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SJC-10323

PAULINE A. ONYEAGORO vs. E.T. ENGINEERING ENTERPRISES, INC.

May 7, 2009.

Supreme Judicial Court, Superintendence of inferior courts.
District Court, Small claims procedure. Practice, Civil,
Counterclaim and cross-claim.

The petitioner appeals from a judgment of a single justice of this court denying her petition for relief pursuant to G. L. c. 211, § 3. We affirm.

The respondent commenced an action against the petitioner in the small claims session of the District Court seeking recovery of an unpaid balance on a contract. The petitioner counterclaimed seeking recovery of a partial payment she had made to the respondent under the contract. Following a hearing before a clerk-magistrate, judgments entered in the respondent's favor on both the original claim and the counterclaim. The petitioner unsuccessfully challenged those judgments in the Appeals Court, pursuant to G. L. c. 231, § 118, first par. Thereafter, she sought relief from the judgments in the county court. The single justice treated the matter as a petition pursuant to G. L. c. 211, § 3, and denied it without a hearing.

The single justice neither abused his discretion nor otherwise erred. The petitioner could have appealed from the judgment on the original claim pursuant to G. L. c. 218, § 23, but did not do so. See Most v. Fitzgerald, 417 Mass. 1001 (1994). With respect to the adverse judgment on her counterclaim, there is some authority indicating that she might have been entitled to review of that judgment as part of her appeal on the main claim. See Boat Maintenance & Repair Co. v. Lawson, 50 Mass. App. Ct. 329, 330-332 & n.4 (2000) (plaintiff-in-counterclaim's appeal from adverse judgment on original claim included counterclaim). There is also some authority suggesting that, as a counterclaim plaintiff in the small claims session, she had no right to appeal from the judgment on the counterclaim. See M.G. Perlin & J.M. Connors, Civil Procedure in the Massachusetts District Court § 15.27, at 493-494 n.69 (4th ed. 2009) (plaintiff-in-counterclaim "would appear" to lose right to

appeal from adverse ruling on counterclaim because acting in role of plaintiff). In either case, she was not entitled to relief pursuant to G. L. c. 211, § 3.

Judgment affirmed.

Pauline A. Onyeagoro, pro se.

Michael G. Sites, for the defendant, submitted a brief.