

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

LILIANA CECCOTTI and)	
FEDERICO CECCOTTI)	
)	
Plaintiffs Below, Appellants,)	
)	
v.)	C.A. No.: 2006-10-313
)	
JAMES LEIGHT, JEAN FLORATOS,)	
GERASIMOS FLORATOS and)	
DAVID TABUSH,)	
)	
Defendant Below, Appellants.)	

Date Submitted: February 2, 2007

Date Decided: February 23, 2007

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ORDER ON APPELLANTS' MOTION FOR RELIEF FROM ORDER

On January 16, 2007 this Court dismissed Appellants appeal to this Court for want of jurisdiction owing to a violation of Court of Common Pleas Civil Rule 72.3(a). Appellants now bring this Motion for Relief from Order pursuant to Court of Common Pleas Civil Rule 60(b)(1) and (b)(6). Appellants essentially argue that the issue of intentional infliction of emotional distress was raised through verbal, unrecorded testimony in the original Justice of the Peace trial, and therefore argue that the inclusion of such tort claims in the appeal does not constitute a violation of the Mirror Image Rule.

Appellants were not represented by counsel in the lower proceeding. They therefore argue that any admission by counsel for Appellants concerning the addition of new claims on appeal was mistaken, caused by the limited written record in the lower proceeding and counsel's unfamiliarity with Appellants' full, prior testimony. In support of this claim, Plaintiff-Below/Appellant Federico Ceccotti presents an affidavit stating that in the Justice of the Peace proceeding he testified concerning the extreme and outrageous conduct of the Appellees and the resulting physical and emotional stress caused by this conduct. Appellants then attempt to cite *Silverview Farm, Inc. v. Laushey* and *Crosse v. Cohen* for the proposition that simple testimony in a lower proceeding is sufficient to raise an issue for Mirror Image purposes, when the issue has not otherwise been addressed either in the pleadings or in the lower court's order.

This reliance is misplaced. *Crosse v. Cohen* says that with respect to identical issues, there is no Mirror Image violation when the complaint on appeal "sets forth *more specific* legal claims" than those made in the original complaint, "but [does] not alter the subject matter of the case below." 2000 WL 33653441 (Del. Com. Pl.) (emphasis added). Interpreting several Mirror Image cases including *Crosse*, the Court in *Silverview Farm, Inc. v. Laushey* concluded that the Mirror Image Rule and Civil Rule 72.3(c) "are satisfied if the complaint on appeal presents no parties or issues other than those *presented by the original complaint* below." 2006 WL 1112911 (Del. Com. Pl.) (emphasis added). Neither case regarded testimony in the lower proceeding as a sufficient basis for raising an issue when it was not otherwise addressed in the pleadings.

As noted in the January 16, 2007 Order on Appellee's Motion to Dismiss, the complaint filed in the Justice of the Peace Court raised the contractual issues of rent, late

fees, fines, and costs of repairing or otherwise maintaining the rental property in question. There was no mention, even generally, of a personal injury claim for the intentional infliction of emotional distress. Likewise, neither the docket nor the order from the Justice of the Peace action addresses any claim for the intentional infliction of emotional distress. While the Court has no reason to doubt Appellant's sworn affidavit that he may have broached the subject of emotional distress in his actual testimony, the Court is nevertheless wary of relying on such affidavits when there is no support in the pleadings, docket or order. Given the limited record generated by Justice of the Peace proceedings, opening the door to such potentially self-serving affidavits may have the effect of vitiating the Mirror Image Rule and its ability to guarantee a true appeal *de novo*.

Putting aside that broader concern, it is clear in the instant case that the issue of intentional infliction of emotional distress was not and could not have been raised in the Justice of the Peace proceeding. The Justice of the Peace Court is a court of limited jurisdiction with authority derived solely from statute. *Shaw Park Tenants Ass'n, Inc. v. City of Rehoboth Beach*, 1989 WL 89523 (Del. Super.). As such, the Justice of the Peace Court has jurisdiction to hear debt actions, contract actions, distress for rent actions, and tort actions for injury to real or personal property. 10 *Del. C.* § 9301. However, the statutory jurisdiction of the Justice of the Peace Court does not extend to personal injury claims including the emotional distress claims at issue in this appeal. *See Mells v. Billops*, 482 A.2d 759, 761 (Del. Super. Ct. 1984). Therefore, even if the Court were to find that Appellants could raise the issue of emotional distress solely through unrecorded testimony, which the Court does not, the Justice of the Peace Court would not have had jurisdiction to hear such a claim. Consequently, the addition of an emotional distress

claim on appeal to this Court would have defeated the Mirror Image Rule's guarantee of a trial *de novo*, and constituted a clear violation of that rule.

ORDER

For the aforementioned reasons, Appellants' motion for relief from order is hereby DENIED.

IT IS SO ORDERED this 23th day of February, 2007.

Joseph F. Flickinger III
Judge