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Cummins v. Kappe Associates, Inc., et al.

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

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Immigration Law for the Corporate/Commercial & Labor/Employment Attorney
ECBA Live Lunch-n-Learn Seminar
Bayfront Convention Center
12:15 - 2:15 p.m. (11:45 a.m. lunch/reg.)
\$64 (ECBA member/non-attorney staff)
\$96 (nonmember) \$45 (member Judge)
2 hours substantive

WEDNESDAY, AUGUST 29, 2012

Petitions to Settle Small Estates and Other Ways to Avoid Formal Estate Settlement
ECBA Video Replay Seminar
Erie County Bar Association
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

FRIDAY, AUGUST 31, 2012

Fee Agreements
ECBA Video Replay Seminar
Erie County Bar Association
12:15 - 1:15 p.m. (11:45 a.m. lunch/reg.)
\$32 (ECBA member/non-attorney staff)
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1 hour substantive

TUESDAY, SEPTEMBER 11, 2012

Personal Contact
ECBA Live Seminar
Bayfront Convention Center
Seminar - 4:00 - 5:00 p.m. (3:45 p.m. reg.)
Happy Hour - 5:00 p.m. - 6:00 p.m.
\$32 (ECBA member/non-attorney staff)
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1 hour substantive

THURSDAY, SEPTEMBER 20, 2012

The Sunshine Act, the Right-to-Know Law, and the New Borough Code
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8:30 a.m. - 11:45 p.m. (8:00 a.m. reg.)
\$96 (ECBA member/non-attorney staff)
\$145 (nonmember) \$67 (member Judge)
3 hour substantive

THURSDAY, SEPTEMBER 20, 2012

A Workshop on Estates - Beyond the Basics
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Bayfront Convention Center
8:30 a.m. - 11:45 p.m. (8:00 a.m. reg.)
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\$145 (nonmember) \$67 (member Judge)
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In Memoriam



Joseph F. MacKrell *December 18, 1927 - August 9, 2012*

Attorney Joseph Frederick MacKrell, Sr., passed away Thursday, August 9, 2012. He was born in Erie on December 18, 1927, a son of the late Joseph C. and Marion E. Spahr MacKrell.

His early education began at Sacred Heart School and Cathedral Prep in Erie. He then enlisted in the US Navy and served on Guam in the South Pacific from 1945-46. After his service, he attended Gannon College and went on to pursue a law degree at the University of Notre Dame, remaining a loyal son of Notre Dame all of his days. In his final year at Notre Dame he was honored by an appointment as Editor of the Notre Dame Lawyer.

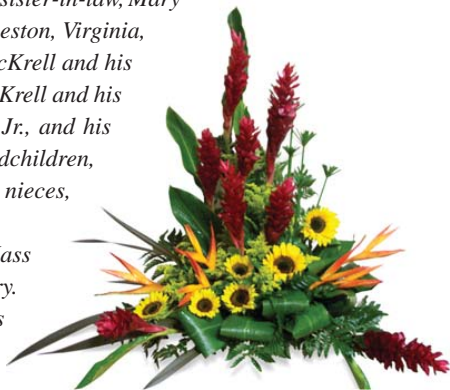
Following law school, Attorney MacKrell joined the law firm now known as Knox McLaughlin Gornall and Sennett. He specialized in municipal law, real estate and workers' compensation, and fought tirelessly to ensure fair treatment for employers and workers alike. He performed significant pro bono work and was a member of the original board of the Institute of Public Defenders as well as an original incorporator of Northwestern Legal Services. His work in these areas was highly respected by his fellow lawyers and by the many people he was able to assist in difficult times.

Joe centered his life on faith, family and his work as an attorney. He was a lifelong member of Sacred Heart Church, and freely offered his time and expertise, serving in numerous parish positions. He raised five children and gave them an unforgettable example of living faith and rock-solid integrity. He also nudged most of them into following in his footsteps at Notre Dame. He enjoyed a cheerful social life with family and close friends. He particularly cherished the "Elite Eight," the group of his siblings and their spouses who dined out together every week for over thirty years.

He was preceded in death by his wife of 52 years, Jean Rinda MacKrell; a sister, Rosemary Maloney; a brother, James MacKrell; a sister Kathryn Ann who died in infancy; and brothers-in-law William Maloney and Thomas Van Volkenburg.

He is survived by his sister, Ethel Van Volkenburg; a sister-in-law, Mary Jane MacKrell; two daughters, Eileen MacKrell of Reston, Virginia, and Betsy MacKrell of Erie; three sons, William MacKrell and his wife Diane of Durham, North Carolina; Patrick MacKrell and his wife Linda of Austin, Texas; and Joseph MacKrell, Jr., and his wife Jane, of Highland, Maryland; and three grandchildren, Michael, Marguerite and Jonathan MacKrell. Many nieces, nephews and cousins also survive.

Attorney MacKrell was laid to rest, after a Mass of Christian Burial, in Gate of Heaven Cemetery. Memorials may be made to Sacred Heart Church's Fr. Engel Scholarship Fund or to the Veterans Administration Hospice in Erie.



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**ROBERT J. CUMMINS, d/b/a BOB CUMMINS
CONSTRUCTION CO., Plaintiff**

v.

**KAPPE ASSOCIATES, INC., SPENCER TURBINE, INC.,
PAULA A. LOGAN, ESQUIRE, and POWELL, TRACHTMAN,
LOGAN, CARRIE, BOWMAN & LOBARDO, Defendants**

CIVIL PROCEDURE / PRELIMINARY OBJECTIONS

Courts will take judicial notice of public statutes and thus such laws need not be specifically pleading provided sufficient facts are alleged to bring the case within the statute in question.

CIVIL PROCEDURE / PRELIMINARY OBJECTIONS

Pa.R.C.P. 1019 requires that the material facts on which a cause of action or defense is based shall be stated in a concise and summary form. Allegations in a complaint will satisfy this rule if they (1) contain averments of all the facts the pleader will eventually have to prove in order to recover and (2) they are sufficiently specific so as to enable the defendant to prepare his/her defense.

CIVIL PROCEDURE / PRELIMINARY OBJECTIONS

The question presented by a demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. Only factual allegations are to be considered true for purposes of a demurrer, not conclusions of law. The only time a demurrer should be sustained is when the plaintiff has clearly failed to state a claim upon which relief may be granted. If there is any doubt as to the adequacy of the complaint, a demurrer should not be sustained.

*CIVIL PROCEDURE / PLEADINGS / WRONGFUL USE OF CIVIL
PROCEEDINGS*

Wrongful use of civil proceedings and malicious prosecution are often used interchangeably in Pennsylvania

*CIVIL PROCEDURE / PLEADINGS / WRONGFUL USE OF CIVIL
PROCEEDINGS*

A cause of action for wrongful use of civil proceedings governed by the Dragonetti Act, 42 Pa.C.S.A. 8351 et seq., requires a plaintiff to allege and prove that (1) the defendant has procured, initiated or continued civil proceedings against him; (2) the proceedings were terminated in his favor; (3) the defendant did not have probable cause for his action; (4) the primary purpose for which the proceedings were brought was not that of securing proper discovery, joinder of parties or adjudication of the claim on which the proceedings were based; and (5) the plaintiff has suffered damages.

*CIVIL PROCEDURE / PLEADINGS / WRONGFUL USE OF CIVIL
PROCEEDINGS / PROBABLE CAUSE*

Probable cause is only a question of law for the Court to decide if the Court can determine whether probable cause exists under an admitted or clearly established state of facts. If facts material to the issue of probable cause are in controversy, the existence of probable cause may be submitted to the jury.

*CIVIL PROCEDURE / PLEADINGS / WRONGFUL USE OF CIVIL
PROCEEDINGS / PROBABLE CAUSE*

A person who takes part in the procurement, initiation or continuation of civil proceedings against another has probable cause for doing so if he reasonably believes in the existence of facts upon which the claim is based and either (1) reasonably believes that under those facts the claim may be valid under the existing or developing law; (2) believes to this effect in reliance upon the advice of counsel, sought in good faith and given after full disclosure of all relevant facts within his knowledge and information; or (3) believes as an attorney of record, in good faith that his procurement, initiation or continuation of a civil cause is not intended to merely harass or maliciously injure the opposite party.

*CIVIL PROCEDURE / WRONGFUL USE OF CIVIL
PROCEEDINGS / DAMAGES*

The Dragonetti Act provides that a plaintiff is entitled to recover for (1) the harm normally resulting from any arrest or imprisonment, or any dispossession or interference with the advantageous use of his land, chattels or other things, suffered by him during the course of the proceedings; (2) the harm to his reputation by any defamatory matter alleged as the basis of the proceedings; (3) the expense, including any reasonable attorney fees, that he has reasonably incurred in defending himself against the proceedings; (4) any specific pecuniary loss that has resulted from the proceedings; (5) any emotional distress that is caused by the proceedings; and (6) punitive damages according to law in appropriate cases

DAMAGES / PUNITIVE DAMAGES

Whether a defendant's actions arise to outrageous conduct lies within the sound discretion of the fact-finder.

DAMAGES / PLEADING

Damages are either general or specific. General damages are those that are the usual and ordinary consequence of the wrong done. Special damages are those that are not the usual and ordinary consequence of the wrong done but which depend on special circumstances. General damages may be proven without specifically pleading them; however, special damages may not be proved unless special facts giving rise to them are averred.

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY,
PENNSYLVANIA CIVIL DIVISION No. 10454 - 2007

Appearances: Gregory A. Henry, Esq., Attorney for Plaintiff
Todd B. Narvol, Esq., and Jason C. Giurintano, Esq.,
Attorneys for Defendant Kappe Associates, Inc.
John B. Fessler, Esq., Attorney for Defendant Spencer
Turbine, Inc.
Dennis J. Roman, Esq., and Charlene S. Seibert, Esq.,
Attorneys for Defendants Logan and Powell,
Trachtman, Logan, Carrie, Bowman & Lombardo

OPINION

Connelly, J. January 23, 2012

This matter is before the Court pursuant to Preliminary Objections filed by Defendant Kappe Associates, Inc. (hereinafter "Defendant Kappe"), Defendant Spencer Turbine, Inc. (hereinafter "Defendant Spencer"), and Defendants Logan and Powell, Trachtman, Logan, Carrie, Bowman & Lobardo (hereinafter "Defendants Logan and Powell"). Robert J. Cummins d/b/a Bob Cummins Construction Co. (hereinafter "Plaintiff") opposes.

Procedural History/Statement of Facts

On February 2, 2007, Plaintiff commenced this action by filing a praecipe for writ of summons against Defendants. Plaintiff filed his Complaint on April 1, 2011 alleging Wrongful Use of Civil Proceedings. Plaintiff alleges the underlying action was filed in the federal district court in Erie, Pennsylvania¹ on June 27, 2002 by Defendants Kappe and Spencer against Plaintiff, Stewart Mechanical, Inc. (hereinafter "Stewart"), and the Smethport Borough Authority (hereinafter "the Authority"). *Complaint*, ¶ 7. Plaintiff alleges Defendants Logan and Powell were legal counsel for and represented Defendants Kappe and Spencer in the underlying action. *Id.*

The facts surrounding the underlying action are as follows. The Authority "hired [Plaintiff] as the general contractor for [a p]roject" expanding and improving the Authority's waste water treatment plant. *Kappe Associates v. Bob Cummins Construction et al.*, No. 1:02-cv-00204-MBC (Erie), p. 2 (W.D. Pa. Feb. 3, 2005). Plaintiff then "entered into a subcontract with [Stewart]," whereby Stewart would "provide and install specific waste water treatment equipment, along with startup services and warranties." *Id.* The contract between Plaintiff and Stewart

¹ The underlying action can be found at docket number 1:02-cv-00204-MBC (Erie) in the United States District Court for the Western District of Pennsylvania.

was for \$628,190.00. *Id.* at p. 14.

Defendants Kappe and Spencer "agreed to provide Stewart with the necessary equipment and services the [p]roject required." *Id.* The underlying action alleged Defendants Kappe and Spencer only contracted with Stewart because Plaintiff assured Defendants Kappe and Spencer "that Stewart was creditworthy and that payment was guaranteed from either [Plaintiff or Stewart] to Kappe and Spencer." *Complaint, No. 1:02-cv-00204-MBC (Erie)*, In ¶¶ 14-15 [hereinafter "Underlying Action Complaint"].

Thereafter, Defendants Kappe and Spencer delivered the products and invoiced Stewart for \$85,000.00 and \$56,000.00, respectively. *Kappe Associates, No. 1:02-cv-00204-MBC (Erie)*, at p. 3. Defendant Kappe "received partial payment from Stewart in the amount of \$40,221.00, leaving an outstanding balance of \$46,932.00," which Stewart never paid. *Id.* With regard to Defendant Spencer's invoice, "Stewart sent Spencer a check in the amount of \$53,500.00. This check was dishonored for insufficient funds." *Id.* Defendant Spencer never received any of the \$56,000.00 owed to it by Stewart. *Id.* It is undisputed that Plaintiff "paid Stewart for most of the equipment and related services it purchased from Stewart," though Plaintiff "continue[d] to owe Stewart an unpaid balance of \$11,566.29." *Id.*

When Defendants Kappe and Spencer were unable to collect from Stewart, Defendant Spencer sent a letter dated April 27, 2001 "notif[ying] both [Plaintiff and the Authority] that [Defendants Kappe and Spencer] had been unable to collect from Stewart on their invoices, and that they were seeking these funds from [Plaintiff] and the Authority." *Id.* In response, Plaintiff wrote the Authority a letter dated May 11, 2001 and copied Defendants Kappe and Spencer on the correspondence, explaining that the Procurement Code² "provided the Authority with an absolute defense and provided [Plaintiff] with a conditional defense to any contractual or quasi-contractual liability which could be asserted by Defendants Kappe and Spencer." *Complaint, ¶¶ 9, 12.* Specifically, the letter stated, "because neither the Borough of Smethport nor the [Authority] was in privity with [Defendant Spencer], neither entity can have any liability whatsoever to it," and "because [Plaintiff] paid Stewart

² Title 62 of the Pennsylvania Consolidated Statutes is referred to as the Procurement Code. See 62 Pa. C.S. § 101 ("Short Title of part. This part shall be known and may be cited as the Commonwealth Procurement Code."). At issue in the present case is section 3939 of the Procurement Code:

(a) *No obligation to third parties.* --The government agency shall have no obligation to any third parties for any claim.
 (b) *Barred claims.* --Once a contractor has made payment to the subcontractor according to the provisions of this subchapter, future claims for payment against the contractor or the contractor's surety by parties owed payment from the subcontractor which has been paid shall be barred.

62 Pa. C.S. § 3939.

Mechanical, Inc. in full,³ neither [Plaintiff] nor its bonding company can have any liability whatsoever to [Defendant Spencer]." *Id.* at ¶ 9.

On June 18, 2001, Defendant Spencer replied by letter, noting that Plaintiff offered no proof of payment to Stewart. *Complaint, attached June 18, 2001 letter, p. 1.* Defendant Spencer then explained that Stewart's nonpayment constituted a "material breach" that "relieved Spencer of any prospective obligations regarding the underlying contract, including, *inter alia*, equipment check out and start-up, warranty or any related services respecting the equipment." *Id.* at p. 2. Furthermore, Defendant Spencer wrote,

to the extent that any of Spencer's intellectual property is currently in the possession of the [Authority] or [Plaintiff], which was procured by or on behalf of Stewart . . . , Spencer revokes all licenses and demands the immediate return of this proprietary intellectual property. Notice is hereby provided that further use of these materials is prohibited without the written prior consent of Spencer and that these materials are protected by the Copyright laws.

Id. Defendant Spencer then agreed to "consider offers from the [Authority] to purchase a limited, non-exclusive license to utilize the intellectual property, purchase an equipment warranty from Spencer, and procure start-up services for the [Authority] upon the payment of the total sum of \$56,000," which was the amount Stewart owed Defendant Spencer. *Id.*

The Authority responded by way of letter on June 20, 2001. The Authority expressed its "opinion that the Authority ha[d] no responsibility for payment to [Defendant Spencer] under the Procurement Code." *Complaint, attached June 20, 2001 letter.* Furthermore, the Authority had "no intention of returning any of what [Defendant Spencer] describe[d] as 'Spencer's intellectual property.' As far as [the Authority was] concerned, [it had] no legal obligation to do so." *Id.*

A little over a year later, on June 27, 2002, Defendants Kappe and Spencer filed the underlying action, arguing that Stewart's conduct constituted theft and that Plaintiff had admitted Stewart "obtained Kappe's and Spencer's copyrighted intellectual and other property through theft." *Underlying Action Complaint, ¶¶ 21, 26.* The underlying action therefore alleged copyright infringement (Count I) and equitable restitution/unjust enrichment (Count III) against Plaintiff, Stewart and the Authority; fraud and conversion (Count II) against Plaintiff

³ This letter erroneously stated that Plaintiff had paid Stewart in full, but as noted earlier, \$11,566.29 remained unpaid on the \$628,190.00 contract. *See Kappe Associates, No. 1:02-cv-00204-MBC (Erie)*, at p. 14.

and Stewart; and quantum meruit (Count IV) against Plaintiff and the Authority. *Underlying Action Complaint*. Included in Defendants' complaint, in addition to the allegation that Defendants Kappe and Spencer only contracted with Stewart because Plaintiff orally guaranteed Stewart's payment, was an allegation that Plaintiff insisted he would pay what Stewart owed Defendants Kappe and Spencer only after Stewart was prosecuted. *Id. at ¶ 22*.

Plaintiff and the Authority both filed motions for summary judgment. Plaintiff's motion was only for partial summary judgment, because Plaintiff acknowledged that a question of material fact existed as to whether Plaintiff had orally guaranteed payment to Defendants Kappe and Spencer. The federal district court granted the Authority's motion for summary judgment and Plaintiff's motion for partial summary judgment. The federal district court found Defendants' theft argument meritless and determined that the Procurement Code insulated both the Authority and Plaintiff from liability for Stewart's nonpayment.

Thereafter, Plaintiff sent Defendants a letter on March 2, 2005 threatening to file a motion for sanctions if Defendants did not withdraw the remaining claim against Plaintiff (Count II for fraud and conversion) within thirty days. *Complaint, attached March 2, 2005 letter*. On March 22, 2005, Defendants withdrew the underlying action. *Docket, No. 1:02-cv-00204-MBC (Erie)*.

Plaintiff's Complaint alleges Defendants filed the underlying action when they knew it to be meritless in order to extort money from either Plaintiff or the Authority. *Complaint, ¶¶ 35-37*. Plaintiff alleges his contract with the Authority required he indemnify the Authority against "any and all claims, actions or proceedings, whether groundless or not, which were instituted against the Authority by third parties." *Id. at ¶ 22*. Plaintiff alleges the underlying action therefore cost him \$10,000 in his own attorney's fees and \$45,641.05 in the Authority's attorney's fees. *Id. at ¶ 23*. Plaintiff is demanding "the sum of \$55,641.05 together with appropriate pre-judgment and post-judgment interest, . . . punitive/exemplary damages in excess of \$50,000.00 together with appropriate interest thereon, . . . costs of this action and . . . such other relief as the Court deems just and proper." *Id. at p. 10*.

Defendants filed preliminary objections arguing: Plaintiff failed to cite the Dragonetti Act in his Complaint; wrongfully included the phrase "malicious prosecution" in the title of Count I; failed to plead facts legally sufficient to support a cause of action for wrongful use of civil proceedings; and seeks improper damages.

The Court must address these arguments in light of the applicable Pennsylvania law.

Findings of Law

Pennsylvania Rule of Civil Procedure 1028 allows "any party to any pleading" to file preliminary objections. *Pa. R.C.P. 1028(a)*. "All preliminary objections shall be raised at one time. . . . [and] shall state specifically the grounds relied upon and may be inconsistent." *Pa. R.C.P. 1028(b)*. In ruling on preliminary objections, a court must accept as true all well-pled facts which are relevant and material, as well as all inferences reasonably deducible therefrom. *Bower v. Bower*; 611 A.2d 181, 182 (Pa. 1992). In order to sustain preliminary objections, it must appear with certainty, or be "clear and free from doubt" based on the facts as pleaded, "that the pleader will be unable to prove facts legally sufficient to establish his right to relief." *Id.*

To that end, the Court has weighed the applicable law as it relates to the facts of this case along with the merit of the arguments presented by both Plaintiff and Defendants. The Court must address the following specific issues: whether Plaintiff's failure to cite the Dragonetti Act is fatal to his claim; whether Plaintiff's inclusion of "malicious prosecution" in brackets in Count I's title is fatal to his claim; whether Plaintiff has pled facts legally sufficient to support a wrongful use of civil proceedings action; and whether Plaintiff is entitled to the damages he seeks.

I. Failure to cite to the Dragonetti Act

Defendant Spencer preliminarily objects to Plaintiff's failure to cite the statute under which his claim was brought. Defendant Spencer argues that "Plaintiff cites no statutory basis for his cause of action, and therefore it is assumed he is pursuing a common-law cause of action." *Defendant Spencer's Preliminary Objections*, ¶ 14. Defendant Spencer argues that Pennsylvania has codified the common law wrongful use of civil proceedings action and therefore "the exclusive remedy for a Wrongful Use of Civil Proceedings claim is the Dragonetti Act, and Plaintiff has not pled this in his Complaint." *Id.* at ¶ 17.

Similarly, Defendant Kappe's preliminary objection argues "Pennsylvania law does not recognize a common law claim for civil malicious prosecution. The claim was codified in 1980. The Complaint does not identify any statutory basis for the claim of malicious prosecution," and so Defendant Kappe argues the Complaint should be dismissed with prejudice. *Defendant Kappe's Brief in Support*, p. 6 (internal citation omitted).

Defendants Kappe and Spencer correctly note that Plaintiff's Complaint does not reference the Dragonetti Act, either by name or its statute citation. However, Defendants Kappe and Spencer cite no legal authority for their assertions that Plaintiff's Complaint must cite to any specific statutory authority. In fact, courts in Pennsylvania have held the opposite:

[A]s a rule universally recognized, . . . courts will take judicial notice of its public statutes. Such laws need not be pleaded or proved; it is not necessary to allege a violation of the statute, but, of course, the statement must set forth sufficient facts to bring the case within the statute. . . . [Therefore, w]here the facts relied upon bring the case within the statute, it is not necessary to plead it.

Goldberg v. Friedrich, 124 A. 186-87 (Pa. 1924) (internal citations omitted). *See also Godina v. Oswald*, 211 A.2d 91, 93 (Pa. Super. 1965) ("Statutes need not be specifically pleaded but there must be set forth sufficient facts to bring the case within the statute in question.") (citing *Goldberg*).

Pennsylvania is a fact-pleading state. *Lerner v. Lerner*, 954 A.2d 1229, 1235 (Pa. Super. 2008). Our Rule of Civil Procedure 1019(a) provides that the "material facts on which a cause of action or defense is based shall be stated in a concise and summary form." *Pa. R.C.P. 1019(a)*. This rule is meant "to enable the adverse party to prepare his case." *Smith v. Wagner*, 588 A.2d 1308, 1310 (Pa. Super. 1991) (citations and brackets omitted). It requires a complaint "do more than give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. [The complaint] should formulate the issues by fully summarizing the material facts. . . ., i.e., those facts essential to support the claim." *Id.* Allegations in a complaint will satisfy this Rule "if (1) they contain averments of all the facts the pleader will eventually have to prove in order to recover, and (2) they are sufficiently specific so as to enable the defendant to prepare his defense." *Id.*

In the instant case, the Complaint labels Count I as "Wrongful Use of Civil Proceedings [Malicious Prosecution]." *Complaint*, p. 7. Plaintiff listed the elements he would be required to prove for a wrongful use of civil proceedings action under the Dragonetti Act. *Id.* at ¶ 28. All of the Defendants identified the Dragonetti Act, 42 Pa. C.S. § 8351 *et seq.*, as Plaintiff's cause of action. All of the Defendants advanced preliminary objections that argued Plaintiff failed to satisfy the wrongful use of civil proceedings elements as laid out in the Dragonetti Act. Thus, Defendants were all obviously aware that Plaintiff's Complaint implicated the Dragonetti Act. Because Plaintiff is not required to specifically allege a violation of the Dragonetti Act, and because Plaintiff's Complaint is sufficiently specific so as to enable the Defendants to prepare their defenses, the preliminary objections relating to Plaintiff's failure to cite the Dragonetti Act are OVERRULED.

II. Malicious prosecution

Defendant Kappe's and Spencer's preliminary objections also argue that Plaintiff's Complaint should be dismissed because Plaintiff included "malicious prosecution" in brackets in Count I's title. They argue that such a claim would require the underlying cause of action be a criminal one, and the underlying action was clearly civil in this case. *Defendant Spencer's Preliminary Objections*, ¶¶ 28-30; *Defendant Kappe's Preliminary Objections*, ¶¶ 21-23.

This Court observes that "wrongful use of civil proceedings" and "malicious prosecution" are often used interchangeably in Pennsylvania case law. In *Werner v. Plater-Zyberk*, for example, appellant filed a wrongful use of civil proceedings action after appellees' suit alleging appellant violated the federal Racketeering Influence and Corrupt Organization Act was dismissed. 799 A.2d 776 (Pa. Super. 2002). When summarizing the facts of the case, the Superior Court stated appellant's complaint "asserted that . . . [appellees] were liable for . . . committing the torts of malicious prosecution and/or abuse of legal process," but then later the Superior Court explained the complaint "alleges that [a]ppellees engaged in a course of conduct toward [appellant] that constituted both abuse of legal process and wrongful use of civil proceedings as these torts are framed by Pennsylvania state law." *Id.* at 781, 783. Additionally, the Superior Court stated that "allegations of malicious prosecution invoke Pennsylvania's statutory law in the form of the wrongful use of civil proceedings statute or Dragonetti Act." *Id.* at 785. *See also Coatesville v. Jarvis*, 902 A.2d 1249, 1249-50 (Pa. Super. 2006) (noting that the trial court's statement of facts explained that appellant filed the action "alleging malicious prosecution, as codified under 42 Pa.C.S. § 8351 (the Dragonetti Act)," and proceeding with an analysis of the case under the wrongful use of civil proceedings elements without correcting the trial court's statement of facts). Thus, the fact that Plaintiff's Complaint includes "malicious prosecution" in brackets in Count I's title is of no consequence. The preliminary objections as to Plaintiff's inclusion of "malicious prosecution" in brackets in Count I's title are **OVERRULED**.

III. Legal Insufficiency

All Defendants offer demurrers as to the legal sufficiency of the facts pled by Plaintiff to support a claim for wrongful use of civil proceedings. "The question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible." *Eckell v. Wilson*, 597 A.2d 696, 698 (Pa. Super. 1991) (internal citations omitted). Only the factual allegations in a complaint are considered to be true for the purposes of a demurrer, not the pleader's conclusions of law. *Id.* Testing the sufficiency of the facts requires that "all material facts set forth in the complaint as well as all inferences reasonably deducible therefrom

are admitted as true for the purposes of review." *Id.* The only time a demurrer should be sustained is when "the plaintiff has clearly failed to state a claim on which relief may be granted." *Id.* If there is any doubt as to the adequacy of the plaintiff's complaint, a demurrer should not be sustained. *Id.*

A claim for wrongful use of civil proceedings is governed by the Dragonetti Act at 42 Pa. C.S. § 8351 *et seq.* The elements for this cause of action are as follows:

(a) Elements of action. — A person who takes part in the procurement, initiation or continuation of civil proceedings against another is subject to liability to the other for wrongful use of civil proceedings [if]:

(1) he acts in a grossly negligent manner or without probable cause and primarily for a purpose other than that of securing the proper discovery, joinder of parties or adjudication of the claim in which the proceedings are based; and

(2) the proceedings have terminated in favor of the person against whom they are brought.

42 Pa. C.S. § 8351(a). The burden on the plaintiff is to allege and prove:

(1) The defendant has procured, initiated or continued the civil proceedings against him.

(2) The proceedings were terminated in his favor.

(3) The defendant did not have probable cause for his action.

(4) The primary purpose for which the proceedings were brought was not that of securing the proper discovery, joinder of parties or adjudication of the claim on which the proceedings were based.

(5) The plaintiff has suffered damages

42 Pa. C.S. § 8354.

Though Defendants explicitly challenge only the third and fourth factors of probable cause and improper purpose, this Court also notes that Plaintiff has alleged facts sufficient to satisfy the first, second, and fifth factors at this preliminary objection stage, i.e. that Defendants initiated the underlying action against Plaintiff, that the underlying action was terminated in Plaintiff's favor, and that Plaintiff suffered damages as a result of the underlying action. There is no question that Defendants Kappe and Spencer, represented by Defendants Logan and Powell, filed suit in federal district court against Plaintiff and the Authority. *Complaint*, ¶ 7. Additionally, there is no question that Defendants withdrew Count I for copyright infringement, Plaintiff's and the Authority's motions for summary judgment were granted as to Counts III and IV (equitable

restitution/unjust enrichment and quantum meruit), and Defendants later withdrew Count II (fraud and conversion).⁴ *Id.* at ¶¶ 15, 17-18, 21. Finally, Plaintiff has alleged that it cost \$55,641.05 to defend against the underlying action and that Plaintiff "has suffered frustration, an extensive loss of his business time and damage to his reputation."⁵ *Id.* at ¶¶ 26, 40, p. 10. Thus, for the purposes of this preliminary objections analysis, these alleged facts are sufficient to satisfy the first, second, and fifth factors listed above.

This Court must next consider whether Plaintiff has pled facts sufficient to satisfy the third factor regarding probable cause. Contrary to the assertion of Defendants Logan and Powell,⁶ lack of probable cause is not always a question of law for the court to determine. Probable cause is only a question of law for a court to decide if the court can determine "whether [probable cause] exists *under an admitted or clearly established state of facts*." *Simpson v. Montgomery Ward & Co.*, 46 A.2d 674, 677 (Pa. 1946) (emphasis added). However, "if facts material to the issue of probable cause are in controversy," the existence of probable cause "may be submitted to the jury." *Broadwater v. Sentner*, 725 A.2d 779, 782 (Pa. Super. 1999) (quoting *McKibben v. Schmotzer*, 700 A.2d 484, 493 (Pa. Super. 1997)) (emphasis in original).

Initially, this Court will address the arguments of Defendants Spencer

⁴ Defendants Logan and Powell argue, in a footnote, that the withdrawal of Count II "had nothing to do with the merits of the claim and thus did not constitute a favorable termination of the proceedings in favor of [Plaintiff], an argument for a later day if necessary." *Preliminary Objections of Defendants Logan and Powell*, p. 16 n. 8 (emphasis in original). Though Defendants Logan and Powell do not advance a complete argument on this issue, for the sake of thoroughness, this Court will briefly address this point.

To determine "whether withdrawal or abandonment constitutes a final termination of the case in favor of the person against whom the proceedings are brought . . . depends on the circumstances under which the proceedings are withdrawn." *Bannar v. Miller*, 701 A.2d 242, 248 (Pa. Super. 1997) (internal citation omitted). In *Bannar*, the plaintiff in the underlying action did not withdraw the claim until the day the trial was called. *Id.* In deciding that this constituted a final determination in favor of the defendant in the underlying action, the Superior Court reasoned that the facts "tend[ed] to establish neither clients nor attorneys were attempting to properly adjudicate the claim. A last-second dismissal in the face of imminent defeat is not favorable to appellants. Appellants did not answer the bell in the fight they started, which is a victory for the other side." *Id.*

In the case before this Court, the facts alleged by Plaintiff are that Defendants were informed on March 2, 2005 that Plaintiff would be seeking sanctions against Defendants if Count II was not withdrawn within thirty days, and Defendants withdrew Count II on March 22, 2005, twenty days after receiving Plaintiff's letter. *Complaint*, ¶¶ 20, 21. Such facts suggest that Defendants knew the action was meritless and that sanctions would be imposed on them if the suit continued. Defendants' actions support the inference that - in the face of imminent defeat - Defendants withdrew rather than face sanctions. For the purposes of these preliminary objections, Plaintiff's alleged facts are sufficient to satisfy the second factor relating to favorable termination of the underlying action.

⁵ Though Defendants contest the type and amount of damages Plaintiff seeks to recover, they do not challenge that Plaintiff did incur some damages.

⁶ "As an initial matter, the presence or absence of probable cause for the bringing of earlier litigation is a threshold question that a trial court alone must resolve . . ." *Preliminary Objections of Defendants Logan and Powell*, ¶ 47.

and Kappe that probable cause exists in this case because 1) the federal district court determined probable cause existed and 2) Plaintiff admits it exists. Defendant Spencer argues that "there has been a judicial determination that probable cause existed in the Underlying Action." *Defendant Spencer's Preliminary Objections*, ¶ 19. Defendant Spencer argues that the federal district court's

ruling expressly noted that Kappe's and Spencer's claims for Fraud and Conversion against [Plaintiff] could proceed, because [Plaintiff] agreed there were disputed questions of material fact to be resolved, and that [Plaintiff] was not even seeking summary judgment as to those claims.

Since there were disputed questions of material fact as to some of Spencer's claims against [Plaintiff] - claims as to which [Plaintiff] chose not to move for summary judgment - it follows that Spencer had a sufficient factual and legal basis to proceed against Cummins.

Defendant Spencer's Brief in Support, p. 7.

Similarly, Defendant Kappe argues that, "as a matter of law, probable cause existed for the claims in the federal lawsuit against [Plaintiff]. In fact, [Plaintiff] admits that probable cause existed for the underlying claims against him" *Defendant Kappe's Preliminary Objections*, ¶ 32. Defendant Kappe argues that

Plaintiff expressly stated that he did 'not dispute that [Plaintiff's] alleged guarantee of Stewart's debt to [Defendants Kappe and Spencer] is a disputed fact precluding summary judgment on Count II of [the underlying action].' In addition, [Plaintiff's] only allegation about the claims against him in the underlying federal action avers that the claims against him in the federal action were 'of doubtful legal merit.' Not only did Kappe believe that the facts could support it and [Defendant Spencer's] claims in the federal action but, based on the allegations and exhibits to the Complaint, so, too, did [Plaintiff] and his counsel, as they acknowledged material issue of fact existed to preclude the entry of summary judgment on all claims.

Defendant Kappe's Brief in Support, p. 7 (internal citations omitted).

Defendant Spencer's and Kappe's arguments are unpersuasive. The only judicial determination related to this issue in the underlying action was that certain allegations made by Defendants were not appropriate for disposition at the summary judgment stage - not that the presence of such created the necessary probable cause that would insulate Defendants Kappe and Spencer from liability for wrongful use of civil proceedings. When ruling on a motion for summary judgment, a court determines

whether there are genuine issues of material fact to be submitted to the fact-finder, but it does not necessarily follow that the presence of such disputed facts automatically creates probable cause for the action to have been initiated. Consider, for example, Plaintiff's contention that Defendants Kappe and Spencer were lying when they alleged Plaintiff orally guaranteed the payment of Stewart's debts. *See Complaint*, ¶ 34 ("Defendants possessed no evidence and had no cause to believe that [Plaintiff] ever induced Kappe and Spencer to extend credit to Stewart or ever guaranteed Stewart's payment(s)"). Such a lie would create a disputed question of material fact such that granting summary judgment would be inappropriate, but it would not operate to create probable cause. Thus, the presence of disputed issues of material fact at the summary judgment stage in the underlying action is not dispositive of whether there was probable cause to bring the action in the first place.

Additionally, contrary to the assertion that Plaintiff "agreed" that probable cause existed by acknowledging that disputed questions of material fact existed, Plaintiff acknowledged exactly what the federal district court did: that the disputed facts in the underlying action were not appropriate for disposition at the summary judgment stage. Plaintiff's reply brief in support of his motion for summary judgment in the underlying action stated: "[Plaintiff] does not dispute that his alleged guarantee of Stewart's debts to [Defendants Kappe and Spencer] is a disputed fact precluding summary judgment on Count II of the [Underlying Action]. Accordingly, [Plaintiff] did *not* request summary judgment as to Count II." *Preliminary Objections of Defendants Logan and Powell, Ex. F at p. 7 ((Plaintiff's) Reply Brief in Support of his Motion for Partial Summary Judgment)* (emphasis in original). This statement acknowledges the existence of disputed facts; it does not admit the presence of probable cause in the underlying action.

Thus, this Court will consider whether Plaintiff has alleged facts sufficient to demonstrate a lack of probable cause. Probable cause is defined in the Dragonetti Act as follows:

A person who takes part in the procurement, initiation or continuation of civil proceedings against another has probable cause for doing so if he reasonably believes in the existence of the facts upon which the claim is based, and either:

- (1) reasonably believes that under those facts the claim may be valid under the existing or developing law;
- (2) believes to this effect in reliance upon the advice of counsel, sought in good faith and given after full disclosure of all relevant facts within his knowledge and information; or
- (3) believes as an attorney of record, in good faith that his procurement, initiation or continuation of a civil cause is not intended to merely harass or maliciously injure the opposite party.

42 Pa. C.S. § 8352.

With regard to Count I (copyright infringement) of the underlying action, Plaintiff alleges that Defendants, after Plaintiff and the Authority filed their motions for summary judgment, "acknowledged . . . that the copyrights of both Defendants Kappe and Spencer. . . were, in fact, never registered pursuant to the Federal Copyright Act . . . and, accordingly, withdrew Count I." *Complaint*, ¶ 15. Plaintiff alleges Defendants "knew, or should have known, before commencing the [underlying] action . . . , that Defendants Kappe and Spencer never registered their copyrights and, therefore, never had any basis for the copyright claims." *Id.* at ¶ 33. These allegations - that Defendants were able to verify the copyright claims and therefore knew or should have known there was no valid copyright - certainly indicate a lack of probable cause for filing Count I.

On this point, Defendants Logan and Powell argue that they were "entitled to rely upon the statements of their clients" as to the validity of the copyrights. *Preliminary Objections of Defendants Logan and Powell*, ¶ 73. However, Plaintiff has not alleged that Defendants Logan and Powell lacked probable cause because they improperly relied on statements made by Defendants Kappe and Spencer. Plaintiff has alleged all Defendants, including Defendants Logan and Powell, "knew or should have known" the copyrights were invalid, and such is sufficient to survive preliminary objections.

As to Count II (fraud and conversion), Plaintiff alleges Defendants "possessed no evidence and had no cause to believe that [Plaintiff] ever induced Kappe and Spencer to extend credit to Stewart of ever guaranteed Stewart's payment(s) to Kappe and Spencer." *Complaint*, ¶ 34. Furthermore, Plaintiff alleges Defendants withdrew Count II of their complaint after Plaintiff notified Defendants he would be seeking sanctions against Defendants if Count II was not withdrawn. *Id.* at ¶¶ 20-21. Such allegations are sufficient to survive preliminary objections as they create a question of material fact as to whether Defendants had any evidence of Plaintiff's alleged oral guarantee of Stewart's payment and whether Defendants withdrew the final Count of their complaint because they knew their action was meritless.

Defendants Logan and Powell argue for a second time that they were allowed to rely on their clients' representations as to this oral guarantee. *Preliminary Objections of Defendants Logan and Powell*, ¶ 69. Again, however, this argument ignores the fact that Plaintiff's Complaint imputes knowledge of the falsity of the oral guarantee to Defendants Logan and Powell. Plaintiff's allegations are sufficient for the purposes of this preliminary objections analysis.

With regard to Counts III and IV, Plaintiff alleges he informed Defendants over one year prior to the filing of the underlying action that the Procurement Code "provided the Authority with an absolute defense

and provided [Plaintiff] with a conditional defense to any contractual or quasi-contractual liability which could be asserted by Defendants Kappe and Spencer." *Complaint*, ¶ 12. Defendants argue they had a reasonable basis for pursuing these Counts in spite of the Procurement Code "in light of: (a) the criminal conduct of Stewart Mechanical; and] (b) the absence of a full payment by [Plaintiff] . . ." *Preliminary Objections of Defendants Logan and Powell*, ¶ 56.

Regarding the theft argument as against the Authority,⁷ the federal district court opined as follows:

[Defendants Kappe and Spencer] argue that because of Stewart's conversion and criminal theft, the Authority did not get lawful title to the equipment and intellectual property. They strenuously assert that summary judgment is improper because there is a disputed issue of fact as to whether Stewart's conduct was criminal. We agree with the Authority that this is a red herring, and has no bearing on the case before us.

Kappe Associates, No. 1:02-cv-00204-MBC (Erie), at p. 8. The theft argument as against Plaintiff was likewise determined to be meritless:

[Defendants Kappe and Spencer] also argue that summary judgment is improper because [Plaintiff] obtained their equipment as a result of Stewart's theft, and therefore, as a matter of law, did not have title to convey the equipment to the Authority. . . . This argument has no merit. The undisputed record shows that Stewart did not steal [Defendant Kappe's and Spencer's] property. Rather, Stewart breached a contract by refusing to fully pay for products [Defendants Kappe and Spencer] provided, and by paying for some of these products with a check drawn on insufficient funds.

Kappe Associates, No. 1:02-cv-00204-MBC (Erie), at p. 15.

This Court agrees with the federal district court's opinion that the theft argument was without merit. Defendants Logan and Powell, writing on behalf on Defendant Spencer, even expressed their "analysis and legal opinion" that Stewart's nonpayment constituted a "material breach" that "relieved Spencer of any prospective obligations regarding the underlying contract, including, *inter alia*, equipment check out and start-up, warranty or any related services respecting the equipment." *Complaint, attached June 18, 2001 letter*, p. 2. Thus, the fact that Defendants advanced a theory of theft in the underlying action does not shield them from potential liability in this present action.

⁷ The claims as against the Authority are relevant in this case because Plaintiff is alleging damages incurred from having to indemnify the Authority against this action.

Finally, Defendants argue that under developing case law, they had a reasonable basis for filing the underlying action based on the fact that Plaintiff had not paid Stewart in full.⁸ Defendants rely on *Ferrick Construction Co. v. One Beacon Ins. Co.* to support this argument. 2008 Phila. Ct. Corn. Pl. LEXIS 187 (2008), *aff'd without opinion*, 986 A.2d 1289 (Pa. Super. 2009). In *Ferrick*, the trial court opined that the Procurement Code only shields a general contractor from claims for payment by suppliers or a subcontractor's subcontractor if the general contractor had made full payment to its subcontractor. *Ferrick*, 2008 Phila. Ct. Corn. Pl. LEXIS at *7-8 ("For the Prompt Payment Act⁹ to be applicable *all payments* must be made by the general contractor to the subcontractor.") (emphasis in original).

There are several problems with this argument. First, *Ferrick* was not then and is not now controlling on this issue. *Ferrick* is a trial court case affirmed without opinion by the Superior Court. While it holds persuasive value, it does not have precedential value. Commonwealth cases, however, are binding on this Court, and a Commonwealth case on point exists: *Trumbull Corp. v. Boss Construction, Inc.*, 768 A.2d 368 (Pa. Commw. 2001). In *Trumbull*, a supplier was seeking recovery under a general contractor's bond. The Commonwealth Court determined the Prompt Pay Act barred the supplier from recovering against the general contractor because the general contractor "made payments to [the subcontractor]." *Trumbull*, 768 A.2d at 370. The Commonwealth Court did not require the general contractor to have paid the subcontractor in full. Thus, the controlling law on this issue is - and was when the underlying action was filed - *Trumbull*, which counsels that Plaintiff was protected from liability by the Procurement Code for having made payments to Stewart.

Second, even the persuasive value of *Ferrick* is minimal, as the facts of this case do not square with the facts of *Ferrick*. In *Ferrick*, the trial court specifically noted: "The record shows that while [the general contractor's] last payment to [the subcontractor] was in August, the contaminated soil continued to be removed in September and October. According to the contract, [the subcontractor] was entitled to payment from [the general contractor] for that work, even though the work had been done by [the subcontractor's subcontractor]." *Ferrick*, 2008 Phila. Ct. Com. Pl. LEXIS at *8. In *Ferrick*, then, there was an explicit determination that work had been done by the subcontractor's subcontractor after the

⁸ The Court notes that this argument has absolutely no bearing on whether Defendants had probable cause to initiate the underlying action against the Authority. The Procurement Code absolutely insulated the Authority from liability in this case, regardless of whether and how much Plaintiff paid Stewart.

⁹ Title 62 Pa. C.S. § 3901 *et seq.* of the Procurement Code is sometimes referred to as the Prompt Pay Act.

general contractor had stopped paying the subcontractor, and so there was unquestionably a determination that a portion of the subcontractor's subcontractor performance had not been paid for. In the present case, however, the federal district court found just the opposite:

The undisputed evidence shows that [Plaintiff] paid a total of \$477,178.29, by check, [directly] to Stewart. . . . The evidence shows that the amounts [Plaintiff] paid by check far exceed the total amount of \$102,932.00 Stewart owed to [Defendants Kappe and Spencer]. . . . Furthermore, as the dates of [Plaintiff's] check show, [Plaintiff] was paying Stewart regularly before Kappe and Spencer invoiced the order from Stewart, which was on 11/16/00, and continued to pay Stewart after 12/26/00, when Stewart wrote Spencer the check which was returned for insufficient funds.

Kappe Associates, No. 1:02-cv-00204-MBC (Erie), at p. 14.

Third, in their response to Plaintiff's motion for summary judgment, Defendants did not argue that Plaintiff must have made full payment *period*, but rather that Plaintiff could not demonstrate that the payments he *did* make fully covered the equipment and materials supplied by Defendants. Defendants wrote in their brief: "Having failed to fully pay Stewart *for the work completed by [Defendants Kappe and Spencer]*, [Plaintiff] is not afforded the protections of § 3939" *Complaint, attached Memorandum of Law in Opposition to [Plaintiff's] Motion for Summary Judgment*, p. 8 (emphasis added). The "crucial question" identified by Defendants in their brief was whether "the funds that remain unpaid to Stewart [were], even partially, for the equipment supplied by [Defendants Kappe and Spencer]?" *Id.* at p. 9. Defendants gave specific examples of how Plaintiff's "various invoices, requests for payments, and checks" failed to completely account for the cost of the materials and equipment supplied by Defendants Kappe and Spencer.¹⁰ *See id.* at p. 9-10. If, as Defendants now argue, they were arguing that Plaintiff's failure to make full payment all together precluded him from benefiting from the protections of the Procurement Code, such an item-by-item analysis would have been unnecessary. They would have simply argued that Plaintiff was \$11,566.29 short of full payment to Stewart, not that a question of material fact remained as to whether that amount "even partially, [was] for the equipment supplied by [Defendants Kappe and

¹⁰ It is worth mentioning that the Commonwealth Court in *Trumbull* also addressed this argument:

[The supplier] asserts that [the general contractor] failed to identify which of the estimated payments from PennDOT covered the materials supplied by [the supplier] and failed to prove that payments to [the subcontractor] were made within the time required. However, such compliance need not have been proved with absolute certainty, but only by a preponderance of the evidence.

Trumbull, 768 A.2d at 371. As explained above, the federal district court found Plaintiff had met this burden.

Spencer]." *Id. at p. 9.*

Finally, this Court notes that Defendants in the underlying action chose to abandon their action instead of following it through and appealing the federal district court's decision. Abandoning their case and by extension their right to appeal is at odds with Defendants' contention that they believed developing law¹¹ might turn in their favor. *Cf. Broadwater v. Sentner*, 725 A.2d 779, 784 (Pa. Super. 1999) ("Sentner argues that because the law on the issue of paternity was changing at the time of the commencement of the underlying proceedings, he had a reasonable belief that Deems had a cause of action. However, after our independent review of the above pertinent cases, we find Sentner's argument to be specious. Moreover, Appellees' voluntarily [sic] withdrawal from the case with prejudice belies this contention as well.").

Plaintiff has pled facts sufficient to support Plaintiff's contention that Defendants lacked probable cause to proceed on the underlying action. A lack of probable cause, however, is not enough for a wrongful use of civil proceedings action. Plaintiff will also have to demonstrate Defendants acted with an improper purpose.

Defendant Kappe argues that Plaintiff "wholly fails to allege a factual predicate to establish that Kappe asserted the claims against him for an improper purpose." *Defendant Kappe's Preliminary Objections*, ¶ 32. However, Plaintiff's Complaint alleges

the Defendants, knowing, in advance, that they had no cause of action whatsoever against the Authority and no probable cause of action against [Plaintiff], procured, initiated and continued the civil action . . . for the purpose of extorting, from the Authority and from [Plaintiff], money to which Kappe and Spencer were not entitled to receive from the Authority or from [Plaintiff].

Complaint, ¶ 37. This assertion is sufficient to allege that Defendants acted with an improper purpose, i.e. to extort money from Plaintiff.¹² *See, e.g., Shaffer v. Stewart*, 473 A.2d 1017, 1021 (Pa. Super. 1983)

¹¹ This Court also questions Defendants' interpretation of the phrase "developing law." Defendants can only point to *Ferrick* for the proposition that the Procurement Code requires full payment, and this Court notes that Defendants Logan and Powell were the attorneys of record in *Ferrick* as well. It seems to this Court that "developing law" requires more activity on this point than a single trial court case in which Defendants themselves are attempting to make the same argument as they were in the underlying action.

¹² This Court notes that Defendants Logan and Powell also argue that Plaintiff's "only allegation is that the purpose of the lawsuit was to 'extort' money from [Plaintiff] which [Defendants Kappe and Spencer were] not entitled to recover from him." *Preliminary Objections of Defendants Logan and Powell*, ¶ 77. Defendants Logan and Powell then argue that "[Plaintiff] has not alleged any purpose of attorney-defendants other than the proper adjudication of [the] claim." *Id. at ¶ 79*. However, as Defendants Logan and Powell themselves acknowledge, Plaintiff alleges Defendants were attempting to extort money from him, and such a use of the legal system would not be proper adjudication.

("An allegation that a caveat to a will has been filed not for purposes of contesting the will but to extort a settlement in favor of disinterested parties states an improper purpose within the meaning of 42 Pa. C.S. §8351.").

Plaintiff's Complaint is legally sufficient to allege a cause of action for wrongful use of civil proceedings against Defendants, and the preliminary objections as to this point are **OVERRULED**.

IV. Damages

The Dragonetti Act provides that a

Plaintiff is entitled to recover for the following:

- (1) The harm normally resulting from any arrest or imprisonment, or any dispossession or interference with the advantageous use of his land, chattels or other things, suffered by him during the course of the proceedings.
- (2) The harm to his reputation by any defamatory matter alleged as the basis of the proceedings.
- (3) The expense, including any reasonable attorney fees, that he has reasonably incurred in defending himself against the proceedings.
- (4) Any specific pecuniary loss that has resulted from the proceedings.
- (5) Any emotional distress that is caused by the proceedings.
- (6) Punitive damages according to law in appropriate cases.

42 Pa. C.S. § 8353.

Initially, Defendants Kappe and Spencer object that Plaintiff has requested attorney's fees for this action, which is not permitted under the Dragonetti Act. Though Plaintiff acknowledged at oral arguments that he has no right to attorney's fees for the present action and maintained that the Complaint seeks attorney's fees only for the underlying action, for the purposes of clarity, these preliminary objections are **SUSTAINED IN PART** insofar as they relate to a request for attorney's fees for the present case.

However, Defendants also challenge Plaintiff's damages demand because it includes attorney's fees incurred by the Authority in the underlying action. Defendants Logan and Powell argue that the Dragonetti Act does not entitle Plaintiff to someone else's attorney's fees and that Plaintiff has no standing to request someone else's attorney's fees. *Preliminary Objections of Defendants Logan and Powell*, ¶¶ 87, 90 (emphasis in original). Defendant Spencer simply argues that "Plaintiff seeks to recover the Authority's attorney's fees, which he would have no right to do in any event." *Defendant Spencer's Preliminary Objections*, ¶ 37. Finally, Defendant Kappe argues that the Authority's attorney's fees are not permitted under the Dragonetti Act as they were not attorney's

fees incurred by Plaintiff in defending himself against the action, and Defendant Kappe argues that the Authority's fees "do not constitute 'any specific pecuniary loss' . . . [because Plaintiff] did not incur these costs from the federal action, but instead, [Plaintiff] claims the costs were related to his contract with [the Authority]." *Defendant Kappe's Preliminary Objections*, ¶ 49, 50.

Plaintiff is not seeking these attorney's fees as attorney's fees incurred by him in defending against the underlying action but instead as a specific pecuniary loss resulting from the proceedings. Defendant Kappe's argument that these damages did not arise from the underlying action are unpersuasive. Plaintiff alleges he lost out on \$45,641.05 because of the underlying action. At this point, Plaintiff's allegations generally and reasonably seem to qualify as "any specific pecuniary loss" contemplated by the Dragonetti Act. Defendants' preliminary objections as to this issue are **OVERRULED**.

Defendant Kappe also argues that Plaintiff "has pleaded no factual basis to assert" a claim for punitive damages. *Defendant Kappe's Preliminary Objections*, ¶ 64. More specifically, Defendant Kappe argues Plaintiff "does not specify any conduct that is outrageous or evidences evil motive or reckless indifference to others." *Id.* at ¶ 67. Plaintiff has alleged that Defendants filed a meritless claim that they knew to be meritless for the sole purpose of extorting money from either Plaintiff or the Authority. Whether Defendants' "actions arise to outrageous conduct lies within the sound discretion of the fact-finder." *Pestco, Inc. v. Associated Prods.*, 880 A.2d 700, 709 (Pa. Super. 2005) (quoting *SHV Coal, Inc. v. Continental Grain Co.*, 587 A.2d 702, 705 (Pa. 1991)). Plaintiff's alleged facts on this issue are sufficient for the purposes of this preliminary objections analysis and Defendant Kappe's preliminary objection on this point is **OVERRULED**.

Finally, Defendant Kappe argues Plaintiff "fails to properly allege any facts to support the special damages for 'frustration, an extensive loss of his business time and damage to his reputation', which he seeks in the Complaint, and these damages must be stricken." *Defendant Kappe's Preliminary Objections*, ¶ 70. Pennsylvania Rule of Civil Procedure 1019(f) requires that "[a]verments of time, place and items of special damage shall be specifically stated." *Pa. R.C.P. 1019(f)*. Under Pennsylvania law,

Damages are either general or special. General damages are those that are the usual and ordinary consequences of the wrong done. Special damages are those that are not the usual and ordinary consequences of the wrong done but which depend on special circumstances. General damages may be proven without specifically pleading them; however, special damages may not be proved unless special facts giving rise to them are averred.

Hooker v. State Farm Fire & Cas. Co., 880 A.2d 70, 77 (Pa. Commw. 2005). In the present case, Plaintiff's alleged damages for "frustration, an extensive loss of his business time and damage to his reputation" are not general damages as they are not "the usual and ordinary consequences of the wrong done." *Id.* Thus, because Plaintiff has not alleged special facts relating to these special damages, Plaintiff is precluded from recovering special damages in this case. Defendant Kappe's preliminary objection on this point is SUSTAINED.

ORDER

AND NOW, TO-WIT, this 23rd day of January, 2012, for the reasons set forth in the foregoing **OPINION**, it is hereby **ORDERED, ADJUDGED, and DECREED** that the Preliminary Objections of Defendants Kappe, Spencer, Logan and Powell are **SUSTAINED IN PART and OVERRULED IN PART**. Specifically, to the extent that Plaintiff is seeking attorney's fees for the present action, the preliminary objection on this issue is **SUSTAINED**. To the extent that Plaintiff is seeking special damages, the preliminary objection on this issue is **SUSTAINED**. All other preliminary objections are **OVERRULED**.

BY THE COURT:

/s/ Shad Connelly, Judge

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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

Notice is hereby given that an Application for Registration of Fictitious Name was filed in the Commonwealth of Pennsylvania on July 5, 2012 for Just-A-Feid Creations located at 10952 Eureka Road, Edinboro, PA 16412. The name and address of each individual interested in the business is Ronald A. Feidler, 10952 Eureka Road, Edinboro, PA 16412. This was filed in accordance with 54 PaC.S. 311.

Aug. 17

FICTITIOUS NAME NOTICE

1. Fictitious Name: Tim's Designs
 2. Principal business address: 7602 East Lake Road, Erie, Pennsylvania 16511
 3. Name and address of the person who is party to the registration: Timothy E. Rettger, 7598 East Lake Road, Erie, Pennsylvania 16511
 4. An application for registration of the fictitious name was filed with the Department of State under the Fictitious Names Act on or about July 18, 2012.
- Darlene M. Vlahos, Esq., P.C.
3305 Pittsburgh Avenue
Erie, PA 16508

Aug. 17

FICTITIOUS NAME NOTICE

Notice is hereby given that an Application for Registration of Fictitious Name was filed in the Commonwealth of Pennsylvania on June 28, 2012 for ZoomAnd Focus located at 125 East 34th Street, Erie, PA 16504. The name and address of each individual interested in the business is Eric R. Nicastro, 125 East 34th Street, Erie, PA 16504. This was filed in accordance with 54 PaC.S. 311.

Aug. 17

LEGAL NOTICE

**ATTENTION: PARIS A. BISHOP
INVOLUNTARY TERMINATION
OF PARENTAL RIGHTS**

**IN THE MATTER OF THE
ADOPTION OF MINOR MALE
CHILD (P.A.B.) DOB: 11/23/05
BORN TO: MICHELLE WELSH
30 IN ADOPTION 2012**

If you could be the parent of the above mentioned child, at the instance of Erie County Office of Children and Youth you, laying aside all business and excuses whatsoever, are hereby cited to be and appear before the Orphan's Court of Erie County, Pennsylvania, at the Erie County Court House, Judge Cunningham, Court Room No. 213-C, City of Erie on November 5, 2012, at 9:30 a.m. and there show cause, if any you have, why your parental rights to the above child should not be terminated, in accordance with a Petition and Order of Court filed by the Erie County Office of Children and Youth. A copy of these documents can be obtained by contacting the Erie County Office of Children and Youth at (814) 451-7740.

Your presence is required at the Hearing. If you do not appear at this Hearing, the Court may decide that you are not interested in retaining your rights to your children and your failure to appear may affect the Court's decision on whether to end your rights to your child. You are warned that even if you fail to appear at the scheduled Hearing, the Hearing will go on without you and your rights to your child may be ended by the Court without your being present.

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

Family/Orphan's
Court Administrator
Room 204 - 205
Erie County Court House
Erie, Pennsylvania 16501

(814) 451-6251
**NOTICE REQUIRED BY ACT 101
OF 2010: 23 Pa. C.S §§2731-2742.**
This is to inform you of an important option that may be available to you under Pennsylvania law. Act 101 of 2010 allows for an enforceable voluntary agreement for continuing contact or communication following an adoption between an adoptive parent, a child, a birth parent and/or a birth relative of the child, if all parties agree and the voluntary agreement is approved by the court. The agreement must be signed and approved by the court to be legally binding. If you are interested in learning more about this option for a voluntary agreement, contact the Office of Children and Youth at (814) 451-7726, or contact your adoption attorney, if you have one.

Aug. 17

LEGAL NOTICE

**ATTENTION: UNKNOWN
FATHER/LARELL BROWN
A/K/A LARELL THOMAS
INVOLUNTARY TERMINATION
OF PARENTAL RIGHTS**

**IN THE MATTER OF THE
ADOPTION OF MINOR
FEMALE CHILD (K.N.W.)
DOB: 10/21/10
BORN TO: MICHELLE WELSH
30A IN ADOPTION 2012**

If you could be the parent of the above mentioned child, at the instance of Erie County Office of Children and Youth you, laying aside all business and excuses whatsoever, are hereby cited to be and appear before the Orphan's Court of Erie County, Pennsylvania, at the Erie County Court House, Judge Cunningham, Court Room No. 213-C, City of Erie on November 5, 2012, at 9:30 a.m. and there show cause, if any you have, why your parental rights to the above child should not be terminated, in accordance with a Petition and Order of Court filed by the Erie County Office of Children and Youth. A copy of these documents can be obtained by contacting the Erie County Office of Children and Youth at (814) 451-7740.

Your presence is required at the Hearing. If you do not appear at this Hearing, the Court may decide that you are not interested in retaining your rights to your children and your failure to appear may affect the Court's decision on whether to end your rights to your child. You are warned that even if you fail to appear at the scheduled Hearing, the Hearing will go on without you and your rights to your child may be ended by the Court without your being present.

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

Family/Orphan's
Court Administrator
Room 204 - 205
Erie County Court House
Erie, Pennsylvania 16501
(814) 451-6251

NOTICE REQUIRED BY ACT 101 OF 2010: 23 Pa. C.S §§2731-2742. This is to inform you of an important option that may be available to you under Pennsylvania law. Act 101 of 2010 allows for an enforceable voluntary agreement for continuing contact or communication following an adoption between an adoptive parent, a child, a birth parent and/ or a birth relative of the child, if all parties agree and the voluntary agreement is approved by the court. The agreement must be signed and approved by the court to be legally binding. If you are interested in learning more about this option for a voluntary agreement, contact the Office of Children and Youth at (814) 451-7726, or contact your adoption attorney, if you have one.

Aug. 17

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. 1:12-cv-00060, I shall expose to public sale the real property of Brandy A. Dyne known as 8724 Oriole Drive, Erie,

PA 16509, being fully described in the Deed dated February 2, 2009 and recorded February 3, 2009 in the Recorder's Office of Erie County, Pennsylvania, in Deed Book Volume 1541, Page 1994.

TIME AND LOCATION OF SALE: Wednesday, September 12, 2012 at 10:00 A.M. at the Erie County Courthouse, 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.

Aug. 10, 17, 24, 31

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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 **Monday, August 27, 2012** and confirmed Nisi.

September 20, 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>
172.	Dorothy G. Ellsmore	Frederick J. Ellsmore, Executor	N/A
184.	Aaron Daniel Beaton,	David Beaton and Scott E. Miller,	
	a/k/a Aaron D. Beaton	Co-Administrators	Scott E. Miller, Esq.

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

Aug. 17, 24



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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

CHATHAM, EMILY M.,

deceased

Late of Lawrence Park Township, County of Erie and Commonwealth of Pennsylvania
Co-Executors: Charles D. Chatham and Ann C. Allen
Attorney: David J. Rhodes, Esquire, Elderkin Law Firm, 150 East 8th Street, Erie, PA 16501

CZERWINSKI, GLADYS J.,

deceased

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executor: Brian Czerwinski, 3317 Davison Avenue, Erie, PA 16504
Attorney: Thomas S. Kubinski, Esquire, The Gideon Ball House, 135 East 6th Street, Erie, PA 16501

DAVIS, THOMAS E.,

deceased

Late of the Township of Millcreek, Erie County, Pennsylvania
Executor: Douglas R. Davis, 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

NORRIS, LOIS L.,

deceased

Late of the Borough of North East, Erie County
Executrix: Sally N. Murray, c/o James S. Bryan, Esq., 11 Park Street, North East, PA 16428
Attorney: James S. Bryan, Esq., Knox McLaughlin Gornall & Sennett, P.C., 11 Park Street, North East, PA 16428

OLSON, JEAN M.,

deceased

Late of Millcreek Township, Erie County, Pennsylvania
Executrix: Mary Patricia Oliver, 17814 Lake Road, Lakewood, OH 44107
Attorney: Christine Hall McClure, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

ROHAN, KYLE T.,

deceased

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Administrators: Thomas J. Rohan and Pattilee Rohan, 1316 Potomac Avenue, Erie, PA 16505-3533
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

SCEPURA, JOHN J.,

deceased

Late of the City of Erie
Executor: Stanley C. Scepura, 3704 Allegheny Road, Erie, PA 16508
Attorney: David J. Mack, 115 East 7th Street, Erie, PA 16501

SEIB, GEORGE W.,

deceased

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executrix: Sharyn K. Parry, 3613 Imperial Drive, Erie, PA 16506-1913
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

SMITH, I. GERALDINE,

deceased

Late of North East Township, Erie County, North East, Pennsylvania
Executrix: Sharon L. Swift, c/o Robert J. Jeffery, Esq., 33 East Main Street, North East, Pennsylvania 16428
Attorney: Orton & Jeffery, P.C., 33 East Main Street, North East, Pennsylvania 16428

WILSON, DIANA J.,

deceased

Late of Erie County, PA
Executrix: Sandra R. Fulgham, c/o Elizabeth Brew Walbridge, 4258 West Lake Road, Erie, PA 16505
Attorney: Elizabeth Brew Walbridge, 4258 West Lake Road, Erie, PA 16505

SECOND PUBLICATION

DeNARDO, DONALD R.,

deceased

Late of Millcreek Township, County of Erie, and Commonwealth of Pennsylvania
Executor: Patricia Ann Bielinski, 3834 Cochran Street, Erie, PA 16508
Attorney: Gary K. Schonthaler, Esquire, The Gideon Ball House, 135 East 6th Street, Erie, PA 16501

JAGTA, ROSE V.,

deceased

Late of the Township of Greene, County of Erie, and State of Pennsylvania
Co-Executrices: Mary Ventresca, 917 West 33rd St., Erie, PA 16508 and Kathy Frawley, 2544 West 34th St., Erie, PA 16506
Attorney: Richard T. Ruth, Esq., 1026 West 26th St., Erie, PA 16508

**KALIVODA, EUGENE S.,
deceased**

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

Administrator: John P. Eppinger, Esq., Suite 300, 300 State Street, Erie, PA 16507

Attorneys: Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, Suite 300, 300 State Street, Erie, PA 16507

**KONETSKY, JOHN S.,
deceased**

Late of the Township of Millcreek
Executors: Catherine A. Brandon and Pamela A. Zech

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

**MATHER, EDWARD M.,
deceased**

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

Executor: Randall Long, 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

**SCHWARZFELD, BENJAMIN K.,
deceased**

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

Executor: Carrie L. Watkins, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

Attorney: Scott L. Wallen, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

**SEDLER, MART T., a/k/a
MARK SEDLER, a/k/a
MARK TODD SEDLER,
deceased**

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

Executrix: Janice K. Sedler, 5317 Nash Road, West Springfield, Pennsylvania 16443

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

**SNYDER, MARGARET SCOTT,
a/k/a MARGARET S. SNYDER,
a/k/a MARGARET SNYDER,
deceased**

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

Executrix: Lisa McNamara, 4651 White Pine Drive, Erie, Pennsylvania 16506

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

**ZUZOLO, MATTHEW A.,
deceased**

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

Executor: Edward Max Weiss, 911 Diamond Park, Meadville, Pennsylvania 16335

Attorney: William J. Kelly, Jr., Esquire, 100 State Street, Suite 440, Erie, Pennsylvania 16507

THIRD PUBLICATION

**ANDREWS, EMOGENE R.,
a/k/a EMOGENE K. ANDREWS,
a/k/a EMOGENE ANDREWS,
deceased**

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

Executrix: Sheryl Buchner, 535 Richardson Drive, Lake City, Pennsylvania 16423

Attorney: Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, Pennsylvania 16417

**CONNOLLY, SHIRLEY MAE,
a/k/a SHIRLEY P. CONNOLLY,
a/k/a SHIRLEY MAE PIERCE
CONNOLLY,
deceased**

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

Executor: Matt A. Connolly, c/o 6350 Meadowrue Lane, Erie, PA 16505

Attorney: Scott E. Miller, Esquire, 6350 Meadowrue Lane, Erie, PA 16505

**COSA, JOSEPH C.,
deceased**

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

Executor: Christopher G. Cosa, c/o 900 State Street, Suite 215, Erie, PA 16501

Attorney: Gregory L. Heidt, Esquire, 900 State Street, Suite 215, Erie, PA 16501

**DUNDON, ALVIN S.,
deceased**

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

Executor: Lester Hamill, c/o 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508

Attorney: Darlene M. Vlahos, Esquire, 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508

**GREGOR, GEORGE A.,
deceased**

Late of Amity Township, County of Erie, Commonwealth of Pennsylvania

Executrix: Patricia J. Yost, 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

**LEWIS, CHARLOTTE,
deceased**

Late of Green Township, Erie County, Pennsylvania
Executor: Charlotte Tylman, c/o McCarthy, Martone & Peasley, 150 West Fifth Street, Erie, Pennsylvania 16507
Attorney: Joseph P. Martone, Esquire, McCarthy, Martone & Peasley, 150 West Fifth Street, Erie, Pennsylvania 16507

**LJJEWSKI, PHYLLIS J.,
deceased**

Late of Millcreek Township
Executors: David A. Buerk and Grant R. Weber, 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

**NYBERG, ARTHUR D., a/k/a
ARTHUR NYBERG,
deceased**

Late of the Township of Millcreek, County of Erie and State of Pennsylvania
Executor: Theodore N. Nyberg, 829 Linden Avenue, Erie, PA 16505
Attorney: Ronald J. Susmarski, Esq., 4030-4036 West Lake Road, Erie, PA 16505

**ROSS, HOWARD F.,
deceased**

Late of the City of Corry, County of Erie, Commonwealth of Pennsylvania
Executrix: Flora Ann Bensink, 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

**RUMBERGER, SAMUEL J.,
deceased**

Late of North East Borough
Co-Administrators: Lisa M. Rumberger, 544 Cohasset Drive, Hermitage, PA 16148 and Steven J. Rumberger, 48 Eagle Street, North East, PA 16428
Attorney: Leigh Ann Orton, Esq., Knox McLaughlin Gornall & Sennett, P.C., 11 Park Street, North East, PA 16428

**SMITH, JAY SOL,
deceased**

Late of the City of Erie, County of Erie, and Commonwealth of Pennsylvania
Executrix: Linda Jo Kingsmore, c/o Yochim, Skiba & Nash, 345 West 6th Street, Erie, PA 16507
Attorney: Gary V. Skiba, Esq., Yochim, Skiba & Nash, 345 West 6th Street, Erie, PA 16507

**WOLF, KENNETH H.,
deceased**

Late of the Township of Harborcreek, Commonwealth of Pennsylvania
Executor: Richard J. Wolf, 1011 West 30th Street, Erie, Pennsylvania 16508
Attorney: Richard A. Vendetti, Esq., Vendetti & Vendetti, 3820 Liberty Street, Erie, PA 16509

**WOZNIAK, CHARLES C., a/k/a
CASIMIR WOZNIAK,
deceased**

Late of the City of Erie, Pennsylvania
Co-Executors: Judith C. Rainsberger, 4574 N. Colonial Parkway, Erie, PA 16509 and Camille M. Thompson, 631 Sommerheim Drive, Erie, PA 16505
Attorney: None

**WROBEL, NORMAN E.,
deceased**

Late of the City of Erie
Executor: Leonard J. Wrobel, 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

**YOVICH, MARY LEONA,
deceased**

Late of LeBoeuf Township, Erie County, Commonwealth of Pennsylvania
Executor: Doris Yovich, 12009 Rt. 98, Edinboro, PA 16412
Attorney: None



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Erie, PA 16505 ----- *sem@cpaatty.com*

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807 West 26th Street
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