

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**

KENT COUNTY COURTHOUSE
38 THE GREEN
DOVER, DELAWARE 19901
PHONE: (302) 735-3910

**CHARLES W. WELCH, III
JUDGE**

April 27, 2016

Stephen E. Smith, Esq.
6 South State Street
Dover, DE 19901
Attorney for Appellee/Plaintiff Below

Walter J. O'Brien, Esq.
30 The Green
Dover, DE 19901
Attorney for Appellants/Defendants Below

RE: Don A. Lockwood and John E. O'Brien v. Dover Consulting Services
C.A. No.: CPU5-16-000008
(Appeal from the Justice of the Peace Court)

Decision on Appellee's Motion to Dismiss

Dear Mr. Smith and Mr. O'Brien:

The Court has reviewed the Motion to Dismiss that was filed by the appellee, Dover Consulting Services, for the above-referenced matter. The motion was filed pursuant to Court of Common Pleas Civil Rule 12(b)(1). After careful consideration by the Court, the appellee's motion is granted pursuant to Court of Common Pleas Civil Rule 72.3(f) for lack of subject matter jurisdiction because the appeal fails to join all identical parties that were before the court below.

This appeal arises from a civil debt action filed by the appellee, plaintiff below, (hereinafter "Dover Consulting") in the Justice of the Peace Court (hereinafter "J.P. Court"). In its Complaint that was filed in J.P. Court, Dover Consulting alleged that the defendants below, Don Lockwood; Michael Strong; and John O'Brien (hereinafter collectively referred to as the "defendants") breached a verbal agreement with it when they failed to pay in full for services rendered by Dover Consulting. Dover Consulting alleged that, as agreed, it had completed an

appraisal and market analysis for the defendants for \$10,000. Dover Consulting submitted an invoice for payment addressed to FDCC, LLC, a Delaware entity whose sole members consisted of the defendants.

The defendants made a partial payment, but, after several failed attempts to collect payment in full, Dover Consulting filed suit against the defendants in their individual capacities for non-payment of the full amount due. On or about December 16, 2015, J.P. Court entered judgment for Dover Consulting and against the defendants for \$8,000, the remaining balance of the invoice.

On January 5, 2016, the appellants, Don Lockwood and John O'Brien, filed an appeal in this Court on the J.P. Court judgment against them. Thereafter, Dover Consulting filed the instant motion to dismiss the appeal on the grounds that (1) the appeal violates the "mirror image rule" codified under Court of Common Pleas Civil Rule 72.3(f) because the appeal omits Michael Strong as a party; and (2) the appellants failed to file a timely notice of appeal with J.P. Court pursuant to Court of Common Pleas Civil Rule 72.3(e).

DISCUSSION

It is well settled by Delaware courts that the requirements of 10 *Del. C.* § 9571, which governs the right to appeal from the Justice of the Peace Court to the Court of Common Pleas, is jurisdictional. *Gibson v. Car Zone*, 2007 WL 3231595, at *1 (Del. Com. Pl. July 05, 2007). A litigant's failure to adhere to such requirements divests the Court of its subject matter jurisdiction to hear the appeal. *Id.* The appeal must be taken within 15 days of the final judgment of the Justice of the Peace Court. 10 *Del. C.* § 9571(b). Additionally, 10 *Del. C.* § 9571(d) provides that the Court of Common Pleas shall establish appeal procedures by rule.

The Court of Common Pleas has adopted Court of Common Pleas Civil Rule 72.3(f) which, in pertinent part, states:

Appeals de novo

(f) 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 a dismissal on jurisdictional grounds. Compliance with paragraph (d) of this Rule shall constitute transfer of jurisdiction of the civil action from the Justice of the Peace Court to the Court of Common Pleas.

Rule 72.3(f) is commonly referred to as the “mirror image rule.” This rule prevents the Court from obtaining subject matter jurisdiction over an appeal that fails to contain the identical: “1) parties, 2) character or right in which the parties are sued, and 3) cause and form of action” as the court below. *Harris v. J.P. Ct. No. 16*, 2014 WL 3534995, at *2 (Del. Com. Pl. Mar. 7, 2014). The burden is upon the appellant to assemble the parties to the appeal. *Fossett & Strock v. Dalco Constr.*, 2003 WL 22787844, at *2 (Del. Super. Nov. 24, 2003). The purpose of the rule is to “provide an adequate and fair hearing of the *entire* matter *de novo* by affording all parties to the Justice of the Peace proceeding an opportunity to argue their version of the facts, and to assure the *de novo* reviewing court that all relevant issues that could be presented can be heard.” *Jones v. Hertz Corp.*, 2014 WL 3401606, at *4 (Del. Super. July 8, 2014).

However, “without good reason, such as actual or potential prejudice as a result of noncompliance, the [mirror image] rule should not be applied to preclude a court from possessing subject matter jurisdiction.” *Morgan v. Swain*, 2009 WL 3309173, at *4 (Del. Super. Sept. 17, 2009) (alteration in original). An appeal is prejudicial and dismissal is appropriate “where a party was left out altogether on appeal.” *Id.*

In the instant matter, the appellants failed to include Michael Strong, who was a party in the action in the court below, in the appeal. Because Rule 72.3(f) requires that the appeal contain all parties as in the court below, the omission of Mr. Strong violates the “mirror image rule.” Therefore, this Court lacks subject matter jurisdiction to hear this appeal.

CONCLUSION

The appellants failed to include all parties in their appeal that were before the Justice of the Peace Court. Therefore, pursuant to Rule 72.3(f), the appellee's Motion to Dismiss is GRANTED for lack of subject matter jurisdiction.¹

IT IS SO ORDERED this 27th day of April, 2016.

Sincerely,



Charles W. Welch, III

CWW: mek

¹ The Court also lacks jurisdiction because the appeal was filed on January 5, 2016, which is more than 15 days from the date the Justice of the Peace Court entered its judgment. Pursuant to Court of Common Pleas Civil Rule 6(a), the deadline for the appeal was December 31, 2015. The appellants contend that the appeal was rejected by the e-filing system. However, after a thorough investigation by the Court, the Judicial Information Center ("JIC") did not have any error or rejection messages for the appellants' e-filing account on file for this case in the month of December. Furthermore, JIC's records show that the appellants first attempted to file their appeal on January 4, 2015, which is past the 15-day statutory period to file an appeal.