

**COURT OF COMMON PLEAS  
FOR THE STATE OF DELAWARE**

WILMINGTON, DELAWARE 19801

*John K. Welch*  
*Judge*

July 19, 2010

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*DIHS*

**Re: *Saheed Rufai of DIHS v. Ellen Ezekiel Okorie***  
**C.A. No.: CPU4-09-005864**

**Date Submitted: June 24, 2010**

**Date Decided: July 19, 2010**

**ORDER ON PLAINTIFF/APPELLEE ELLEN EZEKIEL OKORIE'S  
MOTION TO DISMISS  
FOR LACK OF SUBJECT MATTER JURISDICTION**

1. The relevant facts and procedural history of this case are undisputed and are as follows: On September 23, 2008, Ellen Ezekiel Okorie (hereinafter "Okorie") filed a breach of contract action against Saheed Rufai (hereinafter "Rufai") of Delaware Institute of Health Sciences, Inc. (hereinafter "DIHS") in Justice of the Peace Court No.: 13. On November 26, 2008, Rufai and DIHS filed an Answer, denying the averments in the Complaint and requesting a trial. On December 12, 2008, DIHS filed a counterclaim against Okorie for breach of contract. Trial was held in Justice of the Peace Court No.: 13 on July 1, 2009. On July 17, 2009, Judgment was entered in favor of Rufai on Okorie's breach of contract claim, and in favor of

Okorie on DIHS's breach of contract claims. No monies were awarded to either party.

2. On July 28, 2009 DIHS filed a Notice of Appeal in the Court of Common Pleas. In this Notice of Appeal DIHS challenged only the denial of its breach of contract counter-claim by the Justice of the Peace Court. Accordingly, DIHS thereafter filed its complaint on appeal in the Court of Common Pleas with respect to this counter-claim. On November 16, 2009 Okorie filed a response to the counter-claim on appeal.

3. On June 24, 2010 Okorie filed the instant Motion to Dismiss for lack of subject matter jurisdiction in this Court. Oral argument in this matter was heard on July 16, 2010. Okorie argued that DIHS's counter-claim on appeal should be dismissed pursuant to Court of Common Pleas Civil Rule 72.3 because DIHS's appeal addresses only its counter-claim below, and not Okorie's original complaint below; hence, a violation of the *Mirror-Image Rule*.

4. *Court of Common Pleas Civil Rule 72.3(f)* governs appeals *de novo* from the Justice of the Peace Court to the Court of Common Pleas and provides, "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." *CCP. Civ. R. 72.3(f)*.

## DISCUSSION

5. The proceedings below indicate on September 23, 2008 in Justice of the Peace Court Complaint, JP13-08-010040 Okorie filed against Saheed Rufai of DIHS Inc. for \$12,000 and on November 26, 2008 defendant Rufai filed an Answer indicating Rufai/DIHS demanded a trial.

6. As set forth above in this Order, defendant's counsel filed a counter-claim on behalf of Delaware Institute of Health Sciences, Inc. ("DIHS") demanding \$6,116.50 and the counter claim changed the initial caption of the case in Justice of the Peace Court by omitting Rufai as a defendant and submitting DIHS as the defendant. After a formal hearing by Order dated July 17, 2009 the Justice of the Peace Court awarded no monies to either Okorie or Rufai.

7. In the proceedings before the Court of Common Pleas, on July 28, 2009, DIHS filed a *de novo appeal* by requesting the Common Pleas clerk of the court to issue a summons to the Sheriff of New Castle County for service of the Notice of Appeal upon "Counter-Defendant Below, Appellee, Ellen Ezekiel Okorie" only.

8. Accordingly, what appears in the Court of Common Pleas civil docket is a counter-claim/complaint filed with the Civil Clerk which allegedly requires an Answer by Affidavit of Demand from Okorie to what was the counter-claim of DIHS in the Justice of the Peace Court. The original action as it appears in the Justice of the Peace Court was not appealed to this Court.

9. As set forth above, it is clear in this civil docket in the Court of Common Pleas that the original proceedings in the Justice of the Peace Court were *Ellen Ezekiel Okorie vs. Saheed Rufa of DIHS*. When defendant counter-claimant filed a Notice of Appeal only the counter-claim was raised as an issue, factual or legal, in the Court of Common Pleas in the *appeal de novo*. Clearly the identical parties and issues that were before the Justice of the Peace Court are not pending in this Court pursuant to *Court of Common Pleas Civil Rule 72.3*. Simply put, only the counter-claim was brought in the Notice of Appeal to the Court of Common Pleas Court and this action must therefore be dismissed by the Court.

10. Counter-claimant/appellant claims in it's Answer to the pending Motion to Dismiss at paragraph one (1) "The mirror-image rule has been rejected." This is an incorrect conclusion and statement of the current law. In the enactment of the CCP Civ. R. 72.3 on June 17, 2007, the Mirror-Image Rule was re-affirmed by this Court. *See, e.g. Spaulding v. Byrne*, Del.Com.Pl. November 7, 2008, C.A. No.: 2008-06-574; *Hyson v. Carmon Lincoln Mercury*, Del.Com.Pl., July 26, 2006 (C.A. No.: 2006-02-389); *Meyer & Meyer, Inc. v. Brooks*, 2009 WL 498537, Del.Com.Pl., July 6, 2009 (C.A. No.: 207-11-268); *Levy's Loan Office v. Folks*, 2009 WL 1856642, Del.Com.Pl. June 26, 2009 (C.A. No.: CPU4-08-000118); *Ceccotti v. Leight*, 2007 WL 707552, Del.Com.Pl., Feb. 23, 2007 (C.A. No.: 2006-10-313). The case is therefore dismissed.

**IT IS SO ORDERED** this 19<sup>th</sup> day of July, 2010.

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John K. Welch  
Judge

/jb  
cc: Tamu White, Chief Civil Clerk  
CCP, Civil Division