

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

Edward J. Schultz,	:	
	:	C.A. No. 07-08-0140AP
Plaintiff,	:	
	:	
v.	:	
	:	
James Messick, Sr. and	:	
James Messick, Jr.,	:	
d/b/a Taylor & Messick,	:	
	:	
Defendants.	:	

Submitted: September 20, 2007

Decided: September 20, 2007

Decision on appeal from the Justice of the Peace Court.

Appellant's appeal is dismissed for lack of jurisdiction.

Edward J. Schultz, 110 Goose Valley Lane, Chestertown, Maryland 21620, Pro Se Plaintiff.

Roy S. Shiels, Esquire, Brown, Shiels & O'Brien, LLC, Post Office Drawer F, Dover, Delaware 19903 Attorney for Defendants.

Trader, J.

In this civil appeal from the Justice of the Peace Court, the appeal must be dismissed because of the appellant's failure to have the same parties involved in a *de novo* appeal as were present in the initial hearing.

The relevant facts are as follows: on May 16, 2007, the plaintiff, Edward Schultz, filed a debt action against James Messick, Sr. d/b/a Taylor & Messick, Inc. and James Messick, Jr. d/b/a Taylor & Messick, Inc. At a pretrial conference in the court below, James Messick, Sr. and James Messick, Jr. were dismissed from the case and the plaintiff amended his complaint to substitute Taylor & Messick, Inc. as the defendant in the case. After a trial, the magistrate entered a judgment on behalf of the defendant, Taylor & Messick, Inc.

On August 17, 2005, the plaintiff filed a complaint, praecipe, and notice of appeal with this Court. On appeal, the plaintiff's complaint alleged a claim against James Messick, Sr. d/b/a Taylor & Messick, Inc. and James Messick, Jr. d/b/a Taylor & Messick, Inc. He failed to allege a claim in his complaint on appeal against Taylor & Messick, Inc.

A *de novo* hearing on appeal from a Justice of the Peace Court means a trial anew whether of law or fact. *Cooper's Home Furnishings, Inc. v. Smith*, 250 A.2d 507, 508 (Del. Super. Ct., 1969). The jurisdiction of the Court is limited by statute to try the same action as instituted in the Justice of the Peace Court. *Dzedzej v. Prusinski*, 259 A.2d 384, 386 (Del. Super. Ct., 1969). "In order for [this Court] to have jurisdiction of an appeal *de novo* from the Justice of the Peace Court, the parties below and on appeal must be identical in name, number, and character, or right, in which they sue or are sued." *Hicks v. Taggart*, 1999 WL 462375, at *3 (Del. Super. Ct., 1999). Any variance from the lower

court proceedings strips this Court of jurisdiction to hear the appeal. *McIlvaine v. Townsend*, 1997 WL 718650, at *2 (Del. Super. Ct., 1997).

In the case before me, one of the necessary parties in the court below was omitted on appeal. The failure to join a necessary party on appeal strips this Court of jurisdiction. Accordingly, the appeal is dismissed for a violation of the mirror image rule.

IT IS SO ORDERED.

Merrill C. Trader
Judge