

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

JONATHAN W. STEILA, and)
VICKI STEILA,)
)
Defendants Below/Appellants,)

v.)

Civil Action No.: 08-06-398

JONATHAN W. STEILA,)
LAURA STEILA, SANDY GRAHAM,)
And KENNETH GRAHAM,)
)
Plaintiffs Below/Appellees.)

Submitted: May 29, 2009
Decided: August 20, 2009

Scott G. Wilcox, Esquire
Bayard, P.A.
222 Delaware Avenue, Suite 900
P.O. Box 25130
Wilmington, DE 19899
Attorney for Appellees

Tasha M. Stevens
28 The Circle
P.O. Box 250
Georgetown, DE 19947
Attorney for Appellants

ORDER ON APPELLEES' MOTION TO DISMISS

Defendants Below/Appellants, Jonathan W. Steila and Vicki Steila (hereinafter "Steila") bring this motion pursuant to Court of Common Pleas *Civil Rule 12(b)(1)* to dismiss this appeal from a Justice of the Peace Court judgment on the basis the Court lacks subject matter jurisdiction.

FACTS

“Steila” and plaintiffs below/appellees, Jonathan W. Steila, Laura Steila, Sunday Graham and Kenneth Graham (hereinafter, “Steila-Graham”) entered into an oral agreement (the “Agreement”) to purchase a lot at 10216 Luciana Lane, Rehoboth Beach, Delaware (the “Property”) as an investment property. The pleadings indicate Steila-Graham would own 71% of the property and that Steila would own 29%, with expenses being paid according to this allocation. It is alleged that on or about March of 2006, Steila made a payment of \$1,080.00, or 29%, of the expenses and made two subsequent payments of the same amounts, but refused to make further payments for their share of expenses.

Steila-Graham brought a debt action in the Justice of the Peace Court alleging Steila owed \$4,195.97 as required by the agreement, for expenses and related costs. Steila brought a counter-claim for \$15,282.00. The Justice of the Peace Court entered judgment for Steila-Graham in the amount of \$7,774.03, \$35.00 Court cost, and 7.25% post-judgment interest. Steila timely filed this appeal. Steila-Graham filed a complaint following the appeal, seeking the amounts due under the agreement. Steila filed an answer admitting making some payments, but denied any further liability, asserted an affirmative defense on the basis this Court lacked subject matter jurisdiction, and a counterclaim for damages based upon the oral agreement.

STANDARD OF REVIEW

On a motion to dismiss, the court must determine whether it appears with reasonable certainty that, under any set of facts which could be proven to support the

claim, the plaintiffs would be entitled to relief.”¹ This analysis is limited to the facts alleged in the complaint which are taken as true and interpreted in the light most favorable to the non-moving party.²

DISCUSSION

Steila moves to dismiss this appeal which it brought from the Justice of the Peace Court pursuant to *19 Del. C. § 9571* on the basis this Court lacks subject matter jurisdiction. It is Steila’s position that since Steila-Graham’s claim is based upon an oral agreement and concerns the purchase of real property, it is barred by the Statute of Frauds, *5 Del. C. § 2714(e)*. Additionally, Steila argues that since the statute bars recovery on the agreement and any alternative recovery must be in equity, this Court does not have subject matter jurisdiction. Therefore, Steila reasons that this action cannot proceed and must be dismissed.

This is an appeal *de novo* from the Justice of the Peace Court and under *Civil Rule 72.3(c)* which codified the *McDowell Rule-Mirror Image Rule* the parties and the form of action must be identical as that brought in the Justice of the Peace Court. The complaint in the Justice of the Peace Court was brought in the nature of a debt proceeding. The pro se answer filed by Steila referred to the proceeding as a debt action, and demanded a trial. Defendant subsequently retained an attorney and a counter-claim was filed which challenged the amounts claimed by Steila-Graham and sought damages for breach of agreement. Neither the answer nor the counter-claim

¹ *Mortgage Electronic Registration Systems, Inc. v. Haase and Flanagan*, 2006 WL 1454807, *1 (Del. Super.)(citing *Vanderbilt Income & Growth Assoc. L.L.C. v. Arvida/JMB Managers, Inc.*, 691 A.2d 609, 612 (Del. 1996)). The Court of Common Pleas follows the same standard of review in a motion to dismiss as the Delaware Superior Court.

² *Id.*

raised the statute of fraud issue in the Justice of the Peace Court. The jurisdictional issue was first raised in Steila's responsive pleading in this Court.

Steila's argument that this Court lacks jurisdiction is based upon the analysis that the application of the statute of frauds bars recovery because the claim arises out of the sale of real property for which there is no writing. Therefore, the challenge to the Court's jurisdiction can only be considered if Steila's claim based upon the statute of frauds can be properly raised. The rule requires that the pleading in this Court must be identical in parties and issues as that brought in the Justice of the Peace Court. Therefore, Steila cannot consistent with the rule raise this issue in its first pleading, but may with leave of the Court raise the matter. Therefore, the affirmative defense raised in Steila's answer is stricken. This would end the matter; however, because Steila may, if granted, raise the statute of frauds issue in a later pleading, I will address the issue at this time for expediency.

Delaware law requires any contract concerning the sale of land to be in writing. The provisions of *6 Del. C. § 2714(a)* in relevant part provide that:

“No action shall be brought to charge any person . . . upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them . . . unless the contract is reduced to writing, or some memorandum, or notes thereof, are signed by the party to be charged therewith . . .”

Therefore, Steila argues in their motion that because the agreement was not in writing and concerned the sale of land, it may not be enforced. While this argument puts forth the rule's initial prohibition, there is an exception to the rule that part performance of an oral contract may be enforced upon proof by clear and convincing

evidence of such actual part performance.³ In this case, it is undisputed that “Steila-Graham” performed some of their responsibilities under the agreement. They obtained a mortgage and expended funds in an attempt to finance the purchase of the property, both acts done with the understanding that “Steila” would pay their share of the expenses. In addition, it is undisputed that “Steila” made several payments under the agreement. These part performances by both parties bring the parties’ arrangement within the exception-of-the-rule.

Further, Delaware courts have held that if a party admits that the oral agreement existed, they are presumed to have waived the protection of the Statute of Frauds.⁴ In this case, “Steila” admits in their answer and counterclaim that the parties entered into an oral agreement for the purchase and maintenance of the property. By admitting that an oral agreement existed, “Steila” effectively waived any right to raise the prohibition of the statute.

Finally, “Steila” argues that even if one of the exceptions to the Statute of Frauds applies, this Court lacks jurisdiction to apply the exception, because it is not a court of equity. Although the Appellees contend equitable relief is being sought, the complaint clearly seeks payment of a debt for which this Court has jurisdiction.⁵ It was a debt proceeding in the Justice of the Peace Court and “Steila” may not change the nature of the proceeding in this appeal.

³ See, *Quillen v. Sayers*, 482 A.2d 744, 747 (Del. 1984).

⁴ See, *Wolf v. Crosby*, 377 A.2d 22, 26 (Del.Ch. 1977).

⁵ See, *Powell v. Probst*, 2000 WL 33653415, at *1 (Del.Com.Pl.).

For the foregoing reasons, Appellant' Motion to Dismiss is DENIED. The Clerk will schedule this matter for trial.

SO ORDERED this 20th day of August 2009,

Alex J. Smalls
Chief Judge

Steila-OP Aug 09