

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

Zachary F. Paitsel,	:	
	:	C.A. No. 06-06-0108AP
Plaintiff below/	:	
Appellant,	:	
	:	
v.	:	
	:	
KLT Bump Telecom, Inc. and	:	
Keith Bump,	:	
	:	
Defendant below/	:	
Appellee.	:	

Submitted: February 23, 2007

Decided: February 26, 2007

Decision on appeal from the Justice of the Peace Court.

Appellant's appeal is dismissed for lack of subject matter jurisdiction

**Kevin M. Howard, Esquire, Young, Malmberg & Howard, P.A., 30 The Green,
Dover, Delaware 19901, attorney for Appellant.**

**Brad S. Eaby, Esquire, Barros, McNamara, Malkiewicz & Taylor, P.A., Post Office
Box 1298, Dover, Delaware 19903-1298, attorney for Appellee.**

Trader, J.

In this civil appeal from the Justice of the Peace Court I hold that the cause of action on appeal is not identical to the cause of action in the original proceedings. Accordingly, the mirror image rule is violated and this Court lacks subject matter jurisdiction to hear this appeal.

The relevant facts are as follows: On February 6, 2006, the plaintiff, Zachary F. Paitsel, filed a civil action for breach of contract in the Justice of the Peace Court 16. After a trial on June 16, 2006, the Justice of the Peace rendered judgment for the defendant, KLT Bump Telecom, Inc. and Keith Bump. On June 26, 2006, the plaintiff filed a notice of appeal, praecipe, and a Complaint in this Court. On appeal the plaintiff alleged a cause of action for breach of contract, but he also alleges a statutory claim for failure to pay wages under 19 Del. C. Sec. 1101(3). In the statutory claim, in addition to unpaid wages the plaintiff seeks liquidated damages, costs, and reasonable attorney's fees.

The defendant has moved to dismiss the Complaint on the grounds that it violates the mirror image rule. The defendant's contention is correct. The Superior Court in *Sulla v. Quillen*, 1987 WL 18425, at *1 (Del. Super. Ct. Sept. 24, 1987) held that the cause of action in the appeal has to be the same as in the original proceedings. *A de novo* appeal from the Justice of the Peace Court extends only to a review by retrial of the same cause of action heard and decided at the Justice of the Peace Court level. The jurisdiction of this court is limited by statute to try the same action as instituted in the Justice of the Peace Court. *Dzedzej v. Prusinski*, 259 A.2d 384, 386 (Del. Super. 1969).

Under Common Pleas Civil Rule 73(c), an appeal that fails to raise the same issues that were before the Court below shall be dismissed on jurisdictional grounds.

In the case before me, although the plaintiff in his appeal alleges a claim for breach of contract, he also alleges a statutory claim under 19 Del. C Sec. 1101(3) which was not brought in the Justice of the Peace Court. The magistrate heard and decided a claim for breach of contract. The plaintiff did not raise any issue of an employer/employee relationship in the Court below. Therefore, the cause of action on appeal is not identical with the cause of action in the original proceedings. Any variance from the lower court proceedings strips this Court of jurisdiction to hear this appeal.

Hicks v. Taggart, 1999 WL 462375, at *3 (Del. Super. Ct. Apr. 12, 1999).

Since I lack jurisdiction to hear this appeal, this case must be dismissed.

IT IS SO ORDERED.

Merrill C. Trader
Judge