

# Northampton County Reporter

(USPS 395-280)

VOL. LVI

EASTON, PA March 10, 2011

NO. 62

**Richard Dias and Andrea Dias, h/w, Plaintiffs v. David M. Yen, M.D., Bethlehem Ears,  
Nose and Throat Associates, P.C., St. Luke's Hospital Health Network, Inc., a/k/a St.  
Lukes's Hospital & Health Network, d/b/a St. Luke's Hospital, Defendants**

**QRC Contracting Co., LLC, Inc., Plaintiff v. Fameco Management Co., Defendant**

**Discover Bank, Plaintiff v. Anthony P. Casciano and Toni A. Casciano, Defendants**

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**INSERT:** Pink: 1. 2011 Calendar  
2. NCBA/BALC Joint Event  
3. Reception for the Court  
4. "How to Succeed in Business Without Really Trying"

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

**Notice From Court Administration—Debra C. French, Deputy Court  
Administrator**

The Magisterial District Courts in Northampton County will be closed to the public from noon on Friday, April 8, 2011 until 10:00 a.m. Monday, April 11, 2011 due to the installation of a new computer system.

Should you have any questions please contact me at (610) 559-6704.

**NORTHAMPTON COUNTY BAR ASSOCIATION  
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*Northampton County Reporter*

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

Subscription Price—\$75.00 per year.

Periodical Postage Paid at Easton, PA and additional office.

Postmaster: Send all communications and address changes to:

**NORTHAMPTON COUNTY REPORTER**

155 South Ninth St., Easton, PA 18042-4399

Telephone (610) 258-6333 FAX (610) 258-8715

Edward P. Shaughnessy, Esquire

Editor

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

#### **Committee Preference Forms**

New committees are formed each year. It may not be assumed that you roll over to the committee each year. Complete the Committee Preference Form if you would like to be added to a committee.

#### **Mark Your Calendars**

Reception for the Court—Friday, March 25, 2011.

Registration form inside.

NCBA/BALC Joint Event—Iron Pigs Game—Thursday, April 21, 2011

Registration form inside.

*This is the only Iron Pigs game we are attending this year.*

Quarterly Association Meeting—Thursday, May 19, 2011.

Malpractice Avoidance Seminar @ Best Western.

#### **NCBA Photo Directory**

We are publishing a new photo directory this year. Information on where and when the photo sessions will be scheduled should be out within the next few weeks. Please make every effort to have your photo taken for the directory. Members want to know who you are!

Never iron a four-leaf clover, because you don't want to press your luck.  
~ Author Unknown

**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****AKREP, ALBERT F.,** dec'd.

Late of Forks Township, Northampton County, PA

Executrix: Margaret E. Akrep 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

**BISCHKE, MARGARET a/k/a MARGARET THERESE BISCHKE,** dec'd.

Late of the Township of Bethlehem, Northampton County, PA  
Executor: Roy Wade c/o Joseph A. Corpora, III, Esquire, Sovereign Bank Building, 100 North Third Street, Suite 502, Easton, PA 18042

Attorney: Joseph A. Corpora, III, Esquire, Sovereign Bank Building, 100 North Third Street, Suite 502, Easton, PA 18042

**BLACK, STEVEN M.,** dec'd.

Late of Pen Argyl, Northampton County, PA

Administratrix: Patricia Rissmiller, Wind Gap, PA 18091

Attorneys: James G. Murphy, Esquire, Murphy & Murphy,

P.C., 106 N. Franklin St., Suite 2, P.O. Box 97, Pen Argyl, PA 18072

**ELLIS, LORRAINE O. a/k/a LORRAINE ELLIS,** dec'd.

Late of Bethlehem, Northampton County, PA

Executrix: Cindy Lou Ellis, 2137 Montgomery Street, Bethlehem, PA 18017

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

**GOEPFERT, JOANNE L.,** dec'd.

Late of the Township of Palmer, Northampton County, PA

Executrices: Melinda S. Snyder and Debra L. Coulton 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

**HAHN, ARLENE R.,** dec'd.

Late of the Township of Plainfield, Northampton County, PA  
Executors: Ralph W. Hahn and Brenda L. Steinmetz 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

**HOFFMAN, ALTHEA M. a/k/a ALTHEA HOFFMAN,** dec'd.

Late of the Borough of Portland, Northampton County, PA

Administrators: Barry Hoffman, Ara J. Thomas and Katherine L. Shook 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

**HORVATH, ELSIE D.,** dec'd.

Late of the Borough of Hellertown, Northampton County, PA  
Executor: William L. Horvath, Jr. 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

**KINCAID, WILLARD H.,** dec'd.

Late of the City of Bethlehem, Northampton County, PA  
Executrix: Wilma Meyer c/o John J. Bartos, Esquire, 100 Brodhead Road, Suite 130, Bethlehem, PA 18017

Attorney: John J. Bartos, Esquire, 100 Brodhead Road, Suite 130, Bethlehem, PA 18017

**KNECHT, ELEANOR M.,** dec'd.

Late of the Borough of Nazareth, Northampton County, PA  
Executor: James F. Knecht 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

**KOVACH, JULIA,** dec'd.

Late of the Borough of Freemansburg, Northampton County, PA  
Executrix: Helen Bachochin c/o William P. Leeson, Esquire, Leeson, Leeson & Leeson, 70 E. Broad Street, P.O. Box 1426, Bethlehem, PA 18016-1426

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

**LaBAR, DONNA H. a/k/a DONNA HUMMER LaBAR,** dec'd.

Late of the Borough of East Bangor, Northampton County, PA  
Executrix: Bonnie L. Hayford 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

**MAZZA, JOSEPH P.,** dec'd.

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

Executrix: Helen Marie Shafer c/o April L. Cordts, Esquire, 391 Nazareth Pike, Bethlehem, PA 18020

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

**MITMAN, KATHRYN B.,** dec'd.

Late of Bethlehem, Northampton County, PA

Executors: Philip B. Mitman and Joyce E. Welken c/o Joel M. Scheer, Esquire, Fishbone & Scheer, 940 W. Lafayette Street, Easton, PA 18042

Attorneys: Joel M. Scheer, Esquire, Fishbone & Scheer, 940 W. Lafayette Street, Easton, PA 18042

**MONETA, PETER G.,** dec'd.

Late of Bethlehem, Northampton County, PA

Executrix: Lee Ann Rinkenberg, 4505 Greenfield Road, Bethlehem, PA 18017

Attorney: Daniel P. Sabetti, Esquire, 224 West Broad Street, Bethlehem, PA 18018

**PENSACK, BETTY JANE**, dec'd.

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

Executor: Richard A. Pensack 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

**SOURS, DOROTHY G. a/k/a DOROTHY SOURS**, dec'd.

Late of the Township of Bethlehem, Northampton County, PA

Executor: John Sours, Jr. 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

**WACK, FRANK, JR.**, dec'd.

Late of the Township of Palmer, Northampton County, PA

Executrix: Marlyn Moore Wack 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

**ZIEGLER, WAYNE C.**, dec'd.

Late of the Borough of Nazareth, Northampton County, PA

Administrator C.T.A.: National Penn Investors Trust Co., 1620 Pond Road, Suite 200, Allentown, PA 18104

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

**SECOND PUBLICATION**

**ALBERTSON, MARGARET J.**, dec'd.

Late of Northampton, Northampton County, PA

Executor: John B. Mesics, Jr. c/o Donald S. Young, Esquire, Rebecca M. Young, Esquire, Young & Young, 119 E. Main Street, Macungie, PA 18062

Attorneys: Donald S. Young, Esquire, Rebecca M. Young, Esquire, Young & Young, 119 E. Main Street, Macungie, PA 18062

**BENNETT, MICHAEL**, dec'd.

Late of Bethlehem, Northampton County, PA

Executrix: Sandra J. Bennett, 333 E. Broad St., Bethlehem, PA 18018

Attorneys: Gary M. Miller, Esquire, Miller & Davison, 210 E. Broad Street, Bethlehem, PA 18018

**BILHEIMER, KENNETH H.**, dec'd.

Late of Walnutport, Northampton County, PA

Executrices: Barbara J. DeLong, 3706 Highland Road, P.O. Box 207, Neffs, PA 18065 and Carol A. Overholt, 4308 Butter Street, Walnutport, PA 18080

Attorneys: Keith W. Strohl, Esquire, Steckel and Stopp, 125 S. Walnut Street, Suite 210, Slatington, PA 18080.

**BILHEIMER, RUTH A.**, dec'd.

Late of Walnutport, Northampton County, PA

Executrices: Barbara J. DeLong, 3706 Highland Road, P.O. Box

207, Neffs, PA 18065 and Carol A. Overholt, 4308 Butter Street, Walnutport, PA 18080  
Attorneys: Keith W. Strohl, Esquire, Steckel and Stopp, 125 S. Walnut Street, Suite 210, Slatington, PA 18080.

**BOOTH, ELLEN C.,** dec'd.

Late of Bethlehem Township, Northampton County, PA  
Executrix: Beverly E. B. Butz, 380 E. Dannersville Rd., Bath, PA 18014  
Attorney: Steven B. Molder, Esquire, 904 Lehigh Street, Easton, PA 18042

**BUKICS, ALICE R.,** dec'd.

Late of the Borough of Hellertown, Northampton County, PA  
Executrix: Jean D. Wagner 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

**COLE, RUTH A.,** dec'd.

Late of Northampton County, PA  
Executor: Bruce G. Cole, 1302 Clearfield Road, Nazareth, PA 18064  
Attorneys: Kevin A. Hardy, Attorney At Law, P.C., P.O. Box 818, Stroudsburg, PA 18360

**CORRELL, WILLIAM C.,** dec'd.

Late of the Township of Bushkill, Northampton County, PA  
Personal Representatives: Katherine M. (Correll) Beam, 606 Farm Hill Road, Northampton, PA 18067 and Judy A. (Correll) Bobeck, 823 South 24th Street, Easton, PA 18042  
Attorney: Antonia M. Grifo, Esquire, 318 Spring Garden Street, Easton, PA 18042-3552

**FAUST, TERRY A.,** dec'd.

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

Administratrix: Frances M. Faust 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

**FEEHAN, JOHN D.,** dec'd.

Late of the Township of Hanover, Northampton County, PA  
Executrix: Margaret F. Hansen a/k/a Marbo F. Hansen c/o Littner, Deschler & Littner, 512 North New Street, Bethlehem, PA 18018  
Attorneys: Littner, Deschler & Littner, 512 North New Street, Bethlehem, PA 18018

**FRITZO, CONNIE B.,** dec'd.

Late of the Township of Palmer, Northampton County, PA  
Executor: Jeffrey L. Fritz 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

**FRY, JAMES, SR. a/k/a JAMES FRY,** dec'd.

Late of the Borough of Nazareth, Northampton County, PA  
Executor: James Fry, Jr. 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



**GIBBONS, ROBERT**, dec'd.

Late of the Township of Palmer, Northampton County, PA  
Executrix: Mrs. Annette Gibbons 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

**HOCHWARTER, JOHN W.**, dec'd.

Late of the Township of Palmer, Northampton County, PA  
Executrix: Sheryl A. Montoro-Creazzo 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

**KORVES, JEROME B.**, dec'd.

Late of Bethlehem, Northampton County, PA  
Executrix: Anne Korves, 86 Oak Lane, Northampton, PA 18067  
Attorney: Robert P. Daday, Esquire, 1042 W. Walnut Street, Allentown, PA 18102

**KRAUTTER, RUTH**, dec'd.

Late of Upper Mt. Bethel, Northampton County, PA  
Executor: C. George Kemmerer c/o Timothy J. Duckworth, Esquire, Mosebach, Funt, Dayton & Duckworth, P.C., P.O. Box 20770, Lehigh Valley, PA 18002-0770  
Attorneys: Timothy J. Duckworth, Esquire, Mosebach, Funt, Dayton & Duckworth, P.C., P.O. Box 20770, Lehigh Valley, PA 18002-0770

**LAUDENSLAGER, KATHRYN R.**, dec'd.

Late of the Borough of Hellertown, Northampton County, PA  
Executor: Robert J. Laudenslager 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

**LONCAR, MARGILLIA B.**, dec'd.

Late of 8 Longwood Circle, Bath, Northampton County, PA  
Executor: Lee A. Conrad, Esquire, Thomas, Conrad & Conrad, 3 North Main Street, Tipton, PA 19562  
Attorneys: Lee A. Conrad, Esquire, Thomas, Conrad & Conrad, 3 North Main Street, Tipton, PA 19562

**MACKES, CHARLES E.**, dec'd.

Late of the Township of Bushkill, Northampton County, PA  
Executor: Eugene D. Mackes c/o David M. Backenstoe, Esquire, 514 Main Street, Hellertown, PA 18055  
Attorney: David M. Backenstoe, Esquire, 514 Main Street, Hellertown, PA 18055

**NONEMAKER, LEON L. a/k/a LEON NONEMAKER**, dec'd.

Late of the City of Bethlehem, Northampton County, PA  
Executrix: Jean F. Nonemaker c/o Littner, Deschler & Littner, 512 North New Street, Bethlehem, PA 18018  
Attorneys: Littner, Deschler & Littner, 512 North New Street, Bethlehem, PA 18018

**SANDT, RUTH N.**, dec'd.

Late of Palmer Township, Northampton County, PA



Executrix: Sharon L. Gackebach c/o Joel M. Scheer, Esquire, Fishbone & Scheer, 940 W. Lafayette Street, Easton, PA 18042

Attorneys: Joel M. Scheer, Esquire, Fishbone & Scheer, 940 W. Lafayette Street, Easton, PA 18042

**SHATSKY, GERALDINE I.,** dec'd.

Late of Nazareth Borough, Northampton County, PA

Executrix: Jane L. Kline, 6140 Pond View Terrace, Bath, PA 18014

Attorneys: Christopher M. McLean, Esquire, Zator Law Offices, LLC, 4400 Walbert Avenue, Allentown, PA 18104

**VALO, LARRY F. a/k/a LARRY VALO,** dec'd.

Late of the Borough of Bath, Northampton County, PA

Executrix: Doreen Zdonowski c/o Leo P. Jackson, Esquire, JacksonLaw, LLC, 607 Monroe Street, P.O. Box 698, Stroudsburg, PA 18360

Attorneys: Leo P. Jackson, Esquire, JacksonLaw, LLC, 607 Monroe Street, P.O. Box 698, Stroudsburg, PA 18360

**WRIGHT, MALCOLM R.,** dec'd.

Late of the Township of Palmer, Northampton County, PA

Administratrix: Pamela D. Kistler c/o Littner, Deschler & Littner, 512 North New Street, Bethlehem, PA 18018

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

**WUCHTER, CHARLES C.,** dec'd.

Late of the Borough of Bath, Northampton County, PA

Executor: Charles C. Wuchter, Jr. 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

**THIRD PUBLICATION**

**BORDA, SUE A.,** dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executors: Brian L. Borda, 158 Hamilton Avenue, Bethlehem, PA 18017-4647 and Stephen C. Borda, 1562H Catasauqua Road, Bethlehem, PA 18017-7410

Attorney: Daniel G. Spengler, Esquire, 110 East Main Street, Bath, PA 18014

**BREITENSTEIN, ADELE E.,** dec'd.

Late of the City of Bethlehem, Northampton County, PA

Administrator: John R. Breitenstein, 6210 Regina Lane, Beaumont, TX 77706

Attorney: Charlene D. Rauscher, Esquire, P.O. Box 78, New Tripoli, PA 18066

**CERINO, ANGELINE,** dec'd.

Late of the Borough of Bangor, Northampton County, PA

Executrix: Judith DePaulo, 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

**CLARKE, HAROLD B.,** dec'd.

Late of the Borough of Hellertown, Northampton County, PA

Executrix: Dawn L. Vresics 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

**DEEMER, GRACE V. a/k/a GRACE DEEMER a/k/a GRACE V. RICE, dec'd.**

Late of Hellertown Borough, Northampton County, PA

Executrix: Grace J. Kramer c/o Gregory E. Grim, Esquire, Grim, Biehn & Thatcher, 104 South Sixth Street, P.O. Box 215, Perkasio, PA 18944

Attorneys: Gregory E. Grim, Esquire, Grim, Biehn & Thatcher, 104 South Sixth Street, P.O. Box 215, Perkasio, PA 18944

**DICKISSON, MARIAN G., dec'd.**

Late of the Borough of Hellertown, Northampton County, PA  
Executor: Richard A. Charman c/o Littner, Deschler & Littner, 512 North New Street, Bethlehem, PA 18018

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

**GRANNETINO, WILLIAM J., dec'd.**

Late of Northampton, Northampton County, PA

Executors: William J. Grannetino, Jr. and Peggy E. Schellhamer c/o Michael A. Henry, Esquire, Gross McGinley, LLP, P.O. Box 4060, Allentown, PA 18105-4060

Attorneys: Michael A. Henry, Esquire, Gross McGinley, LLP, P.O. Box 4060, Allentown, PA 18105-4060

**HEFFELFINGER, SALLY A. a/k/a SALLY ANN HEFFELFINGER, dec'd.**

Late of Northampton, Northampton County, PA

Executor: Arthur T. Heffelfinger c/o Jeffrey F. Hussar, Esquire, 946 Third Street, Whitehall, PA 18052

Attorney: Jeffrey F. Hussar, Esquire, 946 Third Street, Whitehall, PA 18052

**HOGAN, VIRGINIA, dec'd.**

Late of the City of Bethlehem, Northampton County, PA

Executors: Scott and David Akus c/o Chrystyna M. Fenchon, Esquire, 1022 Main Street, P.O. Box 1006, Bethlehem, PA 18016  
Attorney: Chrystyna M. Fenchon, Esquire, 1022 Main Street, P.O. Box 1006, Bethlehem, PA 18016

**KRUEGER, EMILY V. a/k/a EMILY KRUEGER, dec'd.**

Late of the Township of Bethlehem, Northampton County, PA  
Executrix: Shirley Ann Kochenberger c/o Richard J. Haber, Esquire, 150 W. Macada Road, Bethlehem, PA 18017-2409

Attorney: Richard J. Haber, Esquire, 150 W. Macada Road, Bethlehem, PA 18017-2409

**LEMMON, MARGARET T., dec'd.**

Late of Bethlehem, Northampton County, PA

Personal Representative: Raymond A. Lemmon c/o Peter P. Perry, Esquire, 1600 Lehigh Parkway East, 1E, Allentown, PA 18103-3097

Attorney: Peter P. Perry, Esquire, 1600 Lehigh Parkway East, 1E, Allentown, PA 18103-3097

**MAHONEY, ANNA M. a/k/a ANNA MAHONEY, dec'd.**

Late of the City of Bethlehem, Northampton County, PA

Executrix: Jennifer J. Hero 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

**MANSELL, ETHEL H.,** dec'd.

Late of Bethlehem, Northampton County, PA

Executor: Edward Mansell c/o William J. Fries, Esquire, The Atrium—Suite 106, 2895 Hamilton Boulevard, Allentown, PA 18104

Attorney: William J. Fries, Esquire, The Atrium—Suite 106, 2895 Hamilton Boulevard, Allentown, PA 18104

**SACARAKIS, JOHN,** dec'd.

Late of the Borough of Hellertown, Northampton County, PA  
Executrix: Deborah J. Sacarakis 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

**NOTICES OF INCORPORATION**

NOTICE IS HEREBY GIVEN that Articles of Incorporation—Nonprofit 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:

**BLUE VALLEY**

**BABE RUTH LEAGUE, INC.**

The Articles of Incorporation were filed on February 22, 2011.

ANTHONY J. MARTINO, ESQUIRE  
641 Market Street  
Bangor, PA 18013

Mar. 10

Articles were filed with the Dept. of State on February 18, 2011 for:

**SADDLE RIDGE**

**HOMEOWNERS ASSOCIATION**

pursuant to the provisions of the PA Nonprofit Corporation Law of 1988 for the operation of a homeowners association.

BARROWLAW

65 West Street Road  
Suite B102

Warminster, PA 18974

Mar. 10

**CORPORATE FICTITIOUS NAME  
REGISTRATION NOTICE**

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

**KEASBEY TRUCKING, INC.  
OF PA**

with its principal place of business at: 608 Five Points—Richmond Road, Bangor, PA 18013. The name and address of the entity owning or interested in said business is: Keasbey Trucking, Inc., 608 Five Points—Richmond Road, Bangor, PA 18013.

The certificate was filed on January 26, 2011.

JOHN O. STOVER, JR., ESQUIRE  
537 Chestnut Street  
Emmaus, PA 18049

Mar. 10

**CERTIFICATE OF AUTHORITY  
NOTICE**

NOTICE IS HEREBY GIVEN that **EBL International, Inc.**, a Delaware corporation, has filed an application with the Department of State of the Commonwealth of Pennsylvania, at

Harrisburg, Pennsylvania, for the purpose of obtaining a Certificate of Authority under the provisions of the Pennsylvania Business Corporation Law of 1988. The principal office and registered office of EBL International, Inc. are at 116 Research Dr., Ste. 126, Bethlehem, PA 18015.

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

MAMIE PINTO BONISESE a/k/a  
MAMIE BONISESE; John D. Bonise-  
ese, Sr., Executor

ROBERT P. GAFFNEY; Patricia A.  
Windas, Administratrix

RYAN M. LUCAS; Marie L. Knecht,  
Administratrix

JOSEPH PATTI a/k/a GIUSEPPE  
PATTI; Maria Patti, Executrix

MARK S. RETZLER a/k/a MARK  
STEVEN RETZLER; Annette M. Filler,  
Executrix

**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 25, 2011 AT 9:00 A.M. IN COURTROOM #1.

Dorothy L. Cole  
Clerk of Orphans' Court

Mar. 10, 17

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

Darlene Bolig and Edward E.  
Johnson, Jr., Administrators of the  
Estate of Maxine Johnson,

Plaintiffs

vs.

Ida Schwab, et al.,

Defendants

**NO. C-48-CV-2011-1954**

**CIVIL ACTION**

**DECLARATION JUDGMENT AND  
TO QUIET TITLE**

To: The unknown heirs, successors, executors, legal representatives, personal representatives, assigns and other persons claiming by, under or through Ida Schwab, a deceased person, Henry Schwab, a deceased person, Henry William Schwab, a deceased person, Richard Schwab, a deceased person, Francis Schwab Haas, a deceased person, Lillian Schwab, a deceased person, Carl Maxwell Schwab, a deceased person, Villa Clark, a deceased person, Hazel Bieber, a deceased person, Herbin Schwab, a deceased person, Marion Schwab, Warren Schwab, a deceased person, Henry Schwab, a deceased person, Margaret Schwab, a deceased person, Dorothea Schwab, a deceased person, Emma Pittenger, a deceased person, Carl Schwab, a deceased person, Laura Titman, Louella Evrard, a deceased person, Richard Clark, David Schwab, Nancy Lou Schwab, Jennifer Chilmonik, Rodney Schwab, Winfred Dalgewicz, Henry Jo Davy, a deceased person, Donna Schiavone, Kathy Marrah, Linda Moroz, Thomas Schwab, David Evrard, Mark Evrard and persons who claim any interest in the property known as 460 NEW STREET, FREEMANSBURG, PENNSYLVANIA, TAX PARCEL N7SWC3-4-3.

**NOTICE**

A suit has been filed in Court to quiet title to the property known as 460 New Street, Freemansburg, Pennsylvania and known as tax par-

cel N7SWC3-4-3. All interested parties wishing to defend against the claims set forth in the Complaint in Quiet Title filed, must take action within twenty (20) days after this Notice is served via publication, by entering a written appearance personally or by attorney and filing in writing with the Court defenses or objections to the claims set forth in the Complaint. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for the relief requested in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU CANNOT AFFORD A LAWYER, GO TO OR TELEPHONE THE OFFICE

SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Lehigh Valley Legal Services  
65 East Elizabeth Avenue  
Suite 903  
Bethlehem, PA 18018  
(610) 317-8757

IF YOU CAN AFFORD TO HIRE A LAWYER BUT DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Lawyer Referral Service  
155 South Ninth Street  
Easton, PA 18042  
(610) 258-6333

WENDY NICOLASI, ESQUIRE  
Attorney I.D. #76794  
BROUGHAL & DeVITO, L.L.P.  
Attorneys for Plaintiffs

38 West Market Street  
Bethlehem, PA 18018  
(610) 865-3664

Mar. 10

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Mar. 10, 17, 24, 31

**RICHARD DIAS and ANDREA DIAS, H/W, Plaintiffs v. DAVID M. YEN, M.D., BETHLEHEM EARS, NOSE AND THROAT ASSOCIATES, P.C., ST. LUKE'S HOSPITAL HEALTH NETWORK, INC., a/k/a ST. LUKE'S HOSPITAL & HEALTH NETWORK, d/b/a ST. LUKE'S HOSPITAL, Defendants**

*Preliminary Objections—Venue—Medical Professional Liability Action.*

Plaintiffs filed suit, alleging negligence, corporate negligence, and loss of consortium. Plaintiffs contend that Plaintiff Richard Dias (“Dias”) suffered an eye injury as a result of a surgery performed by Defendant David M. Yen (“Dr. Yen”). Defendants responded with preliminary objections, arguing that Northampton County is an improper venue and that the case should be transferred to Lehigh County, where the surgery occurred.

The Court, following law set out in *Bilotti-Kerrick v. St. Luke's Hospital*, 873 A.2d 728 (Pa. Super. 2005), agreed with Defendants. In *Bilotti-Kerrick*, a plaintiff was transferred to St. Luke's Hospital in Lehigh County. The defendant doctor, who was at his home in Northampton County, agreed to provide the plaintiff with treatment by 6:00 a.m. Although the doctor gave orders over the telephone from his home, he did not arrive at the hospital until 10:15 a.m. After the plaintiff filed suit in Northampton County, this Court transferred the case to Lehigh County. On appeal, the Superior Court agreed that Lehigh County was the proper venue because the doctor's orders were carried out in Lehigh County. In the instant case, although Dr. Yen recommended the surgery at his office in Northampton County, his recommendation was carried out in Lehigh County. Moreover, the crux of Plaintiffs' complaint is that despite signs of injury noted by other healthcare providers at St. Luke's Hospital following the surgery, Dr. Yen failed to appreciate and/or treat the injury prior to discharging Dias from the hospital. Therefore, the Court concluded that Northampton County is not the proper venue for this action.

In the Court of Common Pleas of Northampton County, Pennsylvania,  
Civil Division—No. C-48-CV-2010-10025.

TIMOTHY R. LAWN, ESQUIRE, for Plaintiffs.

ELAINE M. ROSS, ESQUIRE, for Defendants David M. Yen, M.D. and Bethlehem Ears, Nose and Throat.

PAUL F. LAUGHLIN, ESQUIRE, for Defendant St. Luke's Health Network, Inc., a/k/a St. Luke's Hospital & Health Network, d/b/a St. Luke's Hospital.

Order of the Court entered on January 6, 2011 by BELTRAMI, J.

*OPINION*

This matter is before the Court on the “Preliminary Objections of Defendant, David M. Yen, M.D. and Bethlehem Ears, Nose and Throat to Plaintiffs' Complaint” and the “Preliminary Objections of Defendants, St. Luke's Health Network, Inc., a/k/a St. Luke's Hospital and Health Network, d/b/a St. Luke's Hospital, to Plaintiffs' Complaint.” Briefs have been submitted, oral argument was heard on December 7, 2010, and the matter is ready for disposition.



In their complaint, Plaintiffs allege that Dr. Yen was negligent in recommending and in performing a bilateral endoscopic surgery on Plaintiff Richard Dias (“Dias”) at St. Luke’s Hospital. Plaintiffs contend that, during the surgery, Dias suffered “a transection of the left medial rectus muscle and [dehiscence] of the inferomedial left orbital/ethmoid margin.” Pls.’ Compl. ¶22. Plaintiffs allege that, as a result of the injury, Dias was required to undergo eye surgery to repair the damage and continues to suffer from “a loss of vision, double vision, eye pain, [and] decreased and improper eye movement.” *Id.* ¶32.

In Count One of their complaint, Plaintiffs state a cause of action against Defendants for negligence. In Count Two of their complaint, Plaintiffs state a cause of action against Defendants St. Luke’s Health Network, Inc., a/k/a St. Luke’s Hospital and Health Network, d/b/a St. Luke’s Hospital (“St. Luke’s Hospital”) for corporate negligence. In Count Three of Plaintiffs’ complaint, Plaintiff Andrea Dias states a cause of action for loss of consortium against Defendants.

In their respective preliminary objections, both Defendants argue that Northampton County is an improper venue and that the case should be transferred to Lehigh County, where the surgery occurred. The Court agrees.

“Except as otherwise provided by subdivision (c), a medical professional liability action may be brought against a health care provider for a medical professional liability claim only in a county in which the cause of action arose.” Pa. R.C.P. No. 1006(a)(2)(a.1). The relevant portion of subdivision (c) of that rule states that “[i]f the action to enforce a joint or joint and several liability against two or more defendants includes one or more medical professional liability claims, the action shall be brought in any county in which the venue may be laid against any defendant under subdivision (a.1).” Pa. R.C.P. No. 1006(c)(2). Sections (a.1) and (c)(2) were added to Rule 1006 as a result of the General Assembly’s enactment of 42 Pa. C.S.A. §5101.1(b), which states that “a medical professional liability action may be brought against a health care provider for a medical professional liability claim only in the county in which the cause of action arose.”

In this case, all parties concede that the causes of action against St. Luke’s Hospital arose in Lehigh County, where the hospital is located and where the surgery was performed. However, Plaintiffs argue that Dr. Yen and, vicariously, his practice, Bethlehem Ears, Nose and Throat, were negligent in both Northampton and Lehigh Counties, making venue proper in Northampton County pursuant to Rule 1006(c)(2). Thus, the sole issue to be decided in this case is whether a cause of action against Dr. Yen and his practice arose in Northampton County.

In a medical professional liability case, the phrase “cause of action” is defined to mean “the negligent act or omission, as opposed to the injury which flows from the tortious conduct.” *Peters v. Sidorov*, 855 A.2d 894,

896 (Pa. Super. 2004). In discussing the relevant law, the Superior Court has stated:

Pennsylvania courts have defined the phrase ‘cause of action’ in cases involving claims based upon negligence to mean ‘the negligent act or omission, as opposed to the injury which flows from the tortious conduct.’ *Peters v. Sidorov*, 855 A.2d 894, 896 (Pa.Super.2004) citing *Sunderland v. R.A. Barlow Homebuilders*, 791 A.2d 384, 390 (Pa.Super.2002).

In our decision of *Olshan v. Tenet Health System City Ave., LLC*, 849 A.2d 1214 (Pa.Super.2004), we determined that where a plaintiff was misdiagnosed by health care providers in one county but filed suit in another county (where the health care providers’ hiring, training, and administration took place), the cause of action arose in the county of misdiagnosis for venue purposes (the place of the negligent act or omission). *See Olshan*. Following *Olshan*, in our decision of *Peters v. Sidorov*, 855 A.2d 894 (Pa. Super.2004), we determined that where a plaintiff was misprescribed a drug in one county but filed suit in another county (where the injury occurred by ingesting the drug), the cause of action arose in the county of misprescription for venue purposes (the place of the negligent act). *See Peters*.

*Bilotti-Kerrick v. St. Luke’s Hospital*, 873 A.2d 728, 731 (Pa. Super. 2005) (footnote omitted). In *Bilotti-Kerrick*, the plaintiff was transferred by helicopter from Pocono Medical Center in Monroe County to St. Luke’s Hospital, which is located in Lehigh County, for immediate cardiac catheterization. *Id.* at 729. The defendant doctor, who was at his home in Northampton County at the time, agreed to provide the plaintiff with medical treatment at St. Luke’s Hospital by 6:00 a.m. that morning. *Id.* Although the doctor gave orders over the telephone from his home, he did not arrive at the hospital until 10:15 a.m. *Id.* at 729, 731. After the plaintiff filed suit in Northampton County, this Court transferred the case to Lehigh County. On appeal, the Superior Court agreed that the proper venue was Lehigh County because “the cause of action arose in the county where the negligent act or omission of failing to provide the needed care occurred.” *Id.* at 731. As the Superior Court explained, “[e]ven though [the doctor] gave medical orders over the phone from his home in Northampton County, the orders were carried out in Lehigh County. All of the care provided [or not provided] to the [plaintiff] ... occurred in Lehigh County.” *Id.*

In this case, the only acts or omissions attributed to Dr. Yen that are alleged to have occurred in Northampton County are his “failure to properly assess [Dias]’ condition before surgery to ascertain whether he was a proper candidate for the endoscopic surgery” and his failure to promptly diagnose Dias’ condition post-operatively. Pls.’ Compl. ¶¶27(a), (c), (e)-(i).

With regard to the pre-surgery assessment, although Plaintiffs complain that Dr. Yen was negligent in recommending the surgery, analogous to the omission in *Bilotti-Kerrick*, that recommendation was carried out in Lehigh County. As for Plaintiffs' allegation that Dr. Yen failed to promptly diagnose Dias' condition after he performed the surgery, the crux of Plaintiffs' complaint is that despite signs of injury noted by other healthcare providers at St. Luke's Hospital following the surgery, Dr. Yen failed to appreciate and/or treat the injury prior to discharging Dias from the hospital, thereby increasing the risk of harm. *Id.* ¶¶11-14, 27(c), (e)-(i). For this reason, as in *Bilotti-Kerrick*, the omission occurred in Lehigh County, even if we assume for the sake of argument that a family member called Dr. Yen's Northampton County office for advice after Dias' discharge from the hospital.<sup>1</sup> See *id.* ¶17.

For all of the above reasons, Northampton County is not the proper venue for this action. Accordingly, the Court will transfer this case to Lehigh County pursuant to Pa. R.C.P. No. 1006(e), which states:

If a preliminary objection to venue is sustained and there is a county of proper venue within the State the action shall not be dismissed but shall be transferred to the appropriate court of that county. The costs and fees for transfer and removal of the record shall be paid by the plaintiff.

WHEREFORE, we enter the following:

#### ORDER

AND NOW, this 6th day of January, 2011, the "Preliminary Objections of Defendant, David M. Yen, M.D. and Bethlehem Ears, Nose and Throat to Plaintiffs' Complaint" and the "Preliminary Objections of Defendants, St. Luke's Health Network, Inc., a/k/a St. Luke's Hospital and Health Network, d/b/a St. Luke's Hospital, to Plaintiffs' Complaint" are hereby SUSTAINED, in part. Defendants' preliminary objections on the ground of improper venue are hereby SUSTAINED.

The Clerk of Court—Civil Division is hereby ordered to transfer this case to the Court of Common Pleas of Lehigh County upon payment of the costs and fees for transfer and removal of the record by the Plaintiffs.

The Court hereby defers disposition of Defendants' remaining preliminary objections to the Court of Common Pleas of Lehigh County.

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<sup>1</sup> We note that although Plaintiffs argued that this phone call took place in Northampton County, no such allegation is contained in Plaintiffs' complaint or in Plaintiffs' responses to Defendants' preliminary objections. We further note that Plaintiffs did not raise this allegation as new matter in their responses to the objections, and neither party requested an evidentiary hearing, pursuant to local rule N1028(c)(2), on the issue of venue. However, as noted above, the Court has assumed, for the sake of argument, that the call occurred in Northampton County, as that fact does not change the Court's decision to transfer this case to Lehigh County.

**QRC CONTRACTING CO., LLC, Plaintiff v. FAMECO  
MANAGEMENT CO., Defendant**

*Preliminary Objections—Breach of Contract—Agency.*

Plaintiff filed suit, alleging that Defendant breached a contract when it failed to pay for snow removal services performed by Plaintiff. Defendant responded with preliminary objections, arguing that it cannot be held liable because it was not a party to the contract. Defendant asserted that it merely acted as a disclosed agent for a principal who was a party to the contract.

After examining the contract that Plaintiff had attached to its complaint, the Court found that the contract was between Plaintiff and SCI Palmer Town Center Fund, LLC (“Owner”). The contract stated that Defendant was Owner’s agent and that Defendant could not be held liable to Plaintiff for the fulfillment or non-fulfillment of any of the terms or conditions of the contract. The Court, following well-settled law, concluded that only the principal is liable for a breach of contract. *Bucks v. Buckwalter*, 419 Pa. 544, 546, 215 A.2d 625, 627 (1966). Because Plaintiff’s complaint failed to state a cause of action against Defendant, the Court sustained Defendant’s demurrer and dismissed Plaintiff’s complaint.

In the Court of Common Pleas of Northampton County, Pennsylvania,  
Civil Division—No. C-48-CV-2010-11303.

MICHELLE HOUSER, ESQUIRE, for Plaintiffs.

DANIEL R. UTAIN, ESQUIRE, for Defendants.

Order of the Court entered on January 10, 2011 by BELTRAMI, J.

*OPINION*

This matter is before the Court on “Defendant’s Preliminary Objections to the Complaint Pursuant to Pa. R.C.P. 1028(a)(1) and (2),” filed on December 2, 2010. On December 22, 2010, Plaintiff filed a response to the preliminary objections. On December 23, 2010, Defendant filed a brief in support of its objections, and oral argument was heard on January 4, 2011.<sup>1</sup> The matter is ready for disposition.

Plaintiff’s complaint was filed on October 7, 2010, and purports to state a cause of action for breach of contract based upon allegations that Defendant failed to pay for snow removal services performed by Plaintiff under the terms of a contract, a copy of which is attached to Plaintiff’s complaint as Exhibit “A.” Plaintiff alleges that it is owed \$13,048.35 for its services.

In its first preliminary objection, Defendant raises a demurrer, arguing that it cannot be held liable because it was not a party to the contract but rather solely acted as a disclosed agent for a principal who was a party to the contract. Pennsylvania Rule of Civil Procedure 1028(a)(4) allows for a preliminary objection on the ground of legal insufficiency of a plead-

<sup>1</sup> No one appeared on behalf of Plaintiff at the call of the argument list or for oral argument.

ing, which is called a demurrer. A demurrer will only be sustained if the plaintiff's complaint fails to state any legally cognizable cause of action. *Lerner v. Lerner*, 954 A.2d 1229, 1234 (Pa. Super. 2008). However, any doubt as to whether the complaint states a cause of action should be resolved in favor of overruling the demurrer. *Francesco v. Group Health Inc.*, 964 A.2d 897, 899 (Pa. Super. 2008). In ruling on a demurrer, a trial court may not consider any testimony or evidence outside of the complaint. *Cooper v. Frankford Health Care System, Inc.*, 960 A.2d 134, 143 (Pa. Super. 2008), *appeal denied*, 970 A.2d 431 (Pa. 2009). Further, a trial court may not consider the factual merits of the complaint, but must accept as true all well-pleaded, material, relevant facts, as well as all inferences reasonably deducible therefrom. *Filippi v. City of Erie*, 968 A.2d 239, 242 (Pa. Commw. 2009).

The elements of a breach of contract claim are: "(1) the existence of a contract including its essential terms, (2) a breach of a duty imposed by the contract and (3) resultant damages." *Corestates Bank, N.A. v. Cutillo*, 723 A.2d 1053, 1058 (Pa. Super. 1999).

In this case, the contract is dated November 3, 2006, and is an agreement between Plaintiff and SCI Palmer Town Center Fund, LLC ("Owner"). Pl.'s Compl., Ex. A, at 1. The contract states that Palmer Town Center ("Property") is owned by Owner. *Id.* The contract required Plaintiff to perform snow removal services for Owner at the Property under certain terms and conditions. *See* Pl.'s Compl., Ex. A. However, the contract specifically states that "Owner has appointed [Defendant] as the sole and exclusive agent of Owner to manage the Property." *Id.* at 1. The contract also states that "[Defendant] has acted as an agent of Owner in connection with this Agreement and shall not in any event be held liable to [Plaintiff] for the fulfillment or non-fulfillment of any of the terms or conditions of this Agreement or for any action that may be taken by [Plaintiff] against Owner." *Id.* at Section 22.

Section 22 of the contract is consistent with well-settled law. In this regard, we note that "[n]o authorities need to be cited in support of the familiar rule of law, that where one deals with an agent who acts within the scope of his authority and reveals his principal, the latter ordinarily is alone liable for a breach of contract." *Bucks v. Buckwalter*, 419 Pa. 544, 546, 215 A.2d 625, 627 (1966) (quoting *Rosenberg v. Clyde & Co.*, 2 Pa. Super. 572, 575 (1896)). Thus, pursuant to Plaintiff's agreement with Owner and applicable law, while Defendant agreed to manage the contract between Plaintiff and Owner, Defendant incurred no liability to Plaintiff for nonpayment under the terms of the agreement. For this reason, even if we accept the allegations in Plaintiff's complaint as true, Defendant did not enter into a contract with Plaintiff—Owner did. Thus, Plaintiff may pursue a breach of contract action against Owner. However, under the terms of the Plaintiff's

agreement with Owner and applicable law, Plaintiff may not recover against Defendant for the amount alleged due pursuant to that agreement.

For all of the above reasons, Plaintiff's complaint fails to state a cause of action against Defendant, Defendant's demurrer must be sustained, and Plaintiff's complaint must be dismissed. Because the case turns on a pure question of law and no amendment has been suggested that would cure the problem, leave to amend will not be granted. *See Wells v. Wells*, 166 Pa. Super. 635, 74 A.2d 702 (1950). As Defendant's demurrer will be sustained, the Court need not address Defendant's remaining preliminary objections.

WHEREFORE, we enter the following:

*ORDER*

AND NOW, this 10th day of January, 2011, "Defendant's Preliminary Objections to the Complaint Pursuant to Pa. R.C.P. 1028(a)(1) and (2)" are hereby SUSTAINED, in part, and OVERRULED, in part. Plaintiff's complaint is hereby dismissed, with prejudice. In all other respects, Defendant's preliminary objections are overruled as moot.

**DISCOVER BANK, Plaintiff v. ANTHONY P. CASCIANO and  
TONI A. CASCIANO, Defendants**

*Preliminary Objections—Credit Card—Necessary Writings—Verification.*

Plaintiff Discover Bank filed a Second Amended Complaint against Defendants Anthony P. Casciano and Toni A. Casciano, seeking to recover monies owed under a credit card agreement. Defendants filed preliminary objections in the form of demurrers, seeking to dismiss Plaintiff's Second Amended Complaint based on alleged legal insufficiency. Defendants claimed that Plaintiff failed to attach the necessary writings and failed to properly verify their Complaint.

Relying on the Pennsylvania Rules of Civil Procedure, related case law, and Opinions issued by other counties' Courts of Common Pleas, this Court determined that Discover Bank attached the necessary writings to its Second Amended Complaint. In so doing, the Court reconciled an apparent split among Pennsylvania Courts of Common Pleas. The Court also determined that Plaintiff's Second Amended Complaint was properly verified. Accordingly, the Court denied Defendants' objections.

In the Court of Common Pleas of Northampton County, Pennsylvania,  
Civil Division—No. C-48-CV-2010-4744.

KARINA VELTER, ESQUIRE, for Plaintiff.

ANTHONY MARTINO, ESQUIRE, for Defendants.

Order of the Court entered on December 7, 2010 by KOURY, Jr., J.

*OPINION*

This matter is before the Court on the Preliminary Objections of Defendants Anthony P. Casciano and Toni A. Casciano (collectively, "the Cascianos") to Plaintiff Discover Bank's Second Amended Complaint. Discover Bank filed its Second Amended Complaint on August 9, 2010 and a Praecipe to Substitute Verification of the Second Amended Complaint on August 13, 2010. Thereafter, on August 26, 2010, the Cascianos filed Preliminary Objections and, on September 20, 2010, Discover Bank filed its response. The parties appeared for argument on September 28, 2010 before the Honorable Michael J. Koury, Jr. The matter is now ready for disposition.

For the reasons that follow, the Court overrules the Cascianos' Preliminary Objections and, accordingly, directs them to file a response to Discover Bank's Second Amended Complaint within twenty days of the filing of the attached Order of Court.

*I. FACTUAL AND PROCEDURAL BACKGROUND<sup>1</sup>*

On or about October 9, 1989, Discover Bank offered the Cascianos a Discover credit card. Second Amended Complaint in Civil Action at ¶8,

<sup>1</sup> While considering preliminary objections, the Court must accept as true all of the well-pleaded material facts set forth in the complaint and all inferences fairly deducible therefrom. See *Insurance Adjustment Bureau, Inc. v. Allstate Insurance Company*, 588 Pa. 470, 905 A.2d 462, 468 (2006). It "need not accept as true conclusions of law, unwarranted



*Discover Bank v. Casciano*, No. C-48-CV-2010-4744 (C.P. Northampton, Aug. 9, 2010) [“Second Amended Complaint”]. Discover Bank sent the Cascianos a Cardmember Application and a Cardmember Agreement. *Id.* The Cascianos signed and returned the Cardmember Application, and regularly used their Discover credit card. *See id.* at ¶¶8-10.

Pursuant to the Cardmember Agreement, the Cascianos were required to remit payments equal to the total balance due on their account or, alternatively, the minimum monthly payment as reflected in their most recent statement of account. *Id.* at ¶¶17, 23. The Cascianos periodically made such payments until June 6, 2009. *Id.* at ¶13. They have not made any payments since then.

On August 9, 2010, Discover Bank filed its Second Amended Complaint, whereby it seeks to recover the balance owed on the Cascianos’ account, interest, and attorney’s fees. *Id.* at 3, 4. The Second Amended Complaint was verified by Robert Adkins, the Account Manager of DFS Services L.L.C. (“DFS”). Praecipe to Substitute Verification at 2, *Discover Bank v. Casciano*, No. C-48-CV-2010-4744 (C.P. Northampton, Aug. 13, 2010) [“Verification”]. At all times relevant to this action, DFS was the servicing affiliate of Discover Bank. Second Amended Complaint at ¶3. As the servicing affiliate, DFS was responsible for the collection of delinquent accounts. *Id.* This responsibility gave DFS the right to forward the account to attorneys for collection and to file suit on Discover Bank’s behalf. *Id.*

## II. DISCUSSION

The Cascianos filed Preliminary Objections in the nature of Demurrers, claiming that this Court should dismiss Discover Bank’s Second Amended Complaint. To support their claim, the Cascianos raise two alleged defects that, if accepted as such by this Court, would render the Second Amended Complaint insufficient as a matter of law.<sup>2</sup> First, the Cascianos effectively argue that Discover Bank’s failure to attach a signed copy of the Cardmember Agreement violates Rule 1019(i) of the Pennsylvania Rules of Civil Procedure.<sup>3</sup> *See* Preliminary Objections of Defendants to Second Amended Complaint at ¶3, *Discover Bank v. Casciano*, No. C-

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inferences from facts, argumentative allegations, or expressions of opinion.” *Penn Title Insurance Company v. Deshler*, 661 A.2d 481, 483 (Pa. Cmwlth. 1995). With this standard in mind, the Court presents this summary of the underlying facts, as presented by Discover Bank. *See Insurance Adjustment Bureau, Inc.*, supra, 905 A.2d at 468; Second Amended Complaint, *Discover Bank v. Casciano*, No. C-48-CV-4744 (C.P. Northampton, Aug. 13, 2010).

<sup>2</sup> In their Preliminary Objections, the Cascianos failed to provide the legal basis for their claims. However, those bases were somewhat clarified by their brief. *See* Brief in Support of Defendant’s Preliminary Objections, *Discover Bank v. Casciano*, No. C-48-CV-2010-4744 (C.P. Northampton, Sept. 15, 2010).

<sup>3</sup> In their brief, the Cascianos stated that pursuant to Pa. R.C.P. 1028(a), Discover Bank’s Second Amended Complaint was insufficient as a matter of law. They failed, however, to provide any citation or legal authority for their claim. The Court has thus interpreted their claim as relying upon Pa. R.C.P. 1019(i).

48-CV-2010-4744 (C.P. Northampton, Aug. 26, 2010) [“Preliminary Objections”]; Brief in Support of Defendants’ Preliminary Objections at 8-9, *Discover Bank v. Casciano*, No. C-48-CV-2010-4744 (C.P. Northampton, Sept. 15, 2010) [“Defendants’ Brief”]. Second, the Cascianos argue that this Court should dismiss the Second Amended Complaint because it was not properly verified as required by Rule 1024. Preliminary Objections at ¶¶4-6.

#### A. Standard of Review

A preliminary objection in the nature of a demurrer challenges the underlying complaint, alleging that the plaintiff failed to set forth a cause of action upon which relief can be granted. *See* Pa. R.C.P. 1028(a)(4); *Balsbaugh et al. v. Rowland*, 447 Pa. 423, 426, 290 A.2d 85, 87 (1972). “A trial court may sustain a demurrer, and thereby dismiss a claim, only [where] the law is clear that a plaintiff is not entitled to recovery based on the facts alleged in the complaint.” *Insurance Adjustment Bureau, Inc.*, *supra*, 905 A.2d at 468. A trial court may not, however, sustain a demurrer unless relief cannot be granted under any theory of law. *See McNeil v. Jordan*, 814 A.2d 234, 238 (Pa. Super. 2002), *reversed on other grounds*, 586 Pa. 413, 894 A.2d 1260 (2006); *Sutton v. Miller*, 405 Pa. Super. 213, 221, 592 A.2d 83, 87 (1991).

#### B. The Cascianos’ Claim That Discover Bank’s Second Amended Complaint Should Be Dismissed Based Upon Its Failure to Attach a Signed Cardmember Agreement

The Cascianos’ first Preliminary Objection is based on Rule 1019 of the Pennsylvania Rules of Civil Procedure. Rule 1019 governs the contents of pleadings and, in relevant part, states:

(i) 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. 1019. In the context of an action brought by a credit card company (or assignee) against a debtor in default on his account, the Superior Court reaffirmed these requirements when it provided that the creditor must “attach the writings which assertedly establish [the creditor’s] right to [] judgment.” *See Atlantic Credit and Finance, Inc. v. Giuliani*, 829 A.2d 340, 345 (Pa. Super. 2003). Those writings include an application signed by the consumer, writings containing the applicable terms, and copies of the debtor’s monthly statements. *See id.* (noting that, in absence of such paperwork, complaint should be dismissed for failure to comply with Rule 1019); *see also, Discover Bank v. Winfree*, 11 D. & C. 5th 321, 324 (Adams Co. 2010); *Target National Bank v. Kilbride*, 10 D. & C. 5th 489, 491

(Centre Co. 2010); *Hilko Receivables v. Haas*, 2009 WL 6761854 (Lawrence Co. 2009); *Citibank (S.D.) N.A. v. Shedlosky*, 2005 WL 5314588 (Cumberland Co. 2005); *Marine Bank v. Orlando*, 25 D. & C. 3d 264, 266 (Erie Co. 1982).

In the instant matter, Discover Bank satisfied Rule 1019 by attaching the documents discussed above. *See e.g., Giuliana*, supra, 829 A.2d at 345; *Winfree*, 11 D. & C. 5th at 324. Discover Bank noted that its contract with the Cascianos was founded upon several writings. Second Amended Complaint at ¶8. Thus, it complied with Rule 1019 by producing copies of those writings—namely, the Cascianos’ signed Cardmember Application, the relevant Cardmember Agreement, and monthly statements of account. *See* Second Amended Complaint at Exhibits A-C.

In their first Preliminary Objection, the Cascianos specifically fault Discover Bank for failing to attach a signed copy of the Cardmember Agreement, which contained the specific terms and conditions of the parties’ agreement. However, the Court has not identified any binding authority which would require Discover Bank to submit a signed copy of the Cardmember Agreement. Instead, as discussed above and as required by law, Discover Bank submitted a signed copy of the Cascianos’ Cardmember Application.<sup>4</sup> Therefore, with respect to the Cascianos’ first Preliminary Objection, the Second Amended Complaint is sufficient as a matter of law. The Court thus overrules the Cascianos’ first Preliminary Objection.

*C. The Cascianos’ Claim that Discover Bank’s Second Amended Complaint Should Be Dismissed Based Upon the Allegedly Improper Verification By a DFS Employee*

The Cascianos’ second Preliminary Objection is based on Rule 1024 of the Pennsylvania Rules of Civil Procedure. Rule 1024 governs the contents of pleadings and, in relevant part, states:

(a) Every pleading containing an averment of fact not appearing of record in the action or containing a denial of fact shall state that the averment or denial is true upon the signer’s personal knowledge or information and belief and shall be verified. The signer need not aver the source of the information or expectation of ability to prove the averment or denial at the trial. A pleading may be verified upon personal knowledge as to a part and upon information and belief as to the remainder.

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<sup>4</sup>To the extent that a minority of Pennsylvania trial courts require similarly situated creditors to submit a signed copy of the terms governing their relationship, *see e.g., Am. Express Centurion v. Decker*, 9 D. & C. 5th 299, 300 (Centre Co. 2009), the Court notes that Discover Bank satisfied its obligation by producing a signed copy of the Cardmember Application. By signing the Application, the Cascianos accepted the terms of the Cardmember Agreement. *See* Cardmember Application, Second Amended Complaint at Exhibit A.

(c) The verification shall be made by one or more of the parties filing the pleading unless all the parties (1) lack sufficient knowledge or information, or (2) are outside the jurisdiction of the court and the verification of none of them can be obtained within the time allowed for filing the pleading. In such cases, the verification may be made by any person having sufficient knowledge or information and belief and shall set forth the source of the person's information as to matters not stated upon his or her own knowledge and the reason why the verification is not made by a party.

Pa. R.C.P. 1024 (a), (c). Rule 1024 applies to preliminary objections because the Pennsylvania Rules of Civil Procedure recognize preliminary objections as pleadings. *See* Pa. R.C.P. 1017(a)(4).

In the instant matter, Discover Bank's Second Amended Complaint was not verified by Discover Bank or by one of its corporate officers; instead, it was verified by Robert Adkins, an Account Manager at DFS. Nevertheless, the verification substantially complies with the relevant Rules of Civil Procedure. Pennsylvania courts have previously held that verification by a non-party is appropriate and acceptable where: (1) the complaint is filed by a corporation; (2) the complaint is verified by an officer of a different corporation; (3) the corporations are interrelated, in that one is responsible for the collections of the other; (4) this relationship is sufficiently set forth in the complaint; and (5) the officer that verified the complaint stated that the facts set forth in the complaint are true and correct. *See Kensington Mfg. Co. v. Thermal Seal Window Corp.*, 20 D. & C. 3d 733, 734-35 (Lehigh Co. 1981).

In the instant matter, Discover Bank's Second Amended Complaint and related verification meet these criteria. The Second Amended Complaint was filed by Discover Bank, a corporation based out of New Albany, Ohio, but verified by Robert Adkins, an Account Manager for DFS. Second Amended Complaint at ¶1, Verification. As set forth in the Second Amended Complaint and accepted as true by this Court, *see Insurance Adjustment Bureau, Inc.*, *supra*, 905 A.2d at 468, DFS was the servicing affiliate of Discover Bank and was responsible for the collection of delinquent accounts. *Id.* at ¶3. Finally, Mr. Adkins verified that the facts set forth in Discover Bank's Second Amended Complaint are "true and correct to the best of his/her knowledge, information and belief." *Id.* at Verification.

Moreover, even if this Court had determined that Mr. Adkin's verification of Discover Bank's Second Amended Complaint was technically deficient, the Court would not have dismissed it. As the Pennsylvania Superior Court has stated, "[v]erification [of a pleading] is necessary to defend a party against spurious allegations[, but the verification requirement should] not be transformed into an offensive weapon designed to strike down an otherwise valid petition." *Monroe Contract Corporation v. Harrison Square*,

*Inc.*, 266 Pa. Super. 549, 557, 405 A.2d 954, 958 (1979). Any error in the verification of Discover Bank's Second Amended Complaint was "inconsequential" and "certainly not prejudicial" because the Cascianos had fair notice of the action against them. *See id.* Further, the Cascianos have not alleged that this action is, in any sense, spurious. As such, this Court may disregard the error because it "would not be in the best interests of judicial economy" to dismiss the matter without prejudice "for the sole purpose of effecting a miniscule and purely formal amendment." *See id.* at 557-58, 405 A.2d at 958-59; *see also*, Pa. R.C.P. 126 ("The court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties.").

WHEREFORE, we enter the following:

*ORDER*

AND NOW, this 7th day of December, 2010, upon consideration of Defendants' Preliminary Objections to Plaintiff's Second Amended Complaint, it is hereby ORDERED that said Preliminary Objections are OVER- RULED. It is further ORDERED that Defendants shall file a response to the Second Amended Complaint within twenty (20) days of the date of this Order.



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## **PERIODICAL PUBLICATION**

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