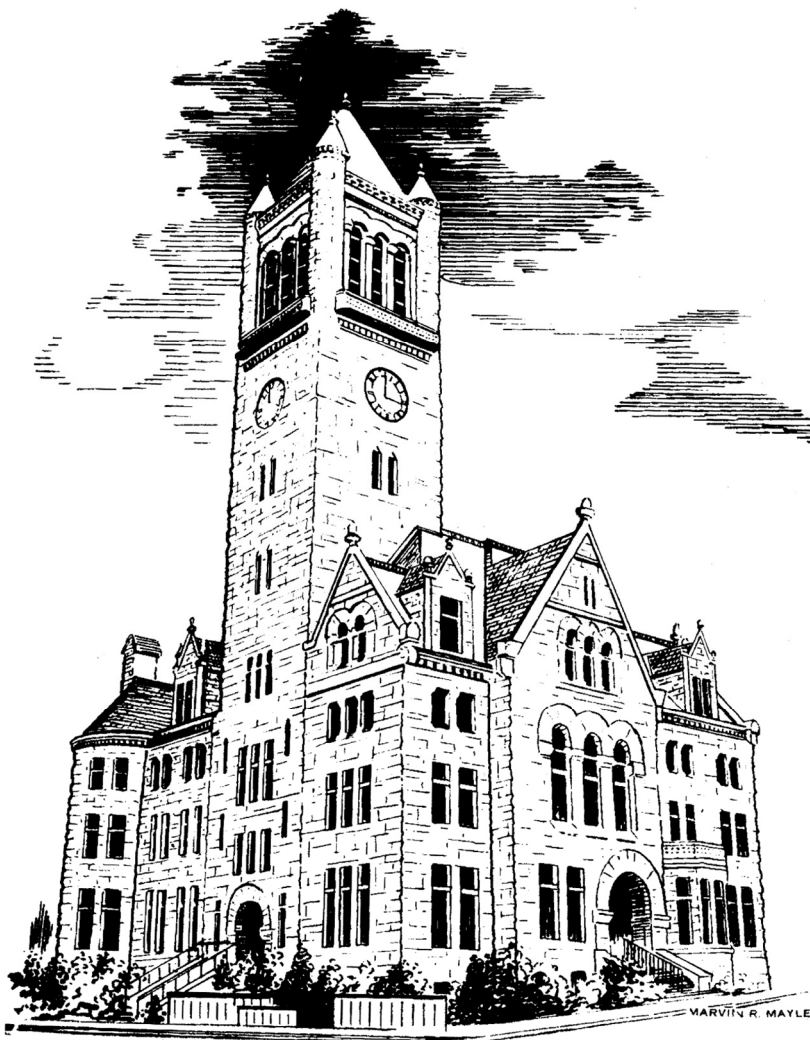


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Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay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

Third Publication

PATRICIA AMERICO, late of Uniontown, Fayette County, PA (3)

Co-Executors: Peter Americo
3760 National Pike
Farmington, PA 15437
Amy Americo
123 Horseshoe Drive
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Bradford Woods, PA 15015
Attorney: Ashley Sharek

DEBORAH JEAN CALLAHAN, late of Fayette County, PA (3)

Administrator: Joshua K. Callahan
48A Monroe Avenue
Uniontown, PA 15401
c/o Fieschko & Associates, Inc.
300 Cedar Boulevard, Suite 202
Pittsburgh, PA 15228
Attorney: Joseph Fieschko

HELEN M. FETSKO, a/k/a HELEN MARIE FETSKO, late of South Union Township, Fayette County, PA (3)

Executor: Robert J. Fetsko, Jr., a/k/a Robert Fetsko
c/o Radcliffe Martin Law, LLC
648 Morgantown Road, Suite B
Uniontown, PA 15401
Attorney: William M. Martin

JANET S. MCMANUS, a/k/a JANET ELIZABETH MCMANUS, late of Connellsville, Fayette County, PA (3)

Personal Representative:
Joseph R. McManus
c/o Watson Mundorff, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Timothy J. Witt

JACQUELINE SCHWENK, late of Uniontown, Fayette County, PA (3)

Executrix: Colleen Brain
c/o Adams Law Offices, PC
55 East Church Street, Suite 101
Uniontown, PA 15401
Attorney: Jason Adams

CATHERINE STEWART, late of Springfield Township, Fayette County, PA (3)

Administrator: Jason A. Medure
c/o Medure Bonner Bellissimo, LLC
713 Wilmington Avenue
New Castle, PA 16101
Attorney: Jason Medure

CHARLOTTE YVONNE STEWART, a/k/a YVONNE STEWART, late of Washington Township, Fayette County, PA (3)

Executor: Alan Baker
138 Grimplin Road
Vanderbilt, PA 15486
c/o 300 Fallowfield Avenue
Charleroi, PA 15022
Attorney: Richard C. Mudrick

Second Publication

BARBARA RAE DUBOVICH, a/k/a BARBARA R. DUBOVICH, late of Luzerne Township, Fayette County, PA (2)

Executor: David E. Dubovich
c/o Higinbotham Law Offices
68 South Beeson Boulevard
Uniontown, PA 15401
Attorney: James E. Higinbotham, Jr.

WESLEY CHARLES MCCLINTOCK, late of Dunbar, Fayette County, PA (2)

Administrator: Wesley Boyd McClintock
c/o 208 South Arch Street, Suite 2
Connellsville, PA 15425
Attorney: Richard A. Husband

SARA JEAN RECKUS, a/k/a SARA J. RECKUS, late of South Union Township, Fayette County, PA (2)

Personal Representative:
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c/o George & George
92 East Main Street
Uniontown, PA 15401
Attorney: Joseph M. George

GEOFFREY W. SNYDER, late of Connellsville, Fayette County, PA (2)

Executor: Gary W. Snyder
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

CAROL A. CABLE, late of Dawson, Fayette County, PA (1)

Administrator: George S. Cable
c/o Molinaro Law Offices
P.O. Box 799
Connellsville, PA 15425
Attorney: Carmine V. Molinaro, Jr.

ROBERT I. CONFER, JR., late of South Union Township, Fayette County, PA (1)

Executrix: Audrey J. Confer
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: James T. Davis

LEONA MAZZOCCO, a/k/a LEONA ANGELINE MAZZOCCO, late of Redstone Township, Fayette County, PA (1)

Executor: Thomas Mazzocco
c/o 9 Court Street
Uniontown, PA 15401
Attorney: Vincent J. Roskovensky, II

MICHAEL C. MILLER, late of Uniontown, Fayette County, PA (1)

Personal Representative:
James E. Higinbotham, Jr.
c/o Higinbotham Law Offices
68 South Beeson Boulevard
Uniontown, PA 15401
Attorney: James E. Higinbotham, Jr.

WILLIAM MERLE STONER, a/k/a WILLIAM STONER, late of South Connellsville, Fayette County, PA (1)

Personal Representative:
Myrtle Martha Stoner
c/o Watson Mundorff, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Robert A. Gordon

LEGAL NOTICES

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION
Docket No. 2390 of 2023 G.D.

IN RE: Change of Name of Emerson Grace Pratt (E.C.P.), a minor. By and through Sarah Jesko, her natural mother and guardian, petitioner.

Notice Of Name Change Petition

TO ALL PERSONS INTERESTED: Notice is hereby given that an Order of said Court authorized the filing of said Petition and fixed the 28th day of February, 2024, at 1:30 o'clock, p.m. as the date and time and Courtroom No. 5, Fayette County Courthouse, Uniontown, Pennsylvania, as the place for a hearing, when and where all persons may show cause, if any, why the request of the Petitioner should not be granted.

Pavina Law, LLC
Bryan L. Pavina Jr., Esquire
4 N. Beeson Blvd.
Uniontown, PA 15401
Attorney for Petitioner

First Publication

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JUDICIAL OPINION

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

EDWARD T. KIBE, JR. and	:	
AMANDA KIBE, his wife,	:	
Plaintiffs,	:	
	:	
vs.	:	
	:	
SCOTT VAN DIVNER, NRT PITTSBURGH,	:	
LLC d/b/a COLDWELL BANKER REAL	:	
ESTATE SERVICES, COLDWELL	:	
BANKER REAL ESTATE, LLC d/b/a	:	
COLDWELL BANKER REALTY –	:	
PITTSBURGH and SIMON REAL ESTATE	:	
SERVICES, INC. d/b/a HOWARD HANNA	:	
REAL ESTATE SERVICES,	:	No. 2013 of 2022, G.D.
Defendants.	:	Honorable Nancy D. Vernon

OPINION AND ORDER

VERNON, J.

January 31, 2024

Before the Court are Preliminary Objections filed by Defendants NRT Pittsburgh, LLC, d/b/a Coldwell Banker Real Estate Services and Coldwell Banker Real Estate, LLC d/b/a Coldwell Banker Realty – Pittsburgh (“Coldwell Banker”) and Defendant Simon Real Estate Services, Inc. d/b/a Howard Hanna Real Estate Services (“Howard Hanna”).

Plaintiffs Edward T. Kibe, Jr. and Amanda Kibe purchased a home from Defendant Scott Van Divner and after closing discovered that the property was not serviced by a septic system or on lot disposal system as represented in the sale. Through their own investigation six months later, Plaintiffs learned that raw sewage from their residence flowed through a plastic pipe in their backyard over a hillside and discharged onto adjacent vacant land.

To assist in their home purchase, Plaintiffs retained Coldwell Banker as a broker and Nadene Johnson as their agent. Plaintiffs entered into an Agreement for Sale of Real Estate dated September 5, 2020, with Defendant Van Divner, for real estate located at 605 Jefferson Road, Perryopolis, Pennsylvania. Defendant Howard Hanna was the listing agent for this property. Plaintiffs allege that the Seller Disclosure Statement stated that the property had a septic system.

In their First Amended Complaint, Plaintiffs Kibe allege violations of the Real Estate Disclosure Law and Breach of Contract against Defendant Van Divner; Intentional Misrepresentation, Negligent Misrepresentation, and Pennsylvania Unfair Trade Prac-

tices and Consumer Protection Law against all defendants; and Breach of Contract/Warranty against Defendants Coldwell Banker and Howard Hanna.

Defendants Coldwell Banker and Howard Hanna filed the instant Preliminary Objections in the nature of a demurrer as to all of Plaintiffs' claims and for Plaintiffs' alleged failure to complete alternative dispute resolution. Howard Hanna filed an additional objection as to the Breach of Contract and/or Warranty arguing that Plaintiffs failed to attach any written contract or warranty as none exists between these parties.

STANDARD OF REVIEW

A preliminary objection in the nature of a demurrer is properly granted where the contested pleading is legally insufficient. *Cardenas v. Schober*, 783 A.2d 317, 321 (Pa.Super.2001) citing Pa.R.C.P. 1028(a)(4). A demurrer admits every well-pleaded material fact set forth in the pleadings to which it is addressed as well as all inferences reasonably deducible therefrom, but not conclusions of law. *Gekas v. Shapp*, 364 A.2d 691 (Pa. 1976). "Preliminary objections in the nature of a demurrer require the court to resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by the demurrer." *Cardenas* at 321–22. "[C]onclusions of law, unwarranted inferences from the facts, argumentative allegations or expressions of opinion" need not be accepted as true. *Myers v. Ridge*, 712 A.2d 791, 794 (Pa.Comm.w. 1998). "Preliminary objections, the end result of which would be dismissal of a cause of action, should be sustained only in cases that are clear and free from doubt." *League of Women Voters of Pennsylvania v. Commonwealth*, 692 A.2d 263, 267 (Pa.Comm.w. 1997). In order to sustain the demurrer, it is essential that the plaintiff's complaint indicate on its face that his claim cannot be sustained, and the law will not permit recovery. *Id.*

DISCUSSION

Accepting as true the pleadings of the First Amended Complaint, on September 5, 2020, Plaintiffs entered into a "Standard Agreement for the Sale of Real Estate" with Defendant Van Divner for property located in Jefferson Township, Fayette County, for the amount of \$130,000.00. As part of the transaction, Van Divner completed and delivered to Plaintiffs a "WPML Seller Disclosure Statement" stating the property was serviced by an individual on-lot sewage system, holding tank, and septic tank. Van Divner answered "No" to the questions, "Do you know the location and condition of any basin, pond, ditch, drain, swell, culvert, pipe, or other man-made feature of land that temporarily or permanently conveys or manages stormwater for the property?" and "Are you aware of sewage sludge being spread on the property or have you received written notice of sewage sludge being spread on an adjacent property?"

Plaintiff makes the following allegations:

9. In reliance on the factual assertions made in the Disclosure Statement and through pressure to buy imposed by Coldwell Banker and Howard Hanna, by and through their respective agent, Plaintiffs purchased the aforesaid property.

10. In reliance on the factual assertions made by Van Divner and conveyed by his agent Howard Hanna, Howard Hanna knew, had reason to know, and had a duty to

inquire and failed to conduct due diligence of the misrepresentations and inaccuracies contained in the Disclosure Statement.

11. In forwarding the Disclosure Statement, Howard Hanna failed to have Van Divner truthfully and completely submit an accurate Disclosure Statement.

12. Coldwell Banker listed and advertised the property for sale as serviced by a septic system, septic tank, and/or individual on-lot sewage system when in fact the septic tank and/or sewage system did not exist on the property.

13. Coldwell Banker's advertisement and listing for the property was false, misleading and deceptive designed to induce the Plaintiffs to purchasing the property.

14. Howard Hanna listed and advertised the property for sale as serviced by a septic system, septic tank, and/or individual on-lot sewage system when in fact the septic tank and/or sewage system did not exist on the property.

15. Howard Hanna's advertisement and listing for the property was false, misleading and deceptive designed to induce the Plaintiffs to purchasing the property.

16. Prior to the purchase of the property, Plaintiffs informed all Defendants that Plaintiffs were first time homebuyers, wanted a home that was in good condition, structurally sound and Plaintiffs thereby relied on Van Divner, Coldwell Banker, and Howard Hanna to exercise due candor, transparency and truth in all material elements of the property purchase. As a result, Defendants collectively had a duty to know, a reason to know, and should have inquired as to the defective conditions in the property as outlined in paragraphs below.

17. Van Divner, Coldwell Banker, and Howard Hanna jointly and collectively failed to conduct a due diligence assessment of the true condition of the subject property namely – the status of the sewage system.

18. Van Divner, Coldwell Banker, and Howard Hanna misrepresented and failed to disclose latent and otherwise defective and dangerous conditions known or should have been known to them, and they collectively had the duty to inquire or investigate the property's defective conditions while they chose not to disclose defective conditions to Plaintiffs prior to the sale of the property to effectuate the sale and collect their respective sale proceeds, commission fees, and inspection fees.

19. Plaintiffs relied upon Coldwell Banker's vast experience in real estate transactions and knowledge of the property.

20. Coldwell Banker equally accepted an inaccurate and false Disclosure Statement as completed by Van Divner.

21. Plaintiffs relied on Howard Hanna's vast experience in real estate transactions and knowledge of the property.

See, Plaintiffs' Complaint.

Thereafter, in the summer of 2021, Plaintiffs noticed noxious odors in the bathrooms and began searching for the septic system or on-lot sanitary sewage disposal system. In October 2021, Plaintiffs determined that the sewage from the residence flows from the premises in a plastic pipe, through the back yard and discharges over a hillside onto adjacent vacant land.

Intentional Misrepresentation and Negligent Misrepresentation

As to the Intentional Misrepresentation, Plaintiffs allege that Van Divner made representations concerning the condition of and/or defects in the property in the Disclosure Statement, which were material to the transaction, that they were made falsely, knowing that they were false or made recklessly as to their actual falsity. “The concealment or the failure to reveal or the withholding of information concerning the aforesaid conditions of and defects in the said property, as outlined above, was undertaken with the intent to induce Plaintiffs to purchase the said real estate [and ...] to deceive the Plaintiffs about the condition of the property.” Though listed in the heading, Plaintiffs do not specify allegations against Coldwell Banker or Howard Hanna in their claim for Intentional Misrepresentation.

As to the Negligent Misrepresentation, Plaintiffs allege Coldwell Banker and Howard Hanna “negligently made representations to Plaintiffs by transmitting and/or delivering Van Divner’s inaccurate and misleading Disclosure Statement and advertising the property for sale, knowing or having reason to know of said defects and said Defendant [s] had a duty to inquire as to the true condition of the sewage system on the subject property and failed to warn or provide notice to Plaintiffs through the Disclosure Statement or knowledge gained through the years of experience in the real estate business.” Further Plaintiffs allege they justifiably and detrimentally relied upon the material misrepresentations of Coldwell Banker and Howard Hanna and that these Defendants were “real estate professionals who possessed superior knowledge who failed to warn Plaintiffs of the defective conditions of the property and misrepresentations contained in the Disclosure Statement.”

Plaintiff cites the Agreement of Sale as being the affirmative representations made by Coldwell Banker and Howard Hanna regarding the sewage system servicing the property. However, the parties to the “Standard Agreement for the Sale of Real Estate” are Plaintiffs and Defendant Van Divner, not Coldwell Banker or Howard Hanna.

The Court can find no misrepresentation by Coldwell Banker or Howard Hanna on which Plaintiffs can rest a claim of Intentional or Negligent Misrepresentation. Even the Seller Disclosure Statement recites, “This Statement discloses Sellers’ knowledge of the condition of the Property as of the date signed by the Seller and is not a substitute for any inspections or warranties that the Buy may wish to obtain.” The completion of the Sellers Disclosure statement is the responsibility of the Seller. See 68 PA.C.S. § 7308.

It is well established under Pennsylvania law that a real estate agent owes no duty to conduct an independent inspection of the property. 63 P.S. § 455.606a(i) (“Unless otherwise agreed, a [real estate] licensee owes no duty to conduct an independent inspection of the property and owes no duty to independently verify the accuracy or com-

pleteness of any representation made by a consumer to a transaction reasonably believed by the licensee to be accurate and reliable.”); see also *Bortz v. Noon*, 729 A.2d 555, 563 (Pa.1999) (declining to impose on a real estate agent the duty to investigate the accuracy of a contractor’s report made prior to closing where the real estate agent did not have any agency or contractual relationship with the third party).

As in *Bortz*, supra., in advertising the property for sale, Coldwell Banker and Howard Hanna “acted as the innocent conduit of information from an apparently reliable source,” here, the source being the Seller, Defendant Van Divner. 729 A.2d at 563. A review of the Complaint finds no allegation that either Coldwell Banker or Howard Hanna had knowledge to the contrary of Defendant Van Divner’s statement that the property was serviced by a septic tank. Citing *Bortz*, supra., again, “[t]here is no record evidence that [Coldwell Banker or Howard Hanna] had specialized knowledge of septic systems, that [either] pretended to have such knowledge, or that [the agencies] assumed the obligation of guaranteeing or providing this information to the Buyer.” 729 A.2d at 563.

68 PA.C.S. § 7303 and § 7308 squarely puts the duty on the Seller to prepare the disclosure statement as well as to not make false, deceptive, or misleading statements in preparing the disclosure statement.

Coldwell Banker and Howard Hanna acted as real estate agents in the sale of this property and had no duty under Pennsylvania law to make these disclosures on Seller Defendant Van Divner’s behalf nor did either have a duty further investigate the property to discover material defects and ensure that they were disclosed. Plaintiffs also make no allegations that Coldwell Banker or Howard Hanna played any role in completing the Seller Disclosures.

To determine whether liability extends to a real estate agent, 68 PA.C.S. § 7310 provides guidance in this area. 68 PA.C.S. § 7310 states that “an agent of a seller or a buyer shall not be liable for any violation of this chapter unless the agent had actual knowledge of a material defect that was not disclosed to the buyer or of a misrepresentation relating to a material defect.” Actual knowledge is defined as an individual having known that a condition is true or exists. The falsity of the septic system disclosure was not known to Plaintiffs for approximately six months after owning the property; meaning, the septic failure could not be readily apparent from a visual inspection. Plaintiffs have provided no Pennsylvania law which would impose a duty on a real estate agent to conduct an investigation to seek out potential material defects. Additionally, there is no evidence to suggest that Coldwell Banker and Howard Hanna had actual knowledge that the property was not serviced by a septic system as disclosed by Seller Defendant Van Divner.

Accordingly, the Court must sustain the preliminary objections and dismiss the claims of Intentional Misrepresentation and Negligent Misrepresentation against Coldwell Banker and Howard Hanna.

Breach of Contract/Warranty

In their fifth count “Breach of Contract/Warranty,” Plaintiffs allege that “Coldwell Banker and Howard Hanna were parties to express contracts and/or express or implied warranties as recognized under Pennsylvania Law.” As to the contractual duties and/or warranties, Plaintiffs cite the Disclosure Statement and Standard Agreement of Sale, and the “presumed superior knowledge of the real estate industry and ability to probe into the true condition of the property they placed on the marketplace with the Plaintiffs relying on their aforementioned knowledge.”

Coldwell Banker and Howard Hanna both filed preliminary objections to this cause of action arguing that Plaintiffs have failed to adequately identify the contractual duties and/or warranties that were breached. Howard Hanna filed an additional preliminary objection pursuant to Pa.R.Civ.P. 1028(a)(2) for Plaintiffs’ failure to any writing of a contract or warranty between Plaintiffs and Howard Hanna.

As the Court has already found, Coldwell Banker and Howard Hanna are not parties to either the Disclosure Statement or Standard Agreement of Sale. Absent privity of contract and/or written warranty between the real estate agents and these Plaintiffs, the Court cannot allow causes of action to proceed for either breach of contract or warranty to proceed and will sustain these preliminary objections.

Pennsylvania Unfair Trade Practices and Consumer Protection Law

In their sixth and final cause of action, Plaintiffs allege violations of Pennsylvania Unfair Trade Practices and Consumer Protection Law against all Defendants, in that:

68. The conduct of all Defendants constituted an unfair or deceptive practice within the meaning of UTPCPL through the material misrepresentations as to the true condition of the property to consummate the sale of the property to collect their respective sale proceeds, commission fees, and inspection fees from the unknowing new homebuyers who justifiably relied upon the misrepresentations made by all the Defendants.

69. All Defendants, at a minimum, knew or should have known and should have investigated the false statements contained in the Disclosure Statement as conveyed by Defendant Van Divner.

See, Plaintiffs’ Complaint.

The General Assembly implemented the UTPCPL to prevent unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce[.] See *DeArmitt v. New York Life Ins. Co.*, 73 A.3d 578, 585 (Pa. Super. 2013). In the Commonwealth of Pennsylvania, the public is protected and given the right to take private action against those who perform unfair business practices. See *Id.*

No evidence has been alleged to demonstrate that Coldwell Banker or Howard Hanna played a more integral role in this transaction outside of serving as the real estate agents to facilitate the sale of the property from Seller Defendant Van Divner to the

Plaintiff. Under the 68 PA.C.S. § 7313, the real estate agent is only charged to advise the Seller of its responsibilities. No allegations have been made that agents should not have believed the seller's disclosures. Plaintiffs waived inspection of the sewage system. The Court cannot find how any of these actions or alleged inactions would serve as the basis for a claim against Coldwell Banker or Howard Hanna pursuant to Pennsylvania Unfair Trade Practices and Consumer Protection Law and as such will also sustain these preliminary objections.

WHEREFORE, in accordance with the foregoing Opinion, we will enter the following Order sustaining the Preliminary Objections filed by Defendants NRT Pittsburgh, LLC, d/b/a Coldwell Banker Real Estate Services and Coldwell Banker Real Estate, LLC d/b/a Coldwell Banker Realty – Pittsburgh (“Coldwell Banker”) and Defendant Simon Real Estate Services, Inc. d/b/a Howard Hanna Real Estate Services (“Howard Hanna”) and dismissing these Defendants from the within action with prejudice.

ORDER

AND NOW, this 31st day of January, 2024, upon consideration of the Preliminary Objections filed by Defendants NRT Pittsburgh, LLC, d/b/a Coldwell Banker Real Estate Services and Coldwell Banker Real Estate, LLC d/b/a Coldwell Banker Realty – Pittsburgh (“Coldwell Banker”) and Defendant Simon Real Estate Services, Inc. d/b/a Howard Hanna Real Estate Services (“Howard Hanna”) and the Record, it is hereby ORDERED and DECREED that the Preliminary Objections are SUSTAINED and these Defendants are DISMISSED with prejudice.

BY THE COURT:
NANCY D. VERNON, JUDGE

ATTEST:
Prothonotary

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