

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

James Ciliberti,	:	
	:	C.A. No. 04-07-0122AP
Plaintiff Below/	:	
Appellant,	:	
	:	
v.	:	
	:	
Donald Cummings and	:	
Theresa Cummings,	:	
	:	
Defendants Below/	:	
Appellees.	:	

Submitted: September 1, 2004

Decided: September 8, 2004

Upon Defendants' Motion to Dismiss Appeal

Motion is denied.

**Sandra W. Dean, Esquire, 12322 Willow Grove Road, Camden, Delaware 19934,
Attorney for Plaintiff Below/Appellant.**

**Adam Elgart, Esquire, Mattleman, Weinroth & Miller, 200 Continental Drive,
Newark, Delaware 19713, Attorney for Defendant Below/Appellee.**

Trader, J.

In this civil appeal from the Justice of the Peace Court, I hold that the plaintiff's claim is not barred on the grounds of the doctrine of *res adjudicata*. Since a claim for rent is a separate and distinct cause of action from a summary possession proceeding, the refiling of plaintiff's rent claim does not involve claim splitting. Additionally, plaintiff's claim was dismissed by the magistrate without prejudice. I also hold that this appeal does not violate the mirror image rule because the claim on appeal is identical to the claim in the court below.

The relevant facts are as follows: On January 16, 2004, the plaintiff filed a summary possession proceeding and a claim for rent against the defendants in the Justice of the Peace Court 16. At trial, the justice of the peace dismissed the plaintiff's rent claim without prejudice and awarded possession to the plaintiff. The defendants appealed this decision to a three-judge panel and after a trial *de novo*, the court awarded possession to the plaintiff. The three-judge panel did not award rent to the plaintiff because there was no testimony on that issue. On May 7, 2004, the plaintiff filed a cause of action for rent in the Justice of the Peace Court 16. The magistrate dismissed plaintiff's rent claim on the grounds that the claim is barred under the doctrine of *res adjudicata*. She stated that "the plaintiff failed to assert the claim of past rent due in the trial *de novo*" before the three-judge panel. Thereafter, the plaintiff filed a timely appeal with this court.

The defendants contend that plaintiff's claim is barred under the doctrine of *res adjudicata*. The defendants' contention is incorrect. In *Epstein v. Chatham Park, Inc.*, 153 A.2d 180 (Del. Super. Ct. 1959), Justice Wolcott sitting in the Superior Court discussed the doctrine of *res adjudicata*. "The doctrine of *res adjudicata*, briefly stated,

is that a final judgment upon merits rendered by a court of competent jurisdiction may, in the absence of fraud or collusion, be raised as an absolute bar to the maintenance of a second suit in a different court upon the same matter by the same party, or his privies.”*Id.*

When a defendant asserts the doctrine of *res adjudicata* bars the subsequent action, he must show the elements of *res adjudicata* exist. First, the same transaction must form the basis for the prior and subsequent suits. Second, the plaintiff must have neglected or failed to assert the claims which in fairness should have been asserted in the first action. *Coca Cola Co. v. Pepsi Cola Co.*, 172 A. 260, 262 (Del. Super Ct. 1934).

The rule against claim splitting is an aspect of the doctrine of *res adjudicata*. *Maldonado v. Flynn*, 417 A.2d 378 (Del. Ch. 1980). As was stated in *Webster v. State Farm Mutual Automobile Ins. Co.*, 348 A.2d 329, 331 (Del. Super. Ct.1975) “An equally compelling consideration is one founded on public policy: piecemeal litigation of a single cause of action is contrary to the orderly administration of justice.”

The defendants cite the case of *Kossol v. Ashton Condominium Association, C.A.* No. 92C-02-0166 1994 WL 10861 (Del. Jan. 6, 1994) as an authority for the invocation of the doctrine of *res adjudicata* in this case. In *Ashton*, the plaintiff brought suit against Kossol for certain common expenses relating to the maintenance and operation of the Ashton Condominiums, plus attorney’s fees. At trial the justice of the peace court amended the complaint to eliminate the request for attorney’s fees from the case. Thereafter, the magistrate awarded judgment in favor of Ashton in the amount of \$249.00. Ashton subsequently filed another suit for attorney’s fees against Kossol in the Justice of the Peace Court. A representative from Ashton failed to appear at the hearing and judgment was entered in favor of Kossol. Ashton appealed to the Superior Court and

the Superior Court ruled in favor of Ashton. On appeal to the Delaware Supreme Court it was held that Ashton had split his cause of action and the claim for attorney's fees was barred by the doctrine of *res adjudicata*. *Id.*

I hold that the case before me is distinguishable from *Ashton*. Initially, I note that the rent claim is a separate cause of action from a proceeding for summary possession. Under 25 Del. C. Sec. 5707(5), a rent claim may be included in a complaint for summary possession. There is no requirement in this statute that the rent claim be asserted in the complaint for summary possession. Therefore, the subsequent filing of a claim for rent does not constitute claim splitting.

In the case at bar the rent claim was dismissed without prejudice. The United States Supreme Court held in *Semtek International Incorporate v. Lockheed Martin Corporation*, 531 U.S. 497 (2001) that the “primary meaning of ‘dismissal without prejudice’ is dismissal without barring the plaintiff from returning to the same court with the same underlying claim.” Thus, a dismissal without prejudice permits the plaintiff to refile the rent claim in the same court. But in *Ashton*, the plaintiff abandoned her claim for attorney's fees against the defendant in the Justice of the Peace Court and this does not constitute a dismissal without prejudice. In the instant case the three-judge panel could not have addressed the rent claim since it had been previously dismissed without prejudice by the magistrate. The only issue before the three-judge panel in the trial *de novo* was the issue of summary possession.

The defendants contend that this *de novo* appeal violates the mirror image rule. The defendants' contention is incorrect. The mirror image rule requires pleading the identical cause of action on appeal. *Sulla v. Quillen*, 1987 WL 18425, at *1 (Del. Super.

Ct. Sept. 24, 1987) “The right to a trial *de novo* appeal from the Justice of the Peace Court extends only to review by retrial of the same cause of action heard and decided at the Justice of the Peace Court level.” *Id.*

In the case before me the cause of action on appeal is identical with the cause of action filed in the Justice of the Peace Court. A claim for rent was filed in the court below and a claim for rent is filed on appeal. It is true the complaint on appeal requests that I vacate the judgment in the court below, but the requested remedy does not change the nature of the plaintiff’s claim. Although I have no authority to vacate the decision of the Justice of the Peace Court, the plaintiff is entitled to a trial *de novo* in this court.

Since I hold that the plaintiff’s claim is not barred by the doctrine of *res adjudicata* and the mirror image rule does not apply, this complaint should not be dismissed and the case will be scheduled for trial.

IT IS SO ORDERED.

Merrill C. Trader
Judge