

# Erie County Legal Journal

April 24, 2015

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98 ERIE 55 - 59

Arnealt v. MTR Gaming Group, Inc., et al.

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# 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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**SATURDAY, APRIL 25, 2015**

Law Day 5K Run/Walk

Perry Square / Erie County Court House

9:00 a.m. start time

Day-of registration fees: \$20 (adult) \$15 (12 and under)



Erie County Bar  
Association



@eriepabar

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

## **2015 BOARD OF DIRECTORS**

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**EDSON R. ARNEALT, Plaintiff**

**v.**

**MTR GAMING GROUP, INC. and PRESQUE ISLE DOWNS, INC., Defendants**

*RIGHT TO JURY TRIAL / UNJUST ENRICHMENT*

A claim for a jury trial does not create a right for a jury trial. Therefore, consent to withdraw a demand for a jury trial is only required where a right to a jury trial already exists. Pa.R.C.P. §1007.1(a).

*RIGHT TO JURY TRIAL / UNJUST ENRICHMENT*

Where a statute does not confer the right to a jury trial for a type of claim, the determination of whether a party has that right is based on whether the type of action existed at the time the Pennsylvania Constitution was adopted and whether a common law basis existed for that type of claim.

*RIGHT TO JURY TRIAL / UNJUST ENRICHMENT*

A claim for monetary damages based on unjust enrichment has a basis in common law, even where it does not arise from the breach of contract. Therefore, such a claim vests of right to a jury trial.

*RIGHT TO JURY TRIAL / UNJUST ENRICHMENT*

Invoking the equitable concepts of fairness and justness does not convert a legal claim into an equitable claim.

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA  
CIVIL DIVISION NO. 11589-2012

Appearances: John F. Mizner, Esq., Attorney for Plaintiff  
Christopher J. Sinnott, Esq., Attorney for Defendants  
Henry F. Siedzikowski, Esq., Frederick P. Santarelli, Esq., and Krista K. Beatty, Esq., Attorneys for Defendants  
Narciso A. Rodriguez-Cayro, Esq., Attorney for Defendants

**OPINION**

Cunningham, William R., J.

The presenting matter is a Motion to Strike Jury Demand filed by the Defendants. At issue is whether the Plaintiff has a right to a trial by jury on a claim for unjust enrichment. The Defendants' Motion is untimely and the issue is waived. On the merits, the Plaintiff's claim has a basis in common law and was triable by a jury prior to the adoption of the 1790 Constitution of Pennsylvania. Thus the Plaintiff is entitled to a jury trial and the Defendants' Motion is **DISMISSED**.

**PROCEDURAL HISTORY**

Plaintiff filed this lawsuit seeking to recover monetary damages in the form of attorney fees incurred to secure a gaming license which allegedly made possible the renewal of the Defendants' gaming license in Pennsylvania. The Plaintiff has filed a single cause of action for unjust enrichment.

The original Complaint was filed on April 27, 2012 and included a demand for a jury trial. After the lifting of a Stay Order entered while federal litigation was pending between the parties, the Defendants filed an Answer and New Matter on April 10, 2013 which also

included a demand for a jury trial. There followed a flurry of activity involving Preliminary Objections, discovery disputes, Motions for a Protective Order and Motions for Summary Judgment.

On August 6, 2014, an Order was entered denying the Motion for Summary Judgment filed by each party. The Defendants filed the present Motion to Strike Jury Demand and Confirm Bench Trial on August 18, 2014.

### **CONSENT TO WITHDRAW DEMAND IRRELEVANT**

The Plaintiff argues the Defendants' Motion should be denied summarily pursuant to Pa.R.C.P. 1007.1(c)(1) which provides a demand for a jury trial "may not be withdrawn without the consent of all parties who have appeared in the action." Plaintiff does not consent to the withdrawal of his demand for a jury trial nor does he consent to the withdrawal of the Defendants' demand for a jury trial. Accordingly, Plaintiff believes the matter is resolved.

Plaintiff's argument is unpersuasive. The fact a party made a demand for a jury trial does not vest the party with a right to a jury trial.

Plaintiff overlooks the initial language of Pa. R.C.P. 1007.1(a) which states, "any action in which the right to a jury trial exists, that right shall be deemed waived unless a party files and serves a written demand for a jury trial not later than twenty days after service of the last permissible pleading." Hence, the demand for a jury trial set forth in Pa. R.C.P. 1007.1 assumes the existence of a right to a jury trial but does not vest a party with the right to a jury trial.

Notably, "no Rule shall be construed to confer a right to trial by jury where such right does not otherwise exist." *Pa. R.C.P. 128(f)*. For the provisions of Pa. R.C.P. 1007.1 to apply, a party must have a right to a jury trial to demand it. In this case, the Defendants dispute the Plaintiff's right to a jury trial. Thus, the provisions of Rule 1007.1 cannot be used by the Plaintiff to defeat the Defendants' Motion.

### **WAIVER**

Discovery is now closed and the dispositive motions were denied on August 6, 2014. This case is now positioned for trial. The present Motion to Strike Jury Demand and Confirm Bench Trial was filed nearly twenty-eight (28) months after the Plaintiff's demand for a jury trial and over sixteen (16) months since the Defendants' demand for a jury trial. Throughout this twenty-eight (28) month time period, virtually every pleading filed by the Plaintiff included a demand for a jury trial.

By failing to object to the Plaintiff's Demand for a Jury Trial while maintaining a demand for a jury trial throughout the pre-trial phase of this case, the Defendants have attempted to lure the Plaintiff into an illusory belief there will be a jury trial. In fairness to the Plaintiff, the manner in which this case was prepared through discovery was undertaken with a view towards the presentation of the case before a jury. The Plaintiff claims prejudice because of the expenses incurred with the expectation this case would be decided by a jury. The Plaintiff also contends that his pre-trial strategies would have been different if there were a bench trial instead of a jury trial.

Separately, this matter presents the anomalous situation in which the Defendants are objecting to a jury trial despite the Defendants' own demand for a jury trial. The Defendants explain their demand for a jury trial was only filed to preserve their ability to have a jury trial if any eventual theory of recovery for the Plaintiff crystallized into a claim permitting

a jury trial. The Defendants' explanation is unmoving since the Defendants retained the ability to demand a jury trial up to twenty (20) days after service of the last permissible pleading. *See Rule 1007.1(a)*.

Given the posture of this case, coupled with the inherent and actual prejudice to the Plaintiff, this Court finds the Defendants' Motion to Strike Plaintiff's Demand for Jury Trial is untimely and/or waived.

### **WHETHER THERE IS A RIGHT TO A JURY TRIAL FOR PLAINTIFF'S CLAIM**

The Defendants contend the Plaintiff's cause of action for unjust enrichment is a claim in equity for which there is no right to a jury trial. The Defendants' argument relies on an outdated view of the procedural treatment of civil claims.

The concept of unjust enrichment as employed for centuries in the Commonwealth of Pennsylvania has various permutations based on the diverse circumstances in which it has been used. The concept of unjust enrichment does not fit neatly into the box of an equity claim for which there is no right to a jury trial nor does it have to under current pleading requirements.

Modern jurisprudence at the federal and state level long ago abandoned the classification of various civil claims. The result is that trial courts in Pennsylvania possess general jurisdiction to exercise powers over law and equity in a single type of civil action. Accordingly, "there shall be a "civil action" in which shall be brought all claims for relief heretofore asserted in (1) the action of assumpsit, (2) the action of trespass, and (3) the action in equity. Note: the procedural distinctions between the forms of action in assumpsit, trespass and equity are abolished." *Pa. R.C.P. 1001(b)*. The attempt by the Defendants to limit the analysis to simply an inquiry of whether unjust enrichment is a claim in equity truncates the necessary analysis.

In Pennsylvania, there is not a statute creating a right to a jury trial for a claim of unjust enrichment. In the absence of a statutory right to a jury trial, "the next inquiry is whether the particular cause of action existed at the time the Pennsylvania Constitution was adopted. Finally, if the cause of action and a right to jury existed at that time, then the inquiry is whether a common law basis existed for the claim." *Advanced Tel Sys. v. Com-Net Prof'l Mobile Radio, LLC*, 100 ¶ 34, 846 A.2d 1264, 1275-76 (Pa. Super. 2004).

The Pennsylvania Constitution was originally adopted in 1790. Prior to its adoption, by Pennsylvania statute, "the common law and such of the statutes of England as were in force in the province of Pennsylvania on May 14, 1776 and which were properly adapted to the circumstances of the inhabitants of this Commonwealth shall be deemed to have been in force in this Commonwealth from and after February 10, 1777." *1 Pa.C.S.A. §1503(a)*. This statute incorporated the common law of England into the common law of Pennsylvania as of 1777, which preceded the adoption of the 1790 Constitution of Pennsylvania.

The claim of unjust enrichment has a basis in the common law of England and Pennsylvania prior to the adoption of the 1790 Constitution of Pennsylvania. Various forms of unjust enrichment appeared in common law centuries ago. In *Lampleigh v. Braithwaite* (1615) 80 ENG. Rep. 255 (K.B.), a cause of action on a quasi-contract was recognized by a promise to pay after the performance of a requested service.

More prominently, in the often-cited case of *Moses v. MacFerlan*, (1760) 2 BURR. 1005, 97 ENG. Rep. 676 (K.B.), it was held:

If the Defendant be under an obligation, from the ties of natural justice, to refund; the law implies a debt, and gives this action, founded in the equity of the Plaintiff's case, as it were upon a contract (quasi ex contractu) as the Roman law expresses it.

*Id.* 2 BURR. 1008, 1012.

In *Moses v. MacFerlan*, *supra*, there was no express or written contract. Instead, the Plaintiff was seeking a monetary refund based on the "ties of natural justice and equity" *Id.* *Moses v. MacFerlan* has long been recognized in Pennsylvania as a common law form of unjust enrichment claim. *See e.g., Lee v. Gibbons*, 14 Serg. and Rawle 105, 111 (1826); *Hertzog v. Hertzog*, 29 Pa. 465, 468 (1857).

Historically, a lawsuit brought in assumpsit was triable by a jury at common law. *Grossman Bros. v. Goldman*, 85 Pa. Super. 205, 206-07 (1924). Notably, *Moses v. MacFerlan* involved a jury trial. As employed in this case, unjust enrichment is a form of an assumpsit action because the Plaintiff seeks to create an implied contract between the parties.

The Plaintiff alleges he was considered by the Pennsylvania Gaming Commission to be a principal of the Defendants. As a principal, the Plaintiff's licensure purportedly cleared a path for the renewal of the Defendants' gaming license. Plaintiff contends that had he not expended considerable sums for attorney fees to receive his license, the Defendants' gaming license would not have been renewed. Accordingly, Plaintiff argues he conferred a benefit on the Defendants and it is unjust for the Defendants to retain the benefit without reimbursing the Plaintiff for the attorney fees.

Importantly, the nature of the remedy the Plaintiff seeks is for monetary damages and not an equitable form of relief. To shed light on this distinction, the following is instructive:

Restitution claims for money are usually claims "at law." So are restitution claims for replevin and ejectment. On the other hand, restitution claims that may require coercive intervention or some judicial action that is historically "equitable," may be regarded as equitable claims. For example, if the defendant fraudulently obtained title to Blackacre from the plaintiff, the plaintiff might ask the court to declare a "constructive trust," the upshot of which would be to order the defendant to reconvey Blackacre to the plaintiff. Such a claim is restitutionary and also historically regarded as equitable.

If the same plaintiff merely asked for the money value of Blackacre or the sums gained by the defendant in selling that famous property, then the claim could still be restitutionary but it would now be a claim at law.

*Dan B. Dobbs, Law of Remedies: Damages - Equity - Restitution*, 370 (1993).

In this case, the Plaintiff does not seek any relief requiring coercive action by the Court against the Defendants. The Plaintiff is not seeking an equitable remedy in the form of a constructive trust, stockholders derivative action, injunction, receivership or fiduciary accounting. Instead, the Plaintiff is requesting reimbursement for attorney fees, which is a legal claim entitling Plaintiff to a jury trial.<sup>1</sup>

<sup>1</sup> In asserting a cause of action for unjust enrichment under Pennsylvania law, the Plaintiff must establish:

- (1) benefits conferred on defendant by plaintiff;
- (2) appreciation of such benefits by defendant; and
- (3) acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value.

*Mitchell v. Moore*, 729 A.2d 1200, 1204 (Pa. Super. 1999).

The Plaintiff may invoke equitable concepts of fairness and justness in his case in chief. However, the need for these considerations does not make the Plaintiff's claim solely an equitable one for which there is no right to a jury trial. As aptly stated, "a naked reference to equity or the use of equity does not convert a legal claim into an equitable one." *Dastgheib v. Genentech, Inc.*, 457 F. Supp.2d 536, 545 (E.D. PA. 2006).

The resolution of the issues presented in this case are easily within the ken of a lay jury. The jury's verdict does not require an esoteric knowledge of the law. For centuries, jurors in Pennsylvania have been asked to decide a diverse range of issues involving equity, justice and fairness. In this case, a jury can appropriately decide whether the Plaintiff conferred a benefit on the Defendants and whether it is unjust for the Defendants to retain the benefit.

### **CONCLUSION**

The Defendants' Motion is untimely and the issue waived. The Plaintiff's cause of action existed prior to the adoption of the Pennsylvania Constitution in 1790 with an attendant right to a jury trial at common law. Accordingly, the Defendants' Motion to Strike the Plaintiffs Demand is **DENIED**.

### **ORDER**

AND NOW, to-wit, this 22nd day of October, 2014, for the reasons set forth in the accompanying Opinion, the Motion to Strike Jury Demand as filed by the Defendants is hereby **DENIED**.

The Motion to Set Pre-Trial Deadlines as filed by the Defendants is hereby **GRANTED** as follows:

The Plaintiff's Pre-Trial Narrative shall be filed on or before January 9, 2015.

The Defendant's Pre-Trial Narrative shall be filed on or before February 9, 2015.

All pre-trial Motions shall be filed on or before March 15, 2015.

This case shall be tried during the April, 2015 term of court.

BY THE COURT:

/s/ William R. Cunningham



**ACTION TO QUIET TITLE**

No. 10755 - 2015

TO: Albee Erie Homes, Inc. and Approved BANCredit, their administrators executors or assigns, and Anyone claiming Title by or under them, Defendants  
NOTICE IS HEREBY GIVEN THAT John Wroblewski and Denise Wroblewski filed a Complaint to Quiet Title, in the Court of Common Pleas of Erie County, Pennsylvania, on March 16, 2015, alleging that the 1961 unsatisfied mortgage to Albee Erie Homes, Inc., which was assigned to Approved BANCredit, was paid and should be satisfied of record over the following premises:

ALL THAT CERTAIN lot or piece of ground situate in the Township of Harborcreek, County of Erie and State of Pennsylvania, more particularly bound and described as follows, to-wit:

BEING part of Tract No. 197 beginning at a point and iron pin in the south line of the Erie and Buffalo Road, said point being nine-hundred twelve and one-tenth (912.1) feet measured Westerly from an iron pin in the corner of Luce and Swanson farms and also being the northeast corner of the M.C. Goodspeed eight (8) acre piece; thence South 63° 29' East two hundred thirty-nine (239.0) feet to an iron pin; thence South 27° 0' East two hundred thirty-seven and five-tenths (237.5) feet to an iron pin; thence South 12° 30' West one hundred sixty-six and three-tenths (166.3) feet to an iron pin; thence "North 51° 10' West five hundred twenty-one and eight-tenths (521.8) feet to an iron pin in the south line of the Erie and Buffalo Road; thence North 38° 10' East along the south side of the Erie and Buffalo Road, one hundred and ninety-six and one-tenth (196.1) feet to an iron pic, being the point and place of beginning, containing two and twenty-nine hundredths (2.29) acres of land, be the same more or less and being the eastern portion of N.C. Goodspeed eight (8) acres plot more particularly described by deed recorded in Erie County

Deed Book 661, page 478 and 477. Having erected thereon a one family frame dwelling with a garage in the basement known as 8035 Buffalo Road, Harborcreek Township, Pennsylvania.

WHEREFORE, the Plaintiff brings this Complaint to establish that the 1961 mortgage should be satisfied or record, unless an action is instituted with thirty (30) days of the Final Court Order. It is requested that Defendants, their successors and/or assigns be forever divested of any right, title, or interest in the Subject Parcel, herein described, which is inconsistent with the interest of the Plaintiff, and to have Plaintiff's title to the parcels declared to be good, valid and indefeasible against the Defendants and their heirs.

Apr. 24

**ACTION TO QUIET TITLE**

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA  
NO. 11051 - 2015

KENNIE L. GODA, Plaintiff

v.

DARRELL W. HANNOLD and  
MARY ELLEN HANNOLD,  
Defendants

**LEGAL NOTICE**

**ACTION TO QUIET TITLE**

To: **Darrell W. Hannold and Mary Ellen Hannold**, their heirs, executors, successors and/or assigns, Defendants

You have been sued in Court. If you wish to defend against the claims set forth in the Complaint you must take action within twenty (20) days after this publication by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for the relief requested by the Plaintiff. You may lose money, property or other rights important to you. You should take this notice to your lawyer at once. If you do not have a lawyer or

cannot afford one, go to or telephone the following to find out where you can get legal help.

Lawyers Referral Service  
PO Box 1796, Erie, PA 16507  
(814) 459-4411

Monday-Friday 8:30 a.m. to 3:00 p.m.  
The Complaint, filed in the Court of Common Pleas of Erie County, Pennsylvania at No. 11051 - 2015, alleges that the Plaintiff, Kennie L. Goda is the owner of the following parcel of property:

1308 West 25th Street, City of Erie,

County of Erie, Pennsylvania

Erie County Tax ID # (19) 6202-219  
The Court has ordered that notice to this action may be given by publication so that title to the property may be adjudicated. The Complaint requests the Court to decree that title to the property is free and clear of any claim or interest of any of the said Defendants, their heirs, executors, successors and/or assigns, and that said Defendants, their heirs, executors, successors and/or assigns be barred forever from asserting any right, title and interest in and to the property inconsistent with the interest and claim of the Plaintiff unless an action of ejectment is brought within thirty (30) days of the Court's Order.

Richard A. Blakely, Esq.

Blakely & Blakely, LLC

2701 Evanston Avenue, Suite 100  
Erie, PA 16506

Apr. 24

**CERTIFICATE OF  
AUTHORITY**

An application for Certificate of Authority has been filed by Global Media Outreach with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on or about March 22, 2015, for a foreign corporation with a registered address in the state of Pennsylvania as follows:

Global Media Outreach  
c/o Corporation Creations  
Network, Inc.

1001 State Street, #1400  
Erie, PA 16501

Global Media Outreach is incorporated under the laws of

California. The address of its principal office is 7160 Dallas Parkway, Suite 300, Plano, TX 75024. It is registered to do business in Pennsylvania under Chapter 4 of the Associations Code.

Apr. 24

### CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania  
Docket No. 10277-15

In re: Xavier James Hull, a minor  
Notice is hereby given that a Petition has been filed in the above named Court by Nicole Oregia requesting an Order to change the name of Xavier James Hull to Xavier James Oregia.

The Court has fixed the 12th day of May, 2015 beginning at 1:30 p.m. in Courtroom G, Room 222 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.

Apr. 24

### 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: FitnessU Erie
2. Address of the principal place of business, including street and number: 2312 W. 15th Street, Erie, PA 16505
3. The real name(s) and address, including street and number, of the persons who are parties to the registration: iRock Fitness Inc., 1541 W. Eighth Street, Erie, PA 16505
4. An application for registration of a fictitious name under the Fictitious Name Act was filed on March 25, 2015 with the Department of State

Apr. 24

### FICTITIOUS NAME NOTICE

1. Fictitious Name: Union City Coin Laundry
2. Address of the principal place of business, including street and number: 27 East High Street, Union City, Pennsylvania 16438
3. The character of the business so carried on or conducted is: operation of a coin laundry
4. The name and address, including street and number, of the entity who is interested in this registration: SJF Real Estate Holdings, LLC, 35893 Maple Drive, Union City, Pennsylvania 16438
5. An application for registration of a Fictitious Name under the Fictitious Names Act was filed on March 26, 2015  
Paul J. Carney, Jr., Esq.  
43 North Main Street  
Union City, PA 16438

Apr. 24

### LEGAL NOTICE

NOTICE OF SHERIFF'S SALE  
IN THE COURT OF COMMON  
PLEAS OF ERIE COUNTY,  
PENNSYLVANIA  
NO. 11885-14

WELLS FARGO BANK, N.A.,  
S/B/M TO WELLS FARGO  
HOME MORTGAGE, INC., F/K/A  
NORWEST MORTGAGE, INC.

Vs.

ADAM CLARK, IN CAPACITY  
AS ADMINISTRATOR OF THE  
ESTATE OF STEPHEN M. WEBB  
A/K/A STEPHEN WEBB

UNKNOWN HEIRS,  
SUCCESSORS, ASSIGNS, AND  
ALL PERSONS, FIRMS, OR  
ASSOCIATIONS CLAIMING  
RIGHT, TITLE OR INTEREST  
FROM OR UNDER STEPHEN  
WEBB A/K/A STEPHEN WEBB,  
DECEASED

NOTICE TO: UNKNOWN HEIRS,  
SUCCESSORS, ASSIGNS, AND  
ALL PERSONS, FIRMS, OR  
ASSOCIATIONS CLAIMING  
RIGHT, TITLE OR INTEREST  
FROM OR UNDER STEPHEN  
WEBB A/K/A STEPHEN WEBB,  
DECEASED

NOTICE OF SHERIFF'S SALE  
OF REAL PROPERTY  
Being Premises: 2620 GLENDALE

AVENUE, ERIE, PA 16510-1526  
Being in ERIE CITY, County  
of ERIE, Commonwealth of  
Pennsylvania, 18051042012000  
Improvements consist of residential  
property.

Sold as the property of ADAM  
CLARK, IN CAPACITY AS  
ADMINISTRATOR OF THE  
ESTATE OF STEPHEN M. WEBB  
A/K/A STEPHEN WEBB  
UNKNOWN HEIRS,  
SUCCESSORS, ASSIGNS, AND  
ALL PERSONS, FIRMS, OR  
ASSOCIATIONS CLAIMING  
RIGHT, TITLE OR INTEREST  
FROM OR UNDER STEPHEN  
WEBB A/K/A STEPHEN WEBB,  
DECEASED

Your house (real estate) at 2620  
GLENDALE AVENUE, ERIE,  
PA 16510-1526 is scheduled to  
be sold at the Sheriff's Sale on  
06/19/2015 at 10:00 AM, at the  
ERIE County Courthouse, 140  
West 6th Street, Room 18, Erie, PA  
16501-1077, to enforce the Court  
Judgment of \$42,015.83 obtained  
by, WELLS FARGO BANK,  
N.A., S/B/M TO WELLS FARGO  
HOME MORTGAGE, INC., F/K/A  
NORWEST MORTGAGE, INC.  
(the mortgagee), against the above  
premises.

Phelan Hallinan Diamond & Jones  
Attorney for Plaintiff

Apr. 24

### LEGAL NOTICE

NOTICE OF ACTION IN  
MORTGAGE FORECLOSURE  
IN THE COURT OF COMMON  
PLEAS OF ERIE COUNTY,  
PENNSYLVANIA  
10329-2015

PNC BANK, NATIONAL  
ASSOCIATION, SUCCESSOR BY  
MERGER TO NATIONAL CITY  
BANK, Plaintiff,

vs.

ALL KNOWN AND UNKNOWN  
HEIRS OF PAUL D.  
NEWCOMER, SR., A/K/A PAUL  
D. NEWCOMER, Defendant.

To Whom It May Concern:

You are hereby notified that on  
February 9, 2015, PNC Bank,  
National Association filed a  
Mortgage Foreclosure Complaint

against the above Defendant at the above number.

Property Subject to Foreclosure:  
3114 Court Avenue, Erie, PA 16506

#### NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

Lawyer Referral &  
Information Service

PO Box 1792  
Erie, PA 16507

Telephone: (814) 459-4411

Brett A. Solomon, Esquire  
Pa. I.D. #83746

Attorney for Plaintiff  
Tucker Arensburg, P.C.  
1500 One PPG Place  
Pittsburgh, PA 15222  
412-566-1212

Apr. 24

#### LEGAL NOTICE

THE SCHOOL DISTRICT  
CITY OF ERIE, PA

Dr. James E. Barker  
Leadership Center

148 West 21st Street, Erie, PA 16502

#### NOTICE TO BIDDERS

The School District of the City of Erie, 148 West 21st Street, Erie, PA 16502 will receive SEALED BIDS for Fueling Services and Waste Removal and Recycling Services

up to Thursday, May 7, 2015 at 1:30 p.m., at which time they will be opened in the Board Room, in accordance with the bid forms and specifications to be obtained from the Purchasing Department.

Robin Smith  
Secretary

Apr. 24 and May 1

#### LEGAL NOTICE

**MARSHAL'S SALE:** By virtue of a Writ of Execution issued out of the United States District Court for the Western District of Pennsylvania and to me directed, I shall expose to public sale the real property located at 1116 Birch Street, Lake City, PA 16423 being more fully described at Erie County Deed Book Volume 759, Page 1.

**SAID SALE** to be held at the **ERIE COUNTY COURTHOUSE, 140 W. SIXTH STREET, ROOM 209, ERIE, PA at 10:00 a.m.** prevailing, standard time, on **MAY 11, 2015.**

All that certain tract of land, together with the buildings, and improvements erected thereon described as Tax Map No. 28005006700600 recorded in Erie County, Pennsylvania. Seized and taken in execution as the property of Jessica A. Pasquarello aka Jessica A. Pettigrew, at the suit of the United States of America, acting through the Under Secretary of Rural Development, on behalf of Rural Housing Service, United States Department of Agriculture, to be sold on Writ of Execution as Civil Action No. 14-225-Erie.

**TERMS OF SALE:** Successful bidder will pay ten percent (10%) by certified check or money order upon the property being struck down to such bidder, and the remainder of the bid within thirty (30) days from the date of the sale and in the event the bidder cannot pay the remainder, the property will be resold and all monies paid in at the original sale will be applied to any deficiency in the price at which the property is resold. The successful bidder must send payment of the balance of the bid directly to the U.S. Marshal's Office c/o Sheila Blessing, 700 Grant Street, Suite 2360, Pittsburgh,

PA 15219. Bidder must have deposit funds immediately available and on his person in order to bid, bidder will not be permitted to leave the sale and return with deposit funds. Notice is hereby given that a Schedule of distribution will be filed by me on the thirtieth (30th) day after the date of sale, and that distribution will be made in accordance with the Schedule unless exemptions are filed thereto within ten (10) days thereafter. Purchaser must furnish State Realty Transfer Tax Stamps, and stamps required by the local taxing authority. Marshal's costs, fees and commissions are to be borne by seller. Steve Frank, United States Marshal. For additional information, please contact Cathy Diederich at 314-457-5514 or the USDA foreclosure website at [www.resales.uds.gov](http://www.resales.uds.gov).

Apr. 10, 17, 24 and May 1

AUDIT LIST  
NOTICE BY  
KENNETH J. GAMBLE

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, April 27, 2015** and confirmed Nisi.

**May 21, 2015** 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>2015</u>	<u>ESTATE</u>	<u>ACCOUNTANT</u>	<u>ATTORNEY</u>
94.	Craig A. Rodgers .....	Susanne S. Rodgers, Executrix .....	Philip B. Friedman, Esquire
95.	Lillian E. Briody, a/k/a .....	Richard Briody, Rita L. Briody, Lily Anna Briody Co-Administrators .....	Darlene M. Vlahos, Esquire
96.	Raymond B. Czupkowski .....	Donald A. Czupkowski, Administrator .....	Darlene M. Vlahos, Esquire
97.	Michael J. Bebko .....	Betty L. Bednar, Administratrix .....	Colleen R. Stumpf, Esquire

KENNETH J. GAMBLE  
Clerk of Records  
Register of Wills &  
Orphans' Court Division

Apr. 17, 24

**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**

**AYMONG, GRACE M.,  
deceased**

Late of the Township of Millcreek, Erie County, Pennsylvania  
*Executor:* John M. Aymong, c/o Raymond A. Pagliari, Esq., 510 Cranberry St., Suite 301, Erie, Pennsylvania 16507-1129  
*Attorney:* Raymond A. Pagliari, Esq., 510 Cranberry St., Suite 301, Erie, Pennsylvania 16507

**FOGLE, ROBERT E.,  
deceased**

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

**KINDLE, SUSAN L.,  
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania  
*Executor:* Ronald J. Kindle, c/o 300 State Street, Suite 300, Erie, PA 16507  
*Attorney:* Thomas V. Myers, Esquire, Marsh Spaeder Baur, Spaeder & Schaaf, LLP, 300 State Street, Suite 300, Erie, PA 16507

**McLAUGHLIN, LUCILLE M.,  
a/k/a LUCILLE MAXINE  
McLAUGHLIN,  
deceased**

Late of the Borough of Mill Village, Commonwealth of Pennsylvania  
*Administrator:* William McLaughlin, c/o Richard A. Vendetti, Esquire, 3820 Liberty Street, Erie, Pennsylvania 16509  
*Attorney:* Richard A. Vendetti, Esq., Vendetti & Vendetti, 3820 Liberty Street, Erie, PA 16509

**NALEPA, DOROTHY C., a/k/a  
DOROTHY NALEPA,  
deceased**

Late of the City of Erie  
*Executrix:* Kay Pamula  
*Attorney:* Michael G. Nelson, Esquire, Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, 300 State Street, Suite 300, Erie, Pennsylvania 16507

**POWDEN, ESTHER R.,  
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania  
*Executor:* John M. Laniewicz, 12840 Rt. 86, Edinboro, PA 16412  
*Attorney:* None

**SWEENEY, ELIZABETH A.,  
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania  
*Executrix:* Terry Lee Hammond, 3101 Elk Run Drive, Park City, UT 84098-5300  
*Attorneys:* MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

**WHITTEN, PHYLLIS,  
deceased**

Late of the City of Erie, County of Erie  
*Executor:* Robert Whitten, 71 Catawba Drive, North East, Pennsylvania 16428  
*Attorney:* Kari A. Froess, Esquire, Carney & Good, 254 West Sixth Street, Erie, Pennsylvania 16507

**YENTES, JUNE E.,  
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania  
*Executor:* Ted J. Padden, Esquire, 17 West 10th Street, Erie, Pennsylvania 16501  
*Attorney:* Ted J. Padden, Esquire, 17 West 10th Street, Erie, Pennsylvania 16501

**SECOND PUBLICATION**

**BRUGGER, PATRICIA C.,  
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania  
*Executrix:* Michele Brugger Orlando, c/o 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508  
*Attorney:* Darlene M. Vlahos, Esquire, 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508

**BUFFALARI, WILLIAM, a/k/a  
WILLIAM BUFALARI, JR.,  
deceased**

Late of the City of Erie  
*Executor:* Jack M. Gornall, 17 Niagara Pier, Erie, PA 16507  
*Attorney:* Michael A. Fetzner, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**DeARMENT, AUDREY J.,  
deceased**

Late of the City of Erie, Erie County, Commonwealth of Pennsylvania  
*Co-Executors:* Carol J. DeArment & Patricia J. Toth, c/o Thomas C. Hoffman II, Esq., 120 West Tenth Street, Erie, PA 16501  
*Attorney:* Thomas C. Hoffman II, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**DRISCOLL, DANIEL M.,  
deceased**

Late of the Township of Millcreek, Erie County, Pennsylvania  
*Executrix:* Linda Foll Johnson, c/o William J. Hathaway, Esquire, 1903 West 8th Street, PMB#261, Erie, Pennsylvania 16505  
*Attorney:* William J. Hathaway, Esquire, 1903 West 8th Street, PMB#261, Erie, Pennsylvania 16505

**IESUE, NANCY M., a/k/a  
ANUNZIATTA IESUE,  
deceased**

Late of the City of Erie, Erie County, PA  
*Executrix:* Concetti Bucci, c/o 120 West Tenth Street, Erie, PA 16501  
*Attorney:* Christine Hall McClure, Esquire, Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**KRASNESKY, DAVID  
BERNARD,  
deceased**

Late of the City of Erie, County of Erie and State of Pennsylvania  
*Executor:* Lori Jean Krasnesky, c/o Howard A. Hain, Esq., 821 State Street, Erie, PA 16501  
*Attorney:* Howard A. Hain, Esquire, 821 State Street, Erie, PA 16501

**LACHOWSKI, JOSEPHINE  
THERESA, a/k/a JOSEPHINE T.  
LACHOWSKI,  
deceased**

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

**POLATAS, MARY JO,  
deceased**

Late of Millcreek Township, Erie County, Pennsylvania  
*Executrix:* Susan Kelly, 4519 Antoinette Court, Erie, PA 16506  
*Attorney:* Frances A. McCormick, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**SHAUBERGER, HELEN I.,  
deceased**

Late of the Borough of Albion, County of Erie, Commonwealth of Pennsylvania  
*Executrix:* Ellen M. Carr, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506  
*Attorney:* Scott L. Wallen, Esquire, Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**VEIT, ROSE MARY,  
deceased**

Late of the City of Erie, Erie County, Pennsylvania  
*Executrix:* Nancy Veit, 1303 Anna Court, Erie, PA 16504  
*Attorney:* Frances A. McCormick, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**WAGNER, BRIAN FRANK,  
a/k/a BRIAN F. WAGNER, a/k/a  
BRIAN WAGNER,  
deceased**

Late of the Township of McKean, County of Erie, State of Pennsylvania  
*Administrator C.T.A.:* Marvin F. Wagner, 9280 Townhall Road, Wattsburgh, PA 16442  
*Attorney:* James R. Steadman, Esq., 24 Main St. E., PO Box 87, Girard, PA 16417

**THIRD PUBLICATION**

**BAILEY, FORD JAMES,  
deceased**

Late of the Township of Springfield, County of Erie and Commonwealth of Pennsylvania  
*Executor:* Mark A. Bailey  
*Attorney:* Thomas J. Minarcik, Esquire, Elderkin Law Firm, 150 East 8th Street, Erie, PA 16501

**BENTZ, WARREN W.,  
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania  
*Executor:* James W. Bentz, 30 Mayfair Drive, Pittsburgh, PA 15228-1104  
*Attorneys:* MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

**BLAIR, RUTH C.,  
deceased**

Late of the Township of Millcreek, Erie County, PA  
*Executrix:* Janet C. Carter, c/o 120 West 10th Street, Erie, PA 16501  
*Attorney:* Christine Hall McClure, Esquire, Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**DeARMENT, WAYNE C.,  
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania  
*Executor:* Gary H. Nash, c/o Yochim, Skiba & Nash, 345 West Sixth Street, Erie, PA 16507  
*Attorney:* Gary H. Nash, Esq., Yochim, Skiba & Nash, 345 West Sixth Street, Erie, PA 16507

**DZURICKY, JOHN MATTHEW,  
deceased**

Late of the Township of Millcreek, County of Erie, Pennsylvania  
*Executrix:* Katherine Ann Ditrich, c/o 150 East 8th Street, Erie, PA 16501  
*Attorney:* Gregory L. Heidt, Esquire, 150 East 8th Street, Erie, PA 16501

**HOLLAND, TIMOTHY J.,  
deceased**

Late of Millcreek Township,  
County of Erie, Commonwealth  
of Pennsylvania  
*Co-Executors:* Linda C. Spronatti,  
Michael J. Holland and Thomas  
P. Holland, c/o Quinn, Buseck,  
Leemhuis, Toohey & Kroto, Inc.,  
2222 West Grandview Blvd.,  
Erie, PA 16506  
*Attorney:* James F. Toohey,  
Esq., Quinn, Buseck, Leemhuis,  
Toohey & Kroto, Inc., 2222 West  
Grandview Blvd., Erie, PA 16506

**MACIOLEK, TADEUSZ,  
deceased**

Late of the City of Erie, County  
of Erie, Commonwealth of  
Pennsylvania  
*Executor:* Henry T. Maciolek,  
955 Fair Ave., Erie, PA 16511  
*Attorney:* John E. Gomolchak,  
Esq., 3854 Walker Blvd., Erie,  
PA 16509

**MULLEN, JAMES E.,  
deceased**

Late of the Township of Lawrence  
Park, County of Erie and  
Commonwealth of Pennsylvania  
*Executor:* James M. Mullen  
*Attorney:* James H. Richardson,  
Jr., Esq., Elderkin Law Firm, 150  
East 8th Street, Erie, PA 16501

**PERINO, VERNA, a/k/a  
VERNA L. PERINO,  
deceased**

Late of Millcreek Township, Erie  
County, Pennsylvania  
*Executrix:* Patricia Ann  
Dougherty, 2033 Picadilli Hill  
Road, Corry, Pennsylvania 16407  
*Attorney:* John R. Falcone, Esq.,  
4845 West Lake Road, Erie,  
Pennsylvania 16505

**STAFFORD, MARY, a/k/a  
MARY M. STAFFORD,  
deceased**

Late of the Township of  
Washington, County of Erie,  
State of Pennsylvania  
*Executor:* James Stafford,  
11458 Martin Road, Waterford,  
Pennsylvania 16441  
*Attorney:* Grant M. Yochim,  
Esq., 24 Main St. E., PO Box 87,  
Girard, PA 16417



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Public Defender's Office ----- (f) (814) 451-6513  
509 Sassasfras Street  
Erie, PA 16507 ----- *khorton@eriecountygov.org*

**DAVID S. WILLOUGHBY** ----- (585) 362-4519  
Woods Oviatt Gilman LLP ----- (f) (585) 362-4619  
2 State Street, 700 Crossroads Bldg.  
Rochester, NY 14614 ----- *dwilloughby@woodsoviatt.com*

**MICHAEL W. HARMON** ----- (814) 651-3608  
5321 Loomis St., No. 96  
North East, PA 16428 ----- *harmon603@hotmail.com*

**SUSAN FUHRER KARDOS** ----- (814) 881-9083  
1528 Fairway Drive  
Erie, PA 16505 ----- *sreiter7760@gmail.com*

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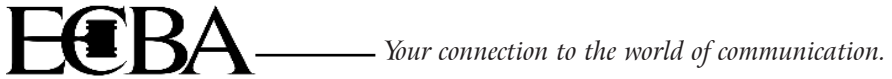
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