

LACKAWANNA JURIST

JUDICIAL OPINION

CASE NAME AND NUMBER: Menzel v. Cardiovascular Consultants, Ltd., 2020 WL 2510761 (Lacka. Co. 2020)

DATE OF DECISION: May 15, 2020

JUDGE: Terrence R. Nealon

ATTORNEYS INVOLVED:

Howard A. Rothenberg, Esquire, Ryan N. O'Connor, Esquire, Counsel for Plaintiff in No. 08 CV 1696 and Defendant in No. 08 CV 1960 and No. 08 CV 1961

George A. Reihner, Esquire, Ryann D. Loftus, Esquire, Counsel for Defendants in No. 08 CV 1696 and Plaintiffs in No. 08 CV 1960 and No. 08 CV 1961

SUMMARY OF OPINION:

A retired cardiologist filed a breach of contract action against his former shareholders in their professional corporation, and contended that they failed to pay him \$245,272.82 of the \$886,360.00 in deferred compensation and restrictive covenant payments that they agreed to pay him in monthly installments from 11/1/03 through 10/1/08. The shareholders countersued for damages and maintained that the ex-cardiologist fraudulently induced them to purchase his ownership interest for an inflated amount by providing falsified financial information that grossly overstated the value of the professional corporation and upon which they relied in executing the stock purchase agreement and personal guaranties. In the cardiologist's breach of contract action, the other shareholders asserted that the agreement and guaranties were void and unenforceable based upon fraud in the inducement.

The cardiologist filed a motion for partial summary judgment in the amount of \$245,272.82 on the grounds that (1) the verification supporting the shareholders' answers to his requests for admission was untimely and signed by only one shareholder, and (2) the answers to his requests for admission acknowledged that the parties' signatures on the agreement and guaranties were "true and authentic" and that the professional corporation ceased making payments to the retired cardiologists in 2007. When a party fails to properly verify responses to requests for admission, the proper remedy is to require the production of an appropriate verification, rather than to deem the requests to be conclusively admitted as a discovery violation. Furthermore, one shareholder may verify joint answers to requests for admission on behalf of a professional corporation and its remaining shareholders. Additionally, the only affidavit contained in the record created genuine issues of material fact as to whether (a) the agreement and guaranties were void based upon fraudulent inducement and (b) the payments to the retired cardiologist ceased once the shareholders discovered his alleged fraud. Accordingly, the ex-cardiologist did not establish his right to judgment in his favor as a matter of law, and his motion for partial summary judgment was denied.

JUDICIAL OPINION

CASE NAME AND NUMBER: Integrative Counseling Services, P.C. v. Pappa, 2020 WL 2561316 (Lacka. Co. 2020)

DATE OF DECISION: May 20, 2020

JUDGE: Terrence R. Nealon

ATTORNEYS INVOLVED:

Corinne E. Thiel, Esquire, Counsel for Plaintiff

Cynthia L. Pollick, Esquire, Counsel for Defendant

SUMMARY OF OPINION:

A counseling service filed a breach of contract and unjust enrichment action against an independent contractor counselor seeking to recover back charges that was assessed against the service by a third party payor as a result of billing and coding errors committed by the counselor in connection with payments that the counselor received directly from the third party payor for therapy services that she provided to clients of the counseling service. The service's claims were premised upon a written agreement executed by the counselor to provide therapy services at the counseling service's office, and an oral agreement to reimburse the service for any back charges by third party payors resulting from the counselor's billing or coding errors. The counselor filed preliminary objections seeking to dismiss the action on the bases that she did not agree to be responsible for the service's billing or coding errors, and that the service's claims based upon an oral agreement were barred by the Statute of Frauds.

The counselor's first preliminary objection alleged the existence of facts that were not set forth in the challenged complaint, and as such, it constituted an impermissible "speaking demurrer" which cannot be sustained based upon the standard of review governing demurrers. Although a guaranty to satisfy the debt of another party must be reduced to a writing under the Statute of Frauds, that rule is inapplicable if the promissor's main object was to serve the promissor's own pecuniary or business purpose. The facts alleged in the complaint did not support the conclusion that the service sought to make the counselor answerable for its own debts, and at a minimum, triable issues of fact existed as to whether the counselor's primary purpose in making the oral agreement was to further her own pecuniary or business ends. Moreover, the Statute of Frauds pertains to the enforceability of contracts and does not apply to an unjust enrichment claim which is predicated upon the absence of a contract. Therefore, it was not clear and free from doubt that the law stated with certainty that the service could not recover based upon the facts averred, and the counselor's demurrers were therefore overruled.

ESTATES

First Notice

ESTATE OF NAOMI WEINER ALAMAR, late of the City of Scranton, Pennsylvania, (died April 21, 2020). Notice is hereby given that Letters of Testamentary on the above Estate have been granted to Frances Alamar Gelb, of Williamsburg, VA. All persons indebted to the said estate are required to make payment and those having claims to present the same without delay to the Personal Representative named herein, or to Nicholas D. Tellie, Esquire, Tellie & Coleman, P.C., 310 East Drinker Street, Dunmore, PA 18512.

ESTATE OF LOIS E. BEHLKE, late of Scranton, Pennsylvania (Died June 2, 2020). Letters Testamentary having been granted to Sally Anna Farris and Betsy Jean Sporer, all persons having claims against the Estate or indebted to the Estate shall make payment or present claims to Matthew P. Barrett, Esquire, 345 Wyoming Avenue, Suite 215 Scranton, PA 18503.

ESTATE OF JAMES B. CONTESSA, late of Dunmore, Lackawanna County, Pennsylvania, (died May 15, 2020). Notice is hereby given that Letters Testamentary have been issued to Sandra M. Fasula, Executrix. **MARIANNE M. STIVALA, ESQUIRE, BRIAN J. CALI & ASSOCIATES, 103 EAST DRINKER STREET, DUNMORE, PENNSYLVANIA 18512.**

NOTICE is hereby given that Letters Testamentary have been given in the **ESTATE OF ROBERT CHARLES CORTESE, A/K/A ROBERT C. CORTESE**, late of Jefferson Township, Lackawanna County, Pennsylvania, who died November 20, 2019. All persons indebted to said Estate are required to make payment, and those having claims or demands, to present the same without delay to the Executrix, Carrie Elizabeth Cortese, and her attorneys, Hourigan, Kluger & Quinn, P.C., 600 Third Avenue, Kingston, PA 18704.

ESTATE OF JAMES P. CRAIG A/K/A JAMES CRAIG, II, A/K/A JAMES P. CRAIG, II, late of Dalton, Lackawanna County, Pennsylvania (died May 2, 2020). Notice is hereby given that Letters Testamentary have been issued to Laura Craig, Executrix of the Estate. All those having claims or demands against the Estate or indebtedness owed to the Estate shall present claims or remit payment without delay to Laura Craig, c/o John J. McGee, Attorney for the Estate, 400 Spruce St., Suite 302 Scranton, PA 18503.

ESTATE OF ALAN B. CUNNINGHAM, late of the Township of Roaring Brook, Pennsylvania, (died May 06, 2020). Notice is hereby given that Letters of Testamentary on the above Estate have been granted to Jeanne Mari McCloe, of Roaring Brook TWP, PA. All persons indebted to the said estate are required to make payment and those having claims to present the same without delay to the Personal Representative named herein, or to Nicholas D. Tellie, Esquire, Tellie & Coleman, P.C., 310 East Drinker Street, Dunmore, PA 18512.

NOTICE IS HEREBY GIVEN that Letters of Administration have been granted to Colleen Ducas, Administratrix of the **ESTATE OF MARY JANE GILLESPIE** late of Scranton, Lackawanna County, Pennsylvania, who died on December 14, 2019. All persons indebted to said Estate are required to make payment and those having claims to present the same without delay to the Administratrix or to Michael F. Cosgrove of Haggerty Hinton & Cosgrove LLP, 1401 Monroe Avenue, Suite 2, Dunmore, PA 18509.

RE: **ESTATE OF WILLIAM D. KEIM**, late of Carbondale, Lackawanna County, Pennsylvania (died May 9, 2020). Notice is hereby given that Letters Testamentary for the Estate of William D. Keim have been issued to Deborah Sanford, Executrix of the Estate. All those having claims or demands against the Estate or indebtedness owed to the Estate shall present claims or remit payment without delay to the Executrix, or to Sean P. McGraw, Attorney for the Estate, 41 N. Main Street, Suite 415, Carbondale, PA 18407.

ESTATE OF JOSEPH R. LIUZZO, late of City of Carbondale, PA (died October 19, 2019) Ilva Liuzzo, Administrator, Frederick M. Moase, Jr., Attorney for the Estate, Law Offices of Frederick M. Moase, Jr., 123 East Garfield Ave, Carbondale, PA 18407.

Notice is hereby given that Testamentary Letters have been granted to James W. Roberts of 81 Washington St., Carbondale, PA 18407 and Thomas F. Roberts of P.O. Box 429, Clifford, PA 18413, in the **ESTATE OF MARIE R. ROBERTS**, late of Carbondale, Lackawanna County, PA, who passed away January 18, 2020. All persons indebted to said Estate are requested to make payment and those having claims or demands to present the same without delay to the Executors named or to the attorney for said Estate: Patrick A. Kane, 960 Scranton/Carbondale Hwy., Archbald, PA 18403.

RE: **ESTATE OF VERONICA RUTKOWSKI**, late of Peckville, Lackawanna County, Pennsylvania 18452 (died March 9, 2020). Letters Testamentary having been granted, creditors shall make demand and debtors shall make payments to Tamara Hall, Executrix, or Attorney James E. O'Brien, Jr., Scranton Life Building, Suite 610, 538 Spruce Street, Scranton, PA 18503.

RE: **ESTATE OF FRANCIS P. STOKLOSA**, late of Carbondale, Lackawanna County, Pennsylvania (died April 20, 2020). Notice is hereby given that Letters Testamentary for the Estate of Francis P. Stoklosa have been issued to James F. Stoklosa, Executor of the Estate. All those having claims or demands against the Estate or indebtedness owed to the Estate shall present claims or remit payment without delay to the Executor, or to Sean P. McGraw, Attorney for the Estate, 41 N. Main Street, Suite 415, Carbondale, PA 18407.

Second Notice

RE: **ESTATE OF MARGARET JEAN BIRTCH A/K/A JEAN BIRTCH**, late of Glenburn Township, Lackawanna County, and State of Pennsylvania, deceased, who died on the 25th day of April, 2020. Letters of Testamentary having been granted, all persons having claims or demands against the estate of the decedent shall make them known and present them, and all persons indebted to the decedent shall make payment thereof without delay to the Executor, Bradley L. Birtch, Jr., 1003 W. Market Street, Scranton, PA 18508, or to Mattes & Mattes, P.C., 324 N. Washington Ave., Scranton, PA 18503.

RE: **ESTATE OF JOYCE A. HOLMES**, late of Clarks Summit, Lackawanna County, Pennsylvania (died April 18, 2020). Notice is hereby given that Letters Testamentary for the Estate have been issued to William Ziegler, Executor of the Estate. All those having claims or demands against the Estate or indebtedness owed to the Estate shall present claims or remit payment without delay to the Executor, or to John J. McGovern, Jr., Attorney for the Estate, 321 Spruce Street - Suite 201, Scranton, PA 18503.

ESTATE OF VICTOR ADAM LOPEZ, LATE OF SCRANTON, LACKAWANNA COUNTY, PENNSYLVANIA. Letters of administration of the above Estate having been granted to Giovanni Lopez, all persons indebted to the Estate are requested to make payment, and those having claims to present the same, without delay to: Giovanni Lopez, 529 Taylor Avenue, 1st floor, Scranton, PA 18510. or to the attorney: Latisha B. Schuenemann, Esquire, Leisawitz Heller Abramowitch Phillips, P.C., 2755 Century Boulevard, Wyomissing, PA 19610.

RE: ESTATE OF DOROTHY D. MACKIE, late of South Abington Township, Lackawanna County, Pennsylvania (Died April 6, 2020). Letters of Testamentary in the above estate having been granted, all persons having claims or demands against the estate of the decedent shall make them known and present them, and all persons indebted to said estate shall make payment thereof without delay to Co-Executors, Matthew D. Mackie, III, P.O. Box 189, Waverly, Pennsylvania 18471 or Linda J. Lundberg, Vice President, Sr. Estate Product Specialist, PNC Wealth Management, P.O. Box 308, 4242 Carlisle Pike, Camp Hill 17001-0308, or to James W. Reid, Esquire, Oliver, Price & Rhodes, Attorneys for the Estate, 1212 South Abington Road, PO Box 240, Clarks Summit, PA 18411.

ESTATE OF DORIS A. MORAN, late of Scranton, Lackawanna County, PA (died March 28, 2020). Letters Testamentary having been granted, all persons having claims or demands against estate of decedent shall make them known and present them, and all persons indebted to said decedent shall make payment thereof without delay to Donna Rupp, Executor, 114 South Merrifield Avenue, Scranton, PA 18504 or to Jane M. Carlonas, Esquire, of Oliver, Price & Rhodes, Attorney for the Estate, 1212 S. Abington Road, PO Box 240, Clarks Summit, PA 18411.

ESTATE OF DALLAS DONNELL SESSION, late of Dunmore, Lackawanna County, Pennsylvania, (died March 12, 2020). Notice is hereby given that Letters of Administration of the estate have been issued to Darkell Adam Session, Administrator. MARIANNE M. STIVALA, ESQUIRE, BRIAN J. CALI & ASSOCIATES, 103 EAST DRINKER STREET, DUNMORE, PENNSYLVANIA 18512.

ESTATE OF LONDON OLIVIA SESSION late of Dunmore, Lackawanna County, Pennsylvania, (died March 10, 2020). Notice is hereby given that Letters of Administration of the estate have been issued to Darkell Adam Session, Administrator. MARIANNE M. STIVALA, ESQUIRE, BRIAN J. CALI & ASSOCIATES, 103 EAST DRINKER STREET, DUNMORE, PENNSYLVANIA 18512.

ESTATE OF TIARA MONAE SESSION, late of Dunmore, Lackawanna County, Pennsylvania, (died March 10, 2020). Notice is hereby given that Letters of Administration of the estate have been issued to Darkell Adam Session, Administrator. MARIANNE M. STIVALA, ESQUIRE, BRIAN J. CALI & ASSOCIATES, 103 EAST DRINKER STREET, DUNMORE, PENNSYLVANIA 18512.

ESTATE OF HANNA WHITE A/K/A HANNAH WHITE A/K/A HANNAH J. WHITE, Late of Carbondale, Pennsylvania, (died April 19, 2020). Notice is hereby given that Letters Testamentary in the above estate have been granted to Michael Wiesel. All persons indebted to the said Estate are required to make payment and those having claims to present the same without delay to Michael Wiesel, Executor, or to Howard M. Spizer, Esquire, Attorney for the Estate, Hinman, Howard & Kattell, LLP, 705 Bank Towers Building, 321 Spruce Street, Scranton, PA.

Third Notice

ESTATE OF JACK M. BERRYMAN, JR., late of the City of Scranton, Pennsylvania, (died February 01, 2020). Notice is hereby given that Letters of Testamentary on the above Estate have been granted to Linda Berryman, of Indiana, PA, and Philip Berryman, of Oley, PA. All persons indebted to the said estate are required to make payment and those having claims to present the same without delay to the Personal Representatives named herein, or to Patrick N. Coleman, Esquire, Tellie & Coleman, P.C., 310 East Drinker Street, Dunmore, PA 18512.

NOTICE IS HEREBY GIVEN that Letters Testamentary have been granted to Janice Prushinski in the **ESTATE OF SHARON A. ESHMONT**, late of Dunmore, PA (died 04/27/2020). All persons indebted to said estate are requested to make payment, and creditors to present their claims without delay to the Executrix c/o Ernest A. Sposto Jr., Esq., 108 North Washington Avenue, Suite 401, Scranton, PA 18503, Attorney for the Estate.

NOTICE IS HEREBY GIVEN that Letters of Administration have been granted in the **ESTATE OF KATHLEEN T. KEATING, A/K/A KATHLEEN L. KEATING**, Deceased, late of 115 Harper Street, Dunmore Lackawanna County, Pennsylvania 18512, who died on June 5, 2012. All persons indebted to the Estate are requested to make payment and those having claims or demands are to present same, without delay, to the Administrator, Dominic J. Keating, or Michael N. Krisa, Attorney for the Estate, 3397 Scranton/Carbondale Highway, Suite 4, Blakely, Pennsylvania 18447.

NOTICE IS HEREBY GIVEN that Letters Testamentary have been granted in the **ESTATE OF FRANK MILEWSKI, JR.**, late of the Township of Jefferson, County of Lackawanna, Pennsylvania, who died 05/17/2020. All persons indebted to the said estate are required to make payment, and those having claims or demands to present the same without delay to the Executor, Michael Milewski, or James P. Phillips, Jr, Esquire, the attorney for the estate at 731 Cliff Drive, Lake Ariel PA 18436.

CHANGE OF NAME

Notice is given that Gabriella Elizabeth Parise has filed a Petition for Change of Name from Gabriella Elizabeth Parise to Gabriella Elizabeth Aleksak. A hearing will be held on July 31, 2020 at 9:30 am at the Lackawanna County Courthouse.

T1-6/19