitted: August 28, 2012
Date Decided: September 11, 2012

FRACZKOWSKI, J.

FACTS AND PROCEDURAL HISTORY

This is an appeal for trial *de novo* from the Justice of the Peace Court (“JP Court”). On December 20, 2011, Plaintiffs Below/Appellants (“Plaintiffs”) filed a *pro se* Complaint in the JP Court alleging that Defendants Below/Appellees (“Defendants”) breached a lease agreement by failing to provide proper living conditions and failing to install handicap bars, and Plaintiffs sought recovery of a \$400.00 security deposit and \$36.95 for payment of an electric bill.

Additionally, Plaintiffs claimed that the lease agreement between the parties began on November 19, 2011, that they never received a copy of the lease, and that they received information on the Delaware Landlord Tenant Code. Plaintiffs alleged they were unable to move into the apartment because it was uninhabitable due to mold, mildew, moisture, bug infestation, personal allergy issues, and failure to install handicap bars.

The JP Court dismissed Plaintiff, James Milnanow, and Defendant, Jamisha Harper, as parties to the case, because the Court found that neither were proper parties. On March 5, 2012, the Court entered judgment in favor of Defendant, Iron Hill Apartments. In its Order of Judgment the Court found that Plaintiff unjustifiably breached the lease agreement without written notice, and found in favor of the Defendant on a counterclaim for unpaid rent and awarded Defendant market rent for the period from when Plaintiff vacated and Defendant re-rented the apartment, totaling \$1,189.56 plus 5.75% in post-judgment interest.

On March 16, 2012, Plaintiffs timely filed a Notice of Appeal and Complaint on Appeal. The Complaint on Appeal alleges breach of a lease agreement because Plaintiffs were unable to inhabit Defendants' apartment because of "mold, mildew and moisture, infestation of bugs and lack of agreed upon installation of ADA bars in the bathrooms." The Complaint on Appeal demands \$400.00 for the security deposit and \$36.95 for an electric bill, totaling \$436.95. The case caption in the appeal is identical to the case caption in the original Complaint, including the parties dismissed.

On May 24, 2012, Mr. Michael Morton, Esquire filed his appearance on behalf of Defendants. On June 7, 2012, Defendants filed a Motion to Dismiss Appeal arguing that Plaintiffs' Complaint on Appeal violates Court of Common Pleas Civil Rule 72(f), the mirror

image rule. On July 6, 2012, Mr. Benjamin Wetzel, Esquire, and Ms. Natalie Ippolito, Esquire, entered appearances on behalf of Plaintiffs.

Plaintiffs filed a response to Defendants Motion to Dismiss and filed a Motion to Amend the Complaint. Defendants filed a reply to Plaintiffs response to the Motion to Dismiss and filed a response to Plaintiffs Motion to Amend.

On August 10, 2012, the Court held a hearing on the motions and directed both parties to submit supplemental briefing. Defendants filed a supplemental brief listing the discrepancies that allegedly exist between the original Complaint and the Complaint on Appeal. Plaintiffs submitted supplemental briefing.

DISCUSSION AND FINDINGS

a. Defendant’s Motion to Dismiss for Violation of the Mirror Image Rule

Appeals from the Justice of the Peace Court are governed by 10 *Del. C.* § 9571. Subsection (a) provides for appeals as of right to the Court of Common Pleas from any final judgment of the Justice of the Peace Court. Subsection (b) provides that the appeal shall be taken within fifteen (15) days of the final judgment. The requirements imposed by this statute are mandatory and jurisdictional.¹ Accordingly, if the statute is not complied with, the Court of Common pleas lacks subject matter jurisdiction.²

Court of Common Pleas Civil Rule 72.3 governs *de novo* appeals from the Justice of the Peace Court. Rule 72.3 is the rule that was enacted in response to 10 *Del. C.* § 9571(d), which provides that “[t]he Court of Common Pleas shall establish appeal procedures and supersedeas bond requirements by rule.” Therefore, failure to comply with Rule 72.3 divests the Court of

¹ *Williams v. Singleton*, 160 A.2d 376, 378 (Del. 1960); *Warren Williams Co. v. Giovannozzi*, 295 A.2d 587, 588 (Del. Super. 1972); *Woods v. Unisex Hair Palace*, 2009 WL 3152878, at *1 (Del. Com. Pl. Aug. 26, 2009).

² *Id.*

Common Pleas of subject matter jurisdiction to review an appeal from the Justice of the Peace Court.³

Court of Common Pleas Civil Rule 72.3(f) codifies the common law “mirror image rule” and provides 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 a dismissal on jurisdictional grounds.”⁴ Delaware Courts have adhered to this rule since 1857 when it was first enunciated in *McDowell v. Simpson*.⁵ The rule protects the parties’ right to a fair hearing of all matters heard below and “to assure the *de novo* reviewing court that all relevant issues that could be presented can be heard.”⁶

“[T]he prime tenet of the venerable ‘mirror image rule’ is that it is a rule of jurisdiction, and not of procedure . . . [and is] . . . satisfied if the complaint on appeal presents no parties or issues other than those presented by the original complaint below.”⁷ Due to the high volume of *pro se* litigants before the Justice of the Peace Court, setting forth more specific legal claims in the complaint on appeal does not violate the mirror image rule as long as it does not “alter the subject matter of the case below.”⁸

This Court has allowed some leniency to this historically harsh rule, because “almost no rule is absolute, and the paramount requirement is to see that justice is done.”⁹ In *Morgan v. Swain*, this Court stated that “there is room to correct a misspelling or, as here to allow for

³ *Woods*, 2009 WL 3152878 at *1. See also *Dippel v. O’Hearn*, 2010 WL 2346223 (Del. Com. Pl. May 25, 2010).

⁴ CCP Civ. R. 72.3(f).

⁵ 6 Del. 467, 468; 1857 WL 1024 (Del. Super. 1857).

⁶ *Fossett v. DALCO Construction Co.*, 2004 WL 1965141 (Del. Aug. 20, 2004).

⁷ *Silverview Farm, Inc. v. Laushey*, 2006 WL 1112911, *4 (Del. Com. Pl. Apr. 26, 2006).

⁸ *Cross v. Cohen*, 2000 WL 33653441, at *4 (Del. Com. Pl. August 8, 2000).

⁹ *Morgan v. Swain*, 2009 WL 3309173, at *4 (Del. Super. Sept. 17, 2009).

inconsistencies in the record.” Subject matter jurisdiction should not be stripped without “good reason, such as actual or potential prejudice as a result of noncompliance.”¹⁰

1. Identical Parties

Defendants first contend that the Complaint on Appeal violates the mirror image rule because it does not include Plaintiff, James Milnamow, originally captioned in the case below, and, therefore, fails to include the same parties to the appeal. This contention is in error. The caption of the Complaint on Appeal is identical to the original Complaint, stating: “Janet Milnamow and James Milnamow v. Iron Hill Apartments and Jamisha Harper.” Therefore, the identical parties to the matter below have been properly joined as required by Court of Common Pleas Civil Rule 72.3(f).

2. No New Issues Raised before this Court

Defendants second contention is that the Complaint on Appeal violates the mirror image rule because Plaintiffs failed to seek the same relief and failed to raise issues that were raised below. Specifically, Defendants assert that Plaintiffs failed to raise the issues of whether they were actual tenants; whether Defendants provided a 20 day letter listing damages to the rental unit; whether Plaintiffs caused any damage to the rental unit; whether Plaintiffs were provided a copy of the rental agreement; and whether Plaintiffs would receive a return of the security deposit if they failed to move in.

First, Plaintiffs requested the same relief in both Complaints. The original Complaint below, under Section 2, entitled “Relief Sought”, lists the amount of money claimed as \$436.95. Additionally, Plaintiffs state, “We are seeking the amount of \$400.00 which was wrongfully

¹⁰ *Morgan v. Swain*, 2009 WL 3309173, at *4 (Del. Super. Sept. 17, 2009) (quoting *Pavetto v. Hansen*, 2004 WL 2419164, at *2 (Del. Super. Sept. 29, 2004)).

withheld and a reimbursement of \$36.95 for the Delmarva Power bill”¹¹ The Plaintiffs Complaint on Appeal asks this Court to award \$436.95 in damages.¹² Therefore, Plaintiffs requested the same relief in the Complaint on Appeal as in the original Complaint.

Second, Defendants argument that the matter should be dismissed for violation of the mirror image rule fails because Plaintiffs legal claims on appeal do not “alter the subject matter of the case below.”¹³ Essentially, Defendants moved for dismissal for lack of subject matter jurisdiction on the ground that Plaintiffs did not write in the Complaint on Appeal exactly what was written in the original Complaint. The original Complaint was filed *pro se* and alleged that Plaintiffs were entitled to recover the amount paid for a security deposit and an electric bill because they could not move into the apartment due to uninhabitable conditions. The Complaint on Appeal makes the same allegations and does not raise any new issues.

Both Complaints aver that there was a breach of a lease agreement, even if not explicitly stated. Plaintiffs failure to allege minute details contained in the original *pro se* Complaint is ancillary and does not change the subject matter of the overall debt claim. Additionally, Plaintiffs failure to set forth all details stated in the original Complaint does not equate to raising new legal issues on appeal, which is necessary for a mirror image rule violation. Furthermore, Defendants have failed to demonstrate any “good reason, such as actual or potential prejudice” that has resulted due to the alleged violation.¹⁴ Therefore, Defendants Motion to Dismiss the Appeal is denied.

¹¹ Plaintiff JP Court Complaint, Sec. 1, par. 2.

¹² Plaintiff Complaint on Appeal, Par. 7.

¹³ *Cross v. Cohen*, 2000 WL 33653441, at *4 (Del. Com. Pl. Aug. 8, 2000).

¹⁴ *Morgan v. Swain*, 2009 WL 3309173, at *4 (Del. Super. Sept. 17, 2009) (quoting *Pavetto v. Hansen*, 2004 WL 2419164, at *2 (Del. Super. Sept. 29, 2004)).

b. Plaintiff's Motion to Amend the Complaint on Appeal

Court of Common Pleas Civil Rule 15 sets forth the standard for amending complaints. Subsection (a) states that “a party may amend the party’s pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.”¹⁵ This Rule is liberally interpreted to permit amendments at all stages of the proceedings unless the party opposing the amendment demonstrates that it will suffer severe prejudice.¹⁶ “The purpose of the Rule is to encourage the disposition on the merits.”¹⁷ After this Court establishes appellate jurisdiction, “the original parties may seek to amend the pleadings or otherwise add or dismiss issues or parties.”¹⁸ An amended complaint on appeal does not expand the issues raised in the original complaint when the complaint on appeal “merely states the original issues with more legal clarity and specificity.”¹⁹

In this case, Plaintiffs have not violated the mirror image rule. Therefore, appellate jurisdiction has been properly established, and the original parties are free to seek amendment of the pleadings. Plaintiffs, acting *pro se*, filed the Complaint on Appeal. On August 1, 2012, soon after retention of counsel, Plaintiffs submitted a Motion to Amend the Complaint on Appeal. The submitted Amended Complaint “merely states the original issues with more legal clarity and specificity.”²⁰ In order to ensure that this appeal is properly decided on the merits rather than a procedural defect, Plaintiffs must be afforded an opportunity to amend the original *pro se* Complaint. Finally, Defendants have failed to demonstrate any prejudice they would suffer from

¹⁵ CCP Civ. R. 72.3(f).

¹⁶ *Paul v. Chromalytics Corp.*, 343 A.3d 622, 625 (Del. Super. 1975).

¹⁷ *Grand Ventures, Inc. v. Whaley*, 632 A.2d 63, 72 (Del. 1993).

¹⁸ *Silverview Farm, Inc. v. Laushey*, 2006 WL1112911, at *4 (Del. Com. Pl. Apr. 26, 2006).

¹⁹ *Id.* at *5.

²⁰ *Silverview Farm, Inc. v. Laushey*, 2006 WL1112911, at *4 (Del. Com. Pl. Apr. 26, 2006).

an amendment of the Complaint on Appeal. Therefore, Plaintiffs Motion to Amend the Complaint on Appeal is granted.

CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss is **DENIED** and Plaintiffs' Motion to Amend the Complaint on Appeal is **GRANTED**.

IT IS SO ORDERED this 11th day of September 2012.

Alfred Fraczkowski, Associate Judge²¹

²¹ Sitting by appointment pursuant to DEL. CONST. Art. IV, §38 and 29 *Del. C.* §5610.