

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

BERKOWITZ, SHAGRIN & JONES, P.A.)	
)	
Plaintiff below/Appellant,)	
)	
v.)	C.A. No. CPU4-12-003083
)	
RONALD E. LEWIS, JR.)	
)	
Defendant below/Appellee.)	

Submitted: September 28, 2012
Decided: October 17, 2012

On Defendant below/Appellee’s Motion to Dismiss
DENIED

MEMORANDUM DECISION AND ORDER

Shauna T. Hagan, Esquire, Wilmington, Delaware, for Plaintiff

Samuel L. Guy, Esquire, Wilmington, Delaware, for Defendant

ROCANELLI, J.

INTRODUCTION

This matter is before the Court on appeal from the Justice of the Peace Court. On July 25, 2012, the Justice of the Peace Court entered judgment in favor of Plaintiff below/Appellant (“Plaintiff”). On August 7, 2012, Plaintiff filed a Complaint on Appeal stating that Defendant below/Appellee (“Defendant”) contracted with Plaintiff in July 2009 to represent Defendant in a divorce matter.

Plaintiff further alleges that Defendant refused to pay the balance owed of \$7,123.46, and Plaintiff seeks that amount in damages.

On August 31, 2012, Defendant filed a Motion to Dismiss contending that the doctrine of collateral estoppel limits any damages which Plaintiff might receive in this appeal to those damages awarded in a separate Justice of the Peace Court action.¹ Defendant did not cite to any authority in support of his request for relief. On September 20, 2012, Plaintiff filed a response in opposition to the Motion to Dismiss.

On September 28, 2012, this Court held a hearing on Defendant's Motion to Dismiss and both parties appeared before the Court. The Court offered Defendant the opportunity for full briefing but Defendant declined. The Court also offered to consider Defendant's Motion to Dismiss as a motion for summary judgment. This, too, Defendant declined. Moreover, at oral argument, Defendant declined to cite to a specific provision of the Court of Common Pleas Civil Rule 12 in support of the Motion to Dismiss.

The Court shall address the motion presented as a Motion to Dismiss pursuant to Court of Common Pleas Civil Rule 12(b)(6) based on the written submissions and the presentation at oral argument.²

¹ Discussed *infra*.

² Plaintiff did not cite any rules or decisional law in support of his request for relief. In *Gonzalez v. Caraballo*, the Superior Court states clearly the courts' expectations that "counsel is required

Justice of the Peace Court Actions Implicating the Contract

There are two Justice of the Peace Court actions involving the Plaintiff in this case that are relevant to the Motion before the Court. First, Plaintiff sued Ronald Lewis, Sr., father of Defendant, as a party to the contract in JP civil action number JP13-10-001783 (“Father’s Action”). In Father’s Action, on December 9, 2010, the Justice of the Peace Court entered judgment in favor of Plaintiff for \$1,625.00 plus costs and pre- and post-judgment interest. Second, Plaintiff brought suit against Defendant in JP civil action number JP13-11-010687 (“Son’s Action”). In Son’s Action, on July 25, 2012, the Justice of the Peace Court entered judgment in favor of Plaintiff for the same amount of damages awarded in Father’s Action, \$1,625.00. The Justice of the Peace Court stated the Plaintiff could not receive more damages in Son’s Action than in Father’s Action under the doctrine of collateral estoppel.

Parties’ Contentions

In this Motion, Defendant argues that Plaintiff has failed to state a claim for which relief can be granted because the doctrine of collateral estoppel prevents Plaintiff from seeking more damages than the amount awarded by the Justice of the Peace Court in Father’s Action. Defendant claims that the issue of damages is

to develop a reasoned argument supported by pertinent authorities.” 2008 WL 4902686 at *3 (Del.Super. Nov. 12, 2008).

identical between both actions because the same contract is involved. Further, Defendant contends that because the Justice of the Peace Court stated that collateral estoppel applies between Father's Action and Son's Action, the Court of Common Pleas must apply the Justice of the Peace's Court's determination that Plaintiff is collaterally estopped from seeking more than \$1,625.00.

Plaintiff argues that the doctrine of collateral estoppel does not apply between Father's Action and Son's Action because the cases involved different issues. Plaintiff asserts that the issue in Father's Action was the amount of damages Father owed under the contract. Additionally, Plaintiff argues that the issue in Son's Action, and the basis for this appeal, is the amount Son owes pursuant to the terms of the contract. Plaintiff's position is that a claim upon which relief can be granted has been stated because Plaintiff is entitled to a *de novo* review of law and fact which could result in a determination by this Court that collateral estoppel does not apply to the issue of damages.

DISCUSSION

Appeals to the Court of Common Pleas from the Justice of the Peace Court are governed by statute, specifically 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. Finally, subsection (d) provides that

“[t]he Court of Common Pleas shall establish appeal procedures and supersedes bond requirements by rule.” The requirements imposed by the statute are mandatory and jurisdictional.³

Court of Common Pleas Civil Rule 72.3 governs *de novo* appeals from the Justice of the Peace Court. “A final judgment is generally defined as one that determines the merits of the controversy or defines the rights of the parties and leaves nothing for future determination or consideration.”⁴ A *de novo* trial from the Justice of the Peace Court “means a trial anew, whether of law or fact, according to the usual or required mode of procedure.”⁵

This Court has subject matter jurisdiction over this appeal pursuant to both 10 *Del. C.* § 9571 and Court of Common Pleas Civil Rule 72.3, because all of the requirements of the rules have been satisfied, including the mirror image rule. Therefore, this matter shall proceed *de novo*.

In considering motions to dismiss filed pursuant to Court of Common Pleas Civil Rule 12(b)(6), the Court must assume that all well-pleaded facts in the

³ *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, *1 (Del. Com. Pl. Aug. 26, 2009).

⁴ *Showell Poultry, Inc. v. Delmarva Poultry Corp.*, 146 A.2d 794, 796 (Del. 1958).

⁵ *Cooper's Home Furnishings, Inc. v. Smith*, 250 A.2d 507, 508 (Del. Super. 1969).

complaint are true.⁶ The complaint should not be dismissed unless “the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible to proof.”⁷

The purpose of the doctrine of collateral estoppel is to “relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and by preventing inconsistent decisions, encourage reliance on adjudication.”⁸ The burden is on the party raising collateral estoppel to prove that the issue allegedly being re-litigated was conclusively decided in a prior judicial proceeding.⁹ “Under ... [this] doctrine, where a question of fact essential to the judgment is litigated and determined by a valid and final judgment, the determination is conclusive between the same parties in a subsequent case on a different cause of action. In such situation, a party is estopped from relitigating the issue again in the subsequent case.”¹⁰

⁶ *Battista v. Chrysler Corp.*, 454 A.2d 286, 287 (Del. Super. 1982).

⁷ *Id.* (citations omitted).

⁸ *State v. Manista*, 651 A.2d 781, 785 (Del. Fam. Ct. 1994) (citing *Allen v. McCurry*, 449 U.S. 90, 94 (1980)).

⁹ *State v. Machin*, 642 A.2d 1235, 1238 (Del. Super. Ct. 1993).

¹⁰ *Tyndall v. Tyndall*, 238 A.2d 343, 346 (Del. 1968).

In *Betts v. Townsends, Inc.*,¹¹ the Delaware Supreme Court set forth the factors that a trial court must consider when determining whether collateral estoppel bars litigation of an issue. A Court must decide whether

(1) the issue previously decided is identical with the one presented in the action in question; (2) the prior action has been finally adjudicated on the merits; (3) the party against whom the doctrine is invoked was a party or in privity with a party to the prior adjudication; and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action.¹²

Two of the factors set forth in *Betts v. Townsend* are not in dispute. First, the prior action, Father's Action, has been finally adjudicated on the merits because the Justice of the Peace Court granted judgment in favor of Plaintiff, the case was appealed to the Court of Common Pleas, and that appeal was dismissed. Second, the party against whom the doctrine of collateral estoppel is invoked was a party to Father's Action, as Plaintiff of the suit.

The two remaining factors are disputed: (1) whether the issue is identical in the two actions; and (2) whether the Plaintiff had a full and fair opportunity to litigate the issue in Father's Action. The first issue to be determined is whether the issues previously decided in Father's Action and Son's Action were identical or whether the damages awarded in Father's Action applied solely to Father's responsibility for payment under the contract. The second issue is that Plaintiff

¹¹ 765 A.2d 531, 534 (Del. 2000).

¹² *Id.*

asserts that Plaintiff did not have a full and fair opportunity to litigate the amount Son owes under the contract because the issue in Father's Action was how much father owed under the contract. Based on the limited record and limited authority provided at oral argument, the Court cannot find that collateral estoppel applies. Furthermore, this Court, in a proceeding *de novo*, will not apply the legal conclusion of the Court below to bar Plaintiff's appeal.

After consideration of the Motion to Dismiss, the Response, and the applicable law, **the Court hereby DENIES the Defendant's Motion to Dismiss**, because Plaintiff has stated a claim upon which relief can be granted under CCP Civil Rule 12(b)(6). Additionally, if the Court were to grant the Motion at this stage of the proceeding, Plaintiff's statutory right to a *de novo* appeal would be meaningless.

Pursuant to § 9571(a), Plaintiff has the right to appeal any final judgment of the Justice of the Peace Court. The Justice of the Peace Court Order is a final order because it determined the merits of the debt controversy between the parties by granting judgment in favor of Plaintiff. Plaintiff has the right to pursue an appeal in this Court for a new trial.

CONCLUSION

NOW, THEREFORE, for the foregoing reasons, Defendant's Motion to Dismiss is DENIED.

IT IS SO ORDERED this 17th day of October, 2012.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli