

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

Michael T. Rezak,	:	
	:	C.A. No 06-10-0032AP
Plaintiff Below,	:	
Appellant.	:	
	:	
vs.	:	
	:	
S & L Contractors, Inc.	:	
	:	
Defendant Below,	:	
Appellee,	:	
	:	

**Upon Defendant's Motion to Dismiss**

**Submitted: February 9, 2007**

**Decided: February 9, 2007**

**Defendant's Motion is denied.**

**Cabbage Brown, Jr., Esquire, Brown, Shiels & O'Brien, 108 East Water Street,  
Dover, Delaware 19901, Attorney for Plaintiff Below/Appellant.**

**Scott E. Chambers, Esquire, Schmittinger & Rodriguez, P.A., Post Office Box 497,  
Dover, Delaware 19903-0497, Attorney for Defendant Below/Appellee.**

**Trader, J.**

In this civil appeal from the Justice of the Peace Court, I hold that the plaintiff's appeal does not violate the mirror image rule because the plaintiff's claim in this Court is identical with the claim filed in the Justice of the Peace Court. Additionally, I hold that the plaintiff's claim on appeal cannot exceed \$15,000.00, exclusive of interest and costs under 10 Del. C. Sec. 9572(b).

The relevant facts are as follows: On May 3, 2006, the pro se plaintiff filed an action of debt for the sum of \$13,565.00 in Justice of the Peace Court 16 alleging that the defendant failed to perform according to a contract. On June 20, 2006, the plaintiff obtained a default judgment against the defendant, but following a hearing on August 11, 2006, the default judgment was set aside. Trial was scheduled for September 19, 2006 and prior to trial, the parties agreed to limit the plaintiff's disputed claim to the builder's warranty. At the close of the plaintiff's case, the defendant's attorney made a motion for a directed verdict and the magistrate entered a directed verdict for the defendant. On October 4, 2006, an attorney for the plaintiff filed a notice of appeal to this Court with a complaint that alleged "defendant's work was not completed pursuant to the contract." On November 13, 2006, the defendant filed a motion to dismiss the appeal on the grounds that the appeal violated the mirror image rule.

The defendant contends that the plaintiff's claim in this Court violates the mirror image rule. I disagree. It is true that the jurisdiction of this Court is limited by statute to trying the same action as instituted in the Justice of Peace Court. *Dzedzej v. Prusinski*, 259 A.2d 384, 386 (Del. Super. 1969). This Court is deprived of jurisdiction where the nature of the cause of action on appeal is different from the cause of action filed in the court below. *Panzer Management v. Farrall*, 1987 WL 8223, at \*2 (Del. Super. Mar. 3, 1987).

In the case before me, the plaintiff alleged a claim for breach of contract in his complaint in the court below and on appeal he has also alleged a claim for breach of contract. Although the parties limited the issue to a breach of warranty in the Justice of the Peace Court, I am not persuaded that this agreement changes the nature of the plaintiff's claim. A claim for breach of contract includes within its scope a claim of breach of warranty and the builder's warranty was part of the contract between the home owner and the builder. The plaintiff is not alleging a claim in this Court different from the claim asserted in the court below. Accordingly, I find no violation of the mirror image rule.

The defendant next contends that the plaintiff's claim on appeal seeks to recover \$16,692.50, but the claim filed in the Justice of the Peace Court was for \$13,565.00. Since the trial in the Justice of the Peace Court, the plaintiff has obtained an estimate that the cost of installation is \$3000.00 more than originally estimated. The additional damages sought do not violate the mirror image rule because the claim on appeal is identical with the claim filed in the court below. However, 10 Del. C. Sec. 9572(b) prohibits the plaintiff from seeking damages for an amount in excess of \$15,000.00.

In accordance with the foregoing discussion, the defendant's motion to dismiss is denied, but the plaintiff is barred from seeking recovery for any amount in excess of \$15,000.00.

**IT IS SO ORDERED.**

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**Merrill C. Trader**  
**Judge**