IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

DALCO CONSTRUCTION CO.,	)	
	)	
Plaintiff-Below,	)	
Appellee,	)	
	)	
v.	)	C.A. No. 2001-09-483
	)	
BARRY FOSSETT and	)	
JUDITH STROCK	)	
	)	
Defendants-Below,	)	
Appellants.	)	

Submitted: November 30, 2001

Decided: January 4, 2002

George R. Tsakataras, Esquire
Suite 36, Professional Buildings
1701 Augustine Cut-Off
Wilmington, DE 19803
Attorney for Plaintiff-Below
Appellee

Paul J. Dougherty III, Esquire
Mellon Bank Center
919 Market Street, Suite 950
Wilmington, DE 19899
Attorney for Defendants-Below
Appellants

DECISION ON APPELLEE'S MOTION TO DISMISS APPEAL

This action is an appeal de novo from the Justice of the Peace Court, where there was a judgment entered in favor of the Plaintiff-Below, Appellee Dalco Construction Co. (hereinafter "Dalco"), against Defendants-Below, Appellants Barry Fossett and Judith Strock (collectively "Appellants"). Dalco has filed a motion to dismiss the appeal and this is the Court's decision on that motion.

Following the decision of the Justice of the Peace, a timely notice of appeal was docketed in this Court captioned "Dalco Construction Co., Plaintiff Below/Appellee, v. Barry Fossett and Judith Strock, Defendants Below/Appellant." The action in the Justice of the Peace Court was captioned "Dalco Construction Co., v. Barry Fossett, Judith Strock and First Union." The Justice of the Peace ruled against Appellants and awarded damages to Dalco in the amount of $15,000.00 with interest from September 12. The action against First Union was dismissed without prejudice.

Because Appellants did not include First Union as a party to the appeal, Dalco argues Appellants have violated the "mirror image rule." On this basis, Dalco moves for dismissal of the appeal, alleging this Court lacks subject matter jurisdiction due to failure of Appellants to include a necessary party. See 10 Del. C. § 9571.

Delaware Courts have a long standing and consistent standard regarding the mirror image rule. The mirror image rule holds that if "an appeal from a Justice of the Peace Court fails to correspond to the process on which the action is founded

in the names of the parties, number of the parties, or in the character of the suit, the variance is fatal and the Court does not have jurisdiction to hear the appeal." Rockford Builders, Inc. v. Jamie Caceras and Evette Caceras, Del. CCP, Cr. A. No. 2001-06-134, James, J. (August 29, 2001) (citing Dzedzej v. Prusinski, Del.Super., 259 A.2d 384, 385 (1969) (citing McDowell v. Simpson, Del.Super., 1 Houst. 467 (1885)). See also Cooper's Home Furnishing's v. Smith, Del.Super., 250 A.2d 507 (1969); Sulla v. Quillen, Del.Super., Ridgely, J., 1987 WL 18425 (Sep. 24 1987).

This Court has recently recognized that "when a defendant appeals from a judgment of the Justice of the Peace Court and fails to join a co-defendant whose action was dismissed below, the Court lacks jurisdiction to hear the appeal." Sivad's Beauty Supply, Inc., v. Palm Beach Beauty Products, Del. CCP, C.A. No. 1997-03-310, Smalls, C.J. (January 28, 1998) (citing Dzedzej, supra). Similarly, in another recent decision by this Court, it is clear that the mirror image rule and § 9571 binds the Court and bars it from hearing an appeal that does not meet the jurisdictional requirements. See Rockford Builders, Inc., supra., accord Hicks v. Taggart, Del. Super., No. 98A-05-002, Ridgely, J., 1999 WL 462375 (April 12, 1999); Wilson v. Eastern Electric & Heating, Inc., Del. Supr., 550 A.2d 35 (1987).

The facts in the present case closely resemble those in Sivad's Beauty Supply, Inc. and Rockford Builders, Inc., in which a party who was dismissed below was not joined in the appeal, and the Court in each case concluded that it lacked subject matter jurisdiction. It is clear in those cases, as well as the present

case, that "[b]y failing to include a party defendant below, the Court is being asked to decide the issues between the parties on appeal, leaving out any claim against the omitted defendant." Sivad's Beauty Supply, Inc. at 1. Thus, this Court's jurisdiction is limited to try the same action as that below. Id. Because all of the necessary parties were not included in the appeal, this Court concludes that it lacks subject matter jurisdiction.

While Appellants cite the case of Freibott v. Patterson-Schwartz, Inc., Del.Super., 740 A.2d 4 (1999) in response to Dalco's motion to dismiss, it does not change this Court's position. The court in Freibott held that while "[s]ection 9571 may be exacting, . . . it does not necessitate dismissal where it is clear from the face of the pleadings that the appellant intended to include all of the parties necessary for de novo review." Id. at 6. However, the facts in the present case are distinguishable from those in Freibott. The appellant in Freibott merely made a mistake in the caption of the appeal, whereas here, there was a complete omission by the Appellants to include First Union in the caption.

Accordingly, Dalco's Motion to Dismiss is hereby GRANTED.

IT IS SO ORDERED.

____
Joseph Flickinger
Associate Judge