

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

SCOTT A. M^{ac}WILLIAMS,)
)
Plaintiff/Appellee,)
)
v.) Civil Action No.: 2006-07-484
)
C. DRUE CHICHI,)
)
Defendant/Appellant.)

Submitted: May 16, 2007
Decided: June 29, 2007

Joseph Scott Shannon, Esquire
Marshall Dennehey Warner Coleman &
Coggin
1220 North Market Street, 5th Floor
P.O. Box 8888
Wilmington, DE 19899-8888
Attorney for Defendant-Below Appellant

Roger M. Truemper, Esquire
Elzufon Austin Reardon Tarlov &
Mondell, P.A.
2500 Wrangle Hill Road
Fox Run Business Park
Building 1, Suite 210
Bear, DE 19701
Attorney for Plaintiff-Appellee

Daniel A. Griffith, Esquire
1220 North Market Street, 5th Floor
P.O. Box 8888
Wilmington, DE 19899-8888

ORDER

**ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT-INDISPENSABLE PARTY
ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT-ECONOMIC LOSS**

Defendant-Below Appellant moves this Court pursuant to *Civil Rules 19, 56,*
and 72 for an order dismissing this Appeal from the Justice of the Peace Court.

This appeal arises out of a trial in the Justice of the Peace Court where the dispute centers upon a sale of residential property from the defendant to plaintiff and his wife, Julia D. MacWilliams. Plaintiff brought the action in the Justice of the Peace Court in only his name without joining his wife as a party plaintiff. The Justice of Peace Court on July 13, 2006 following trial on the merits entered judgment for the plaintiff in the amount of \$4,454.08, cost, plus interest. On July 28, 2006, defendant appealed to this Court.

Defendant moves to dismiss these proceedings on the basis that Julia D. MacWilliams is an indispensable party whose absence leaves defendant subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations by reason of the claimed interest. It is defendant's position that since plaintiff's claim arises out of the sale of residential property for which he and his wife Julia D. MacWilliams purchased jointly and held joint title, failure to join her as a party plaintiff is fatal. He argues that because the mirror image rule under *Court of Common Pleas Civil Rule 72.3(c)* requires the appeal to join the identical parties and raise the same issues as before the Court below, there is no way to remedy this fatal defect in the pleading. He relies upon *Civil Rule 19*, alleging that under the mirror image rule, joining Julia D. MacWilliams would deprive the Court of jurisdiction over the subject matter of the action.

The provisions of *Court of Common Pleas Civil Rule 72.3(c)* provide as follows:

“An appeal to this court that fails to join the identical parties and raise the same issues that were before the court below, shall result in a dismissal on jurisdictional grounds.”

The analysis of the impact or compliance with rule is determined at the time the appeal is docketed with the Court of Common Pleas. The policy rationale is that it provides for an adequate and fair hearing of the entire matter *de novo* by affording all parties to the Justice of the Peace Court proceeding an opportunity to argue their version of the facts, to present their view of the law's application to those facts, and to assure the *de novo* reviewing court that all relevant issues that could be presented can be heard. *Fossett v. Dalco*, 2004 WL 1965141 (Del. Supr.).

Defendant's analysis of the mirror image rule is that the rule requires no change in any aspect of the proceeding at any stage of the proceeding. The rule, however, requires identical parties and issues for the court to acquire jurisdiction. Once jurisdiction is established, there is nothing in the rule which governs subsequent proceedings. If I were to adopt defendant's analysis, this Court's rule governing civil matters would have little application, which is not reasonable. As stated in *Silverview Farm, Inc. v. Lausey*, 2006 WL 1112911 (Del. Com. Pl.) "the purpose of the "mirror image rule" is to preserve the right to a trial *de novo*. A trial *de novo* means a trial anew; thus, the entire case that was before the Justice of the Peace Court must also be brought before this Court and the parties must occupy the same positions as they did below." This does not mean there can be no changes under any set of circumstances. What this means is the nature of the allegation, the claims, and the parties must all be brought for the new trial. How that litigation proceeds after jurisdiction is established is governed by the rules of the Court of Common Pleas.

Turning to defendant's argument that plaintiff's wife is an indispensable party which requires dismissal under *Civil Rule 19*. The plaintiff and Julia D. MacWilliams purchased the property as husband and wife; therefore, I fail to see merit in defendant's argument that he may be subject to multiple claims for the same allegation. Further, if she was subject to future proceedings on this, it would be subject to a collateral estoppel defense.

Defendant also moves for summary judgment on the basis plaintiff's claim rests upon the tort claim of misrepresentation. Therefore, the claim must fail because the damage is to the property, and the doctrine of economic loss prohibits recovery for a tort where the product has damaged only itself and the only losses suffered are economic in nature.

Defendant misreads plaintiff's claim. His allegation is that he purchased residential real property which under the laws of this State requires the seller to conduct a property inspection, prepare a condition report, and acknowledge that report as part of the sale, *25 Del. C. § 2578*. The claim is that as a result of the misrepresentation, he incurred expenses which he seeks reimbursement. The damage may be to the property, but the cost for which he bases his claim is the sum paid as a result of the alleged misrepresentation.

Additionally, for the reasons stated herein, I find no merit to defendant's argument that the Justice of the Peace Court lacked subject matter jurisdiction when it heard these proceedings. Moreover, even if it lacked jurisdiction, this matter is before this Court on a *de novo* appeal, which is trial anew.

Accordingly, defendant's motion for summary judgment is DENIED.

SO ORDERED

Alex J. Smalls
Chief Judge

Chichi-ORD Jun 07