

Northampton County Reporter

(USPS 395-280)

VOL. LIX

EASTON, PA April 7, 2016

NO. 14

Mark Duarte and Meagan Duarte, h/w, Plaintiffs v. Victor Duarte, Defendant

Jed Kahler, Plaintiff v. Alpha Packaging, Defendant

Northampton County Reporter Digest—2016-4

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INSERT: Pink: 1. Law Day

2. 2016 Calendar

3. Quarterly Association Meeting

4. Charlotte Knights vs. Lehigh Valley Iron Pigs

Cream: 1. "Important New Developments in Personal Injury Law"

2. "On Your Feet!"

3. "A View from the Orphans' Court"

4. Happy Hour

Green: 1. "Residential Real Estate Transactions for Non Real Estate Lawyers"

2. Swearing-In Ceremony for U.S. Court of Appeals

3. BarBuddies

NOTICE TO THE BAR...

Save the Dates

Law Day – April 25

Federal Courts Ceremonial Admissions – May 5

Quarterly Association Meeting and Malpractice Avoidance Seminar – May 19

**NORTHAMPTON COUNTY BAR ASSOCIATION
2016 BAR ASSOCIATION OFFICERS**

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Northampton County Reporter
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The Northampton County Reporter will be published every Thursday by the Northampton County Bar Association, 155 South Ninth St., Easton, PA 18042-4399. All legal notices relating to the business of the county, are required by rule of Court, to be published in this Journal. All legal notices must be submitted in typewritten form and are published exactly as submitted by the advertiser. Neither the Law Reporter nor the printer will assume any responsibility to edit, make spelling corrections, eliminate errors in grammar or make any changes to content.

Subscription Price—\$75.00 per year.

Periodical Postage Paid at Easton, PA and additional office.

Postmaster: Send all communications and address changes to:

NORTHAMPTON COUNTY REPORTER
155 South Ninth St., Easton, PA 18042-4399
Telephone (610) 258-6333 FAX (610) 258-8715
Edward P. Shaughnessy, Esquire
Editor

NOTICE TO NCBA MEMBERS – BAR NEWS

**Ceremonial Admissions – U.S. Court of Appeals for the Third Circuit and
U.S. District Court for the Eastern District of Pennsylvania**

Thursday, May 5, 2016

U.S. Federal Courthouse – Easton

Contact the NCBA Office for Court applications and information.

Quarterly Association Meeting and Malpractice Avoidance Seminar

Thursday, May 19, 2016

12:00 p.m. @ Best Western Conference Center, Bethlehem.

Iron Pigs Game

Thursday, June 30, 2016

6:00 p.m. @ Coca Cola Park.

Summer Outing

Thursday, July 21, 2016

2016 Bench Bar Conference

October 6-8, 2016

Hyatt Regency, Chesapeake Bay Golf Resort, Spa and Marina

Cambridge, Maryland

Barristers Boast

Have you received an honor or award for community work? Do you have a new grandchild? Have you heard good news about one of your NCBA colleagues that should be shared?

Your 2016 President, Alyssa Lopiano-Reilly, has added the Barristers Boast to the agenda during our Association meetings. She would like to mention good news items about our members at all of the Association meetings.

Good news items should be sent to: marybeth@nrcobar.org.

The time is always right to do what is right. ~ Martin Luther King, Jr.

ESTATE AND TRUST NOTICES

Notice is hereby given that, in the estates of the decedents set forth below, the Register of Wills has granted letters testamentary or of administration to the persons named. Notice is also hereby given of the existence of the trusts of the deceased settlors set forth below for whom no personal representatives have been appointed within 90 days of death. All persons having claims or demands against said estates or trusts are requested to make known the same, and all persons indebted to said estates or trusts are requested to make payment, without delay, to the executors or administrators or trustees or to their attorneys named below.

FIRST PUBLICATION**BEAL, MARGUERITE E.,** dec'd.

Late of the Township of Plainfield, Northampton County, PA
Executor: William W. Beal, 455 Washington Street, Wind Gap, PA 18091

Attorneys: Peters, Moritz, Peischl, Zulick, Landes & Brienza, LLP, 1 South Main Street, Nazareth, PA 18064

BUTZ, PAULINE H., dec'd.

Late of the Township of Washington, Northampton County, PA
Executors: Donald E. Butz, Sr. and Beverly L. Schimmel c/o McFall, Layman & Jordan, P.C., Attorneys at Law, 134 Broadway, Bangor, PA 18013

Attorneys: McFall, Layman & Jordan, P.C., Attorneys at Law, 134 Broadway, Bangor, PA 18013

DAGON, OLIVE E. a/k/a OLIVE EVELYN DAGON, dec'd.

Late of the City of Easton, Northampton County, PA

Executor: David O. Dagon c/o Daniel E. Cohen, Attorney, Seidel, Cohen, Hof & Reid, L.L.C., 3101 Emrick Blvd., Suite 205, Bethlehem, PA 18020

Attorneys: Daniel E. Cohen, Attorney, Seidel, Cohen, Hof & Reid, L.L.C., 3101 Emrick Blvd., Suite 205, Bethlehem, PA 18020

LISOWSKI, PAUL S., dec'd.

Late of 3725 Cedar Drive, Walnutport, Northampton County, PA

Administrator: Paul M. Lisowski, 126 West Liberty Street, Westminster, MD 21157

Attorneys: Joshua D. Shulman, Esquire, Shulman & Shabbick, 1935 Center Street, Northampton, PA 18067

MERBAUM, BERNICE F., dec'd.

Late of the Township of Palmer, Northampton County, PA

Executor: Daniel E. Cohen, 3101 Emrick Blvd., Suite 205, Bethlehem, PA 18020

MILLER, KURT L. a/k/a KURT MILLER, dec'd.

Late of Bethlehem, Northampton County, PA

Executor: Eric M. Miller c/o Douglas J. Tkacik, Esquire, 18 East Market Street, P.O. Box 30, Bethlehem, PA 18016-0030

Attorney: Douglas J. Tkacik, Esquire, 18 East Market Street, P.O. Box 30, Bethlehem, PA 18016-0030

SHIMER, ALAN R. a/k/a ALAN SHIMER, dec'd.

Late of the Borough of Wilson, Northampton County, PA

Executrix: Susan E. Limeberry c/o Steven N. Goudsouzian, Esquire, 2925 William Penn Highway, Suite 301, Easton, PA 18045-5283

Attorney: Steven N. Goudsouzian, Esquire, 2925 William Penn Highway, Suite 301, Easton, PA 18045-5283

SNOVER, ROSEMARIE a/k/a ROSE MARIE SNOVER, dec'd.

Late of the Borough of Wilson, Northampton County, PA

Co-Executors: Cynthia Ann Kotch and John A. Snover c/o Robert V. Littner, Esquire, Littner, Deschler & Littner, 512 North New Street, Bethlehem, PA 18018

Attorneys: Robert V. Littner, Esquire, Littner, Deschler & Littner, 512 North New Street, Bethlehem, PA 18018

VAIL, CONSTANCE J., dec'd.

Late of Easton, Northampton County, PA

Executrix: Bonnie Meischeld, 3543 Baldwin Drive, Easton, PA 18045

Attorney: Herbert G. Litvin, Esquire, 151 S. 7th Street, Easton, PA 18042

YOUNG, DAVID R., dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executrix: Nancy P. Young, 526 Wood Street, Apt. 327, Bethlehem, PA 18018

Attorney: James J. Holzinger, Esquire, 1216 Linden Street, P.O. Box 1409, Bethlehem, PA 18016

SECOND PUBLICATION

BARTOLACCI, MARGARET a/k/a MARGARET M. BARTOLACCI, dec'd.

Late of Palmer Township, Northampton County, PA

Executor: James A. Bartolacci c/o Judith A. Harris, Esquire,

Norris, McLaughlin & Marcus, P.A., 515 West Hamilton Street, Suite 502, Allentown, PA 18101
Attorneys: Judith A. Harris, Esquire, Norris, McLaughlin & Marcus, P.A., 515 West Hamilton Street, Suite 502, Allentown, PA 18101

BELVIN, DORIS C., dec'd.

Late of the Borough of Nazareth, Northampton County, PA

Executor: Gregg W. Belvin c/o James Pfeiffer, Esquire, Pfeiffer, Bruno, Minotti & DeEsch, P.C., P.O. Box 468, Easton, PA 18044-0468

Attorneys: James Pfeiffer, Esquire, Pfeiffer, Bruno, Minotti & DeEsch, P.C., P.O. Box 468, Easton, PA 18044-0468

BENZONI, ELLA S., dec'd.

Late of the Borough of Nazareth, Northampton County, PA

Executrix: Ellen B. Wallace, 3801 Rancee Street, Easton, PA 18045

Attorney: Stephen H. Palmer, Esquire, 5 Great Valley Parkway, Ste. 234, Malvern, PA 19355

BODAK, MICHAEL, dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executrix: Joan Vargo c/o Michael A. Santanasto, Esquire, 210 E. Broad Street, Bethlehem, PA 18018

Attorney: Michael A. Santanasto, Esquire, 210 E. Broad Street, Bethlehem, PA 18018

BONN, JAMES D., dec'd.

Late of the Borough of Nazareth, Northampton County, PA

Executrix: Christine C. Nocera c/o Kevin R. Grebas, Esquire, Colbert & Grebas, PC, 210 Montage Mountain Road, Suite A, Moosic, PA 18507

Attorneys: Kevin R. Grebas, Esquire, Colbert & Grebas, PC, 210 Montage Mountain Road, Suite A, Moosic, PA 18507

CURRY, RICHARD J., dec'd.

Late of the Borough of Hellertown, Northampton County, PA
Executrix: Maureen E. Valente c/o Bradford D. Wagner, Esquire, 662 Main Street, Hellertown, PA 18055-1726

Attorney: Bradford D. Wagner, Esquire, 662 Main Street, Hellertown, PA 18055-1726

ENGMARK, ANDREA M. a/k/a ANDREA MARIE ENGMARK, dec'd.

Late of Hellertown Borough, Northampton County, PA
Executrix: Debra Ann Raio c/o John B. Kalinkos, Esquire, Kalinkos Law Offices, P.O. Box 611, Quakertown, PA 18951
Attorney: John B. Kalinkos, Esquire, Kalinkos Law Offices, P.O. Box 611, Quakertown, PA 18951

FRABLE, HAROLD A. a/k/a HAROLD FRABLE, dec'd.

Late of Bethlehem Twp., Northampton County, PA
Executors: Lester L. Frable, 2024 Westgate Drive, Apt. C2, Bethlehem, PA 18017 and Gloria Conklin, 1103 Elm Street, Bethlehem, PA 18018
Attorney: William S. Ravenell, Esquire, 166 Allendale Road, King of Prussia, PA 19406

HALDEMAN, ESTHER M. a/k/a ESTHER MARY HALDEMAN, dec'd.

Late of Bethlehem Twp., Northampton County, PA
Executrix: Sylvia Sue Bergman c/o Alan G. Wandalowski,

Esquire, Anthiel Maslow & MacMinn, LLP, 131 W. State St., P.O. Box 50, Doylestown, PA 18901

Attorneys: Alan G. Wandalowski, Esquire, Anthiel Maslow & MacMinn, LLP, 131 W. State St., P.O. Box 50, Doylestown, PA 18901

HOFFNER, MARIAN E. a/k/a MARIAN ELIZABETH HOFFNER, dec'd.

Late of East Allen Township, Northampton County, PA
Executrix: Pamela Ann Hoffner, 5046 Hillside Road, Northampton, PA 18067

Attorney: Robert M. Maskrey, Jr., Esquire, 27 North Sixth Street, Stroudsburg, PA 18360

KALEYCIK, THOMAS, dec'd.

Late of the City of Bethlehem, Northampton County, PA
Executors: Thomas and Richard Kaleyck c/o Michael A. Santanasto, Esquire, 210 E. Broad Street, Bethlehem, PA 18018

Attorney: Michael A. Santanasto, Esquire, 210 E. Broad Street, Bethlehem, PA 18018

KANTOR, MARGARET AGNES a/k/a MARGARET A. KANTOR, dec'd.

Late of Bethlehem, Northampton County, PA
Executor: Francis J. L. Kantor c/o William W. Matz, Jr., Esquire, 211 W. Broad Street, Bethlehem, PA 18018-5517

Attorney: William W. Matz, Jr., Esquire, 211 W. Broad Street, Bethlehem, PA 18018-5517

LEE, DOROTHY a/k/a DOROTHY H. LEE, dec'd.

Late of the Township of Forks, Northampton County, PA

Administrator: Kenneth J. Lee
a/k/a Kenneth James Lee c/o
Robert C. Brown, Jr., Esquire,
Fox, Oldt & Brown, 940 West
Lafayette Street, Suite 100,
Easton, PA 18042-1412

Attorneys: Robert C. Brown, Jr.,
Esquire, Fox, Oldt & Brown, 940
West Lafayette Street, Suite 100,
Easton, PA 18042-1412

LEE, EDWARD C., dec'd.

Late of the Township of Forks,
Northampton County, PA

Administrator: Kenneth J. Lee
a/k/a Kenneth James Lee c/o
Robert C. Brown, Jr., Esquire,
Fox, Oldt & Brown, 940 West
Lafayette Street, Suite 100,
Easton, PA 18042-1412

Attorneys: Robert C. Brown, Jr.,
Esquire, Fox, Oldt & Brown, 940
West Lafayette Street, Suite 100,
Easton, PA 18042-1412

ORWIG, GLORIA M., dec'd.

Late of the Borough of Nazareth,
Northampton County, PA

Co-Executors: Darlene A. Klotz,
1 S. Farview Street, Nazareth, PA
18064, Raymond W. Orwig, 480
Jacobsburg Road, Nazareth, PA
18064 and Bruce D. Orwig, 260
Beil Avenue, Nazareth, PA 18064
Attorneys: James Pfeiffer,
Esquire, Pfeiffer, Bruno, Minotti
& DeSch, P.C., P.O. Box 468,
Easton, PA 18044-0468 and
Michael C. Deschler, Esquire,
Littner, Deschler & Littner, 512
North New Street, P.O. Box 1407,
Bethlehem, PA 18016-1407

RACCIATO, ANN a/k/a ANN V.

RACCIATO, dec'd.

Late of Pen Argyl, Northampton
County, PA

Executor: Peter J. Racciato c/o
Ralph A. Matergia, Esquire,

Matergia and Dunn, 919 Main
Street, Stroudsburg, PA 18360

Attorneys: Ralph A. Matergia,
Esquire, Matergia and Dunn,
919 Main Street, Stroudsburg,
PA 18360

REESE, ALBERT, dec'd.

Late of the City of Bethlehem,
Northampton County, PA

Executrix: Anne Reese c/o
Michael A. Santanasto, Esquire,
210 E. Broad Street, Bethlehem,
PA 18018

Attorney: Michael A. Santanasto,
Esquire, 210 E. Broad Street,
Bethlehem, PA 18018

SAYLOR, RICHARD A., dec'd.

Late of Easton, Northampton
County, PA

Executrix: Shirley Maslowski c/o
Barbara R. Renkert, Esquire,
2120 Northampton Street,
Easton, PA 18042

Attorney: Barbara R. Renkert,
Esquire, 2120 Northampton
Street, Easton, PA 18042

SHUMAN, DOROTHEA M., dec'd.

Late of the City of Bethlehem,
Northampton County, PA

Executor: Roger E. Bartholomew,
323 Courtdale Avenue,
Courtdale, PA 18704

Attorney: James J. Holzinger,
Esquire, 1216 Linden Street,
P.O. Box 1409, Bethlehem, PA
18016

**STAHLER, LEROY C. a/k/a
LEROY C. STAHLER, SR.,**
dec'd.

Late of Hellertown, Northampton
County, PA

Personal Representative: Alice K.
Hontz c/o Paul S. Frank,
Esquire, King Spry Herman
Freund & Faul LLC, One West
Broad Street, Suite 700,
Bethlehem, PA 18018

Attorneys: Paul S. Frank, Esquire, King Spry Herman Freund & Faul LLC, One West Broad Street, Suite 700, Bethlehem, PA 18018

STAPKINSKI, STELLA H. a/k/a STELLA H. STAPINSKI a/k/a STELLA STAPINSKI, dec'd.

Late of the Township of Bethlehem, Northampton County, PA

Executor: David J. Stapinski c/o Bradford D. Wagner, Esquire, 662 Main Street, Hellertown, PA 18055-1726

Attorney: Bradford D. Wagner, Esquire, 662 Main Street, Hellertown, PA 18055-1726

STIRNER, KARL, dec'd.

Late of the City of Easton, Northampton County, PA

Executrix: Noelle Stirner c/o Daniel E. Cohen, Attorney, Seidel, Cohen, Hof & Reid, L.L.C., 3101 Emrick Blvd., Suite 205, Bethlehem, PA 18020

Attorneys: Daniel E. Cohen, Attorney, Seidel, Cohen, Hof & Reid, L.L.C., 3101 Emrick Blvd., Suite 205, Bethlehem, PA 18020

THIERFELDER, VIRGINIA E., dec'd.

Late of Bethlehem, Northampton County, PA

Executrix: Anne L. Thierfelder c/o Noonan & Prokup, 526 Walnut St., Allentown, PA 18101
Attorneys: Noonan & Prokup, 526 Walnut St., Allentown, PA 18101

THIRD PUBLICATION

BUSSENIUS, GERALDINE J., dec'd.

Late of the Township of Upper Mount Bethel, Northampton County, PA

Executor: David J. Ceraul, 22 Market Street, P.O. Box 19, Bangor, PA 18013-0019

Attorney: David J. Ceraul, Esquire, 22 Market Street, P.O. Box 19, Bangor, PA 18013-0019

GATES, ELMER D., dec'd.

Late of Hanover Township, Northampton County, PA

Elmer D. Gates Revocable Trust dated 1/13/1999, as Amended, and the Elmer D. Gates and Betty S. Gates Joint Revocable Trust dated 1/13/1999, as Amended

Co-Trustees: Patti G. Smith and Jodi A. Key c/o Fitzpatrick, Lentz & Bubba, P.C., 4001 Schoolhouse Lane, P.O. Box 219, Center Valley, PA 18034-0219

Attorneys: Fitzpatrick, Lentz & Bubba, P.C., 4001 Schoolhouse Lane, P.O. Box 219, Center Valley, PA 18034-0219

HEISLER, DONALD G., dec'd.

Late of Pen Argyl, Northampton County, PA

Executor: Gregory L. Heisler c/o Joel M. Scheer, Esquire, Fishbone & Scheer, 940 West Lafayette Street, Easton, PA 18042

Attorneys: Joel M. Scheer, Esquire, Fishbone and Scheer, 940 West Lafayette Street, Easton, PA 18042

KINYON, CONSTANCE F., dec'd.

Late of Palmer Township, Northampton County, PA

Executor: Steven Kinyon, 3804 W. Greenwood Dr., Bethlehem, PA 18020

Attorney: Steven B. Molder, Esquire, 904 Lehigh Street, Easton, PA 18042

SCHEER, BARBARA I., dec'd.

Late of the Borough of Nazareth,
Northampton County, PA
Executor: Robert L. Irwine,
19506 Encino Bow, San Antonio,
TX 78259

Attorneys: Peters, Moritz, Peischl,
Zulick, Landes & Brienza, LLP,
1 South Main Street, Nazareth,
PA 18064

SMALTZ, FRANK M., JR., dec'd.

Late of Pen Argyl, Northampton
County, PA

Administratrix: Janine F. Smaltz
c/o Larry R. Roth, Esquire, The
Roth Law Firm, 123 North Fifth
Street, Allentown, PA 18102

Attorneys: Larry R. Roth,
Esquire, The Roth Law Firm, 123
North Fifth Street, Allentown, PA
18102

WOOLEVER, ELAINE, dec'd.

Late of Upper Mount Bethel
Township, Northampton County,
PA

Executrix: Jennifer Febbo c/o
April L. Cordts, Esquire, 391
Nazareth Pike, Bethlehem, PA
18020

Attorney: April L. Cordts,
Esquire, 391 Nazareth Pike,
Bethlehem, PA 18020

NOTICE OF INCORPORATION

NOTICE IS HEREBY GIVEN that
Articles of Incorporation have been
filed with the Department of State of
the Commonwealth of Pennsylvania
at Harrisburg, Pennsylvania, for the
purpose of obtaining a Certificate of
Incorporation pursuant to the provi-
sions of the Business Corporation
Law of the Commonwealth of Penn-
sylvania, approved December 21,
1988, P.L. 1444, as amended, by the
following corporation:

The name of the corporation is:

FAST LANE RECREATION, INC.

Fitzpatrick Lentz & Bubba, P.C.
4001 Schoolhouse Lane
P.O. Box 219
Center Valley, PA 18034-0219

Apr. 7

**LIMITED LIABILITY COMPANY
NOTICE**

NOTICE IS HEREBY GIVEN that
on March 15, 2016, Certificate of
Organization was filed in the Depart-
ment of State of the Commonwealth
of Pennsylvania for:

BDC PROPERTIES, LLC

in accordance with the provisions of
the Limited Liability Act of 1994.

JAMES L. BROUGHAL, ESQUIRE

BROUGHAL & DeVITO, L.L.P.

38 West Market Street
Bethlehem, PA 18018

Apr. 7

**NOTICE OF ARTICLES OF
AMENDMENT**

NOTICE IS HEREBY GIVEN that
MEVELE, INC., a Pennsylvania
business corporation, having its
registered office at 2177 Hannahs
Lane, Bethlehem, Pennsylvania, has
filed Articles of Amendment on March
7, 2016, with the Department of State
of the Commonwealth of Pennsylva-
nia, under the provisions of the
Business Corporation Law of 1988.
The nature and character of the
amendment is to increase the number
of authorized shares.

McFALL, LAYMAN & JORDAN, P.C.
134 Broadway
Bangor, PA 18013

Apr. 7

**COURT OF COMMON
PLEAS OF NORTHAMPTON
COUNTY, PENNSYLVANIA**

Northern Lehigh School District
vs.

Carol Jean Bentley

DOCKET NO. C48CV-2014-0554

Notice is given that the above was named as defendant in a civil action by plaintiff to recover 2012 real estate taxes for property located at 10 View Drive, Walnutport, PA, Tax Parcel No. J2 18 21A-5. A Writ of Scire Facias for \$1,783.91 was filed. You are notified to plead to the Writ on or before 20 days from the date of this publication or a judgment may be entered.

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by plaintiff. You may lose money, property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR

CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Lawyer Referral Service
P.O. Box 4733
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(610) 258-6333

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Norristown, PA 19404-0391
(866) 211-9466

Apr. 7, 14, 21

ATTORNEY

Civil Litigation defense firm is seeking a Workers' Compensation attorney for its Allentown office. 4-10 years' prior Experience. Admission to NJ and PA Bars required. Candidates should have strong interpersonal, organizational, and litigation skills. Competitive salary and benefits. Send resume and cover letter to: resume@tthlaw.com.

Apr. 7

**MARK DUARTE and MEAGAN DUARTE, h/w, Plaintiffs v.
VICTOR DUARTE, Defendant**

Motion for Partial Summary Judgment—Negligence—Breach of Duty of Care.

Plaintiff Mark Duarte (“Plaintiff”) and his father, Defendant Victor Duarte (“Defendant”), were moving a cast iron radiator up a flight of stairs. Defendant was pushing the radiator up the stairs, while Plaintiff was pulling it up the stairs. When they reached the top stair, Defendant, according to his deposition testimony, pushed too hard, causing the radiator to fall on Plaintiff’s foot. Plaintiff brought a negligence action against Defendant.

Plaintiff moved for partial summary judgment on the issue of liability only, arguing that Defendant’s deposition testimony that he pushed too hard indicated that Defendant had, as a matter of law, breached his duty of care to Plaintiff and was, therefore, liable for negligence. The Court found that Defendant’s admission that he pushed too hard did not establish, as a matter of law, that he was negligent, as a reasonable mind could find that his actions constituted the mere happening of an accident, rather than the breach of a duty of care. Therefore, the Court denied Plaintiff’s Motion.

In the Court of Common Pleas of Northampton County, Pennsylvania,
Civil Action—No. C-48-CV-2013-6689.

RICHARD L. ORLOSKI, ESQUIRE, for Plaintiffs.

JAMES J. DODD, ESQUIRE and PARASKEVOULA MAMOUNAS, ESQUIRE, for Defendant.

Order of the Court entered on April 22, 2015 by BELTRAMI, J.

ORDER

AND NOW, this 22nd day of April, 2015, “Plaintiffs’ Motion for Partial Summary Judgment on Liability Only,” filed on January 20, 2015, is hereby DENIED.

STATEMENT OF REASONS

On December 9, 2013, Plaintiffs, who are husband and wife, filed a Complaint against Defendant alleging negligence in Count One and loss of consortium in Count Two. In their Complaint, Plaintiffs allege that on September 25, 2012, Plaintiff Mark Duarte (“Plaintiff”) was helping his father, Defendant Victor Duarte (“Defendant”), “move a very heavy cast iron radiator up a flight of stairs.” (Compl. ¶3; Answer ¶3.) Defendant was pushing the radiator, while Plaintiff was pulling it up the stairs. (See Compl. ¶4; Answer ¶4.) The Complaint alleges that when they reached the last step, Defendant pushed “too hard” and that the radiator fell on Plaintiff, causing him to suffer severe injuries to his foot. (Compl. ¶¶5, 9.)

On April 3, 2014, Defendant filed an Answer with New Matter. On April 7, 2014, Plaintiffs filed a Reply to Defendant’s New Matter.

On January 20, 2015, Plaintiffs filed the instant Motion for Partial Summary Judgment. On February 13, 2015, Defendant filed an Answer to Plaintiffs' Motion. Briefs have been filed, and oral argument was heard on February 24, 2015.

Pennsylvania Rule of Civil Procedure 1035.2 establishes the standard of review for a motion for summary judgment as follows:

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report,

...

Pa. R.C.P. No. 1035.2. Summary judgment may only be granted when the record clearly shows that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Summers v. Certaineed Corporation*, 606 Pa. 294, 307, 997 A.2d 1152, 1159 (2010). The moving party bears the burden of proving that no genuine issue of material fact exists. *Barnish v. KWI Building Company*, 916 A.2d 642, 645 (Pa. Super. 2007). In deciding a motion for summary judgment, the record must be viewed in the light most favorable to the non-moving party, and any doubt as to the existence of a genuine issue of material fact must be resolved against the moving party. *Ario v. Ingram Micro, Inc.*, 600 Pa. 305, 315, 965 A.2d 1194, 1200 (2009). Even where the facts are agreed upon, summary judgment cannot be entered if the facts can support conflicting inferences. *Washington v. Baxter*; 553 Pa. 434, 447 n.10, 719 A.2d 733, 740 n.10 (1998).

The party opposing a motion for summary judgment may not rest upon the mere allegations or denials of the pleadings but must file a response within thirty days after service of the motion identifying

(1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or from a challenge to the credibility of one or more witnesses testifying in support of the motion, ...

Pa. R.C.P. No. 1035.3(a)(1). In deciding a motion for summary judgment, the "record" available for the court's examination includes the pleadings, discovery materials, affidavits, and expert reports. Pa. R.C.P. No. 1035.1.

In this case, Plaintiffs argue that, based upon Defendant's deposition testimony, the facts are undisputed and that Defendant's testimony establishes, as a matter of law, that he was negligent. More specifically, Plaintiffs direct the Court to the following testimony of Defendant:

Q. In the process of moving this radiator up on September 25th, 2012, was there an accident?

A. Yes.

Q. Okay. And what happened in the accident?

A. Well, I was pushing step by step. When we got to the last step, I pushed a little bit too hard to get the radiator up to the macadam, at that, the level ground.

Q. Okay.

A. And that's when [Plaintiff] fell back and the radiator fell on his foot.

Q. Okay. When you say you pushed the radiator too hard, did the, did the radiator get pushed over on top of him?

MS. MAMOUNAS: Object to the form.

You can answer.

A. Well, I was pushing upward on the radiator. It just happened. I just ...

BY MR. ORLOSKI:

Q. Okay. Were you pushing it up and in [Plaintiff]'s direction?

A. Yes.

Q. Okay. And tell us what happened to [Plaintiff]'s body when this occurred?

A. Oh, he was, he laid, he was laying down, he fell on his back.

Q. Okay.

A. And the radiator fell on his foot and leg, you know, part of the leg and foot.

...

Q. Okay. I want to go back to the time on the steps as this accident was happening. Is there anything that [Plaintiff] did to cause the radiator to fall onto his foot?

A. No.

Q. Okay. Is it true that the only reason the radiator fell onto his foot is because you accidentally pushed it too hard?

MS. MAMOUNAS: Objection to the form.

A. Yes.

(Def.'s Dep. 22:1-23:4, 40:20-41:5, Oct. 7, 2014.)

Plaintiffs argue that Defendant has admitted that he is solely responsible for the accident because he pushed the radiator too hard. Therefore, Plaintiffs argue, they are entitled to partial summary judgment on the issue of liability and that the trial should be limited to the issue of damages.

"Negligence is established by proving the following four elements: '(1) a duty or obligation recognized by law; (2) a breach of that duty; (3) a causal connection between the conduct and the resulting injury; and (4) actual damages.' Estate of Swift by Swift v. Northeastern Hosp., 456 Pa. Super. 330, 690 A.2d 719, 722 (1997)." *Grossman v. Barke*, 868 A.2d 561, 566 (Pa. Super. 2005).

Negligence is the absence of ordinary care that a reasonably prudent person would exercise in the same or similar circumstances. ... The mere occurrence of an accident does not establish negligent conduct. ... Rather, the plaintiff has the burden of establishing, by a preponderance of the evidence, that the defendant engaged in conduct that deviated from the general standard of care expected under the circumstances, and that this deviation proximately caused actual harm. ...

Martin v. Evans, 551 Pa. 496, 502, 711 A.2d 458, 461 (1998).

The existence of a duty of care owed by Defendant to Plaintiff is not at issue in this case, and it is undisputed that Plaintiff sustained an injury. If it is determined that Defendant breached his duty of care to Plaintiff, causation would not be at issue, although comparative negligence might preclude Defendant's liability for damages. *See* 42 Pa. C.S.A. §7102(a) (providing that when claimant's comparative negligence exceeds negligence of tortfeasor, claimant is barred from recovery). Rather, the issue in this case is the sufficiency of Plaintiffs' evidence to establish that there is no genuine issue of material fact regarding whether Defendant breached his duty of care to Plaintiff. Thus, Plaintiffs' Motion can only be granted if the facts to be determined from Defendant's deposition testimony are so clear that reasonable minds cannot differ in concluding that Defendant deviated from the care a reasonably prudent person would exercise in the same circumstances and that Defendant was, therefore, negligent. *See Rauch v. Mike-Mayer*, 783 A.2d 815, 821 (Pa. Super. 2001) ("[O]nly when the facts are so clear that reasonable minds cannot differ, may a trial court properly enter summary judgment.")

As noted above, the mere happening of an accident does not constitute negligence. As also noted above, even where the facts are undisputed, the Court cannot grant summary judgment if those facts can support conflicting inferences. Finally, as the Court has also noted, the record must be viewed in the light most favorable to Defendant. Viewing Defendant's testimony in this regard, there are material issues of fact as to what inferences are to be drawn and what conclusions are to be reached from his statement that he "pushed a little bit too hard." (Def.'s Dep. 22:6-7, Oct. 7, 2014.) In other words, reasonable minds can differ as to whether Defendant acted in a manner which fell below the standard of care for the circumstances or whether this was merely the happening of an accident. Accordingly, Plaintiffs are not entitled to partial summary judgment.

JED KAHLER, Plaintiff v. ALPHA PACKAGING, Defendant*Motion for Judgment on the Pleadings—Wage Payment and Collection Law—Vacation Policy.*

Plaintiff worked for Defendant for approximately three years. Plaintiff provided Defendant with two weeks' notice and resigned on June 2, 2014. Following his resignation, Plaintiff admitted that he was compensated for eighty-four vacation hours that he had earned in 2013. Plaintiff brought a claim pursuant to Pennsylvania's Wage Payment and Collection Law, alleging that he was entitled to compensation for additional earned vacation time.

Defendant's vacation policy provides that an employee of Plaintiff's tenure earns vacation time, up to a maximum of eighty-four hours, by working 1,900 hours in a given year, with that vacation time becoming available to the employee on January 1st of the following calendar year. As Plaintiff was not working for Defendant on January 1, 2015, any vacation time he had earned in 2014, which by the Court's calculation was none, was not available to Plaintiff at the time of his resignation. Thus, Plaintiff was not entitled to any additional compensation.

In the Court of Common Pleas of Northampton County, Pennsylvania,
Civil Action—No. C-48-CV-2014-8229.

DONALD P. RUSSO, ESQUIRE, for Plaintiff.

JEFFREY S. STEWART, ESQUIRE and JOHN J. BUCKLEY, III, ESQUIRE, for Defendant.

Order of the Court entered on April 24, 2015 by BELTRAMI, J.

OPINION

This matter is before the Court on Defendant's Motion for Judgment on the Pleadings, filed on January 14, 2015. Briefs have been filed, and oral argument was heard on February 24, 2015. The matter is ready for disposition.

Plaintiff commenced this action on August 29, 2014, by filing a Complaint which alleges the following undisputed facts. Plaintiff worked for Defendant for approximately three years. (Compl. ¶3; Answer ¶3.) On June 2, 2014, Plaintiff resigned from his position after providing Defendant with notice of his resignation on May 19, 2014. (Compl. ¶¶5-6; Answer ¶¶5-6.) While Plaintiff was employed with Defendant, Defendant maintained a vacation policy. (Compl. ¶8; Answer ¶8.) Paragraph eight of Plaintiff's Complaint states that a copy of the policy is attached to the Complaint as Exhibit "A," but there is nothing attached to the Complaint filed with the Clerk of Court. The policy is attached to the copy of the Complaint attached to Defendant's Motion for Judgment on the Pleadings. (Mot. for J. on the Pleadings Ex. A.)

According to the policy, "[d]uring an employee's second and future calendar years of employment, the employee will receive two (2) weeks of

vacation (84 or 80 hours) on January 1st upon working a minimum of 1900 hours in the preceding year.” (*Id.* at 1.) The policy states that the “established vacation year is the calendar year, January 1 through December 31 each year” and that “[e]mployees may not carry unused vacation into the next calendar year[.]” meaning that any vacation time received on January 1 must be used by December 31 of that year. (*Id.* at 1-2.) As Plaintiff was in his third year of employment at the time of his resignation, he was entitled to receive two weeks of vacation (84 or 80 hours) on January 1, 2014, to be used by December 31, 2014. (*Id.*) Plaintiff was compensated for eighty-four hours of vacation during 2014. (New Matter ¶¶28-31; Reply to New Matter ¶¶28-31.)

In his Complaint, which contains a single count pursuant to the Wage Payment and Collection Law, 43 P.S. §§260.1-260.45, Plaintiff claims that he is entitled to unpaid vacation time. At oral argument, Plaintiff clarified that he has not been paid for vacation time earned in 2014.

Defendant’s vacation policy states that employees “receive vacation time based [on] length of service and the number of hours worked *in the preceding year*.” (Mot. for J. on the Pleadings Ex. A at 1 (emphasis added).) The policy also states that “[e]mployees who resign and provide the company with two weeks’ notice will be paid for any earned and unused vacation *for that calendar year*.” (*Id.* at 2 (emphasis added).) By way of an illustrative hypothetical, Defendant’s policy operates as follows.

If Employee works 1,900 hours in Year A, Employee earns vacation time, which does not become available for use by Employee until January 1, Year B. If Employee resigns during Year B and complies with the provision of the policy regarding resignation, Employee is entitled to compensation for any vacation hours which became available for use on January 1, Year B, that Employee has not yet used or been compensated for. Even assuming, for the sake of argument, that Employee worked sufficient (1,900) hours from January 1, Year B, to June 2, Year B, to earn additional vacation time,¹ such vacation time would not become available to Employee until January 1, Year C. Thus, Employee would not be entitled to compensation for that vacation time if he resigned in Year B because employees who resign in a given year are only “paid for any earned and unused vacation for that calendar year.” (*Id.*)

Applying this hypothetical to Plaintiff’s claim reveals that Plaintiff has been compensated for all of the vacation time he was entitled to at the

¹ According to the Court’s calculation, Plaintiff could not have worked 1,900 hours from January 1, 2014 to June 2, 2014, which is 153 days or approximately twenty-two weeks, requiring him to have worked approximately eighty-six hours per week.

time of his resignation on June 2, 2014.² Accordingly, no genuine issue of material fact remains, and Defendant is entitled to judgment as a matter of law.

WHEREFORE, the Court enters the following:

ORDER

AND NOW, this 24th day of April, 2015, the “Motion of Defendant, Alpha Packaging, for Judgment on the Pleadings,” filed on January 14, 2015, is hereby GRANTED. Judgment is hereby entered in favor of Defendant and against Plaintiff on Plaintiff’s Complaint.

² In his Brief, Plaintiff argues that the pleadings provide some basis for finding that an implied-in-fact contract existed between Plaintiff and Defendant such that the parties had an arrangement regarding vacation compensation different in some respect from the standard arrangement spelled out in Defendant’s policy. For this to be the case, the pleadings would have to show some conduct on the part of Defendant indicating to Plaintiff that he would be treated differently than the policy contemplates. Such facts are absent from the pleadings. Instead, when “Plaintiff made a demand for his accrued but unpaid vacation time,” the authority on which he based his demand was the “company policy” itself, not any contrary representations of Defendant. (Compl. ¶10; Answer ¶10.)

NORTHAMPTON COUNTY REPORTER DIGEST—2016-4**Caption:** Frank S. Gasper v. Colleen A. Laubach**Term No.:** C-0048-CV-2014-7294**Keywords:** Child Custody; Relocation; Best Interests**Attorneys:** Linda Shay Gardner, Esquire for Plaintiff
Nancy Aaroe, Esquire for Defendant**Judge:** Craig A. Dally, J.**Date:** June 19, 2015**Description of Decision:**

Mother sought to relocate with the parties' minor son. After hearing, the Court, applying the statutory factors at 23 Pa. C.S.A. §5328 and 5337, determined that it was in the best interests of the child that the relocation be granted and the same was ordered. In making this determination, the Court found that the child was primarily bonded to and relied upon Mother, his relationship with Father could be sufficiently maintained, and given his young age, the relocation would not adversely affect his education, his community life or his overall stability.

Caption: Baron Chase v. Star Buick GMC**Term No.:** C-0048-CV-2015**Keywords:** Preliminary Objections; Demurrer; UTPCPL; Fraud; Pa. R.C.P. 1019(i); Punitive Damages; Attorneys' Fees; Arbitration; Certificate of Service**Attorneys:** Vivian I. Zumas, Esquire for Plaintiff
William M. Brennan, Esquire for Defendant**Judge:** Craig A. Dally, J.**Date:** June 10, 2015**Description of Decision:**

Plaintiff filed a notice of appeal from a decision of a District Court Judge followed by a Complaint setting forth claims against Defendant for fraud; violation of the Unfair Trade Practices and Consumer Protection Law, negligence, negligent misrepresentation, breach of implied warranty of fitness for a particular purpose and breach of express or implied warranty of merchantability in connection with allegations that Defendant induced Plaintiff to purchase a used vehicle and an additional warranty without disclosing the existence of serious defects in the vehicle, and that they later failed to honor the terms of the additional warranty. The matter came before the Court on Defendant's preliminary objections to the Complaint.

By the first of six objections, Defendant demurred to Plaintiff's fraud and UTPCPL claims on the grounds that they were insufficiently pled. Upon review of the Complaint, the Court overruled the demurrer upon a finding that the allegations of the pleading were legally sufficient to support both claims.

Defendant's second preliminary objection was filed under Pa. R.C.P. 1028(a)(2), alleging Plaintiff's failure to comply with Pa. R.C.P. 1019(i) requiring a pleader to attach a copy of any writing upon which a claim is based. Specifically, Defendant alleged Plaintiff's failure to attach a copy of the warranty allegedly breached by Defendant. Finding that certain claims were based on the warranty, and that Plaintiff had neither attached the warranty to the Complaint nor complied with the alternate provisions of Pa. R.C.P. 1019(i), the Court sustained the objection.

Defendant's third preliminary objection raised a challenge to Plaintiff's request for punitive damages. Punitive damages may only be awarded for outrageous conduct, which is demonstrated by willful, wanton or reckless conduct. Finding that the averments of the Complaint set forth allegations of reckless conduct, and that the pleading was not merely stated in the language of punitive damages, the Court overruled the objection.

Next, Defendant raised a motion to strike Plaintiff's claim for attorneys' fees from his breach of warranty claims. Noting Plaintiff's failure to respond to the preliminary objection or to set forth any statutory, contractual or other legal basis for such request, the Court sustained the demurrer.

The Court then addressed Defendant's preliminary objection in the form of a request that the matter be submitted to arbitration, which was sustained by agreement of the parties. Finally, the Court addressed Defendant's demurrer to the Complaint for the failure of Plaintiff's counsel to date the certificate of service, which the Court overruled in the absence of any legal authority for the same, and upon a finding that the certificate of service was attached to the time-stamped Complaint.

Caption: **Citimortgage, Inc. v. Bethlehem Area School District, Sandra K. Triantafelov and John R. Triantafelov**

Term No.: No. C-48-CV-2012-5607

Keywords: Motion for Summary Judgment; Redemption; Recording of Mortgages; Liens

Attorney(s): Michael P. Coughlin, Esquire and Jessica A. Kubisiak, Esquire for Plaintiff
William J. Fries, Esquire for Defendants Sandra K. Triantafelov and John R. Triantafelov

Date of Order: May 22, 2015

Judge: Anthony S. Beltrami, J.

Description of Decision:

Plaintiff Citimortgage, Inc. ("Citi") was the holder of a mortgage against property owned by Defendant Sandra K. Triantafelov. The mortgage was not recorded and could not be located. When Defendant Sandra K. Triantafelov failed to pay school taxes, her property was sold at a sheriff's sale, resulting in the divestiture of the mortgage lien from the property. Citi then filed a Petition to Redeem the property. Both Citi and the Triantafelov defendants moved for summary judgment.

The Court first found that "the owner of any property sold under a tax or municipal claim ... or any party whose lien ... has been discharged thereby ... may ... redeem the same." 53 P.S. §7293(a). The Court also found that "[n]o mortgage ... shall be a lien ... until such mortgage ... shall have been recorded." 21 P.S. §622. In light of the latter provision, it was clear that Citi's unrecorded mortgage was not a lien on the property when it was sold at the sheriff's sale. Thus, Citi was not entitled to redeem the property, and summary judgment was granted in favor of the Triantafelov defendants.

Caption: **Brenda Timpa v. Cynthia R. Hunter and Willard J. Hunter**

Term No.: No. C-48-CV-2014-3285

Keywords: Preliminary Objections; Discontinuance of Action

Attorney(s): Michael J. Vargo, Esquire for Plaintiff
Samuel P. Murray, Esquire for Defendant Willard J. Hunter

Date of Order: May 26, 2015

Judge: Anthony S. Beltrami, J.

Description of Decision:

Plaintiff filed a breach of contract and unjust enrichment action against Defendants Cynthia R. Hunter and Willard J. Hunter. Plaintiff filed a Second Amended Complaint, which only named Defendant Willard J. Hunter as a defendant, and a Praecipe to Amend Caption, asking the Prothonotary to amend the caption by removing Cynthia R. Hunter as a defendant. Defendant Willard J. Hunter filed Preliminary Objections, asserting that the Second Amended Complaint violated Pennsylvania Rule of Civil Procedure 229, which states that “a discontinuance may not be entered as to less than all defendants except upon the written consent of all parties or leave of court after notice to all parties.” Pa. R.C.P. No. 229(b). Because amending the caption to remove Cynthia R. Hunter as a defendant was the equivalent of a discontinuance as to less than all defendants, and because Plaintiff had not obtained the written consent of all parties or leave of court to do so, the Court struck the Second Amended Complaint.

Caption: **Gary Kutos v. Gary Strausser, Individually and in His Capacity As Owner and/or Principal of Strausser Enterprises, Inc. and Strausser Enterprises, Inc.**

Term No.: No. C-48-CV-2014-2602

Keywords: Preliminary Objections; Fair Labor Standards Act; Pennsylvania Wage Payment and Collection Law; Statute of Limitations

Attorney(s): Adam D. Meshkov, Esquire for Plaintiff
Patrick C. Campbell, Esquire for Defendant

Date of Order: February 24, 2015

Judge: Anthony S. Beltrami, J.

Description of Decision:

Plaintiff sought damages for overtime wages under the Fair Labor Standards Act (“FLSA”), 29 U.S.C.A. §§201-19. Defendants filed Preliminary Objections to Plaintiff’s Complaint, arguing that the Complaint failed to conform to law and was insufficiently specific because Plaintiff did not allege his regular rate of pay nor the specific workweeks containing the alleged overtime hours. Defendants also argued that any of Plaintiff’s claims which accrued more than two years prior to the filing of the Complaint were barred by the applicable statute of limitations.

The Court found that Plaintiff pleaded his regular rate of pay and the specific workweeks containing the alleged overtime hours. In addition, the Court found that none of Plaintiff’s claims could have accrued more than two years prior to the filing of the Complaint. Therefore, the Court overruled Defendants’ Preliminary Objections.

Caption: **David Lutz v. Gary Strausser, Individually and in His Capacity As Owner and/or Principal of Strausser Enterprises, Inc. and Strausser Enterprises, Inc.**

Term No.: No. C-48-CV-2014-2604

Keywords: Preliminary Objections; Fair Labor Standards Act; Pennsylvania Wage Payment and Collection Law; Statute of Limitations

Attorney(s): Adam D. Meshkov, Esquire for Plaintiff
Patrick C. Campbell, Esquire for Defendant

Date of Order: February 24, 2015

Judge: Anthony S. Beltrami, J.

Description of Decision:

Plaintiff sought damages for overtime wages under the Fair Labor Standards Act ("FLSA"), 29 U.S.C.A. §§201-19. Defendants filed Preliminary Objections to Plaintiff's Complaint, arguing that the Complaint failed to conform to law and was insufficiently specific because Plaintiff did not allege his regular rate of pay nor the specific workweeks containing the alleged overtime hours. Defendants also argued that any of Plaintiff's claims which accrued more than two years prior to the filing of the Complaint were barred by the applicable statute of limitations.

The Court found that Plaintiff was not required to plead his regular rate of pay nor the specific workweeks containing the alleged overtime hours because that information was either in Defendants' possession, in light of their duty to maintain records of such information under the FLSA, or was obtainable through discovery. As for the statute of limitations, the Court noted that willful violations of the FLSA are governed by a three-year statute of limitations. Because the three-year statute of limitations may govern this action, and because it was not clear from the face of the Complaint that any of Plaintiff's claims accrued more than three years prior to the filing of the Complaint, the Court overruled Defendants' Preliminary Objections.

Caption: Jeffrey R. Pierson, Individually and As the Executor of the Estate of Gloria P. Pierson, Deceased v. Ronold Karasek and Kevin Kelleher

Term No.: C-0048-CV-2015-1707

Keywords: Fraud; Preliminary Objections; Subject Matter Jurisdiction; Venue; Demurrer; Lack of Capacity to Sue; Misjoinder; Amendment

Attorneys: Jeffrey R. Pierson, Pro Se
Ronold Karasek, Esquire and Kevin Kelleher, Esquire, Pro Se

Judge: Craig A. Dally, J.

Date: August 17, 2015

Description of Decision:

Defendants filed preliminary objections to the pro se Plaintiff's Complaint. By the first of their preliminary objections, Defendants challenged the Court's subject matter jurisdiction on the basis of Plaintiff's pleading of violations of 42 U.S.C.A. § 1983, and the Racketeer and Influenced Corrupt Organizations Act. Upon a determination that the doctrine of federal preemption would not preclude such claims from being heard in state court, and that despite passing reference to violations under these statutes, Plaintiff's claim only raised a single fraud claim, the objection was overruled.

The Court then addressed an objection on the basis of improper venue, premised on Plaintiff's own assertion of federal venue because certain acts or omissions of the parties took place in the State of New York, and invoked federal law. However, upon Plaintiff's failure to develop any factual basis for these averments, the Court found that the action, which set forth a single fraud claim relative to a property located in Northampton County, was properly before this Court.

Finally, the Court addressed a demurrer to the Complaint, and finding the allegations contained therein insufficient to state a cause of action for fraud, or indeed, any cognizable cause of action, the demurrer was sustained and the Complaint was dismissed without consideration of the remaining preliminary objections. However, given that this was Plaintiff's first complaint in the matter, and that it is incumbent upon the Court to give a pleader the opportunity to amend, Plaintiff was granted such an opportunity.

Caption: Doris Roscioli v. April Marie Finley and Keith P. Hollowell

Term No.: No. C-48-CV-2015-913

Keywords: Attachment of Wages; Claim for Exemption

Attorney(s): Alan S. Battisti, Esquire for Plaintiff
Defendant April Marie Finley, Pro Se

Date of Order: August 13, 2015

Judge: Anthony S. Beltrami, J.

Description of Decision:

Plaintiff obtained a judgment in Magisterial District Court against Defendant April Marie Finley ("Finley") in a landlord/tenant action. After entering the judgment in this Court, Plaintiff, on June 25, 2015, filed a Praecipe for Notice of Intent to Attach Wages, which was served on Finley on June 26, 2015. On July 29, 2015, Finley filed a Claim for Exemption from Wage Attachment ("Claim"). The case then came before the Court by way of the Miscellaneous Hearing list.

The Court found that the following procedure applies in cases involving claims for exemption from wage attachment. If a defendant files a claim for exemption more than thirty days after being served with the Praecipe for Notice of Intent to Attach Wages but prior to the issuance of a writ of attachment, the prothonotary may not issue a writ of attachment but, instead, must forward the claim to the plaintiff, who then, if she "wishes to challenge the claim for exemption[,] shall file a motion requesting the court to direct the prothonotary to issue a writ for the attachment of wages." Pa. R.C.P. No. 3303(c). If such a motion is filed, the only issue before the Court is whether "the plaintiff is entitled to attach wages pursuant to Section 8127(a)(3.1) of the Judicial Code."

In this case, because Plaintiff did not file a motion challenging Finley's Claim, there was no issue ripe for the Court's determination.

Caption: Bank of New York Mellon v. Edward G. Nightingale

Term No.: C-48-CV-2014-5010

Keywords: Summary Judgment; Foreclosure; General Denials

Attorney(s): Jennifer Frechie, Esquire for Plaintiff
Edward G. Nightingale, Defendant, Pro Se

Date of Order: August 17, 2015

Judge: Paula A. Roscioli, J.

Description of Decision:

The Court granted summary judgment in favor of Plaintiff Bank of New York Mellon, where Defendant had admitted all of the material facts averred in the Complaint by making only general denials. Furthermore, Defendant waived his affirmative defenses.





PERIODICAL PUBLICATION

*** Dated Material. Do Not Delay. Please Deliver Before Monday, April 11, 2016**