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FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that an Application for Registration of Fictitious Name was filed with the Department of State of the Commonwealth of Pennsylvania on or about June 13, 2015, pursuant to the Fictitious Name Act, setting forth that Craig Anderson is the only individual interested in a business known as ANDOVER CONCEPTUAL DESIGNS and that the principal place of business is 1236 Russell Tavern Road, Gettysburg, PA 17325.

Bernard A. Yannetti, Esq.
Hartman & Yannetti
Solicitors

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HEATH MACKLEY, IN HIS CAPACITY AS TRUSTEE OF
THE EDGAR E. YEALY AND BERNICE B. YEALY LIVING
TRUST V. JEFFREY E. SMITH V. STEPHANYE D. SMITH

1. Defendant's Preliminary Objection is well placed as, where an oral argument is alleged, it is particularly important that the pleading at least identify in as specific detail as possible the date of the agreement, the terms of the agreement, and the individuals involved.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, CIVIL 15-S-116, HEATH MACKLEY, IN HIS
CAPACITY AS TRUSTEE OF THE EDGAR E. YEALY AND
BERNICE B. YEALY LIVING TRUST V. JEFFREY E. SMITH V.
STEPHANYE D. SMITH

Justin A. Tomevi, Esq., Attorney for Plaintiff & Add'l. Defendant
John M. Crabbs, Esq., Attorney for Defendant

George, J., June 7, 2016

OPINION

Before the Court are the Preliminary Objections of Defendant, Jeffrey E. Smith (“Defendant”), to the Amended Reply to Defendant’s New Matter and to Additional Defendant, Stephanye D. Smith’s (“Additional Defendant”), Amended Answer to the Joinder Complaint. In his Preliminary Objections, Defendant seeks to strike the respective pleadings on the basis they fail to state whether the agreement which forms the basis for the litigation is oral or written. Additionally, the Preliminary Objections challenge the pleadings on the basis that the claims contained therein are barred by the Pennsylvania Statute of Frauds. For the reasons set forth below, Defendant’s Preliminary Objection for failure to comply with Pennsylvania Rule of Civil Procedure 1019(h) will be granted.

The underlying factual basis for this litigation generally involves the lending of money by a parent (Plaintiff)¹ to their natural daughter (Additional Defendant) and her former spouse (Defendant). The Complaint alleges an oral promise by the Defendant to repay the full amount of the loans of approximately \$150,000. The initial Complaint was filed only against the Defendant. By subsequent pleadings, Defendant joined Additional Defendant alleging she was partially responsible for the debt. The Additional Defendant’s Answer, as well as the Plaintiff’s Reply to New Matter, alleges Defendant accepted full responsibility for the debt. It is this allegation to which Defendant takes exception triggering the current Preliminary Objections.

Pennsylvania Rule of Civil Procedure 1019(h) requires that “[w]hen any claim or defense is based upon an agreement, the pleading shall state specifically if the agreement is oral or written.” In light of Plaintiff’s representations in the initial Complaint that the agreement between the parties was oral, at first glance, this preliminary objection appears to be a meritless exultation of form over substance. A more thorough review of the pleadings in their totality, however, mandates a different result. In the initial Complaint, Plaintiff alleges a breach of contract on the theory that Plaintiff and Defendant “orally agreed that [Plaintiff] would provide the [l]oan to Defendant in exchange for Defendant’s promise to repay the balance of the loan upon demand.” First Amended Complaint,

¹ This suit is brought by Heath Mackley, in his capacity as Trustee of the Edgar Yealy and Bernice Yealy Living Trust. Mr. and Mrs. Yealy are deceased and are the natural parents of Additional Defendant, Stephanye Smith. Stephanye Smith is the former spouse of Defendant, Jeffrey Smith.

paragraph 21. In Defendant's Answer, and the concurrent Joinder Complaint against Additional Defendant, Defendant claims the oral agreement, if any, was a joint obligation of his and the Additional Defendant. In response to those claims, both Plaintiff and Additional Defendant reference an apparent second agreement entered in 2012. According to the pleadings, "...for the consideration of reducing the principal amount due on the loan to \$150,000, along with other good and valuable consideration, and with the consent of all parties, the parties discharged the original agreement and created a new valid agreement in which [Defendant] was to be personally responsible for the repayment of the entire loan balance; ..."² Thus, the pleadings in their current state present an interesting posture: Plaintiff is raising in his Reply to New Matter an agreement different from the alleged agreement upon which he is seeking recovery. Stated another way, Plaintiff is acknowledging that the agreement upon which his cause of action is based has been voided by a subsequent agreement for which he has not brought suit. This interesting procedural posture certainly clouds identification of the agreement upon which Plaintiff is currently seeking recovery. Thus, Defendant's Preliminary Objection is well placed as, where an oral agreement is alleged, it is particularly important that the pleading at least identify in as specific detail as possible the date of the agreement, the terms of the agreement, and the individuals involved. See *Pratter v. Penn Treaty American Corp.*, 11 A.3d 550, 563 (Pa. Cmwlth. 2010). The current stated pleadings fall far short of this standard.

While the action which would promote the most clarity would be revisiting the original Complaint to specifically identify the time and terms of the agreement upon which Plaintiff is pursuing this litigation, the current procedural posture permits this Court to only act upon the preliminary objection. Accordingly, the objection will be granted. Although the parties will be granted an opportunity to amend, amendment of Additional Defendant's Answer or Plaintiff's Reply to New Matter will not cure the more fundamental issue discussed in this Opinion.

For the foregoing reasons, the attached Order is entered.³

² Plaintiff's Reply to Defendant's New Matter, paragraphs 38 and 39; First Amended Additional Defendant's Answer to Joinder Complaint, paragraphs 7 and 8.

³ As the Court has granted Defendant's preliminary objection on the basis of failure to comply with Pa. R. Civ. P. 1019(h), discussion on Defendant's second preliminary objection is unnecessary.

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 administrators or their attorneys named below.

FIRST PUBLICATION**ESTATE OF WILLIAM M. ALLEMAN, DEC'D**

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Personal Representative: M. Jane Alleman, 32 W. Hanover St., Gettysburg, PA 17325

Attorney: G. Steven McKonly, Esq., 119 Baltimore Street, Hanover, PA 17331

ESTATE OF LESTER W. EMORY, DEC'D

Late of Liberty Township, Adams County, Pennsylvania

Personal Representative: Rose Ann Rupert, c/o Stephen D. Kulla, Esq., Kulla, Barkdoll & Stewart, P.C., 9 E. Main St., Waynesboro, PA 17268

Attorney: Stephen D. Kulla, Esq., Kulla, Barkdoll & Stewart, P.C., 9 E. Main St., Waynesboro, PA 17268

ESTATE OF SHIRLEY FRANCES GRANDIA a/k/a SHIRLEY F. GRANDIA, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: William M. Grandia, II, c/o John D. Miller, Jr., Esq., MPL Law Firm, LLP, 137 East Philadelphia Street, York, PA 17401-2424

Attorney: John D. Miller, Jr., Esq., MPL Law Firm, LLP, 137 East Philadelphia Street, York, PA 17401-2424

ESTATE OF ROBERT N. HELM, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Administrator: Brian D. Brooks, c/o Nancy Mayer Hughes, Esq., Barley Snyder LLP, 126 East King Street, Lancaster, PA 17602

Attorney: Nancy Mayer Hughes, Esq., Barley Snyder LLP, 126 East King Street, Lancaster, PA 17602

ESTATE OF JOHN M. JACOBS, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Creta M. Jacobs, PO Box 596, Arendtsville, PA 17303

Attorney: Henry O. Heiser, III, Esq., 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF CHARLES C. KINGSTON, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Executors: Gregory C. Kingston, P.O. Box 426, Biglerville, PA 17307; Jeanne L. Bell, P.O. Box 30, Snowshoe, WV 26209

Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

SECOND PUBLICATION**ESTATE OF LLOYD ANDREW HERSHEY, DEC'D**

Late of Berwick Township, Adams County, Pennsylvania

Executrix: Hester A. Hershey, 989 Abbottstown Pike, Hanover, PA 17331

Attorney: Clayton A. Lingg, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF KEVIN W. LANE, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Dorothy A. Lane: c/o Barbara Jo Entwistle, Esq., Entwistle & Roberts, 37 West Middle Street, Gettysburg, PA 17325

Attorney: Barbara Jo Entwistle, Esq., Entwistle & Roberts, 37 West Middle Street, Gettysburg, PA 17325

THIRD PUBLICATION**ESTATE OF JAMES G. ADAIR, DEC'D**

Late of Mount Joy Township, Adams County, Pennsylvania

Executors: Mary L. Redding, 776 Good Intent Road, Gettysburg, PA 17325; James R. Berwager, 2335 Baltimore Pike, Gettysburg, PA 17325

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF SUZANNE THOMAS AHLBERG a/k/a SUZANNE T. AHLBERG, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Amy Ellen Ahlberg, c/o C. Taylor Katherman, Esq., Stock and Leader, Susquehanna Commerce Center East, 221 W. Philadelphia Street, Suite 600, York, PA 17401-2994

Attorney: C. Taylor Katherman, Esq., Stock and Leader, Susquehanna Commerce Center East, 221 W. Philadelphia Street, Suite 600, York, PA 17401-2994

ESTATE OF LOUISE M. DEARDORFF, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Carol L. Deardorff, 825 Buchanan Valley Road, Orttanna, PA 17353

Attorney: Robert E. Campbell, Esq., Campbell & White, P.C., 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARGARET ETHEL DUVALL, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Co-Executors: Margaret Joann Connolly, 467 Lexington Way, Littlestown, PA 17340; George Edwin Duvall, Jr., 500 Wicklow Court, Forest Hill, MD 21050

Attorney: James T. Yingst, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

ESTATE OF BARBARA A. HUFNAGEL, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Benjamin F. Hufnagel, Jr., 80 Witmer Road, Hanover, PA 17331; David A. Hufnagel, 534 Ridge Avenue, McSherrytown, PA 17344; Anthony S. Hufnagel, 80 Witmer Road, Hanover, PA 17331

Attorney: Thomas E. Miller, Esq., Law Office of Thomas E. Miller, Esquire LLC, 249 York Street, Hanover, PA 17331

ESTATE OF DARRELL L. PRIEST, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Nicholas A. Priest, 9698 Patriot Blvd. Apt 932, Ladson, SC 29456

Attorney: David K. James, III, Esq., 234 Baltimore St., Gettysburg, PA 17325