

*Erie
County
Legal
Journal*

September 18, 2009

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Kendall, et al. v. Northwest Savings Bank

Erie County Legal Journal

*Reporting Decisions of the Courts of Erie County
The Sixth Judicial District of Pennsylvania*

Managing Editor: Paula J. Gregory

Associate Editor: Heidi M. Weismiller

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All legal notices must be submitted in typewritten form and are published exactly as submitted by the advertiser. Neither the Erie County Bar Association nor the printer will assume any responsibility to edit, make spelling corrections, eliminate errors in grammar or make any changes in content.

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Erie County Bar Association

Calendar of Events and Seminars

TUESDAY, SEPTEMBER 22, 2009

The Dead Man's Rule: An Overview

PBI Groupcast Seminar

Bayfront Convention Center

9:00 a.m. - 12:15 p.m.

\$224 (member) \$204 (admitted after 1/1/05)

\$244 (nonmember)

Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee:
\$199 (member) \$179 (admitted after 1/1/05) \$219 (nonmember)
3 hours substantive

THURSDAY, SEPTEMBER 24, 2009

Young Lawyer Division Oktoberfest

The Brewerie

5:00 p.m. - 8:00 p.m.

WEDNESDAY, SEPTEMBER 30, 2009

Long Term Care Planning

Bayfront Convention Center

lunch & registration ~ 11:45 a.m. - 12:15 p.m.

seminar ~ 12:15 p.m. - 1:15 p.m.

\$12 (ECBA members)

\$39 (nonmembers)

1 hour substantive

THURSDAY, OCTOBER 1, 2009

MBA Concepts for Lawyers

PBI Video Seminar

Bayfront Convention Center

9:00 a.m. - 5:00 p.m.

\$344 (member) \$324 (admitted after 1/1/05)

\$364 (nonmembers)

LUNCH INCLUDED

Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee:
\$319 (member) \$299 (admitted after 1/1/05) \$339 (nonmember)
6 hours substantive

FRIDAY, OCTOBER 2, 2009

Winning Before Trial: 10 Keys to Winning Depositions

PBI Groupcast Seminar

Bayfront Convention Center

8:30 a.m. - 3:30 p.m. (8:00 a.m. reg.)

\$344 (member) \$324 (admitted after 1/1/05)

\$364 (nonmember)

LUNCH INCLUDED

Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee:
\$319 (member) \$299 (admitted after 1/1/05) \$339 (nonmember)
5 hours substantive / 1 hour ethics

MONDAY, OCTOBER 5, 2009

Retirement Luncheon for the Honorable

Warren W. Bentz

Bayfront Convention Center

Noon - 2:00 p.m.

Cost: \$25

TUESDAY, OCTOBER 6, 2009

Hot Topics in Employment Law Update

PBI Groupcast Seminar

Bayfront Convention Center

12:00 p.m. - 4:30 p.m. LUNCH INCLUDED

\$224 (member) \$204 (admitted after 1/1/05)

\$244 (nonmember)

Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee:
\$199 (member) \$179 (admitted after 1/1/05) \$219 (nonmember)
4 hours substantive

THURSDAY, OCTOBER 8, 2009

Pardons, Expungements and Civil Ramifications

PBI Video Seminar

Bayfront Convention Center

9:00 a.m. - 12:30 p.m. (Reg. 8:30)

\$129 (member) \$109 (admitted after 1/1/05)

\$149 (nonmember)

3 hours substantive

2009 BOARD OF DIRECTORS

Mary Payton Jarvie, President

J.W. Alberstadt, Jr., First Vice President

Lisa Smith Presta, Second Vice President

Robert G. Dwyer, Past President

John A. Lauer, Treasurer

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David J. Rhodes

Richard T. Ruth

Edwin W. Smith

Richard A. Vendetti

ECBA NOMINATING COMMITTEE TO MEET

In accordance with Article V, Section (2) of the Erie County Bar Association (ECBA) By-Laws, the membership is hereby notified that the Nominating Committee will meet on Wednesday, September 30, 2009 at 8:00 a.m. at the Bar Association office. Any association member wishing to nominate a candidate for any of the following offices may do so in writing to the ECBA office prior to the September 30th Nominating Committee meeting: Second Vice-President (1 year term); Treasurer (1 year term); 3 Board Members (3 year terms each).

It will be the duty of the Nominating Committee to place in nomination the names of one candidate for each seat to be filled by election. Nominations to be considered will come from the membership and from the Nominating Committee itself. No other nominations may be made from the floor at the election meeting.

Sept. 18, 2009

**Erie County Bar Association
Young Lawyers Division**

celebrates

Oktoberfest

**Thursday, September 24, 2009
The BREWERIE at Union Station**

5:00 - 8:00 p.m.

A "ghost tour" will also be offered for those interested in the paranormal occurrences at Union Station. Learn what several different investigative teams have discovered and possibly experience your own ghostly encounter.

Free to ECBA Young Lawyers and spouse/significant other
Includes beer, soft drinks and appetizers. Mixed drinks are cash bar.

Contact the ECBA office at (814) 459-3111 or email pjgregory@eriebar.com to make your reservation.





Wednesday, September 30, 2009

Bayfront Convention Center

Time: Lunch ~ 11:45 a.m. - 12:15 p.m.
Seminar ~ 12:15 p.m. - 1:15 p.m.

Cost: \$12 for ECBA members*
\$39 for non-members

This seminar has been approved by the PA CLE Board for **1 hour substantive law credit**.

What you really should know about

Long Term Care Planning...

and the earlier the better for you!

Everyone deserves long term care education and everyone needs to have a long term care plan. Whether or not insurance is part of that plan is an individual choice based on an informed decision. As with anything, the best way to make an intelligent decision is to look at the facts, and that is the purpose of this ECBA program - to provide you with just the facts. The topic of long term care insurance (LTCI) tends to generate both questions and anxiety. Making decisions related to this important topic can be so challenging that it is easier to just put it off until another day, but therein lies the problem. Education is the solution.

To educate our members - for their personal and professional benefit - The Erie County Bar Association has asked Loesel-Schaaf to present this lunch-n-learn program. They will discuss a specific product, one we feel will be worth your time to hear about.

The single biggest mistake you can make? Waiting. If LTCI is right for you, waiting can cost you a significant amount of money. Examples of why it's risky to wait will be provided at the program.

Speakers:

Edward C. Althof, CLU, CEBS
Loesel-Schaaf Insurance Agency, Inc.

Michael Ocilka, LTC Specialist
Long Term Care Financial Partners

** A special Thank You to Loesel-Schaaf Insurance in Erie, PA, who graciously agreed to underwrite the cost of lunch for this program, thus allowing us to offer it at a significantly reduced fee.*



ECBA Financial Hardship Policy:

Any lawyer for whom the cost of an ECBA Continuing Legal Education program is a financial hardship may petition the ECBA Executive Director for a reduced fee. For more information on the policy and how to apply, please contact the ECBA office at 459-3111. All requests will be confidential.



Cancellation Policy for ECBA Events/Seminars:

Cancellations received on or before the last reservation deadline will be fully refunded. Cancellations received after the deadline or non-attendance will not be refunded. If you register for an event without payment in advance and don't attend, it will be necessary for the ECBA to send you an invoice for the event.

Reservations due to the ECBA office no later than Friday, September 25, 2009.

**CLYDE E. KENDALL, JR., JANICE E. KENDALL, and
KENDALL AUTO PARTS, INCORPORATED, Plaintiffs,**

v.

NORTHWEST SAVINGS BANK, Defendant

PLEADING / PRELIMINARY OBJECTIONS

Preliminary objections should be sustained only in cases that are clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish his right to relief. The court should consider as true all of the well-pled material facts set forth in the pleading of the nonmoving party, as well as all reasonable inferences that may be drawn from those facts to determine whether the preliminary objections should be sustained.

CONTRACTS / PRIVITY

It is a general rule of law in Pennsylvania that where several instruments are made part of one transaction through reference and/or incorporation, they will be jointly read, construed as one instrument, and interpreted as a whole and together. A court must look at all instruments made part of a single transaction before finding privity fails to exist between parties.

DAMAGES / PLEADING

Pleading damages in a lump sum does not violate Civil Rule 1019(f) where pleading contains sufficient information with which defendant may prepare its defense. Defendant may avail itself of the Pennsylvania Rules of Civil Procedure regarding discovery if it wishes to obtain itemized damages not contained in the complaint.

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY,
PENNSYLVANIA CIVIL DIVISION No. 14599-2008

Appearances: Christopher J. Sinnott, Esq., Attorney for Plaintiffs
 Kurt L. Sundberg, Esq., Attorney for Defendant

OPINION

Connelly, J., April 8, 2009

This matter is before the Court of Common Pleas of Erie County, Pennsylvania (hereinafter "the Court"), pursuant to Preliminary Objections filed by Northwest Savings Bank (hereinafter "Defendant") in response to an Amended Complaint filed by Clyde E. Kendall, Jr.; Janice E. Kendall (hereinafter "Plaintiff Clyde Kendall" and "Plaintiff Janice Kendall," respectively; "Plaintiffs Kendall" when referred to collectively); and Kendall Auto Parts, Incorporated (hereinafter "Plaintiff Kendall Auto," "Plaintiffs" when referred to collectively with Plaintiffs Kendall).

Procedural History

Plaintiffs filed a Complaint on September 22, 2008. *Complaint*, ¶¶ 1-44.

Defendant filed its first set of Preliminary Objections along with a Brief in Support thereof on October 7, 2008. *Defendant's Preliminary Objections*, ¶¶ 1-22; *Defendant's Brief in Support of Preliminary Objections*, pp. 1-6. Responding to Defendant's first set of Preliminary Objections, Plaintiffs filed an Amended Complaint on October 23, 2008. *Amended Complaint*, ¶¶ 1-41. Defendant, in turn, filed Preliminary Objections to Count II of Plaintiffs' Amended Complaint and a Brief in Support thereof on January 30, 2009. *Defendant's Preliminary Objections to Amended Complaint*, ¶¶ 1-22; *Defendant's Brief in Support of Preliminary Objections to Amended Complaint*, pp. 1-5. Plaintiffs filed their Brief in Opposition to Defendant's second set of Preliminary Objections on February 13, 2009. *Brief in Opposition to Preliminary Objections*, pp. 1-5.

Statement of Facts

Plaintiffs Kendall entered into a construction agreement with L.C. Renninger Company, Inc., for construction of a 47,836 square foot metal building (hereinafter "Project") to be located at 1561 East Twelfth Street, Erie, Pennsylvania (hereinafter "Subject Property"), for a cost of \$1,340,900.00. *Amended Complaint* ¶ 9, *Ex. B*. To finance the Project, Plaintiffs Kendall entered into a Construction Loan Agreement with Defendant wherein Defendant would provide \$1,100,000.00 for the Project in exchange for Plaintiffs' Kendall execution and delivery to Defendant of, *inter alia*, a Term Note, Mortgage, and Security Agreement (hereinafter "the Obligations" which also include the Construction Loan Agreement) on forms prepared by Defendant. *Id.* at ¶¶ 10, 11, *Ex. C*. In order to extend the financing addressed in the Construction Loan Agreement to Plaintiffs Kendall, Defendant required Plaintiff Kendall Auto to act as a corporate guarantor for obligation of payment and satisfaction of the Obligations. *Id.* at *Ex. E*. All of the Obligations were collectively entered into and signed on the December 31, 2003 (hereinafter "Date of Contract").

Analysis of Law

Two or more preliminary objections may be raised in one pleading, may be filed by any party to any pleading, shall be raised at one time, shall specifically state the grounds relied upon,¹ and may be inconsistent.

¹ The grounds on which preliminary objections may be relied upon are limited to the following:

- (1) lack of jurisdiction over the subject matter of the action or the person of the defendant, improper venue or improper form or service of a writ of summons or a complaint;
- (2) failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter;
- (3) insufficient specificity in a pleading;
- (4) legal insufficiency of a pleading (demurrer);
- (5) lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action;
- (6) pendency of a prior action or agreement for alternative dispute resolution;
- (7) failure to exercise or exhaust a statutory remedy, and
- (8) full, complete and adequate non-statutory remedy at law.

Pa.R.C.P. 1028(a)(1)-(8).

Pa.R.C.P. 1028(e),(b). Preliminary objections are to be filed within twenty (20) days after service of the preceding pleading. *Pa.R.C.P. 1026, 1017(a)(4)*. The moving party, i.e., the objecting party, must also file a brief in support of their preliminary objections within thirty (30) days after the filing of their preliminary objections; likewise, the nonmoving party may respond to the preliminary objections either by filing an amended pleading within twenty (20) days, or by filing a brief in opposition to the preliminary objections within thirty (30) days after service of the preliminary objections.² *Pa.R.C.P. 1028(c)(1); Erie L.R. 1028(c)(2)*.

If the Court overrules the preliminary objections, "the objecting party shall have the right to plead over within twenty (20) days after notice of the Court's Order or within such other time as the Court shall fix." *Pa.R.C.P. 1028(d)*. If the Court sustains the preliminary objections and allows for the filing of an amended or new pleading, the amended or new pleading must be "filed within twenty (20) days after notice of the Court's Order or within such other time as the Court shall fix." *Id. at 1028(e)*. Objections that are made to any of these amended pleadings shall be done so by the filing of new preliminary objections within twenty (20) days after service of the amended pleading. *Id. at 1017(a)(4), 1026(a), 1028(f)*.

The Pennsylvania Supreme Court ruled preliminary objections "should be sustained only in cases that are clear and free from doubt . . . [that] the pleader will be unable to prove facts legally sufficient to establish his right to relief." *Bower v. Bower*; 611 A.2d 181, 182 (Pa. 1992). The Court shall consider as true all of the well-pled material facts set forth in the pleading of the nonmoving party, as well as all reasonable inferences that may be drawn from those facts to determine whether the Preliminary Objections should be sustained. *See, Id.* In determining whether the Preliminary Objections should be sustained, the Court has weighed applicable law as it relates to the facts of this case as well as the merit of the arguments presented by both Plaintiffs and Defendant.

Defendant states Count II of Plaintiffs' Amended Complaint must be dismissed for lack of capacity to sue pursuant to Pennsylvania Rule

² The Erie County Local Rules of Civil Procedure provide:

If the brief of either the objecting party or nonmoving party is not filed within the time periods above stated . . . the Court may then: (A) overrule the objections where the objecting party has failed to comply; (B) grant the requested relief where the responding party has failed to comply and where the requested relief is supported by law, or (C) prohibit the noncomplying party from participating in oral argument although all parties will be given notice of oral argument and shall be permitted to be present at oral argument; and/or (D) impose such other legally appropriate sanction upon a noncomplying party as the Court shall deem proper including the award of reasonable costs and attorney's fees incurred as a result of the noncompliance.

Erie L.R. 1028(c)(4)(A)-(D).

of Civil Procedure (hereinafter "Civil Rule") 1028(a)(5) or, in the alternative, it must be stricken for failure of a pleading to conform to law or rule of court pursuant to Civil Rule 1028(a)(2), i.e., Civil Rule 1019(f).³ *Defendant's Preliminary Objections to Amended Complaint*, ¶¶ 1-22; *Defendant's Brief in Support of Preliminary Objections to Amended Complaint*, pp. 1-5. Defendant argues that as Plaintiff Kendall Auto "does not plead [in the Amended Complaint] that there was any contract between [it] and [Defendant] that was breached . . . there is no privity of contract to allow Plaintiff Kendall Auto to maintain [its] action," and as such Plaintiff Kendall Auto lacks the capacity to sue Defendant. *Defendant's Brief in Support of Preliminary Objections to Amended Complaint*, pp. 2-3. In the alternative, Defendant also argues Count II of the Amended Complaint fails to conform to Civil Rule 1019(f) as Plaintiffs failed to specifically state their supposed special damages, but instead "arbitrarily plead in Count II a lump sum amount of damages allegedly constituting excess rent or lost profits." *Defendant's Brief in Support of Preliminary Objections to Amended Complaint*, pp. 3-5. Consequently, the specific issues before the Court are as follows: one, whether privity of contract exists between Plaintiff Kendall Auto and Defendant; and two, whether the lump sum amount of damages pled by Plaintiffs violates Civil Rule 1019(f).

I. WHETHER PRIVACY OF CONTRACT, WHICH ALLOWS PLAINTIFF KENDALL AUTO TO MAINTAIN ITS BREACH OF CONTRACT ACTION, EXISTS BETWEEN IT AND DEFENDANT

A plaintiff that is not a direct party to a contract and whose name does not appear thereon must establish existence of privity between it and defendant in order to allege its right to sue upon the contract at issue. *Fredericks v. Hamm*, 45 Pa.D.&C.2d 687, 689-90 (1968). However, lack of privity is not conclusively established merely by an indirect party's name failing to appear on one of several instruments involved in a single transaction. This is due to the fact that it is a general rule of law in Pennsylvania that where several instruments are made part of one transaction through reference and/or incorporation, they will be jointly read, construed as one instrument, and interpreted as a whole and together. *Shehadi v. Northeastern National Bank of Pennsylvania*, 378 A.2d 301, 306 (Pa. 1977); *Wilson v. Viking Corp.*, 3 A.2d 180, 182-83 (Pa. Super. 1938). Thus, when able, a court must look at all instruments made part of a single transaction before finding privity fails to exist between parties. *See, Id.*

³ While Defendant never explicitly states its Preliminary Objection as to Count II of the Amended Complaint is based on Civil Rule 1028(a)(2), the Court has determined it must have been as Defendant's argument is centered on Plaintiffs' alleged non-conformity with Civil Rule 1019(f).

The Continuing Guaranty entered into between Defendant and Plaintiffs reads, in pertinent part, as follows:

[Plaintiffs Kendall, are] on this date, borrowing money from [Defendant] and may from time to time hereafter desire to borrow additional moneys from [Defendant], such current and future borrowings to be evidence by notes and related documents to be executed and delivered by [Plaintiffs Kendall] to [Defendant]; and whereas, [Defendant] as a condition of extending credit to [Plaintiffs Kendall] as represented by the Obligations requires that [Plaintiff Kendall Auto] obligate [itself] unconditionally for the payment and satisfaction of the Obligations; and whereas, to induce [Defendant] to extend credit to [Plaintiffs Kendall] as represented by the Obligations, [Plaintiff Kendall Auto is] willing to guaranty the Obligations.

. . . .

Now, therefore, for good and valuable consideration and intending to be legally bound hereby, [Plaintiff Kendall Auto] agree[s] as follows

Amended Complaint, Ex. E. A reading of the Continuing Guaranty clearly reveals that Defendant required Plaintiff Kendall Auto to act as an indirect party regarding the Project's financing as a corporate guarantor. Furthermore, as the Continuing Guaranty references the Obligations and was entered into on the Date of Contract as well, the Court finds it to be one of several instruments made part of the transaction at issue. As Defendant itself established privity between it and Plaintiff Kendall Auto via the Continuing Guaranty (which is one of several instruments made part of the transaction at issue on the Date of Contract), the Court finds the required privity exists between Plaintiff Kendall Auto and Defendant for Plaintiff Kendall Auto to maintain its breach of contract action against Defendant.

II. WHETHER THE LUMP SUM AMOUNT OF DAMAGES PLED BY PLAINTIFFS VIOLATES CIVIL RULE 1019(f)

Defendant argues Plaintiffs' Amended Complaint is in violation of Civil Rule 1019(f)⁴ as Plaintiffs "have arbitrarily pled in Count II a lump sum amount of damages allegedly constituting excess rent or lost profits," and therefore "must plead how the claim for lost profits was ascertained and calculated so that [Defendant] can adequately respond to the claim." *Defendant's Brief in Support of Preliminary Objections to*

⁴ Civil Rule 1019(f) reads, "Averments of time, place, and Items of special damage shall be specifically stated." *Pa.R.C.P. 1019(f)*.



Erie County Court of Common Pleas

Calendar 2010

2010 TRIAL TERMS

January	01/11/10	01/22/10
February	02/08/10	02/19/10
March	03/15/10	03/26/10
April	04/12/10	04/23/10
May	05/10/10	05/21/10
June	06/07/10	06/18/10
July	07/12/10	07/23/10
September	09/13/10	09/24/10
October	10/11/10	10/22/10
November	11/08/10	11/19/10

PULL-OUT

2010 CIVIL TRIAL TERM CERTIFICATION DATES

February Term	December 31, 2009
April Term	February 26, 2010
June Term	April 30, 2010
October Term	August 27, 2010
February 2011 Term	December 31, 2010

2010 ARRAIGNMENTS

January 25, 2010	February 22, 2010
March 29, 2010	April 26, 2010
May 24, 2010	June 28, 2010
July 26, 2010	August 30, 2010
September 27, 2010	October 25, 2010
November 22, 2010	December 20, 2010

PULL-OUT

SHERIFF SALE SCHEDULE
FOR THE YEAR 2010

LAST DATE TO FILE

DATE OF SALE

December 7, 2009

February 19, 2010

January 4, 2010

March 19, 2010

February 1, 2010

April 16, 2010

March 1, 2010

May 21, 2010

April 5, 2010

June 18, 2010

May 3, 2010

July 16, 2010

June 7, 2010

August 20, 2010

July 6, 2010

September 17, 2010

August 2, 2010

October 15, 2010

September 7, 2010

November 19, 2010

November 1, 2010

January 21, 2011

NO SALES IN DECEMBER

PULL-OUT

FEDERAL COURT CIVIL/CRIMINAL
TRIAL CALENDAR

January 19, 2010

August 2, 2010

March 8, 2010

October 4, 2010

May 3, 2010

November 22, 2010

2010 AUDIT CALENDAR

	<u>Last day to file</u>	<u>Audit Statements</u>	<u>Objections</u>
	<u>Accounts</u>		
<u>2009</u>			
NOVEMBER	October 7, 2009	October 26, 2009	November 19, 2009
DECEMBER	November 12, 2009	November 30, 2009	December 24, 2009
<u>2010</u>			
JANUARY	December 9, 2009	December 28, 2009	January 21, 2010
FEBRUARY	January 6, 2010	January 25, 2010	February 18, 2010
MARCH	February 3, 2010	February 22, 2010	March 18, 2010
APRIL	March 10, 2010	March 29, 2010	April 22, 2010
MAY	April 7, 2010	April 26, 2010	May 20, 2010
JUNE	May 12, 2010	June 1, 2010	June 24, 2010
JULY	June 9, 2010	June 28, 2010	July 22, 2010
AUGUST	July 7, 2010	July 26, 2010	August 19, 2010
SEPTEMBER	August 11, 2010	August 30, 3010	September 23, 2010
OCTOBER	September 8, 2010	September 27, 2010	October 21, 2010
NOVEMBER	October 6, 2010	October 25, 2010	November 18, 2010
DECEMBER	November 10, 2010	November 29, 2010	December 23, 2010

Amended Complaint, pp. 4-5.

The Pennsylvania Supreme Court has ultimately found that in matters surrounding the level of specificity in pleadings, the Court has broad discretion in determining the amount of detail that must be averred in a given pleading.⁵ *United Refrigerator Co. v. Applebaum*, 189 A.2d 253, 254 (Pa. 1963). In lieu of preliminary objections, a party may avail itself of the Pennsylvania Rules of Civil Procedure regarding discovery at 4001 *et. seq.*, if it believes facts are required which were not contained, as desired, in a particular pleading. *Brandeis v. Kenny*, 31 Pa. D. & C. 2nd 347, 349 (C.P. Montgomery Co. 1963)(holding that if a party believes themselves unable from the pleadings alone to make adequate preparations for trial they may resort to the Pennsylvania Rules of Civil Procedure). As between the use of preliminary objections and/or discovery to obtain material facts as to a party's cause of action or defense, a court (using the broad discretion as defined in *United Refrigerator Co.*) may dismiss the preliminary objections if it believes discovery to be more practical than further pleadings. *Brandeis*, 31 Pa. D. & C. 2nd at 352.

While Plaintiffs' damages, as contained in the Amended Complaint, are displayed in a lump sum amount, this figure when read in conjunction with the rest of the Amended Complaint along with Plaintiffs' other pleadings, provide Defendant with enough information to begin preparation of its defense. *See, Yacoub v. Lehigh Medical Center, P.C.* 805 A.2d 579, 588 (Pa. Super. 2002)(holding courts may look not only to the particular paragraphs at issue, but also to those paragraphs in the content of the other allegations in the pleadings to determine if a paragraph contains the appropriate specificity); *Hock*, 69 D. & C. 2nd at 423. Therefore, the Court finds Civil Rule 1019(f) has not been violated as Plaintiffs' pleading contains sufficient information with which Defendant may prepare its defense in that the Amended Complaint's lump sum amount puts Defendant on notice of what causes of action Plaintiffs will pursue against it regarding the specific terms of the contract at issue. Defendant may avail itself of the Pennsylvania Rules of Civil Procedure regarding discovery if it wishes to obtain itemized damages not contained in the Amended Complaint.

⁵ At the very least a pleading must be sufficiently clear to enable a party to prepare its defense against the opposing party. *Paz v. Commonwealth Dep't of Corrections*, 580 A.2d 452, 456 (Pa. Cmwlth. 1990). Additionally, the Court of Common Pleas of Columbia County, Pennsylvania, found "all averments of the complaint must be considered together and appraised in the light of the nature of the case. It is enough that, considering the complaint as a whole, it contains sufficient material facts to show the existence of a cause of action." *Hock v. L. B. Smith, Inc.*, 69 D. & C. 2nd 420, 423 (C.P. Columbia Co. 1974).

ORDER

AND NOW, TO-WIT, this 8th day of April, 2009, it is hereby **ORDERED, ADJUDGED, and DECREED** that, for the reasons set forth in the foregoing Opinion, the following Order is made, Defendant's Preliminary Objections are **OVERRULED**.

BY THE COURT:

/s/ Shad Connelly, Judge

FICTITIOUS NAME NOTICE

Pursuant to Act 295 of December 16, 1982 notice is hereby given of the intention to file with the Secretary of the Commonwealth of Pennsylvania a "Certificate of Carrying On or Conducting Business Under an Assumed of Fictitious Name." Said Certificate contains the following information:

FICTITIOUS NAME NOTICE

1. The fictitious name is: Winschel's Auto Service
2. The address of the principal place of business is: 1310 West 38th Street, Erie, PA 16508
3. The name and the address of the individuals to the registration is: William J. Winschel, 841 West Gore Road, Erie, PA 16509
4. The Application for Registration of Fictitious Name was filed with the Pennsylvania Department of State under the Fictitious Name Act on or about August 31, 2009.
Dale Huntley, Esq.
MacDonald Illig Jones & Britton LLP
100 State Street, Suite 700
Erie, PA 16507-1459

Sept. 18

INCORPORATION NOTICE

Notice is hereby given that Erie Truck & Trailer, Inc. has been incorporated under the provisions of the Pennsylvania Business Corporation Law of 1988.
Harold J. Bender, Esquire
340 Shenley Drive
Erie, PA 16505

Sept. 18

INCORPORATION NOTICE

Notice is hereby given that Mac & B, Inc. has been incorporated under the provisions of the Pennsylvania Business Corporation Law of 1988.
Michael A. Agresti, Esquire
4934 Peach Street
Erie, PA 16509

Sept. 18

LEGAL NOTICE

MARSHAL'S SALE: By virtue of a Writ of Execution issued out of the United States Court for the Western District of Pennsylvania and to me directed, I shall expose to public sale the real property located at

4705 Cedar Drive, North East, PA 16428 being more fully described in Erie County Record Book 1281, Page 1364.

SAID SALE to be held at the **ERIE COUNTY COURTHOUSE, ROOM 209, ERIE PA** at 9:30 a.m. prevailing, standard time, on **OCTOBER 13, 2009.**

All those certain tracts of land, together with the buildings, and improvements erected thereon described in Erie Map No. (37) 41-88-160 as recorded in Erie County, Pennsylvania. Seized and taken in execution as the property of Michelle L. Battaglia a/k/a Michelle L. Whitford at the suit of the United States of America, acting through the Under Secretary of Rural Development, on behalf of Rural Housing Service, United States Department of Agriculture, to be sold on Writ of Execution as Civil Action Number 1:09-CV-73.

TERMS OF SALE: Successful bidder will pay ten percent (10%) by certified check or money order and the remainder of the bid within thirty (30) days from the date of the sale and in the event bidder cannot pay the remainder, the property will be resold and all monies paid in at the original sale will be applied to any deficiency in the price at which the property is resold. The successful bidder must send payment of the balance of the bid directly to the U.S. Marshal's Office c/o Sheila Blessing, Room 241, U.S. Post Office & Courthouse, Pittsburgh, PA 15219. Notice is hereby given that a Schedule of Distribution will be filed by me on the thirtieth day after the date of sale, and that distribution will be made in accordance with the Schedule unless exemptions are filed thereto within ten (10) days thereafter. Purchaser must furnish State Realty Transfer Tax Stamps, and stamps required by the local taxing authority. Marshal's costs, fees and commissions are to be borne by seller. Thomas M. Fitzgerald, United States Marshal. For additional information, please contact William Lambert at 314-457-5512.

Sept. 18, 25 and Oct. 2, 9

LEGAL NOTICE

MARSHAL'S SALE: By virtue of a Writ of Execution issued out of the United States Court for the Western District of Pennsylvania and to me directed, I shall expose to public sale the property located at 708 Aspen Way, Edinboro, PA 16412 being more fully described in Erie County Deed Volume 482 at Page 1240.

SAID SALE to be held at the **ERIE COUNTY COURTHOUSE, ROOM 209, ERIE PA** at 9:30 a.m. prevailing, standard time, on **OCTOBER 13, 2009.**

All those certain tracts of land, together with the buildings, and improvements erected thereon described in Erie County Assessment Index as No. 11-7-32-3.22. Seized and taken in execution as the property of Mary Zuck, individually and as surviving joint tenant, at the suit of the United States of America, acting through the Under Secretary of Rural Development, on behalf of Rural Housing Service, United States Department of Agriculture, to be sold on Writ of Execution as Civil Action Number 1:09-CV-79.

TERMS OF SALE: Successful bidder will pay ten percent (10%) by certified check or money order and the remainder of the bid within thirty (30) days from the date of the sale and in the event bidder cannot pay the remainder, the property will be resold and all monies paid in at the original sale will be applied to any deficiency in the price at which the property is resold. The successful bidder must send payment of the balance of the bid directly to the U.S. Marshal's Office c/o Sheila Blessing, Room 241, U.S. Post Office & Courthouse, Pittsburgh, PA 15219. Notice is hereby given that a Schedule of Distribution will be filed by me on the thirtieth day after the date of sale, and that distribution will be made in accordance with the Schedule unless exemptions are filed thereto within ten (10) days thereafter. Purchaser must furnish State Realty Transfer Tax Stamps, and stamps required by the local taxing authority. Marshal's costs, fees and commissions are to be borne by seller. Thomas M.

Fitzgerald, United States Marshal. For additional information, please contact Kimberly Williamson at 314-457-5513.

Sept. 18, 25 and Oct. 2, 9

LEGAL NOTICE

MARSHALS SALE: By virtue of a Writ of Execution issued on June 23, 2009, out of the United States Court for the Western District of Pennsylvania and to me directed, I shall expose the following real property to public sale AT THE JEFFERSON COUNTY COURTHOUSE, temporarily located at 98 SERVICE CENTER ROAD, BROOKVILLE PA 15825 ON September 28, 2009, at 10:30 a.m., local time. Said hereinafter described property is located 202 ½ Marion Avenue, Punxsutawney, Jefferson County, Pennsylvania 15767, being more fully described as follows:

All those certain tracts of land, together with the buildings, and improvements erected thereon, described in Mortgage Book 92, Page 477, recorded in the Recorder's Office of Jefferson County, Pennsylvania, seized and taken in execution as the property of Sally Anderson at the suit of The United States of America v. Sally Anderson, to be sold on Writ of Execution at Case No. 2:08-cv-1753 filed in the United States District court for the Western District of Pennsylvania. **TERMS OF SALE:** Successful bidder will pay ten percent (10%) by certified check to be tendered immediately at the sale and the remainder of the bid within thirty (30) days from the date of the sale and in the event bidder cannot pay the remainder, the property will be resold and all monies paid in at the original sale will be applied to any deficiency in the price at which the property is resold. Notice is hereby given that a Schedule of Distribution will be filed by me on the thirtieth day after the date of sale, and that distribution will be made in accordance with the Schedule unless exemptions are filed thereto within ten (10) days thereafter. Purchaser must furnish State Realty Transfer Tax Stamps

and stamps required by the local taxing authority. Marshals' costs, fees and commissions will be the responsibility of the seller. On behalf of the U.S. Marshals Service, we are allowing the highest bidder to secure, by official bank check or money order, ten percent (10%) of the highest bid amount within one hour of the conclusion of the sale. Additional information can be obtained through the USDA's property foreclosure website at www.resales.usda.gov.

Sept. 4, 11, 18, 25

ESTATE NOTICES

Notice is hereby given that in the estates 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 their attorneys named below.

FIRST PUBLICATION**BROWN, THELMA T.,
deceased**

Late of Erie County, Pennsylvania
Executrix: Bonnie Brown, c/o James A. Pitonyak, Esquire, 1001 State Street, Suite 303, Erie, PA 16501

Attorney: James A. Pitonyak, Esquire, 1001 State Street, Suite 303, Erie, PA 16501

**CANFIELD, KENNETH A.,
deceased**

Late of Venango Township, Erie County, Wattsburg, Pennsylvania
Executor: Edward Orton, 33 East Main Street, North East, Pennsylvania 16428

Attorney: Edward Orton, Esquire, Orton & Jeffery, P.C., 33 East Main Street, North East, Pennsylvania 16428

**FIORELLI, THERESA A.,
deceased**

Late of the City of Erie, Commonwealth of Pennsylvania
Co-Executors: Paul Fiorelli and Jessica Fiorelli, 1108 Liberty Street, Erie, PA 16502

Attorney: Kevin W. Barron, Esquire, 821 State Street, Erie, PA 16501

**MERCER, MARGERY,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania

Co-Executors: Beth Ann Bunce and Edward A. Mercer, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

Attorney: Colleen R. Stumpf, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

**ROGERS, VINCENT P.,
deceased**

Late of the Township of Girard, County of Erie, Commonwealth of Pennsylvania

Executrix: Laura J. Rogers, 5724 Daggett Road, Girard, PA 16417-8880

Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

**ROWE, DONALD R., a/k/a
DONALD ROWE,
deceased**

Late of the Township of Millcreek
Executrices: Rita D. Masi and Gina Brown

Attorney: Michael G. Nelson, Esquire, Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, 300 State Street, Suite 300, Erie, Pennsylvania 16507

**WISE, GENEVA M.,
deceased**

Late of the City of Corry, County of Erie, Commonwealth of Pennsylvania

Executrix: Thora J. Scott, c/o Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407
Attorney: Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407

SECOND PUBLICATION**BURKHARDT, ELAINE K.,
deceased**

Late of the Township of Millcreek, Erie County, Pennsylvania

Executor: Dennis K. Burkhardt, c/o 2580 West 8th Street, Erie, Pennsylvania 16505

Attorney: Ralph R. Riehl, III, Esq., 2580 West 8th Street, Erie, Pennsylvania 16505

**HILLS, GARY R.,
deceased**

Late of the City of Erie, Commonwealth of Pennsylvania

Executrix: Jennie A. Hills, c/o Anthony Angelone, Esquire, 3820 Liberty Street, Erie, PA 16509

Attorney: Anthony Angelone, Esq., Vendetti & Vendetti, 3820 Liberty Street, Erie, PA 16509

**JACK, JOSEPH E.,
deceased**

Late of the City of Erie, Erie County, Pennsylvania

Executrix: Carolyn M. Jack, 240 Beverly Drive, Erie, PA 16505

Attorney: Thomas A. Tupitza, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**KENT, KATHRYN L., a/k/a
KATHRYN LORETA KENT,
deceased**

Late of the City of Erie

Executrix: Dixie K. (Kent) York
Attorney: Michael G. Nelson,

Esquire, Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, 300 State Street, Suite 300, Erie, Pennsylvania 16507

**LAURITO, ROCCO A.,
deceased**

Late of the Township of Northeast
Executor: Gerard P. Laurito

Attorney: Joseph M. Walsh, III, Esq., Shapira, Hutzelman, Berlin, Ely, Smith and Walsh, 305 West 6th Street, Erie, PA 16507

**LYTLE, LEATHA M.,
deceased**

Late of the Township of Millcreek, Commonwealth of Pennsylvania

Executrix: Anita L. Marsh, c/o Joseph B. Spero, Esquire, 3213 West 26th Street, Erie, Pennsylvania 16506

Attorney: Joseph B. Spero, Esq., 3213 West 26th Street, Erie, Pennsylvania 16506

**MAKAROWSKY, NONA,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

Executrix: Tamara Makarowsky, c/o James E. Marsh, Jr., Esq., Suite 300, 300 State Street, Erie, PA 16507

Attorney: James E. Marsh, Jr., Esq., Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, Attorneys-at-Law, Suite 300, 300 State Street, Erie, PA 16507

**MYERS, HELEN L.,
deceased**

Late of Greene Township, Erie County, Pennsylvania

Co-Executors: Joseph E. Gausman, 12233 Donation Road, Waterford, PA 16441 and Larry D. Gafner, 2065 Strong Road, Waterford, PA 16441

Attorney: Thomas C. Hoffman, II, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**OSTERBERG, RICHARD M.,
deceased**

Late of the Borough of Albion, County of Erie, State of Pennsylvania

Executrix: Eleanor J. Heim, 8366 Sun Lake Drive, Girard, Pennsylvania 16417

Attorney: James R. Steadman, Esq., 24 Main St. E., Girard, Pennsylvania 16417

**SCHMIDT, DAVID C.,
deceased**

Late of Millcreek Township, Erie County, Pennsylvania

Executrix: Patricia A. Schmidt, 4701 Glen Crest Drive, Erie, PA 16509

Attorney: Thomas C. Hoffman, II, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**SEABERG, ROBERT E.,
deceased**

Late of the City of Erie

Administratrix: Ruth M. Seaberg
Attorney: Norman A. Stark, Esquire, The Stark Law Firm, 100 State Street, Suite 210, Erie, PA 16507

**SZKODA, ALOIS FRANK, a/k/a
ALOIS F. SZKODA,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania

Executor: Anthony J. Erdley, 1010 Hartt Road, Erie, PA 16505

Attorney: John E. Gomolchak, Esq., 3854 Walker Blvd., Erie, PA 16509

**WASHINGTON, WILLIE JOE,
deceased**

Late of the City of Erie

Executor: Gordon M. Mitchell, 4425 E. Lake Road, Erie, PA 16511

Attorney: Larry D. Meredith, Esq., 2021 E. 20th St., Erie, PA 16510

**WIEST, GERALDINE G.,
deceased**

Late of Lawrence Park Township

Executrix: Beth A. Jones, c/o 332 East 6th Street, Erie, PA 16507-1610

Attorney: Evan E. Adair, Esq., Williams and Adair, 332 East 6th Street, Erie, PA 16507-1610

**WOTUS, MARIE J.,
deceased**

Late of the City of Corry, County of Erie, Commonwealth of Pennsylvania

Executor: Patrick Wotus, c/o Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407

Attorney: Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407

THIRD PUBLICATION**BOWERS, ROBERT J.,
deceased**

Late of the City of Erie

Executrix: Julie Johnson
Attorney: Will J. Schaaf, Esquire, Marsh Spaeder Baur Spaeder & Schaaf, LLP, Attorneys at Law, Suite 300, 300 State Street, Erie, PA 16507

**CLAYTON, JOHN F.,
deceased**

Late of the Township of Concord, County of Erie, Commonwealth of Pennsylvania

Executor: Gary W. Clayton, c/o Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407

Attorney: Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407

**COOK, ROBERT W.,
deceased**

Late of Summit Township, Erie County, Pennsylvania

Executrix: Sandra Cashdollar, c/o 2580 West 8th Street, Erie, Pennsylvania 16505

Attorney: Ralph R. Riehl, III, Esq., 2580 West 8th Street, Erie, Pennsylvania 16505

**JERIOSKI, MARY,
deceased**

Late of the City of Erie, Erie County, Pennsylvania

Executor: Frank J. Jerioski, Jr., c/o Taggart Law Office, 1400 Renaissance Centre, 1001 State Street, Erie, Pennsylvania 16501.

Attorney: William Taggart, Esq., 1400 Renaissance Centre, 1001 State Street, Erie, Pennsylvania 16501

**LORANGER, RICHARD G.,
deceased**

Late of the Township of Greenfield, County of Erie, State of Pennsylvania
Executrix: Charise A. Loranger, c/o 78 East Main Street, North East, PA 16428
Attorney: John C. Brydon, Esq., Brydon Law Office, 78 East Main Street, North East, PA 16428

**MUTH, BERNICE M., a/k/a
BERNICE J. MUTH, a/k/a
BERNICE MUTH,
deceased**

Late of the City of Erie
Executor: Sherman D. Kohler, c/o 731 French Street, Erie, PA 16510
Attorney: M. Kathryn Karn, Esquire, Adruini, Jewell and Karn, 731 French Street, Erie, PA 16501

**OSTERBERG, HELEN A.
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executor: David L. Osterberg, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Scott L. Wallen, Esquire, Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**WARNER, BLANCHE,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Administrator: Lisa Warner, c/o 227 West 5th Street, Erie, PA 16507
Attorney: Mark O. Prenatt, Esquire, 227 West 5th Street, Erie, Pennsylvania 16507

**WHITE, LAURENCE A., a/k/a
LAURENCE WHITE,
deceased**

Late of Millcreek Township, County of Erie and State of Pennsylvania
Executrix: Margaret White, 4322 Lauriston Street, Philadelphia, PA 19128
Attorney: Ronald J. Susmarski, Esq., 4030-36 West Lake Road, Erie, PA 16505

**WYKOFF, THELMA J.,
deceased**

Late of the Township of North East, County of Erie and Commonwealth of Pennsylvania
Administrator: William Wykoff, c/o Kevin M. Monahan, Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: Kevin M. Monahan, Esq., Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, Attorneys-at-Law, Suite 300, 300 State Street, Erie, PA 16507

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CHANGES IN CONTACT INFORMATION OF ECBA MEMBERS

Eric G. Carr ----- (814) 452-4451
402 West Sixth Street ----- (f) (814) 452-6527
Erie, PA 16507 ----- *unitylaw@gmail.com*

New Email Address

Ted G. Miller ----- *mlrconsult@verizon.net*

New Address

Francis J. Constantine

32 West 8th Street, 400 Masonic Temple
Erie, PA 16501

Telephone and fax numbers will remain the same.

IF THERE ARE ANY NEW ATTORNEYS IN ERIE INTERESTED IN JOINING
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