

# LACKAWANNA JURIST

## JUDICIAL OPINION

**CASE NAME AND NUMBER:** Osborne v. Scranton Sewer Authority, 2020 WL 239808 (Lacka. Co. 2020)

**DATE OF DECISION:** January 15, 2020

**JUDGE:** Terrence R. Nealon

### **ATTORNEYS INVOLVED:**

John J. Brazil, Jr., Esquire, Counsel for Plaintiffs

Michael J. O'Brien, Esquire, Jenna Kraycer Tuzze, Esquire, Counsel for Defendant, Scranton Sewer Authority

Benjamin A. Nicolosi, Esquire, Counsel for Defendant, Pennsylvania American Water Company, Inc.

### **SUMMARY OF OPINION:**

Developers, who allegedly constructed sewer lines but never dedicated them to the sewer authority or its successor utility company which have collected user fees from homeowners that have connected to those sewer lines, filed an action against the authority and utility asserting claims for trespass and unjust enrichment and seeking a declaratory judgment establishing the developers' ownership of the sewer lines. The authority filed preliminary objections which: (1) sought to dismiss the trespass claims on the basis that the developers had not alleged "exclusive use and possession" of the sewer lines; (2) attached a declaration of protective covenants indicating that the sewer lines were "intended to be dedicated" to the authority, which declaration is purportedly fatal to the unjust enrichment claims; (3) demurred to the developers' claims on the ground that they did not furnish the authority with written notice of their claims within six months of the alleged tort in compliance with 42 Pa.C.S § 5522; (4) challenged the factual specificity of the allegations; and (5) argued that the developers have failed to join as "necessary" parties those homeowners who used the sewer lines.

Based upon the allegations in the complaint, the developers alleged cognizable claims for trespass as it was not necessary for them to assert "exclusive use and possession" of the sewer lines. Since the scope of review prohibited consideration of the declaration of protective covenants that were not referenced in nor attached to the challenged pleading, the preliminary objections to the unjust enrichment claims were overruled. Similarly, as the defense of non-compliance with the notice requirement in 42 Pa.C.S. § 5522 may only be asserted via new matter, the authority's demurrer premised upon Section 5522 was overruled. Additionally, the authority's objections concerning the factual specificity of the developers' averments were overruled since the allegations were sufficient to provide adequate notice of the claims against which the authority had to defend. However, since the declaratory judgment relief sought by the developers would determine the rightful party to whom the homeowners must pay their user fees, those homeowners were deemed to be necessary parties whose joinder was essential to resolve the controversy completely, and the developers were directed to file an amended pleading joining those homeowners as necessary parties.

## JUDICIAL OPINION

**CASE NAME AND NUMBER:** SVP Aggregates, LLC v. A. P. Popple Construction, Inc., 2020 WL 371413 (Lacka. Co. 2020)

**DATE OF DECISION:** January 22, 2020

**JUDGE:** Terrence R. Nealon

### **ATTORNEYS INVOLVED:**

Michael R. Mey, Esquire, Counsel for Plaintiff

Ryan N. O'Connor, Esquire, Counsel for Defendant, A. R. Popple Construction, Inc.

Robert M. Dunn, Esquire, Counsel for Defendant, Philadelphia Indemnity Insurance Company

### **SUMMARY OF OPINION:**

A seller of stone and aggregate material filed an action against a construction company that allegedly failed to pay for materials that the seller delivered to designated construction projects at the company's request. The seller averred that the parties entered into an oral agreement for the delivery of requested materials to certain sites, and attached to the complaint a subsequent written statement that it furnished to the company itemizing the dates of delivery, the amounts charged, the supporting invoice numbers, the only payment made by the contractor, and the unpaid balance due and owing. The company filed preliminary objections asserting a failure to comply with Pa.R.C.P. 1019(i), and alternatively alleging "insufficient specificity in a pleading" under Pa.R.C.P. 1028(a)(3).

Rule 1019(h) provides that if a claim is based upon an agreement, the complaint must state whether "the agreement is oral or written," whereas 1019(i) requires the plaintiff to "attach a copy of the writing" to the complaint whenever the claim "is based upon a writing." The complaint clearly stated that the parties negotiated an "oral agreement" for the delivery of materials to specific projects, and the subsequent writing merely served to document the dates of the deliveries made, the prices charged, the sole payment tendered, and the unpaid balance due under the oral contract. Thus, the complaint satisfied the pleading requirement set forth in Rule 1019(h) and (i). Furthermore, the factual averments contained in the complaint were sufficient to apprise the company of the claims being asserted and adequately summarized the essential supporting facts. Accordingly, the company's preliminary objections under Rule 1028(a)(2) and (3) were overruled.

**ESTATES**

**First Notice**

**ESTATE OF JAMES F. ANTONIO**, deceased, late of Eynon, Lackawanna County, Pennsylvania, died January 7, 2020. Letters Testamentary granted to Valerie J. Antonio. All persons indebted to said Estate are requested to make immediate payment and those having legal claims to present same without delay to Valerie J. Antonio or Frank A. Mazzeo, Jr., Esquire, 327 N. Washington Ave., Suite 506, Scranton, PA 18503.

**ESTATE OF NAOMI E. BODDIE**, late of the City of Scranton, Lackawanna County, PA, deceased. Letters Testamentary, in the above-named Estate having been granted to the undersigned, all persons indebted to the Estate are requested to make immediate payment and those having claims are directed to present the same without delay to the undersigned or her attorney within four (4) months from the date hereof and to file with the Clerk of the Court of Common Pleas of Lackawanna County, Orphans' Court Division, a particular statement of claim, duly verified by an affidavit setting forth an address within the county where notice may be given to claimant. Marie Camacho, Executrix, c/o Leeth & Gaglione, LLC, 513 Main Street, 2<sup>nd</sup> Floor, P.O. Box 150, Stroudsburg, PA 18360.

Notice is hereby given that Letters Testamentary have been granted to Monique O. Buttner, Executrix of the **ESTATE OF RICHARD PAZZALIA A/K/A RICHARD B. PAZZALIA**, late of Peckville, PA, who died on December 2, 2019. All persons indebted to the Estate are required to make payment and those having claims or demands are to present the same without delay to the Executrix or to Carl J. Poveromo, Esquire, Rinaldi & Poveromo, P.C., P.O. Box 826, Scranton, PA, 18501.

**ESTATE OF RONALD V. WETZEL**, late of Simpson, Pennsylvania (died December 24, 2019). Notice is hereby given that Letters of Administration on the above estate have been granted to Gary Bradley Wetzel, of Carbondale, PA and Brandon Keith Wetzel, of Simpson, 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 Walter F. Casper, Jr., Esquire, C/O Tellie & Coleman, P.C., 310 East Drinker Street, Dunmore, PA 18512.

**Second Notice**

NOTICE IS HEREBY GIVEN that Letters Testamentary have been granted in the **ESTATE OF VICTOR A. CAMPISI A/K/A VICTOR ANTHONY CAMPISI**, Deceased, late of 61 Archbald Street, Carbondale, Lackawanna County, Pennsylvania 18407, who died on January 17, 2020. 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 Executor, Philip Campisi, or Michael N. Krisa, Attorney for the Estate, 3397 Scranton/Carbondale Highway, Suite 4, Blakely, Pennsylvania 18447.

**ESTATE PF MYRON EDNOCK**, late of the City of Carbondale, PA (died December 1, 2019) Dawn M. Ednock Administrator, Frederick M. Moose, Jr., Attorney for the Estate, Law Offices of Frederick M. Moose, Jr., 123 East Garfield Ave, Carbondale, PA 18407.

**ESTATE OF THEOLINDE GROSCH**, DECEASED, late of Clarks Summit, Lackawanna County, Pennsylvania, (died November 21, 2019). Notice is hereby given that Letters Testamentary having been granted in the above estate. All persons indebted to said Estate are required to make payments and those having claims or demands are to present the same without delay to Arianne Singer, c/o Stephen J. Evers, Esq., Attorney for the Estate, 213 R. North State Street, Clarks Summit, PA, 18411.

RE: **ESTATE OF CZESLAWA KAWASH (A/K/A JESSICA KAWASH)**, late of Fell Township, Pennsylvania (died January 6, 2020). Notice is hereby given that Letters Testamentary for the Estate of Czeslawa Kawash (a/k/a Jessica Kawash) have been issued to Lisa Skasko and James McLaughlin, Executors 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 Executors at 83 Mountain Laurel Drive, Forest City, PA 18421 or to Robert T. Kelly, Jr., Myers, Brier & Kelly, LLP, Attorney for the Estate, 425 Spruce Street, Suite 200, Scranton, PA 18503.

**ESTATE OF FRANK MILETTA**, Late of Old Forge Borough, PA (DIED December 6, 2019), Regina Ann Miletta, Administratrix, or to Donald J. Frederickson, Jr., KOBAL & FREDERICKSON, Attorneys for the Estate, 435 Main Street, Moosic, PA. 18507-1017.

**ESTATE OF MARK P. MORAN**, late of Fleetville, Lackawanna County, Pennsylvania, (died January 13, 2020). Notice is hereby given that Letters of Administration C.T.A. have been issued to Kelly Moran, Administratrix C.T.A. MARIANNE M. STIVALA, ESQUIRE, BRIAN J. CALI & ASSOCIATES, 103 EAST DRINKER STREET, DUNMORE, PENNSYLVANIA 18512.

NOTICE IS HEREBY GIVEN that Letters of Administration have been granted in the **ESTATE OF JOHN R. RITTER, JR., A.K.A JOHN RITTER**, late of the City of Scranton, County of Lackawanna, Pennsylvania, who died 02/10/2020. 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 Administratrix Jason J. Ritter or James P. Phillips, Jr, Esquire, the attorney for the estate at 731 Cliff Drive, Lake Ariel PA 18436.

**ESTATE OF CLESTA TRIVELPIECE**, DECEASED, late of South Abington Township, Lackawanna County, Pennsylvania, (died February 9, 2020). Notice is hereby given that Letters Testamentary having been granted in the above estate. All persons indebted to said Estate are required to make payments and those having claims or demands are to present the same without delay to Ronald D. Hayden, c/o Stephen J. Evers, Esq., Attorney for the Estate, 213 R. North State Street, Clarks Summit, PA, 18411.

Letters of Administration have been granted in the **ESTATE OF MARY CATHERINE YARROS** to Robert G. Yarros, Administrator, or to Shrive Law, LLC, Jason A. Shrive, Esquire, 204 Wyoming Ave.-2<sup>nd</sup> Floor, Scranton, PA 18503, Attorney. All persons having claims against the Estate are requested to present them in writing and all persons indebted to the Estate are to make payment to it in care of the Attorney noted above.

**Third Notice**

**ESTATE OF ANN LOUISE BENEDICT A/K/A ANN L. BENEDICT** late of Dunmore, Lackawanna County, Pennsylvania (died November 2, 2019). Notice is hereby given that Letters Testamentary have been issued to Elizabeth A. Benedict, the Estate Executrix. All those having claims or demands against the Estate of indebtedness owed to the Estate shall present claims or remit payment without delay to Elizabeth A. Benedict, c/o John J. McGee, Attorney for the Estate, 400 Spruce Street, Ste 302, Scranton, PA 18503.

Notice is hereby given that Letters of Administration, have been granted in the **ESTATE OF JOHN J. BRIER**, late of Springbrook Twp., PA (died 9-26-19). 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: Mary Ann Brier, Administratrix; or to Michael E. Brier, Atty., 410 Jefferson Ave., Scranton, PA 18510.

**ESTATE OF JOSEPH C. FIGURED, SR.** (Deceased January 22, 2020) late of Scranton, PA, William C. Burdett, Executor or Gerald J. Butler, Esquire, P.O. Box 234, Suite 400, 116 N. Washington Ave., Scranton, PA 18503.

**ESTATE OF THEOLINDE GROSCH**, late of Clarks Summit, Lackawanna County, Pennsylvania, (died November 21, 2019). Notice is hereby given that Letters Testamentary having been granted in the above estate. All persons indebted to said Estate are required to make payments and those having claims or demands are to present the same without delay to Arienne Singer, c/o Stephen J. Evers, Esq., Attorney for the Estate, 213 R. North State Street, Clarks Summit, PA, 18411.

**ESTATE OF ANGELA C. KLEIN** late of Clarks Summit, Lackawanna County, Pennsylvania (died February 29, 2020). Notice is hereby given that Letters Testamentary have been issued to David M. Klein and Judy Lynn Galiney, Executors of the Estate. All those having claims or demands against the Estate of indebtedness owed to the Estate shall present claims or remit payment without delay to David M. Klein and Judy Lynn Galiney, c/o John J. McGee, Attorney for the Estate, 400 Spruce Street, Ste 302, Scranton, PA 18503.

**ESTATE OF MICHAEL R. KRESOCK**, late of Simpson, Lackawanna County, Pennsylvania (died January 26, 2020). Personal Representative is Theresa Kresock, 45 Froble Street, Simpson, PA 18407. Attorney for the Estate is Nancy M. Barrasse, Esquire, 224 Adams Avenue, Scranton, Pennsylvania 18503.

**ESTATE OF CAROL ANN THOMAS A/K/A CAROL THOMAS**, file number 3520-00107, late of Dickson City, Lackawanna County, PA (Date of death: 1/11/2020). Mark Brojack was appointed Executor on January 29, 2020. Jeffrey A. Levine, Esquire, Herlands & Levine, 27 North Main Street, Suite 301, Carbondale, PA 18407.

**ESTATE OF SAMUEL E. HARRIS A.K.A SAMUEL HARRIS**, Late of Scranton, Pennsylvania (Died December 24, 2019). Letters of Administration has been granted to David Harris and Jonathan Harris, Co-Administrators. All persons having claims against the Estate of indebted to the Estate shall make payment or present claims to Douglas P. Thomas, Attorney for the Estate, 345 Wyoming Avenue, Suite 200, Scranton, PA 18503.

**ESTATE OF RITA A. MANLEY A/K/A RITA MANLEY** late of Scranton, Lackawanna County, Pennsylvania (died

January 7, 2020). Notice is hereby given that Letter Testamentary been issued to William J. Manley, 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 William J. Manley, c/o Jule Gaige, Attorney for the Estate, 615 Clay Avenue, Third Floor, Scranton, PA 18510.

**ESTATE OF GLORIA A. WELLS, A/K/A GLORIA ANNE WELLS**, late of Madison Twp., Lackawanna County, Pennsylvania, (died 10/28/2019). Notice is hereby given that Letters of Testamentary on the above estate have been granted to Lori Ann Smith, of Madison Twp., PA, Executrix. All persons indebted to the said estate are required to make payment and those having claims to present the same without delay to the Executrix named herein, or to Patrick N. Coleman, Esquire, Tellie & Coleman, P.C., 310 East Drinker Street, Dunmore, PA 18512.

**ESTATE OF JOHN J. YONTAS, JR.**, file number 3519-01013, late of Eynon, Lackawanna County, PA (Date of death: 6/27/2019). Deborah M. Parise was appointed Administratrix on July 16, 2019. Jeffrey A. Levine, Esquire, Herlands & Levine, 27 North Main Street, Suite 301, Carbondale, PA 18407.

**CHANGE OF NAME**

Notice is hereby given that on March 10, 2020, the Petition for a Change of Name was filed in the Court of Common Pleas of Lackawanna County by Salvatore Prudente to change his name from Salvatore Prudente to Sam A. Prudente. A hearing on such Petition has been scheduled before the Lackawanna County Court of Common Pleas, en banc, on April 24, 2020 at 9:00 a.m.

T1-3/27

**NOTICE**

NOTICE TO CLIENTS OF DAVID W. HARRIS III

David W. Harris III was placed on Emergency Temporary Suspension by Supreme Court Order entered on November 8, 2019. At this time of his suspension, Mr. Harris held in his possession files of clients. Any client wishing to retrieve their file, or who believes that they are owed money by Mr. Harris, should immediately contact the following: Attorney Marianne M. Stivala, Brian J. Cali & Associates, 103 E. Drinker Street, Dunmore, PA 18512. (570)344-2029.

T1-3/27

# LACKAWANNA JURIST

## **NOTICE** "NOTICE TO LEGATEES"

To all legatees, creditors and other persons interested. Notice is hereby given that the following Executors, Administrators, Trustees, and Guardians have filed their accounts with the Register of Wills and Clerk of Orphans' Court, Division of the Court of Common Pleas.

The following accounts have been filed and may be examined in the Office of the Register of Wills and Clerk of Orphans' Court. If you desire to object, the same may be accomplished by filing that objection in writing with the Clerk of Orphans' Court **on or before Monday, the 6th of April, 2020.**

The accounts will be filed by the clerk, with the Court for adjudication and confirmation on Tuesday, **the 7th of April, 2020.** Distribution may be ordered or authorized without further notice if no objections are filed prior to that date.

35-2016-200 Mary Josephine Massetti Incapacitated Person	First & Final Account Advocacy Alliance, Guardian John R. O'Brien Esquire
--	---

35-2017-588 Mary K. Lalicki Deceased	First & Final Account Traci L. Adomiak Executrix Brenda D. Colbert Esquire
--	--

35-2018-23 Gladys C. Petroski Deceased	First & Final Account Joy Petroski, Executrix Roger Mattes Jr. Esquire
--	--

35-2018-296 Judith M. Bird Deceased	First & Final Account Alicia Hendricks, Administratrix Stanley J. Hendricks Esquire
---	---

T1-3/27

**LACKAWANNA JURIST**

**NOTICE**

IN THE COURT OF COMMON PLEAS  
OF LACKAWANNA COUNTY  
CIVIL ACTION-LAW  
QUIET TITLE  
No.2019-CIV-7237

JABEZ REALTY, LLC  
315 Jabez Place, Scranton, PA 18508  
Plaintiff

Vs.

LACKAWANNA COUNTY COMMISSIONERS; and ANDREW SETLIGHT his heirs, administrators, executors, successors and assigns,  
Defendants

**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 is served, by entering a written appearance personally or by 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, GO TO, OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Northern PA Legal Services, Inc.,  
33 N. Main Street, Suite 200  
Pittston, PA 18640  
570-299-4100

OR

Lawyer Referral Service  
Lackawanna Bar Association  
233 Penn Avenue  
Scranton, PA 18503  
Phone: (570)969-9600

**AMERICANS WITH DISABILITIES ACT OF 1990**

The Court of Common Pleas of Pike County is required by law to comply with the American with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the Court. You must attend the schedules conference of hearing.

KURT T. LYNOTT, ESQUIRE  
Attorney for the Plaintiffs  
103 East Drinker Street  
Dunmore, PA 18512  
570-344-2029  
ATTY ID 91192

T1-3/27

**LACKAWANNA JURIST**

**NOTICE**

CIVIL ACTION  
COURT OF COMMON PLEAS  
LACKAWANNA COUNTY, PA  
CIVIL ACTION-LAW  
NO. 2020-00688

**NOTICE OF ACTION IN MORTGAGE FORECLOSURE**

WELLS FARGO BANK, NATIONAL ASSOCIATION, SUCCESSOR BY MERGER TO WELLS FARGO BANK MINNESOTA, NATIONAL ASSOCIATION, AS TRUSTEE F/K/A NORWEST BANK MINNESOTA, NATIONAL ASSOCIATION, AS TRUSTEE FOR AMRESKO RESIDENTIAL SECURITIES CORPORATION MORTGAGE LOAN TRUST 1998-3, Plaintiff

v.

THOMAS NESTERAK, IN HIS CAPACITY AS HEIR OF DIANE YACOPCHAK; et al, Defendants

To: UNKNOWN HEIRS, SUCCESSORS, ASSIGNS AND ALL PERSONS, FIRMS OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER DIANE YACOPCHAK Defendant(s), 508-510 F/K/A 510 HICKORY STREET, OLD FORGE, PA 18518

**COMPLAINT IN MORTGAGE FORECLOSURE**

You are hereby notified that Plaintiff, WELLS FARGO BANK, NATIONAL ASSOCIATION, SUCCESSOR BY MERGER TO WELLS FARGO BANK MINNESOTA, NATIONAL ASSOCIATION, AS TRUSTEE F/K/A NORWEST BANK MINNESOTA, NATIONAL ASSOCIATION, AS TRUSTEE FOR AMRESKO RESIDENTIAL SECURITIES CORPORATION MORTGAGE LOAN TRUST 1998-3, has filed a Mortgage Foreclosure Complaint endorsed with a Notice to Defend, against you in the Court of Common Pleas of LACKAWANNA County, PA docketed to No. 2020-00688, seeking to foreclose the mortgage secured on your property located, 508-510 F/K/A 510 HICKORY STREET, OLD FORGE, PA 18518.

**NOTICE**

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in this notice you must take action within twenty (20) days after the 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, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH THE INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Northeastern Pennsylvania Legal Services  
33 N. Main Street  
Suite 200  
Pittston, PA 18640  
570-299-4100

RAS CITRON, LLC  
ATTORNEYS FOR PLAINTIFF  
Jenine Davey, Esq. ID No. 87077  
133 Gaither Drive, Suite F  
Mt. Laurel, NJ 08054  
855-225-6906  
T1-3/27