

Northampton County Reporter

(USPS 395-280)

VOL. LVI

EASTON, PA June 9, 2011

NO. 75

Citibank (South Dakota), N.A., Plaintiff v. Michael Bocko, Jr., Defendant

Daniel Pinho, Plaintiff v. Barbara Pate, Defendant

**PSB Credit Services, Inc., Plaintiff v. Alan V. Dilsaver
and Elizabeth J. Dilsaver, Defendants**

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INSERT: Blue: 1. "Employment Law Update: Big Changes, Big Risks"
2. 2011 Calendar
3. 2011 Photo Directory
4. Philadelphia Phillies vs. New York Mets
Cream: 1. 2011 Summer Outing

NOTICE TO THE BAR...

The ARD and ARD/DUI lists are now available on the Court's website at nccpa.org.

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

If you have any questions, please call the Court Administrator's Office at 610-559-6700.

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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 – BAR NEWS

USI Affinity – Save an additional 5% on Liability Insurance

Members may be able to save 5 percent—an average of \$200—on their professional liability insurance* by viewing a webinar offered by the PBA in partnership with USI Affinity and Swiss Re. This savings is in addition to the discount received at the Malpractice Avoidance Seminar. The webinar, a Swiss Re PowerPoint presentation, focuses on documentation, risk management and the Rules of Professional Conduct. To view the webinar go to www.pabar.org, and scroll down to the notice (member login required). **To receive the discount, 50 percent of the lawyers in a law firm must complete the webinar and must be PBA members. A PBA member solo practitioner qualifies for the discount by completing the webinar.*

U.S. District Court Judge – Eastern District of Pennsylvania

U.S. Senators Robert P. Casey, Jr. and Patrick J. Toomey invite all persons interested in being considered for appointment to the position of Federal District Court Judge for the Eastern District of Pennsylvania to obtain and submit an application that can be found on Senator Casey's website (<http://casey.senate.gov/>) or by request from Senator Toomey's office (judgeappEDPA@toomey.senate.gov). This questionnaire must be completed and returned to both Senators in Microsoft Word or PDF format by email to judicial@casey.senate.gov and judgeappEDPA@toomey.senate.gov no later than 5 p.m., Friday July 15, 2011. Applicants will be contacted to arrange for interviews. Senators Casey and Toomey will be advised and assisted in this process by several leading members of the bar and other Pennsylvanian citizens. *Please note that all applicants must complete this process, regardless of whether they have participated in previous judicial selection processes.*

Everybody is in favor of free speech. Hardly a day passes without its being extolled, but some people's idea of it is that they are free to say what they like, but if anyone says anything back, that is an outrage. ~ Sir Winston Churchill

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**BREISCH, LORETTA M.**, dec'd.

Late of Northampton, Northampton County, PA

Personal Representative: Lori Kibler

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

CHANDLER, WILLIAM A., dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executor: Wayne A. Werner 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

GRAFFIN, DORIS, dec'd.

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

Executors: John J. Trimper, Kathy A. Ruggiero and Lee E. Trimper 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

GRUBB, ANDREA C., dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executrices: Gail Reichard and Cynthia Grebs 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

KEOWN, JOHN D., dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executor: Leslie R. Crown c/o Judith A. Harris, Esquire, Tallman, Hudders & Sorrentino, PA Office of Norris, McLaughlin & Marcus, P.A., 1611 Pond Road, Suite 300, Allentown, PA 18104-2258

Attorneys: Judith A. Harris, Esquire, Tallman, Hudders & Sorrentino, PA Office of Norris, McLaughlin & Marcus, P.A., 1611 Pond Road, Suite 300, Allentown, PA 18104-2258

LINDENMOYER, MABEL E., dec'd.

Late of Allen Township, Northampton County, PA

Executor: Raymond H. Lindenmoyer, Jr. c/o Frank M. Skrapits, Esquire, Steckel and Stopp, 2152 Main Street, Northampton, PA 18067-1211

LUECKE, HELEN H., dec'd.

Late of Forks Township, Northampton County, PA

Executor: Charles H. Luecke, III, 116 Forks Ave., Easton, PA 18040

OLSZEWSKI, LAURA E., dec'd.

Late of the Township of Forks, Northampton County, PA

Executrix: Patricia E. Byron, 438 Old Mill Road, Easton, PA 18040
 Attorney: Louis S. Minotti, Jr., Esquire, 44 North Second Street, P.O. Box 468, Easton, PA 18042

RUDOLPH, JOSEPH A., dec'd.

Late of the City of Bethlehem, Northampton County, PA
 Co-Executrices: Kathleen A. Dieter and Margaret Kelly c/o John A. Zapf, II, Esquire, 628 W. Broad Street, Bethlehem, PA 18018
 Attorney: John A. Zapf, II, Esquire, 628 W. Broad Street, Bethlehem, PA 18018

SCEURMAN, MARJORIE B., dec'd.

Late of the City of Easton, Northampton County, PA
 Executor: Larry N. Scurman c/o Dionysios C. Pappas, Esquire, Vasiliadis & Associates, 2551 Baglyos Circle, Suite A-14, Bethlehem, PA 18020
 Attorneys: Dionysios C. Pappas, Esquire, Vasiliadis & Associates, 2551 Baglyos Circle, Suite A-14, Bethlehem, PA 18020

STILES, WARREN R., dec'd.

Late of the Township of Upper Mt. Bethel, Northampton County, PA
 Co-Executrices: Marsha Stiles, 670 Lexington Road, Nazareth, PA 18064, Deanna Heilman, 403 Walnut Grove, East Stroudsburg, PA 18301 and Andrea Lane, 143 O.W. Road, Bangor, PA 18013
 Attorneys: Peters, Moritz, Peischl, Zulick, Landes & Brienza LLP, 1 South Main Street, Nazareth, PA 18064

SECOND PUBLICATION

HUNYET, LUCY, dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executrix: Karen McKinley c/o Michael E. Riskin, Esquire, Riskin and Riskin, 18 E. Market St., P.O. Box 1446, Bethlehem, PA 18016-1446

Attorneys: Michael E. Riskin, Esquire, Riskin and Riskin, 18 E. Market St., P.O. Box 1446, Bethlehem, PA 18016-1446

KELCHNER, FRANCES A., dec'd.

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

Executor: Neil W. Kelchner 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

KOKOLUS, MINNIE F., dec'd.

Late of the Township of Bushkill, Northampton County, PA
 Executors: Paul Kokolus, Jr. and Mary Louise Schlegel 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

LaBARR, KARL K., JR. a/k/a KARL K. LaBARR, dec'd.

Late of the Township of Bethlehem, Northampton County, PA
 Administratrix: Jill L. Hunt, 132 Silo Circle, Nazareth, PA 18064
 Attorneys: Peters, Moritz, Peischl, Zulick, Landes & Brienza, LLP, 1 South Main Street, Nazareth, PA 18064

McKINNEY, RUTH W., dec'd.

Late of Northampton County, PA

Executor: Kevin L. McKinney c/o Nancy K. Busch, Esquire, 825 North 19th Street, Allentown, PA 18104

Attorney: Nancy K. Busch, Esquire, 825 North 19th Street, Allentown, PA 18104

MEIXELL, CHARLES W. a/k/a CHARLES W. MEIXELL, SR. a/k/a CHARLES MEIXELL, dec'd.

Late of Hellertown Borough, Northampton County, PA
Administrator C.T.A.: Michael O. Meixell c/o Stephanie E. Murphy, Esquire, High Swartz LLP, 40 E. Airy St., P.O. Box 671, Norristown, PA 19404

Attorneys: Stephanie E. Murphy, Esquire, High Swartz LLP, 40 E. Airy St., P.O. Box 671, Norristown, PA 19404

NANGLE, LUELLA H. a/k/a LUELLA NANGLE, dec'd.

Late of the Borough of Portland, Northampton County, PA

Executrix: Denise L. Nangle 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

RINEHART, JoANN, dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executor: David B. Rinehart c/o Paul A. Florenz, Esquire, Kolb, Vasiliadis and Florenz, 74 West Broad Street, Ste. 170, Bethlehem, PA 18018-5738

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

RONCA, ANNA a/k/a ANNA L. RONCA a/k/a ANNE RONCA, dec'd.

Late of the Borough of Nazareth, Northampton County, PA

Administratrix: Mary Ann Snell, Esquire 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

SEIER, RICHARD, dec'd.

Late of Moore Township, Northampton County, PA

Executor: Alexander Seier, 614 Midway Street, Neptune Beach, FL 32266

TATKOVSKY, ELAINE G., dec'd.

Late of the Borough of Hellertown, Northampton County, PA

Administratrix: Tracy Tatkovsky a/k/a Tracy A. Kichline 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

THIRD PUBLICATION

COLLITON, RITA T., dec'd.

Late of the Township of Hanover, Northampton County, PA

Executor: James T. Mason, 3438 Park Place, Bethlehem, PA 18017

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

MORRIS, HAROLD a/k/a HAROLD F. MORRIS, dec'd.

Late of the Township of Hanover, Northampton County, PA

Executrix: Patricia Morris 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

NATTRAS, EDWARD D., JR., dec'd.

Late of Easton, Northampton County, PA

Administrator: David A. Nattras c/o Douglas M. Marinos & Associates, P.C., 101 North Cedar Crest Boulevard, Allentown, PA 18104

Attorneys: Douglas M. Marinos & Associates, P.C., 101 North Cedar Crest Boulevard, Allentown, PA 18104

POTTER, KARY IRENE a/k/a KAY I. POTTER, dec'd.

Late of Bethlehem Township, Northampton County, PA

Executrix: Georgia Marie Croft c/o Daniel P. Sabetti, Esquire, Sabetti Law Office, 224 West Broad Street, Bethlehem, PA 18018

Attorneys: Daniel P. Sabetti, Esquire, Sabetti Law Office, 224 West Broad Street, Bethlehem, PA 18018

REHRIG, HERBERT J., dec'd.

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

Executor: David J. Rehrig 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

RIEGEL, KENNETH F. a/k/a KENNETH FRANKLIN RIEGEL, dec'd.

Late of the Borough of Hellertown, Northampton County, PA

Executor: Keith W. Riegel 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

SCHALLER, DOROTHEA A. a/k/a DOROTHEA SCHALLER, dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executor: Larry S. Schaller, 2025 Edgehill Road, Bethlehem, PA 18017

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

UNANGST, MARGARET R., dec'd.

Late of Palmer Twp., Northampton County, PA

Executrix: Lu Novak, 1422 Madison Ave., Bethlehem, PA 18018

NOTICE OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, for the purpose of obtaining a Certificate of Incorporation pursuant to the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988 (P.L. 1444, No. 177), for the purpose of incorporating the following corporation.

The name of the corporation is:

GNR TOBACCO, INC.

The articles of incorporation were filed on: April 29, 2011.

The purposes for which it is organized are: To have unlimited power to engage in and do any lawful act concerning any and all lawful business for which corporations may be incorporated under the Business Corpora-

tion Law of the Commonwealth of Pennsylvania, Act of December 21, 1988 (P.L. 1444, No. 177).

DANIEL K. McCARTHY, ESQUIRE
 DAVISON & McCARTHY, P.C.
 1146 S. Cedar Crest Blvd.
 Suite 200
 Allentown, PA 18103
 Phone: (610) 435-0450

June 9

**CORPORATE FICTITIOUS NAME
 REGISTRATION NOTICE**

NOTICE IS HEREBY GIVEN that pursuant to the provisions of Section 311 of Act 1982-295, a Fictitious Name Registration was filed with the Department of State of the Commonwealth for:

**LAMBERT REFRIGERATION &
 HVAC, A DIVISION OF EMRICK
 PLUMBING & HEATING, INC.**

with its principal place of business at: 528 W. Blaine Street, East Bangor, PA 18013. The name and address of the entity owning or interested in said business is: Emrick Plumbing & Heating, Inc., 528 W. Blaine Street, East Bangor, PA 18013.
 McFALL, LAYMAN & JORDAN, P.C.
 134 Broadway
 Bangor, PA 18103

June 9

**LIMITED LIABILITY COMPANY
 NOTICES**

NOTICE IS HEREBY GIVEN that on April 25, 2011 a Certificate of Organization was filed with the Pennsylvania Department of State for:

PLAINS HOLDINGS, LLC

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

JAMES H. LUTZ, Solicitor
 300 West State Street
 Suite 302
 Media, PA 19063

June 9

NOTICE IS HEREBY GIVEN that a Certificate of Organization for a Domestic Limited Liability Company has been filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania pursuant to the provisions of the Limited Liability Company Law of the Commonwealth of Pennsylvania, Act of December 7, 1994 (P.L. 703, No. 106), by the following company:

ROLLING HILLS FARM, LLC

The Certificate of Organization was filed on April 11, 2011.

REBECCA M. YOUNG, ESQUIRE
 YOUNG & YOUNG

119 E. Main Street
 Macungie, PA 18062

June 9

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 purpose of creating a Limited Liability Company under the Limited Liability Company Law of 1994, P.L. 703, No. 106. The name of the limited liability company is:

**SLATE BELT MEDICAL
 & WOUND CENTER, L.L.C.**

JAMES G. MURPHY, ESQUIRE
 MURPHY & MURPHY, P.C.

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

June 9

NOTICE OF DISSOLUTION

TO CREDITORS OF AND CLAIMANTS AGAINST TRIPLE G ASSOCIATES, INC.

NOTICE IS HEREBY GIVEN that **Triple G. Associates, Inc.**, a Pennsylvania corporation, with a registered office in care of American Abstract

Company, 433 East Broad Street, Bethlehem (Northampton County), Pennsylvania 18018-6336, is being dissolved and is now engaged in winding up proceedings so that its corporate existence shall be ended, such notice being given pursuant to Section 1975(b) of the Pennsylvania Business Corporation Law of 1988, as amended.

DENNIS M. MCCARTHY, ESQUIRE
 DAVISON & MCCARTHY, P.C.
 1146 South Cedar Crest Boulevard
 Suite 200
 Allentown, PA 18103

June 9

**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

ETHEL A. BARTHOLOMEW; Rebecca Bartholomew, Executrix

JOHN GILBERT DICKERT; Bank of America, N.A., Guardian

MARY A. HAMMEL; Daniel Marakovits, Executor

DOUGLAS H. SEYFRIED; David M. Seyfried, Executor

AUDIT NOTICE

All Parties interested are notified that an audit list will be made up of all Accounts and the said list will be called for audit at the Northampton County Government Center, Easton, PA on: JUNE 24, 2011 AT 9:00 A.M. IN COURTROOM #1.

Dorothy L. Cole
 Clerk of the Orphans' Court

June 9, 16

NOTICE FOR CHANGE OF NAME

NOTICE IS HEREBY GIVEN that on May 17, 2011, the Petition of Laurie Werkheiser was filed in the

Northampton County Court of Common Pleas at No. C-48CV2011-4457, seeking to change the name of her minor child from Jacob Christian Schofield to Jacob Christian Werkheiser. The Court has fixed Tuesday, July 19, 2011 at 9:00 a.m. in Courtroom No. 4 of the Northampton County Courthouse, 669 Washington Street, Easton, Pennsylvania, as the date for hearing of the Petition. All persons interested in the proposed change of name of the minor child may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

May 26, June 2, 9

LIMITED PARTNERSHIP NOTICE

NOTICE IS HEREBY GIVEN that on April 25, 2011 a Certificate of Limited Partnership was filed with the Pennsylvania Department of State for:

MINNETT PROPERTIES, LP

in accordance with the provisions of the Limited Partnership Act.

JAMES H. LUTZ, Solicitor
 300 West State Street
 Suite 302
 Media, PA 19063

June 9

**PUBLIC NOTICE OF DEEMED
 APPROVAL**

The Appeal of Susan E. Crivellaro, 985 Berger Road, Williams Township, Northampton County, Pennsylvania from Williams Township Enforcement Notices dated December 2, 2010 and Cease and Desist—Stop Work Order dated December 2, 2010 was delivered December 30, 2010, to Williams Township, via hand delivery.

The Williams Township Zoning Hearing Board scheduled hearing for February 2, 2011. Williams Township "cancelled" the February 2, 2011 hearing and subsequently scheduled hearing for Wednesday, March 2, 2011.

53 P.S. §10908 (1.2) states “The first hearing before the Board or Hearing Officer shall be commenced within 60 days from the date of receipt of the Applicants Application, unless the Applicant has agreed in writing to an extension of time.” For failure of the Williams Township Zoning Hearing Board to comply with 53 P.S. §10908 (1.2) et seq., the Appeal of Susan E. Crivellaro, filed December 30, 2010, is deemed approved.

CHRISTOPHER T. SPADONI,
ESQUIRE

Attorney for Susan E. Crivellaro
1413 Easton Avenue
P.O. Box 522
Bethlehem, PA 18016-1409
(610) 867-3938
FAX (610) 625-4788

June 9, 16

**NOTICE OF INTENTION TO
ADOPT RESOLUTION**

NOTICE IS HEREBY GIVEN that at its regularly scheduled meeting on June 27, 2011 at 7:00 p.m., at East Hills Middle School Auditorium, 2005 Chester Rd., Bethlehem, PA, the Board of School Directors of Bethlehem Area School District intends to adopt a Resolution, of which this Notice is a summary:

A RESOLUTION OF BETHLEHEM AREA SCHOOL DISTRICT, NORTHAMPTON AND LEHIGH COUNTIES, PENNSYLVANIA, RE-ADOPTING, RESTATING AND AMENDING ITS EARNED INCOME TAX RESOLUTION TO ESTABLISH CONFORMITY WITH THE LOCAL TAX ENABLING ACT AS AMENDED BY ACT 32 OF JULY 2, 2008; LEVYING A TAX ON EARNED INCOME AND NET PROFITS; REQUIRING TAX RETURNS; REQUIRING EMPLOYERS TO WITHHOLD AND REMIT TAX; PROVIDING FOR INTEREST, PENALTIES, COSTS AND FINES FOR

VIOLATIONS AND NON-PAYMENT OF TAX; PROVIDING FOR SEVERABILITY, PURPOSE/REPEAL, CONSTRUCTION AND EFFECTIVE DATE, AND RELATED PROVISIONS.

The proposed Resolution is being adopted, and notice is being given, pursuant to the Local Tax Enabling Act, 53 P.S. §6924.101, et. seq. The Resolution restates and amends in its entirety the School District’s currently existing Earned Income Tax Resolution, in order to conform to the provisions of the Local Tax Enabling Act, 53 P.S. §6924.101, et. seq., as amended and restated by Act 32 of 2008, and to do so within the time frame required by Act 32. The proposed Resolution imposes a tax of one percent (1%) on the earned income and net profits of residents of the School District. The tax is in addition to any earned income tax levied by the Commonwealth of Pennsylvania or municipality in the School District, but may be subject to certain credits or deductions permitted by law. The tax is imposed for general revenue purposes, including general operating revenue for the School District. The Resolution will be effective January 1, 2012 and continues the tax previously imposed, and at the same rate. The nature of the tax is substantially the same as the earned income tax currently levied, subject to the changes required by Act 32. The Resolution shall apply to earned income and net profits earned or received by a taxpayer during calendar year 2012 and each year thereafter without annual re-enactment unless the rate of tax is subsequently changed. The estimated revenue generated by the tax for the 2011-12 fiscal year is \$11,500,000.

A copy of the full text of the proposed Resolution may be obtained at

the Business Office of the Bethlehem Area School District, located at the Education Center, 1516 Sycamore St., Bethlehem, PA, during regular business hours (Monday through Friday between 8:30 a.m. and 4 p.m.).

Stacy M. Gober
Board Secretary
May 26; June 2, 9

**NOTICE OF INTENTION TO
ADOPT RESOLUTION**

NOTICE IS HEREBY GIVEN that at its regularly scheduled meeting on June 27, 2011 at 7:30 p.m., at the Slater Conference Room, at the Bangor Area School District's Administration Office, 123 Five Points Richmond Road, Bangor, Pennsylvania, the Board of School Directors of Bangor Area School District intends to adopt a Resolution, of which this Notice is a summary:

A RESOLUTION OF BANGOR AREA SCHOOL DISTRICT, NORTHAMPTON COUNTY, PENNSYLVANIA, RE-ADOPTING, RESTATING AND AMENDING ITS EARNED INCOME TAX RESOLUTION TO ESTABLISH CONFORMITY WITH THE LOCAL TAX ENABLING ACT AS AMENDED BY ACT 32 OF JULY 2, 2008; LEVYING A TAX ON EARNED INCOME AND NET PROFITS; REQUIRING TAX RETURNS; REQUIRING EMPLOYERS TO WITHHOLD AND REMIT TAX; PROVIDING FOR INTEREST, PENALTIES, COSTS AND FINES FOR VIOLATIONS AND NON-PAYMENT OF TAX; PROVIDING FOR SEVERABILITY, PURPOSE/REPEAL, CONSTRUCTION AND EFFECTIVE DATE, AND RELATED PROVISIONS.

The proposed Resolution is being adopted, and notice is being given, pursuant to the Local Tax Enabling Act, 53 P.S. §6924.101, et seq. The Resolution restates and amends in its entirety the School District's cur-

rently existing Earned Income Tax Resolution, as amended, in order to conform to the provisions of the Local Tax Enabling Act, 53 P.S. §6924.101, et seq., as amended and restated by Act 32 of 2008, and to do so within the time frame required by Act 32. The proposed Resolution imposes a tax of one and two-tenths of one percent (1.2%) on the earned income and net profits of residents of the School District; consisting of a one percent (1.0%) Tax pursuant to the general taxing authority provided by the Local Tax Enabling Act and a two-tenths of one percent (0.2%) Tax pursuant to the authority under Chapter 4, Optional Occupation Tax Elimination, of the Local Tax Enabling Act, Sections 6924.401-6924.409. The tax is in addition to any earned income tax levied by the Commonwealth of Pennsylvania or municipality in the School District, but may be subject to certain credits or deductions permitted by law. The tax is imposed for general revenue purposes, including general operating revenue for the School District. The Resolution will be effective January 1, 2012 and continues the tax previously imposed, and at the same rate. The nature of the tax is substantially the same as the earned income tax currently levied, subject to the changes required by Act 32. The Resolution shall apply to earned income and net profits earned or received by a taxpayer during calendar year 2012 and each year thereafter without annual re-enactment unless the rate of tax is subsequently changed. The estimated revenue generated by the tax for the 2011-12 fiscal year is \$3,150,000.

A copy of the full text of the proposed Resolution may be obtained at the Business Office of the Bangor Area School District, located at the

School District's Administration Office, 123 Five Points Richmond Road, Bangor, PA, during regular business hours (Monday through Friday between 8 a.m. and 4 p.m.).

Stephen Wiencek
Business Manager
Bangor Area School District
June 2, 9, 16

**NOTICE OF INTENTION TO
ADOPT RESOLUTION**

NOTICE IS HEREBY GIVEN that at its regularly scheduled meeting on June 23, 2011 at 6:30 p.m., at the Education Center, 1801 Bushkill Drive, Easton, Pennsylvania, 18040, the Board of School Directors of Easton Area School District intends to adopt a Resolution, of which this Notice is a summary:

A RESOLUTION OF EASTON AREA SCHOOL DISTRICT, NORTHAMPTON AND BUCKS COUNTIES, PENNSYLVANIA, RE-ADOPTING, RESTATING AND AMENDING ITS EARNED INCOME TAX RESOLUTION TO ESTABLISH CONFORMITY WITH THE LOCAL TAX ENABLING ACT AS AMENDED BY ACT 32 OF JULY 2, 2008; LEVYING A TAX ON EARNED INCOME AND NET PROFITS; REQUIRING TAX RETURNS; REQUIRING EMPLOYERS TO WITHHOLD AND REMIT TAX; PROVIDING FOR INTEREST, PENALTIES, COSTS AND FINES FOR VIOLATIONS AND NON-PAYMENT OF TAX; PROVIDING FOR SEVERABILITY, PURPOSE/REPEAL, CONSTRUCTION AND EFFECTIVE DATE, AND RELATED PROVISIONS.

The proposed Resolution is being adopted, and notice is being given, pursuant to the Local Tax Enabling Act, 53 P.S. §6924.101, et seq. The Resolution restates and amends in its entirety the School District's currently existing Earned Income Tax

Resolution, as amended, in order to conform to the provisions of the Local Tax Enabling Act, 53 P.S. §6924.101, et seq., as amended and restated by Act 32 of 2008, and to do so within the time frame required by Act 32. The proposed Resolution imposes a tax of one percent (1%) on the earned income and net profits of residents of the School District. The tax is in addition to any earned income tax levied by the Commonwealth of Pennsylvania or municipality in the School District, but may be subject to certain credits or deductions permitted by law. The tax is imposed for general revenue purposes, including general operating revenue for the School District. The Resolution will be effective January 1, 2012 and continues the tax previously imposed, and at the same rate. The nature of the tax is substantially the same as the earned income tax currently levied, subject to the changes required by Act 32. The Resolution shall apply to earned income and net profits earned or received by a taxpayer during calendar year 2012 and each year thereafter without annual re-enactment unless the rate of tax is subsequently changed. The estimated revenue generated by the tax for the 2011-12 fiscal year is \$6,600,000.

A copy of the full text of the proposed Resolution may be obtained at the Business Office of the Easton Area School District, located at the School District's Education Center, 1801 Bushkill Drive, Easton, PA, during regular business hours (Monday through Friday between 8 a.m. and 4 p.m.).

Marie S. Guidry
Business Manager/Treasurer
Easton Area School District
June 2, 9, 16

**NOTICE OF INTENTION TO
ADOPT RESOLUTION**

NOTICE IS HEREBY GIVEN that at its regularly scheduled meeting on June 20, 2011 at 7:30 p.m., in the Walter L. Peters Board Room of the Administration Building, One Education Plaza, Nazareth, Pennsylvania, the Board of School Directors of Nazareth Area School District intends to adopt a Resolution, of which this Notice is a summary:

A RESOLUTION OF NAZARETH AREA SCHOOL DISTRICT, NORTHAMPTON COUNTY, PENNSYLVANIA, RE-ADOPTING, RESTATING AND AMENDING ITS EARNED INCOME TAX RESOLUTION TO ESTABLISH CONFORMITY WITH THE LOCAL TAX ENABLING ACT AS AMENDED BY ACT 32 OF JULY 2, 2008; LEVYING A TAX ON EARNED INCOME AND NET PROFITS; REQUIRING TAX RETURNS; REQUIRING EMPLOYERS TO WITHHOLD AND REMIT TAX; PROVIDING FOR INTEREST, PENALTIES, COSTS AND FINES FOR VIOLATIONS AND NON-PAYMENT OF TAX; PROVIDING FOR SEVERABILITY, PURPOSE/REPEAL, CONSTRUCTION AND EFFECTIVE DATE, AND RELATED PROVISIONS.

The proposed Resolution is being adopted, and notice is being given, pursuant to the Local Tax Enabling Act, 53 P.S. § 6924.101, et seq. The Resolution restates and amends in its entirety the School District's currently existing Earned Income Tax Resolution, as amended, in order to conform to the provisions of the Local Tax Enabling Act, 53 P.S. § 6924.101, et seq., as amended and restated by Act 32 of 2008, and to do so within the time frame required by Act 32. The proposed Resolution imposes a Nazareth Area School District tax of seven-tenths percent (0.70%) on the

earned income and net profits of residents of the School District. The tax is in addition to any earned income tax levied by the Commonwealth of Pennsylvania or municipality in the School District, but may be subject to certain credits or deductions permitted by law. The tax is imposed for general revenue purposes, including general operating revenue for the School District. The Resolution will be effective January 1, 2012 and continues the tax previously imposed, and at the same rate. The nature of the tax is substantially the same as the earned income tax currently levied, subject to the changes required by Act 32. The Resolution shall apply to earned income and net profits earned or received by a taxpayer during calendar year 2012 and each year thereafter without annual re-enactment unless the rate of tax is subsequently changed. The estimated revenue generated by the tax for the 2011-12 fiscal year is \$5,270,000.

A copy of the full text of the proposed Resolution may be obtained at the Business Office of the Nazareth Area School District, located at the School District's Administration Building, One Education Plaza, Nazareth, PA, during regular business hours (Monday through Friday between 8 a.m. and 4 p.m.).

Ms. Bernadine C. Rishcoff
Business Administrator/
Board Secretary
Nazareth Area School District
June 2, 9, 16

**NOTICE OF INTENTION TO
ADOPT RESOLUTION**

NOTICE IS HEREBY GIVEN that the Board of School Directors of the Northampton Area School District intends to readopt, restate and

amend its earned income tax resolution at its regularly scheduled meeting on June, 27, 2011 at 6:30 p.m., at Northampton Area School District, Administration Center, 1st Floor Board Room, 2014 Laubach Avenue, Northampton, Pennsylvania 18067.

The proposed Resolution is being adopted, and notice is being given, pursuant to the Local Tax Enabling Act, as amended and restated by 53 P.S. §6924.101, et seq. and the Optional Occupation Tax Elimination Act, as amended by 53 P.S. §6924.401 et seq. The substantial nature of the tax is a tax imposed on earned income and net profits earned or received by residents and taxpayers of the School District. The reason for the tax is to provide for general revenue of the School District. The Resolution shall apply to earned income and net profits during calendar year 2012 and each year thereafter without annual readoption unless the rate of tax is subsequently changed. The purpose of the Resolution is to conform the

School District's current Earned Income Tax Resolution to the provisions of the Local Tax Enabling Act as amended and restated. The tax rate of .7% currently imposed on earned income and net profits remains unchanged. The .7% rate represents a combined rate made up of .5% imposed under the authority of the Local Tax Enabling Act and .2% imposed under the authority of the Optional Occupation Tax Elimination Act. The estimated revenue generated by the tax for the 2011-12 fiscal year is \$6,100,350.00.

A copy of the full text of the proposed Resolution may be obtained at the Business Office of the Northampton Area School District located at the Administration Building, 2014 Laubach Avenue, Northampton, PA 18067, during regular business hours (Monday through Friday between 8:00 a.m. and 4:00 p.m.).

Terry Leh, Secretary
Board of School Directors
June 2, 9, 16

**CITIBANK (SOUTH DAKOTA), N.A., Plaintiff v.
MICHAEL BOCKO, JR., Defendant**

Preliminary Objections—Rule 1019—Account Stated—Unjust Enrichment—Verification—Sufficiency—Attorney.

Court sustained in part and denied in part Defendant's preliminary objections. Defendant filed preliminary objections to Plaintiff's complaint seeking to collect an alleged credit card debt. Plaintiff attached monthly statements allegedly mailed to Defendant showing the amount allegedly due on his account, satisfying the Rule 1019(i) requirement for an account stated or unjust enrichment claim. Additionally, neither an account stated nor unjust enrichment claim requires a plaintiff to plead the existence of a contract, therefore both preliminary objections based on Rule 1019 were dismissed. However, the verification signed by Plaintiff's attorney did not satisfy Rule 1024(c) because it did not adequately explain why Plaintiff could not verify the complaint itself. Plaintiff was granted leave to file an Amended Complaint with a proper verification within twenty days.

In the Court of Common Pleas of Northampton County, Pennsylvania,
Civil Division—Law, No. C-48-CV-2010-12665.

DANIEL SANTUCCI, ESQUIRE, for Plaintiff.

Michael Bocko, Jr., Pro Se.

Order of the Court entered on March 16, 2011 by BARATTA, J.

ORDER

AND NOW, this 16th day of March, 2011, upon due consideration of Defendant's Preliminary Objections to the Amended Complaint, and the responses thereto, it is hereby ORDERED that Defendant's Preliminary Objections are SUSTAINED IN PART AND DENIED IN PART.

The Preliminary Objection to the Plaintiff's verification is SUSTAINED.

Defendant's remaining preliminary objections are DENIED.

Plaintiff is granted leave to re-file the Amended Complaint with a verification signed by the Plaintiff within twenty (20) days from the date of this Order, corrected the pleading deficiency.

STATEMENT OF REASONS

Factual and Procedural History

Plaintiff, Citibank (South Dakota) N.A., filed a complaint against Defendant, Michael Bocko, Jr., on November 8, 2010 seeking to collect a debt on a credit card account allegedly not paid by Defendant. After Defendant filed preliminary objections, which were dismissed for failure to file a supporting brief, Plaintiff filed an Amended Complaint on January 10, 2011. Plaintiff seeks relief under the account stated and unjust enrichment theories. Plaintiff attached copies of monthly statements of Defendant's

credit card account from July 6, 2009, up through and including June 3, 2010. The June 3 statement indicates a balance due of \$20,685.33, which is the amount sought by Plaintiff in its Amended Complaint.

The verification was signed by Plaintiff's attorney, Daniel J. Santucci, Esq. No substitute verification has been filed.

Defendant filed Preliminary Objections to the Amended Complaint on January 19, 2011.

Both parties submitted briefs and the matter was set for the March 1, 2011, Argument List. Counsel for Plaintiff and Defendant, who appeared *pro se*, appeared and submitted oral argument.

Legal Standard

In ruling on preliminary objections in the nature of a demurrer, the trial court may consider no testimony or evidence outside of the complaint. *Mellon Bank, N.A. v. Fabinyi*, 437 Pa. Super. 559, 567-68, 650 A.2d 895, 899 (1994). All well-pleaded, material, relevant facts, along with all reasonable inferences therefrom, must be taken as true; *i.e.*, the court may not consider the factual merits of the claims. *In re Adoption of S.P.T.*, 783 A.2d 779, 782 (Pa. Super. 2001). In order to grant a demurrer, it must be certain from the face of the complaint that the claims will not support recovery under any legal theory. *Mellon Bank*, *supra* at 568, 650 A.2d at 899; *Eckell v. Wilson*, 409 Pa. Super. 132, 135, 597 A.2d 696, 697-98 (1991).

Preliminary objections, whose end result would be the dismissal of a cause of action, should be sustained only where "it is clear and free from doubt from all the facts pleaded that the pleader will be unable to prove facts legally sufficient to establish [its] right to relief." *Bourke v. Kazaras*, 746 A.2d 642, 643 (Pa. Super. 2000) (citation omitted). Moreover, it is essential that the face of the complaint indicate that its claims may not be sustained and that the law will not permit recovery. If there is any doubt, it should be resolved by the overruling of the demurrer. *Bailey v. Storlazzi*, 729 A.2d 1206, 1211 (Pa. Super. 1999).

A preliminary objection due to lack of specificity is intended to ensure that an adverse party's right and ability to answer and defend will not be unduly impaired by a pleader's vagueness in stating the grounds of his or her suit. *Stilp v. Commonwealth*, 910 A.2d 775 (Pa. Commw. 2006). The sole question for the court is "whether the pleading is sufficiently clear to enable the defendant to prepare his defense." *Paz v. Commonwealth Department of Corrections*, 135 Pa. Commonwealth Ct. 162, 580 A.2d 452 (1990). The preliminary objection will be denied if the complaint provides enough facts to allow the defendant to frame a proper answer and prepare a defense. *Foster v. Peat Marwick Main & Co.*, 138 Pa. Commonwealth Ct. 147, 587 A.2d 382 (1991).

Discussion

Defendant's 8-paragraph pleading alleges several defects in the Amended Complaint. After reviewing Defendant's filing, we find Defendant raised three objections: 1) Plaintiff failed to state whether the alleged claim for relief is based on an oral agreement or writing in violation of Pa. R.C.P. No. 1019(h); 2) Plaintiff violated Pa. R.C.P. No. 1019(i) by failing to attach a credit card agreement; and 3) the verification was signed by counsel.

1. Rule 1019 Objections

Defendant cites *Atlantic Credit and Finance, Inc. v. Giuliana*, 829 A.2d 340 (Pa. Super. 2003) to support his position that Plaintiff was required to attach a copy of the credit card agreement to the Amended Complaint. There is no credit card agreement attached to the Amended Complaint.

However, Defendant's reliance on *Giuliana* is misplaced. That case set forth the standard for compliance with Rule 1019 in a breach of contract case. Here, Plaintiff's Amended Complaint only set out claims for an account stated and unjust enrichment.

An account stated is an "account in writing, examined and accepted by both parties, which acceptance need not be expressly so, but may be implied from the circumstances." *Robbins v. Weinstein*, 143 Pa. Super. 307, 17 A.2d 629, 634 (1941). An account stated has four elements: 1) there has been a running account; 2) a balance remains due; 3) the account has been rendered upon the defendant; and 4) the defendant has assented to the account. *Citibank (South Dakota), N.A. v. Ambrose*, 13 D. & C. 5th 402 (Adams Cty. 2010).

In order to satisfy the pleading requirements of Pa. R.C.P. No. 1019(i) for an account stated claim, the party only needs to provide a statement that was sent to the opposing party indicating the amount allegedly due. In this case, Plaintiff attached twelve monthly statements allegedly sent to Defendant, including the June 3, 2010, monthly statement that shows the amount due of \$20,685.33. Plaintiff has adequately alleged a claim for an account stated and attached the documentation required under Rule 1019(i) to support its claim.

To sustain a claim of unjust enrichment, the plaintiff must prove three elements: 1) benefits were conferred on the defendant by the plaintiff; 2) appreciation of such benefits by defendant; 3) acceptance and retention of such benefits under such circumstances that it would be inequitable for the defendant to retain the benefit without payment of value. *Schenck v. K.E. David, Ltd.*, 446 Pa. Super. 94, 666 A.2d 327, 328 (1995). In this case, the Amended Complaint alleges Plaintiff conferred a benefit, the line of credit, on Defendant. The Amended Complaint also alleges that Defendant used the line of credit to incur a debt of \$20,685.33. Plaintiff attached the twelve monthly statements to support this claim.

Under the account stated or unjust enrichment theories, the claimant is not required to prove that there was an agreement between the parties. Therefore, Pa. R.C.P. No. 1019(h) does not apply and Plaintiff is not required to state whether there was an oral or written agreement.

We overrule Defendant's first two preliminary objections.

2. *The Verification Signed by the Attorney is Insufficient*

Defendant's third objection is to the verification signed by counsel.

Generally, an attorney is not allowed to verify a pleading for a party. Pa. R.C.P. No. 1002. However, an attorney may verify the pleading for a party if the party is outside the jurisdiction of the court and the verification by the party cannot be obtained within the time allowed for filing the pleading. Pa. R.C.P. No. 1024(c). When an attorney verifies a pleading under Rule 1024(c), the attorney must: 1) state having sufficient knowledge or information and belief of the facts; 2) set forth the source of the information as to matters not stated upon the attorney's knowledge; and 3) the reason why the verification was not made by a party. *Id.*

While a verification is necessary to defend a party against spurious allegations, "it must 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). However, an attorney may not verify the petition for a party unless the conditions of Rule 1024(c) are met. *Lewis v. Erie Insurance Exchange*, 281 Pa. Super. 193, 198 n.2, 421 A.2d 1214, 1217 n.2 (1980). A statement that a party is unavailable does not satisfy Rule 1024(c), rather the verification must state the party is outside the jurisdiction of the court and could not be reached in sufficient time to file the pleading. *Id.* at 198, 421 A.2d at 1217.

The verification attached to the Amended Complaint does not offer much information as to why the party to the action could not verify the pleading.¹ Specifically, it indicates that "due to time constraints" the attorney needed to sign the verification, and the party was outside the jurisdiction of this court. However, we find this statement insufficient to comply with Rule 1024(c).

The Superior Court in *Lewis* favorably cited a Lebanon County Court of Common Pleas case to support the proposition that an attorney verification made under Rule 1024(c) must do more than simply state that the party is unavailable. *See Hercoform Marketing, Inc. v. Brown*, 75 D. & C.

¹ Attached to the Amended Complaint is a page dated January 5, 2011, and titled "VERIFICATION." It reads:

I, Daniel J. Santucci, am the attorney in the enclosed matter, due to time constraints I am signing the verification, Plaintiff is not within the jurisdiction and I have prepared the Amended Complaint after reviewing the file, speaking with my client, and my personal information and belief. I affirm that the fact asserted are true and correct to the best of my knowledge and belief.

2d 394 (Lebanon Cty. 1975). In *Brown*, the court rejected an attorney verification because, although it stated the party was located outside Pennsylvania, the verification did not indicate that the party could not have made the verification in another state. *Id.* at 397. In this case, the verification simply states that the “Plaintiff is not within the jurisdiction” and the attorney needed to sign the verification “due to time constraints.” These statements alone do not indicate that a party-verified Amended Complaint could not have been timely filed.

The Montgomery Court of Common Pleas observed that an attorney verification is proper only under the “extraordinary circumstances” detailed in Rule 1024(c). *Malantonio v. Malantonio*, 37 D. & C. 2d 687, 690 (Montgomery Cty. 1965). We agree that attorney verifications are intended in cases where it would be extremely difficult to obtain a timely verification by the party; attorneys should not sign verifications under normal circumstances. In this case, the verification simply does not indicate that such extraordinary circumstances existed to necessitate an attorney verification under Rule 1024(c).

Therefore, we sustain Defendant’s preliminary objection to the verification and Plaintiff is directed to correct this procedural defect within twenty (20) days of the date of this Order.

DANIEL PINHO, Plaintiff v. BARBARA PATE, Defendant*Attorneys' Fees—Costs—Prevailing Party—Prevail—Contract—Fee-shifting Agreement—Legal Proceeding.*

Court denies Plaintiff's petition for attorneys' fees and costs. This Court previously dismissed Plaintiff's complaint seeking reinstatement into an LLC and his request for attorneys' fees. Defendant subsequently filed the instant petition for attorneys' fees and costs arguing she was the prevailing party based on the Court's previous decision dismissing the complaint. The complaint contained two counts, one count sought reinstatement and the other count asked the court to appoint a temporary receiver. Prior to the order dismissing the complaint, the Court appointed a temporary receiver to wind up the LLC's assets by agreement of the parties.

Under the operating agreement, only the prevailing party in a legal proceeding initiated to enforce a provision of the operating agreement could collect attorneys' fees. In order to be a prevailing party, a party must prevail on every claim raised in a legal proceeding. Here, the parties came to an agreed resolution on count one of the complaint. A party does not prevail when it reaches a settlement. Although the Court dismissed Plaintiff's original complaint, Defendant was not a prevailing party and entitled to attorneys' fees because she did not prevail on all claims raised in Plaintiff's complaint.

In the Court of Common Pleas of Northampton County, Pennsylvania,
Civil Division—Law, No. C-48-CV-2010-6085.

MICHAEL C. DESCHLER, ESQUIRE, for the Plaintiff.

GERARD M. McCABE, ESQUIRE, for the Defendant.

Order of the Court entered on March 18, 2011 by BARATTA, J.

ORDER

AND NOW, this 18th day of March, 2011, upon consideration of the Petition for Attorneys' Fees and Costs of the Defendant, Barbara Pate, the answer of Plaintiff, Daniel Pinho, and the briefs and argument in support thereof, it is hereby ORDERED that said petition is DENIED.

*STATEMENT OF REASONS**Factual and Procedural History*

Plaintiff, Daniel Pinho, and Defendant, Barbara Pate, executed an Operating Agreement (the "Agreement") on May 31, 2007, to govern the operation of California Tan, LLC (the "LLC"). After a certificate of organization was filed with the Secretary of State on June 12, 2007, the Agreement was modified on June 25, 2007. The Agreement outlined the roles and responsibilities of the parties as well as what each party invested in the LLC. Mr. Pinho and Ms. Pate each had a 50% ownership interest in the LLC. The Agreement also detailed procedures for how members could be dissociated from the LLC in Article 7. The expulsion provision of Article 7.2 explains that a vote by "Members holding a majority of the Ownership Interests held by Members other than the expelled Member may expel a

Member if the Member engages in wrongful conduct that adversely affects the business”¹ California Tan opened for business in November 2007.

Serious disagreements arose between Plaintiff and Defendant on or about April 1, 2010. The conflict escalated to the point that Defendant wrote a letter to Plaintiff on June 4, 2010, purporting to expel him from membership in the LLC. On June 14, 2010, Plaintiff filed a Complaint against Defendant alleging that she wrongfully expelled Plaintiff from the LLC. In Count I of the Complaint, Plaintiff sought the appointment of a temporary receiver to oversee the liquidation and distribution of the LLC’s assets until the LLC was dissolved. In Count II, Plaintiff asked this Court to reinstate Plaintiff as a Member of the LLC and enjoin Defendant from expelling Plaintiff because expulsion would cause irreparable harm to both the LLC and Plaintiff’s reputation in the tanning industry. Additionally, Plaintiff sought Preliminary Injunctive relief on the same grounds outlined in Count II. Finally, the Plaintiff sought an award of attorney’s fees.

Defendant filed a Response to the Complaint and Preliminary Injunction Petition on June 29, 2010. Defendant agreed to the appointment of a temporary receiver to oversee the distribution and liquidation of the LLC’s assets as the LLC would be dissolved. However, she opposed Plaintiff’s petition for Preliminary Injunction on Count II and filed two Preliminary Objections. She objected to the demand for counsel fees in Count I and all of Plaintiff’s demands in Count II. The Hon. Paula A. Roscioli issued a Preliminary Injunction Order on July 1, 2010, appointing a temporary receiver to liquidate the assets of the LLC, pay its debts, dissolve the LLC, and distribute the remaining proceeds in equal amounts to Defendant and Plaintiff. Judge Roscioli’s Order disposed of all of Plaintiff’s demands in Count I except his demand for attorney’s fees. Certainly, the Plaintiff achieved a successful resolution on Count I as his request for the appointment of a receiver was agreed to, which in turn made Plaintiff’s other requests (except for attorney’s fees) moot.

Because Judge Roscioli’s order did not finally resolve all claims raised in the complaint, the outstanding Preliminary Objections were assigned to

¹ 7.2 *Expulsion*. A Member may be expelled from the Company by an affirmative vote of the Members holding a majority of the Ownership Interests held by Members other than the expelled Member if the expelled Member has been guilty of wrongful conduct that adversely and materially affects the business or affairs of the Company, or the expelled Member has willfully or persistently committed a material breach of the articles of organization of the Company or this Agreement or has otherwise breached a duty owed to the Company or to the other Members to the extent that it is not reasonably practicable to carry on the business or affairs of the Company with that Member. The right to expel a Member under the provisions of this section does not limit or adversely affect any right or power of the Company or the other Members to recover any damages from the expelled Member or to pursue other remedies permitted under applicable law or in equity. In addition to any other remedies, the Company or the other Members may offset any such damages against any amounts otherwise distributable or payable to the expelled Member.

this Judge. This Court entered an order dated September 22, 2010, sustaining Defendant's Preliminary Objections and dismissing Plaintiff's complaint, but we granted Plaintiff leave to file an amended pleading. Apparently, an amended complaint was not filed. We denied the open claim for attorney's fees, even though the resolution achieved a successful result for the Plaintiff, because the Plaintiff was not technically "the prevailing party" as the parties had reached a negotiated agreement/settlement.

On October 13, 2010, Defendant filed her own Petition for Reasonable Attorneys' Fees and Costs (Petition) and a Rule to Show Cause was issued on Plaintiff. Plaintiff filed an Answer to Defendant's Petition on November 4, 2010, and Defendant filed a reply to Plaintiff's Answer on November 12, 2010. The matter was set for the January 4, 2011, Argument List and counsel for both parties submitted briefs and oral argument.

Standard of Law

In Pennsylvania, the general rule is that each side is responsible for the payment of its own costs and counsel fees absent bad or vexatious conduct. *McMullen v. Kutz*, 603 Pa. 602, 985 A.2d 769, 775 (2009). This "American Rule" governs unless there is express statutory authorization, a clear agreement of the parties, or some other established exception. *Id.* The party seeking to claim entitlement to attorney's fees has the burden of proving such entitlement. *Boro Construction, Inc. v. Ridley School District*, 992 A.2d 208, 220 (Pa. Commw. 2010). If counsel fees are awarded pursuant to a contractual fee-shifting provision, the trial court may consider whether the fees claimed to have been incurred are reasonable and may reduce the claimed fees if appropriate. *Id.*

Discussion

Defendant cites Section 11.4 of the Agreement as the basis for her request for attorneys' fees. Section 11.4 provides:

Litigation Expense. If any legal proceeding is commenced for the purpose of interpreting or enforcing any provision of this Agreement, including any proceeding in the United States Bankruptcy Court, the prevailing party in such proceeding will be entitled to recover a reasonable attorneys' fee in such proceeding, or any appeal thereof, to be set by the court in addition to the costs and disbursements allowed by law.

The term "prevailing party" is not defined anywhere in the Agreement. Therefore, we believe that the ultimate issue is the interpretation of Section 11.4 and, more specifically, defining the term "prevailing party."

When a term in a contract is not defined, the court must construe the words in accordance with their natural, plain and ordinary meaning. *Cordero v. Potomac Insurance Company of Illinois*, 794 A.2d 897, 900 (Pa. Super. 2002). The court will not modify the plain meaning of the words in

the contract to conflict with the accepted meaning of the language used. *Meeting House Lane, Ltd. v. Melso*, 427 Pa. Super. 118, 126, 628 A.2d 854, 857 (1993). As both parties discuss in their briefs, our appellate courts have endeavored to interpret the meaning of “prevailing party” and “prevail” when used in fee-shifting provisions of contracts.

The seminal case on interpreting contractual fee-shifting agreements is *Profit Wize Marketing v. Wiest*, 812 A.2d 1270 (Pa. Super. 2002). In *Profit Wize* an employer sought a preliminary injunction to enforce a restrictive covenant contained in an employment contract against an employee. *Id.* at 1272. During a hearing on the employer’s preliminary injunction request, the parties reached a settlement on a permanent injunction where the employee agreed to a modification of the restrictive covenant while the employer waived its claims for damages and loss, but it reserved the right to seek counsel fees. *Id.* The employment contract also included a fee-shifting provision which stated: “if Employer prevails in any suit or action under this Agreement, Employee shall reimburse Employer for its expenses incurred in connection with such suit or action, including ... attorney’s fees” *Id.* (emphasis in original). On a hearing solely on the issue of counsel fees, the trial court awarded the employer a portion of the counsel fees sought because it partially prevailed in obtaining the requested relief. *Id.* at 1273.

The Superior Court *reversed* the trial court’s decision because it found the employer did not prevail in the underlying action. *Id.* at 1277. While the *Merriam-Webster Dictionary* defines prevail as “to gain ascendancy through strength or supremacy,” and *Black’s Law Dictionary* defines it as “to obtain the relief sought in an action; to win a lawsuit,” the Superior court found that, although a hearing had commenced, the trial court never reached the merits of the case or vindicated the employer’s position. *Id.* at 1275. Under either definition of the word “prevail,” the Superior Court found that neither party was a “clear-cut” winner because both parties preserved certain legal rights and willingly relinquished others. *Id.*

However, unlike in *Profit Wize*, the contract in this case uses the term “prevailing party.” As the Superior Court explained, prevailing party is a noun that has a slightly different definition than prevail. Using the definition from *Black’s Law*, the Superior Court notes that a prevailing party is “a party in whose favor a judgment is rendered, regardless of the amount of damages” *Id.* at 1275. This definition is limited only to circumstances where a fact-finder declares a winner and the court enters judgment in that party’s favor. *Id.* at 1275-76. Because this was an issue of contract law and not statutory law, the Superior Court found it was inappropriate to look to definitions of “prevailing party” in federal statutes that provide for the award of attorney’s fees because the parties could have placed language in the contract evidencing an intent to utilize a statutory definition of the term. *Id.* at 1276.

In this case, the fee-shifting provision states, “[i]f any legal proceeding is commenced for the purpose of interpreting or enforcing any provision of this Agreement ... the prevailing party in such proceeding” will receive attorney’s fees. Legal proceeding is defined as “any proceeding authorized by law and instituted in a court or tribunal to acquire a right or to enforce a remedy.” *Black’s Law Dictionary* (9th ed. 2009). The term “proceeding” has several definitions that could be relevant including: “any procedural means for seeking redress from a tribunal or agency,” or “an act or step that is part of a larger action,” or in the context of a bankruptcy proceeding “a particular dispute or matter arising within a pending case—as opposed to the case as a whole.” *Id.* Proceeding may also be defined as “a particular action or course of action,” “legal action,” or “the taking of legal action.” *Webster’s New College Dictionary*, p. 1114 (2007).

It appears that in this case, the term “legal proceeding” refers to some act or step in a legal action, whether it is a complaint, petition, or motion to enforce a remedy. The “legal proceeding” at issue here is the Complaint that Plaintiff filed on June 14, 2010. The Complaint had two counts: one seeking the appointment of a temporary receiver and dissolution of the LLC and the second seeking injunctive relief reinstating Plaintiff as a member of the LLC. We must look at the *entire* Complaint in order to determine who the prevailing party is; one count of a two-part Complaint cannot be considered a “legal proceeding” as used in the Operating Agreement. We find that neither party is the prevailing party when reviewing the result of the entire litigation process of the Complaint.

Defendant argues it is the prevailing party because this Court sustained all of its preliminary objections and dismissed Plaintiff’s Complaint with leave to amend. However, the Plaintiff acquired the relief sought in his first count of the Complaint by agreement of the parties.

We note that Section 11.4 does not allow a party to split up the relevant proceeding, in this case the Complaint, into portions that sought enforcement of the Agreement and those that did not. It refers to the entire legal proceeding. It is irrelevant whether we previously stated that count two of the Complaint is the only count that actually sought to enforce a provision of the Agreement. The second count was brought in the context of one legal proceeding, the Complaint. None of the definitions we discussed previously can be said to consider one count of a two-count Complaint a separate and distinct “legal proceeding.” In order to receive attorney’s fees under the Operating Agreement, Defendant needed to be the prevailing party with regard to the entire Complaint. Pursuant to the decision in *Profit Wize*, this means that Defendant needed to have triumphed on each request for relief in Plaintiff’s Complaint. She did not prevail on any claim, other than in an ancillary issue related to a claim for damages in the nature of attorneys’ fees.

We remind the Defendant that by her capitulation to Plaintiff’s claim for relief in Count I, the claim in Count II became moot. Clearly, the result

was not a “win” for the Defendant, as she agreed to dissolve a business from which, months earlier, she attempted to remove Plaintiff as a co-owner so that she could keep it for herself. The mere fact that her agreement to accept a receiver to dissolve the business permitted the Defendant to escape paying the Plaintiff’s attorney’s fees is hardly a win. The Defendant is not the “prevailing party,” and as a result, she is not entitled to attorneys’ fees.

Our position is also supported by a recent decision of the Commonwealth Court in *Boro Construction, Inc. v. Ridley School District*, supra. In that case, there was a contract between a contractor and a school district which contained a provision that stated if the contractor litigated a clause that precluded him from seeking delay damages, and the contractor lost such litigation, then the contractor was responsible for the school district’s attorney’s fees. *Id.* at 211. The contractor filed a complaint against the school district that included a claim for delay damages. The school district filed an answer seeking attorney’s fees under the no-delay-damages clause and a counterclaim for doors that were allegedly improperly installed by the contractor. *Id.* at 212-13. After a non-jury trial, a verdict was entered against the contractor on his claim *and* against the school district on the counterclaim. The trial court then denied the school district’s claim for attorney’s fees. The Superior Court upheld the trial court’s decision not to award attorney’s fees because the trial court found, after a hearing, that the school district failed to meet its burden of proof on the counterclaim that the contractor was responsible for the improper door installation. *Id.* at 220. The contractor prevailed on the counterclaim, therefore it could not have been deemed to have “lost” the litigation even though the contractor did not prevail on other claims in its complaint. *Id.*

In *Boro*, although the counterclaim was not at all relevant to the issue of whether the contractor lost its claim for delay damages, it was still asserted within the same legal proceeding. In this case, the issue is even clearer. The Plaintiff achieved his desired result on count one. The remainder of the Complaint was dismissed on preliminary objections as moot and not because Defendant prevailed on the merits. As our September 22, 2010, Order makes clear, no party “prevailed” on the merits of this controversy through litigation. *Profit Wize* illustrates that sometimes there is no “prevailing party” at the conclusion of litigation.

Finally, it is worth noting that the policy of this Commonwealth strongly disfavors awarding attorney’s fees. Even when there is a fee-shifting provision in the contract, *Profit Wize* and *Boro Const.* demonstrate that our appellate courts will construe these provisions very narrowly. The fee-shifting provision of this contract simply imposes a very high standard on the parties to allow the recovery of attorney fees. Neither party is the prevailing party on the Complaint as required by the Operating Agreement.

As a result, Defendant’s petition for attorneys’ fees is denied.

**PSB CREDIT SERVICES, INC., Plaintiff v. ALAN V. DILSAVER
and ELIZABETH J. DILSAVER, Defendants**

*Motion for Judgment on the Pleadings—Deemed Admission—Mortgage
Foreclosure.*

Court grants Plaintiff's motion for judgment on the pleadings and enters judgment in foreclosure against Defendants. Defendants expressly admitted that they owned the mortgage alleged in the complaint and had failed to make several monthly payments. Additionally, Defendants denied as a conclusion of law the amount due and owing on the mortgage, which is considered a deemed admission pursuant to Pa. R.C.P. 1929(b). Judgment on the pleadings was proper because Defendants did not raise a genuine issue of material fact and failed to raise an adequate defense.

In the Court of Common Pleas of Northampton County, Pennsylvania,
Civil Division—Law, No. C-48-CV-2010-7427.

LAUREN BERSCHLER KARL, ESQUIRE, for Plaintiff.

MICHAEL VARGO, ESQUIRE, for Defendants.

Order of the Court entered on March 16, 2011 by BARATTA, J.

OPINION

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Plaintiff, PSB Credit Services, Inc., filed a Complaint in Mortgage Foreclosure against Defendants, Alan V. Dilsaver and Elizabeth J. Dilsaver, on July 15, 2010.

The Dilsavers executed a mortgage agreement with Wachovia Bank on May 27, 2004, for property located at 2601 Nazareth Road, Easton, PA. Mr. Dilsaver executed a promissory note for \$365,000 with Wachovia Bank that was secured by the mortgage. The note and mortgage was assigned to PrinsBank by Wachovia on December 16, 2008. PrinsBank subsequently assigned the note and mortgage to PSB Credit Services, Inc. on November 6, 2009. The Act 91 Notice attached to the Complaint states that Defendants' monthly payments from July 15, 2009, through February 15, 2010, are past due and owing.

Defendants filed an Answer on September 3, 2010. Defendants expressly admitted that they executed the mortgage, that some monthly payments were not tendered and that they received the required Act 91 notice. Defendants also raised eleven boilerplate defenses in a New Matter section. Defendants failed to plead any facts to support these defenses. Plaintiff responded to Defendants' New Matter on September 24, 2010.

Plaintiff filed a Motion for Judgment on the Pleadings and a Brief in Support on February 4, 2011, seeking a judgment in foreclosure on the mortgaged property. The matter was set for the March 1, 2011, Argument

List and submitted on brief. Defendants failed to file a response to Plaintiff's motion or a brief opposing the motion.

LEGAL STANDARD

Pennsylvania Rule of Civil Procedure, Rule 1034 states as follows:

(a) After the relevant pleadings are closed, but within such time as not to unreasonably delay the trial, any party may move for judgment on the pleadings.

(b) The court shall enter such judgment or order as shall be proper on the pleadings.

Pa. R.C.P. No. 1034. The purpose of the Motion for Judgment on the Pleadings is to expedite justice. *Wark & Company v. Twelfth & Sansom Corporation*, 378 Pa. 578, 107 A.2d 856 (1954). The Motion obviates the need for pursuing to trial cases where the pleadings demonstrate that no genuine issue of fact exists and that the moving party is entitled to judgment as a matter of law. *Parish v. Horn*, 768 A.2d 1214 (Pa. Commw. 2001) *aff'd*, 800 A.2d 294 (Pa. 2002). The case must be free and clear from doubt such that a trial would clearly prove to be a fruitless exercise. *Otterson v. Jones*, 456 Pa. Super. 388, 690 A.2d 1166 (1997).

In conducting the inquiry on a motion for judgment on the pleadings, the Court may consider only the pleadings themselves. *Rice v. Rice*, 468 Pa. 1, 359 A.2d 782 (1976); *Booher v. Olczak*, 797 A.2d 342 (Pa. Super. 2002). The Court must accept as true all well-pleaded statements of fact, admissions, and any documents properly attached to the pleadings presented by the party against whom the motion is filed, considering only those facts that were specifically admitted. *Shirley by Shirley v. Javan*, 454 Pa. Super. 131, 684 A.2d 1088 (1996) (citations omitted).

In considering the motion for judgment on the pleadings, the trial court need not accept or admit the validity of conclusions of law pleaded by the parties. *Aughenbaugh v. North American Refractories Company*, 426 Pa. 211, 231 A.2d 173 (1967). Neither party can be deemed to have admitted either conclusions of law or unjustified inferences. *Kelly v. Nationwide Insurance Company*, 414 Pa. Super. 6, 606 A.2d 470 (1992); *Jones v. Travelers Insurance Company*, 356 Pa. Super. 213, 514 A.2d 576 (1986). The Court is not bound to accept the opposing party's allegations that are essentially conclusions of law. *Keystone Automated Equipment Co., Inc. v. Reliance Insurance Co.*, 369 Pa. Super. 472, 535 A.2d 648 (1988).

DISCUSSION

When an averment in a pleading requires a responsive pleading, the averment will be admitted if not denied specifically or by necessary implication; a general denial or demand for proof will constitute an admission. *See* Pa. R.C.P. No. 1929(b). There is a general exception to Rule 1929(b). An averment is considered denied if a party states she is without knowledge

or information sufficient to form a belief as to the truth of an averment after a reasonable investigation. *See* Pa. R.C.P. No. 1929(c). However, in *First Wisconsin Trust Company v. Strausser*, 439 Pa. Super. 192, 653 A.2d 688 (1995), the Superior Court held that this general exception—where a party alleges insufficient information—will not constitute a denial in mortgage foreclosure actions “when it is clear that the pleader must know whether a particular allegation is true or false. *See Cercone v. Cercone*, 254 Pa. Super. 381, 386 A.2d 1 (1978).” *Id.* at 199, 653 A.2d at 692.

Defendants denied as a conclusion of law Plaintiff’s averment of the amount due and owing on the note and mortgage as of June 30, 2010. It is clear under *Strausser* that such a response is considered an admission. *See id.* at 199, 653 A.2d at 692.

Defendants admitted that they are the mortgagors on the property and that they failed to make several monthly payments. It is proper to enter a judgment against a defendant in a mortgage foreclosure action when the defendant admits to being delinquent on his mortgage payments. *Id.* at 204, 653 A.2d at 694. Clearly, Defendants failed to dispute any issue of material fact and Plaintiff is entitled to judgment on the pleadings.

Defendants also filed new matter which merely referenced equitable concepts.¹ No facts are averred to support these alleged defenses. Further, the Defendants have failed to produce any record evidence to support the defenses raised in New Matter.

A pleader is required to state the material facts on which a defense is based. Pa. R.C.P. No. 1019(a). The averments made in Defendants’ New Matter are bald conclusions of law that do not raise any genuine issues of material fact. There is nothing in Defendants’ New Matter precluding us from entering judgment on the pleadings in favor of Plaintiff.

Finally, the Defendants have not filed a response or brief in opposition to this motion.

Based on Defendants’ admissions, Plaintiff clearly demonstrated it is entitled to a judgment in foreclosure on Defendants’ mortgaged property.

Wherefore, we enter the following order:

ORDER

AND NOW, this 16th day of March, 2011, upon consideration of Plaintiff’s Motion for Judgment on the Pleadings, and Defendants’ response thereto, it is hereby ORDERED that said Motion is GRANTED.

¹ In New Matter ¶¶14-24, each paragraph begins: “Plaintiff’s claims are or may be barred in whole or in part by ...” The Defendants filled in a different equitable concept for each numbered paragraph. The following equitable concepts were listed seriatim beginning with Paragraph 14 through and including Paragraph 24: “Statute of Frauds ... Doctrine of Unclean Hands ... Doctrine of Laches...Statute of Limitations ... Doctrine of Promissory Estoppel ... Accord and Satisfaction Release ... Waiver ... Arbitration and Award ... Payment ... Consent.”

It is further ORDERED that judgment in mortgage foreclosure is entered in favor of the Plaintiff, PSB Credit Services, Inc., and against Defendants, Alan V. Dilsaver and Elizabeth J. Dilsaver, in the amount of \$330,331.48, plus continuing interest at the *per diem* rate of \$74.08, from June 30, 2010, and any and all monthly late charges at \$154.99, through the date of judgment, and for foreclosure of the mortgaged property.

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