

Erie County Legal Journal

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In the United States Bankruptcy Court for the Western District of Pennsylvania
In re Brownsville Property Corporation, Inc.

Erie County Legal Journal

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

Managing Editor: Heidi M. Weismiller

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Erie County Bar Association

Calendar of Events and Seminars

TUESDAY, JUNE 5, 2012

ECBA Annual Mid-Year Meeting
Bayfront Convention Center
12:00 p.m. - 1:30 p.m.
\$20 ECBA members only

FRIDAY, JUNE 8, 2012

*Understanding Driver License Suspensions: Five Levels of PennDOT
Suspensions (and what motorists can do about it)*
ECBA Live Lunch-n-Learn Seminar
Bayfront Convention Center
12:15 - 1:15 p.m. (11:45 a.m. lunch/reg.)
\$32 (ECBA member/non-attorney staff)
\$48 (nonmember) (\$22 member Judge)
1 hour substantive

TUESDAY, JUNE 12, 2012

The Utica and Marcellus Shale in Northwest Pennsylvania
ECBA Live Lunch-n-Learn Seminar
Bayfront Convention Center
12:15 - 1:15 p.m. (11:45 a.m. lunch/reg.)
\$32 (ECBA member/non-attorney staff)
\$48 (nonmember) (\$22 member Judge)
1 hour substantive

MONDAY, JUNE 25, 2012

Annual Charity Golf Tournament & Optional Scramble
Erie County Bar Association Event
The Kahkwa Club
1:00 p.m. shotgun start (12:00 p.m. registration)
5:30 p.m. cocktails and hors d'oeuvres
6:00 p.m. dinner and awards ceremony
\$135 (ECBA members)

To view PBI seminars visit the events calendar on the ECBA website
<http://www.eriebar.com/public-calendar>



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May 25

Office space for rent - Ideal downtown location at 821 State Street, just 2 blocks from the Courthouse. Office is 17 x 14 ft with bonus room with shower and sink. \$675/month. Contact John Carlson at 459-8011.

May 25, Jun. 1, 8, 15



ERIE COUNTY BAR ASSOCIATION

MID-YEAR MEETING

Tuesday, June 5, 2012

Bayfront Convention Center
12:00 - 1:30 p.m.

EVENT SCHEDULE

12:00 p.m. Lunch
12:30 p.m. Business Meeting
12:45 - 1:30 p.m. *"Obamacare and the 2012 Election"*

Presented by **Michael P. Federici, Ph.D.**

Professor of Political Science and Department Chair, Mercyhurst University



The Supreme Court's ruling on the federal healthcare law will be a factor in what is shaping up to be a close presidential race. Our distinguished presenter will analyze the political fallout from the Court's ruling for or against the constitutionality of the law.

Reservations due to the ECBA office by Thursday, May 31, 2012

IN RE: BROWNSVILLE PROPERTY CORPORATION, INC., Debtor
FALCK PROPERTIES, LLC, Plaintiff

v.

PARKVALE FINANCIAL CORPORATION, a/k/a PARKVALE BANK, a
Pennsylvania Financial Institution, Defendant

IN THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT
OF PENNSYLVANIA CASE NO. 10-21959-TPA
CHAPTER 7 Adv. No. 12-2045-TPA Related to Document Nos. 6, 13

Appearances: David Fuchs, Esq., for the Plaintiff
 Michael A. Shiner, Esq., for the Defendant

MEMORANDUM OPINION

This adversary proceeding originated as an action filed by Falck Properties, LLC (“Falck”) against Parkvale Financial Corporation (“Parkvale”) in the Allegheny County Court of Common Pleas on December 29, 2011. *See Falck Properties, LLC v. Parkvale Financial Corporation*, No. GD 11-027202 (“the State Court Case”). On January 27, 2012, Parkvale filed a *Notice of Removal* to the District Court, together with a motion asking the District Court to refer the matter to this Court. On February 8, 2012, the Hon. Terrence F. McVerry of the District Court signed a consent order which the Parties had submitted agreeing that the case would be referred to this Court for decision, while reserving the right of the Parties to litigate all issues relating to the removal and the underlying case.

Presently before the Court are two preliminary motions. First, a *Motion to Dismiss Plaintiff’s Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6)* (“Motion to Dismiss”), filed by Parkvale at Doc. No. 6. Second, a *Motion to Remand Proceedings to the Court of Common Pleas of Allegheny County or in the Alternative, Abstain from Hearing the Case* (“Motion to Remand”), filed by Falck at Doc. No. 13. The two *Motions* have been fully briefed and argued by the Parties and are ripe for decision. For the reasons that follow, both of the *Motions* will be denied.

FACTUAL AND PROCEDURAL BACKGROUND

Because of its importance to resolution of the issues raised in the *Motions*, it is necessary to go into the background in some detail. Brownsville Property Corporation (“BPC” or Debtor) was a non-profit corporation that filed a Chapter 7 bankruptcy petition on March 22, 2010. The sole asset of BPC was real estate located at 125-127 Simpson Road, Brownsville, Pa., on which was operated a facility known as Brownsville Tri-County Hospital, and a medical office building. This real property (hereinafter “the Property”) consisted of Fayette County Parcel Nos. 30-04-0202 and 30-04-0202-T0-0.

The BPC bankruptcy is part of a cluster of what may be termed the “Brownsville cases.” The entity which operated Brownsville Tri-County Hospital was Brownsville Health Solutions, Inc. a/k/a Brownsville Health Services Corporation (“BHS”). BHS is itself a debtor in an associated Chapter 11 bankruptcy case that was filed on February 18, 2009, and subsequently converted to Chapter 7. *See In re Brownsville Health Solutions, Inc.*, Case No. 09-20998-TPA. Brownsville General Hospital, Inc. (“BGH”), which has also filed a case under Chapter 7 of the Bankruptcy Code, was an earlier version of the

entity that operated this same medical facility, and in fact formerly owned the Property before it was conveyed to a newly-created BPC. *See In re Brownsville General Hospital, Inc.*, Case No. 06-20253-TPA, filed on January 24, 2006. Finally, West Point Health Corporation owned some condominium units and leaseholds in buildings which were part of this same medical facility. *See In re West Point Health Corporation*, Case No. 10-22146-TPA, filed under Chapter 7 of the Bankruptcy Code on March 29, 2010. The same Chapter 7 Trustee (“Trustee”) is administering the BPC, BHS, and West Point bankruptcy estates. In the BGH case, a plan was confirmed and a Plan Administrator appointed (“Plan Administrator”).

The primary secured creditor in the BPC bankruptcy was Parkvale, which held a first and second lien position on the Property pursuant to mortgages granted in 2007 as part of a loan transaction involving BPC and other Brownsville entities. The loan went into default in the pre-petition period, and in 2009 Parkvale caused a default judgment to be entered in Fayette County against BPC in the amount of \$1,415,903.34. Parkvale had scheduled the Property to be sold at a sheriff sale when the filing of the BPC case intervened to stay such sale.

On May 14, 2010, Parkvale filed a motion to dismiss the BPC bankruptcy case for cause under *11 U.S.C. §707(a)* as having not been filed in good faith, and in the alternative sought relief from stay so the sheriff sale could proceed. *See* Doc. No. 36 in the main BPC case.¹ The details of the allegations in that motion and the response thereto are not germane for present purposes² but it is of significance to note that the Court entered an Order on August 18, 2010, granting the motion in part and directing that the BPC property be sold by November 15, 2010, with Parkvale to be paid in full out of the sale proceeds. *See* Doc. No. 104. That same Order also provided that if the Property was not sold by the November 15th deadline, then the BPC bankruptcy would be dismissed and Parkvale could proceed with a sheriff sale on November 18, 2010. The Trustee attempted to sell the Property at a public auction in September 2010, but there were no bids made. On October 15, 2010, a further Order was entered which, *inter alia*, amended the August 18th Order to provide that the case would not be dismissed if a motion to sell the Property were filed with the consent of Parkvale prior to the November 18th sheriff sale permitted by the prior order. *See* Doc. No. 144.

On November 10, 2010, the Trustee entered into a ‘binding letter of intent’ with Falck whereby Falck agreed to buy the Property (along with a separate condominium unit located at 104 Simpson Road and owned by BHS) for a price of \$1.8 million. On November 12, 2010, the Trustee filed an *Expedited Motion for Order Approving Sale of (i) All Real Property of the Debtor Free and Clear of Liens, Claims, Encumbrances and Interests Outside the Ordinary Course of Business, and (ii) Granting Related Relief*

¹ Hereinafter, all document number references are to the docket in the main BPC case unless otherwise noted.

² To give a very brief summary, the BHG bankruptcy Plan Administrator had obtained a \$6,000,000 judgment lien against BPC through pursuit of a fraudulent transfer theory in connection with the transfer of the Property to BPC. This lien was junior to Parkvale’s mortgages. Parkvale alleged in the motion to dismiss that the Plan Administrator unsuccessfully attempted to have the Parkvale mortgages subordinated to the BGH lien, and when that failed, the Plan Administrator allegedly “conspired and colluded to have this bankruptcy case [i.e., the BPC case] filed in order to manufacture a forum for his ongoing efforts to challenge the validity of Parkvale Bank’s mortgages against the Debtor.”

("Sale Motion"), Doc. No. 146. The *Sale Motion*, which was not filed with Parkvale's consent, proposed that the sale to Falck be approved, with a closing to occur on or before the later of 75 days after Court approval of the sale, or January 31, 2011, that Falck tender payment of \$100,000 in hand monies to Parkvale and that no further contingencies be recognized. The Trustee asked that the *Sale Motion* be heard before the scheduled November 18, 2010 sheriff sale.

Parkvale filed an objection to the *Sale Motion*. While it complained about the "last second" nature of the *Sale Motion* and various other aspects of the proposed sale, Parkvale said it would be willing to consent to the sale if certain conditions were met, including the closing to occur by December 31, 2010 and the \$100,000 of hand money to be immediately paid to Parkvale. *See* Doc. No. 153.

An expedited hearing on the *Sale Motion* was held on November 17, 2010. Counsel for Parkvale stated at the time that his client would be willing to agree to a January 31, 2011 closing deadline for the sale to Falck if the non-refundable deposit was increased to \$180,000. The Court then issued an Order providing for the payment of \$180,000 in hand money to Parkvale by November 25, 2011 (\$150,000 of this to come from Falck, and \$30,000 from the Plan Administrator in the BGH bankruptcy), such to be non-refundable unless on or before November 30, 2011, the BPC Trustee discovered he could not convey good title to the Property, or Falck was not ultimately the successful bidder for the Property. *See Order* dated November 17, 2010, Doc. No. 158.

A further hearing on the *Sale Motion* and possible auction was scheduled for December 1, 2011. At that time an order was entered approving the sale to Falck, subject to the condition that the closing had to occur on or before January 31, 2011. A failure to close by the deadline would mean that the approval was automatically withdrawn and Parkvale could proceed with a sheriff sale on the Property, tentatively scheduled for February 10, 2012. *See* Doc. No. 179. On December 21, 2011, a further order was issued on consent of the Parties resolving a gas lease issue connected with the Property, and again confirming the January 31st deadline for closing on the sale to Falck. *See* Doc. No. 193.

The Court heard nothing further about the matter by the January 31st deadline and assumed that a closing on the Property had occurred. However, on February 6, 2011 Falck filed an *Emergency/Expedited Motion for Extension of Sale Closing or in the Alternative Emergency Motion for Rescission* ("Emergency Motion") at Doc. No. 200. The *Emergency Motion* represented that, by agreement of the Parties, the closing deadline had been extended to February 9, 2012, one day prior to the scheduled sheriff sale. It further represented that subsequent to the December 21, 2011 Order, two new issues had come up that were interfering with a closing. First, Falck alleged that on January 20, 2011, it learned that the Property was not zoned for commercial use, but rather for residential, which significantly lowered the appraised value of the Property and jeopardized financing.³ Falck alleged that it had filed a petition seeking to have the zoning for the Property changed, but it would take some time for that process to be completed. Second, Falck alleged that it discovered there were unpaid real estate taxes of \$242,000 on the Property, and it was engaged in

³ The *Sale Motion* had represented that Falck's offer to buy the Property was not subject to any financing contingency.

negotiations with the proper local authorities to try to resolve that matter. Falck asked either that the closing date be extended for a “reasonable time” or that the sale contract be rescinded and its deposit refunded on the basis of “mutual mistake” (on the theory that both sides incorrectly assumed the Property was zoned commercial and had negotiated based on that assumption).

Perhaps not surprisingly, Parkvale filed a response to the *Emergency Motion* strongly objecting to the relief being requested. *See* Doc. No. 295. Parkvale asserted that Falck was simply guilty of inadequate due diligence and that the December 1, 2010 and December 21, 2010 Orders were final and controlling. Parkvale represented that it had been skeptical of Falck’s ability to close even back at the November 17, 2011 hearing, but that repeated assertions had been made to it and the Court that Falck could close, and do so by January 31, 2011. Parkvale said it had agreed voluntarily to extend that deadline to February 9, 2011, but would not agree to any further extension.

A hearing on the *Emergency Motion* was held on February 9, 2011. At that time, the Court advised the Parties that it had reviewed the *Emergency Motion* and was prepared to deny it, but would prefer if the Parties could come to some agreement to resolve matters. Counsel for Parkvale then made a proposal that the February 10th sheriff sale be permitted to proceed, but that if Parkvale was the successful bidder at that sale, it would give Falck an exclusive option to purchase the Property on the same terms as provided in the *Sale Motion*, with any closing to occur by a firm, March 26, 2011 deadline. This proposal was agreeable to Falck, and was memorialized by the Court in an Order of the same date, *see* Doc. No. 206, which included the following:

If no closing occurs by this deadline [*i.e.*, March 26, 2011], Falck shall have no further rights with respect to the Property except as may be agreed to by Parkvale Bank or any future owner of the property.

The February 9th Order also denied Falck’s alternative request for a rescission, and included the following two provisions:

(6) No further motions seeking an extension of time for a closing on the sale of the property will be entertained by the Court.

(7) The Court will retain jurisdiction over this and any other related matter so as to address any other issues that may arise.

See also, *Transcript of Proceeding* dated Feb. 9, 2011, 36:15-16, 63:17, *et. seq.* (Doc. No. 216) The Court heard nothing further about the matter from any of the Parties until the removal of the State Court Case to this Court in the form of the matters presently at issue.

STATE COURT COMPLAINT

In the State Court Complaint, Falck sets forth two counts against Parkvale: Count I for breach of contract and Count II, for unjust enrichment. A jury trial demand is included. Falck alleges that its plan was to purchase the Property and develop it for use as student housing and for medical offices. Complaint at ¶13.⁴ Falck initially believed the

⁴ A copy of the Complaint which Falck filed initiating the State Court Case is found as part of the *Appendix to the Notice of Removal*.

Property was zoned commercial, but at some point discovered that it was actually zoned residential, with the operation of the medical facility having been a pre-existing, non-conforming use. *Id.* at ¶¶8-11. After recounting the highlights of what transpired in this Court regarding the proposed sale (as described above in more detail in this *Opinion*), the Complaint picks up with events occurring subsequent to the February 9, 2011 Order. *See Id.* at ¶¶22, *et. seq.*

The gist of Falck’s breach of contract claim appears to be that Parkvale refused to agree to refrain from interfering with Falck’s pursuit of a zoning appeal unless Falck paid Parkvale an additional \$50,000 in non-refundable hand money, and when Falck refused to do so, Parkvale successfully moved to quash that appeal. Falck is seeking damages for the alleged breach of contract, including loss of the hand money it paid, maintenance expenses for the Property that it paid, fees and costs incurred with attempting to close on the Property, and the loss of anticipated income. *Id.* at ¶35. There is no explicit allegation in the Complaint as to when the “contract” being sued upon was created, or what its exact terms were, though the February 9, 2011 Order is attached as “Exhibit E” to the document. The unjust enrichment claim is based upon the same facts and appears, in essence, to be an alternative theory in case the breach of contract claim fails.

DISCUSSION

Although the *Motion to Dismiss* was chronologically filed first in this case, from a legal and logical standpoint, the Court finds that it must first address the *Motion to Remand*, because if that request is granted the case must be returned to the Allegheny County Court of Common Pleas for further proceedings. *See, e.g., In re Enron Corp. Sec., Derivative & “ERISA” Litigation*, 2005 WL 6220721 *1 (S.D. Tex. 2005); *Powell v. Miraglia*, 2004 WL 2452024 (N.D. Tex. 2004) (citing *Leroy v. Great W. United Corp.*, 442 U.S. 173, 180 (1979) for the proposition that subject matter jurisdiction is “fundamentally preliminary”).

Motion to Remand

Parkvale removed the State Court Case to federal court pursuant to 28 U.S.C. §§1334 and 1452 and *Fed.R.Bankr.P.* 9027. *Section 1452(a)* provides in relevant part:

(a) A party may remove any claim or cause of action in a civil action ... to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

28 U.S.C. §1452(a). Parkvale contends that this requirement is met because the State Court Case filed by Falck “arises under or is related to the bankruptcy case of BPC.” *See Notice of Remand* at ¶1. Parkvale further contends that the action is a core matter under 28 U.S.C. §157(b)(2)(A),(G),(N), and (O). Respectively, these are matters concerning the administration of the estate, motions to terminate annul, or modify the automatic stay, orders approving the sale of property, and other proceedings affecting the liquidation of the assets of the estate.

The grounds raised by Falck in the *Motion for Remand* are: (1) that the case is noncore

and not related to the BPC bankruptcy case; (2) permitting the removal to stand will interfere with Falck's right to a jury trial; (3) this Court lacks the authority to enter a final order in the case under the decision of *Stern v. Marshall*, ___ U.S. ___, 131 S. Ct. 2594 (2011)⁵; and, (4) even if it has jurisdiction to hear the case, this Court must abstain from doing so. In its response, Parkvale asserts that the Complaint filed by Falck is "nothing more than a dispute over the Bankruptcy Court's Sale Orders thinly disguised as state law causes of action," and it thus is a core matter within the Court's "arising under" jurisdiction. Parkvale contends that the Falck complaint is "squarely rooted" in what happened in this Court, and is in effect a collateral attack on this Court's orders concerning the sale.

Upon a motion for remand, the removing party bears the burden of demonstrating that removal was proper. *Boyer v. Snap-On Tools Corp.*, 913 F.2d 108, 111 (3d Cir. 1990). The removing party thus bears the burden of proving that the federal court has jurisdiction. *Id.* Removal statutes are to be strictly construed, with any doubts resolved in favor of remand. *Batoff v. State Farm Ins. Co.*, 977 F.2d 848, 851 (3d Cir. 1992). After careful consideration of the arguments of the Parties, the Court concludes, without any significant doubt, that Parkvale has sufficiently demonstrated that this Court does have jurisdiction to hear this case. In so concluding, the Court finds that the gravamen of Falck's action, as set forth in its Complaint, is so interwoven with and inseparable from the various orders this Court has previously entered in connection with the would-be sale ("Prior Orders")⁶ of the Property to Falck, as to squarely fall within the Court's well-recognized power to interpret and enforce its own orders. *See, e.g., Travelers Indem. Co. v. Bailey*, 557 U.S. 137 (2009).

The allegations set forth in the Complaint demonstrate that Falck's claims are substantially, if not totally, dependent on this Court's Prior Orders. With respect to the breach of contract claim, the only contract between Falck and Parkvale that is evident from the allegations in the Complaint is the one that was reached in the presence of the Court and memorialized as part of the February 9, 2011 Order. *See Complaint* at ¶¶ 19-20, 30-35. The February 9th Order is attached as Exhibit E to the Complaint, and is in fact the only writing attached to or referred to in the Complaint setting forth the terms

⁵ The *Motions* in the present case were argued at the same time as similar motions in a somewhat related adversary wherein Falck has sued the real estate broker and two agents who were involved in the sale of the Property. *See Falck Properties, L.L.C. v. Walnut Capital Real Estate Services, Inc.*, Adv No. 12-2029. The *Walnut Capital* matter was argued first and at the very outset of his presentation, Counsel for Falck stated that Falck was going to "back away from" the *Stern v. Marshall* argument because of his reading of the subsequent cases was to the effect that *Stern* was being interpreted to go towards whether a bankruptcy court may issue a final order or a report and recommendation. *See Audio Transcript of Proceeding* dated April 2, 2012, 10:06:27 A.M., *et seq.* From the context in which this statement was made, it is apparent to the Court that this withdrawal of the *Stern* argument applies to the present case as well as to the *Walnut Capital* matter. Nevertheless, for the sake of completeness, this Court will address the *Stern* argument in this *Opinion*.

⁶ The Prior Orders referred to have previously been identified in this *Memorandum Opinion* and include: *Order* dated November 17, 2010 at Document No. 158; *Order* dated December 1, 2010 at Document No. 179; *Order* dated December 21, 2010 at Document No. 193; and, *Order* dated February 9, 2011 at Document No. 206.

of the contract.⁷ The Complaint seeks only monetary damages for the alleged breach of contract, and all of the items mentioned in the Complaint are either directly covered by Prior Orders related to the sale, or flow from the Orders.

The unjust enrichment claim is similarly dependent on the Prior Orders. The benefits which Falck alleges to have conferred upon Parkvale were all done pursuant to the Prior Orders of this Court, and resolution of that claim will inevitably require resort to those Prior Orders.

No one disputes that the Court had the jurisdiction to enter the Prior Orders concerning sale of the Property, and the Court itself finds that such Prior Orders represented core matters pursuant to 28 U.S.C. §157(b)(2)(N) and perhaps other subsections of 157(b)(2) as well.⁸ Resolution of the Complaint filed by Falck will necessarily involve the interpretation of the Prior Orders, and therefore is itself a core matter. *See, e.g. Travelers Indem., supra, In re Marcus Hook Dev. Park, Inc.*, 943 F.2d 261, 267 (3d Cir. 1991), *In re Allegheny Health Educ. & Research Found.*, 383 F.3d 169, 176 (3d Cir. 2004), *In re Trico Marine Servs., Inc.*, 450 B.R. 474, 482 (Bankr. D. Del. 2011), *In re River Entm't Co.*, 2012 WL 1098570 (Bankr. W.D. Pa. March 30, 2012). Thus, the first argument raised by Falck in the *Motion for Remand* lacks merit.

The next argument raised by Falck is that, if allowed to stand, the removal will interfere with the jury trial demand it made in the Complaint. The right to a jury trial is certainly an important one, which the Court takes seriously, but on the facts of the present case remand is not compelled for that reason. First, the Court agrees with Parkvale that there is a significant issue whether Falck has previously waived any right to a jury trial in this matter.

It is, of course, well-recognized that a party may waive the right to a jury trial by invoking the equitable jurisdiction of a bankruptcy court. *See, e.g. Langencamp v. Kulp*, 498 U.S. 42, 44-45 (1991) (creditor which filed proof of claim brought itself within equitable jurisdiction of bankruptcy court and waived right to jury trial). The exact contours of when such a waiver occurs are not clear, and the Court need not attempt to determine at this time whether Falck has effected a waiver here. Nevertheless, there is ample basis for finding it may have done so, given Falck's extensive, voluntary involvement in the sale

⁷ In its written response to the *Motion for Remand*, and at the subsequent oral argument, counsel for Falck argued that the breach of contract claim was only intended to cover Parkvale's breach of an alleged oral agreement that the Parties entered into after the February 9, 2011 Order. This does not change the Court's conclusion for several reasons. First, in deciding the *Motion for Remand* the Court is limited to a consideration of the allegations as set forth in the Complaint. *See, e.g., Malesovas v. Sanders*, 2005 WL 1155073 (S.D. Tex. 2005) (under the well-pleaded complaint rule, the plaintiff is the master of his complaint). Counsel's arguments to the contrary cannot change the fact that there is simply no reasonable way to discern the existence of a separate, post-February 9th agreement, let alone the terms and conditions thereof, based on the allegations in the Complaint. (In fact, if anything, the allegations in the Complaint appear to negate the existence of any post-February 9th agreement. *See Complaint* at ¶¶ 23-25). Second, even assuming there was some sort of post-February 9th agreement between the Parties, it is far from clear that it should be treated as a stand-alone contract capable of supporting a cause of action totally independent of the Court's Prior Orders, as opposed to a modification of the agreement reached before the Court and therefore necessarily involving interpretation and enforcement of those Prior Orders. Third, in any event, the relief which Falck is seeking in the Complaint is inconsistent with Counsel's argument since the vast majority of the items of damage listed relate to payments/benefits made pursuant to the Prior Orders.

⁸ *Clark v. Chrysler Group, L.L.C.*, 2010 WL 4486927 (E.D. Pa. 2010), involved a similar situation as here because the court was faced with adjudicating rights as between parties established by a prior sale order. The court noted that the case did not require it to issue an order approving the sale of property, only to interpret a prior order to that effect. Thus the court found it to be "not entirely clear" if the case fell squarely within *Section 157(b)(2)(N)*, but nevertheless found it to be core based on the general definition of the term. *See also, In re River Entm't Co.*, 2012 WL 1098570 (Bankr. W.D. Pa. March 30, 2012) where the court found that the interpretation of a prior consent order was a core proceeding pursuant to *Section 157(b)(2)(A)* and *(O)*.

process before this Court, including its own action in seeking the assistance of this Court by filing the *Emergency Motion* that directly led to the February 9, 2011 Order. On multiple occasions during the hearing on that *Motion* the Court expressly stated that it was going to retain jurisdiction over the sale of the Property – with no objection by Counsel for Falck. *See Transcript of Proceeding* dated Feb. 9, 2012, 36:15, *et. seq.*; 42:9, *et. seq.* Such lack of objection might also be viewed as an implicit waiver of a jury trial right concerning resolution of any dispute stemming from the Order.

Second, and in any event, even if Falck does enjoy a jury trial right in this matter, that of itself is not a sufficient ground for remand. Bankruptcy courts may conduct a jury trial in at least some core matters. *See, e.g., In re Visteon Corp.*, 2011 WL 1791302 (D. Del. 2011). Furthermore, even if this is not such a matter, other courts faced with the argument being made by Falck here have noted that a bankruptcy court may always hear matters through the pretrial stage, subject to the case then being tried in District Court in front of a jury if necessary. *See, e.g., In re Carriage House Condominiums, L.P.*, 415 B.R. 133, 148 (Bankr. E.D. Pa. 2009). The Court thus finds no merit in the jury trial argument for remand.

The third argument raised by Falck for remand is that under the decision in *Stern* this Court lacks the authority to enter a final judgment in this matter.⁹ This same issue was addressed very recently by the Hon. Jeffrey Deller of this Court in *In re River Entm't Co.*, *supra*. In that case, under facts strongly analogous to those here, Judge Deller rejected the argument that *Stern* prevented him from entering a final order. He gave two reasons for his conclusion. First, he found that *Stern* did not apply because resolution of the matter before him was entirely dependent on his interpretation and enforcement of his own prior order and not dependent on the adjudication of an independent state law cause of action. Second, he found that even if *Stern* applied, both of the parties to the dispute could, and did, effectively consent to the entry of final judgment by the court.

This Court agrees with the extensive analysis provided in *River Entertainment*, finds it to be equally applicable in the present case, and sees no need to repeat the details here. The Court thus concludes that *Stern* does not prevent it from entering a final order based upon any lack of constitutional authority to do so. Even if at first blush it did appear that such authority was lacking, the extensive involvement of the Parties in the ongoing litigation process involving the Property, and Falck's failure to raise any objection to the Court's retention of authority to adjudicate disputes arising from the failed sale of the Property, constitutes implicit consent that would overcome the principle announced in *Stern*.¹⁰

The final argument raised by Falck is to the effect that even if this Court has jurisdiction to hear and decide this case, it should abstain from doing so and send the case back to the state court. Falck first argues for the application of mandatory abstention under 28 U.S.C. §1334(c) (2). If the Court concludes that mandatory abstention is not required, Falck argues that the Court should nevertheless exercise its discretion to abstain and equitably remand pursuant to 28 U.S.C. §§1334(c)(1) and 1452(b). Each of these arguments will be addressed in turn.

⁹ As indicated previously, *see n. 5, supra*, it appears Falck has withdrawn this argument, but the Court will nevertheless address it.

¹⁰ Further confirmation of the lack of any merit to Falck's *Stern* argument comes from the consent order submitted by Falck and Parkvale to the District Court whereby both Parties agreed that the case should be referred to this Court for decision. *See* Doc. No. 11 in the Adversary Proceeding. Having consented to such referral, Falck will not now be heard to argue that this Court lacks the authority to render a decision in the case.

The mandatory abstention statute provides:

Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

18 U.S.C. §1334(c)(2). In *Stoe v. Flaherty*, 436 F.3d 209 (3d Cir. 2006), the court held that this provision is operative in the bankruptcy context, and that all five of the following factors must be present for mandatory abstention:

(1) the proceeding is based on a state law claim or cause of action; (2) the claim or cause of action is “related to” a case under title 11, but does not “arise under” title 11 and does not “arise in” a case under title 11, (3) federal courts would not have jurisdiction over the claim but for its relation to a bankruptcy case; (4) an action “is commenced” in a state forum of appropriate jurisdiction; and (5) the action can be “timely adjudicated” in a state forum of appropriate jurisdiction.

436 F.3d at 213. A review of these factors need only get to the second one before Falck’s argument is clearly dispelled. The Court has previously found that the claims as set forth in the Complaint are core matters, therefore they arise in or arise under *Title 11* and are not merely related to the BPC bankruptcy case. In addition, there is significant doubt that Falck can show the first factor either. Although the claims in the Complaint are denominated as being for breach of contract and unjust enrichment, which are on their face descriptive of state law causes of action, the Court’s previous comments in this *Memorandum Opinion* should make clear that it views the real substance of the claims as involving the interpretation and effectuation of its Prior Orders. The Court thus finds that mandatory abstention does not apply.

Turning to the possibility of discretionary, or permissive, abstention, the relevant statute provides:

Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

28 U.S.C. §1334(c)(1). See also, 28 U.S.C. §1452(b) (court to which case has been removed may remand on any equitable ground).

Various courts have propounded various lists of factors which a court should consider in determining whether to permissively abstain. See, e.g., *In re Legates*, 381 B.R. 111 (Bankr. D. Del. 2008) (list of 12 non-exclusive factors). However, an overriding consideration of this Court in reaching a decision on permissive abstention is that abstention is “an extraordinary and narrow exception ... justified only where resort to state proceedings clearly serves an important countervailing interest.” *Lichtenfels v. Electro-Motive Diesel, Inc.*, 2010 WL 653859 *3 (W.D. Pa. 2010) (quoting *Carriage House*, *supra*). The *Lichtenfels* court went on to state that once a federal court is determined to have jurisdiction it has a “virtually unflagging obligation” to exercise such jurisdiction.

The Court does not see how the present case could by any stretch meet this demanding

standard for permissive abstention. Falck has identified no discernible interest of justice to be served by abstaining, and the state law interests which would be respected or served by abstention are minimal given that the claims proffered by Falck are so enmeshed with what happened previously in this Court, which was a proceeding under federal, not state, law. The Court therefore declines to exercise its discretion to permissively abstain in this matter.

For all of the above reasons, the *Motion for Remand* must be denied and the case will remain in this Court. Discussion now turns to the *Motion to Dismiss* filed by Parkvale.

Motion to Dismiss

Parkvale's first argument is that the Count I of the Complaint should be dismissed because it fails to sufficiently allege the existence of a contract between Parkvale and Falck. The second Parkvale argument is that Count II of the Complaint for unjust enrichment should be dismissed because all actions were done pursuant to court order. Parkvale argues that unjust enrichment is essentially an equitable doctrine, and that there could not have been anything unjust about the payments made by Falck or benefits received by Parkvale if they were done pursuant to court orders. Parkvale's third argument is that the Complaint represents a collateral attack, or end run on bankruptcy court orders, and must be dismissed. Parkvale's final argument is that Falck lacks standing to pursue any claim because the sheriff's sale cut off whatever rights it may have had in the Property.

There is no need at this time to go into a discussion of these points. At the hearing on the *Motion to Dismiss* the Court made known its view that the Complaint is not sufficiently pled. However, rather than dismiss all or part of the case at this point, the Court indicated that it would give Falck an opportunity to file an Amended Complaint. The *Motion to Dismiss* will therefore be denied, without prejudice.

An appropriate *Order* follows.

ORDER

AND NOW, this **30th** day of **April, 2012**, for the reasons stated in the *Memorandum Opinion* filed at Doc. No. 26, it is hereby **ORDERED, ADJUDGED and DECREED** that,

(1) The *Motion to Remand Proceedings to the Court of Common Pleas of Allegheny County or in the Alternative, Abstain from Hearing the Case*, filed on February 15, 2012, at Doc. No. 13, is **DENIED**.

(2) The *Motion to Dismiss Plaintiff's Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6)*, filed on February 9, 2012 at Doc. No. 6, is **DENIED**, without prejudice, *provided, however*, that Plaintiff shall have until **May 14, 2012** to file an **Amended Complaint**, and in the event an *Amended Complaint* is timely filed, Defendant shall have until **May 29, 2012**, to file an **Answer** or otherwise respond to the *Amended Complaint*.

/s/ **Thomas P. Agresti, Chief Judge**
United States Bankruptcy Court

2012

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- 12:00 p.m. - Registration/check in begins
Practice range opens
- 1:00 p.m. - Shotgun start
- 5:30 p.m. - Cocktails and hors d'oeuvres
- 6:00 p.m. - Dinner, and brief awards ceremony

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BANKRUPTCY NOTICE

IN THE UNITED STATES
BANKRUPTCY COURT FOR
THE WESTERN DISTRICT OF
PENNSYLVANIA

IN RE: CAROL ZOE BLOSS-
FULTON, Debtor

CASE NO. 10-11498 TPA

(Chapter 13)

JUDGE THOMAS P. AGRESTI

NOTICE OF SALE HEARING

You are hereby notified that the above debtor seeks court authorization to sell 20.63 acres of unimproved land identified as Parcel B of Carol Zoe Bloss-Fulton subdivision No. 2009-1, part of Tract 151, located at O'Neal Road, Union Township, Erie County, Pennsylvania, bearing Erie County Tax Index No. (43) 14-41-8.04 recorded in Map Book 2009, page 26 and being a portion of property described in Deed Book 679, page

479 in the Office of the Recorder of Deeds of Erie County, Pennsylvania for \$30,000.00 (a cash deposit of \$1,000.00 is required at the time of hearing with the balance due at closing).

A hearing will be held on June 20, 2012, at 10:30 A.M. before Judge Thomas P. Agresti, in the United States Bankruptcy Court, 17 South Park Row, Erie, PA 16501. The Bankruptcy Court will entertain highest offers at the hearing.

Closing shall take place within thirty (30) days of the date of the Order confirming sale "As is" examination of the property or further information can be obtained from the undersigned.

Carol Zoe Bloss-Fulton

10040 Concord Road
Union City, PA 16438

(814) 438-7800

May 25

 <p>SAMMARTINO & STOUT, INC.</p> <p>REAL ESTATE ANALYSTS APPRAISERS • CONSULTANTS</p>	 <p>Raymond J. Sammartino, MAI, SRA Robert G. Stout, MAI</p> 			
<p>Sammartino & Stout, Inc. is committed to providing regional real estate valuation and consulting expertise which meets or exceeds our clients' expectations in a timely, concise, and reliable manner.</p>				
<p align="center">State certified general appraisers in Pennsylvania, Ohio, and New York.</p> <p align="center">We provide real estate valuation and consulting expertise for:</p> <table style="width: 100%;"> <tr> <td style="vertical-align: top;"> <ul style="list-style-type: none"> • Tax Appeals • Eminent Domain (Condemnation) • Conservation Easements </td> <td style="vertical-align: top;"> <ul style="list-style-type: none"> • Litigation Support • Mortgage Underwriting • Market/Feasibility Studies </td> </tr> </table>			<ul style="list-style-type: none"> • Tax Appeals • Eminent Domain (Condemnation) • Conservation Easements 	<ul style="list-style-type: none"> • Litigation Support • Mortgage Underwriting • Market/Feasibility Studies
<ul style="list-style-type: none"> • Tax Appeals • Eminent Domain (Condemnation) • Conservation Easements 	<ul style="list-style-type: none"> • Litigation Support • Mortgage Underwriting • Market/Feasibility Studies 			
<p>Sammartino & Stout, Inc. subscribes to the Code of Ethics and Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by the Appraisal Institute, assuring our clients of the highest standards in valuation and consulting services.</p> <p align="center">3111 State St., Erie, PA 16508 814-456-2900, Fax (814) 456-8070</p> <p align="center"><i>E-mail:</i></p> <p align="center">Raymond J. Sammartino, MAI, SRA rsam@sas-rea.com Robert Stout, Jr., MAI rstout@sas-rea.com</p> <p align="center">Visit our website: www.sas-rea.com</p>				



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CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania
Docket No. 11744-12

In Re: Misty R. Miller

Notice is hereby given that a Petition was filed in the above named court requesting an order to change the name of Misty R. Miller to Misty R. Yaple.

The Court has fixed the 9th day of July, 2012 at 8:45 a.m. in Courtroom B of the Erie County Courthouse, 140 W. 6th St., Erie, PA 16501 as the time and place for the hearing on said Petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

May 25

DISSOLUTION NOTICE

Please be advised that the partnership doing business as Watkins Excavating, between Trudi R. Watkins and Peggy L. Watkins will be dissolved by mutual consent of the partners pursuant to the terms of the Partnership agreement as of June 1, 2012.

All debts owed to the partnership, and all claims against the partnership, will be received by Peggy Watkins, at 10403 Phillipsville Road, Wattsburg, Pennsylvania 16442.

May 25

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 or Fictitious Name." Said Certificate contains the following information:

FICTITIOUS NAME NOTICE

1. Fictitious Name: Action Shots
2. Address of the principal place of business, including street and number: 4683 Parkwood Drive, Erie, PA 16510
3. The real name and address, including street and number of the person who is a party to the

registration: Desiree Long, 4683 Parkwood Drive, Erie, PA 16510

4. An Application for Registration of Fictitious Name and Fictitious Name Act was filed on or about May 11, 2012.

Timothy D. McNair, Esquire

821 State Street

Erie, PA 16501-1316

(814) 452-0700

May 25

FICTITIOUS NAME NOTICE

Notice is hereby given that an Application for Registration of Fictitious Name was filed in the Commonwealth of Pennsylvania on January 26, 2012 for J&D Liquidators located at 2619 Evanston Avenue, Erie, PA 16506. The name and address of each individual interested in the business is Jeffrey Kodba, 2619 Evanston Avenue, Erie, PA 16506. This was filed in accordance with 54 Pa.C.S. 311.

May 25

INCORPORATION NOTICE

NOTICE is hereby given that The Hope Movement has been incorporated under the provisions of the Business Corporation Law of 1988.

Craig A. Zonna, Esq.

Elderkin Law Firm

150 E. 8th St.

Erie, PA 16501

May 25

INCORPORATION NOTICE

Notice is hereby given that PMware, 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

May 25

LEGAL NOTICE

In the Court of Common Pleas of Erie County, PA Docket #11190-12 Daniel Young vs. Clayton Gorn Notice was filed March 29, 2012 for a Motion for Involuntary Transfer of Vehicle Ownership pertaining to 1994 Chevrolet Sedan, VIN# 2G1WL54TXR111153. Motion

will be heard on June 21, 2012 at 8:45am, courtroom B-208, Erie County Court House.

May 25

LEGAL NOTICE

In the Court of Common Pleas of Erie County, PA

Case #2012-11812

A hearing for a Motion of Involuntary Transfer of Vehicle Ownership of a 1966 Dodge ½ ton pickup truck. VIN #1862051984. Color: Red. Currently in possession of DAVID R. CARRIER, 899 Donation Rd., Erie, PA 16509.

Hearing will be held on June 27, 2012 at 8:45 a.m. in courtroom H-229 of the Erie County Court House, 140 W. 6th St., Erie, PA 16501.

May 25

LEGAL NOTICE

**SALE OF HAMILTON SCHOOL
BY SEALED BID**

The School District of the City of Erie has declared all that certain piece or parcel of land and all improvements located thereon, being located in the City of Erie, County of Erie, Commonwealth of Pennsylvania, commonly known as the **Hamilton School**, being more particularly described as a 4.6 acre, more or less, parcel of real property, with an address of 2931 Harvard Street, Erie, PA 16508, and identified as Erie County Tax Index No. (19) 6231-100, to be unused and unnecessary to the District. **The Board of Directors of the District has resolved to sell this Property by sealed bid.** Terms and conditions of sale were fixed by Board resolution dated May 2, 2012, which are part of the bid packet.

Interested bidders may pick up bid packets from the District's Board Secretary's office, located at the Dr. James E. Barker Leadership Center, 148 W. 21st Street, Erie, PA 16502, during the hours of Monday through Friday from 8 a.m. through 4 p.m. **Bids must be received by the District, in the Board Secretary's office located at the Dr. James E. Barker Leadership Center.**

148 W. 21st Street, Erie, PA 16502, by 12 p.m. on Wednesday, May 30, 2012.

Bidders are required to submit a Bid Deposit made payable to the School District of the City of Erie in the amount of \$10,000, in the form of a cashier's check or certified check, at the time the Bids are submitted to the District.

Bids shall be opened publicly and read aloud in the Board Secretary's office, located at the above-referenced address, at 12 p.m. on Wednesday, May 30, 2012. The District reserves the right to waive any defects, errors, omissions, mistakes or irregularities in the Bids. The District reserves the right to reject any or all bids. The Board of Directors, if it determines it to be in the best interest of the District to award a bid, shall award the bid to the highest responsible and responsive bidder at a public meeting on June 6, 2012 at 12 p.m. at the Dr. James E. Barker Leadership Center, 148 W. 21st Street, Erie, PA 16502, Conference Room 1.

May 11, 18, 25

LEGAL NOTICE

MARSHAL'S SALE: By virtue of a Writ of Execution issued out of the U. S. Court for the W. D. of PA at suit of the USA at Civil No. 1:11-cv-00206, I shall expose to public sale the real property of Terry A. Hughes and Erin D. Hughes known as 1156 Lake Street, Lake City, PA 16423, being fully described in the Deed dated January 7, 1983 and recorded January 10, 1983 in the Recorder's Office of Erie County, Pennsylvania, in Deed Book Volume 1482, Page 197.

TIME AND LOCATION OF SALE: Tuesday, June 12, 2012 at 9:30 A.M. at the Erie County Courthouse, Courtroom 209, 140 West Sixth Street, Erie, PA 16501.

TERMS OF SALE: Successful bidder will pay ten percent (10%) by cashier's check, certified check or bank money order at the time of 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. The successful bidder must send payment of the balance of the bid directly to the U.S. Marshal's Office c/o Ms. 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 the Marshal's Office 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. The successful bidder takes the real estate subject to, and shall pay all taxes, water rents, sewer charges, municipal claims, and other charges and liens not divested by the sale. Purchaser must furnish State Realty Transfer Tax Stamps, and stamps required by the local taxing authority. Purchaser shall furnish Marshal with Grantee information at the time of the sale. Marshal's costs, fees and commissions are to be borne by seller. Steve Frank, United States Marshal. For additional information visit www.resales.usda.gov or contact Ms. Cathy Diederich at 314-457-5514.

May 11, 18, 25 and Jun. 1

LEGAL NOTICE

MARSHAL'S SALE: By virtue of a Writ of Execution issued out of the U. S. Court for the W. D. of PA at suit of the USA at Civil No. 1:11-cv-00176, I shall expose to public sale the real property of Jennifer M. McCarthy and Jason P. Vanderburg known as 10978 South Shore Avenue, North East, PA 16428, being fully described in the Deed dated December 12, 2003 and recorded December 15, 2003 in the Recorder's Office of Erie County, Pennsylvania, in Deed Book Volume 1094, Page 649.

TIME AND LOCATION OF SALE: Tuesday, June 12, 2012 at 9:30 A.M. at the Erie County Courthouse, Courtroom 209, 140 West Sixth Street, Erie, PA 16501.

TERMS OF SALE: Successful bidder will pay ten percent (10%) by cashier's check, certified check or bank money order at the time of 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. The successful bidder must send payment of the balance of the bid directly to the U.S. Marshal's Office c/o Ms. 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 the Marshal's Office 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. The successful bidder takes the real estate subject to, and shall pay all taxes, water rents, sewer charges, municipal claims, and other charges and liens not divested by the sale. Purchaser must furnish State Realty Transfer Tax Stamps, and stamps required by the local taxing authority. Purchaser shall furnish Marshal with Grantee information at the time of the sale. Marshal's costs, fees and commissions are to be borne by seller. Steve Frank, United States Marshal. For additional information visit www.resales.usda.gov or contact Mr. Daniel Varland at 314-457-5489.

May 11, 18, 25 and Jun. 1

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AUDIT LIST
NOTICE BY
PATRICK L. FETZNER

Clerk of Records,
Register of Wills and Ex-Officio Clerk of
the Orphans' Court Division, of the
Court of Common Pleas of Erie County, Pennsylvania

The following Executors, Administrators, Guardians and Trustees have filed their Accounts in the Office of the Clerk of Records, Register of Wills and Orphans' Court Division and the same will be presented to the Orphans' Court of Erie County at the Court House, City of Erie, on **Tuesday, May 29, 2012** and confirmed Nisi.

June 21, 2012 is the last day on which Objections may be filed to any of these accounts.

Accounts in proper form and to which no Objections are filed will be audited and confirmed absolutely. A time will be fixed for auditing and taking of testimony where necessary in all other accounts.

<u>2012</u>	<u>ESTATE</u>	<u>ACCOUNTANT</u>	<u>ATTORNEY</u>
118.	Donald G. Steva	Patrick Forest Steva, Executor	Ritchie T. Marsh, Esq.
119.	Joanne Root, a/k/a	James R. Steadman, Esq., Jo Anne Root Personal Representative	James R. Steadman, Esq.
120.	Joseph A. Smith	Debbie Tarr, Administratrix	David J. Rhodes, Esq.

PATRICK L. FETZNER
Clerk of Records
Register of Wills &
Orphans' Court Division

May 18, 25

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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**BRANDON, PEGGY L.,****deceased**

Late of the Township of Millcreek
Executrix: Patricia L. Tomczak,
11290 Lake Pleasant Road, Union
City, PA 16438

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

BROWN, LARRY ALLEN,**deceased**

Late of the Township of Girard,
County of Erie, Pennsylvania
Executor: Raymond Brown, 1008
Spruce Tree Drive, Girard, PA
16417

Attorney: None

BRUSH, ROSE IRENE,**deceased**

Late of Waterford, the Township
of Washington, County of
Erie, and Commonwealth of
Pennsylvania

Administratrix: Joan M. Hair,
3625 Roma Drive, Erie, PA 16510
Attorney: None

BURNS, REGIS P.,**deceased**

Late of Fairview Township, Erie
County, Pennsylvania
Executor: Andrew C. Burns,
5110 Ferndale Place, Fairview,
PA 16415

Attorney: Brian Glowacki,
Esquire, Knox McLaughlin
Gornall & Sennett, P.C., 120 West
Tenth Street, Erie, PA 16501

CURRIE, MARIAN B.,**deceased**

Late of Borough of North East,
Erie County, Pennsylvania

Executor: R. Thomas Huber, 196
Eastwood Dr., North East, PA
16428

Attorney: Leigh Ann Orton, Esq.,
James S. Bryan, Esq., Knox
McLaughlin Gornall & Sennett,
P.C., 11 Park Street, North East,
PA 16428

DeSANTO, ARLENE R.,**deceased**

Late of the Township of
Erie, County of Erie, State of
Pennsylvania

Executor: Randolph J. DeSanto,
6075 Meridian Drive, Erie,
Pennsylvania 16509

Attorney: None

FAGLEY, RITA A.,**deceased**

Late of the Township of
Millcreek, County of Erie, State
of Pennsylvania

Executor: Ronald H. Fagley,
9273 West Lake Road, Lake City,
Pennsylvania 16423

Attorney: James R. Steadman,
Esq., 24 Main St. E., P.O. Box 87,
Girard, Pennsylvania 16417

KIGHTLINGER, SHIRLEY M.,**deceased**

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

Executor: Paul B. Kightlinger,
c/o David R. Devine, Esq., 201
Erie Street, Edinboro, PA 16412

Attorney: David R. Devine, Esq.,
201 Erie Street, Edinboro, PA
16412

MALINOWSKI, FLORENCE**ESTHER,****deceased**

Late of the Township of
Waterford, County of Erie and
Commonwealth of Pennsylvania

Executrices: Lorraine H.
Malinowski and Loretta J. Fiore
Attorney: Gery T. Nietupski,
Esq., The Law Offices of Gery
T. Nietupski, Esquire LLC, 818
State Street, Erie, Pennsylvania
16501

REILLY,**MONSIGNOR ROBERT J.,****deceased**

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

Executor: Michael P. Ferrick,
c/o Thomas J. Buseck, Esq., The
McDonald Group, L.L.P., 456
West 6th Street, Erie, PA 16507

Attorney: Thomas J. Buseck,
Esq., The McDonald Group,
L.L.P., 456 West 6th Street, Erie,
PA 16507

SECHRIST,**THOMAS****RUSSELL,****deceased**

Late of the County of Erie and
State of Pennsylvania

Executor: Timothy T. Sechrist,
c/o Edward J. Niebauer, Esquire,
558 West 6th Street, Erie,
Pennsylvania 16507

Attorney: Edward J. Niebauer,
Esquire, Talarico & Niebauer,
558 West 6th Street, Erie,
Pennsylvania 16507

SINNOTT, HENRIETTA ROSE,**deceased**

Late of Millcreek Township, Erie
County, Pennsylvania

Executor: Christopher J. Sinnott,
Esq., 516 West Tenth Street, Erie,
PA 16501

Attorney: Jerome C. Wegley,
Esq., Knox McLaughlin Gornall
& Sennett, P.C., 120 West Tenth
Street, Erie, PA 16501

SOMERDER, ALBERT,**deceased**

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

Executor: Denis W. Krill, 309
French Street, Erie, Pennsylvania
16507

Attorney: Denis W. Krill,
Esquire, 309 French Street, Erie,
Pennsylvania 16507

**WEISENFLUH, ELEANOR M.,
deceased**

Late of the Township of Lawrence Park, County of Erie, Commonwealth of Pennsylvania
Executor: Mark G. Weisenfluh, 2612 Lakeside Drive, Erie, Pennsylvania 16511
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

SECOND PUBLICATION

**BOGART, ROBERT F.,
deceased**

Late of the City of Erie, County of Erie and State of Pennsylvania
Executor: Sharon A. Shaffer, c/o Denis W. Krill, Esquire, 309 French Street, Erie, Pennsylvania 16507
Attorney: Denis W. Krill, Esquire, 309 French Street, Erie, Pennsylvania 16507

**EDKIN, WILLIAM L., a/k/a
WILLIAM EDKIN,
deceased**

Late of the Township of Fairview, County of Erie, State of Pennsylvania
Executor: Jack Raymond Edkin, 2905 Oakwood Street, Erie, Pennsylvania 16508
Attorney: Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, Pennsylvania 16417

**FAVA, FRANK P.,
deceased**

Late of Harborcreek Township, Erie County, Pennsylvania
Executor: John R. Falcone, 135 East 6th Street, Erie, Pennsylvania 16501
Attorney: John R. Falcone, Esq., The Gideon Ball House, 135 East 6th Street, Erie, Pennsylvania 16501

**GASHGARIAN, FRANCES,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Administratrix: Susan Finazzo
Attorney: Tibor R. Solymosi, Esquire, Segel & Solymosi, 818 State Street, Erie, Pennsylvania 16501

**HARRIMAN, ROBERTA P.,
deceased**

Late of the Township of Washington, County of Erie and State of Pennsylvania
Executor: Charles R. Harriman, c/o David R. Devine, 201 Erie Street, Edinboro, PA 16412
Attorney: David R. Devine, Esq., 201 Erie Street, Edinboro, PA 16412

**LAMIS, ALEXANDER P.,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executrix: Renee M. Lamis, c/o 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508
Attorney: Darlene M. Vlahos, Esquire, 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508

**LAYDEN, MARY JANE,
deceased**

Late of Fairview Township
Executor: Paul W. Layden, 6726 West Manchester Beach Road, Fairview, PA 16415
Attorney: Robert G. Dwyer, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**LEGENZOFF, JEANNI LEE,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Administratrix: Elvira Bromberg, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Colleen R. Stumpf, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**McGRAW, JEANNE P.,
deceased**

Late of the City of Erie, Erie County, Pennsylvania
Executor: Daniel G. McGraw, 320 Maryland Avenue, Erie, PA 16505
Attorney: Michael J. Visnosky, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**OAKES, DAVID K.,
deceased**

Late of Wesleyville Borough
Executrix: Beverly McCurdy, c/o Attorney Terrence P. Cavanaugh, 3336 Buffalo Road, Wesleyville, PA 16510
Attorney: Terrence P. Cavanaugh, Esq., 3336 Buffalo Road, Wesleyville, PA 16510

**OZOLEK, ANN E., a/k/a
ANNA E. OZOLEK, a/k/a
ANNA E. CASTRILLA OZOLEK,
deceased**

Late of the Township of Fairview, County of Erie, State of Pennsylvania
Co-Executors: John A. Ozolek, 209 Sherly Lane, Pittsburgh, Pennsylvania 15221 and Katherine Ann Bartlebaugh, 1453 West Grandview Blvd., Erie, Pennsylvania 16509
Attorney: James R. Steadman Esq., 24 Main St. E., P.O. Box 87, Girard, Pennsylvania 16417

**PERSEO, ALBERT J.,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executrix: Katherine A. Nick, c/o 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508
Attorney: Darlene M. Vlahos, Esquire, 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508

**SMITH, ETHEL F.,
deceased**

Late of Millcreek Township, County of Erie and Commonwealth of Pennsylvania
Executrix: Linda K. Smith
Attorney: David J. Rhodes, Esquire, Elderkin Law Firm, 150 East 8th Street, Erie, PA 16501

THIRD PUBLICATION

**ALBERTSON, ROBERT F.,
deceased**

Late of the Township of Millcreek, County of Erie, and Commonwealth of Pennsylvania
Executrix: Linda M. Albertson, c/o Yochim, Skiba & Nash, 345 West 6th Street, Erie, PA 16507
Attorney: Gary V. Skiba, Esquire, Yochim, Skiba & Nash, 345 West 6th Street, Erie, PA 16507

**BILINSKI, ALICE R.,
deceased**

Late of McKean, Erie County
Executor: John L. Bilinski, 3842 Ellington Street, Kennedy, NY 14747
Attorney: Donald J. Rogala, Esquire, 246 West 10th Street, Erie, PA 16501

**BUETIKOFER, WALTER H.,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Co-Executors: David Seib and Peggy Seib, 537 Wilshire Ave., Erie, PA 16509
Attorney: John E. Gomolchak, Esq., 3854 Walker Blvd., Erie, PA 16509

**DARR, JOHN P., a/k/a
J.P. "SKIP" DARR, a/k/a
JOHN P. "SKIP" DARR, a/k/a
JOHN PHILLIP DARR,
deceased**

Late of the Township of Fairview, County of Erie, State of Pennsylvania
Executor: John D. Darr, 2909 Tannery Road, Girard, Pennsylvania 16417
Attorney: James R. Steadman, Esq., 24 Main St. E., P.O. Box 87, Girard, Pennsylvania 16417

**FENNER, SCOTT D., a/k/a
SCOTT DAVID FENNER, a/k/a
SCOTT FENNER,
deceased**

Late of the City of Erie, County of Erie, State of Pennsylvania
Executor: Stephen C. Fenner, 9185 Tannery Road, Girard, Pennsylvania 16417
Attorney: James R. Steadman, Esq., 24 Main St. E., P.O. Box 87, Girard, Pennsylvania 16417

**HOSSMAN, EARL R., a/k/a
EARL HOSSMAN,
deceased**

Late of the Township of Fairview, County of Erie, State of Pennsylvania
Executrix: Joan R. Delavern, 8951 Francis Road, Girard, Pennsylvania 16417
Attorney: James R. Steadman, Esq., 24 Main St. E., P.O. Box 87, Girard, Pennsylvania 16417

**KEISTER, STEPHEN R.,
deceased**

Late of the City of Erie, County of Erie and State of Pennsylvania
Executors: Cynthia Hepfer and Philip B. Friedman, c/o 17 West 10th Street, Erie, Pennsylvania 16501
Attorneys: Conner Riley Friedman & Weichler, 17 West 10th Street, Erie, Pennsylvania 16501

**LAIRD, DONALD L.,
deceased**

Late of the City of Erie
Administratrix: Terri L. Laird
Attorney: Andrew J. Sisinni, Esquire, 3820 Liberty Street, Erie, PA 16509

**MATHER, WILLIAM K., SR.,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executor: Nancy Taylor, 4 Eaton Place, Woodstock, VT 05091
Attorney: Denise C. Pekelnicky, Esq., 333 State Street, Suite 203, Erie, PA 16507

**OGSBURY, DORIS S.,
deceased**

Late of the Township of Millcreek, Erie County, Pennsylvania
Executor: William L. Ogsbury, IV, c/o 120 W. 10th Street, Erie, PA 16501
Attorney: Christine Hall McClure, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**PACINELLI, MARLENE M.,
deceased**

Late of the City of Erie, County of Erie, and Commonwealth of Pennsylvania
Administrator C.T.A.: Norma P. Tulio, P.O. Box 8409, Erie, PA 16505
Attorney: Catherine J. Spafford, Esq., The McDonald Group, L.L.P., 456 West 6th Street, Erie, PA 16507

**PICKENS, HAROLD D., a/k/a
H.D. PICKENS,
deceased**

Late of the Township of Conneaut, County of Erie, State of Pennsylvania
Executor: Neil S. Pickens, 13888 West Ridge Road, West Springfield, Pennsylvania 16443
Attorney: James R. Steadman, Esq., 24 Main St. E., P.O. Box 87, Girard, Pennsylvania 16417

**SABER, CHRISTINE,
deceased**

Late of Harborcreek Township, County of Erie and Commonwealth of Pennsylvania
Executor: Steve M. Saber
Attorney: David J. Rhodes, Esquire, Elderkin Law Firm, 150 East 8th Street, Erie, PA 16501

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 Erie, PA 16501 ----- *mkilmer@eriecountygov.org*

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