

# Northampton County Reporter

(USPS 395-280)

VOL. LIX

EASTON, PA March 10, 2016

NO. 10

**William Coral and Rhea Coral, Plaintiffs v. Alexander Patullo, Defendant**

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### INSERT: Pink: 1. 2016 Bench Bar Conference

2. 2016 Calendar

3. "On Your Feet!"

4. NCBA/Miller Keystone Blood Center Blood Bank Program

Cream: 1. NCBA Foundation Planning Committee

2. BarBuddies

3. "Heroin Addiction and the Role of Problem Solving Courts"

4. Find us on: facebook

### **NOTICE TO THE BAR...**

Court Administration Notice – Rule to Show Cause why custody or visitation case should not be dismissed – See page 13.

\* \* \* \* \*

#### ***Save the Dates***

2016 Bench Bar Conference

October 6-8, 2016

Hyatt Regency, Chesapeake Bay Golf Resort, Spa and Marina

Cambridge, Maryland

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

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*Northampton County Reporter*  
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Deborah J. Flanagan .....Attorney Referral

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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.

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Edward P. Shaughnessy, Esquire  
Editor

### **NOTICE TO NCBA MEMBERS – BAR NEWS**

#### **2016 Committees**

Committee Preference Forms were mailed to members in December. Please complete and return your form to the NCBA Office. Committees are forming and will be scheduling committee meetings soon. If we do not receive the 2016 form you will not be included on the committee.

#### **Save the Dates**

**“On Your Feet!”** – Broadway in NY  
Saturday, May 7, 2016  
Registration form inside.

#### **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

A man must be big enough to admit his mistakes, smart enough to profit from them, and strong enough to correct them. ~ John C. Maxwell

**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****ADAMS, FRANK a/k/a FRANK W.**

**ADAMS**, dec'd.

Late of the Township of Bethlehem, Northampton County, PA

Executrix: Francine Kovacs c/o Theresa Hogan, Esquire, Attorney-at-Law, 340 Spring Garden Street, Easton, PA 18042  
Attorney: Theresa Hogan, Esquire, Attorney-at-Law, 340 Spring Garden Street, Easton, PA 18042

**BLUM, ROBERT C.**, dec'd.

Late of the Township of Hanover, Northampton County, PA

Co-Executors: Marsha C. Kashner and Michael H. Kashner c/o Richard J. Haber, Esquire, 150 West Macada Road, Bethlehem, PA 18017  
Attorney: Richard J. Haber, Esquire, 150 West Macada Road, Bethlehem, PA 18017

**BOOK, HELEN JANE a/k/a HELEN J. BOOK a/k/a H. JANE BOOK a/k/a JANE BOOK**, dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executrix: JoAnne B. Turcotte c/o Edward H. Butz, Esquire, Lesavoy Butz & Seitz LLC, 7535 Windsor Drive, Suite 200, Allentown, PA 18195

Attorneys: Edward H. Butz, Esquire, Lesavoy Butz & Seitz LLC, 7535 Windsor Drive, Suite 200, Allentown, PA 18195

**CASCIANO, PASQUALE**, dec'd.

Late of the Borough of Bangor, Northampton County, PA

Executor: Vito Trigiani, 304 Martino Avenue, Roseto, PA 18013

Attorneys: Ronold J. Karasek, Esquire, Karasek Law Offices, LLC, 641 Market Street, Bangor, PA 18013

**CURRAN, HELEN E.**, dec'd.

Late of the Township of Bethlehem, Northampton County, PA

Executrix: Joan A. Kohut c/o Richard P. Kovacs, Esquire, Noel, Kovacs & McGuire, P.C., 2505 Newburg Road, Easton, PA 18045-1963

Attorneys: Richard P. Kovacs, Esquire, Noel, Kovacs & McGuire, P.C., 2505 Newburg Road, Easton, PA 18045-1963

**DEVEREAUX, CHARLES W., JR.**, dec'd.

Late of Easton, Northampton County, PA

Personal Representative: Jo-Ann Devereaux

Attorneys: Avery E. Smith, Esquire, King Spry Herman

Freund & Faul LLC, One West Broad Street, Suite 700, Bethlehem, PA 18018

**FLAHERTY, JEANNE E.,** dec'd.

Late of Bethlehem, Northampton County, PA

Executrix: Gayle F. Deck, 6703 Flint Hill Road, New Tripoli, PA 18066

Attorneys: Charles W. Stopp, Esquire, Steckel and Stopp, 125 S. Walnut Street, Slatington, PA 18080

**HART, SEAN MICHAEL,** dec'd.

Late of the Township of Lower Saucon, Northampton County, PA

Administratrix: Sherry A. Doyle c/o Vaughn A. Terrinoni, Esquire, 3976 Township Line Road, Bethlehem, PA 18020

Attorney: Vaughn A. Terrinoni, Esquire, 3976 Township Line Road, Bethlehem, PA 18020

**HOGAN, PATRICIA A.,** dec'd.

Late of the City of Bethlehem, Northampton County, PA

Administratrix: Jennifer Ann Hogan c/o Lucas J. Repka, Esquire, 108 East Center Street, Nazareth, PA 18064

Attorney: Lucas J. Repka, Esquire, 108 East Center Street, Nazareth, PA 18064

**HOWER, RACHEL R. a/k/a RACHEL HOWER,** dec'd.

Late of Allen Township, Northampton, Northampton County, PA

Executor: Ned P. Hower c/o Eric R. Strauss, Esquire, Worth, Magee & Fisher, P.C., 2610 Walbert Avenue, Allentown, PA 18104

Attorneys: Eric R. Strauss, Esquire, Worth, Magee & Fisher, P.C., 2610 Walbert Avenue, Allentown, PA 18104

**KUNSMAN, CHARLES R., SR. a/k/a CHARLES KUNSMAN, SR. a/k/a CHARLES R. KUNSMAN,** dec'd.

Late of Hanover Township, Northampton County, PA

Executrix: Sherry L. Flanagan, 1381 Puggy Lane, Bethlehem, PA 18015

**LAMPROS, GEORGE,** dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executrix: Mary Lampros

Attorney: Nicholas M. Zumas, Esquire, 5540 Memorial Road, Allentown, PA 18104

**MEIXELL, ROBERT W.,** dec'd.

Late of the Township of Hanover, Northampton County, PA

Executrix: Stephanie Kay Crabtree, 420 W. Shadow Lane, State College, PA 16803

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

**NEWHARDT, PAUL E.,** dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executrices: Maryann Gehringer and Jill Garger c/o Robert A. Pinel, Esquire, Law Offices of Robert A. Pinel, LLC, 1502 Center Street, Suite 201, Bethlehem, PA 18018

Attorneys: Robert A. Pinel, Esquire, Law Offices of Robert A. Pinel, LLC, 1502 Center Street, Suite 201, Bethlehem, PA 18018

**PATTERSON, BRUCE D. a/k/a BRUCE PATTERSON,** dec'd.

Late of the Township of Lehigh, Northampton County, PA

Administrator: Dwight Michael Patterson c/o Robert H. Littner, Esquire, Littner, Deschler &

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

**YOO, JESSICA F.,** dec'd.

Late of the Township of Bushkill,  
Northampton County, PA  
Administrator: Keaton Yoo 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

**YURISH, JOSEPH J.,** dec'd.

Late of the Borough of Northamp-  
ton, Northampton County, PA  
Executrix: Sara Jane Krex c/o  
Karl F. Longenbach, Esquire,  
425 West Broad St., P.O. Box  
1920, Bethlehem, PA 18016-  
1920  
Attorney: Karl F. Longenbach,  
Esquire, 425 West Broad St.,  
P.O. Box 1920, Bethlehem, PA  
18016-1920

**SECOND PUBLICATION**

**BORLODAN, JOHN F. a/k/a**

**JOHN F. BORLODAN, JR.,**  
dec'd.

Late of the City of Bethlehem,  
Northampton County, PA  
Executor: Michael G. Borlodan  
c/o April L. Cordts, Esquire, 391  
Nazareth Pike, Bethlehem, PA  
18020  
Attorney: April L. Cordts, Esquire,  
391 Nazareth Pike, Bethlehem,  
PA 18020

**ELMO, JENNIE V.,** dec'd.

Late of Williams Township,  
Northampton County, PA

Executrix: Staccia M. Pugliese  
c/o Ralph J. Bellafatto, Esquire,  
4480 William Penn Highway,  
Easton, PA 18045

Attorney: Ralph J. Bellafatto,  
Esquire, 4480 William Penn  
Highway, Easton, PA 18045

**FARLEIGH, MARTHA a/k/a**  
**MARTHA A. FARLEIGH,** dec'd.

Late of the Borough of Pen Argyl,  
Northampton County, PA  
Executrix: Judy Rotzell c/o  
David J. Ceraul, Esquire, 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

**KOSTELNICK, JOSEPH J. a/k/a**  
**JOSEPH J. KOSTELNICK, JR.,**  
dec'd.

Late of Bethlehem, Northampton  
County, PA

Executrix: Maryanne West c/o  
Donald H. Lipson, Esquire,  
Norris, McLaughlin & Marcus,  
P.A., 515 W. Hamilton St., Suite  
502, Allentown, PA 18101

Attorneys: Donald H. Lipson,  
Esquire, Norris, McLaughlin &  
Marcus, P.A., 515 W. Hamilton  
St., Suite 502, Allentown, PA  
18101

**MUGAVERO, ROSALYN A.,** dec'd.

Late of Roseto, Northampton  
County, PA

Executrix: Lisa Colgan, 32 Miele  
Pl., Summit, NJ 07901

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

**STARK, MARTHA ANN a/k/a**  
**MARTHA A. STARK-BOSWELL**  
**a/k/a MARTHA STARK-**  
**BOSWELL,** dec'd.

Late of Bethlehem, Northampton  
County, PA

Executor: William Weiss c/o Sally L. Schoffstall, Esquire, Schoffstall Elder Law, 2987 Corporate Court, Suite 200, Orefield, PA 18069

Attorneys: Sally L. Schoffstall, Esquire, Schoffstall Elder Law, 2987 Corporate Court, Suite 200, Orefield, PA 18069

### **THIRD PUBLICATION**

#### **ABAHAZY, PAUL J., dec'd.**

Late of Hellertown, Northampton County, PA

Trustee: Paul Abahazy, 1880 North Delaware Dr., Easton, PA 18040

Attorney: William S. Ravenell, Esquire, 166 Allendale Road, King of Prussia, PA 19406

#### **BLUM, CHARLES J., dec'd.**

Late of Moore Township, Northampton County, PA

Administrator: Harry Newman, 1834 Pennsylvania Avenue, Allentown, PA 18109

Attorney: Harry Newman, Esquire, 1834 Pennsylvania Avenue, Allentown, PA 18109

#### **BOBINTA, MARY H., dec'd.**

Late of 3047 Eisenhower Drive, Northampton, Northampton County, PA

Personal Representative: Peter J. Bobinta c/o Michael J. Piosa, Esquire, 33 South 7th Street, Allentown, PA 18101

Attorney: Michael J. Piosa, Esquire, 33 S. 7th Street, Allentown, PA 18101

#### **CHOMA, HELEN, dec'd.**

Late of Bethlehem, Northampton County, PA

Executrices: Carol E. Berger and Natalie C. Plantier c/o Nicholas E. Englessen, Esquire, 740 Main Street, Bethlehem, PA 18018

Attorney: Nicholas E. Englessen, Esquire, 740 Main Street, Bethlehem, PA 18018

#### **DACUNZA, CAROLYN M. a/k/a CAROLYN DACUNZA, dec'd.**

Late of the Township of Bethehem, Northampton County, PA

Administrator: Joseph Dacunza c/o Littner, Deschler & Littner, 512 North New Street, Bethlehem, PA 18018

Attorneys: Littner, Deschler & Littner, 512 North New Street, Bethlehem, PA 18018

#### **GUZZO, MARGARET E. a/k/a MICHELINA GUZZO, dec'd.**

Late of the City of Bethlehem, Northampton County, PA

Executor: Richard Norris c/o Robert H. Jacobs, Esquire, 400 Northampton St., Suite 408, Easton, PA 18042-3546

Attorney: Robert H. Jacobs, Esquire, 400 Northampton St., Suite 408, Easton, PA 18042-3546

#### **HARDING, BARBARA V., dec'd.**

Late of the Borough of Pen Argyl, Northampton County, PA

Co-Executors: Dana L. Apgar and Valerie L. Viglione, 406 East Laurel Avenue, Pen Argyl, PA 18072

#### **LEYKO, ROBERT, dec'd.**

Late of Easton, Northampton County, PA

Executrix: Shirley Trinchere c/o Richard H. Yetter, III, Esquire, 4480 William Penn Highway, Easton, PA 18045

Attorney: Richard H. Yetter, III, Esquire, 4480 William Penn Highway, Easton, PA 18045

#### **MALONEY, THOMAS J., dec'd.**

Late of Bethlehem, Northampton County, PA



Executors: Thomas K. Maloney and Denise M. Force, 901 West Lehigh Street, P.O. Box 1279, Bethlehem, PA 18016-1279

**MORRIS, GERTRUDE**, dec'd.

Late of the Borough of Northampton, Northampton County, PA  
Executrix: Patricia Morris c/o Harry Newman, Esquire, 1834 Pennsylvania Avenue, Allentown, PA 18109

Attorney: Harry Newman, Esquire, 1834 Pennsylvania Avenue, Allentown, PA 18109

**PATTERSON, MARIE A.**, dec'd.

Late of the Borough of Wilson, Northampton County, PA

Executors: Steven J. Parkansky, Jr., 1015 Cornwallis Drive, Easton, PA 18040 and David C. Parkansky, 4075 Allen Street, Bethlehem, PA 18020

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

**ROGERS, SHIRLEY K. a/k/a**

**SHIRLEY M. ROGERS a/k/a**

**SHIRLEY M. KUEBLER**, dec'd.

Late of the City of Easton, Northampton County, PA

Co-Executrices: Lynn M. Rogers, 535 W. Lincoln Street, Easton, PA 18042 and Lisa Rogers, P.O. Box 730, Blakeslee, PA 18610

Attorney: Beth A. Knickerbocker, Esquire, P.O. Box 1358, Easton, PA 18044

**SAUERZOPF, ROBERT**, dec'd.

Late of Nazareth, Northampton County, PA

Administratrix: Audrey Sauerzopf c/o David M. Roth, Esquire, The Roth Law Firm, 123 North Fifth Street, Allentown, PA 18102

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

**SCHAFER, EVE S. a/k/a EVE STRUSS SCHAFER**, dec'd.

Late of 3376 S. 2nd Street, Whitehall, Lehigh County, PA  
Co-Executors: Richard P. Schaffer, Jr., 4955 Meadowview Drive, Macungie, PA 17040 and Stephen H. Schaffer, 3376 S. 2nd Street, Whitehall, PA 18052

Attorneys: David B. Shulman, Esquire, Shulman & Shabbick, 1935 Center Street, Northampton, PA 18067

**SHOOK, JOAN R.**, dec'd.

Late of the Township of Bethlehem, Northampton County, PA

Co-Executrices: Constance J. Donchez and Susan E. Shook 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

**WEISS, CHRISTINE S. a/k/a CHRISTINE WEISS**, dec'd.

Late of the Borough of Nazareth, Northampton County, PA

Executrix: Carol S. Keller c/o Alfred S. Pierce, Esquire, Pierce & Steirer, LLC, 124 Belvidere Street, Nazareth, PA 18064

Attorneys: Alfred S. Pierce, Esquire, Pierce & Steirer, LLC, 124 Belvidere Street, Nazareth, PA 18064

**YOUNG, GEORGE R., SR.**, dec'd.

Late of Catasauqua, Northampton County, PA

Administratrix: Alma M. Young c/o Robert B. Roth, Esquire, The



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

---

**NOTICE OF INCORPORATION**

NOTICE IS HEREBY GIVEN that Articles of Incorporation—for Profit have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purposes of obtaining a Certificate of Incorporation of a proposed business corporation to be organized under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, as amended.

The name of the corporation is:

**C&M CAMPING  
ENTERPRISE, INC.**

The Articles of Incorporation were filed on February 10, 2016.

HOLZINGER, HARAK &  
SCOMILLIO

1216 Linden Street  
P.O. Box 1409  
Bethlehem, PA 18016

Mar. 10

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**FICTITIOUS NAME  
REGISTRATION NOTICE**

NOTICE IS HEREBY GIVEN that an Application for Registration of Fictitious Name was filed in the Department of State of the Commonwealth of Pennsylvania on December 1, 2015 for:

**BOGGY BOTTOM FARM**

located at: 301 Gap View Ln., Mount Bethel, PA 18343. The names and address of the individuals interested in the business are Lynne Thomas Nelson and Donald Jay Nelson, 301 Gap View Ln., Mount Bethel, PA 18343. This was filed in accordance with 54 Pa. C.S. 311.

Mar. 10

**CORPORATE FICTITIOUS NAME  
REGISTRATION NOTICE**

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Act 295 of 1982, as amended, of intention to file, or the filing of, in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, a certificate for the conduct of a business in Pennsylvania, under the assumed or fictitious name, style or designation of:

**HERITAGE FIREARMS, INC.**

with its principal place of business at: 70 Hilton Street, Easton, Pennsylvania 18042.

The name and address of the entity owning or interested in said business is: AB, Inc., 70 Hilton Street, Easton, Pennsylvania 18042.

Mar. 10

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**LIMITED LIABILITY COMPANY  
NOTICES**

NOTICE IS HEREBY GIVEN that a Certificate of Organization—Domestic Limited Liability Company was filed with the PA Dept. of State at Harrisburg, PA, for the purpose of creating a Limited Liability Company under the Limited Liability Company Law of 1994, P.L. 703, No. 106, under the name of:

The name of the LLC is:

**ACSELLERATE  
CONSULTING, LLC**

The Certificate of Organization was filed on February 2, 2016.

THEODORE R. LEWIS, ESQUIRE  
LEWIS & WALTERS

46 S. Fourth Street  
Easton, PA 18042

Mar. 10

NOTICE IS HEREBY GIVEN that a Certificate of Organization for a Domestic Limited Liability Company has been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purposes of

obtaining a Certificate of Organization of a proposed domestic limited liability company to be organized under the provisions of the Pennsylvania Limited Liability Company Law of 1994, 15 Pa. C.S. §8901 et seq., and any successor statute, as amended from time to time.

The name of the limited liability company is:

**ORWIG PROPERTY  
MANAGEMENT 21  
BELVIDERE STREET LLC**

Alfred S. Pierce, Esquire  
Pierce & Steirer, LLC  
124 Belvidere Street  
Nazareth, PA 18064

Mar. 10

**IN THE NORTHAMPTON COUNTY  
COURT OF COMMON PLEAS  
ORPHANS' COURT DIVISION**

The following Executors, Administrators, Guardians & Trustees have filed Accounts in the Office of the Orphans' Court:

ESTATE; Accountant  
JOHN VINCENT LUNSFORD;  
Robert P. Lunsford, Administrator  
CHARLES MACSEK; Matthew P. Macsek, Executor

**AUDIT NOTICE**

All parties interested are notified that an audit list will be made up of all Accounts and the said list will be called for audit at the Northampton County Government Center, Easton, PA on: FRIDAY, MARCH 18, 2016 AT 9:00 A.M. IN COURTROOM #1.

Gina X. Gibbs  
Clerk of Orphans' Court  
Mar. 3, 10

**IN THE COURT OF COMMON  
PLEAS OF NORTHAMPTON  
COUNTY, PENNSYLVANIA  
CIVIL ACTION—LAW**

IN RE: Nicholas Thomas Negrete,  
a minor, by and through his  
parent and natural guardian,  
Carolyn M. Yulfo

**FILE NO. C0048CV2016-1755**

**CHANGE OF NAME NOTICE**

NOTICE IS HEREBY GIVEN that on March 2, 2016, the Petition of Nicholas Thomas Negrete, a minor, by and through his parent and natural guardian, Carolyn M. Yulfo, was filed in the above-named Court praying for a Decree to change his name to Nicholas Aidan Yulfo.

The Court has fixed April 7, 2016, at 9:00 a.m. in Courtroom #4 as the time and place for the hearing of said Petition, when and where all persons interested may appear and show cause, if any they have, why the prayer of said Petition should not be granted.

P. CHRISTOPHER COTTURO,  
ESQUIRE  
I.D. #59860  
Attorney for Petitioner  
Mar. 10

**NOTICE FOR CHANGE OF NAME**

NOTICE IS HEREBY GIVEN that on March 4, 2016, the Petition of Jorge Luis Santiago, Joanna Marta Santiago, h/w, individually and o/b/o of Pamela Jessica Santiago, a minor, was filed in the Northampton County Court of Common Pleas at No. C0048CV2016-1824, seeking to change the names of Petitioners from Jorge Luis Santiago to Jay Szabuniewicz, Joanna Marta Santiago to Asha Szabuniewicz and Pamela Jessica Santiago, a minor, to Pamela Jessica Szabuniewicz. The Court has fixed Friday, May 13, 2016 at 9:00 a.m., in Courtroom #4 at the Northampton County Courthouse as the date for hearing of the Petition. All persons interested in the proposed change of names may appear and show cause, if any they have, why the prayer of the Petitioners should not be granted.

ALEXANDER J. KARAM, JR.,  
ESQUIRE  
ALEXANDER J. KARAM, JR., P.C.  
Attorneys for Petitioners  
675 Walnut Street  
Easton, PA 18042

Mar. 10

**NOTICE FOR CHANGE OF NAME**

NOTICE IS HEREBY GIVEN that on February 12, 2016, the Petition of Gary Dean was filed in Northampton County Court of Common Pleas at No. C-48CV2016 001181, seeking to change the name(s) of minor child(ren) from Landon Parker Schratt to Landon Parker Dean. The court has fixed Tuesday, April 12, 2016 at 9:00 a.m., in courtroom #4 at Northampton County Courthouse as the date for hearing of the Petition. All persons interested in the proposed change of name may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

Mar. 10

**IN THE COURT OF COMMON  
PLEAS OF NORTHAMPTON  
COUNTY, PENNSYLVANIA  
CIVIL ACTION—LAW**

NOTICE OF ACTION IN  
MORTGAGE FORECLOSURE  
HSBC BANK USA, N.A., AS  
INDENTURE TRUSTEE FOR THE  
REGISTERED NOTEHOLDERS  
RENAISSANCE HOME EQUITY  
LOAN TRUST 2005-3,  
RENAISSANCE HOME EQUITY  
LOAN ASSET-BACKED NOTES,  
SERIES 2005-3

Plaintiff

vs.

SHAWN BARRY,  
KAREN BARRY, Individually and in  
her capacity as Heir of KENNETH E.  
SANTEE, SR., Deceased,  
KENNETH E. SANTEE, JR., in his  
capacity as Heir of KENNETH E.  
SANTEE, SR., Deceased,  
UNKNOWN HEIRS, SUCCESSORS,  
ASSIGNS AND ALL PERSONS,  
FIRMS OR ASSOCIATIONS  
CLAIMING RIGHT, TITLE OR  
INTEREST FROM OR UNDER  
KENNETH E. SANTEE,  
SR., DECEASED,

UNKNOWN HEIRS, SUCCESSORS,  
ASSIGNS AND ALL PERSONS,  
FIRMS OR ASSOCIATIONS  
CLAIMING RIGHT, TITLE OR  
INTEREST FROM OR UNDER  
MILDRED SANTEE, DECEASED

Defendants

**NO. C-48-CV-2015-10010****NOTICE**

To: UNKNOWN HEIRS, SUCCESSIONS, ASSIGNS AND ALL PERSONS, FIRMS OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER KENNETH E. SANTEE, SR., DECEASED and UNKNOWN HEIRS, SUCCESSORS, ASSIGNS AND ALL PERSONS, FIRMS OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER MILDRED SANTEE, DECEASED

You are hereby notified that on October 23, 2015, Plaintiff, HSBC BANK USA, N.A., AS INDENTURE TRUSTEE FOR THE REGISTERED NOTEHOLDERS RENAISSANCE HOME EQUITY LOAN TRUST 2005-3, RENAISSANCE HOME EQUITY LOAN ASSET-BACKED NOTES, SERIES 2005-3, filed a Mortgage Foreclosure Complaint endorsed with a Notice to Defend, against you in the Court of Common Pleas of NORTHAMPTON County, Pennsylvania, docketed to No. C-48-CV-2015-10010. Wherein Plaintiff seeks to foreclose on the mortgage secured on your property located at 5580 SHAWNEE DRIVE, BETHLEHEM, PA 18017-9273 whereupon your property would be sold by the Sheriff of NORTHAMPTON County.

You are hereby notified to plead to the above referenced Complaint on or before 20 days from the date of this publication or a Judgment will be entered against you.

**NOTICE**

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 the plaintiff. You may lose money or property or other rights important to you.

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Mar. 10

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Mar. 10, 17

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IN THE COURT OF COMMON PLEAS OF  
NORTHAMPTON COUNTY, PENNSYLVANIA  
CIVIL ACTION—LAW

**RULE TO SHOW CAUSE  
WHY CUSTODY OR VISITATION CASE  
SHOULD NOT BE DISMISSED**

**AND NOW**, this 27th day of January, 2016, a rule is hereby issued on the parties in the below listed cases to show cause why the custody or visitation case should not be dismissed because neither party has listed the case for trial within 180 days of the filing of the complaint. Pa.R.C.P. 1915.4 (b). Said rule is returnable on Friday, April 15, 2016, at 11:00 a.m., in Courtroom #1.

Any questions regarding this Rule should be addressed to the Court Administrator's Office prior to the rule returnable date.

**BY THE COURT:**

**Stephen G. Baratta, President Judge**

<b>Angel Perez v Jennifer Perez</b>	<b>2012-4538</b>
<b>Michael Affa v Sharlotte Affa</b>	<b>2012-7253</b>
<b>Heather Becker v David Tucker</b>	<b>2012-9703</b>
<b>Erika Mullin v Christopher Mullin</b>	<b>2013-7983</b>
<b>Jason Viegas v Elizabeth Strohl</b>	<b>2013-11395</b>
<b>Christopher Wirkus v Susanna Dallis Wirkus</b>	<b>2014-249</b>
<b>Melody Johnson v William Johnson</b>	<b>2014-516</b>
<b>Lisa McIntyre v Daniel McIntyre</b>	<b>2014-641</b>
<b>Nichole Deater v Emmanuel Grisby</b>	<b>2014-1682</b>
<b>Wayne Gayle v Dawn Stocker</b>	<b>2014-1830</b>
<b>Harley Tordonato v Thoa Nguyen</b>	<b>2014-1960</b>
<b>Carol Ehrie v William Burtkette</b>	<b>2014-2006</b>
<b>Daniel Magliane v Tiffany Magliane</b>	<b>2014-2207</b>
<b>Lori Coon v Glenn Coon</b>	<b>2014-2393</b>
<b>Kelly Church v George Albus</b>	<b>2014-2424</b>
<b>Zoila Bonilla-Paul v Kurt Paul</b>	<b>2014-3397</b>
<b>Kelly Fenstermaker v Daniel Fenstermaker</b>	<b>2014-7703</b>
<b>Christine Vandenburg v Greg Webb</b>	<b>2014-4456</b>
<b>Norman Jones v Nicolette Stark</b>	<b>2014-5002</b>

<b>Jennifer Cirillo v Christopher Cirillo</b>	<b>2014-5449</b>
<b>Jose Guzman v Heidy Murillo</b>	<b>2014-5555</b>
<b>Christopher Rivera v Jazmin Vidal</b>	<b>2014-5777</b>
<b>Melissa Muzac v Jose Dominguez</b>	<b>2014-5927</b>
<b>Theodore Howell v Barbara Howell</b>	<b>2014-5928</b>
<b>Joseph Dlugos v Donna Dlugos</b>	<b>2014-6123</b>
<b>Staci Sabetti-Caiazzo v Ralph Caiazzo</b>	<b>2014-6185</b>
<b>Kasey Moyer v Justin Moyer</b>	<b>2014-6304</b>
<b>Annemarie Dralus v Michael McMahon</b>	<b>2014-6713</b>
<b>Anthony DeSessa v Mayra Chitic</b>	<b>2014-7215</b>
<b>Jerome Houser v Chantelle Rodriguez</b>	<b>2014-7293</b>
<b>Isaac Mahaffey v Bettina Mahaffey</b>	<b>2014-7705</b>
<b>Lee Ann Greenawalt v Aaron Greenawalt</b>	<b>2014-8124</b>
<b>Colleen Quinn v Aaron Winskill</b>	<b>2014-4049</b>

Mar. 10, 17

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Mar. 10, 17

**ALL SUBMISSIONS SHOULD BE SENT DIRECTLY TO: THE HONORABLE ROBERT L. STEINBERG, LEHIGH COUNTY COURTHOUSE, CHAMBERS 4-A, 455 HAMILTON STREET, ALLENTOWN, PA 18101.**

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The law clerk candidate should be well-organized, detail-oriented, and a self-starter. Must be able to work well on his/her own. Writing and citation experience is highly valued.

Mar. 10, 17

**WILLIAM CORAL and RHEA CORAL, Plaintiffs v.  
ALEXANDER PATULLO, Defendant**

*Preliminary Objections—Implied Warranty of Habitability—Gist of the Action Doctrine—Unfair Trade Practices and Consumer Protection Law—Attorney’s Fees.*

Plaintiffs purchased from Defendant a parcel of real estate containing a house built by Defendant. The house was marketed to Plaintiffs as “new construction.” Pursuant to the parties’ agreement of sale (“Agreement”), the purchase was contingent on Plaintiffs’ right to conduct an inspection. However, Defendant assured Plaintiffs that they need not conduct such an inspection, as the property was without defects. Upon taking possession of the premises, Plaintiffs discovered numerous defects. They brought claims for breach of implied warranties, fraud, and violation of the Unfair Trade Practices and Consumer Protection Law (“UTCPL”). Defendant raised five preliminary objections.

First, Defendant argued that Plaintiffs’ Complaint should be stricken for failure to attach the writing upon which their breach of implied warranties claim was based. The Court overruled this objection because Plaintiffs’ claim was not based on the Agreement but, rather, on warranties implied by operation of law, and Plaintiffs had no obligation to attach a writing that was in Defendant’s possession. Second, Defendant demurred to Plaintiffs’ breach of implied warranties claim based upon the plain language of the Agreement. The Court overruled this objection, as it was an improper speaking demurrer which would have required the Court to look outside the challenged pleading. Third, Defendant demurred to Plaintiffs’ fraud claim, arguing that it was barred by the gist of the action doctrine and the plain language of the Agreement. The Court overruled this objection because the gist of the action doctrine does not bar claims for fraud in the inducement, and the Court could not refer to the Agreement.

Fourth, Defendant demurred to Plaintiffs’ UTCPL claim, arguing that they had not pleaded a prima facie case under the statute. The Court found that Plaintiffs pleaded a prima facie case under the UTCPL and, accordingly, overruled Defendant’s objection. Fifth, Defendant moved to strike Plaintiffs’ request for attorney’s fees in their fraud claim. The Court found that Plaintiffs were not entitled to attorney’s fees under either the Judicial Code or the Real Estate Recovery Fund. Thus, the Court sustained Defendant’s fifth objection.

In the Court of Common Pleas of Northampton County, Pennsylvania,  
Civil Action—No. C-48-CV-2013-9382.

STEVEN N. GOUDSOUZIAN, ESQUIRE, for Plaintiffs.

KEVIN T. FOGERTY, ESQUIRE, for Defendant.

Order of the Court entered on March 16, 2015 by BELTRAMI, J.

*OPINION*

This matter is before the Court on Defendant’s Preliminary Objections to Plaintiffs’ Complaint, which were filed on October 29, 2014. Plaintiffs initiated this action on September 19, 2013, by filing a Praecipe for Summons. Plaintiffs’ Complaint was filed on October 2, 2014, and their Response to Defendant’s Preliminary Objections was filed on November 18, 2014. Briefs have been filed, and the matter is ready for disposition.

In their Complaint, Plaintiffs allege the following facts. Plaintiffs are husband and wife. (Compl. ¶1.) Defendant “is in the business of developing, constructing, and selling real estate.” (*Id.* ¶3.) On September 28, 2012, Plaintiffs purchased a parcel of real estate (“Property”) from Defendant. (*Id.* ¶4, Ex. A.) The parcel “contained a single family residence that was listed and sold as ‘new construction.’” (*Id.* ¶5.) Upon taking possession of the Property, Plaintiffs became aware of numerous problems/defects with various components of the Property. (*Id.* ¶¶7, 15-16.) To investigate these problems, Plaintiffs retained Allied Inspection Services, Inc. (“Allied”) which inspected the Property on August 31, 2012, September 24, 2012, and May 1, 2013. (*Id.* ¶¶18, 21, 22.) Allied concluded that the on-lot waste water treatment system was in an unsatisfactory condition. (*Id.* ¶¶18-25.) Allied also found problems with, *inter alia*, the foundation, the exterior walls, the exterior doors, the balcony, stoops, the driveway, the grading and retaining walls, the roof, the electrical system, the heating and cooling systems, the interior, and the kitchen, bathrooms, and laundry room. (*Id.* ¶29, Exs. B-C.)

On May 13, 2013, the Property failed a septic inspection by Lower Saucon Township’s Sewage Enforcement Officer because the “grading did not facilitate ... adequate storm water drainage[,] ... [t]he lid of the first compartment of the septic tank was not properly backfilled[, and] [t]he distribution box and piping had shifted.” (*Id.* ¶¶30-31, Ex. D.) Plaintiffs have obtained estimates to repair the Property. (*Id.* ¶¶33-39, Exs. E-F.) In addition to the defects identified by Allied, Plaintiffs have discovered additional problems, including improperly constructed and damaged flooring throughout the home and in the bathroom and significant rusting in the basement. (*Id.* ¶¶40-55, Ex. G.)

Leading up to their purchase of the Property, Defendant represented to Plaintiffs that the property taxes on the Property were \$7,800.00 annually; however, Plaintiffs have since learned that this figure represented a “partial assessment” and that their actual property taxes are in excess of \$14,000.00. (*Id.* ¶¶56-60.) Defendant also failed to install tempered glass windows in the master bathroom as the parties had agreed and as was required for Defendant to obtain a temporary certificate of occupancy for the home. (*Id.* ¶¶62-70.) At the time of closing, Plaintiffs believed that a certificate of occupancy had been issued for the home. (*Id.* ¶66.) However, they later discovered that no such certificate was issued due to the waste water treatment system problems identified by Allied. (*Id.* ¶¶67-68, 71.) At present, Plaintiffs do not have a certificate of occupancy for the Property, which could expose Plaintiffs to fines and/or civil liability. (*Id.* ¶¶72-74.)

Additional problems with the Property, all of which Plaintiffs have discovered without any disclosure by Defendant, include an HVAC system that, contrary to the home having been marketed as “new construction,” dates from 2001, mold growth in the basement for which Plaintiffs plan to

schedule an inspection, water leakage in the basement, and an eroding and crumbling driveway. (*Id.* ¶¶75-77, 80-81, 84-90.) Plaintiffs allege that, in the period preceding their taking possession of the Property, Defendant consistently represented to them that the Property was in good condition and that, as a result, an independent inspection of the Property was unnecessary. (*Id.* ¶¶9-10.) Defendant implied that he had inspected the Property and represented to Plaintiffs that there were no defects. (*See id.* ¶¶10-11.) Plaintiffs relied on both Defendant's position as a builder/vendor and his representations regarding the Property's condition in completing the purchase of the Property. (*Id.* ¶¶8, 14, 103, 105-106, 118.)

Plaintiffs' Complaint contains three counts. Count I alleges breach of implied warranties. Count II claims a cause of action for fraud. Count III asserts claims for violation of the Unfair Trade Practices and Consumer Protection Law ("UTCPL"). Defendant asserts five objections.

First, Defendant asserts that by failing to attach the parties' contract for the sale of the Property ("Agreement") to their Complaint, Plaintiffs have violated Pennsylvania Rule of Civil Procedure 1019(i), which states:

When any claim or defense is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof, but if the writing or copy is not accessible to the pleader, it is sufficient so to state, together with the reason, and to set forth the substance in writing.

Pa. R.C.P. No. 1019(i). Initially, the Court notes that Plaintiffs' claims are not "based upon" the Agreement. Rather, they are based upon "implied" warranties and Defendant's pre-sale and post-sale conduct that Plaintiffs contend constitutes fraud and violations of the UTCPL.<sup>1</sup> Moreover, a complaint will not be stricken for failure to attach a writing that is in the possession of the objecting party. *See Foster v. Peat Marwick Main & Co.*, 138 Pa. Commonwealth Ct. 147, 156, 587 A.2d 382, 387 (1991). Here, Defendant is clearly in possession of the Agreement, as he has attached it to his Brief in support of his Preliminary Objections. (Def.'s Br. Ex. A.) Thus, Defendant's first objection will be overruled.

Next, Defendant asserts a demurrer to Plaintiffs' breach of implied warranties claim. The demurrer is based on the express language of the Agreement. The question presented by a demurrer is whether, on the facts pleaded, the law says, with certainty, that no recovery is possible. *Orange Stones Co. v. City of Reading*, 87 A.3d 1014, 1021 n.7 (Pa. Commw. 2014). The Court must resolve a demurrer solely on the basis of the pleadings, without reference to testimony or other outside evidence. *Hill v. Ofalt*, 85 A.3d 540, 547 (Pa. Super. 2014). When considering a demurrer, the Court must accept, as true, all material facts averred in the challenged pleading,

<sup>1</sup> While Defendant may be asserting defenses in this case based upon the Agreement, that does not require Plaintiffs to attach the Agreement to their Complaint in anticipation of the same.

as well as all inferences that can be reasonably deduced therefrom. *Schemberg v. Smicherko*, 85 A.3d 1071, 1073 (Pa. Super. 2014).

Preliminary objections which seek the dismissal of a cause of action should be sustained only in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief. If any doubt exists as to whether a demurrer should be sustained, it should be resolved in favor of overruling the preliminary objections.

*Id.*

Count I of the Complaint sounds in breach of the implied warranty of habitability.

In *Elderkin [v. Gaster]*, 288 A.2d [771,] 771 [(Pa. 1972)], this Court adopted the implied warranty of habitability in the context of new home sales: ‘We thus hold that the builder-vendor impliedly warrants that the home he has built and is selling is constructed in a reasonably workmanlike manner and that it is fit for the purpose intended—habitation.’ *Id.* at 777. With the adoption of this warranty, the *Elderkin* Court rejected as anachronistic, in the context of residential real estate transactions, the traditional doctrine of *caveat emptor*—the rule that ‘in the absence of fraud or misrepresentation[,] a vendor is responsible for the quality of the property being sold ... only to the extent ... he expressly agrees to be responsible.’ *Id.* at 774. The *Elderkin* Court explained that the doctrine of *caveat emptor* was rooted in the view that a vendor and a purchaser were on equal footing, with equal knowledge and bargaining power regarding the transaction at issue. However, residential real estate purchases in the modern era are transactions not just for land, but for a reasonably constructed and habitable home, for which the purchaser ‘justifiably relies on the skill of the developer,’ who not only ‘hold[s] himself out as having the necessary expertise with which to produce an adequate dwelling, but [also] has by far the better opportunity to examine the suitability of the home site and to determine what measures should be taken to provide a home fit for habitation.’ *Id.* at 776-77. Accordingly, the *Elderkin* Court concluded that ‘[a]s between the builder-vendor and the vendee, the position of the former, even though he exercises reasonable care, dictates that he bear the risk that a home which he has built will be functional and habitable in accordance with contemporary community standards.’ *Id.* at 777.

*Conway v. Cutler Group, Inc.*, 626 Pa. 660, 665, 99 A.3d 67, 69-70 (2014).

“Warranties of habitability and reasonable workmanship are not created by representations of the builder-vendor but rather are implied in law and as such exist independent of any representations of a builder-vendor.” *Ecksel v. Orleans Construction Company*, 360 Pa. Super. 119, 129, 519 A.2d 1021, 1026 (1987). Therefore, such implied warranties are not based upon a writing but are “applicable only by operation of law.” *Tyus v. Resta*, 328 Pa. Super. 11, 25, 476 A.2d 427, 434 (1984) (quoting *Griffin v. Wheeler-Leonard & Co.*, 225 S. E. 2d 557, 568 (N.C. 1976)). “[G]iven the important consumer protection afforded by the implied warranties ... such warranties may be limited or disclaimed only by clear and unambiguous language in a written contract between the builder-vendor and the home purchaser.” *Id.* at 20, 476 A.2d at 432. Such language “must always be construed against the builder and in order to exclude warranty coverage for latent defects, ‘language of disclaimer must refer to its effect on specifically designated, potential latent defects.’” *Pontiere v. James Dinert, Inc.*, 426 Pa. Super. 576, 581-82, 627 A.2d 1204, 1206 (1993) (quoting *Tyus v. Resta*, 328 Pa. Super. 11, 476 A.2d 427 (1984)). The implied warranty of habitability extends only to defects which the purchaser had actual notice of or which should be visible to a reasonable person upon inspection. *Tyus*, supra at 22, 476 A.2d at 433.

In support of his demurrer to Plaintiffs’ breach of implied warranties claim, Defendant relies solely upon certain provisions of the Agreement. (See Def.’s Br. at 5-9.) For the reasons outlined above in relation to Defendant’s first objection, the Agreement is not, and is not required to be, a part of Plaintiffs’ Complaint. As further noted above, Defendant has attached a copy of the Agreement to his Brief. Thus, consideration of Defendant’s arguments in support of his second objection would require the Court to look outside the challenged pleading, the Complaint, to the Agreement attached to Defendant’s Brief. For this reason, Defendant’s second objection is an improper speaking demurrer and, as such, must be overruled.<sup>2</sup> See *Smith v. Pennsylvania Employees Benefit Trust Fund*, 894 A.2d 874, 877 n.3 (Pa. Commw. 2006) (“A demurrer may not be a speaking demurrer; it may not aver the existence of facts not apparent from the face of the challenged pleading.”).<sup>3</sup>

<sup>2</sup> “[W]hen the plaintiff bases his cause of action on a written agreement, the defendant may attach the agreement to the preliminary objections, and it may be referred to for purposes of deciding a demurrer.” *Satchell v. Insurance Placement Facility of Pennsylvania*, 241 Pa. Super. 287, 292, 361 A.2d 375, 377 (1976); see also, *Richardson v. Wetzel*, 74 A.3d 353, 358 n.4 (Pa. Commw. 2013). However, as noted, Plaintiffs do not premise any of their causes of action on the Agreement. Moreover, Defendant has not attached the Agreement to his Preliminary Objections but, rather, to his Brief.

<sup>3</sup> Defendant’s demurrer to Count I is alternatively based on the doctrine of “merger of deed.” However, Defendant did not brief this issue, and the Court, therefore, determines that this issue has been abandoned. See *Commonwealth v. Dessus*, 262 Pa. Super. 443, 452-53, 396 A.2d 1254, 1258 (1978).



Defendant's third objection is a demurrer to Plaintiffs' fraud claim based on two theories. Defendant first argues that Plaintiffs' fraud claim is barred by the gist of the action doctrine. The gist of the action doctrine was recognized by the Superior Court for the first time in *Bash v. Bell Telephone Company of Pennsylvania*, 411 Pa. Super. 347, 601 A.2d 825 (1992). The doctrine is designed to enforce the conceptual distinctions between tort claims and breach of contract claims. *eToll, Inc. v. Elias/Savion Advertising, Inc.*, 811 A.2d 10, 14 (Pa. Super. 2002). "As a practical matter, the doctrine precludes plaintiffs from re-casting ordinary breach of contract claims into tort claims." *Id.* The difference between contract claims and tort claims was explained in *Bash* as follows:

[A]lthough they derive from a common origin, distinct differences between civil actions for tort and contract breach have developed at common law. Tort actions lie for breaches of duties imposed by law as a matter of social policy, while contract actions lie only for breaches of duties imposed by mutual consensus agreements between particular individuals. ... To permit a promisee to sue his promisor in tort for breaches of contract *inter se* would erode the usual rules of contractual recovery and inject confusion into our well-settled forms of actions.

*Bash*, supra at 356, 601 A.2d at 829.

"[I]t is possible that a breach of contract also gives rise to an actionable tort. ... To be construed as in tort, however, the wrong ascribed to [the] defendant must be the gist of the action, the contract being collateral." *Id.* at 355-56, 601 A.2d at 829 (quoting *Closed Circuit Corporation of America v. Jerrold Electronics Corporation*, 426 F. Supp. 361, 364 (E.D. Pa. 1977)(internal quotations and citation omitted)). A tort claim should not be allowed when "the parties' obligations are defined by the terms of the contract, and not by the larger social policies embodied by the law of torts." *Id.* at 357, 601 A.2d at 830. Stated another way, "[i]f the plaintiff must rely wholly on the agreement to define the rights that the defendant violated, the claim is generally a contract claim." *Greater Philadelphia Health Services II Corporation v. Complete Care Services, L.P.*, 2000 WL 33711052, at \*1 (Pa. Com. Pl. 2000). "Courts have generally invoked the gist of the action doctrine to bar a tort claim where the defendant negligently or intentionally breached a contract." *Id.* at \*2.

[A]uthority interpreting Pennsylvania law has restated the gist of the action doctrine in a number of similar ways. These courts have held that the doctrine bars tort claims: (1) 'arising solely from a contract between the parties'...; (2) where 'the duties allegedly breached were created and grounded in the contract itself'...; (3) where 'the liability stems from a contract'...; or (4) where the tort claim 'essentially duplicates

a breach of contract claim or the success of which is wholly dependent on the terms of a contract.’...

These courts have *not* carved out a categorical exception for fraud, and have not held that the duty to avoid fraud is always a qualitatively different duty imposed by society rather than by the contract itself. Rather, the cases seem to turn on the question of whether the fraud concerned the performance of contractual duties. If so, then the alleged fraud is generally held to be merely collateral to a contract claim for breach of those duties. If not, then the gist of the action would be the fraud, rather than any contractual relationship between the parties.

*eToll, Inc.*, supra at 19 (citations omitted).

In order to prevail on a claim of fraud or intentional misrepresentation, a plaintiff must establish the following:

- (1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance.

*Gibbs v. Ernst*, 538 Pa. 193, 207, 647 A.2d 882, 889 (1994).

With regard to their claim for fraud, Plaintiffs aver that at least one of Defendant’s misrepresentations induced them to enter into the Agreement. (See Compl. ¶¶56, 61, 111.) The gist of the action doctrine does not necessarily bar a fraudulent misrepresentation claim stemming from the inducement to enter into a contract. See *Sullivan v. Chartwell Investment Partners, LP*, 873 A.2d 710, 719 (Pa. Super. 2005). In *Sullivan*, the plaintiff sued his former employee for, *inter alia*, breach of contract, fraudulent misrepresentation, and negligent misrepresentation arising out of the termination of his employment, the terms of which were governed by compensation and severance agreements. *Id.* at 713-15. Following the filing of preliminary objections, the trial court dismissed the fraudulent and negligent misrepresentation claims based on the gist of the action doctrine. *Id.* at 713, 718. In reversing the trial court, the Superior Court held:

Herein, the Compensation Agreement and the Severance Agreement clearly govern the parties’ contractual relationship; however, Appellant’s allegations do not relate to Appellee’s failure to perform its obligations under the contracts. Rather, the tort claims that Appellant raised in his amended complaint relate to Appellee’s fraudulent promises that induced Appellant to enter the contracts. Specifically, Appellant alleged that Appellee fraudulently and/or negligently agreed to perform obligations that it never intended to perform in order to induce Appellant to agree to the proposed changes to his compensation

package and to forgo an immediate resignation. *See* Amended Complaint, ¶¶ 88-92, at 15 and ¶¶ 147-54, at 25-26. Accordingly, we conclude that since Appellant's tort claims relate to the inducement to contract, they are collateral to the performance of the contracts and therefore, are not barred by the gist-of-the action doctrine.

*Id.* at 719. Likewise, in the case at bar, Plaintiffs' fraud claim relates, at least in part, to the inducement to contract, not failure to perform under the contract. Thus, we cannot say that the gist of the action doctrine bars *all* recovery for fraud such that the Court is required to dismiss that claim.

Defendant also argues that Plaintiffs' fraud claim is barred by the Agreement. For the same reasons outlined above, the demurrer to Plaintiffs' fraud claim based on the Agreement represents an improper speaking demurrer.

For all of the above reasons, Defendant's demurrer to Plaintiffs' fraud claim is without merit and/or is an improper speaking demurrer and must be overruled.<sup>4</sup>

Defendant's fourth objection is a demurrer to Plaintiffs' claim brought under the UTPCPL. The UTPCPL makes it unlawful for any individual, in conducting any trade or commerce, to, *inter alia*, "[e]ngag[e] in any ... fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding."<sup>5</sup> 73 Pa. C.S.A. §§201-2(4)(xxi), 201-3. In support of his demurrer, Defendant argues that "Plaintiffs have failed to allege the requisite elements of fraudulent misrepresentation and/or deceptive conduct necessary for a claim to be brought pursuant to [the UTPCPL]." (Def.'s Br. at 13.) A review of the Complaint, which includes numerous allegations of deceptive conduct, reveals this argument to be without merit. In addition, Defendant's argument that Plaintiffs' UTPCPL claim is barred by certain provisions of the Agreement is an improper speaking demurrer. Accordingly, Defendant's demurrer to Plaintiffs' claim brought under the UTPCPL will be overruled.

Lastly, Defendant objects to Plaintiffs' request for attorney's fees in Count II, their fraud claim.<sup>6</sup> This objection is based upon the "inclusion of ... impertinent matter." Pa. R.C.P. No. 1028(a)(2). To be impertinent, "the

<sup>4</sup> Defendant's demurrer to Plaintiffs' fraud claim is alternatively based on the doctrine of "merger of deed." However, Defendant did not brief this issue, thus abandoning it.

<sup>5</sup> This particular prohibition is found in the UTPCPL's broadest provision, the "catch-all" provision. *See* 73 Pa. C.S.A. §201-2(4)(xxi). Plaintiffs allege a violation of this provision in paragraph 122(g) of their Complaint. As Defendant's demurrer to Plaintiffs' UTPCPL claim must be analyzed in the light most favorable to Plaintiffs, the Court will address whether Plaintiffs have alleged facts sufficient to bring themselves under the protections of the UTPCPL's broadest provision.

<sup>6</sup> Defendant also moves to strike Plaintiffs' request for attorney's fees in Count I; however, as Plaintiffs make no such request in Count I, this portion of Defendant's fifth preliminary objection is moot.

allegations must be immaterial and inappropriate to the proof of the cause of action.” *Common Cause/Pennsylvania v. Commonwealth*, 710 A.2d 108, 115 (Pa. Commw. 1998). A party includes impertinent matter in a pleading by making an inappropriate request for damages. *Hudock v. Donegal Mutual Insurance Company*, 438 Pa. 272, 277 n.2, 264 A.2d 668, 671 n.2 (1970).

“The general rule is that the parties to litigation are responsible for their own counsel fees and costs unless otherwise provided by statutory authority, agreement of parties, or some other recognized exception.” *Cresci Construction Services, Inc. v. Martin*, 64 A.3d 254, 266 (Pa. Super. 2013) (quoting *Cher-Rob, Inc. v. Art Monument Co.*, 406 Pa. Super. 330, 332, 594 A.2d 362, 363 (1991)). Plaintiffs argue that their request for attorney’s fees is proper as they “could potentially recover attorney’s fees pursuant to [42 Pa.C.S.A. §] 2503(9) as they could be determined to be a ‘participant who is awarded counsel fees because the conduct of another party in commencing the matter *or otherwise* was arbitrary, vexatious or in bad faith.’” (Pls.’ Br. at 22-23 (emphasis added).) Plaintiffs essentially argue that the phrase “or otherwise” extends to Defendant’s allegedly fraudulent and deceptive conduct in selling the Property to Plaintiffs. However, this argument is contrary to established precedent from both the Commonwealth Court and the Superior Court.

Section 2503(7) of the Judicial Code entitles a participant in litigation to receive an attorney fee as a sanction against another participant ‘for dilatory, obdurate or vexatious conduct *during the pendency of a matter.*’ (Emphasis added.) Under Section 2503(9), such a fee is to be allowed to a participant in litigation where ‘the conduct of another party *in commencing the matter or otherwise* was arbitrary vexatious or in bad faith.’ (Emphasis added.)

Section 2503(7), by its very terms, relates only to conduct that takes place during the pendency of a matter. The term ‘matter’ is defined by Section 102 of the Judicial Code to mean ‘[a]ction, proceeding or appeal.’ ... Section 2503(9), on the other hand, is concerned initially with a party’s conduct in *commencing* a matter. And, as we construe the words ‘or otherwise,’ that phrase in Section 2503(9) is a reference to a party’s conduct in raising *defenses*.

*White v. Redevelopment Authority, City of McKeesport*, 69 Pa. Commonwealth Ct. 307, 313-14, 451 A.2d 17, 20 (1982) (footnote omitted) (citation omitted), *abrogated on other grounds by In re Condemnation by the Commonwealth of Pennsylvania, Department of Transportation, of the Right of Way for Legislative Route 1021, Section B v. Commonwealth, Department of Transportation*, 549 Pa. 439, 701 A.2d 535 (1997); *see also, Cher-Rob, Inc. v. Art Monument Co.*, 406 Pa. Super. 330, 333, 594 A.2d 362, 364

(1991) (“Our review of judicial interpretation of § 2503(9) also reveals that this statutory exception to the general rule applies to bad faith conduct related to the institution of the suit or occurring after the commencement of the suit.”).

As Plaintiffs point to conduct which occurred prior to their initiation of the instant action in support of their request for attorney’s fees, and there are no allegations that Defendant has acted in bad faith in defending this action, Plaintiffs’ request for attorney’s fees in Count II is not supported by Section 2503(9) of the Judicial Code.

Plaintiffs argue, alternatively, that their request for attorney’s fees is proper in light of the Real Estate Recovery Fund (“Fund”) established at 63 Pa. C.S.A. §455.801. The statute allowing recovery from the Fund states:

When any aggrieved person *obtains a final judgment* in any court of competent jurisdiction against any person licensed under this act, upon grounds of fraud, misrepresentation or deceit with reference to any transaction for which a license or registration certificate is required under this act ... the aggrieved person may, upon termination of all proceedings, including reviews and appeals, file an application in the court in which the judgment was entered for an order directing payment out of the Real Estate Recovery Fund of *the amount unpaid upon the judgment*.

63 Pa. C.S.A. §455.803(a) (emphasis added). The emphasized language of the statute would allow Plaintiffs to recover the amount of any “unpaid judgment” obtained in this suit. That judgment, by law, could only include an amount for damages legally recoverable in this action. For the reasons outlined above, attorney’s fees are not recoverable in this action and, thus, could never be part of a judgment to be paid from the Fund.<sup>7</sup> Accordingly, Defendant’s final objection will be sustained, and Plaintiffs’ request for attorney’s fees in Count II will be stricken as impertinent.

WHEREFORE, the Court enters the following:

### ORDER

AND NOW, this 16th day of March, 2015, “Defendant Alexander Patullo’s Preliminary Objections Filed in Response to Plaintiffs’ Complaint,” filed on October 29, 2014, are hereby SUSTAINED, in part, and OVERRULED, in part. Plaintiffs’ request for attorney’s fees is hereby STRICKEN from Count II of Plaintiffs’ Complaint.

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<sup>7</sup> Moreover, recovery from the Fund is made by separate application after the suit is completed, not as a claim for damages during the pendency of the suit.



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## **PERIODICAL PUBLICATION**

**\* Dated Material. Do Not Delay. Please Deliver Before Monday, March 14, 2016**