

# Northampton County Reporter

(USPS 395-280)

VOL. LVI

EASTON, PA April 7, 2011

NO. 66

**Hans G. Stoll and Jane A. Stoll, Plaintiffs v. United Services  
Automobile Association, Defendant**

**HSBC Bank v. Falls Trust et al.**

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**INSERT:** Yellow: 1. NCBA/BALC Joint Event

2. 2011 Calendar

3. Quarterly Association Meeting

4. PBI/CLE Seminars—NCBA Office, March—August 2011

Cream: 1. "Business and Ethical Considerations When Representing Personal Injury Clients"

2. "Protecting You and Your Clients' Retirement from a Disability"

3. "Special Needs Trust—A Primer"

4. "Elder Law Traps: Guide for the General Practitioner"

## NOTICE TO THE BAR...

### **N.C. Reporter Deadline Change**

Due to the holiday, the new deadline for the April 21, 2011 issue is  
Monday, April 18 @ 12:00 p.m.

\* \* \* \* \*

### **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.

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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.

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**Edward P. Shaughnessy, Esquire**

**Editor**

### **NOTICE TO NCBA MEMBERS**

#### Mark Your Calendars

Iron Pigs Game—NCBA/BALC Joint Event—Thursday, April 21, 2011  
Registration form inside.

Quarterly Association Meeting—Thursday, May 19, 2011.

Malpractice Avoidance Seminar @ Best Western.

Summer Outing—Thursday, July 21, 2011.

The palest ink is better than the best memory. ~ Chinese Proverb

**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****ANDERSON, WILLIAM H., JR.  
a/k/a WILLIAM H. ANDERSON,** dec'd.

Late of Bethlehem, Northampton County, PA

Co-Executors: William H. Anderson III and Juliana P. Anderson, 7100 Old York Road, Philadelphia, PA 19126

**ASTEAK, RUTH a/k/a ROSE R. ASTEAK,** dec'd.

Late of the Township of Palmer, Northampton County, PA

Executor: Gary Neil Asteak, 726 Walnut Street, Easton, PA 18042

**BURNETT, RICHARD G.,** dec'd.

Late of the Township of Williams, Northampton County, PA

Executrices: Kimberly Blake and Rebecca S. Jones 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

**DAVIS, MICHAEL B.,** dec'd.

Late of the Township of Williams, Northampton County, PA

Executor: Edward J. Davis, III 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

**DONCHEZ, GEORGE, JR.,** dec'd.

Late of Bethlehem, Northampton County, PA

Executrix: Monica M. Galles, 6946 Helsinki Square, Bethlehem, PA 18017

Attorney: Eric R. Shimer, Esquire, 1 Bethlehem Plz., Ste. 830, Bethlehem, PA 18018

**FASICK, BARBARA F. a/k/a BARBARA FASICK,** dec'd.

Late of Wilson Borough, Northampton County, PA

Executor: Brian D. Fasick c/o Constantine M. Vasiliadis, Esquire, Kolb, Vasiliadis and Florenz, 74 W. Broad Street, Suite 170, Bethlehem, PA 18018-5738

Attorneys: Constantine M. Vasiliadis, Esquire, Kolb, Vasiliadis and Florenz, 74 W. Broad Street, Suite 170, Bethlehem, PA 18018-5738

**INFUSINO, CHARLES I.,** dec'd.

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

Co-Executors: Charles M. Infusino and Carol Lynn Tokar c/o Littner, Deschler & Littner, 512 North New Street, Bethlehem, PA 18018

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

**MILLER, DAVID J.,** dec'd.

Late of the Township of Moore, Northampton County, PA

Executor: Marshall Miller 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

**MOHN, NANCY J.,** dec'd.

Late of the Township of Plainfield, Northampton County, PA  
Executor: Floyd W. Mohn 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

**ORLANDO, JOHN, JR.,** dec'd.

Late of the Borough of Bangor, Northampton County, PA  
Administratrix: Mamie Orlando 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

**ROMEO, DELORES,** dec'd.

Late of Easton, Northampton County, PA  
Executor: Nicodemo Romeo, 1050 Ferry Street, Easton, PA 18042  
Attorney: William Clements, Esquire, 65 East Elizabeth Avenue, Suite 510, Bethlehem, PA 18018

**RUMFIELD, HELEN P.,** dec'd.

Late of Nazareth Borough, Northampton County, PA  
Executrices: Jane A. Leposa and Debra M. Wilder c/o Eric R. Strauss, Esquire, Worth, Magee

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

**SALABSKY, WILLIAM K., SR.,** dec'd.

Late of the City of Bethlehem, Northampton County, PA  
Executor: William K. Salabsky, Jr. c/o Edward L. Redding, Esquire, 548 N. New Street, Bethlehem, PA 18018  
Attorney: Edward L. Redding, Esquire, 548 N. New Street, Bethlehem, PA 18018

**SALVADGE, COLLEEN M.,** dec'd.

Late of the Township of Hanover, Northampton County, PA  
Co-Executors: Ralph M. Salvadge, Jr. and Karen M. Schiffert c/o Stanley M. Vasiliadis, Esquire, CELA, Vasiliadis & Associates, 2551 Baglyos Circle, Suite A-14, Bethlehem, PA 18020  
Attorneys: Stanley M. Vasiliadis, Esquire, CELA, Vasiliadis & Associates, 2551 Baglyos Circle, Suite A-14, Bethlehem, PA 18020

**WEAVER, CARL A. a/k/a CARL A. WEAVER, SR. a/k/a CARL WEAVER,** dec'd.

Late of the City of Easton, Northampton County, PA  
Executrix: Doris A. Houser 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

**SECOND PUBLICATION****DEITER, HENRY F.,** dec'd.

Late of the City of Bethlehem, Northampton County, PA  
Executrix: Suzanne D. Deiter 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

**FLYTUTA, PETER,** dec'd.

Late of the Borough of Northampton, Northampton County, PA

Administrator: Stephen Flytuta c/o Dean C. Berg, Esquire, 1820 Main Street, P.O. Box 10, Northampton, PA 18067

Attorney: Dean C. Berg, Esquire, 1820 Main Street, P.O. Box 10, Northampton, PA 18067

**GARRITY, NINA R.,** dec'd.

Late of the Township of Palmer, Northampton County, PA

Executor: Thomas R. Garrity 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

**GOLDSTEIN, EUGENE,** dec'd.

Late of Hanover Township, Northampton County, PA

Executrix: Dr. Estelle R. Stein c/o William W. Matz, Jr., Esquire, 211 W. Broad Street, Bethlehem, PA 18018-5517

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

**GORSKI, TIMOTHY R.,** dec'd.

Late of Lower Saucon Township, Northampton County, PA

Administrator: Richard D. Gorski, Esquire, 2029 West Union St., Allentown, PA 18104

Attorney: Richard D. Gorski, Esquire, 2029 West Union St., Allentown, PA 18104

**KECK, IRENE M.,** dec'd.

Late of the Township of Hanover, Northampton County, PA

Executor: Luther W. Keck c/o Littner, Deschler & Littner, 512 North New Street, Bethlehem, PA 18018

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

**MARSH, VICTORIA I.,** dec'd.

Late of Lower Nazareth Township, Northampton County, PA  
Executor: Randall A. Marsh, 455 Spruce Lane, Nazareth, PA 18064-9606

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

**PATEL, ANKIT,** dec'd.

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

Administrator: Rajanikant R. Patel, 5717 Sullivan Trail, Nazareth, PA 18064

Attorney: Gary Neil Asteak, Esquire, 726 Walnut Street, Easton, PA 18042

**SNYDER, SHERRY S.,** dec'd.

Late of Lehigh Township, Northampton County, PA

Administrator: Thomas J. Peters-Hall c/o Jon A. Swartz, Esquire, Swartz & Associates, 1605 N. Cedar Crest Boulevard, Suite 514, Allentown, PA 18104-2351

Attorneys: Jon A. Swartz, Esquire, Swartz & Associates, 1605 N. Cedar Crest Boulevard, Suite 514, Allentown, PA 18104-2351

**WILLIAMS, TERESA**, dec'd.

Late of the City of Bethlehem,  
Northampton County, PA

Executrix: Mary Ellen Fisher c/o  
William W. Matz, Jr., Esquire,  
211 W. Broad Street, Bethlehem,  
PA 18018-5517

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

**THIRD PUBLICATION****BETSCH, JOSEPH B.**, dec'd.

Late of the Township of Palmer,  
Northampton County, PA

Executrix: Jacqueline M. Rogers  
c/o R. Steven Porreca, Esquire,  
38 Beaver Run Road, Downing-  
town, PA 19335

Attorney: R. Steven Porreca,  
Esquire, 38 Beaver Run Road,  
Downingtown, PA 19335

**CASTNER, JOANNE**, dec'd.

Late of the Borough of Nazareth,  
Northampton County, PA

Executor: Victor A. Castner, 175  
West North Street, Nazareth, PA  
18064

Attorneys: Peters, Moritz, Pei-  
schl, Zulick, Landes & Brienza,  
LLP, 1 South Main Street, Naza-  
reth, PA 18064-2083

**CRAWFORD, EDWARD J.**, dec'd.

Late of Lower Saucon Township,  
Northampton County, PA

Executor: Sean M. Crawford,  
4651 Kathi Drive, Bethlehem, PA  
18017

Attorney: Samuel P. Murray,  
Esquire, 720 Washington Street,  
Easton, PA 18042

**FALCONE, MICHAEL J.**, dec'd.

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

Executor: Joseph Falcone, c/o  
David J. Ceraul, Esquire, 22  
Market Street, P.O. Box 19, Ban-  
gor, PA 18013-0019

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

**HORTON, RUTH E.**, dec'd.

Late of Wilson Borough,  
Northampton County, PA

Executor: Ralph S. Horton, Jr.  
c/o Thomas L. Walters, Esquire,  
Lewis and Walters, 46 South  
Fourth Street, P.O. Box A,  
Easton, PA 18044-2099

Attorneys: Thomas L. Walters,  
Esquire, Lewis and Walters, 46  
South Fourth Street, P.O. Box A,  
Easton, PA 18044-2099

**MURPHY, DAVID W.**, dec'd.

Late of Shamokin, Northumber-  
land County, PA

Administratrix: Debra Weit,  
1222 West Walnut Street, Coal  
Township, PA 17866

Attorneys: Robin J. Marzella,  
Esquire, R.J. Marzella & Associ-  
ates, 3513 North Front Street,  
Harrisburg, PA 17110

**NICHOLAS, IDA MAE a/k/a IDA  
NICHOLAS a/k/a IDA M. NICH-  
OLAS**, dec'd.

Late of Bethlehem Township,  
Northampton County, PA

Administrators: Alvin N. Nicho-  
las, Jr., 1403 Ravena St., Beth-  
lehem, PA 18015 and Jeffrey A.  
Nicholas, 1471 Sixth St., Beth-  
lehem, PA 18020

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

**ORLANDO, MICHAEL M.**, dec'd.

Late of the Borough of Wilson,  
Northampton County, PA

Executor: Joseph C. Orlando,  
Sr., 435 Berkley Street, Easton,  
PA 18045

Attorneys: Peters, Moritz, Pei-  
schl, Zulick, Landes & Brienza,



LLP, 1 South Main Street, Nazareth, PA 18064

**PAGNI, PRIMO**, dec'd.

Late of the Borough of Northampton, Northampton County, PA

Administrator: Carlo Pagni, 474 East 12th Street, Whitehall, PA 18052

Attorney: John L. Obrecht, Esquire, 1731 Main Street, Northampton, PA 18067-1544

**PELOSI, MICHAEL**, dec'd.

Late of the City of Bethlehem, Northampton County, PA

Administratrix: Tara Pelosi c/o Jacob S. Kolb, Esquire, Kolb, Vasiliadis and Florenz, 74 West Broad Street, Ste. 170, Bethlehem, PA 18018-5738

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

**ROTHROCK, FLORENCE I. a/k/a FLORENCE ROTHROCK**, dec'd.

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

Executors: Dale E. Rothrock and Wanda May Rothrock a/k/a Wanda M. Rothrock 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

**SCHIERONI, HELEN**, dec'd.

Late of 602 E. 21st Street, Northampton, Northampton County, PA

Executrix: Roberta Kaplan, 4325 Vassar Avenue, Bethlehem, PA 18017

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

**SEIFERT, CARL K.**, dec'd.

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

Executrix: Terry I. Seifert 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

**SINKO, KALMAN**, dec'd.

Late of the Township of Bethlehem, Northampton County, PA  
Executrix: Katherine A. Sinko c/o Nicholas M. Zanakos, Esquire, 742 North Main Street, Bethlehem, PA 18018

Attorney: Nicholas M. Zanakos, Esquire, 742 North Main Street, Bethlehem, PA 18018

**SULLIVAN, MARVIN**, dec'd.

Late of Lower Mount Bethel, Northampton County, PA

Administrator: Scott Mayer c/o The Law Offices of Charles W. Gordon, 680 Wolf Avenue, Easton, PA 18042

Attorneys: The Law Offices of Charles W. Gordon, 680 Wolf Avenue, Easton, PA 18042

**TRAINER, HENRIETTA A.**, dec'd.

Late of the City of Easton, Northampton County, PA

Executrix: Kay F. Crouse, 131 Goritz Road, Milford, NJ 08848  
Attorneys: Peters, Moritz, Peischl, Zulick, Landes & Brienza, LLP, 1 South Main Street, Nazareth, PA 18064-2083

**TROIANO, JOYCE C.**, dec'd.

Late of the City of Bethlehem, Northampton County, PA



Executor: Willard H. Leh 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

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**TRUST NOTICES**

NOTICE IS HEREBY GIVEN of the existence of the trusts of the deceased settlors set forth below for whom no personal representatives have been appointed within 90 days of death. All persons having claims or demands against said 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.

**SALVADGE, COLLEEN M.**, dec'd.

Late of the Township of Hanover, Northampton County, PA  
Colleen M. Salvadge Revocable Trust U/A/D 11/9/2004.

Colleen M. Salvadge, Settlor of the Trust.

Co-Trustees: Ralph M. Salvadge, Jr. and Karen M. Schiffert c/o Stanley M. Vasiliadis, Esquire, CELA, Vasiliadis & Associates, 2551 Baglyos Circle, Suite A-14, Bethlehem, PA 18020

Attorneys: Stanley M. Vasiliadis, Esquire, CELA, Vasiliadis & Associates, 2551 Baglyos Circle, Suite A-14, Bethlehem, PA 18020

Apr. 7, 14, 21

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**THOMMA, EVA**, dec'd.

Late of Bushkill Twp., Northampton County, PA

Personal Representative/Trustee: Dennis W. Thomma c/o

Peter J. Gilbert, Esquire, HighPoint Law Offices, PC, 200 Highpoint Drive, Suite 209, Chalfont, PA 18914

Attorneys: Peter J. Gilbert, Esquire, HighPoint Law Offices, PC, 200 Highpoint Drive, Suite 209, Chalfont, PA 18914

Mar. 31; Apr. 7, 14

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**NOTICE OF ARTICLES OF AMENDMENT**

NOTICE IS HEREBY GIVEN that Articles of Amendment have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of changing the name of Bangor Straight Chiropractic, Inc., a Pa. professional corporation to be organized under the provisions of the Pa. C.S. Section 2903, as amended.

The name of the corporation is to be changed to: **Bangor Chiropractic, Inc.**

The Articles of Amendment were filed on March 25, 2011.

DAVID J. CERAUL, ESQUIRE  
22 Market Street  
Bangor, PA 18013

Apr. 7

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**FICTITIOUS NAME REGISTRATION NOTICE**

NOTICE IS HEREBY GIVEN that an Application for Registration of Fictitious Name was filed in the Commonwealth of Pennsylvania on October 19, 2010 for:

**RONE NOTARY SERVICES**

located at: 1690 Best Place, Bethlehem, PA 18017. The name and address of the individual interested in the business is: Sheldon J. Rone, 1690 Best Place, Bethlehem, PA 18017. This was filed in accordance with 54 Pa. C.S. 311.

Apr. 7

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

The name of the limited liability company is:

**SAMMI'S LLC**

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

Apr. 7

**NOTICE OF DISSOLUTION**

NOTICE IS HEREBY GIVEN that a Certificate of Dissolution was filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on March 21, 2011 pursuant to the provisions of the Business Corporation Law. The name of the LLC is: **Windchime Enterprises, LLC**

Apr. 7

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

Northampton Area School District  
vs.

Eric R. Ellis

**NO. C48CV-2010-9707**

NOTICE IS HEREBY GIVEN that the above was named as Defendant in a civil action instituted by plaintiff.

This is an action to recover delinquent real estate taxes for the year 2009, for the property located at 2375 Yost Road, Moore Township, Pennsylvania, Tax Parcel H6 25 3. A tax claim in the amount of \$1,435.00 was filed on or about September 7, 2010, for this claim and a Writ of Scire Facias was filed.

You are hereby notified to plead to the writ in this case, on or before 20 days from the date of this publication or a Judgment will be entered.

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

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Northampton County  
Lawyer Referral Service  
155 S. Ninth Street  
Easton, PA 18042  
(610) 258-6333

PORTNOFF LAW  
ASSOCIATES, LTD.

P.O. Box 391  
Norristown, PA 19404-0391  
(866) 211-9466

Apr. 7

**ATTORNEY**

Lehigh Valley office of White and Williams LLP, a large law firm based in Philadelphia, is seeking an entry level associate for its Litigation practice group. PA Bar admission required along with excellent academic credentials. We offer a competitive salary and benefits package, a collegial work environment and the opportunity for professional growth.

**Please send resume, writing sample and  
cover letter with salary history to:**

**Platte B. Moring, III, Managing Partner**

**White and Williams LLP**

**3701 Corporate Parkway**

**Suite 300**

**Center Valley, PA 18034-8233;**

**burgesss@whiteandwilliams.com**

**EOE/M/F/D/V**

Apr. 7

**ALLENTOWN CENTER SQUARE OFFICE SPACE**

Office space available for 1 or 2 lawyers in well maintained Center Sq., Allentown, office building. Shared use of all facilities, library, copier, fax, etc.

Contact Jeffrey Greenwald at (610) 821-8700;  
e-mail: [jlgreen@fastmail.net](mailto:jlgreen@fastmail.net)

Mar. 31; Apr. 7, 21

**HANS G. STOLL and JANE A. STOLL, Plaintiffs v. UNITED SERVICES AUTOMOBILE ASSOCIATION, Defendant**

*Preliminary Objections—Unfair Trade Practices and Consumer Protection Law—Bad Faith.*

In their complaint, Plaintiffs alleged that Defendant wrongfully denied them insurance coverage after their home was damaged in a hail storm. Plaintiffs included a cause of action for bad faith and claimed damages pursuant to the Unfair Trade Practices and Consumer Protection Law (“UTCPL”). Defendant asserted demurrers to Plaintiffs’ UTCPL and bad faith claims.

The Court first concluded that the UTCPL applied because the insurance policy was purchased for personal, family, or household purposes. The Court also determined that Defendant’s sale of insurance to Plaintiffs fell within the UTCPL’s definition of “trade and commerce.” In their complaint, Plaintiffs did not cite to any specific section of the UTCPL that had been violated. The Court found that only section 201-2(4)(xxi) was relevant to the averments in Plaintiffs’ complaint. This “catch-all” provision of the UTCPL requires a plaintiff to plead and prove the elements of common-law fraud. *Sewak v. Lockhart*, 699 A.2d 755, 761 (Pa. Super. 1997). Pennsylvania Rule of Civil Procedure 1019(b) requires fraud to be averred with particularity. Because Plaintiffs failed to plead fraud with particularity, the Court sustained Defendant’s demurrer to Plaintiffs’ UTCPL claim.

The Court next addressed Defendant’s demurrer to Plaintiffs’ bad faith claim. Plaintiffs’ complaint stated that Defendant intentionally failed and refused to timely and properly investigate the claim and to provide coverage. Plaintiffs also alleged that Defendant failed to provide a reasonable basis for its failure to provide coverage. Because Plaintiffs’ complaint included sufficient facts to state a legally cognizable cause of action for bad faith, the Court overruled Defendant’s demurrer.

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—No. C-48-CV-2010-4793.

Leanne A. Waldie, Esquire, for Plaintiffs.

James Cole, Esquire, for Defendants.

Order of the Court entered on January 11, 2011 by BELTRAMI, J.

OPINION

This matter is before the Court on the “Preliminary Objections of Defendant, United Services Automobile Association, to Plaintiffs’ Complaint,” filed on November 26, 2010. Briefs have been submitted, and oral argument was heard on January 4, 2011. The matter is ready for disposition.

In their complaint, Plaintiffs allege that they purchased a homeowner’s insurance policy from Defendant that provided coverage for hail damage to their home. Plaintiffs allege that on May 23, 2009, a hail storm damaged the roof and siding on their home. Plaintiffs contend that after they notified Defendant of the loss, Defendant investigated the claim and wrongfully denied coverage. In Count I<sup>1</sup> of their complaint, Plaintiffs allege

<sup>1</sup> This Count was mistakenly identified as Count II in the complaint.

a cause of action for negligence. In Count II,<sup>2</sup> Plaintiffs seek a declaration that Defendant is obligated to provide coverage for the claim. In Count III<sup>3</sup> of their complaint, Plaintiffs claim damages pursuant to the Unfair Trade Practices and Consumer Protection Law (“UTCPL”), 73 P.S. §§201-1 to 201-9.3. In Count IV, Plaintiffs set forth a cause of action for bad faith pursuant to 42 Pa. C.S.A. §8371.

In their preliminary objections, Defendant asserts demurrers to Counts III and IV of Plaintiffs’ complaint. Pennsylvania Rule of Civil Procedure 1028(a)(4) allows for a preliminary objection on the ground of legal insufficiency of a pleading, 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 Incorporated*, 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).

### UTCPL

The UTCPL provides that “consumers may sue a seller of goods or services who commits an unfair trade practice ... .” *Williams v. Nat’l Sch. of Health Tech., Inc.*, 836 F. Supp. 273, 283 (E.D. Pa. 1993). The UTCPL states:

Any person who purchases ... goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful by section 3 of this act, may bring a private action to recover actual damages or one hundred dollars (\$100), whichever is greater. The court may, in its discretion, award up to three times the actual damages sustained, but not less than one hundred dollars (\$100), and may provide such additional relief as it deems necessary or proper. The court may award to the plaintiff, in addition to other relief provided in this section, costs and reasonable attorney fees.

73 P.S. §201-9.2(a). There is no allegation that the insurance policy in question was purchased by Plaintiffs for anything other than personal, fam-

<sup>2</sup> This Count was mistakenly identified as Count III in the complaint.

<sup>3</sup> No number was associated with the heading preceding this Count in the complaint.

ily, or household purposes. Therefore, this transaction clearly falls within the protection of the UTPCPL.

Section 3 of the UTPCPL states that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce as defined by subclauses (i) through (xxi) of clause (4) of section 2 of this act and regulations promulgated under section 3.1 of this act are hereby declared unlawful.” *Id.* §201-3.<sup>4</sup> “Trade” and “commerce” are defined as the “advertising, offering for sale, sale or distribution of any services ... directly or indirectly affecting the people of this Commonwealth.” *Id.* §201-2(3). Defendant’s sale of insurance to Plaintiffs, who reside in Pennsylvania, clearly falls within the definition of trade and commerce.

Section 201-2 of the UTPCPL sets forth twenty-one definitions of what constitutes “unfair methods of competition” and “unfair or deceptive acts or practices.” *Id.* Plaintiffs do not cite to any specific section of Section 201-2 as having been violated. Rather, Plaintiffs simply aver that Defendant “misrepresented to Plaintiffs that the insurance policy would provide coverage for claims such as the claim made by Plaintiffs.” Pls.’ Compl. ¶20. Plaintiffs also allege that Defendant “failed to properly and timely investigate the claim, failed to provide the coverage owed under the policy, wrongfully disclaimed coverage and failed to provide coverage without any reasonable basis.” *Id.* ¶21. Our review of Section 201-2 reveals only one section relevant to the averments in Plaintiffs’ complaint—“[e]ngaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.” *Id.* §201-2(4)(xxi). However, this “catch-all” provision of the UTPCPL requires a plaintiff to plead and “prove the elements of common law fraud.” *Sewak v. Lockhart*, 699 A.2d 755, 761 (Pa. Super. 1997). The elements of common-law fraud are:

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

*Id.* at 759 (quoting *Gibbs v. Ernst*, 538 Pa. 193, 207, 647 A.2d 882, 889 (1994)). Pennsylvania Rule of Civil Procedure 1019(b) requires fraud to be averred with particularity.

In this case, Plaintiffs’ complaint does not particularly aver an intentionally false misrepresentation, justifiable reliance, or causation. In this regard, we note:

[E]very plaintiff asserting a private cause of action under the UTPCPL must demonstrate his/her justifiable reliance on

<sup>4</sup> Section 201-3 also provides several exclusions to this section. None of the exclusions apply in the instant case.



the misrepresentation or wrongful conduct. As the decision in Weinberg emphasized that the UTPCPL was designed to prevent fraud and that the legislature did not intend to remove the common law elements of reliance and causation that attend a fraud action, plaintiffs must demonstrate the level of reliance that accompanies a common law fraud claim. *See Bortz v. Noon*, 556 Pa. 489, 499, 729 A.2d 555, 560-61 (1999) (stating that a plaintiff's justifiable reliance on a defendant's misrepresentation is an element of a common law fraud claim).

*Toy v. Metropolitan Life Insurance Company*, 863 A.2d 1, 11 (Pa. Super. 2004). Because Plaintiffs have not pleaded fraud with particularity, we must conclude that the mere refusal or failure of Defendant to pay Plaintiffs' insurance claim does not constitute a violation of the UTPCPL. *See Gordon v. Pennsylvania Blue Shield*, 378 Pa. Super. 256, 548 A.2d 600 (1988); *Klinger v. State Farm Mut. Auto. Ins. Co.*, 895 F. Supp. 709, 717 (M.D. Pa. 1995) ("It is well established that an insurer's refusal to pay benefits to an insured is nonfeasance, and not actionable under the [UTPCPL]").

For all of the above reasons, Defendant's demurrer to Plaintiffs' UTPCPL claim will be sustained.

#### *Bad Faith*

Next, Defendant argues that Plaintiffs' complaint fails to state a cause of action for bad faith pursuant to 42 Pa. C.S.A. §8371. The elements of bad faith are that "the insurer (1) did not have a reasonable basis for denying benefits under the policy and (2) knew or recklessly disregarded its lack of a reasonable basis in denying the claim." *Condio v. Erie Insurance Exchange*, 899 A.2d 1136, 1143 (Pa. Super. 2006).

Read in its entirety, Plaintiffs' complaint alleges that hail damage is a covered loss under the policy. Pls.' Compl. ¶5. The complaint also states that Defendant intentionally failed and refused to timely and properly investigate the claim and to provide coverage. *Id.* ¶¶5, 16, 21. In the complaint, Plaintiffs also allege that Defendant failed to provide a reasonable basis for its failure to provide coverage. *Id.* ¶21. Viewing these allegations, and all reasonable inferences that can be drawn therefrom in the light most favorable to Plaintiffs, Plaintiffs have pleaded sufficient facts to state a legally cognizable cause of action for bad faith pursuant to 42 Pa. C.S.A. §8371. Therefore, Defendant's demurrer to Plaintiffs' bad faith claim will be overruled.

WHEREFORE, we enter the following:

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*ORDER*

AND NOW, this 11th day of January, 2011, the “Preliminary Objections of Defendant, United Services Automobile Association, to Plaintiffs’ Complaint” are hereby SUSTAINED, in part, and DENIED, in part. Count III of Plaintiffs’ complaint, which purports to set forth a cause of action pursuant to the Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§201-1 to 201-9.3, is hereby dismissed. In all other respects, Defendant’s preliminary objections are overruled. Plaintiffs are granted leave to file an amended complaint within twenty (20) days.

**HSBC BANK, USA NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE UNDER THE INDENTURE RELATING TO PEOPLE'S CHOICE HOME LOAN SECURITIES TRUST SERIES 2006-1, Plaintiff v. FALLS TRUST 2010-1, ASSIGNEE OF HARLEYSVILLE NATIONAL BANK AND TRUST COMPANY and DOMINIC DESEI and JUDITH K. DESEI, Defendants.**

*Preliminary Objections—Damages—Loss of Consortium.*

HSBC Bank and Falls Trust 2010-1 each held mortgages against property owned by Dominic and Judith Desai. After securing judgment against the Desai's property, the parties cross-filed motions for summary judgment, each seeking declaration that its mortgage was superior (that is, its mortgage had priority) over the other party's mortgage.

After examining pertinent statutes, Pennsylvania precedent, and related federal precedent, the Court determined that Falls Trust 2010-1's mortgage was improperly acknowledged. As a result, the Court determined that Falls Trust 2010-1's mortgage was "fraudulent" as against HSBC's mortgage.

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. C-48-CV-2010-3019.

Ethan R. O'Shea, Esquire, for Plaintiff.

Richard Brent Somach, Esquire, for Defendants.

Order of the court entered on November 24, 2010 by KOURY, JR., J.

OPINION

This matter is before the Court on the July 14, 2010 Motion for Summary Judgment filed by Plaintiff HSBC Bank, USA National Association ("HSBC"), and the September 14, 2010 Motion for Summary Judgment cross-filed by Defendant Falls Trust 2010-1 ("Falls Trust"). HSBC and Falls Trust submitted briefs and 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 grants HSBC's Motion, declares that HSBC's lien against the parcel located at 1111 Washington Street in Easton, Pennsylvania has priority over Falls Trust's lien against the parcel, and denies Falls Trust's Motion.

I. STANDARD OF REVIEW

Motions for summary judgment are governed by Pa. R.C.P. 1035, *et seq.* The Pennsylvania Superior Court has explained that:

[a] motion for summary judgment may properly be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that

the moving party is entitled to judgment as a matter of law... . Summary judgment serves to eliminate the waste of time and resources of both litigants and the courts in cases where a trial would be a useless formality.

*Curran v. Children's Service Center of Wyoming County, Inc.*, 396 Pa. Super. 29, 32-33, 578 A.2d 8, 9 (1990) (quotation marks and citations omitted).

To overcome a properly made and supported motion for summary judgment, “the non-moving party may not rest upon the mere allegations and denials of his pleadings.” *Id.* Instead, the non-moving party must file a response to the motion for summary judgment within thirty days. Pa. R.C.P. 1035.3(a). That response must direct the court to evidence of record which identifies some genuine issue which should be held for trial, such as disputed issues of material fact cited in support of the motion for summary judgment. *See id.*; *see also, Curran*, *supra* at 33, 578 A.2d at 9.

Ultimately, “[t]he inquiry in deciding a motion for summary judgment ‘is whether the admissible evidence in the record, in whatever form, from whatever source, considered in the light most favorable to the respondent to the motion, fails to establish a prima facie case [for the moving party].’” *Curran*, *supra* at 33, 578 A.2d at 9.

## II. PROCEDURAL AND FACTUAL HISTORY

The parties do not dispute the facts. From May 2006, Domenic Desei and Judith Desei owned real property located at 1111 Washington Street in Easton, Pennsylvania (“the Property”). *See* Plaintiff, HSBC Bank, USA National Association’s Motion for Summary Judgment at ¶¶1, 4, *HSBC Bank, USA Nat’l Assoc. v. Falls Trust 2010-1*, No. C-48-CV-2010-344 (C.P. Northampton, July 15, 2010) [“HSBC’s Motion”]; Answering Defendant’s Motion for Summary Judgment at ¶1, *HSBC Bank, USA Nat’l Assoc. v. Falls Trust 2010-1*, No. C-48-CV-2010-344 (C.P. Northampton, September 14, 2010) [“Falls Trust’s Motion”]. On May 4, 2006, in consideration of a loan of \$40,000, the Deseis executed and delivered a promissory note to Harleysville National Bank and Trust Company (“Harleysville”), secured by interests in the Property and two other parcels. HSBC’s Motion at ¶¶4-5; Falls Trust’s Motion at ¶¶1, 3-4, Exhibit A. The Deseis’ mortgage with Harleysville was not executed before a notary public. HSBC’s Motion at ¶12; Defendant, Harleysville National Bank and Trust Company’s Answer to Action for Declaratory Judgment and New Matter at ¶15, *HSBC Bank, USA Nat’l Assoc. v. Falls Trust 2010-1*, No. C-48-CV-2010-344 (C.P. Northampton, February 4, 2010) [“Harleysville’s Answer”]. The Harleysville mortgage was, however, filed in the Northampton County Recorder of Deeds Office on May 16, 2006. Falls Trust’s Motion at ¶3; Plaintiff’s Answer to Defendant Falls Trust’s Motion for Summary Judgment at ¶3, *HSBC Bank, USA Nat’l Assoc. v. Falls Trust 2010-1*, No. C-

48-CV-2010-344 (C.P. Northampton, September 27, 2010) [“HSBC’s Response to Falls Trust’s Motion”].

On June 13, 2006, in consideration of a loan of \$82,500, the Deseis executed and delivered a promissory note to Mortgage Electronic Registration Systems, Inc. (“MERS”), the Nominee for People’s Choice Home Loan. *See* HSBC’s Motion at ¶1, Exhibit A; Falls Trust’s Motion at ¶6. This loan was also secured by the Property. HSBC’s Motion at ¶1; Falls Trust’s Motion at ¶¶7-8. The MERS mortgage was properly acknowledged before a notary public and filed in the Northampton County Recorder of Deeds Office on June 16, 2006. *See* HSBC’s Motion at Exhibit A. Since then, HSBC has assumed MERS’ interest in the Property. *Id.* at ¶2; Falls Trust’s Motion at ¶15.

The Deseis defaulted on both loans. Action for Declaratory Judgment at ¶¶6, 11, *HSBC Bank, USA Nat’l Assoc. v. Falls Trust 2010-1*, No. C-48-CV-2010-344 (C.P. Northampton, January 14, 2010) [“Complaint”]; HSBC’s Motion at ¶6; Falls Trust’s Motion at ¶18. As a result, HSBC and Harleysville commenced foreclosure actions against the Deseis. HSBC’s Motion at ¶¶6, 8; Falls Trust’s Motion at ¶18. HSBC obtained a judgment lien on the Property for \$107,906.36 and Harleysville obtained a judgment lien on the Property for \$138,556.36. After judgment was entered in favor of Harleysville, Harleysville transferred its interest in the Property to Falls Trust and this Court substituted Falls Trust for Harleysville in this action. *See* Praecepto to Substitute Parties at 1, *HSBC Bank, USA Nat’l Assoc. v. Falls Trust 2010-1*, No. C-48-CV-2010-344 (C.P. Northampton, August 11, 2010).

On January 14, 2010, HSBC filed an Action for Declaratory Relief, seeking declaration that its lien on the Property has priority over the lien held by Falls Trust. Complaint at 5. On July 15, 2010, HSBC filed the instant Motion for Summary Judgment. Because Harleysville failed to acknowledge its mortgage before a notary public, HSBC contends that the Harleysville mortgage is *per se* fraudulent and void as against the HSBC mortgage. HSBC’s Motion at ¶¶12-13.

Falls Trust responded to HSBC’s Motion. In its response, Falls Trust acknowledged Harleysville’s response to HSBC’s Complaint, wherein Harleysville admitted that the Deseis failed to execute the Harleysville mortgage before a notary public. *See* Defendant, Falls Trust 2010-1’s, Assignee of Harleysville National Bank and Trust Company, Opposition to Plaintiff’s Motion for Summary Judgment at ¶12, *HSBC Bank, USA Nat’l Assoc. v. Falls Trust 2010-1*, No. C-48-CV-2010-344 (C.P. Northampton, August 13, 2010) [“Falls Trust’s Response to HSBC’s Motion”]. Falls Trust argues, however, that such failure does not render its interest void against subsequent interests (that is, subordinate it to subsequent interests) absent a showing of actual fraud or forgery. *Id.* at ¶¶13-15. Falls Trust also cross-filed a Motion for Summary Judgment, whereby it set forth three bases for

relief. First, Falls Trust effectively repeats its argument against HSBC's Motion. *See* Falls Trust's Motion at ¶¶26-38. It then argues that the Doctrine of Equitable Servitude and the Doctrine of Marshalling of Assets, which HSBC raises in its Complaint, are inapplicable in this case. *See id.* at ¶¶39-51, 52-59.

### III. APPLICABLE LAW

A mortgage is an instrument, such as a deed or contract, which specifies the terms of a conveyance "of title to property that is given as security for the payment of a debt ... that will become void upon payment or performance according to [its] stipulated terms." *Black's Law Dictionary* (9th ed. 2009). Thus, Pennsylvania courts have recognized that a mortgage serves three functions. First, it conveys an interest in property between the mortgagor and mortgagee. *Pines v. Farrel*, 577 Pa. 564, 848 A.2d 94, 99 (2004); *Warden v. Zanella*, 283 Pa. Super. 137, 146, 423 A.2d 1026, 1031 (1980). Second, it acts as a lien for the mortgagee on the mortgagor's property. *Pines*, *supra*, 848 A.2d at 99. Finally, a mortgage confers a right to have the property sold in satisfaction of the debt that it secures. *See e.g.*, *Day v. Ostergard*, 146 Pa. Super. 27, 21 A.2d 586 (1941).

When property is encumbered by multiple mortgages and sold in order to satisfy them, the respective mortgagees must determine the priority of their liens to determine the manner in which the sale's proceeds will be distributed. *See Knoell v. Carey*, 285 Pa. 498, 500, 132 A. 702, 702-703 (1926); *State Street Bank v. Petrey*, 819 A.2d 581, 584 (Pa. Super. 2003); *Farmers Trust Company v. Bomberger*, 362 Pa. Super. 92, 96, 523 A.2d 790, 792 (1987). Priority is unaffected by assignment; if a mortgagee assigns its interest to another party, the assignee, as against the other mortgagees, enjoys the same priority position as held by the assignor. *See Appeal of Moore*, 1844 WL 5001 (Pa. 1844). In most cases, priority amongst mortgagees is determined by the order in which their mortgages appear on record, in the Recorder of Deeds Office.<sup>1</sup> 21 Pa. C.S. §8141(2); *Extraco Mortgage v. Williams*, 805 A.2d 543, 545 (Pa. Super. 2002) (citing *Bomberger*, *supra* at 96, 523 A.2d at 792). As maintained by the Recorder of Deeds Office, the record is *prima facie* evidence of priority. *Id.* at 545.

Therefore, to attain priority over subsequent mortgagees, a mortgagee must record its lien. The mortgagee must also, however, ensure that its lien is properly acknowledged. *See e.g.*, 21 Pa. C.S. §444 (1893);<sup>2</sup>

<sup>1</sup> This rule for priority is colloquially known as "first-in-time, first-in-right." *See In re 250 Bell Road, Lower Merion Township, Montgomery County*, 479 Pa. 222, 229, 388 A.2d 297, 301 (1978).

<sup>2</sup> Section 444 states:

All deeds and conveyances, which, from and after the passage of this act, shall be made and executed within this commonwealth of or concerning any lands, tenements or hereditaments in this commonwealth, or wherby [sic] the title to the same may be in any way affected in law or equity, shall be ac-

*Abraham v. Mihalich*, 330 Pa. Super. 378, 382, 479 A.2d 601, 603 (1984) (“An acknowledgment is an essential prerequisite for recording a deed.”). “An acknowledgment is a formal declaration before an authorized official, by the person who executed the deed, that it is his free act and deed.” *Id.* at 381, 479 A.2d at 603. It also includes the official’s written recordation of the act of acknowledgment. *Id.* A mortgage is properly acknowledged if, within ninety days after the transfer of title from the mortgagor to mortgagee, it is completed in the presence of one of the public officials enumerated by statute.<sup>3</sup> *Id.*; Uniform Acknowledgment Act, 21 Pa. C.S. §291.2 (1951).

The acknowledgment is not part of the execution of a mortgage and, as such, an improperly acknowledged mortgage does not affect the relationship between the mortgagor and mortgagee. *See Abraham*, *supra* at 382, 479 A.2d at 603; *Petition of Bell*, 45 D. & C. 2d 725, 731 (Luzerne Cty. 1968) (citing *Faust v. Heckler*, 359 Pa. 19, 22, 58 A.2d 147, 148-49 (1948)). It is, however, a prerequisite to recording. As a result, an improperly exe-

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knowned by the grantor, or grantors, bargainor or bargainors, or proved by one or more of the subscribing witnesses thereto, before one of the judges of the supreme court, or before one of the judges of the court of common pleas, or recorder of deeds, prothonotary, or clerk of any court of record, justice of the peace, or notary public of the county wherein said conveyed lands lie, and shall be recorded in the office for the recording of deeds where such lands, tenements or hereditaments are lying and being, within ninety days after the execution of such deeds or conveyance, and every such deed and conveyance that shall at any time after the passage of this act be made and executed in this commonwealth, and which shall not be proved and recorded as aforesaid, shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for a valid consideration, or any creditor of the grantor or bargainor in said deed of conveyance, and all deeds or conveyances that may have been made and executed prior to the passage of this act, having been duly proved and acknowledged as now directed by law, which shall not be recorded in the office for recording of deeds in the county where said lands and tenements and hereditaments are lying and being, within ninety days after the date of the passage of this act, shall be adjudged fraudulent and void as to any subsequent purchaser for a valid consideration, or mortgagee, or creditor of the grantor, or bargainor therein.

21 Pa. C.S. §444 (West).

As stated, the statute applies to all deeds and conveyances “concerning lands, tenements or hereditaments” in Pennsylvania. Although it does not explicitly mention mortgages, the statute applies to mortgages because Pennsylvania law recognizes mortgages as conveyances of interests in land. *See Pines*, *supra* 848 A.2d at 99 (noting that mortgage is “conveyance of property between the mortgagor and mortgagee”); *Southwestern Nat’l Bank v. Riegner*, 288 Pa. 491, 140 A. 615 (1928) (“A mortgage is a defeasible deed, and that is a conveyance affecting land ...”).

<sup>3</sup> By statute, an acknowledgment may be completed before: (1) a judge of a court of record; (2) any clerk, deputy clerk, prothonotary, or deputy prothonotary of court that has a seal; (3) a recorder of deeds or deputy recorder of deeds; (4) a notary public of the county where the property is located; or (5) a justice of the peace, magistrate, or alderman. 21 Pa. C.S. §§291.2, 444.



cuted acknowledgment renders the recording of the related mortgage “fraudulent and void” against subsequent liens. 21 Pa. C.S. §444.

After an exhaustive search, this Court has not uncovered any reported Pennsylvania decisions that affirm the rule provided by the plain language of 21 Pa. C.S. §444, *i.e.*, that an improperly acknowledged mortgage is void as against subsequent mortgages. Nonetheless, several federal court interpretations of the Pennsylvania acknowledgment statutes mirror this Court’s understanding.<sup>4</sup> See *In re Fisher*, 320 B.R. 52, 65-67 (E.D. Pa. 2005) (holding that, even in absence of actual fraud, improper acknowledgment and filing constitutes *per se* fraud that renders underlying mortgage ineffective against subsequent purchasers or mortgagees); *In re Bell*, 309 B.R. 139 (Bankr. E.D. Pa. 2004) (“Pennsylvania law require[s] that all deeds and conveyances made and executed within Pennsylvania be acknowledged, otherwise the deed or conveyance is adjudged fraudulent and void against any subsequent purchaser or mortgagee... . The acknowledgment is required for the recording and perfection of a mortgage lien.”); *In re Reimiller*, 281 B.R. 561, 566 (Bankr. M.D. Pa. 2002) (recognizing that, under Pennsylvania law, improperly acknowledged mortgages are valid as between mortgagor and mortgagee).

#### IV. ANALYSIS OF HSBC’S MOTION FOR SUMMARY JUDGMENT

The Deseis executed a mortgage with Falls Trust’s predecessor, Harleysville, on or about May 4, 2006. Falls Trust’s Motion at ¶1, Exhibit A; HSBC’s Response to Falls Trust’s Motion at ¶1. This mortgage was not acknowledged before a notary public or other recognized official but, on or about May 16, 2006, it was recorded and indexed in the Northampton County Recorder of Deeds Office. See Harleysville’s Answer at ¶15; Falls Trust’s Motion at ¶3; HSBC’s Response to Falls Trust’s Motion at ¶3. Later, on or about June 13, 2006, HSBC’s predecessor, MERS, also extended a mortgage to the Deseis. HSBC’s Motion at ¶1, Exhibit A; Falls Trust’s Response to HSBC’s Motion at ¶1. HSBC’s mortgage was properly acknowledged on June 13, 2006 before a notary public and recorded on June 16, 2006. See HSBC’s Motion at Exhibit A (noting dates of acknowledgment and recordation on first and twenty-fifth pages).

If Falls Trust’s mortgage had been properly acknowledged, priority as between the Falls Trust mortgage and HSBC mortgage would be governed by 21 Pa. C.S. §8141. In that situation, Falls Trust would be entitled to a first lien against the Property and, upon sale of the Property, would have had its lien satisfied before HSBC’s lien. See *id.*; *Williams*, supra, 805 A.2d at 545 (citing *Bomberger*, supra at 96, 523 A.2d at 792).

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<sup>4</sup> Federal interpretation of Pennsylvania law is not binding upon this Court. See *Cambria-Stoltz Enterprises v. TNT Investments*, 747 A.2d 947, 952 (Pa. Super. 2000). Nonetheless, this Court may consider federal cases as persuasive authority. *Id.*

Here, however, HSBC alleges and Falls Trust admits that the Harleysville mortgage—the mortgage interest now held by Falls Trust—was not properly acknowledged. Falls Trust admitted in its response to HSBC’s Complaint that the acknowledgment to the Harleysville mortgage was not executed before a notary public. *See* Harleysville’s Response to HSBC’s Complaint at ¶15. Falls Trust has not produced any evidence or affidavit to the effect that another official, of a kind recognized by statute, presided over and observed the acknowledgment. *See* 21 Pa. C.S. §444. Further, at argument before the undersigned, counsel for Falls Trust admitted that the mortgage was technically improper under the acknowledgment statute.<sup>5</sup> As a result, this Court has determined that the Falls Trust mortgage is *per se* fraudulent and void as against all subsequent mortgages—specifically, as against the HSBC mortgage. *See* 21 Pa. C.S. §444. Based on the plain language of the acknowledgment statutes, “such a finding [is] technically inescapable.” *Fisher*, supra, 320 B.R. at 65.

In its brief in opposition to HSBC’s Motion for Summary Judgment and in support of its own Motion for Summary Judgment, Falls Trust relies upon bankruptcy court decisions in *Bell*, supra; *In re Jones*, 284 B.R. 92 (Bankr. E.D. Pa. 2002), and *Schwab v. Home Loan and Investment Bank*, 281 B.R. 568 (Bankr. M.D. Pa. 2002). *See* Defendant, Falls Trust 2010-1’s, Assignee of Harleysville National Bank and Trust Company, Brief in Support of its Opposition to Plaintiff’s Motion for Summary Judgment and Motion for Summary Judgment, *HSBC Bank, USA Nat’l Assoc. v. Falls Trust 2010-1*, No. C-48-CV-2010-344 (C.P. Northampton, September 14, 2010) [“Falls Trust’s Brief”]. Falls Trust’s reliance on these cases is based upon two conclusions of law: (1) that a mortgage with a facially proper acknowledgment cannot be voided as against subsequent mortgages without proof of actual fraud or forgery, and (2) in any case, that an improper acknowledgment cannot affect the validity of the mortgage. *See id.* at 5-6. However, Falls Trust’s first conclusion of law is erroneous and its second conclusion, while accurate, has no bearing on the issue presently before this Court. As such, Falls Trust’s reliance on *Bell*; *Jones*; and *Schwab* is misplaced.

First, Falls Trust is mistaken in its belief that 21 Pa. C.S. §444 requires a showing of actual fraud or forgery. To the extent that they held as much, *Schwab* and *Jones* were explicitly overruled by the United States District Court for the Eastern District of Pennsylvania in *Fisher*. *See Fisher*, supra, 320 B.R. at 66-67 (examining bankruptcy court’s opinion, conclusions of law held over from *Schwab* and *Jones*, and Pennsylvania law, and rejecting holdings of *Schwab* and *Jones* as erroneous conclusions of law). Further,

<sup>5</sup> In fact, counsel for Falls Trust suggested that the Court should overlook the defect because, as a matter of common practice, mortgagees often employ notary publics to acknowledge mortgages after the fact and outside the presence of the parties. Even if this were true, this Court lends greater weight to clear statutory edicts than common industry practice.

even if this Court chose not to rely on the *Fisher* decision, Falls Trust's conclusion runs contrary to the plain language of the acknowledgment statutes. As stated, "every deed and conveyance ... which shall not be proved and recorded" as provided in the statute "shall be adjudged fraudulent and void against ... any creditor of the grantor ... ." 21 Pa. C.S. §444.

Second, Falls Trust correctly notes that an improper acknowledgment does not affect the validity of the related mortgage. *See* Falls Trust's Brief at 5-6; *Abraham*, supra at 382, 479 A.2d at 603; *see also*, *Bell*, 309 B.R. at 158. Nevertheless, Falls Trust fails to recognize that this rule only applies to the validity of a mortgage as between the mortgagor and mortgagee. *See Abraham*, supra at 382, 479 A.2d at 603; *see also*, *Bell*, 309 B.R. at 158. Falls Trust is thus mistaken when it relies on this proposition and equates the validity of the mortgage with the mortgagee's priority relative to subsequent mortgagees. *See* Falls Trust's Brief at 5-6. As discussed above, an improper acknowledgment has an absolute impact in that situation. *See* 21 Pa. C.S. §444; *Fisher*, 320 B.R. at 65, 66-68.

#### V. ANALYSIS OF FALLS TRUST'S MOTION FOR SUMMARY JUDGMENT

Through its Motion, Falls Trust advances three reasons why this Court should not grant HSBC's request for declaratory relief. First, it argues that an improper acknowledgment does not void the related mortgage's priority against subsequent mortgages. Falls Trust's Motion at 5-6. As discussed in Section IV, supra, this argument lacks merit.

Falls Trust also argues that HSBC is not entitled to the declaratory relief HSBC seeks because the Doctrine of Equitable Subrogation and the Doctrine of Marshalling—which were both raised in HSBC's Complaint—do not apply in this case. *Id.* at 6-9. Although Falls Trust properly raises both issues, this Court has already determined that HSBC is entitled to the declaratory relief that it seeks based solely upon Falls Trust's improperly acknowledged mortgage interest. Accordingly, the Court does not reach the merits of Falls Trust's second and third arguments.

WHEREFORE, We enter the following:

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*ORDER*

AND NOW, this 13th day of December, 2010, upon consideration of the cross-filed Motions for Summary Judgment of Plaintiff and Defendants, and briefs and argument thereon, it is hereby ORDERED that:

- Plaintiff's Motion is GRANTED.
- Defendants' Motion is DENIED.

Accordingly, it is hereby ORDERED and DECREED that Plaintiff's lien against the parcel located at 1111 Washington Street in Easton, Pennsylvania, and recorded and indexed in the Northampton County Recorder of Deeds Office as parcel ID No. L9SE1D-20-16, has priority over Defendant's lien against the same parcel.

It is further ORDERED that this Order of Court shall be recorded in the Northampton County Recorder of Deeds Office, against the parcel located at 1111 Washington Street in Easton, Pennsylvania, indexed as parcel ID No. L9SE1D-20-16.

## Northampton County Bar Association Notification of Change Form

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## **PERIODICAL PUBLICATION**

**\* Dated Material. Do Not Delay. Please Deliver Before Monday, April 11, 2011**