## 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

August 16, 2012

Mr. David N. Keiper, III Mrs. Dawn Keiper P O Box 62 Felton, DE 19943 Mr. George J. Fink 491 Banning Road Camden, DE 19934

RE: David N. Keiper, III & Dawn Keiper v. George J. Fink C.A. No.: CPU5-11-002057 (JP Court Appeal)

Decision on Appellants' Motion for Default Judgment on Counterclaim and Appellee's Motion to Dismiss Counterclaim

Dear Mr. and Mrs. Keiper and Mr. Fink:

This matter involves a civil appeal that has been filed by David N. Keiper, III, and Dawn Keiper (hereinafter the "appellants") from a December 1, 2011, decision of the Justice of the Peace Court. In that decision, the court-below entered a judgment in favor of George J. Fink (hereinafter the "appellee") against the appellants in the amount of \$3,880.00, plus post judgment interest and court costs.

This Court is in receipt of the appellants' counterclaim which has been filed for this matter. The appellants have filed a Motion for Default Judgment on the counterclaim due to the appellee's failure to answer it. The appellee, on the other hand, has filed a Motion to Dismiss Counterclaim for failure to state a claim upon which relief can be

granted. The Court has carefully reviewed the file and record for this matter. The appellants' Motion for Default Judgment on their counterclaim is denied and the appellee's Motion to Dismiss Counterclaim is granted as the counterclaim adds an issue that was not presented in the court-below. Therefore, this Court lacks jurisdiction to consider the counterclaim in the appellants' appeal as it would be a violation of the "mirror image rule."

Section 9571 of Title 10 of the Delaware Code provides that a party can appeal a civil decision from the Justice of the Peace Court to the Court of Common Pleas. Court of Common Pleas Civil Rule 72.3 provides the procedures an appellant must follow for the perfection of an appeal from Justice of the Peace Court. Court of Common Pleas Civil Rule 72.3 states: "(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." If a party fails to comply with this provision, the Court of Common Pleas has no jurisdiction over the appeal and it must be dismissed pursuant to the "mirror image rule."

The "mirror image rule" has long been recognized by Delaware courts. It "requires that the identical parties from the proceeding below be joined in the appeal, and that the same issues that were before the J.P. Court below also be raised on appeal." Silverview Farm, Inc. v. Laushey, 2006 WL 1112911, at \*2 (Del. Com. Pl. 2006) (emphasis added). The mirror image rule denies "[a party] the right to include issues not raised below [as this would be] inconsistent with both the spirit and intent of the rule." Levy's Loan Office v. Folks, 2009 WL 1856642, at \*2 (Del. Com. Pl. 2009). Any appeal at any level should only consider issues raised at the court-below. Counterclaims raised

in the initial pleadings of an appeal filed in the Court of Common Pleas that introduce issues not presented in Justice of the Peace Court should be stricken. *Id.* 

The appellants were the original defendants in Justice of the Peace Court. The appellee was the original plaintiff. The plaintiff brought a debt action against the defendants for unpaid rent. According to the order of the Justice of the Peace Court, the plaintiff presented the court-below with a complete list of transactions and accounting of unpaid rent. The defendants' defense was apparently that they had made additional payments in cash which should have reduced the amount of back rent owed. However, the Justice of the Peace Court noted that the defendants did not produce any dates or amounts of these alleged unrecorded payments. Nowhere in the order or record of the court-below is any mention of any counterclaims by the defendants, nor is there any evidence that the defendants pursued any counterclaims as a separate suit against the plaintiff. Therefore, it is the holding of this Court that the counterclaim filed as part of their appeal by the appellees-defendants for the half tank of oil left on the property after they had vacated the rental unit was not raised in the court-below. The counterclaim must therefore be stricken as a violation of the "mirror image rule."

Adherence to the "mirror image rule" is not a mere formality. It is a jurisdictional hurdle that must be met which limits the scope of the appeal and the issues that can be presented. To allow a party to introduce a totally new issue as a counterclaim after he or she initiates an appeal to the Court of Common Pleas would defeat the limiting effect of the "mirror image rule" and prejudice the opposing party. Because here the appellant, by adding a new counterclaim, has failed to comply with Court of Common Pleas Civil Rule 72.3 and the "mirror image rule", this Court lacks jurisdiction to hear the counterclaim.

Therefore, the appellants' Motion for Default Judgment is denied and the appellee's Motion to Dismiss Counterclaim is granted. The counterclaim is stricken from the appeal.

IT IS SO ORDERED.

Sincerely

Charles W. Welch, III