

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DARREN M. SMITH AND STARLA SMITH	:	
	:	CIVIL ACTION
Plaintiffs,	:	
	:	
	:	
v.	:	NO. 04-5266
	:	
	:	
STEPHEN AGRESTA, individually and d/b/a AGRESTA CONSTRUCTION	:	
	:	
	:	
Defendants.	:	

**MEMORANDUM -ORDER**

Presently pending is Defendants Motion to Dismiss for Lack of Jurisdiction and Plaintiff's response thereto. Upon careful consideration of all Motions, **IT IS HEREBY ORDERED** this 6<sup>th</sup> day of April 2005, that Defendant's Motion to Dismiss is **DENIED**.

Plaintiffs are a husband and wife who reside at 233 Crossshill Road, Wynnewood, PA 19096 and are citizens of the state of Pennsylvania. Defendant Stephen Agresta is the sole proprietor of Agresta Construction. Stephen Agresta is a citizen of the state of New Jersey who resides at 1001 Kresson Road, Cherry Hill, NJ 08003. Agresta Construction is a fictitious name registered in the state of Pennsylvania. Plaintiffs contracted with the Defendant Agresta Construction in October of 2003 to build an extension to the rear of Plaintiffs' home. Defendant argues that because Agresta Construction is a fictitious name registered in Pennsylvania, there is no diversity and thus this court does not have subject matter jurisdiction. The court does not agree with the Defendant's reasoning. Defendant Agresta is being sued as an individual, who is a

citizen of New Jersey, doing business as Agresta Construction which is merely a fictitious name registered in the state of Pennsylvania. Defendant Agresta confuses the determination of a corporation's citizenship with that of a registered fictitious name. Here, Mr. Agresta is the sole proprietor of Agresta Construction which takes its citizenship from that of Mr. Agresta, which is New Jersey. See Beasley v. Klepp, 1988 WL 96801, at \*1, 1988 U.S. Dist. LEXIS 10465, at \*1 (E.D.Pa. Sept. 15, 1988). As the Plaintiffs in this case are citizens of Pennsylvania and the Defendant is a citizen of New Jersey, complete diversity is established pursuant to 28 U.S.C. § 1332(a)(1) and (2). Accordingly, Defendant's Motion to Dismiss for Lack of Jurisdiction is **DENIED**.

**BY THE COURT:**

S/Clifford Scott Green 04/21/05

**CLIFFORD SCOTT GREEN, S.J.**