

Northampton County Reporter

(USPS 395-280)

VOL. LV

EASTON, PA November 5, 2009

NO. 97

Northampton County Reporter Digest—2009-11

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INSERT: Pink: 1. Elder Law Forum

2. 2009 Calendar

3. Philadelphia Flyers vs. New York Islanders

4. PBI-CLE Seminars—NCBA Office

Cream: 1. "SmartPhones for Smart Lawyers and Other Ways to be Productive from the Ski Slopes"

2. Quarterly Association Meeting

3. YLD Members—We Need Your Help!—Holiday Hope Chests

4. "How Speech Got to be Free Speech—World War I, The Red Scare, Two Justices, Two Dissents and a Whole New Concept for the Speech Clause in the First Amendment"

NOTICE TO THE BAR....

N.C. Reporter Deadline Change:

Due to the Thanksgiving holiday, the deadline to submit legal ads for the November 26th edition of the Reporter has been changed to Friday, November 20 at Noon.

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Northampton County Reporter

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

Subscription Price—\$75.00 per year.

Periodical Postage Paid at Easton, PA and additional office.

Postmaster: Send all communications and address changes to:

NORTHAMPTON COUNTY REPORTER

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

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

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Editor

NOTICE TO NCBA MEMBERS – BAR NEWS

WiFi Access in the Courthouse Law Library for NCBA Members

Members interested in registering for the WiFi access in the law library should contact the librarian, Carol Devlin, for the registration information. Access begins October 1, 2009.

Memorial Service for Honorable Richard D. Grifo—Tuesday, December 8, 2009

A Memorial Service will be held for Judge Richard D. Grifo on December 8, 2009, in Courtroom #1, Northampton County Courthouse beginning at 9:00 a.m. Please plan to join us for this memorial.

Philadelphia Flyers vs. New York Islanders Bus Trip

Saturday, January 30, 2010

Look for the registration form inside.

It's not what we don't know that hurts, it's what we know that ain't so. ~ Will Rogers

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

BEIDLEMAN, CHARLES G. a/k/a CHARLES GERALD BEIDLEMAN a/k/a CHARLES BEIDLEMAN a/k/a CHARLES JUNIOR BEIDLEMAN, dec'd.

Late of Northampton, Northampton County, PA

Co-Executrices: Heather M. Barbosa, 2233 Farmersville Road, Bethlehem, PA 18020 and Kimberly J. Hollowell, 1016 Brazil Nut Way, Dover, DE 19901

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

DeVITO, MICHAEL J., JR., dec'd.

Late of the Township of Washington, Northampton County, PA

Administratrix: Carmella J. DeVito, 80 North Street, Bangor, PA 18013

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

DIETZ, ARLENE R. a/k/a ARLENE DIETZ, dec'd.

Late of the Borough of East Bangor, Northampton County, PA

Administrator: Alan B. McFall 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

GALM, VERONICA A, dec'd.

Late of the Borough of North Catasauqua, Schuylkill County, PA

Executor: John A. Galm, III c/o Timothy J. Duckworth, Esquire, Mosebach, Funt, Dayton & Duckworth, P.C., P.O. Box 20770, Lehigh Valley, PA 18002-0770

Attorneys: Timothy J. Duckworth, Esquire, Mosebach, Funt, Dayton & Duckworth, P.C., P.O. Box 20770, Lehigh Valley, PA 18002-0770

KUHNSMAN, ELIZABETH R., dec'd.

Late of Bethlehem, Northampton County, PA

Executor: John Sittler c/o Larry R. Roth, Esquire, The Roth Law Firm, 123 North Fifth Street, Allentown, PA 18102

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

KURTZ, VERNA I., dec'd.

Late of the Borough of Northampton, Northampton County, PA

Co-Executrices: Janet L. Ifkovits, 364 E. 11th Street, Northampton, PA 18067, Barbara A. Brown, 1102 Wynnewood Drive, Northampton, PA 18067 and Rosanne Abel, 301 Sexton Road, Wind Gap, PA 18091

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

PARENTI, GRACE J., dec'd.

Late of the City of Bethlehem, Northampton County, PA
 Executrix: Joanne E. Marzola, 1604 Hausman Avenue, Allentown, PA 18103

Attorney: Richard S. Luse, Esquire, 316 West Broad Street, Bethlehem, PA 18018

ROOF, DORIS H. a/k/a DORIS HELEN ROOF, dec'd.

Late of the Township of Plainfield, Northampton County, PA
 Executrix: Linda Roof Frick c/o Craig A. Dally, Esquire, Pierce & Dally, LLP, 124 Belvidere Street, Nazareth, PA 18064

Attorneys: Craig A. Dally, Esquire, Pierce & Dally, LLP, 124 Belvidere Street, Nazareth, PA 18064

SABO, HELEN K. a/k/a HELEN KATHRYN SABO, dec'd.

Late of the Borough of Hellertown, Northampton County, PA
 Executor: William T. Sabo 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

SEIFERT, GRACE E. a/k/a GRACE ELEANOR SEIFERT, dec'd.

Late of the City of Easton, Northampton County, PA
 Administratrix: Ms. Mildred R. Seifert, 1322 Washington Street, Easton, PA 18042

Attorneys: Hemstreet, Nitchkey & Freidl, 730 Washington Street, Easton, PA 18042

SECOND PUBLICATION

ALAI, ANNA MAE a/k/a ANNA MAE ONDUSH, dec'd.

Late of 523 Second St., Northampton, Northampton County, PA
 Executor: Michael J. Ondush c/o Samuel F. Feldman, Esquire, Feldman Law Offices, P.C., 221 N. Cedar Crest Blvd., Allentown, PA 18104

Attorneys: Samuel F. Feldman, Esquire, Feldman Law Offices, P.C., 221 N. Cedar Crest Blvd., Allentown, PA 18104

BOUIS, SOLANGE C., dec'd.

Late of Bethlehem, Northampton County, PA

Co-Executors: Jean Claude Bouis a/k/a John C. Bouis and Paul A. Bouis c/o Noonan & Prokup, 526 Walnut St., Allentown, PA 18101

Attorneys: Noonan & Prokup, 526 Walnut St., Allentown, PA 18101

CORONA, MARGARET C., dec'd.

Late of the City of Easton, Northampton County, PA
 Executor: Dennis J. Corona c/o Theresa Hogan, Esquire, Attorney at Law, 340 Spring Garden St., Easton, PA 18042-3533

Attorney: Theresa Hogan, Esquire, Attorney at Law, 340 Spring Garden St., Easton, PA 18042-3533

DAVIES, GRACE ELLENOR MARY a/k/a GRACE E.M. DAVIES a/k/a GRACE DAVIES, dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executrix: Judith Schneider c/o Timothy J. Duckworth, Esquire, Mosebach, Funt, Dayton & Duckworth, P.C., P.O. Box 20770, Lehigh Valley, PA 18002-0770

Attorneys: Timothy J. Duckworth, Esquire, Mosebach, Funt, Dayton & Duckworth, P.C., P.O. Box 20770, Lehigh Valley, PA 18002-0770

DIAZ, MANUEL, dec'd.

Late of the Township of Plainfield, Northampton County, PA
Co-Executrices: Jennifer Diaz and Suzanne Stepien c/o John Molnar, Esquire, The Molnar Law Offices, Wind Gap Professional Center, 6697 Sullivan Trail, Wind Gap, PA 18091

Attorneys: John Molnar, Esquire, The Molnar Law Offices, Wind Gap Professional Center, 6697 Sullivan Trail, Wind Gap, PA 18091

GEORGE, CATHERINE M., dec'd.

Late of the Borough of Wilson, Northampton County, PA
Executor: Robert E. George 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

GLICAS, GUS S., dec'd.

Late of the City of Bethlehem, Northampton County, PA
Co-Executors: Stanley G. Glicas and Irene G. Hackett c/o Nicholas M. Zumas, Esquire, 54 South Commerce Way, Suite 172, Bethlehem, PA 18017-8966

Attorney: Nicholas M. Zumas, Esquire, 54 South Commerce Way, Suite 172, Bethlehem, PA 18017-8966

GOERNER, LAURA S., dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executrix: Dianne K. McLane 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

HOCH, PERMA L., dec'd.

Late of Northampton, Northampton County, PA

Administrator: David J. Hoch c/o Jeffrey B. Matzkin, Esquire, 352 Fifth Street, Suite A, Whitehall, PA 18052

Attorney: Jeffrey B. Matzkin, Esquire, 352 Fifth Street, Suite A, Whitehall, PA 18052

KOVACS, JOSEPHINE, dec'd.

Late of Northampton, Northampton County, PA

Co-Executors: Joseph F. Kovacs and David F. Kovacs c/o Larry R. Roth, Esquire, The Roth Law Firm, 123 North Fifth Street, Allentown, PA 18102

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

MALE, ANGELINA M., dec'd.

Late of the Township of Palmer, Northampton County, PA

Executor: John A. Male c/o Raymond J. DeRaymond, Esquire, Gross McGinley, LLP, 717 Washington Street, Easton, PA 18042-4386

Attorneys: Raymond J. DeRaymond, Esquire, Gross McGinley, LLP, 717 Washington Street, Easton, PA 18042-4386

PALMER, MARION V., dec'd.

Late of 274 Evergreen Road, Mt. Bethel, Northampton County, PA

Executor: Albert Palmer c/o Connie J. Merwine, Esquire,

Merwine Hanyon & Kaspszyk, LLP, Route 209 Merwine Commons, Brodheadsville, PA 18322

Attorneys: Connie J. Merwine, Esquire, Merwine Hanyon & Kaspszyk, LLP, Route 209 Merwine Commons, Brodheadsville, PA 18322

REICH, DANA E., dec'd.

Late of the Borough of Hellertown, Northampton County, PA
Executrix: Jill A. Marsteller, 2220 Hendricks Station Road, Harleysville, PA 19438

Attorneys: Diane M. Zabowski, Esquire, Zabowski Law, LLC, 117 West Second Avenue, Collegeville, PA 19426

REIMER, ALLEN O., dec'd.

Late of Danielsville, Northampton County, PA
Executrix: Sally Snyder, 2500 Knights Road Apt. 158-06, Bensalem, PA 19020

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

SCHWEITZER, GERTRUDE M. a/k/a GERTRUDE SCHWEITZER, dec'd.

Late of the Township of Bushkill, Northampton County, PA
Executrix: Mary E. Schweitzer 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

SMOLLINGER, HAZEL, dec'd.

Late of the City of Bethlehem, Northampton County, PA
Executor: Frederick Smollinger c/o Keith D. Cacciatore, Esquire,

Suite 302, 2045 Westgate Drive, Bethlehem, PA 18017

Attorney: Keith D. Cacciatore, Esquire, Suite 302, 2045 Westgate Drive, Bethlehem, PA 18017

WOLLE, PETER C. a/k/a PETER CLARK WOLLE, dec'd.

Late of the City of Bethlehem, Northampton County, PA
Executrix: Priscilla P. Wolle c/o Littner, Deschler & Littner, 512 N. New Street, P.O. Box 1407, Bethlehem, PA 18016-1407

Attorneys: Littner, Deschler & Littner, 512 N. New Street, P.O. Box 1407, Bethlehem, PA 18016-1407

YEAKEL, DOROTHY M., dec'd.

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

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

Attorneys: Alfred S. Pierce, Esquire, I.D. No. 21445, Pierce & Dally, LLP, 124 Belvidere Street, Nazareth, PA 18064

THIRD PUBLICATION

BAUDER, LARRY P., dec'd.

Late of the Borough of Hellertown, Northampton County, PA
Executrix: Dolores J. Del Re c/o Vaughn A. Terrinoni, Esquire, 3976 Township Line Road, Bethlehem, PA 18020

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

DECH, LILLIAN E., dec'd.

Late of the Township of East Allen, Northampton County, PA

Executor: Ralph H. Dech, 1438 Main Street, Bath, PA 18014
 Attorneys: Peters, Moritz, Peischl, Zulick, Landes & Brienza, LLP, 1 South Main Street, Nazareth, PA 18064-2083

FILASETA, ROSE M., dec'd.

Late of the City of Bethlehem, Northampton County, PA
 Executor: Leonard J. Filaseta 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

HAHL, BRIAN MAIRE a/k/a BRIAN M. HAHL, dec'd.

Late of the Borough of Stockertown, Northampton County, PA
 Executrix: Jacky A. McCurdy, 745 Old Farm Road, Bridgewater, NJ 08807
 Attorney: Beth A. Knickerbocker, Esquire, Third Floor, 101 South Third Street, Suite 203, Easton, PA 18042

KELLY, HELEN W. a/k/a HELEN W. BETTY KELLY a/k/a HELEN ELIZABETH KELLY, dec'd.

Late of Hellertown, Northampton County, PA
 Executor: William H. Kelly, Jr. c/o Fitzpatrick Lentz & Bubba, P.C., 4001 Schoolhouse Lane, P.O. Box 219, Center Valley, PA 18034-0219
 Attorneys: Fitzpatrick Lentz & Bubba, P.C., 4001 Schoolhouse Lane, P.O. Box 219, Center Valley, PA 18034-0219

LERCH, SHIRLEYANN M. a/k/a SHIRLEY ANN M. LERCH, dec'd.

Late of Allen Township, Northampton County, PA

Executor: Barrie M. Lerch c/o Frank M. Skrapits, Esquire, Affiliated with Steckel and Stopp, 2152 Main Street, Northampton, PA 18067-1211

POMPONIO, JOSEPH G., dec'd.

Late of the City of Bethlehem, Northampton County, PA
 Executrix: Agnes J. Pomponio, 2830 Linden Street, Apt. 9A, Bethlehem, PA 18017
 Attorney: James J. Holzinger, Esquire, 1216 Linden Street, P.O. Box 1409, Bethlehem, PA 18016

REED, MARY B., dec'd.

Late of the Borough of Northampton, Northampton County, PA
 Executor: James J. Reed, Sr. 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

RUSCHE, CAROL POWERS a/k/a C. POWERS RUSCHE, dec'd.

Late of the City of Easton, Northampton County, PA
 Executrix: Lisa Landman c/o Ralph J. Bellafatto, Esquire, 4480 William Penn Highway, Easton, PA 18045
 Attorney: Ralph J. Bellafatto, Esquire, 4480 William Penn Highway, Easton, PA 18045

SEBIO, DOMINICK, dec'd.

Late of the Township of Bethlehem, Northampton County, PA
 Executor: Joseph G. Sebio, 206 Paine Street, Riverside, NJ 08075

Attorney: Louis S. Minotti, Jr., Esquire, 44 North Second Street,

P.O. Box 468, Easton, PA 18042

WINKLER, ALFRED P., dec'd.

Late of 1400 Main Street, Apartment 205, Catasauqua, Northampton County, PA

Executor: Frederick A. Winkler c/o Robert B. Roth, Esquire, The Roth Law Firm, 123 North 5th Street, Allentown, PA 18102

Attorneys: Robert B. Roth, Esquire, The Roth Law Firm, 123 North 5th Street, Allentown, PA 18102

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 Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, as amended, for the following corporation:

PALMERTON LIVING & WELLNESS CENTER, INC.

The Articles of Incorporation were filed on October 26, 2009. The purpose for which the corporation has been organized is: to engage in and do any lawful business for which corporations may be incorporated under the Pennsylvania Business Corporation Law.

JOHN A. ZAPF, II, ESQUIRE
628 W. Broad Street
Bethlehem, PA 18018

Nov. 5

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, on or about July 8, 2009, 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:

COREY MICHAEL'S HAIR DESIGN LLC

Cory Michael's Hair Design LLC
190 S. Greenwood Ave.
Easton, PA 18045

Nov. 5

IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY, PENNSYLVANIA CIVIL DIVISION—LAW CHANGE OF NAME NOTICE NO. C0048CV2009012075

NOTICE IS HEREBY GIVEN, that on October 28, 2009, the Petition of Amy G. Hinkle on behalf of her daughter, ADRIANA JACINE LESTER, was filed in the above named Court, praying for a decree to change the name of ADRIANA JACINE LESTER to ADRIANA GRACE HINKLE. The Court has fixed December 8, 2009, in Northampton County Courthouse, Courtroom 4 at 9:00 A.M. as the time and place for the hearing on said petition, when and where all persons, interested may appear and show cause, if any they have, as to why the prayer of said Petition should not be granted.

DEAN C. BERG, ESQUIRE
I.D. #25086

Attorney for Petitioner

1820 Main St.
P.O. Box 10
Northampton, PA 18067-0010
Phone (610) 262-1551
FAX (610) 261-0666

Nov. 5

**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

EDWARD C. BALL; Ryan S. Cortez, Executor

MARY A. CHUMAS; Charles P. Chumas and Edward L. Karch, Co-Executors

THERESE ROSE CONNOLLY; Susan Fahy, Executrix

CLAYTON F. KILPATRICK; Erma Kromer, Executrix

BEATRICE A. STRUNK; William M. Strunk and William Milton Strunk, II, Co-Executors

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: WEDNESDAY, NOVEMBER 25, 2009 AT 9:00 A.M. IN COURTROOM #1.

Dorothy L. Cole
Clerk of Orphans' Court
Nov. 5, 12

**COMMERCIAL OFFICE
SPACE AVAILABLE**

Second floor three room office suite available on well traveled West Broad Street in Bethlehem, conveniently located to major highways and both courthouses. Rent is \$975.00 per month which includes all utilities with the exception of phone & Internet. This office has a finished 3rd floor which allows for growth if desired. A full kitchen on the 1st floor is available to tenant as well. This space is available beginning December 1. Please call (610) 867-8150 with all inquiries.

Nov. 5

NORTHAMPTON COUNTY REPORTER DIGEST—2009-11

The following are recent decisions of the Court of Common Pleas of Northampton County, Pennsylvania. The full opinion may be viewed online, downloaded and printed under “Records Search” at www.northamptoncounty.org

Caption: Commonwealth of Pennsylvania v. Ernest Moser

Term No.: CR-3318-2008

Keywords: Probable Cause; Warrant

Attorney(s): Michelle Kluk, Esquire for the Commonwealth
Edward J. Connor, Esquire for Defendant

Date of Order: February 23, 2009

Judge: Paula A. Roscioli, J.

Description of Decision:

Defendant filed a Motion to Quash Warrant, claiming that the warrant to search his home was issued without probable cause. Applying a totality of the circumstances test, the Court found that information supplied by confidential informants and an unwitting informant, police surveillance, and controlled buys, taken as a whole, presented sufficient evidence from which the issuing magistrate could have properly concluded that there was a fair probability that evidence of a crime would be found in Defendant’s home. The attesting officer need not have presented evidence to the issuing magistrate sufficient to support a prima facie case. While much of the information supplied was hearsay, sufficient indicia of reliability were provided to the magistrate such that she could properly consider and rely upon it. The circumstances of the case made clear that the information supplied was not stale.

Caption: Amanda Fournier v. Mark Augello, D.C.; Kelley Best, D.C.; Augello Chiropractic; Tecla Brabazon, D.O.; Colleen Wladyslewski, M.D.; Lehigh Valley Hospital—Muhlenberg; and L.V.H., Inc. d/b/a Lehigh Valley Hospital and Health Network

Term No.: C-48-CV-2008-6799

Keywords: Agency; Insufficient Specificity; Vague and Overbroad

Attorney(s): Craig D. Harvath, Esquire for Plaintiff
George L. Young, Esquire for Defendants
Mark H. Scoblionko, Esquire for Defendants
Howard S. Stevens, Esquire for Defendants

Date of Order: March 5, 2009

Judge: Paula A. Roscioli, J.

Description of Decision:

Defendants Brabazon, Wladyslewski, Lehigh Valley Hospital—Muhlenberg, and L.V.H., Inc. objected to the allegations of agency contained in Plaintiff’s third amended complaint, on the grounds that they were vague and overbroad. The Court found that Plaintiff had failed to plead sufficient facts to support the five factors of a properly pleaded claim of agency, and that Plaintiff had failed to be sufficiently specific in her identification of alleged agents so as to allow the Defendants to prepare their defense. Plaintiff was admonished not to include identical vague and overbroad language in her third amended complaint, as the same language had twice before been stricken by the Court.

Caption: **Rox-Ann Reifer v. Donald P. Russo**
Term No.: C-48-CV-2008-2558
Keywords: Professional Negligence; Preliminary Objections; Pa. R.C.P. 1042.2; Pa. R.C.P. 1042.3; Pa. R.C.P. 1028; Pa. R.C.P. 400
Attorney(s): David W. Knauer, Esquire for Plaintiff
Donald P. Russo, Esquire pro se
Date of Order: March 5, 2009
Judge: Paula A. Roscioli, J.
Description of Decision:

Defendant filed preliminary objections to Plaintiff's Complaint, which alleged claims of *inter alia* professional negligence, fraud, and breach of contract, on the grounds that Plaintiff had signed a release of claims against him, that Plaintiff had failed to comply with Pa. R.C.P. 1042.2 and 1042.3, and that the Complaint was not served upon him by a sheriff. The Court overruled Defendant's first preliminary objection on the grounds that the affirmative defense of release is not an appropriate preliminary objection, but must be pleaded as new matter. Defendant's second preliminary objection was overruled on the grounds that Plaintiff's Complaint, on its face, clearly complied with Pa. R.C.P. 1042.2, and on the grounds that Plaintiff had filed her certificate of merit well within the time prescribed by Pa. R.C.P. 1042.3. Defendant's third preliminary objection was overruled on the grounds that only original service need be served by a sheriff pursuant to Pa. R.C.P. 400, which had occurred when Defendant was served with a writ of summons prior to service of the Complaint.

Caption: **Countrywide Home Loans, Inc. v. Gary L. Cook, Shawn M. Cook, and Tamara Cook**
Term No.: C-48-CV-2008-9347
Keywords: Foreclosure; Fraud; Pa. R.C.P. 1148; UTPCPL; Unjust Enrichment
Attorney(s): Lisa A. Lee, Esquire for Plaintiff
John P. O'Boyle, Esquire for Defendants
Date of Order: March 24, 2009
Judge: Paula A. Roscioli, J.
Description of Decision:

Plaintiff filed preliminary objections to Defendants' Counterclaim, which asserted causes of action in fraud, unjust enrichment, and a violation of the UTPCPL. The underlying claim was one for mortgage foreclosure. Plaintiff asserted (a) that all of Defendants' claims were barred by Pa. R.C.P. 1148, because the alleged fraudulent transaction did not arise from the mortgage relationship, (b) that the UTPCPL does not provide a cognizable counterclaim to an action in mortgage foreclosure, and (c) that Defendants failed to plead all of the necessary elements of any of their claims. The Court found that the claims were not barred by Pa. R.C.P. 1148, because the alleged fraudulent transaction was an inducement to enter into a mortgage contract, not an inducement to enter into a contract for sale. Finding no support for Plaintiff's claim that the UTPCPL does not provide a defense to a mortgage foreclosure action, the Court dismissed Plaintiff's preliminary objection on that ground. Finally, the Court found that Defendants had in fact pleaded sufficient facts to support their causes of action in fraud and violation of the UTPCPL, but that Defendants had not pleaded sufficient facts

to support their claim for unjust enrichment. Accordingly, Plaintiff's final preliminary objection was overruled in part and sustained in part.

Caption: **Miriam Landes, as Trustee of the Hanford Trust, and Jesse Langman v. Keystone Nazareth Bank and Trust Co., Palmer Zigmund, Stephen W. Wiener, Esquire and Wiener & Wiener, LLP**

Term No.: C-48-CV-2008-1787

Keywords: Abuse of Process; Standing; Preliminary Objections; Breach of Fiduciary Duty

Attorney(s): Richard P. Myers, Esquire for Plaintiff
Jeffrey B. McCarron, Esquire for Defendants
Gerald E. Burns, Esquire for Defendants

Date of Order: April 20, 2009

Judge: Paula A. Roscioli, J.

Description of Decision:

Plaintiffs asserted causes of action against Defendants for wrongful use of civil proceedings, abuse of process, and breach of fiduciary duty, arising out of a prior lawsuit wherein Defendants asserted claims for *inter alia* unjust enrichment. Defendants filed preliminary objections on the grounds that (a) Jesse Langman should not be included as a Plaintiff, and (b) that Plaintiffs had failed to state a claim for abuse of process. Defendants' first preliminary objection was sustained as it pertained to Plaintiffs' claims for wrongful use of civil proceedings and abuse of process, as Jesse Langman was not a party to the prior action, but Mr. Langman was permitted to remain as a plaintiff on the claim for breach of fiduciary duty, as he was a beneficiary of the trust. The Court further found that Plaintiffs had set forth sufficient facts to support a claim for abuse of process, as they had alleged that Plaintiffs had suffered harm as a result of Defendants' pursuit of a claim against them which they knew had no merit, in an effort to force Plaintiffs to settle with them on another related matter.

Caption: **Joseph J. Herczeg, Executor for the Estates of Mary Herczeg and Joseph Herczeg v. Marketing Masters, Inc. d/b/a Preneed Family Services**

Term No.: C-48-CV-2009-148

Keywords: Void Contract; Unjust Enrichment; Funeral Services; Restitution; Failure To State a Claim; Demurrer

Attorney(s): Benjamin A. Cero, Esquire for Plaintiff
Laura H. Scheff, Esquire for Defendant

Date of Order: April 21, 2009

Judge: Paula A. Roscioli, J.

Description of Decision:

Plaintiff's Complaint alleged a claim for unjust enrichment, seeking restitution for money paid under a contract which he alleged was void *ab initio* because Defendant's predecessor in interest did not have the legal right to enter into a contract for funeral or cremation services. Defendant filed preliminary objections in the nature of a demurrer, seeking dismissal of the Complaint on the grounds that (a) Plaintiff had not verified the Complaint, (b) Plaintiff was inexplicably attempting to sue upon a contract that he claimed was void, (c) Plaintiff failed to state a claim upon which relief could be granted,

and (d) Plaintiff had not attached a copy of the contract to the Complaint. Plaintiff had in fact verified the Complaint, and it was revealed that a clerical error resulted in Defendant being served with an unsigned copy, which error was rectified prior to the date of argument. Similarly, a copy of the contract, which had been in the possession of Defendant since 1992, had inadvertently been omitted from the copy which was served upon Defendant, and a copy had been provided to Defendant by Plaintiff prior to argument. It was clear to the Court that Plaintiff was not attempting to sue upon the contract, but rather to obtain restitution for money paid pursuant to that contract, and that Plaintiff had pleaded sufficient facts to support a claim for unjust enrichment. Accordingly, all of Defendant's preliminary objections were overruled.

Caption: **Deutsche Bank National Trust Company v. Sarah E. Baker and Eric G. Baker**

Term No.: C-48-CV-2006-3235

Keywords: Summary Judgment; Foreclosure; Rescind Contract

Attorney(s): Jenine R. Davey, Esquire for Plaintiff
Peter J. Quigley, Esquire for Defendants

Date of Order: April 23, 2009

Judge: Paula A. Roscioli, J.

Description of Decision:

Plaintiff filed a motion for summary judgment on the grounds that no genuine issues of material fact remained in the case, and that it was entitled to judgment as a matter of law. The action was one for mortgage foreclosure. Defendants alleged that they had rescinded the mortgage contract within the time provided to do so, and that the mortgage was therefore invalid. The Court found that genuine issues of material fact remained with regard to the questions of (a) whether Defendants had in fact rescinded the contract, (b) whether Plaintiff improperly issued and mailed checks to third parties on behalf of Plaintiffs after the contract was rescinded, and (c) whether Defendants had retained checks which were issued to them in error after the contract was rescinded. Accordingly, summary judgment was denied.

Caption: **Clifford Ransom, Sr. v. Easton Area School District**

Term No.: C-48-CV-2008-11366

Keywords: False Light; Breach Of Contract; Settlement; Confidential; Political Subdivision Tort Claims Act; Right-to-Know Law; 42 Pa.C.S. §8541; 65 P.S. §67.101

Attorney(s): Richard Orloski, Esquire for Plaintiff
John E. Freund, Esquire for Defendant

Date of Order: May 8, 2009

Judge: Paula A. Roscioli, J.

Description of Decision:

Defendant filed preliminary objections in the nature of a demurrer to Plaintiff's Complaint, which alleged causes of action in false light and breach of contract. Plaintiff alleged that Defendant breached the parties' prior settlement agreement in a discrimination case by providing false and confidential information to the press regarding that settlement. Defendant argued that it was immune from suit on the false light claim as a political subdivision and local agency, and that Plaintiff could not possibly aver sufficient facts to support a claim for breach of contract because the provision being sued upon

was unenforceable. Plaintiff conceded that the Political Subdivision Tort Claims Act made Defendant immune from suit on the false light claim, and the Court dismissed that claim. The Court found that while the settlement agreement, which required Defendant to keep the terms of the settlement confidential "to the extent permitted by law," may have been subject to the Right-to-Know Law, Plaintiff had asserted sufficient facts to support his claim that Defendant breached the parties' contract by providing additional interpretive statements to the press regarding the nature of the settlement agreement, which conduct is not required by law. Accordingly, Defendant's second preliminary objection was overruled.

Caption: Pawan J. Singh and Sandhya A. Singh v. Old Mill Estates, Inc.

Term No.: C-48-CV-2009-422

Keywords: Contract Interpretation; Motion To Strike; Real Estate Contract

Attorney(s): Kevin T. Fogerty, Esquire for Plaintiffs
Leo V. DeVito, Esquire for Defendant

Date of Order: May 13, 2009

Judge: Paula A. Roscioli, J.

Description of Decision:

Plaintiffs filed preliminary objections in the nature of a motion to strike in response to Defendant's Answer and New Matter, wherein Defendant relied upon a paragraph in the parties' contract to support its argument which was different than the paragraph which the Plaintiffs had relied upon in making their arguments in their Complaint. Finding that a contract is to be read as a whole and that Defendant was well within its right to direct the attention of the Court to a provision of the parties' contract which it believed was relevant, the Court overruled the preliminary objections.

Caption: Commonwealth v. Jamal Middleton

Term No.: CR-2009-1283

Keywords: Mens Rea; Sufficiency of Evidence; Motion To Dismiss

Attorney(s): Roy A. Manwaring, Esquire for the Commonwealth
Dwight L. Danser, Esquire for Defendant

Date of Order: June 2, 2009

Judge: Paula A. Roscioli, J.

Description of Decision:

Defendant was charged with the crimes of conspiracy, theft, receiving stolen property, underage drinking, and unauthorized use of an automobile, all arising out of an incident in which Defendant was the passenger in a vehicle that had been reported stolen. Each of the charges was bound over for court by the magistrate, with the exception of the unauthorized use charge. Finding that the charge of conspiracy and theft each required that the Commonwealth prove that the Defendant possessed a mens rea of intent, and that the charge of receiving stolen property required that the Commonwealth prove that the Defendant possessed a mens rea of either knowledge or recklessness, and finding that there was no evidence of record that Defendant possessed either mens rea, the Court granted Defendant's motion to dismiss the charges of conspiracy, theft, and receiving stolen property.

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