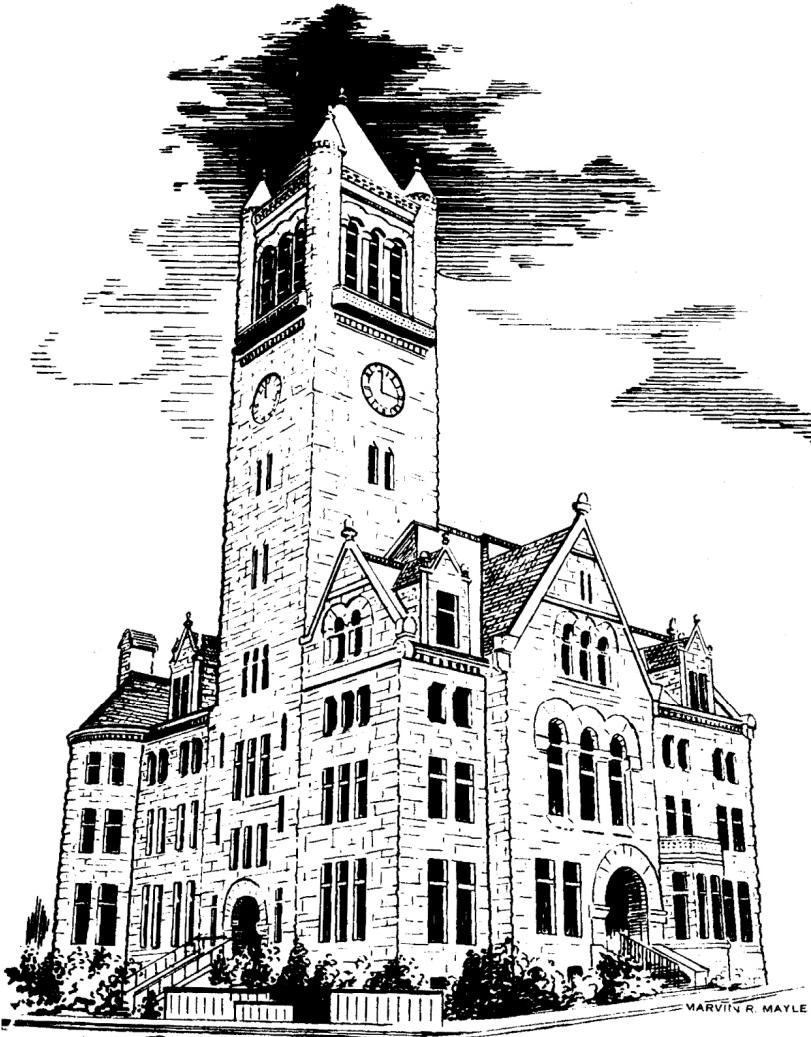


FAYETTE LEGAL JOURNAL

VOL. 81

SEPTEMBER 8, 2018

NO. 36



FAYETTE LEGAL JOURNAL

The FAYETTE LEGAL JOURNAL is published weekly by the Fayette County Bar Association, 2 West Main Street, Suite 711, Uniontown, Pennsylvania 15401, 724-437-7994. Legal advertisements should be submitted online at www.fcbar.org no later than 12:00 noon on Friday for publication the following Saturday. No date of publication is promised, however. Legal notices are published exactly as submitted by the advertiser. Copyright 2001 Fayette County Bar Association. All rights reserved.

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ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

GERTRUDE D'AURIA, a/k/a GERTRUDE ANN D'AURIA, late of Dunbar Township, Fayette County, PA (3)

Personal Representative:

Marianne E. Germeyer
c/o Watson Mundorff & Sepic, LLP
720 Vanderbilt Road
Connellsville, PA 15425

Attorney: Charles W. Watson

HAZEL M. GALLO, a/k/a HAZEL MAE GALLO, late of South Union Township, Fayette County, PA (3)

Executor: Randy Stuart Gallo

c/o Webster & Webster
51 East South Street
Uniontown, PA 15401

Attorney: Webster & Webster

PATRICIA LUBITS GUMP, a/k/a PATRICIA GUMP, late of Masontown, Fayette County, PA (3)

Executor/Attorney: Joseph M. Standish

100 Center Street
Masontown, PA 15461

MICKEY F. JOSEPH, late of Dunbar Township, Fayette County, PA (3)

Personal Representative:

Michele Joseph Colbert
c/o Watson Mundorff & Sepic, LLP
720 Vanderbilt Road
Connellsville, PA 15425

Attorney: Charles W. Watson

SARAH NURMINEN, late of Bulls Skin Township, Fayette County, PA (3)

Executrix: Kristin L. Olexa
134 Maple Road
Acme, PA 15610
c/o 749 North Church Street
Mt. Pleasant, PA 15666
Attorney: Paul E. Toohy

Second Publication

HARRIET MAE COX, a/k/a HARRIET M. COX, a/k/a HARRIET B. COX, late of Jefferson Township, Fayette County, PA (2)

Co-Executors:

Jon Paul Cox and
411 Mutich Street
Belle Vernon, PA 15012
Leah Rae Ackincklose
141 Williams Road
Fayette City, PA 15438

c/o 823 Broad Avenue
Belle Vernon, PA 15012

Attorney: Mark E. Ramsier

BARBARA T. DALSON, late of Luzerne Township, Fayette County, PA (2)

Executor: Chad M. Dalson

c/o Webster & Webster
51 East South Street
Uniontown, PA 15401

Attorney: Webster & Webster

EILEEN FALCO, a/k/a EILEEN W. FALCO, late of Connellsville, Fayette County, PA (2)

Personal Representative: Ralph A. Falco
813 McCormick Avenue
Connellsville, PA 15425

Personal Representative: Beverly A. Enoff
208 Gacek Road
Greensboro, PA 15338

c/o Moore Becker Smarto & Ciszek, P.C.
121 West Second Street
Greensburg, PA 15601

Attorney: Lawrence F. Becker, III

IWILDA FENIELLO, late of Bullsken Township, Fayette County, PA (2)
Executrix: Burnice Feniello
 c/o Casini & Geibig, LLC
 615 West Crawford Avenue
 Connellsville, PA 15425
Attorney: Jennifer M. Casini

HARRIETTE HARPER, late of South Union Township, Fayette County, PA (2)
Executor: Robert R. Harper
 431 Independence Court
 Uniontown, PA 15401
 c/o Harper & Mikluscak
 111 East Main Street
 Uniontown, PA 15401
Attorney: Robert R. Harper, Jr.

JUDITH NARDONE, a/k/a JUDY NARDONE, a/k/a JUDITH S. WORK, late of Connellsville, Fayette County, PA (2)
Executrix: Kathryn Poggi
 815 Wellington Drive
 Seven Fields, PA 16046
 c/o 9380 McKnight Road, Suite 106
 Pittsburgh, PA 15237
Attorney: James S. Vergotz

JOSEPH STEVENS, a/k/a JOSEPH STEVENS, JR., late of Fayette City, Fayette County, PA (2)
Personal Representative: Wesley J. Stevens
 c/o Nathan J. Zarichnak & Assoc., LLC
 601 ½ Broad Avenue
 Belle Vernon, PA 15012
Attorney: Nathan J. Zarichnak

PAULINE STRAUSS, a/k/a PAULINE H. STRAUSS, late of South Union Township, Fayette County, PA (2)
Executrix: Linda L. Ford
 c/o Higinbotham Law Office
 45 East Main Street, Suite 500
 Uniontown, PA 15401
Attorney: James E. Higinbotham, Jr.

First Publication

MARY BOBECK, late of Brownsville, Fayette County, PA (1)
Executor: Frank Bobeck
 816 High Street
 Brownsville, PA 15417
 c/o 357 Regis Avenue
 Pittsburgh, PA 15236
Attorney: Joseph P. Covelli

JOHN T. HOFERKA, late of Uniontown, Fayette County, PA (1)
Administratrix: Stacey Hoferka Jensen
 c/o 11 Pittsburgh Street
 Uniontown, PA 15401
Attorney: Thomas W. Shaffer

MARY LOUISE JESSO, late of German Township, Fayette County, PA (1)
Personal Representative: Nicholas Jesso
 c/o 107 East Main Street
 Uniontown, PA 15401
Attorney: Gary J. Frankhouser

STELLA M. POVLSH, late of Washington Township, Fayette County, PA (1)
Executrix: Erika Pesarsick
 203 Meadow Ponds Lane
 Madsville, WV 26541
 c/o 823 Broad Avenue
 Belle Vernon, PA 15012
Attorney: Mark E. Ramsier

LEGAL NOTICES

NOTICE OF TRUST ADMINISTRATION
RE: Esther Sabol, Deceased /Sabol
Revocable Family Trust

Notice is hereby given that Norma J. Martin is Trustee of the Sabol Revocable Family Trust. All persons indebted to Esther Sabol are requested to make payment and all those having claims against Esther Sabol are directed to present same without delay to: Esther Sabol Revocable Family Trust, c/o Michael S. Butler, Esquire, Heritage Elder Law & Estate Planning, LLC, 318 S. Main St., Butler, PA 16001 (3 of 3)

IN THE COURT OF COMMON PLEAS OF
 FAYETTE COUNTY, PENNSYLVANIA
 CIVIL ACTION

The Honorable Joseph M. George, Jr.
 ACTION TO QUIET TITLE
 No. 1290 of 2018

**MICHAEL T. ORTLIP AND LYNDA S.
 ORTLIP,**

Plaintiffs
vs.

BEST FOOD PRODUCTS, INC.,
Defendant.

TO: BEST FOOD PRODUCTS, INC., its
 Successors, Administrators or Assigns.

PLEASE TAKE NOTICE that on June 19, 2018, Michael T. Ortlip and Lynda S. Ortlip, filed a Complaint in Action to Quiet Title and for Declaratory Judgment, claiming ownership in fee and in sole possession of the premises situate in Perry Township, Fayette County, Pennsylvania and designated as Fayette County Tax Parcel Number 27-20-0062.

A portion of the current Tax Parcel Number 27-20-0062 was sold to Defendant, Best Food Products, Inc., by Deed from General Acceptance Corporation, dated January 31, 1967, and recorded February 9, 1967, in Deed Book 1037, Page 680.

That the Defendant, Best Food Products, Inc., may have an interest in the said premises which creates a cloud upon Plaintiff's title, whereupon the Plaintiff has filed its Complaint as aforesaid asking the Court to enter a Decree

terminating all rights which Defendants may have in said premises and decreeing that Plaintiff has the full and free use and occupation of said premises, released and forever discharged of any right, lien, title or interest of Defendant herein. Service of this Complaint by publication is made pursuant to an Order of Court dated August 8, 2018, and filed at the above term and number.

You are hereby notified that you have been sued in Court. If you wish to defend against the claims set forth in the Complaint filed against you, a copy of which may be obtained at the Office of the Prothonotary, Fayette County Courthouse, Uniontown, Pennsylvania, you must take action within twenty (20) days after the Complaint and this Notice is 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 claims 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
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GORDON LAW P.L.L.C.
 Robert A. Gordon, Esquire
 Attorney for Plaintiff
 99 East Main Street
 Uniontown, Pennsylvania 15401
 Telephone: 724-438-3560

SHERIFF'S SALE

Gary W. Darr, Esquire
McGrath McCall P.C.
Four Gateway Center, Suite 1040
444 Liberty Avenue, Pittsburgh, PA 15222

No. 315 of 2018 GD
No. 266 of 2018 ED

Date of Sale: November 15, 2018

By virtue of the below stated writs out of the Court of Common Pleas of Fayette County, Pennsylvania, the following described properties will be exposed to sale by James Custer, Sheriff of Fayette County, Pennsylvania on Thursday, November 15, 2018, at 2:00 p.m. in Courtroom Number Five at the Fayette County Courthouse, Uniontown, Pennsylvania.

The terms of sale are as follows:

Ten percent of the purchase price, or a sufficient amount to pay all costs if the ten percent is not enough for that purpose. Same must be paid to the Sheriff at the time the property is struck off and the balance of the purchase money is due before twelve o'clock noon on the fourth day thereafter. Otherwise, the property may be resold without further notice at the risk and expense of the person to whom it is struck off at this sale who in case of deficiency in the price bid at any resale will be required to make good the same. Should the bidder fail to comply with conditions of sale money deposited by him at the time the property is struck off shall be forfeited and applied to the cost and judgments. All payments must be made in cash or by certified check. The schedule of distribution will be filed the third Tuesday after date of sale. If no petition has been filed to set aside the sale within 10 days, the Sheriff will execute and acknowledge before the Prothonotary a deed to the property sold. (1 of 3)

James Custer
Sheriff Of Fayette County

FIRST COMMONWEALTH BANK,

Plaintiff,

vs.

LISA RANAE BAILEY, and the UNITED STATES OF AMERICA,
Defendants.

All that certain piece or parcel of ground lying and situate in the Borough of Everson, Fayette County, Pennsylvania. Having erected thereon a house and garage known as 613 Brown Street, Everson, Pennsylvania 15631 and designated as Parcel No. 10-04-0044.

No. 2093 of 2017 GD
No. 264 of 2018 ED

CLEAR MOUNTAIN BANK,

Plaintiff,

v.

DAN BASHOUR and BASHOUR VENTURES, LLC,
Defendant.

534 Jumonville Road, Uniontown, PA 15401. All that Certain lot of ground being Lot Nos. 24 and 25 in the J.M. Swaney Plan of Lots in North Union Township, Fayette County, Pennsylvania, a plot of which is recorded in the Recorder of Deeds Office of Fayette County, Pennsylvania, in Plan Book Volume 6, page 65. Parcel No. 25-55-0009.

No. 282 of 2018 GD
 No. 260 of 2018 ED

**BRANCH BANKING AND TRUST
 COMPANY,**

Plaintiff,

Vs.

**SPENCER TODD CHRISTOPHER
 And**

UNITED STATES OF AMERICA,

Defendants.

ALL that certain tract of land situate in Menallen Township, Fayette County, Pennsylvania, designated as Lot No. 2 in the VanSickle Subdivision which is of record in the Office of the Recorder of Deeds of Fayette County, Pennsylvania, in Plan Book Volume 72, page 31, and being more particularly bounded and described as follows:

BEGINNING at a point in SR 4006, more commonly known as New Salem Road, at the southeastern corner of land herein conveyed and land now or formerly of David Jobes; thence along land of said Jobes, South 84° 16' 30" West, a distance of 217.26 feet to a point; thence continuing along land of said Jobes, South 63° 45' 00" West, a distance of 183.15 feet to a point on line of land now or formerly of County of Fayette; thence along land of said County of Fayette, North 51° 00' 00" West, a distance of 628.38 feet to a point, corner of Lot No. 1 in said VanSickle Subdivision; thence along said Lot No. 1, North 05° 26' 00" East, a distance of 518.59 feet to a point in the said New Salem Road; thence along said New Salem Road, South 71° 30' 00" East, a distance of 291.06 feet to a point; thence continuing along said New Salem Road, on a curve to the right, with a radius of 400.00 feet, a length of 216.42 feet, a delta of 31° 00' 00", a chord of South 56° 00' 00" East, a distance of 213.79 feet, and a tangent of 110.93 feet to a point; thence continuing along said New Salem Road, South 40° 30' 00" East, a distance of 132.54 feet to a point; thence continuing along said New Salem Road on a curve to the right, with a radius of 500.00 feet, a length of 141.08 feet, a delta of 16° 10' 00", a chord of South 32° 25' 00" East, a distance of 140.61 feet, and a tangent of 71.01 feet to a point; thence continuing along said New Salem Road, South 24° 20' 00" East, a distance of 202.44 feet to a point; thence continuing along said New Salem Road on a curve to the left, with a radius of 800.00 feet, a length of 181.51 feet, a

delta of 13° 00' 00", a chord of North 30° 50' 00" West, a distance of 181.13 feet, and a tangent of 91.15 feet to a point; thence continuing along said New Salem Road, South 37° 20' 00" East, a distance of 47.36 feet to a point, the place of beginning. CONTAINING an area of 10.0362 acres according to the survey of Fayette Engineering Company, Inc. dated April, 2004.

UNDER AND SUBJECT to all exceptions, reservations, easements, covenants, restrictions, conditions, rights-of-way, etc., contained in prior instruments of record and affecting the chain of title thereto.

BEING the same premises which were conveyed to Spencer Todd Christopher by Deed of Jeff Porterfield, Jr. and Marie Porterfield, his wife, dated August 5, 2007, and recorded on August 10, 2007, in the office of the Recorder of Deeds for Fayette County, in Record Book 3035, page 2173.

ADDRESS OF PROPERTY: 789 New Salem Road, Uniontown, PA 15401.

PARCEL NUMBER: 22-19-0068-01

PROPERTY OWNER: Spencer Todd Christopher

IMPROVEMENTS: A commercial building

IMPORTANT NOTICE: The above property will be sold expressly subject to the IRS' right to redeem the property within 120 days of the date of the foreclosure sale.

No. 1090 of 2018 GD

No. 277 of 2018 ED

Land Home Financial Services, Inc.,

Plaintiff,

vs.

Joshua Coneway,

Defendant.

ALL THAT RIGHT, TITLE, INTEREST AND CLAIMS OF JOSHUA CONEWAY OF, IN AND TO THE FOLLOWING DESCRIBED PROPERTY:

ALL THAT CERTAIN LOT OR PARCEL OF LAND SITUATE IN UNIONTOWN CITY, COUNTY OF FAYETTE AND COMMONWEALTH OF PENNSYLVANIA, BEING MORE FULLY DESCRIBED AT DBV 3340 PAGE 1637

BEING KNOWN AS 9 DERRICK AVENUE, UNIONTOWN, PA 15401

TAX MAP NO. 38-15-0250

KML Law Group, P.C.
Suite 5000 - BNY Independence Center
701 Market Street
Philadelphia, PA 19106
215-627-1322

No. 1279-8 of 2018 GD
No. 279 of 2018 ED

DITECH FINANCIAL LLC
3000 Bayport Drive, Suite 880
Tampa, FL 33607,
Plaintiff,
vs.

TAMMY C. HAWK
JAMES D. HAWK
Mortgagor(s) and Record Owner(s)
104 Painter Street
Everson, PA 15631,
Defendant.

ALL THAT CERTAIN lot or parcel of
land situate in the County of Fayette and
Commonwealth of Pennsylvania.

TAX PARCEL# 10-03-0011

PROPERTY ADDRESS: 104 Painter
Street Everson, PA 15631

IMPROVEMENTS: A residential
dwelling.

SOLD AS THE PROPERTY OF:
TAMMY C. HAWK and JAMES D. HAWK

KML Law Group, P.C.
Suite 5000 - BNY Independence Center
701 Market Street
Philadelphia, PA 19106
215-627-1322

No. 943 of 2018 GD
No. 268 of 2018 ED

DITECH FINANCIAL LLC
3000 Bayport Drive, Suite 880
Tampa, FL 33607,

Plaintiff,
vs.

MICHAEL E. JACKSON AKA MICHAEL
JACKSON
SARAH J. JACKSON
Mortgagor(s) and Record Owner(s)
616 Pine Street
Brownsville, PA 15417,
Defendants.

ALL THAT CERTAIN lots or parcels of
land situate in the , County of Fayette and
Commonwealth of Pennsylvania.

TAX PARCEL# 19-29-004, 019-29-0069
and 19-29-0041

PROPERTY ADDRESS: 616 Pine Street
Brownsville, PA 15417

IMPROVEMENTS: A residential
dwelling.

SOLD AS THE PROPERTY OF:
MICHAEL E. JACKSON AKA MICHAEL
JACKSON and SARAH J. JACKSON

Phelan Hallinan Diamond & Jones, LLP

No. 2198 of 2017 GD
No. 278 of 2018 ED

Pennymac Loan Services, LLC,
Plaintiff,
V.

Francis W. Lee, III,
Defendant(s).

By virtue of a Writ of Execution No. 2198-
OF-2017-GD, Pennymac Loan Services, LLC v.
Francis W. Lee, III, owner(s) of property situate
in the GEORGES TOWNSHIP, Fayette County,
Pennsylvania, being 108 Victory Drive,
Smithfield, PA 15478-1268

Parcel No.: 1425005741

Improvements thereon: RESIDENTIAL
DWELLING

ANNE N. JOHN Esq.
ATTORNEY AT LAW

No. 191 of 2018 GD
No. 161 of 2018 ED

**FIRST FEDERAL SAVINGS AND LOAN
ASSOCIATION OF GREENE COUNTY, a
corporation,**

Plaintiff,
vs.

**RYAN PATRICK MAHONEY and
NICHOLE MARIE HOST, a/k/a NICOLE
MARIE HOST,**
Defendants.

ALL that certain lot of land situated in North Union Township, Fayette County, Pennsylvania being the Northeasterly portion of Lot No. 27 in Section "F" of "Evans Manor" Land Company's Plan of Lots called "Evans Manor", according to a plot thereof recorded September 4, 1923, in the office of the Recorder of Deeds of Fayette County, Pennsylvania in Plan Book Vol. 4, page 186.

UPON which is erected a single family dwelling known locally as 224 Edison Blvd., a/k/a 224 Edison Street, Uniontown, PA 15401.

Fayette County Assessment Map No.: 25-30-0024.

No. 865 of 2018 GD
No. 280 of 2018 ED

**PENNSYLVANIA HOUSING FINANCE
AGENCY,**

PLAINTIFF,
vs.

FREDERICK MARTIN,
DEFENDANT.

ALL THOSE TWO lots of land in South Union Township, Fayette County, Pennsylvania: FIRST: being approximately 70 x 50 and containing 3500 square feet; and SECOND: being approximately 70 x 50 and containing 3500 square feet. HAVING THEREON ERECTED a dwelling known and numbered as 143 Balsinger Road, Uniontown, PA 15401.

TAX PARCEL: 34-05-0010

Fayette Deed Book 3255, Page 465

TO BE SOLD AS THE PROPERTY OF
FREDERICK MARTIN UNDER FAYETTE
COUNTY JUDGMENT NO. 865 OF 2018.

Phelan Hallinan Diamond & Jones, LLP

No. 1075 of 2018 GD
No. 263 of 2018 ED

Wells Fargo Bank, NA,
Plaintiff,

V.

Cheryl Ann Morgan a/k/a Cheryl A. Morgan,
Defendant(s).

By virtue of a Writ of Execution No. 1075 OF 2018 GD Wells Fargo Bank, NA v. Cheryl Ann Morgan a/k/a Cheryl A. Morgan, owner(s) of property situate in the JEFFERSON TOWNSHIP, Fayette County, Pennsylvania, being 129 East 2nd Street, a/k/a 129 East Second Street, Grindstone, PA 15442-1241

Parcel No.: 17-16-0011

Improvements thereon: RESIDENTIAL
DWELLING

Richard M. Squire & Associates, LLC

By: Richard M. Squire, Esquire

Bradley J. Osborne, Esquire

Sarah K. McCaffery, Esquire

Pierre E. Simonvil, Esquire

One Jenkintown Station, Suite 104

115 West Avenue

Jenkintown, PA 19046

Telephone: 215-886-8790

Fax: 215-886-8791

No. 1576 of 2014 GD

No. 259 of 2018 ED

The Bank of New York Mellon, f/k/a The Bank of New York, as Trustee for registered holders of CWABS, Inc., Asset-Backed Certificates, Series 2006-23,

PLAINTIFF,

v.

**John Petrosky, a/k/a John M. Petrosky
Stephanie L. Petrosky, a/k/a Stephanie Petrosky,**

DEFENDANT(S).

TAX PARCEL NO.: 41-07-0284

PROPERTY ADDRESS: 407 Perry Avenue, Belle Vernon, PA 15012
IMPROVEMENTS: Single Family Dwelling

SEIZED AND TAKEN in execution as the property of John Petrosky, a/k/a John M. Petrosky and Stephanie L. Petrosky, a/k/a Stephanie Petrosky

ALL THAT CERTAIN piece or parcel of land situated in the Village of Fairhope, Washington Township, Fayette County, Pennsylvania, and described as follows:

BEGINNING at a point in the Eastern line of the public road leading from Belle Vernon, Pennsylvania in Perryopolis at the Northern line of property now or formerly of John Patrosky, Jr., et ux; thence by the latter, North 69 degrees, 21 minutes East, a distance of 130.55 feet to a point; thence still by the same, North 20 degrees, 22 minutes West, a distance of 36.96 feet to a point in the line of land now or formerly of Rudolph Anderson; thence by the latter, South 69 degrees, 38 minutes West, a distance of 130.55 feet to a point in the aforementioned public road leading from Belle Vernon to Perryopolis; thence by the latter, South 20 degrees, 22 minutes East, a distance of 36.96 feet to a point, the place of beginning.

No. 303 of 2016 GD

No. 281 of 2018 ED

Nationstar Mortgage LLC d/b/a Champion Mortgage Company,

Plaintiff,

vs.

Keithette V. Shearer,

Defendant.

ALL THAT CERTAIN piece or parcel or tract of land containing 722 Connellsville Avenue situate in the Township of Bullskin, County of Fayette, and State of Pennsylvania

Tax Parcel No. 04-33-0052

TITLE TO SAID PREMISES IS VESTED IN Keithette V. Shearer, from Howard D. Shearer, widower, by General Warranty Deed dated August 6, 1982, and recorded on August 13, 1982 in Book 1308, Page 751

Sold as the property of Keithette V. Shearer

No. 990 of 2018 GD

No. 261 of 2018 ED

U.S. Bank National Association, as Trustee for SASCO Mortgage Loan Trust 2006-WF3,
Plaintiff,

vs.

Anna M. Toth, AKA Anna Marie Toth,

Defendant.

ALL that certain parcel of land lying and being situate in the Township of Washington, County of Fayette, and Commonwealth of Pennsylvania, known as 264 Gillespie Hollow Road, Fayette City, PA 15438 having erected thereon a dwelling house.

Being known and designated as Tax ID No.: 41220059

BEING the same premises which David J. Serra and Sherry A. Serra, his wife, by Deed dated June 26, 2006 and recorded in and for Fayette County, Pennsylvania in Deed Book 3000, Page 648, granted and conveyed unto Anna Marie Toth.

Richard M. Squire & Associates, LLC
 By: Richard M. Squire , Esquire
 Bradley J. Osborne, Esquire
 Sarah K. McCaffery, Esquire
 Pierre E. Simonvil, Esquire
 ID. Nos. 04267 / 312169 / 311728 / 323490
 One Jenkintown Station, Suite 104
 115 West Avenue
 Jenkintown, PA 19046
 Telephone: 215-886-8790
 Fax: 215-886-8791

No. 704 of 2018 GD
 No. 267 of 2018 ED

**Wilmington Savings Fund Society, FSB, as
 Trustee for Stanwich Mortgage Loan Trust A,
 PLAINTIFF,
 V.
 Unknown Heirs of the Estate of James J.
 Kimmel a/k/a James Kimmel, deceased
 Phyllis E. Kimmel a/k/a Phyllis Kimmel,
 DEFENDANT(S).**

TAX PARCEL NO.: 33-03-0090
 PROPERTY ADDRESS: 1419 East
 Gibson Avenue Connellsville, PA 15425
 IMPROVEMENTS: Single Family
 Dwelling
 SEIZED AND TAKEN in execution as the
 property of Unknown Heirs of the Estate of
 James J. Kimmel a/k/a James Kimmel, deceased
 and Phyllis E. Kimmel a/k/a Phyllis Kimmel
 LEGAL DESCRIPTION:
 ALL THAT CERTAIN property situated in
 Connellsville in the County of Fayette, and State
 of Pennsylvania and being described in a Deed
 dated 2/27/89 and recorded 3/23/89, among the
 Land Records of the County and State set forth
 above, and referenced as follows:
 Book 536 Page 124
 Tax ID: 33-03-0090

No. 1178 of 2018 GD
 No. 262 of 2018 ED

**PENNSYLVANIA HOUSING FINANCE
 AGENCY,
 PLAINTIFF,
 vs.
 EDWARD S. WAGNER,
 DEFENDANT.**

ALL those certain lots of ground in the
 Township of Connellsville, County of Fayette,
 being Lot Nos. 33, 34 and 35, Poplar Grove Plan
 of Lots, Fayette Plan Book 1, page(s) 178.
 HAYING THEREON ERECTED DWELLING
 KNOWN AND NUMBERED AS: 1501 SUN
 STREET CONNELLSVILLE, PA 15425.
 Tax Parcel # 06-03-0071
 Fayette Deed Book 3124, page 843
 TO BE SOLD AS THE PROPERTY OF
 EDWARD S. WAGNER UNDER JUDGMENT
 NO. 2017- 01178.

No. 1218 of 2017 GD
 No. 265 of 2018 ED

**PHH Mortgage Corporation,
 PLAINTIFF,
 VS.
 Robin S. Walters,
 DEFENDANT.**

FIRST: ALL that certain lot of land situate
 in the City of Uniontown, formerly North Union
 Township , Fayette County, Pennsylvania,
 known as Lot No. 49 in the Fred Felty Plan of
 Lots, said plan being recorded in the Recorder's
 Office of Fayette County in Plan Book No. 2 at
 page 32, said lot being bounded and described as
 follows:
 SECOND: ALL that certain lot of land
 situate in the City of Uniontown, Fayette
 County, Pennsylvania, being Lot No. 48 in the
 Fred Felty Plan of Lots as recorded in the
 Recorder's Office of Fayette County,
 Pennsylvania, in Plan Book 2, page 32, said lot
 being bounded and described as follows:
 COMMONLY KNOWN AS: 30 Elwood
 Street, Uniontown, PA 15401
 TAX PARCEL NO. 38-03-0371 and 38-03-
 -0370

JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION

DEER LAKE IMPROVEMENT	:	
ASSOCIATION,	:	
Plaintiff,	:	
v.	:	
JOHN SCOTT BUSH COMPANY, P.C.,	:	
and JOHN SCOTT BUSH, P.G.,	:	No. 390 of 2013, G.D.
individually,	:	(Consolidated with 316 of 2018, G.D.)
Defendants	:	Honorable Linda R. Cordaro

OPINION

Linda R. Cordaro, J.

August 17, 2018

SUMMARY

Currently before the Court are Defendants' Preliminary Objections to Plaintiffs Complaints in two consolidated cases. Defendants argue that a valid agreement to arbitrate exists between the parties, and that the parties are bound by the agreement. For the following reasons, Defendants' Preliminary Objections are sustained. These cases are to be submitted to arbitration in accordance with the parties' agreement.

BACKGROUND

Plaintiff, the Deer Lake Improvement Association, is a nonprofit organization incorporated by homeowners with properties adjacent to Deer Lake in Fayette County, Pennsylvania. Defendants include the J. Scott Bush Company, a professional engineering company, and J. Scott Bush in his individual capacity. J. Scott Bush is the president and CEO of the Company. Beginning in 2006 until around 2015, the Deer Lake Association alleges that it retained the J. Scott Bush Company to provide engineering, geotechnical, and other services. These services were for several engineering projects intended to maintain, repair, and rehabilitate the Deer Lake Dam and Deer Lake. None of the agreements for these projects were memorialized in writing.

The projects included:

- 1) Rehabilitating the Deer Lake Dam in 2006-2007, which involved replacing and relocating the drawdown pipe and repairing an embankment to prevent future erosion and overflow;
- 2) Dredging Deer Lake in 2009 to remove silt and soil that had accumulated for almost a century; and
- 3) Removing and reconstructing a spillway for the Deer Lake Dam in 2009 while the lake was drained.

The work that the J. Scott Bush Company was hired to perform included designing, planning, inspecting, and managing the projects, as well as obtaining permits from gov-

ernment agencies.

On July 31, 2015, the Deer Lake Association entered into a written Agreement with the J. Scott Bush Company to supervise and inspect the work on the Deer Lake Dam and Dredging Project, which was scheduled to begin in August of 2015. This Agreement contained the following provision:

All claims, disputes and other matters in question arising out of, or relating to, the Contract Documents or the breach thereof shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. This Agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the Arbitrators shall be final, and the judgment may be entered upon it in any court having jurisdiction thereof.

Engineering Consulting Services Agreement at ¶9 (Exhibit A to Plaintiffs First Complaint).

The term "Contract Documents," as defined in the Agreement at ¶4, includes the Agreement itself as well as "Environmental Permits and Drawings prepared by the engineer" and located at a certain dropbox link listed in the Agreement.

After work began on the project, the Deer Lake Association alleges that the J. Scott Bush Company failed to perform contractual duties, and that the Association suffered damages as a result. The Association filed a Complaint on February 20, 2018, claiming Professional Negligence and Breach of Contract against the J. Scott Bush Company, which in turn filed Preliminary Objections to the Complaint on March 1, 2018.

Before oral argument on those Preliminary Objections were heard, the Association filed a Second Complaint on April 13, 2018, claiming Professional Negligence against J. Scott Bush in his individual capacity. On May 2, 2018, J. Scott Bush filed Preliminary Objections to the Second Complaint, as well as a Motion to Consolidate both actions. This Court granted the Motion to Consolidate.

The Defendants' Preliminary Objections for the First and Second Complaints are now before the Court.

DISCUSSION

The J. Scott Bush Company argues in its Preliminary Objections to the First Complaint that the July 31, 2015 Agreement between the parties included a valid arbitration provision, and that the dispute falls within the provision.

Pennsylvania Rule of Civil Procedure 1028(a)(6) allows a party to file preliminary objections to a pleading on the grounds that there is an agreement for alternative dispute resolution between the parties. This Court notes at the outset that Defendants' Preliminary Objections to both the First and Second Complaint seek to dismiss the Complaints with prejudice for failure to comply with the Agreement's arbitration provision. However, this Court can properly infer that the Preliminary Objections instead assert the existence of an agreement to arbitrate and a request that the dispute be resolved by an arbitrator. See, *Pennsy Supply, Inc. v. Mumma*, 921A.2d 1184, 1189-90 (Pa. Super. Ct.

2007) ("Because [defendants] raised a preliminary objection under Pa.R.C.P. 1028(a) (6), the trial court's inference [that defendants requested arbitration rather than dismissal] was reasonable given that Pa.R.C.P. 1028(a)(6) is a vehicle by which a party can assert an agreement to arbitrate.").

The issue of whether a dispute falls within a contractual agreement to arbitrate is a matter of law. *Shaddock v. Christopher J. Kaclik, Inc.*, 713 A.2d 635, 637 (Pa. Super. Ct. 1998), citing *Wolf v. Baltimore*, 378 A.2d 911, 912-13 (Pa. Super. Ct. 1977). Arbitration agreements are to be strictly construed and not extended by implication. *Callan v. Oxford Land Deu., Inc.*, 858 A.2d 1229, 1233 (Pa. Super. Ct. 2004), citing *Highmark Inc. v. Hosp. Serv. Ass'n. of Ne. Pa.*, 785 A.2d 93, 98 (Pa. Super. Ct. 2001). However, Pennsylvania law favors arbitration when the parties have agreed to it. E.g., *Commw., Office of Admin. v. Commw., Pa. Labor Relations Bel.*, 598 A.2d 1274, 1277- 78 (Pa. 1991).

In order to sustain preliminary objections in the nature of a petition to compel arbitration, a two-part test is employed. *Callan* at 1233, citing *Pittsburgh Logistics Sys, Inc. v. Prof'l Transp. and Logistics Inc.*, 803 A.2d 776, 779 (Pa. Super. Ct. 2002). First, the court must determine whether a valid agreement to arbitrate exists between the parties. *Id.* Second, the court must determine whether the dispute is within the scope of the arbitration agreement. *Id.* In determining whether the dispute is within the scope of the agreement, the court must consider the precise language of the arbitration clause. *Shaddock* at 637. If there is a valid agreement to arbitrate and the dispute falls within the scope of the agreement, the controversy must be submitted to arbitration. *Callan* at 1233., citing *Highmark Inc. v. Hosp. Serv. Ass'n. of Ne. Pa.*, 785 A.2d 93, 98 (Pa. Super. Ct. 2001).

Each of the Association's Complaints will be addressed separately. In the First Complaint, the Association filed a lawsuit against the J. Scott Bush Company for Professional Negligence and Breach of Contract.

The Association's Breach of Contract claim clearly falls under the scope of the 2015 Engineering Consulting Services Agreement. The Association alleges in its Complaint that "Defendant's conduct in violation of its duties as a professional engineering and geotechnical company are also in breach of its professional services agreements with the Plaintiff Association ... " Complaint at ¶22. That Agreement states, "[a]ll claims, disputes and other matters in question arising out of, or relating to, the Contract Documents or the breach thereof shall be decided by arbitration ... " Agreement at ¶9. The Agreement also states that the Contract Documents include the Agreement itself. By its very nature, the Association's action for Breach of Contract of the Agreement is subject to the arbitration clause in the Agreement.

Further, the Association argues that some of the alleged breaches were for prior agreements and therefore are not subject to the arbitration clause of the 2015 Agreement. This argument is unconvincing.

An earlier agreement, without an arbitration clause can be incorporated into a later agreement that contains an arbitration clause. *Huegel v. Mifflin Constr. Co.*, 796 A.2d

350, 356-57 (Pa. Super. Ct. 2002). In Huegel, the plaintiffs and defendants entered into two contracts regarding home improvement work. *Id.* at 353. Neither of the contracts contained an arbitration clause. *Id.* The parties subsequently entered into a third contract, which contained an arbitration clause. *Id.* The third contract also referenced the second contract as a description of the work to be performed. *Id.* Finding that the third contract integrated the second one, the Superior Court held that the arbitration clause in the third contract applied to claims arising out of the second contract. *Id.* at 356-57.

The facts in Huegel are similar to those in the present case. The Association and the J. Scott Bush Company entered into agreements from 2006 to 2015 for various engineering projects involving Deer Lak e. As those agreements were not written, none of them had an arbitration clause. However, the July 31, 2015 Agreement referenced and incorporated the prior agreements. The earlier agreements are therefore subject to the arbitration clause of the 2015 Agreement.

The arbitration clause in the Agreement is very broad. It states that "[a]ll claims, disputes and other matters in question ... shall be decided by arbitration ... " All of the Association's Breach of Contract claims clearly fall within the all-encompassing language of that arbitration clause. Therefore, all of the Association's Breach of Contract claims should be sent to arbitration according to the Agreement.

The next issue is whether the Association's tort claim for Professional Negligence in its First Complaint should be sent to arbitration. The Superior Court in *Smay v. E.R. Stuebner, Inc.* determined that broad language in an arbitration agreement encompasses tort claims arising out of the agreement. *Smay v. E.R. Stuebner, Inc.*, 864 A.2d 1266, 1273-76 (Pa. Super. Ct. 2004), but cf. *Hazleton Area School Dist. v. Bosak*, 671 A.2d 277, 282 (Pa. Commw. Ct. 1996) (holding that arbitration provisions in an agreement did not encompass tort claims because it did not explicitly mention them). The Superior Court in *Smay* rejected the Commonwealth Court's decision in *Hazleton*, arguing that the Commonwealth Court misconstrued the Pennsylvania Supreme Court's decision in *Muhlenberg Twp. Sch. Dist. Auth. v. Pa. Fortunato Const. Co.*, 333 A.2d 184, 186 (Pa. 1975). In *Muhlenberg*, the arbitration clause at issue stated:

Should either party to this Contract suffer damage in any manner because of any wrongful act or neglect of the other party or of anyone employed by him, then he shall be reimbursed by the other party for such damages. 2. Claims under this clause ... shall be adjusted by agreement or arbitration.

Muhlenberg at 186. The Supreme Court determined that the phrases "suffer damage in any manner" and "[c]laims ... shall be adjusted by agreement or arbitration" were all-inclusive and meant that all claims should be arbitrated under that agreement. *Id.*

In contrasting the *Hazleton* decision, the *Smay* Court found that the *Muhlenberg* decision "does not stand for the proposition that an agreement to arbitrate must specifically reference tortious conduct in order for the agreement to apply to disputes arising under the contract which sound in tort." *Smay* at 1275-76. The Superior Court then concluded that "even assuming that the controversy sought to be decided at arbitration concerned a party's negligence, arbitration is appropriate." *Smay* at 1276.

Applying the Superior Court's decision in Smay to the present case, the Deer Lake Association's tort claim for Professional Negligence in its First Complaint is encompassed by the broad arbitration language in the Agreement. It should therefore be submitted to arbitration.

The Association's Second Complaint is a Professional Negligence action against J. Scott Bush as an individual. J. Scott Bush argues in the Second Preliminary Objections that this claim should be submitted to arbitration as well. The Association argues that because J. Scott Bush-the individual-is not a party to the Agreement, the claim should not be submitted to arbitration.

It is generally true that only parties to an agreement are bound by its arbitration clause. Smay at 1271, citing Cumberland-Perry Area Vo-Tech. Sch. v. Bogar & Bink, 396 A.2d 433,435 (Pa. Super. Ct. 1978). However, a non-party may fall under the scope of the arbitration clause if that is the parties' intent. Smay at 1271, citing Highmark at 99. Further, "[t]he parties to an agreement cannot attempt to defeat an arbitration clause simply by ... adding a principal as a defendant who was not a party to the agreement." Dodds v. Pulte Home Corp., 909 A.2d 348, 350 (Pa. Super. Ct. 2006).

In Dodds, the plaintiffs filed suit against the Pulte Home Corporation of the Delaware Valley, as well as its parent company, the Pulte Home Corporation. Id. at 349. The plaintiffs had a contract containing an arbitration provision with the Pulte Home Corporation of the Delaware Valley; however, the parent company was not a signatory to the contract. Id. Defendants filed preliminary objections seeking to enforce the arbitration agreement. Id. The trial court overruled the preliminary objections. Id. The Superior Court reversed on appeal, agreeing with the defendants' argument "that non-signatories to an arbitration agreement can enforce such an agreement when there is an obvious and close nexus between the non-signatories and the contract or the contracting parties." Id. at 351.

Here, the Association's Second Complaint is clearly just an attempt to circumvent the arbitration clause in the Agreement. The language in the Second Complaint is virtually word-for-word the same as in the First Complaint. The Association even alleges that J. Scott Bush was acting through his company when breaching the Agreement.

Accordingly, any claims against J. Scott Bush as an individual in this case shall be submitted to arbitration as well.

CONCLUSION

For the foregoing reasons, this Court sustains the Preliminary Objections of both the J. Scott Bush Company and J. Scott Bush as an individual. This matter shall be submitted to arbitration in accordance with the parties' 2015 Agreement.

BY THE COURT:
Linda R. Cordaro, Judge

Attest:
Prothonotary

LUNCH & LEARN SERIES

FAYETTE COUNTY BAR ASSOCIATION LUNCH & LEARN SERIES

The Fayette County Bar Association will be sponsoring a monthly Lunch & Learn Series on the third Wednesday of each month in the Grey Room, or in Courtroom No.1 depending on attendance, of the Fayette County Courthouse.

Often times, attorneys make costly mistakes based on a misinterpretation of the rules or because they are unaware of the specific practices or requirements of a judge. Each session will cover a different area of practice in Fayette County. After a brief presentation, attendees will have the opportunity to ask pertinent questions and discuss issues and practice tips with members of the bench and the bar in an informal setting. It is the intent of the series to promote professionalism, including ethics, civility and excellence among the members of our bar through education, example, and mentoring.

The series moderator will be the Honorable Judge Steve P. Leskinen. There will also be presenters knowledgeable in the area of practice to be covered each month.

- The first session of the series will be on **Wednesday, September 19th, from 12:00 p.m. to 1:30 p.m.**
- The discussion topic will be **Motions Court: Summary Judgment, Preliminary Objections and Judgment on the Pleadings Procedure.**

We are interested in knowing what areas of practice you would like covered in upcoming meetings. Depending on attendance and how the series evolves, we may be able to arrange CLE credit for future sessions.

A light lunch will be provided. There is no charge for members of the FCBA. There is a \$10 fee for non-members to be paid at the door. Please contact **Cindy McClain at the Bar office at 724-437-7994 or by email to cindy@fcbbar.org** no later than Friday, September 14th, if interested in attending or with ideas for future meetings.

- Professional Ethics Committee of the Fayette Bar Association

BENCH BAR CONFERENCE

Fayette County Bar Association
Bench Bar Conference

Schedule:

8:30 - Meet the Sponsors/Full Breakfast Buffet

9:00 - 12:15 - Seminar CLE Presentations

12:30 - Lunch

CLE Agenda to follow

Wednesday, October 10, 2018

The Historic Summit Inn

Cost to attend - \$75 members and \$125 non-members

RSVP to Cindy 724-437-7994 or cindy@fcbar.org

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