

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

MEYER & MEYER, INC.,)	
Defendant Below/Appellant,)	
)	
v.)	C. A. No: 2007-11-268
)	
JACQUELINE BROOKS,)	
Plaintiff Below/Appellee)	

Date Submitted: January 7, 2009
Date Decided: February 6, 2009

Jacqueline Brooks
813 Kirkwood St.
Wilmington, DE, 19801
Plaintiff Below/Appellee, Pro Se

John R. Weaver, Esquire
831 N. Tatnall St., Suite 200
Wilmington, DE 19801
*Attorney for Defendant
Below/Appellant*

MEMORANDUM OPINION

This is the Court’s ruling in the above-captioned matter regarding the jurisdictional consequences of Plaintiff Below/Appellee’s failure to comply with the mirror image rule.

Plaintiff Below/Appellee Jacqueline Brooks (“Brooks”) originally filed a complaint in Justice of the Peace Court No. 13 naming Option One Mortgage Corporation (“Option One”) and Meyer & Meyer, Inc. as defendants, alleging breach of contract regarding home repair. On November 8, 2007, the JP Court issued an opinion

finding in favor of Brooks and against Meyer & Meyer for \$8,683 plus court costs and post-judgment interest. The Court also found that Brooks did not have any lawful claim against Option One, therefore dismissing that portion of the claim with prejudice.

On November 19, 2007, Meyer & Meyer filed an incomplete notice of appeal with this Court. The clerk's office notified Meyer & Meyer that it had neglected to include an entry of appearance, and allowed ten days to correct the error. On November 29, 2007, Meyer & Meyer correctly filed the entry of appearance. Brooks was served with the summons and notice of appeal on January 11, 2008 and filed the complaint on appeal on January 16, 2008. The caption on the complaint did not include Option One as a defendant, only naming Meyer & Meyer as a defendant. On February 4, 2008, Meyer & Meyer filed an answer to the complaint, including as an affirmative defense that this Court lacks subject matter jurisdiction due to Brooks' failure to comply with the mirror image rule. On December 18, 2008, the date on which this matter was scheduled for trial, the Court determined that Brooks had not followed the mirror image rule. The Court permitted counsel for Meyer & Meyer to provide legal authority that would permit this case to proceed.

Under the mirror image rule, embodied in Civil Rule 72.3(c), an appeal to the Court of Common Pleas must "join the identical parties and raise the same issues that were before the court below".¹ If it does not, the court does not have jurisdiction to hear the appeal.² Where, as here, the claim below was filed against two defendants and dismissed as to one defendant, the complaint on appeal must name both defendants.³ However, noncompliance with the mirror image does not automatically strip the appellate

¹ CCP Civil Rule 72.3(c)

² *Id.*; *McDowell v. Simpson*, 1 *Houst.* 467 (Del. Super. 1885)

³ *Cooper's Home Furnishings, Inc. v. Smith*, 250 A.2d 507 (Del. Super. 1969)

court of jurisdiction. “Absent good reason, such as actual or potential prejudice as a result of noncompliance, the rule should not be applied to preclude a court from possessing subject matter jurisdiction. In exercising their discretion, judges must inquire into the particular facts of each case in determining whether a dismissal based on the mirror image rule is warranted.”⁴

Here, the party that failed to comply with the mirror image rule was the Plaintiff Below/Appellee Brooks. The party that would suffer as a result of this noncompliance is the Defendant Below/Appellant Meyer & Meyer. The Court of Common Pleas has previously recognized the inequitable result that would occur in such a situation:

When the appellant is the defendant . . . [its] only filing obligation within 15 days of the judgment below is the filing of the notice of appeal, which vests this Court with jurisdiction. . . Pleadings not required to be filed within the jurisdictional, 15 day appeal period, although violative of the mirror image rule, do not create an incurable jurisdictional defect. The Court can entertain motions to amend such pleadings, or order additional pleadings filed, to cure the mirror image rule violation and insure that the same parties and issues are before it *de novo* as were before the court below.⁵

Here, Meyer & Meyer filed its original notice of appeal within 15 days of the entry of judgment in the JP Court, as required by Rule 72.3(a). Therefore, this Court has jurisdiction over the case. Brooks’ complaint on appeal was not required to be filed within that 15-day period.⁶ Therefore, although it violates the mirror image rule, it does not create an incurable jurisdictional defect.

ORDER

⁴ *Pavetto v. Hansen*, 2004 WL 2419164 at 2 (Del. Super.)

⁵ *Holloway v. Wheatley*, 2007 WL 3231589 at 2 (Del.Com.Pl.)

⁶ Under Rule 72.3(a), the appellee must file the complaint or other first pleading of appeal within 20 days of service of the process on appeal.

The Court hereby orders Plaintiff Below/Appellee Jacqueline Brooks, within 30 days, from the date of this opinion, to file a proper, amended complaint naming both Meyer & Meyer and Option One Mortgage Corp. as defendants. Plaintiff shall also file a praecipe and obtain service of process on Defendant Option One Mortgage

SO ORDERED

Joseph F. Flickinger III
Judge