

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

JOSEPH CHERICO and	)	
KATHLEEN CHERICO,	)	
	)	
Defendants below/Appellant	)	C.A. #CPU6-10-000213
	)	
vs.	)	
	)	
GRIZZLEY'S LANDSCAPE	)	
SUPPLY & SERVICES, INC.	)	
	)	
Plaintiff below/Appellee.	)	

Submitted June 3, 2010  
Decided July 13, 2010

Seth L. Thompson, Esquire, Attorney for Appellants  
Eric C. Howard, Esquire, Attorney for Appellee

**DECISION ON APPEAL FROM COMMISSIONER'S  
RECOMMENDATION**

**CLARK, J.**

Appellants appeal the Commissioner's *sua sponte* recommendation that the above appeal *de novo* from the Justice of the Peace Court be dismissed for lack of jurisdiction due to violation of the so-called "Mirror Image Rule."<sup>1</sup> Appellee filed no response to the appeal, or otherwise objected to it.

The dismissal of an action obviously is a case-dispositive determination. When reviewing a Commissioner's decision on a case-

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<sup>1</sup> See CCP Civ. R. 72.3 (f)

dispositive matter the judge of the Court reviews the decision *de novo*. A judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Commissioner.<sup>2</sup>

I have reviewed *de novo* the Commissioner's *sua sponte* finding that this appeal violates the Court's Rule 72.3 (f). I respectfully disagree. The Appellants were self-represented litigants, husband and wife, in the JP Court action. The Notice of Appeal filed in this Court properly named the identical parties as in the original action below: Joseph and Kathleen Cherico as Defendants-Appellants, and Grizzly's Landscape Supply & Services, Inc., as Plaintiff-Appellee. The Notice of Appeal, however, was signed only by one of the self-represented Appellants, Kathleen Cherico. Counsel for the Appellants subsequently entered his appearance in this matter. The entry of appearance by one counsel for both appellants, and his filing of their joint answer, clearly indicates that the appellants both intended to jointly appeal the decision below by the filing of the properly captioned Notice of Appeal signed only by Mrs. Cherico.

The Appellants plainly failed to fully follow Civil Rule 72.3 (c), which provides that the Notice of Appeal filed by unrepresented appellants "shall be signed by the appellants," since only Mrs. Cherico signed the Notice of Appeal. However, a violation of Rule 72.3 (c) is not an automatic violation of Rule 72.3 (f) as well. The Court is satisfied that the appeal

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<sup>2</sup> CCP Civ. R. 112 (A) (4) (iv).

joined the identical parties and raised the same issues that were before the court below, and that no party to the matter below was prejudiced by the technical non-compliance with rule 72.3 (c). Without “good reason, such as actual or potential prejudice as a result of noncompliance, the rule should not be applied to preclude a court from possessing subject matter jurisdiction.”<sup>3</sup>

Although the “Mirror Image Rule” has been historically referred to as a rule of subject matter jurisdiction for this Court, when it concerns identity of parties, it is more akin to a rule of *in personam* jurisdiction, since it requires that the same parties be before this Court *de novo* that were before the court below. While parties cannot by consent confer subject matter jurisdiction on the Court that it otherwise lacks, they certainly can consent to personal jurisdiction. All of the parties that were before the Court below are before this Court by consent or service. Further, the Appellee, by its lack of objection, is deemed to consent to the Appellants’ position that they both submitted themselves to the jurisdiction of the Court by the filing of the Notice of Appeal.

Public policy and this Court’s rules favor disposition of suits upon their merits, rather than through procedural defaults.<sup>4</sup> “[A]lmost no rule is

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<sup>3</sup> *Pavetto v. Hansen*, 2004 WL 2419164, at \*2 (Del. Super.).

<sup>4</sup> See *Old Guard Ins. Co. v. Jimmy’s Grille, Inc.*, 2004 WL 2154286 (Del. Sept. 21, 2004); *Beneficial Nat. Bank v. Eber*, 1988 WL 1017752, 1 (Del. Com. Pl.) (citing *Vechery v. McCabe*, 100 A.2d 460, 461 (Del. Super. 1953)); CCP Civ. R. 60 (b) (1).

absolute, and the paramount requirement is to see that justice is done.”<sup>5</sup> Justice would not be done in denying this appeal under the circumstances presented. Accordingly, the Commissioner’s recommendation is **REJECTED**. The appeal *de novo* in this matter shall proceed in accordance with the Rules of Court.

**IT IS SO ORDERED**, this \_\_\_\_ day of July, 2010.

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Kenneth S. Clark, Jr.  
Judge

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<sup>5</sup> *Morgan v. Swain et al.*, 2009 WL 3309173, at \*4 (Del. Super.).