

# Northampton County Reporter

(USPS 395-280)

VOL. LVI

EASTON, PA February 10, 2011

NO. 58

**In Re: Sutton**

**Commonwealth of Pennsylvania v. Thomas G. Kush, Jr., Defendant**

**Larry Stein v. Veterans Discount Oil, LLC et al.**

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### NOTICE TO THE BAR....

#### February 22nd on the 2011 Court Calendar

Please be advised that Juvenile Court will be held on Tuesday, February 22, 2011.

\* \* \*

The ARD and ARD/DUI lists are now available on the Court's website at [nccpa.org](http://nccpa.org).

\* \* \*

The CRN Evaluation and Alcohol Highway Safety Program for all DUI offenders are now being coordinated through the Court's DUI program. Attorneys are instructed to advise all clients to contact the DUI Program at (610) 559-6825 to schedule either of these requirements.

\* \* \*

Please be advised that in the event of inclement weather, attorneys need to check the [nccpa.org](http://nccpa.org) website and the [WFMZ.com](http://WFMZ.com) website for any delays or cancellations.

\* \* \*

If you have any questions concerning either of these notices, please call the Court Administrator's Office at (610) 559-6700.

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2011 BAR ASSOCIATION OFFICERS**

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*Northampton County Reporter*

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***E-mail: [ncba@norcobar.org](mailto:ncba@norcobar.org)***

**PBA (800) 932-0311—PBI (800) 932-4637**

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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**

#### **2011 Committee Preference Forms**

Please return your forms as soon as possible. Committee Chairs are scheduling meetings and we want to invite you!

#### **Legislative Reapportionment Committee (LRC)**

Applications are currently being sought from individuals who are interested in chairing the LRC. Chairman must be a citizen of Pennsylvania who does not hold a local, state or federal office for which compensation is attached. Application letter with a resume or curriculum vitae is due by February 18. Applications may be sent to:

Legislative Reapportionment Commission  
c/o Kathy Sullivan, Executive Director  
Legislative Data Processing Center  
G-27 North Office Building  
Harrisburg, PA 17120  
[redistricting@palegislature.us](mailto:redistricting@palegislature.us)

For more information contact the NCBA Office for a copy of the original letter/request.

#### **Mark Your Calendars**

Quarterly Association Meeting—Thursday, March 10, 2011  
Reception for the Court—Friday, March 25, 2011  
NCBA/BALC Joint Event—Iron Pigs Game—Thursday, April 21, 2011

There is no value in life except what you choose to place upon it and no happiness in any place except what you bring to it yourself. ~ Henry David Thoreau

**ESTATE NOTICES**

Notice is hereby given that in the estate of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

**FIRST PUBLICATION****ACHENBACH, FRED D.,** dec'd.

Late of the Township of Plainfield, Northampton County, PA

Executors: Leroy D. Achenbach and Henry N. Achenbach 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

**BIRKEL, MARGARET C.,** dec'd.

Late of the Borough of Hellertown, Northampton County, PA  
Executor: Joseph Birkel c/o Richard J. Jacobs, Esquire, 1772 Arden Lane, Bethlehem, PA 18015

Attorney: Richard J. Jacobs, Esquire, 1772 Arden Lane, Bethlehem, PA 18015

**BISHER, RUTH K.,** dec'd.

Late of the Township of Upper Mt. Bethel, Northampton County, PA

Executor: Dale Bisher 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

**BREDEHORST, DIETRICH,** dec'd.

Late of the Township of Forks, Northampton County, PA

Executrix: Evelyn A. Nazaro, 915 Schuyler Drive, Easton, PA 18040

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

**BRUCH, JOHN G.,** dec'd.

Late of the Township of Bushkill, Northampton County, PA

Executor: William Keenhold c/o Gregory R. Reed, Esquire, Attorney-at-Law, 141 South Broad Street, P.O. Box 299, Nazareth, PA 18064-0299

Attorney: Gregory R. Reed, Esquire, Attorney-at-Law, 141 South Broad Street, P.O. Box 299, Nazareth, PA 18064-0299

**D'HUYVETTERS, GERALDINE R.,** dec'd.

Late of Borough of Nazareth, Northampton County, PA

Executors: William E. D'Huyvetters, 175 West North Street, #3209, Nazareth, PA 18064-1450 and Elaine M. Young, 204 Adrian Drive, Easton, PA 18040-7719

Attorneys: Peters, Moritz, Peischl, Zulick, Landes & Brienza, LLP, 1 South Main Street, Nazareth, PA 18064-2083

**HEYER, DORIS M. a/k/a DORIS HEYER,** dec'd.

Late of the Township of Bethlehem, Northampton County, PA

Executor: Glenn G. Heyer c/o Karl H. Kline, Esquire, Karl Kline P.C., 2925 William Penn High-

way, Suite 301, Easton, PA 18045-5283

Attorneys: Karl H. Kline, Esquire, Karl Kline P.C., 2925 William Penn Highway, Suite 301, Easton, PA 18045-5283

**HOLMES, KATHLEEN O.,** dec'd.

Late of the Borough of Wilson, Northampton County, PA

Executor: Mr. Bruce T. Holmes 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

**LORETTI, DORA,** dec'd.

Late of Hellertown, Northampton County, PA

Executrix: Dori O'Brien, 6320 Everson Goshen Rd., Everson, WA 98247

**MONTORO, ELIZABETH C.,** dec'd.

Late of the City of Easton, Northampton County, PA

Executor: Vincent Montoro 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

**OSMUN, VIOLET G.,** dec'd.

Late of the Township of Bushkill, Northampton County, PA

Executrix: Nancy Ann Osmun Everswick c/o Alfred S. Pierce, Esquire, Pierce & Dally, LLP, 124 Belvidere Street, Nazareth, PA 18064

Attorneys: Alfred S. Pierce, Esquire, Pierce & Dally, LLP, 124

Belvidere Street, Nazareth, PA 18064

**SCHAIBLE, AGNES B.,** dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executors: Adam L. Schaible and Beata Agnes Schaible c/o Raymond J. DeRaymond, Esquire, Gross McGinley, LLP, 717 Washington Street, Easton, PA 18042  
Attorneys: Raymond J. DeRaymond, Esquire, Gross McGinley, LLP, 717 Washington Street, Easton, PA 18042

**WATRAS, THOMAS M.,** dec'd.

Late of Northampton County, PA  
Administrator: William T. Watras, 348 State Route 31 North, Oxford, NJ 07863

**WILKIE, KATHY ANN a/k/a KATHY A. WILKIE,** dec'd.

Late of the Township of Williams, Northampton County, PA

Executrix: Maria A. Wilkie c/o Joel M. Scheer, Esquire, Fishbone & Scheer, 940 West Lafayette Street, Easton, PA 18042  
Attorneys: Joel M. Scheer, Esquire, Fishbone & Scheer, 940 West Lafayette Street, Easton, PA 18042

**ZELEZEN, ELEANOR L.,** dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executor: Mark A. Zelezen c/o Harry Newman, Esquire, Harry Newman & Associates, P.C., 3897 Adler Place, Suite 180C, Bethlehem, PA 18017

Attorneys: Harry Newman, Esquire, Harry Newman & Associates, P.C., 3897 Adler Place, Suite 180C, Bethlehem, PA 18017

**SECOND PUBLICATION****BRACKEN, RANDY C.,** dec'd.

Late of 1230 Center Street, Apt. 1, Bethlehem, Northampton County, PA  
Executor: Reneé L. Bracken c/o Norman E. Blatt, Jr., Esquire, Scherline & Associates, 512 Walnut Street, Allentown, PA 18101  
Attorneys: Norman E. Blatt, Jr., Esquire, Scherline & Associates, 512 Walnut Street, Allentown, PA 18101

**CSENSITS, MARGARET M.,** dec'd.

Late of the Borough of Bath, Northampton County, PA  
Executor: Martin J. Csencsits c/o Frank M. Skrapits, Esquire, Affiliated with Steckel and Stopp, 2152 Main Street, Northampton, PA 18067-1211

**GABARICK, FRANK J.,** dec'd.

Late of the Township of Upper Nazareth, Northampton County, PA  
Executrix: Janet Ninno c/o Paul A. Florenz, Esquire, Kolb, Vasiliadis and Florenz, 74 West Broad Street, Ste. 170, Bethlehem, PA 18018-5738  
Attorneys: Paul A. Florenz, Esquire, Kolb, Vasiliadis and Florenz, 74 West Broad Street, Ste. 170, Bethlehem, PA 18018-5738

**JONES, RICHARD H.,** dec'd.

Late of the Township of Washington, Northampton County, PA  
Executrix: Sandra E. Stinson 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

**LIVIRRIE, VIRGINIA S.,** dec'd.

Late of the City of Bethlehem, Northampton County, PA  
Co-Executors: Roy L. Smith and J. Lawrence Smith, III c/o James Martin Connell, Esquire, 251 E. Broad Street, Bethlehem, PA 18018  
Attorney: James Martin Connell, Esquire, 251 East Broad Street, Bethlehem, PA 18018

**McGINNIS, MARION J. a/k/a MARION McGINNIS,** dec'd.

Late of Nazareth, Northampton County, PA  
Administrators C.T.A.: J. Renne Mekosh and Raymond James Trust, N.A. 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

**PILYAR, PAUL A.,** dec'd.

Late of the Township of Hanover, Northampton County, PA  
Administrator: Thomas J. Pilyar 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

**POULOS, HELEN E. a/k/a HELEN ELIZABETH POULOS,** dec'd.

Late of the City of Bethlehem, Northampton County, PA  
Executor: Paul A. Florenz c/o Kolb, Vasiliadis and Florenz, 74

West Broad Street, Ste. 170,  
Bethlehem, PA 18018-5738  
Attorneys: Kolb, Vasiliadis and  
Florenz, 74 West Broad Street,  
Ste. 170, Bethlehem, PA 18018-  
5738

**RITTENHOUSE, MARGARET E.,**  
dec'd.

Late of the City of Bethlehem,  
Northampton County, PA

Executrix: Anne R. Washychyn  
c/o Karl H. Kline, Esquire, Karl  
Kline P.C., 2925 William Penn  
Highway, Suite 301, Easton, PA  
18045-5283

Attorneys: Karl H. Kline, Esquire,  
Karl Kline P.C., 2925 William  
Penn Highway, Suite 301,  
Easton, PA 18045-5283

**SOLT, JEANNETTE B. a/k/a JA-**  
**NETTE SOLT,** dec'd.

Late of the Township of Hanover,  
Northampton County, PA

Executor: James B. Wesner c/o  
Theresa Hogan, Esquire, Attor-  
ney-at-Law, 340 Spring Garden  
Street, Easton, PA 18042

Attorney: Theresa Hogan, Es-  
quire, Attorney-at-Law, 340  
Spring Garden Street, Easton,  
PA 18042

**WINTER, LARRY T. a/k/a LARRY**  
**WINTER,** dec'd.

Late of Moore Township,  
Northampton County, PA

Administratrix: Sandra L. Winter  
c/o Martin J. Karess, Esquire,  
Karess, Reich & Furst, PC, 215  
N. 9th Street, Allentown, PA  
18102

Attorneys: Martin J. Karess,  
Esquire, Karess, Reich & Furst,  
PC, 215 N. 9th Street, Allentown,  
PA 18102

**YAGIELSKI, AGNES J.,** dec'd.

Late of Lower Saucon Township,  
Northampton County, PA

Executrix: Evelyn M. Keeler c/o  
Joel H. Ziev, Esquire, 700 Wash-  
ington Street, Easton, PA 18042  
Attorney: Joel H. Ziev, Esquire,  
700 Washington Street, Easton,  
PA 18042

**THIRD PUBLICATION**

**AHERN, MARY ANN a/k/a MARY**  
**A. AHERN,** dec'd.

Late of the Township of Bethle-  
hem, Northampton County, PA

Executrix: Maryellen Ahern c/o  
Lawrence Center, Esquire, 60 W.  
Broad St., Ste. 103, P.O. Box  
1248, Bethlehem, PA 18016

Attorney: Lawrence Center, Es-  
quire, 60 W. Broad St., Ste. 103,  
P.O. Box 1248, Bethlehem, PA  
18016

**ARAGONA, MARIE,** dec'd.

Late of 4298 Rexford Drive, Beth-  
lehem, Northampton County, PA

Executrix: Rosemarie Wingert-  
zahn, 4298 Rexford Drive, Beth-  
lehem, PA 18020

Attorney: Thomas M. Butz, Es-  
quire, 125 Technology Dr., Suite  
202, Bailey Center I, South-  
pointe, Canonsburg, PA 15317

**COLLINS, CHARLES F. a/k/a**  
**CHARLES F. COLLINS, JR.,**  
dec'd.

Late of the Township of Allen,  
Northampton County, PA

Executrix: Mary E. Collins c/o  
Littner, Deschler & Littner, 512  
North New Street, Bethlehem, PA  
18018

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



**GOSSY, GREGORY WAYNE a/k/a GREGORY W. GOSSY**, dec'd.

Late of 242 Nor-Bath Blvd., Northampton County, PA  
Executrix: Barbara A. Lewis, 1400 Main Street, Apt. 412, Catasauqua, PA 18032

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

**HAFER, EUGENE Y.**, dec'd.

Late of Keller Road, Borough of Wind Gap, Northampton County, PA

Executor: Dennis E. Hafer, P.O. Box 283, Bally, PA 19503

Attorneys: Jeffrey C. Karver, Esquire, Boyd & Karver, 7 East Philadelphia Avenue, Boyertown, PA 19512

**INNARELLA, BESSIE**, dec'd.

Late of the Township of Palmer, Northampton County, PA  
Executrix: Charis A. Innarella, 30 Old Orchard, Easton, PA 18045

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

**LAUBACH, ELSIE A. a/k/a ELSIE LAUBACH**, dec'd.

Late of the Borough of Wind Gap, Northampton County, PA

Executrix: Cynthia A. Chromiak a/k/a Cynthia Laubach Chromiak 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

**LYSEK, HELEN**, dec'd.

Late of Bethlehem, Northampton County, PA

Executor: Robert Lysek c/o Wendy A. Nicolosi, Esquire, Broughal & DeVito, L.L.P., 38 West Market Street, Bethlehem, PA 18018

Attorneys: Wendy A. Nicolosi, Esquire, Broughal & DeVito, L.L.P., 38 West Market Street, Bethlehem, PA 18018

**MELINSKY, JULIA**, dec'd.

Late of the Borough of Hellertown, Northampton County, PA  
Executrix: Julieann Bambu c/o Mary Ann Snell, Esquire, 3400 Bath Pike, Suite 311, Bethlehem, PA 18017

Attorney: Mary Ann Snell, Esquire, 3400 Bath Pike, Suite 311, Bethlehem, PA 18017

**PERIN, DAVID R.**, dec'd.

Late of the Township of Bethlehem, Northampton County, PA  
Executrix: Erika J. Perin McDonnell c/o Joseph F. Leeson, Jr., Esquire, Leeson, Leeson & Leeson, 70 E. Broad Street, P.O. Box 1426, Bethlehem, PA 18016-1426

Attorneys: Joseph F. Leeson, Jr., Esquire, Leeson, Leeson & Leeson, 70 E. Broad Street, P.O. Box 1426, Bethlehem, PA 18016-1426

**REDLINE, JEANNE L.**, dec'd.

Late of Hellertown, Northampton County, PA

Executrix: Linda Hoffert c/o Wendy A. Nicolosi, Esquire, Broughal & DeVito, L.L.P., 38 West Market Street, Bethlehem, PA 18018

Attorneys: Wendy A. Nicolosi, Esquire, Broughal & DeVito, L.L.P., 38 West Market Street, Bethlehem, PA 18018



**RISSMILLER, ALICE**, dec'd.

Late of 189 E. Mountain Road,  
Wind Gap, Northampton County,  
PA

Administrators: Ashby Law Offices,  
LLC, 246 West Broad Street,  
Suite 3, Quakertown, PA 18951

Attorneys: Ashby Law Offices,  
LLC, 246 West Broad Street,  
Suite 3, Quakertown, PA 18951

**ROSEBERY, MARY P.**, dec'd.

Late of the City of Bethlehem,  
Northampton County, PA

Executrix: Susan Lynn Rosebery  
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

**RUSSO, MICHAEL M., JR.**, dec'd.

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

Executrix: Linda Yetter 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

**STANNARD, HELEN R. a/k/a HELEN STANNARD**, dec'd.

Late of the Borough of Nazareth,  
Northampton County, PA

Co-Executors: Patricia A. Fischl,  
Francis E. Stannard, Jr., Kathy  
D. Kleinle and Susan M. Wolf c/o  
Theodore R. Lewis, Esquire,  
Lewis and Walters, 46 S. 4th  
Street, P.O. Box A, Easton, PA  
18044-2099

Attorneys: Theodore R. Lewis,  
Esquire, Lewis and Walters, 46  
S. 4th Street, P.O. Box A, Easton,  
PA 18044-2099

**TOOMA, BARBARA J. a/k/a BARBARA TOOMA a/k/a BARBARA JEAN TOOMA**, dec'd.

Late of the Township of Upper  
Nazareth, Northampton County,  
PA

Executors: Victoria A. Ippolito  
and John Ippolito c/o Alfred S.  
Pierce, Esquire, Pierce & Dally,  
LLP, 124 Belvidere Street, Nazareth,  
PA 18064

Attorneys: Alfred S. Pierce, Esquire,  
Pierce & Dally, LLP, 124  
Belvidere Street, Nazareth, PA  
18064

**WERKHEISER, DOROTHY M. a/k/a DOROTHY WERKHEISER**, dec'd.

Late of the Township of Washington,  
Northampton County, PA

Co-Executors: Steven B. Werkheiser,  
307 Bangor Junction Road, Bangor, PA 18013  
and Debra A. Metzgar, 297 Bangor  
Junction Road, Bangor, PA  
18013

Attorneys: Ronold J. Karasek,  
Esquire, Martino, Karasek, Martino  
and Lopiano-Reilly, L.L.P.,  
641 Market Street, Bangor, PA  
18013

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**TRUST NOTICE**

NOTICE IS HEREBY GIVEN of the  
existence of the trusts of the deceased  
settlers set forth below for whom no  
personal representatives have been  
appointed within 90 days of death.  
All persons having claims or demands  
against said trusts are requested to  
make known the same, and all persons  
indebted to said trusts are requested  
to make payment, without delay,  
to the trustees or to their attorneys  
named below.

**BRECHTER, CARL F.**, dec'd.

Late of Bath, Northampton  
County, PA

Trustee: Dorothy F. Brechter c/o Avery E. Smith, Esquire, King Spry Herman Freund & Faul LLC, One West Broad Street, Suite 700, Bethlehem, PA 18018  
Attorneys: Avery E. Smith, Esquire, King Spry Herman Freund & Faul LLC, One West Broad Street, Suite 700, Bethlehem, PA 18018

Feb. 10, 17, 24

**ZEIGAFUSE, GRANVILLE E.,  
dec'd.**

Late of Bangor Borough, Northampton County, PA  
Granville E. Zeigafuse Trust, dated October 17, 2002, Settlor.  
Trustee: Carol Zeigafuse, 1415 Lower South Main Street, Bangor, PA 18013

Attorney: Brett B. Weinstein, Esquire, 705 W. DeKalb Pike, King of Prussia, PA 19406

Jan. 27; Feb. 3, 10

**NOTICE OF ANNUAL MEETING**

NOTICE IS HEREBY GIVEN that the Annual Meeting of the members of Nazareth Mutual Insurance Company will be held at the office of the Company, 114 South Main Street, Nazareth, Pennsylvania, on Saturday, March 12, 2011 at ten o'clock A.M., local time, for:

1. Election of three directors, each to serve for a three-year term; and
2. The transaction of such other business as may properly come before the meeting.
3. Proxy ballots are available, may be obtained from the company by policy holder request and submitted prior to the above date.

John G. Abbott, Chairman

Attest: Charmaine E.

Bartholomew, Secretary

Feb. 10, 17, 24

**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 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:

**AUNT WENDY'S KIFFLES, INC.**

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

Feb. 10

**LIMITED LIABILITY COMPANY  
NOTICE**

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, pursuant to the provisions of the Limited Liability Company Law of the Commonwealth of Pennsylvania, Act of December 7, 1994 (P.L. 703, No. 106), as amended, by the following:

The name of the business organization is:

**DMB PROPERTY  
MANAGEMENT LLC**

The Certificate of Organization was filed on January 31, 2011.

DANIEL P. SABETTI, ESQUIRE  
224 West Broad Street  
Bethlehem, PA 18018

Feb. 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

RALPH E. JAMES a/k/a R. E.  
JAMES; Ronald W. Shipman, Admin-  
istrator C.T.A.

**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, FEBRUARY 18, 2011  
AT 9:00 A.M. IN COURTROOM #1.

Dorothy L. Cole  
Clerk of Orphans' Court  
Feb. 3, 10

**PART-TIME PARALEGAL NEEDED**

For our Bankruptcy Department

Minimum 2 years recent Pa. law firm experience  
required. E-mail resume and cover letter to:

[rgasdaska@luther-veno.com](mailto:rgasdaska@luther-veno.com)

**LAW OFFICES OF  
LINDA LUTHER-VENO**  
1605 N. Cedar Crest Blvd.  
Suite 106  
Allentown, PA 18104

Feb. 3, 10

**IN RE: SUTTON***Petition To Transfer Structured Settlement—Structured Settlement Protection Act.*

After a car accident, Petitioner settled her legal claims under the terms of a structured settlement agreement. Petitioner's affidavit indicated that she had transferred portions of her structured settlement on four prior occasions, with Court approval. Petitioner sought the Court's approval of an agreement with Settlement Funding, LLC to transfer the remaining \$90,000.00 payment she is to receive on April 22, 2024. After the deduction of all commissions, fees, costs, expenses, and charges, the net amount payable to Petitioner would have been \$11,851.28. Based upon this net amount, Petitioner would have, in effect, paid interest at the rate of 15.59% per year.

Section 4003 of the Structured Settlement Protection Act requires a petitioner to establish that a transfer is in his or her best interest. The trial court acts as a guardian by determining whether the transaction serves the petitioner's best interests. Although Petitioner complied with the technical requirements of the Structured Settlement Act, the Court could not conclude that the transfer was in the best interests of Petitioner or her dependents. At the hearing, Petitioner was uncertain about the amount her husband earns, although she handles the couple's finances. She was also uncertain about the amount of the couple's monthly expenses. Petitioner offered no testimony that she and her husband have savings or financial goals.

Petitioner planned to use \$8,850.00 of the proposed transfer payment to buy a used car and the remainder to pay off medical and credit card bills. The Court concluded that Petitioner failed to establish that the transfer was in the best interests of her or her dependents. Petitioner offered no testimony that she considered an alternate method of purchasing a car or that her medical bills or credit cards were accruing interest greater than 15.59%. Further, Petitioner had made four prior transfers of her structured settlement in the previous four years without making any changes to the manner in which she handles her finances. Thus, the Court declined to approve the transfer.

In the Court of Common Pleas of Northampton County, Pennsylvania,  
Civil Division—No. C-48-CV-2010-8252.

DONALD W. JENSEN, ESQUIRE

Order of the Court entered on September 21, 2010 by BELTRAMI, J.

*ORDER*

AND NOW, this 21st day of September, 2010, Settlement Funding, LLC's Petition to Transfer Structured Settlement Payment Rights is hereby DENIED.

*STATEMENT OF REASONS*

This matter is before the Court on Settlement Funding, LLC's Petition to Transfer Structured Settlement Payment Rights, filed on August 3, 2010. A hearing was held on September 3, 2010, and the matter is ready for disposition.

According to the petition and testimony, Heather M. Sutton, a/k/a Heather Cascioli ("Payee"), sustained multiple injuries in a car accident

that occurred on November 11, 2002. At the time, Payee was a minor, and her parents agreed to settle her legal claims under the terms of a structured settlement agreement. The agreement provided for the following payments to Payee: (1) 240 monthly payments, each in the amount of \$1,323.00, from April 22, 2004, through and including March 22, 2024; and (2) one lump sum payment in the amount of \$300,000.00, on April 22, 2024.

Payee's affidavit, which is attached to the petition as Exhibit "E," indicates that she has transferred portions of her structured settlement on four prior occasions, with court approval.<sup>1</sup> In 2006, Payee transferred 206 of her monthly payments, in the amount of \$800.00 each, for a lump sum of \$42,969.69, which she used to prepay two years of rent and to buy a car. In 2007, Payee transferred 200 of her monthly payments, in the amount of \$223.00 each, and \$60,000.00 of her \$300,000.00 payment due on April 22, 2024, for a lump sum of \$13,670.00, which she used to pay bills and debt. Also in 2007, Payee transferred 196 of her monthly payments, in the amount of \$223.00 each, for a lump sum of \$17,480.00, which she used to pay rent, to pay bills, and to buy furniture and appliances. In 2009, Payee transferred \$150,000.00 of the remaining \$240,000.00 payment due on April 22, 2024, for a lump sum of \$17,480.00, which she used to pay expenses related to the birth of one of her two children.

Payee seeks approval of an Absolute Assignment Agreement with Settlement Funding, LLC to transfer the remaining \$90,000.00 payment she is due to receive on April 22, 2024. After the deduction of all commissions, fees, costs, expenses, and charges, the net amount payable to Payee under the proposed transfer is \$11,851.28. According to the disclosure attached to the petition as Exhibit "B," the discounted present value of the proposed transfer is \$61,155.97. According to paragraph seven of the petition, based upon the net amount that Payee will receive from this transaction, Payee is, in effect, paying interest at the rate of 15.59% per year.

To approve a petition to transfer structured settlement rights, the Court must find that Payee has fulfilled the enumerated conditions of Section 4003 of the Structured Settlement Protection Act, which requires Payee to establish that the transfer is in her best interest:

(a) *Petition*.—No transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment to any transferee of structured settlement payment rights unless the payee has filed a petition requesting such transfer and the petition has been granted by final order or decree of a court of competent jurisdiction based on such court's express written findings that:

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<sup>1</sup> Three of the four prior transfers were made to Settlement Funding, LLC.

....

(3) The payee has established that the transfer is in the best interests of the payee or [her] dependents.

40 P.S. §4003(a)(3). By ensuring that a payee adequately establishes that the transfer will be in her best interests, the trial court acts in the position of a guardian, determining “on an independent basis, whether the transaction serves the best interests of” that payee. *In re Jacobs*, 936 A.2d 1156, 1160 (Pa. Super. 2007) (quoting *In Re: Bush*, 152 P.L.J. 207, 208 (2004)). This active oversight by the trial court, in turn, promotes the Structured Settlement Protection Act’s principal objective of protecting recipients of structured settlements from transferees who seek to convince them to sell their future payments at sharp discount rates. *Id.* at 1165.

Section 4002 of the Structured Settlement Protection Act defines “best interests” as:

The standard applicable to transfers of structured settlement payment rights based on judicial findings regarding the payee and his dependents, as required by section 3(a)(3), unless if at the time the payee and the transferee enter into the transfer agreement a different standard is contained in the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 *et seq.*) or in a United States Treasury regulation adopted pursuant thereto, then such different standard.

40 P.S. §4002. Although there is no reported appellate precedent in Pennsylvania interpreting the “best interests” standard, some trial court decisions have recognized that the issue to be decided is not merely “whether [a payee] is a competent adult who understands the transaction.” *In re Marshall*, No. 06-1186, 2006 WL 1682793, at \*4 (Pa. Com. Pl. Lackawanna Cty. Apr. 12, 2006) (quoting *In Re: Bush*, supra, 152 P.L.J. at 208). Instead, the standard “compels the court to make an independent determination that the transaction is in the best interests of ... [Payee].” *Id.*

Payee requests that the Court approve the transfer of the structured settlement payment because she has complied with the requirements of the Structured Settlement Protection Act, no objections have been raised, and her best interests will be served by allowing the transfer. Payee has complied with the technical requirements of the Structured Settlement Protection Act. For example, the transfer would not contravene any other applicable Federal or State law. 40 P.S. §4003(a)(1). In addition, Settlement Funding, LLC has provided Payee with the disclosure required by Section 4003(a)(2) of the Structured Settlement Protection Act. Finally, Payee has been advised in writing to seek independent legal advice. *See* 40 P.S. §4003(a)(4).

Although Payee has complied with the technical requirements of the Structured Settlement Protection Act, the Court cannot conclude that the transfer is in the best interests of Payee or her dependents. At the hearing, Payee was uncertain about the amount that her husband earns, although she handles the couple’s finances. N.T., 9/3/10, at 3. Payee’s affidavit indicates

that the couple has a monthly income of \$3,304.00 per month. Payee was also uncertain about the amount of the couple's monthly expenses, although she did testify that she and her husband rent a home for \$765.00 per month. *Id.* at 3-4. Payee testified that she and her husband do not use a written monthly budget, and she offered no testimony that they have savings or financial goals. *Id.* at 3. Nevertheless, Payee testified that she and her husband sometimes have money left over at the end of the month. *Id.* at 4.

According to her affidavit, Payee would use approximately \$8,850.00 of the proposed transfer payment to buy a used car and the remainder to pay off medical and credit card bills totaling \$3,000.00. Although Payee's proposed use of the funds is understandable, she has failed to set forth any basis for the Court to conclude that the transfer, which represents 67% of the discounted present value of the amount to be transferred (or an effective interest rate of 15.59% per year), is in the best interests of Payee or her dependents. *See In re Bendowski*, No. 06-3056, 2006 WL 2988465 (Pa. Com. Pl. Lackawanna Cty. Aug. 24, 2006) (rejecting offer to purchase structured settlement payment for 57% of its discounted present value as unconscionable under the Structured Settlement Protection Act).

In this regard, we note that Payee presented no testimony that she has considered an alternate method of purchasing a car, such as setting aside money each month for the eventual purchase of a used car. Even if Payee had to finance a car purchase, it would likely be at an appreciably better rate than the effective interest rate of 15.59% offered by Settlement Funding, LLC.<sup>2</sup> *Id.* In addition, Payee presented no testimony that the medical and/or credit card debts are incurring interest, let alone interest at a rate greater than the 15.59% interest rate that the proposed transfer represents. Finally, given the fact that Payee has made four transfers of her structured settlement in the last four years, the Court is convinced that unless Payee and her husband take active steps to control their finances—for example, by adopting a written budget each month and sticking to it, living within their income, setting aside money for emergencies, paying off their debts with budgeted income rather than by, in effect, borrowing at an interest rate of 15.59%, and saving for purchases rather than using credit cards—they will have squandered away the cushion that the structured settlement should provide for their family in the future (without having derived any benefit that they could not attain on their own, *without the proposed transfer*, by adopting a sound financial plan and taking control of their finances themselves).

For all of the above reasons, the interests of Payee and her dependents will be better served if we decline to approve the transfer. We therefore deny Settlement Funding, LLC's Petition to Transfer Structured Settlement Payment Rights.

<sup>2</sup> The Court takes judicial notice of the fact that as of the date of this decision, the average interest rate for a forty-eight month used car loan is 6.06%, according to Bankrate.com.



**COMMONWEALTH OF PENNSYLVANIA v.  
THOMAS G. KUSH, JR., Defendant**

*Expunge—Criminal History Record Information Act.*

Defendant was charged with theft by unlawful taking or disposition and receiving stolen property, as misdemeanors of the first degree. Defendant pleaded guilty to theft by unlawful taking or disposition as a misdemeanor of the third degree, and the remaining charge was withdrawn. The Court sentenced Defendant to twelve months probation and ordered him to perform community service and to pay a fine.

Defendant filed a petition to expunge the record of his arrest and conviction. The Criminal History Record Information Act governs when criminal history record information must or may be expunged. The mandatory expungement provisions did not apply to this case because Defendant pleaded guilty within five months of his arrest and because Defendant was not convicted of underage drinking. The discretionary expungement provisions did not apply to this case because Defendant is not 70 years of age, Defendant is not dead, and Defendant was not convicted of a summary offense.

In the alternative, Defendant argued that the Court should expunge the record of his arrest for receiving stolen property, a charge that the Commonwealth withdrew as part of Defendant's negotiated plea. However, the Supreme Court of Pennsylvania has rejected this same argument in prior cases. Therefore, the Court denied Defendant's Petition to Expunge Criminal Record.

In the Court of Common Pleas of Northampton County, Pennsylvania,  
Criminal Division—No. 904-2008.

JAMES A. AUGUSTINE, ESQUIRE, for the Commonwealth.

SUSAN A. ROYSTER, ESQUIRE, for Defendant.

Order of the Court entered on September 21, 2010 by BELTRAMI, J.

*ORDER*

AND NOW, this 21st day of September, 2010, Defendant's Petition to Expunge Criminal Record is hereby DENIED.

*STATEMENT OF REASONS*

This matter is before the Court on Defendant's Petition to Expunge Criminal Record, filed on August 17, 2010. A conference was held on September 10, 2010, and the matter is now ready for disposition.

A review of the file reveals that Defendant was arrested on February 26, 2008. On April 18, 2008, the Commonwealth filed an information charging Defendant with theft by unlawful taking or disposition<sup>1</sup> and receiving stolen property,<sup>2</sup> as misdemeanors of the first degree. On June 27, 2008, Defendant pleaded guilty to theft by unlawful taking or disposition as a

<sup>1</sup> 18 Pa. C.S.A. §3921.

<sup>2</sup> 18 Pa. C.S.A. §3921.

misdeemeanor of the third degree, and the remaining charge was withdrawn. The Court sentenced Defendant to twelve months probation and ordered him to perform community service and to pay a fine.

Defendant has now filed a petition to expunge the record of his arrest and conviction. In his petition, Defendant alleges that he has paid his fines and costs and has completed his sentence. He asks the Court to expunge his criminal record because he has not been involved in any criminal activity since his arrest. Defendant argues that the record is harmful to his reputation and that the record prejudices his opportunities for employment and education.

The Criminal History Record Information Act governs when criminal history record information must or may be expunged. 18 Pa. C.S.A. §9122. Under 18 Pa. C.S.A. §9122(a), criminal history record information must be expunged only if specific circumstances are established. First, an expungement must occur when “no disposition has been recorded in the repository within 18 months after the date of arrest and the court of proper jurisdiction certifies to the director of the repository that no disposition is available and no action is pending.” 18 Pa. C.S.A. §9122(a)(1). Section (a)(1) does not apply to the instant petition because Defendant pleaded guilty within five months of his arrest. Second, criminal history record information must be expunged when “a [petitioner] 21 years of age or older who has been convicted of [underage drinking] ... and ... has satisfied all terms and conditions of the sentence.” 18 Pa. C.S.A. §9122(a)(3). Section (a)(3) does not apply to the instant petition because Defendant was not convicted of underage drinking. Thus, neither of the mandatory expungement provisions applies in this case.

Under 18 Pa. C.S.A. §9122, a court has the discretion to expunge criminal proceedings in only three instances. First, a court may expunge a criminal record when “[a]n individual who is the subject of the information reaches 70 years of age and has been free of arrest or prosecution for ten years following final release from confinement or supervision.” 18 Pa. C.S.A. §9122(b)(1). Section (b)(1) does not apply because Defendant is only thirty-seven years old. Second, a court may expunge a criminal record when “[a]n individual who is the subject of the information has been dead for three years.” 18 Pa. C.S.A. §9122(b)(2). Section (b)(2) does not apply to the instant petition because Defendant is still living. Third, a court may expunge criminal history record information when a defendant “petitions the court for the expungement of a summary offense and has been free of arrest or prosecution for five years following the conviction of that offense.” 18 Pa. C.S.A. §9122(b)(3)(i). Section (b)(3)(i) does not apply because Defendant was convicted of a misdemeanor. For all of the above reasons, the Court does not have discretion to expunge Defendant’s conviction in this case.

In the alternative, Defendant argues that if the Court does not have the authority to expunge the record of his theft by unlawful taking conviction, then the Court should expunge the record of his arrest for receiving stolen property, a charge that the Commonwealth withdrew as part of Defendant's negotiated plea. In *Commonwealth v. Lutz*, 788 A.2d 993, 1001 (Pa. Super. 2001), the Superior Court rejected this same argument, holding:

[A] plea agreement is quasi-contractual in nature and must be analyzed under the terms of contract law. ... In this instance the consideration received by the parties was that in return for [Defendant's] guilty plea to [one] charge, the Commonwealth would move to dismiss the remaining charges. Now after the plea agreement has been consummated, [Defendant] apparently wishes to have part of the subject of the agreement destroyed; *i.e.*, expungement of the dismissed charges would obliterate or seal any record of those charges and thus leave no accurate record of the contractual relationship entered into by [Defendant] and the Commonwealth.

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What [Defendant] is requesting is tantamount to destroying the last nine pages of a ten-page contract and then requesting that the contract continue to be enforced based on the first page alone. We therefore hold that where charges are dismissed pursuant to a plea agreement, those charges are not eligible for expunction, as to destroy them would obscure the true circumstances under which [Defendant] has been convicted.

*Id.* at 1000 (citation omitted). In affirming the trial court's decision, the Superior Court of Pennsylvania explained:

In the absence of an agreement as to expungement, [Defendant] stands to receive more than he bargained for in the plea agreement if the dismissed charges are later expunged. Thus, we agree with the trial court that the better resolution is to deny expungement of the charges dismissed as part of [Defendant's] plea agreement. ...

*Id.* at 1001. In light of *Lutz*, this Court has no authority to expunge the receiving stolen property charge that was dismissed as part of Defendant's plea bargain.

For all of the above reasons, Defendant's Petition to Expunge Criminal Record must be denied.

**LARRY STEIN, Plaintiff v. VETERANS DISCOUNT OIL, LLC,  
ANTHONY GORNICK, CRAIG SULLENBERGER, CHERYL  
SULLENBERGER, and SUE HRIN, Defendants**

*Motion for Summary Judgment—Breach of Contract—Quantum Meruit—Conversion.*

Plaintiff filed suit, alleging a breach of contract. Plaintiff worked for Anthony Gornick (“Gornick”) and T & C Oil. After T & C Oil was dissolved, Plaintiff had a discussion with Gornick, Sue Hrin (“Hrin”), Cheryl Sullenberger (“Sullenberger”), and Craig Sullenberger. Because Gornick could no longer purchase oil, Plaintiff offered to start a business and purchase Gornick’s truck.

Plaintiff believed that he owned one-third of Defendant Veterans Discount Oil, LLC (“Veterans Oil”) and that Hrin and Sullenberger also owned one-third each. Plaintiff’s belief was reaffirmed when Hrin asked him to sign a certification of organization to form the company. Although the certificate referred to Plaintiff as an organizer rather than as an owner, Plaintiff signed after Gornick explained that the words have the same meaning. Plaintiff also signed a \$50,000 line of credit for Veterans Oil. Plaintiff filed suit when he realized that Defendants did not consider him to be an owner and entered into an operating agreement that excluded him as a member of the LLC. Defendants asserted a counterclaim against Plaintiff, alleging that Plaintiff misappropriated oil and failed to pay for it. Defendants seek damages for breach of contract, quantum meruit, and conversion.

During a deposition, Hrin testified that she had a conversation about Plaintiff being an owner. Viewing the evidence in the light most favorable to Plaintiff, the Court denied Defendants’ motion because Plaintiff offered evidence of a contract. The Court also denied Defendants’ request that the Court enter summary judgment against Plaintiff on their counterclaim because Hrin testified that the repayment terms of Plaintiff’s debt were “pay it off when you can.” Therefore, a jury could conclude that no breach of the parties’ repayment terms has occurred.

In the Court of Common Pleas of Northampton County, Pennsylvania,  
Civil Division—No. C-48-CV-2009-1964.

EVERETT COOK, ESQUIRE, for Plaintiffs

NEIL D. ETTINGER, ESQUIRE, for Defendants

Order of the Court entered on December 2, 2010 by BELTRAMI, J.

*OPINION*

This matter is before the Court on “Defendants’ Motion for Summary Judgment Based on Plaintiff’s Cause of Action and Defendants’ Motion for Summary Judgment Based on Defendants’ Counterclaim Against Plaintiff,” filed on June 18, 2010. Defendants filed “Brief of Defendants in Support of Motion for Summary Judgment” on June 18, 2010, and Plaintiff filed “Brief of Plaintiff Opposing Defendants’ Motion for Summary Judgment” on July 14, 2010. The case was placed on the September 7, 2010, argument list and is ready for disposition.

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, or (2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

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. Certainteed Corporation*, 997 A.2d 1152, 1159 (Pa. 2010). The moving party bears the burden of proving that no genuine issue of material fact exists. *Barnish v. KWT 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, 965 A.2d 1194, 1200 (2009).

Viewed in this manner, the record reveals that Plaintiff initiated this case on March 2, 2009, alleging a breach of contract cause of action. Pl.’s Compl. ¶¶16-19. Plaintiff began working as a truck driver for Anthony Gornick (“Gornick”) and his oil company, T & C Oil, in July of 2007. Defs.’ Mot. for Summ. J., Ex. A, at 20-21. T & C Oil was dissolved because Gornick violated a non-compete clause that he had with Yeager’s Fuel Oil. *Id.* at 22. After T & C Oil was shut down, Plaintiff testified that he visited Gornick’s home, where he had a discussion with Gornick, Sue Hrin (“Hrin”), Cheryl Sullenberger (“Sullenberger”), and Craig Sullenberger. *Id.* at 11. During the conversation, which occurred on Gornick’s back porch, Gornick said he could not use his oil truck because he had been banned from purchasing oil. *Id.* at 27, 34. Plaintiff said that he could start a business and purchase Gornick’s oil truck by refinancing his home. *Id.* at 27. Plaintiff did not ultimately refinance his home, because Gornick told him that Hrin and Sullenberger would serve as Plaintiff’s silent partners. *Id.* at 29.

Plaintiff testified that he believed that he owned one-third of Defendant Veterans Discount Oil, LLC (“Veterans Oil”) and that Hrin and Sullenberger also owned one-third each. *Id.* at 33. Plaintiff’s belief was reaffirmed when Hrin called him and asked him to sign a paper to form the company. *Id.* at 32. Plaintiff testified that the paper stated that he was the

organizer of Veterans Oil. *Id.* Before signing the paper, Plaintiff asked Gornick why he was referred to as an organizer rather than as an owner. *Id.* at 50. Plaintiff testified that he signed the paper after Gornick explained to him that “organizer” and “owner” have the same meaning. *Id.* at 50-51, 54; Defs.’ Mot. for Summ. J., Ex. G. Plaintiff further testified that he signed for a \$50,000 line of credit to be used by Veterans Oil to purchase heating oil. Defs.’ Mot. for Summ. J., Ex. A, at 34.

Plaintiff subsequently drove an oil truck for the company. *See id.* at 71, 89, 90. Plaintiff was paid \$500 per week in wages. *Id.* at 71. When Plaintiff realized that Defendants did not consider him to be an owner of Veterans Oil, he composed a letter, stating that he would no longer be associated with, or drive a truck for, Veterans Oil. *Id.* at 89-90. Plaintiff thereafter hired an attorney and filed the instant suit. *Id.* at 90; Pl.’s Am. Compl.

After Plaintiff filed suit, Defendants asserted a counterclaim against Plaintiff in “Defendants’ Answer to Plaintiff’s (Third) Amended Complaint,” filed on October 21, 2009. In their counterclaim, Defendants allege that Plaintiff misappropriated 1735.7 gallons of oil for his own personal use and enjoyment. *See* Defs.’ Countercl. ¶¶5-6. Defendants further allege that Plaintiff made a promise to pay for the oil in his resignation letter. *Id.* ¶7; Defs.’ Mot. for Summ. J., Ex. D. Defendants contend that Plaintiff has failed to pay Defendants for the oil and seek damages for breach of contract, quantum meruit, and conversion. Defs.’ Countercl. Plaintiff denies that he used the oil for his own personal use and that there is a disputed balance. Pl.’s Ans. to New Matter ¶¶7, 11. Defendants request that the Court enter summary judgment against Plaintiff in the amount of \$6,407.58 on their counterclaim. Defs.’ Br. in Supp. of Mot. for Summ. J., at 7.

The Court will first address Defendants’ request that summary judgment be entered in their favor with regard to Plaintiff’s breach of contract action. Defendants argue that Plaintiff’s claim outlines an alleged oral contract with Gornick, a third party who is not associated with Defendants. Therefore, Defendants maintain that Plaintiff is unable to establish a breach of contract claim against them.

In response to Defendants’ motion for summary judgment, Plaintiff argues that “Hrin, who all parties agree is a part owner of [Veterans Oil], admitted on the record that she had conversations with [Plaintiff] about him being a partner in the company.” Pl.’s Br. in Opp’n to Defs.’ Mot. for Summ. J., at 4-5. During a deposition, Hrin testified as follows:

Q. Okay. Did you overhear any conversation with anyone and [Plaintiff] about him being a partner, an owner, shareholder, or a member in this company?

A. We had—well, we—we *did talk but we had one conversation about him being the owner*, but then we had another

conversation that he was just going to be a manager and [Sullenberger] and I were going to be the silent owners.

....

A. We just talked about him maybe being an owner, but then we went back and told him that he was just a manager and we were the owners, *the silent owners*.

Pl.'s Ans. to Defs.' Mot. for Summ. J., Ex. A, at 18 (emphasis added).

'The law of this Commonwealth makes clear that a contract is created where there is mutual assent to the terms of a contract by the parties with the capacity to contract.' *Shovel Transfer & Storage, Inc. v. Pa. Liquor Control Bd.*, 559 Pa. 56, 62-63, 739 A.2d 133, 136 (1999). In order for a contract to be formed, there must be an offer, acceptance, and an exchange of consideration. *Jenkins v. County of Schuylkill*, 441 Pa. Super. 642, 658 A.2d 380 (1995). An enforceable agreement exists if the parties have manifested their intent to be bound by its terms and the terms are sufficiently definite. *In re Estate of Hall*, 731 A.2d 617 (Pa. Super. 1999). 'When the trier of fact has determined the intention of the parties to an agreement, an appellate court will defer to the findings if the evidence supports them.' *Id.* at 621.

*Beaver Dam Outdoors Club v. Hazleton City Authority*, 944 A.2d 97, 103 n.2 (Pa. Commw. 2008).

In this case, Plaintiff has offered evidence that the parties manifested an intent to be bound by an oral agreement whereby Plaintiff, Hrin, and Sullenberger would form and own one-third of Veterans Oil. Plaintiff has also offered evidence that in exchange for Defendants' agreement, Plaintiff signed for a \$50,000 line of credit to be used by Veterans Oil to purchase heating oil. Finally, Plaintiff has presented evidence that Defendants entered into an operating agreement which excluded Plaintiff as a member of the business. We must view this evidence in the light most favorable to Plaintiff at this stage of the proceeding. Viewed in this manner, Plaintiff's evidence is sufficient to require his breach of contract claim to be submitted to the trier of fact. Thus, we must deny Defendants' motion for summary judgment as to Plaintiff's breach of contract claim.<sup>1</sup>

The Court will next address Defendants' request that the Court enter summary judgment against Plaintiff on their counterclaim. Defendants argue that Plaintiff acknowledged his failure to pay for oil that was delivered to his home. Therefore, Defendants argue that the Court should enter judgment against Plaintiff in the amount of \$6,407.58. In response, Plaintiff

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<sup>1</sup> We reject Defendants' argument that a limited liability company cannot be formed pursuant to an oral agreement, as the Limited Liability Company Law of 1994 specifically states that "[t]he operating agreement of a limited liability company need not be in writing." 15 Pa. C.S.A. §8916(a).



notes that Hrin told Plaintiff that he could pay when he had funds available. Hrin testified at a preliminary hearing in a related criminal proceeding as follows:

Q. Now, it says here in the second sentence that you show a due date on the invoice but just ignore it like we said before, pay it off when you can.

A. Yes.

Q. So those were the payment terms that you talked about?

A. Yes.

Q. So this was the repayment terms that you gave him, pay it off when you can?

A. Yes.

Pl.'s Ans. to Defs.' Mot. for Summ. J., Ex. C, at 19. Viewed in the light most favorable to Plaintiff, a jury could conclude that no breach of the parties' repayment terms has occurred. Thus, there is a genuine issue of material fact which requires Defendants' breach of contract, quantum meruit, and conversion claims to be submitted to a jury.

WHEREFORE, we enter the following:

*ORDER*

AND NOW, this 2nd day of December, 2010, Defendants' Motion for Summary Judgment Based on Plaintiff's Cause of Action and Defendants' Motion for Summary Judgment Based on Defendants' Counterclaim Against Plaintiff are hereby DENIED.



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## **PERIODICAL PUBLICATION**

**\* Dated Material. Do Not Delay. Please Deliver Before Monday, February 14, 2011**