

# Adams County Legal Journal

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## IN THIS ISSUE

U.S. BANK VS. DARRAGH

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*Trust Officer*



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NOTICE

IN THE COURT OF COMMON PLEAS  
OF ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW  
NO. 12-SU-118

PENNSYLVANIA STATE EMPLOYEES  
CREDIT UNION, Plaintiff

vs.

GERRI A. HAINES and THEODORE S.  
HAINES, Defendants

NOTICE

To: GERRI A. HAINES and THEODORE  
S. HAINES

You are hereby notified that on January 26, 2012, Plaintiff, Pennsylvania State Employees Credit Union, filed a Complaint endorsed with a Notice to Defend against you in the Court of Common Pleas of Adams County, Pennsylvania, docketed to NO. 12-SU-118, which has been reinstated, wherein Plaintiff seeks to enforce its rights under its loan documents.

Since your current whereabouts are unknown, the Court, by Order dated March 1, 2012, ordered notice of said facts and the filing of the Complaint to be served upon you as provided by R.C.P.430(b).

You are hereby notified to plead to the above referenced Complaint on or before 20 DAYS from the date of this publication or Judgment will be entered against you.

NOTICE

You have been sued in Court. If you wish to defend, you must enter a written appearance personally or by attorney, and file your defenses or obligations in writing with the Court. You are warned that if you fail to do so, the case may proceed without you and a Judgment may be entered against you without further notice for the relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE 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 INFORMATION  
ABOUT AGENCIES THAT MAY OFFER  
LEGAL SERVICES TO ELIGIBLE  
PERSONS AT A REDUCED FEE OR NO  
FEE.

Court Administrator  
Adams County Courthouse  
117 Baltimore Street  
Gettysburg, PA 17325  
717-337-9846

Shawn M. Long, Esq.  
Barley Snyder  
126 East King Street  
Lancaster, PA 17602  
(717) 299-5201

3/23

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania on February 17, 2012, for the purpose of obtaining a Certificate of Incorporation organized under the provisions of the Pennsylvania Business Corporation Law, approved December 21, 1988, P.L. 1444, as amended. The name of the corporation is HARRINGTON'S EQUIPMENT COMPANY. The purpose or purposes for which the corporation is incorporated is that the corporation shall have unlimited power to engage in and do any lawful act concerning any or all lawful business for which corporations may be incorporated under said Business Corporation Law.

Entwistle & Roberts  
Attorneys for the Corporation

3/23

NOTICE

NOTICE is hereby given that the Application for Domestic Limited Liability Company was filed by NEVIN'S AUTOMOTIVE SALES, LLC with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of registering under 15 Pa. C.S. 8913, relating to Domestic Limited Liability Companies.

Samuel A. Gates, Esq.  
250 York Street  
Hanover, PA 17331  
717-632-4971

3/23

## U.S. BANK VS. DARRAGH

1. Where a party's claim as a real party in interest depends on an assignment, several Pennsylvania Courts of Common Pleas have held the assignment must be attached to the complaint.

2. Where a plaintiff avers in the complaint it is in the process of formalizing an assignment, this is sufficient to explain why, under Pa.R.C.P. 1019, a copy of the written assignment was not attached to the complaint.

3. Moreover, Pa.R.C.P. 1147(a)(1) does not require a party have a recorded assignment as a prerequisite to filing a Complaint in Mortgage Foreclosure.

4. As a general matter, this Court notes Plaintiff's efforts to satisfy its legal obligation through ambiguous boilerplate pleading is unacceptable. The Rules require clear and concise pleadings, and this requirement cannot be met through the use of ambiguous, general language contained in boilerplate pleadings.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 11-S-756, U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, VS. CHARMAINE S. DARRAGH AND THOMAS H. DARRAGH.

Scott A. Dietterick, Esq., for Plaintiff

D.J. Hart, Esq., for Defendants

George, J., September 20, 2011

### OPINION

Plaintiff initiated this action by filing a Complaint in Mortgage Foreclosure on May 6, 2011. Defendants responded by filing Preliminary Objections seeking to have Plaintiff's complaint stricken or dismissed based on its failure to comport to the Pennsylvania Rules of Civil Procedure (Pa.R.C.P.). The complaint arises out of a Note and Mortgage executed by Defendants in the amount of \$148,000.00. Plaintiff claims it is the present legal owner of the mortgage "which has been assigned to Plaintiff or the assignment is in the process of formalization and to be recorded." Defendants are allegedly in default under the terms of the Mortgage and Note due to their failure to pay the monthly installments of principal and interest when due. Thus, Plaintiff has sought to foreclose on Defendants' property to recover the \$149,382.06 it claims is owed by Defendants.

Pa.R.C.P. 1019(i) states, "When any claim or defense is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof, but if the writing or copy is not accessible to the pleader, it is sufficient so to state, together with the reason and to set forth the substance in writing." Where a party's claim as a real party

in interest depends on an assignment, several Pennsylvania Courts of Common Pleas have held the assignment must be attached to the complaint. See e.g., *Remit Corp. v. Miller*, 5 Pa. D. & C. 5th 43 (Centre County 2008) (Pa.R.C.P. requires that, in a credit card case based on assignment, the relevant assignments showing the chain of ownership for the account from originator to current holder must be attached to the complaint); *Flanagan v. Hill, Fitzgerald, and Erie Ins. Group*, 78 Pa. D. & C. 4th 487 (Centre County 2006) (Pa.R.C.P. 1019 requires an assignment be attached to the complaint).

Where a plaintiff avers in the complaint it is in the process of formalizing an assignment, this is sufficient to explain why, under Pa.R.C.P. 1019, a copy of the written assignment was not attached to the complaint. *US Bank N.A. v. Mallory*, 982 A.2d 986, 993 (Pa. Super. 2009). Moreover, Pa.R.C.P. 1147(a)(1) does not require a party have a recorded assignment as a prerequisite to filing a Complaint in Mortgage Foreclosure. *Id.* (citation omitted). In either of these instances, an averment in the complaint that the plaintiff is the holder of the mortgage note is sufficient to plead he is an original party in interest to the action and defeat a motion to strike on that basis. *Id.* at 994 (motion to strike dismissed where appellee averred in its complaint it was the “legal owner” of the mortgage, thereby indicating it was the holder of the mortgage note).

In the case at hand, Plaintiff avers it is “presently the legal owner of the mortgage which has been assigned to Plaintiff or the assignment is in the process of formalization and to be recorded.” Although *Mallory* permits Plaintiff to file a Complaint in Mortgage Foreclosure prior to finalization or recordation of the assignment of interest to Plaintiff, here the lack of specificity in Plaintiff’s complaint precludes applying this principal. Although Plaintiff does clarify it is in the process of formalizing an assignment in its Brief in Opposition to Defendants’ Preliminary Objections, this does not cure the deficiency in Plaintiff’s complaint.

As a general matter, this Court notes Plaintiff’s efforts to satisfy its legal obligation through ambiguous boilerplate pleading is unacceptable. The Rules require clear and concise pleadings, and this requirement cannot be met through the use of ambiguous, general language contained in boilerplate pleadings.

Because Plaintiff's complaint fails to attach the documents required by Pa.R.C.P. 1019 or meet the specificity required by Pa.R.C.P. 1147(a)(1), it is stricken without prejudice. Plaintiff is granted 20 days to file an amended complaint.

For the foregoing reasons, the attached Order is entered.

#### ORDER

AND NOW, this 20th day of September 2011, the Defendants' Preliminary Objections are sustained. Plaintiff's Complaint is stricken. Plaintiff is granted twenty (20) days from the date of this Order within which to file an Amended Complaint.



**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 DORIS NICHOLAS a/k/a DORIS B. NICHOLAS, DEC'D**

Late of Hamilton Township, Adams County, Pennsylvania

Executor: Martin A. Nicholas, c/o Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

**SECOND PUBLICATION****ESTATE OF CARMENITA N. CULLERS, DEC'D**

Late of Mount Joy Township, Adams County, Pennsylvania

Executrix: Kathy Bowman, 17 Parkland Court, Gettysburg, PA 17325

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF WILLIAM ALBERT LAUR, DEC'D**

Late of Butler Township, Adams County, Pennsylvania

Co-Executors: Gregory W. Laur, 5406 Talltree Way, West Chester, OH 45069; Katherine A. Laur Bushey, 3220 Harbor Drive, St. Augustine, FL 32084

Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

**ESTATE OF RICHARD J. LAWRENCE, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Executors: Robert E. Lawrence, 342 Iron Street, Bloomsburg, PA 17815; Daniel E. Lawrence, 23 Franklin Drive, McSherrystown, PA 17344

Attorney: David C. Smith, Esq., 754 Edgegrove Rd., Hanover, PA 17331

**ESTATE OF INEZ G. LONG, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Kathryn L. Missildine, c/o James T. Yingst, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

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

**ESTATE OF RANDY A. MARKLE, DEC'D**

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Administrator: Barry E. Markle, 285 Irishtown Road, Hanover, PA 17331

Attorney: Todd A. King, Esq., Campbell & White, P.C., 112 Baltimore Street, Suite 1, Gettysburg, PA 17325

**ESTATE OF DOROTHY M. MOOSE, DEC'D**

Late of Tyrone Township, Adams County, Pennsylvania

Co-Executrices: Pamela R. Hewitt, 306 Gardners Station Rd., Gardners, PA 17324; Donna M. Kuhn, 1991 Heidlersburg Rd., Aspers, PA 17304

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

**ESTATE OF JOHN D. MOOSE, DEC'D**

Late of Tyrone Township, Adams County, Pennsylvania

Co-Executrices: Pamela R. Hewitt, 306 Gardners Station Rd., Gardners, PA 17324; Donna M. Kuhn, 1991 Heidlersburg Rd., Aspers, PA 17304

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

**ESTATE OF MARY C. MURPHY, DEC'D**

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Co-Executors: Joseph Alan Murphy, Lisa Marie Wolf and Thomas George Murphy, c/o Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

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

**ESTATE OF DELORES B. TINCHER, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Personal Representative: Dawn R. Paschall, 257 Jefferson St., Hanover, PA 17331

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

**ESTATE OF BRENDA JANE TITMAN-SCHULTZ, a/k/a BRENDA J. SCHULTZ, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Administrator: John P. Buffington, 944 Edgegrove Road, Hanover, PA 17331

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

**THIRD PUBLICATION****ESTATE OF RUSSELL J. BROWN, DEC'D**

Late of Germany Township, Adams County, Pennsylvania

Executor: Charles R. Brown, c/o Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

Attorney: Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

**ESTATE OF ROBERT LAUER ELLER a/k/a ROBERT L. ELLER, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Administratrix: Nancy Jo Eller, 4509 Shaff Lane, Frederick, MD 21703

Attorney: Robert L. McQuaide, Esq., Suite 204, 18 Carlisle Street, Gettysburg, PA 17325

**ESTATE OF JOSEPH H. L'ETOILE a/k/a JOSEPH HENRI L'ETOILE, DEC'D**

Late of the Borough of Carroll Valley, Adams County, Pennsylvania

Executor: Stephen L'Etoile, 219 Equestrian Road, Warrenton, VA 20186

Attorney: Wendy Weikal-Beauchat, Esq., 63 West High St., Gettysburg, PA 17325

**ESTATE OF JOHN R. WHITE, DEC'D**

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Executrix: Tonya Knouse White, P.O. Box 472, Arendtsville, PA 17303

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

