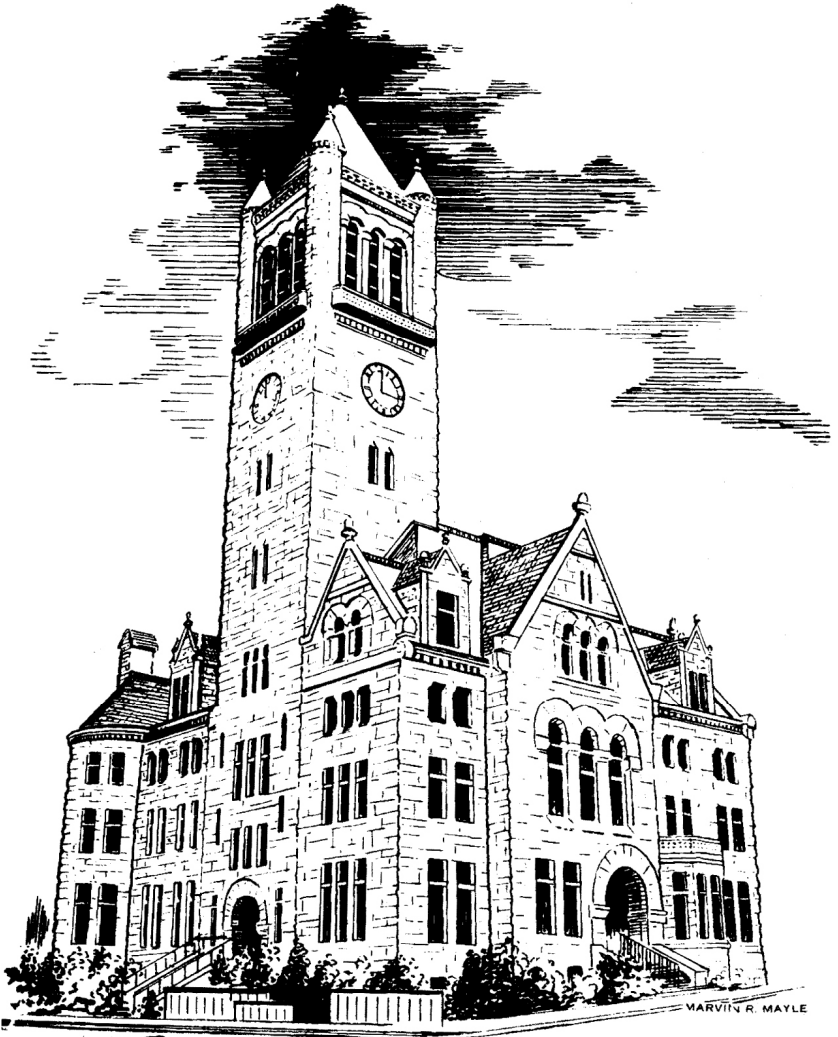


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ESTATE NOTICES

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

THOMAS LOUIS BERTOVICH, late of Springhill Township, Fayette County, PA (3)

Co-Executrix: Roxana Marie Bertovich
3509 Fletchers Way
Stem, NC 27581
Varina Cecelia Bertovich Houk
7646 Vallejo Street
Denver, CO 80221
c/o Newcomer Law Offices
4 North Beeson Boulevard
Uniontown, PA 15401
Attorney: Ewing D. Newcomer

TIMOTHY R. KESSLER, a/k/a TIMOTHY RALPH KESSLER, late of Uniontown, Fayette County, PA (3)

Administrator: Douglas A. Kessler
38 East Wine Street
Uniontown, PA 15401
c/o Newcomer Law Offices
4 North Beeson Boulevard
Uniontown, PA 15401
Attorney: Ewing Newcomer

LESLIE KAREN PREKSTA, LESLIE KAREN BRICKNER, late of Springhill Township, Fayette County, PA (3)

Personal Representative: Dennis Dolinar
c/o Davis and Davis
107 East Main Street
Uniontown, PA 15401
Attorney: James T. Davis

THELMA TRAYNOR, late of Washington Township, Fayette County, PA (3)

Executrix: Sherri Traynor-Novak
c/o 815A Memorial Boulevard
Connellsville, PA 15425
Attorney: Margaret Zylka House

EARL E. WHETSEL, JR., a/k/a EARL WHETSEL, late of Uniontown, Fayette County, PA (3)

Executrix: Nancy Kovach
c/o Proden and O'Brien
99 East Main Street
Uniontown, PA 15401
Attorney: Wendy L. O'Brien

JOSEPHINE MARIE YOKIEL, late of Redstone Township, Fayette County, PA (3)

Executrix: Dorothy L. Bryant
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

Second Publication

CHARLES MARVIN HYDE, JR., a/k/a CHARLES MARVIN HYDE, late of Springhill Township, Fayette County, PA (2)

Executrix: Michelle L. Hyde, a/k/a
Michelle Louise Hyde
c/o DeHaas Law, LLC
51 East South Street
Uniontown, PA 15401
Attorney: Ernest P. DeHaas, III

First Publication

CHARLEEN L. DERA, a/k/a CHARLEEN LUCILLE DERA, late of Washington Township, Fayette County, PA (1)

Administrator: Richard C. Mudrick
c/o 300 Fallowfield Avenue
Charleroi, PA 15022
Attorney: Richard C. Mudrick

HAROLD LEHMAN, a/k/a HAROLD R. LEHMAN, A/K/A HAROLD RAY LEHMAN, late of Georges Township, Fayette County, PA (1)

Co-Executrix: Paula Brnich and Lori Smith
c/o Kopas Law Office
556 Morgantown Road
Uniontown, PA 15401
Attorney: John Kopas

**JOSEPH WILLIAM NIEDOJADLO, JR.,
a/k/a JOSEPH W. NIEDOJADLO, JR., a/k/a
JOSEPH W. NIEDOJADLO**, late of Redstone
Township, Fayette County, PA (1)

Administratrix: Diane Lynn Niedojadlo
c/o 9 Court Street
Uniontown, PA 15401
Attorney: Vincent J. Roskovensky, II

**EUGENE RICHTER, a/k/a EUGENE L.
RICHTER**, late of Normalville, Fayette
County, PA (1)

Executrix: Karen E. Richter
614 Clinton Road
Normalville, PA 15469
c/o Snyder and Snyder
17 North Diamond Street
Mount Pleasant, PA 15666
Attorney: Marvin Snyder

**KENNETH TAYLOR, a/k/a KENNETH
HAYES TAYLOR**, late of Redstone Township,
Fayette County, PA (1)

Personal Representative: Patricia Ann
Taylor, a/k/a Patricia A. Nicely
c/o Davis and Davis
107 East Main Street
Uniontown, PA 15401
Attorney: James T. Davis

LEGAL NOTICES

NOTICE

RE: Change of Name of Henry Durinzi,
an adult individual:

To Whom It May Concern:

Be advised that the Court of Common Pleas of Fayette County, Pennsylvania, will hear the Petition for the Change of Name of Henry Durinzi to Harry W. Durinzi, an adult individual, on October 19, 2020, at 11:00 a.m. in Courtroom No. 4. All interested individuals may attend at that date and time.

DAVIS & DAVIS
BY: Jeremy J. Davis, Esquire
107 East Main Street
Uniontown, PA 15401

NOTICE

Notice is hereby given that the Certificate of Organization has been approved and filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on August 20, 2020, for a limited liability company known as O'Brien and Beard LLC.

Said limited liability company has been organized under the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania.

The purpose or purposes of the limited liability company is/are: purchasing and selling of real estate and any other lawful purpose related thereto for which the corporation may be organized under the Business Corporation Law.

DAVIS & DAVIS
BY: Gary J. Frankhouser, Esquire
107 East Main Street
Uniontown, PA 15401

NOTICE

Notice is hereby given that Certificate of Organization has been approved and filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on August 18, 2020, for a limited liability company known as Power Princess Party! LLC. Said limited liability company has been organized under the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania.

The purpose or purposes of the limited liability company is/are: Virtual performing and any other lawful purpose related thereto for which limited liability company may be organized under the Business Corporation Law.

DAVIS & DAVIS
BY: Samuel J. Davis, Esquire
107 East Main Street
Uniontown PA 15401

Fictitious Name Registration

Notice is hereby given that an Application for Registration of Fictitious Name was filed in the Department of State of the Commonwealth of Pennsylvania on July 16, 2020 for Faithful Variety Services at 2028 5th Street #121, Cardale, PA 15420. The name and address of each individual interested in the business is

James Erjavec at 2028 5th Street #121, Cardale, PA 15420. This was filed in accordance with 54 Pa.C.S. 311.

Fictitious Name Registration

Notice is hereby given that an Application for Registration of Fictitious Name was filed in the Department of State of the Commonwealth of Pennsylvania on July 23, 2020 for Worthy Apparel at 39 West Main Street Uniontown, PA 15401. The name and address of each individual interested in the business is Caitlin Livingston at 39 West Main Street Uniontown, PA 15401. This was filed in accordance with 54 Pa.C.S. 311.

FICTITIOUS NAME NOTICE

NOTICE is hereby given pursuant to the provisions of §311 of Act 1982-295 (54 Pa. C.S.A. §311) of December 16, 1982, of the filing and approval of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, on the **30th day of June, 2020**, a Certificate for the conduct of the business in Fayette County, Pennsylvania, under the assume or fictitious name, style, or designation of **Green Hill Mobile Home Park** with its principal place of business at **717 High Street Ext., Dunbar, Fayette** County, Pennsylvania.

The names and addresses of the persons or entities owning any interest in said business are:

Emma Jean Crocetti
717 High Street Ext.
Dunbar, PA 15431

Jon M. Lewis, Esquire
Mears, Smith Houser & Boyle, P.C.
127 North Main Street
Greensburg, PA 15601
724-832-8700

IN THE COURT OF COMMON PLEAS OF
WASHINGTON COUNTY, PENNSYLVANIA
CIVIL ACTION—LAW
No. 2020-2754

Rhonda Lynn Green,
Plaintiff,
v
Jeffrey Mitchel Green,
Defendant.

NOTICE TO DEFEND

TO: **Jeffrey Mitchel Green**

You have been sued in Court with an action in divorce.

If you wish to defend, you must enter a written appearance personally or by attorney and file your objections 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 including custody or visitation of your children.

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.

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.

SW PA LEGAL AID SOCIETY
10 WEST CHERRY AVENUE
WASHINGTON, PA 15301
724-225-6170

LAWYER REFERRAL SERVICE
119 SOUTH COLLEGE STREET
WASHINGTON, PA 15301
724-225-6710

SHERIFF'S SALE

Date of Sale: November 19, 2020

By virtue of the below stated writs out of the Court of Common Pleas of Fayette County, Pennsylvania, the following described properties will be exposed to sale by James Custer, Sheriff of Fayette County, Pennsylvania on Thursday, November 19, 2020, at 2:00 p.m. in Courtroom Number One at the Fayette County Courthouse, Uniontown, Pennsylvania.

The terms of sale are as follows:

Ten percent of the purchase price, or a sufficient amount to pay all costs if the ten percent is not enough for that purpose. Same must be paid to the Sheriff at the time the property is struck off and the balance of the purchase money is due before twelve o'clock noon on the fourth day thereafter. Otherwise, the property may be resold without further notice at the risk and expense of the person to whom it is struck off at this sale who in case of deficiency in the price bid at any resale will be required to make good the same. Should the bidder fail to comply with conditions of sale money deposited by him at the time the property is struck off shall be forfeited and applied to the cost and judgments. All payments must be made in cash or by certified check. The schedule of distribution will be filed the third Tuesday after date of sale. If no petition has been filed to set aside the sale within 10 days, the Sheriff will execute and acknowledge before the Prothonotary a deed to the property sold. (2 of 3)

James Custer
Sheriff Of Fayette County

KML LAW GROUP, P.C.
Suite 5000
701 Market Street
Philadelphia, PA 19106-1532
(215) 627-1322

No. 2386 of 2019 GD
No. 138 of 2020 ED

**WELLS FARGO BANK, N.A., AS
TRUSTEE FOR CARRINGTON
MORTGAGE LOAN TRUST, SERIES 2007-
RFC1, ASSET-BACKED PASS-THROUGH
CERTIFICATES
c/o CARRINGTON MORTGAGE
SERVICES, LLC
1600 S. Douglass Road, Suite 200-A
Anaheim, CA 92806**

Plaintiff

vs.

**MARGARET A. BREAKIRON aka
MARGARET BREAKIRON
KENNETH D. BREAKIRON aka
KENNETH BREAKIRON
Mortgagor(s) and Record Owner(s)
25 Vernon Street
Uniontown, PA 15401**

ALL THAT CERTAIN LOT OF LAND
SITUATE IN SOUTH UNION TOWNSHIP.
COUNTY OF FAYETTE AND
COMMONWEALTH OF PENNSYLVANIA.

BEING KNOWN AS: 25 VERNON
STREET, UNIONTOWN, PA 15401

TAX PARCEL #34-16-0246

IMPROVEMENTS: A RESIDENTIAL
DWELLING

SOLD AS THE PROPERTY OF:
MARGARET A. BREAKIRON aka
MARGARET BREAKIRON AND KENNETH
D. BREAKIRON aka KENNETH
BREAKIRON

Andrew J. Marley, Esquire
 Stern & Eisenberg, PC
 1581 Main Street, Suite 200
 The Shops at Valley Square
 Warrington, PA 18976
 Phone: (215) 572-8111

No. 644 of 2020 GD
 No. 142 of 2020 ED

Deutsche Bank National Trust Company, as Trustee for Equifirst Mortgage Loan Trust 2003-2, Asset- Backed Certificates, Series 2003-2

v.

Emma J. Marucci, 1046 Main Street, Redstone Township, Republic, PA 15475

By virtue of Writ of Execution No. 2020-00644

Deutsche Bank National Trust Company, as Trustee for Equifirst Mortgage Loan Trust 2003-2, Asset- Backed Certificates , Series 2003 -2 v. Emma J. Marucci, 1046 Main Street, Redstone Township, Republic, PA 15475, Tax Parcel No. 30-24-0206. Improvements thereon consisting of a Residential Dwelling, sold to satisfy judgment in the amount of \$51,243.70.

No. 1004 of 2020 GD
 No. 141 of 2020 ED
 No. 1 of 2020 ML

TOWNSHIP OF SPRINGFIELD, Plaintiff,
vs.
GERALD PRINKEY, Defendant.

ALL that certain tract located in Springfield Township, Fayette County, Pennsylvania, described as Tax Parcel No. 35-09 -0087 and more particularly described in a deed recorded in the Office of the Recorder of Deeds for Fayette County in Record Book 2779, page 323.

The street address of the property is 352 Hawkins Hollow Road, Connellsville, Springfield Township, Fayette County, Pennsylvania 15425.

Seized and taken in execution as the property of Gerald Prinkey, defendant, in the action on the municipal claim of the Township of Springfield in the Court of Common Pleas of Fayette County, Pennsylvania at No. 1004 of 2020, G.D.

ANNE N. JOHN
 ATTORNEY AT LAW

No. 612 of 2020 GD
 No. 145 of 2020 ED

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF GREENE COUNTY, a corporation, Plaintiff
vs.
JOSHUA C. SUMEY, Defendant

ALL that certain piece or parcel of property situated in South Union Township, Fayette County, PA.

FOR prior title see Record Book 3241, page 630

Tax Parcel No.: 34-28-0048

UPON which is erected a residential brick dwelling known locally as 715 Morgantown Road, Uniontown, PA 15401.

RAS Citron, LLC
 Robert Flacco, Esquire
 133 Gaither Drive, Suite F
 Mt. Laurel, NJ 08054
 (855)225-6906

No. 2472 of 2018 GD
 No. 139 of 2020 ED

FINANCE OF AMERICA REVERSE LLC Plaintiff
v.
TINA UNDERWOOD, IN HER CAPACITY AS HEIR OF NANCY L. ROBERTS; LINDA MCMAHAN, IN HER CAPACITY AS HEIR OF NANCY L. ROBERTS; UNKNOWN HEIRS, SUCCESSORS, ASSIGNS AND ALL PERSONS, FIRMS OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER NANCY L. ROBERTS Defendant(s)

ALL THOSE CERTAIN LOTS OR PIECES OF GROUND SITUATE IN THE TOWNSHIP OF UPPER TYRONE, FAYETTE COUNTY, PENNSYLVANIA:

BEING KNOWN AS: 801 BROADFORD ROAD CONNELLSVILLE, PA 15425

PARCEL NUMBER: 39-07-0175

IMPROVEMENTS: RESIDENTIAL PROPERTY

Registers' Notice

Notice by JEFFREY L. REDMAN, Register of Wills and Ex-Officio Clerk of the Orphans' Court Division of the Court of Common Pleas

Notice is hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Monday, October 5, 2020, at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2617-0844	KATHLEEN G. SWEITZER	David A. Sweitzer and Amanda L. Stoner, Co-Administrators

Accounts filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas of Fayette County Pennsylvania

2678-0462	EDWARD RAY HILL	PNC BANK NA, Guardian
-----------	-----------------	-----------------------

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on

Monday, October 19, 2020, at 9:30 A.M.

in Courtroom No. 1 of the **Honorable Steve P. Leskinen** or his chambers, 2nd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

Notice is also hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Monday, October 5, 2020, at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2619-0761	PATRICIA A. CHECK	Mary Shubert, Executrix

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on

Monday, October 19, 2020, at 9:30 A.M.

in Courtroom No. 5 of the **Honorable Joseph M. George Jr.** or his chambers, 3rd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

JUDICIAL OPINION

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

ROBERT SEAN GALLAGHER AND	:	
ASHLI THOMAS GALLAGHER,	:	
HUSBAND AND WIFE,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
CORELOGIC FLOOD SERVICES,	:	No. 849 OF 2018, G.D.
Defendant.	:	Honorable Linda R. Cordaro

OPINION

Linda R. Cordaro, J.

April 3, 2020

SUMMARY

Plaintiffs purchased a property in 2012. Prior to closing, Defendant conducted a flood zone determination for the insurance broker involved in Plaintiffs’ purchase. Plaintiffs allege that Defendant incorrectly determined the property’s flood zone, which led Plaintiffs to believe that the property was located in a low-to-moderate-risk flood zone when the property was in fact in a high-risk flood zone.

Following the purchase, Plaintiffs invested in improvements to the property. In 2015, when Plaintiffs attempted to refinance their property, a second flood zone determination was completed. The second determination, also completed by Defendant, correctly determined that the property was in a high-risk flood zone. As a result, Plaintiffs’ flood insurance premiums increased, and the assessed value of the property lowered. The property has also sustained multiple, significant floods since Plaintiffs’ purchase.

The Complaint alleges one count of Negligence and one count of Negligent Misrepresentation {1} against Defendant. Plaintiffs argue that they would not have purchased the property or invested money in it had they known that the property was subject to a substantial risk of flooding.

Currently before the Court is Defendant’s Motion for Summary Judgment.

{1} The Complaint lists Count II as “Negligent Inducement,” although this appears to be a claim for “Negligent Misrepresentation,” of which an intent to induce another to act upon a misrepresentation of a material fact is an element. See, *Bilt-Rite Contractors, Inc. v. The Architectural Studio*, 866 A.2d 270, 277 (Pa. 2005).

THE NATIONAL FLOOD INSURANCE PROGRAM

As a background to the Action before the Court, in 1968 the United States Congress enacted the National Flood Insurance Act, which was amended in 1973 as the Flood Disaster Protection Act. 42 U.S.C.A. §§ 4001-4129. Pursuant to the Act, the Federal Emergency Management Agency (FEMA) administers the National Flood Insurance Program.

The National Flood Insurance Program helps “provide flood insurance with reasonable terms and conditions for property located in flood-prone areas.” *Williams v. Standard Fire Ins. Co.*, 892 F. Supp. 2d 615, 619 (M.D.Pa. 2012) (internal citation omitted). The Program was created “to, among other things, limit the damage caused by flood disasters through prevention and protective measures, spread the risk of flood damage among many private insurers and the federal government, and make flood insurance available on reasonable terms and conditions to those in need of it.” *Id.* (citing *Van Holt v. Liberty Mut. Fire Ins. Co.*, 163 F.3d 161, 165 (3d Cir. 1998)).

Part of the National Flood Insurance Act establishes a procedure for FEMA to determine flood zones. 42 U.S.C.A. § 4101b. The flood zones range from high-risk to low-risk areas. Areas at high risk for flooding are called Special Flood Hazard Areas. <https://www.fema.gov/flood-zones>.

One component of the National Flood Insurance Program requires that houses and personal property located in Special Flood Hazard Areas be covered by a certain amount of flood insurance. 42 U.S.C.A. § 4012a(a). If those high-risk properties are not covered by the appropriate amount of insurance, regulated lending institutions cannot provide financial assistance for the acquisition or construction of such structures. 42 U.S.C.A. § 4012a(a) and (b). Flood insurance is available but is not required for moderate-to-low-risk flood zones.

Finally, third-party flood determination companies work on behalf of the federally-regulated lending institutions to whom the Act applies in order to determine the appropriate flood zone for properties. <https://www.fema.gov/flood-zone-determination-companies>. The Act permits lenders to use third-parties to make the flood zone determinations “only to the extent such [third-parties guarantee] the accuracy of the information.” 42 U.S.C.A. § 41046 (d).

COMPLAINT

Plaintiffs, Robert and Ashli Gallagher, filed a Complaint against Defendant, CoreLogic Flood Services, on April 25, 2018. According to the Complaint, the Gallaghers purchased a Property in Uniontown, Pennsylvania. The closing for the Property was on July 11, 2012 for a price of \$112,000.

Sprowl’s Agency served as the insurance broker for the transfer of the Property. Prior to the closing, Sprowl’s Agency engaged the services of Defendant, CoreLogic Flood Services, to evaluate the flood zone determination of the Property. On June 12, 2012, Sprowl’s Agency issued a Standard Flood Hazard Determination describing the Property as in “Flood Zone X,” which denotes that the Property is not in a Special Flood

Hazard Area. {2} Complaint at Exhibit A. The Standard Flood Hazard Determination was prepared by Defendant, CoreLogic.

Also prior to the closing, certified real estate appraiser Larry Franks appraised the value of the Property as \$114,000 “as of May 24, 2012.” Complaint at Exhibit B. {3}

The Gallaghers also allege in their Complaint that after purchasing the Property, they invested an additional \$30,000 towards improvements. Complaint at ¶17. Further, the Gallaghers allege that their flood insurance premium was initially \$400 per year. Complaint at ¶27.

In 2015, the Gallaghers attempted to refinance their Property. On January 26, 2016, CoreLogic issued a second Standard Flood Hazard Determination. The 2016 Determination describes the property as in “Flood Zone AE,” which denotes that the Property is in a Special Flood Hazard Area. Complaint at Exhibit C.

Based on the 2016 Flood Hazard Determination issued by CoreLogic, Allstate Insurance issued a Letter dated February 13, 2017 to the Gallaghers informing them that their flood insurance premium was being raised to \$2,415 per year. Complaint at Exhibit D. The Letter also informs the Gallaghers that they “will see rate increases of at least 5 percent, and up to 18 percent each year.” Id.

Additionally, a Second Appraisal of the Property was prepared by Certified Real Estate Broker Appraiser Gary Reagan on October 28, 2016. As of that date, the Fair Market Value of the Property if not in a flood zone was \$135,000. Complaint at Exhibit E. The Fair Market Value of the Property if in a flood zone was \$105,000. {4}

The Gallaghers have experienced flooding on the Property, which has caused “significant water damage and the accumulation of mold within the residence.” Complaint ¶¶ 34-35.

{2} According to FEMA’s website, Flood Zone X denotes either a moderate flood hazard area or a minimal flood hazard area. <https://www.fcma.gov/flood-zones>.

{3} The Complaint incorrectly states at ¶15 that the Appraisal was “[b]ased in part on the classification of the Property within flood zone ‘X’...” However, the Appraisal is dated May 24, 2012 and the Standard Flood Hazard Determination issued by CoreLogic is dated June 12, 2012, so clearly the Appraisal did not rely on the Flood Hazard Determination by CoreLogic. Additionally, the Uniform Residential Appraisal Report prepared by Larry Franks explicitly lists the property as being in “FEMA Flood Zone AE.”

Further, ¶¶ 16-17 of the Complaint allege that the Gallaghers relied on the 2012 Appraisal when deciding to purchase the Property. However, as stated above, the 2012 Appraisal correctly identifies the property as being in Flood Zone AE.

{4} The Complaint incorrectly states at ¶¶ 28-29 that the Second Appraisal, performed by Mr. Reagan, differentiates between the value of the Property if it were located in Flood Zone AE vs. Flood Zone X. However, the Second Appraisal, attached to the Complaint as Exhibit E, merely differentiates the value of the Property if it were in a flood zone vs. not in a flood zone. There does not appear to be any dispute that the Property is located in a flood zone.

The Gallaghers allege in their Complaint that CoreLogic was negligent in its initial determination of their Property as being in Flood Zone X, rather than Flood Zone AE. Flood Zone AE represents a higher flood risk than Flood Zone X. The Gallaghers argue that if they had known that the Property was in Flood Zone AE, they would not have purchased the Property, they would not have spent \$30,000 in improvements to the Property, and they would not have incurred additional flood insurance premiums in excess of \$2,000 per year.

The Gallaghers also argue in Count II that CoreLogic's misclassification of the Property negligently induced them into buying the Property and negligently induced them into spending \$30,000 in improvements to the property. {5} {6}

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

On August 23, 2019, CoreLogic filed a Motion for Summary Judgment. In its Motion, CoreLogic argues that it is not liable for Plaintiffs' claims for the following reasons:

- 1) Plaintiffs' claims are preempted by federal law, which provides no private cause of action;
- 2) CoreLogic owed no duty to Plaintiffs in connection with the flood determination at issue;
- 3) Plaintiffs cannot establish that they relied on the flood determination;
- 4) Alternatively, Plaintiffs cannot establish that their alleged reliance on the flood determination was justifiable; and
- 5) CoreLogic did not cause Plaintiffs' purported damages.

Oral Argument was held on the Motion on December 16, 2019.

DISCUSSION

After the relevant pleadings are closed, any party may move for summary judgment when: 1) there is no genuine issue of any material fact as to a necessary element of the cause of action or defense, or 2) an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense that in a jury trial. Pa.R.C.P. 1035.2.

{5} As noted, *supra*, Count II should be for Negligent Misrepresentation rather than Negligent Inducement. CoreLogic has not challenged the nomenclature of Count II, and no Preliminary Objections were filed in this case.

{6} This Action was removed to federal court by the Defendant, citing diversity jurisdiction. However, the Honorable Peter J. Phipps of the Western District of Pennsylvania issued a Memorandum Opinion and Order dated March 18, 2019 remanding the case to state court, reasoning that the amount in controversy could not plausibly exceed \$75,000.

When determining whether to grant a motion for summary judgment in Pennsylvania, the following standards apply:

[S]ummary judgment may be granted only in those cases in which the record clearly shows that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law. The moving party has the burden of proving that no genuine issues of material fact exist. In determining whether to grant summary judgment, the trial court must view the record in the light most favorable to the non-moving party and must resolve all doubts as to the existence of a genuine issue of material fact against the moving party. Thus, summary judgment is proper only when the uncontroversial allegations in the pleadings, depositions, answers to interrogatories, admissions of record[,] and submitted affidavits demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law. In sum, only when the facts are so clear that reasonable minds cannot differ, may a trial court properly enter summary judgment.

Barnish v. KWI Building Co., 916 A.2d 642, 645 (Pa. Super. Ct. 2007) (internal citation omitted).

CoreLogic's arguments will be addressed individually.

1. Federal Law Preemption

CoreLogic's first argument is that the Gallaghers' claims are preempted by federal law. In support of its argument, CoreLogic cites to a number of federal cases, but acknowledges that "Pennsylvania state courts have not squarely addressed the particular facts at hand..." Defendant's Motion for Summary Judgment at ¶52. {7} Federal circuit court cases to which CoreLogic cites include: *Till v. Unifirst Federal Sav. and Loan Ass'n*, 653 F.2d 152 (5th Cir. 1981), *Audler v. CBC Innovis Inc.*, 519 F.3d 239 (5th Cir. 2008), *Gunter v. Farmers Ins. Co., Inc.*, 736 F.3d 768 (8th Cir. 2013). However, the legal analyses and holdings in those cases do not support CoreLogic's argument.

As CoreLogic points out, the 5th Circuit in *Till* held that the federal flood laws do not create a private cause of action. *Till* at 158-161. As CoreLogic does not point out, however, the holding in *Till* specifically relates to a federal cause of action. The court in *Till* separately examines whether a state-law cause of action based on the federal flood laws could proceed and concludes that "[w]hether this is true is a matter of state law." *Id.* at 161.

{7} CoreLogic cites one Pennsylvania State case in support of its argument: *Scondras v. LSI Flood Servs.*, No. 131 MDA 2013, 2014 WL 10980076 (Pa. Super. Ct. Feb. n, 2014). However, both the procedural and the underlying facts in *Sco11dras* are different from the case at hand in important aspects, and *Scondras* is also a Non-Precedential Decision.

That conclusion is reiterated in *Paul v. Landsafe Flood Determination, Inc.*, 550 F.3d 511 (5th Cir. 2008). In *Paul*, the 5th Circuit again distinguishes between federal and state-law causes of action arising from the National Flood Insurance Act. The Paul Court acknowledges that no federal cause of action exists, but also acknowledges that whether a state-law cause of action exists is determined by individual state law: "[t]his court previously recognized that the lack of a private cause of action under the [National Flood Insurance] Act would not foreclose relief under state tort law..." *Id.* at 514 (citing *Till* at 154). This is the complete opposite of what *CoreLogic* argues.

CoreLogic also cites to *Audler*, *supra*, in support of its argument that no state-law cause of action exists under the federal flood laws. However, the court in *Audler* was specifically applying Louisiana state law in reaching that conclusion—in other words, under Louisiana state law, no private cause of action exists. *Id.* at 254. The Paul Court, on the other hand, applied Mississippi state law to an issue similar to that in *Audler* and reached a separate conclusion.

It is enough to hold that the erroneous flood-zone determination was the kind of professional opinion, developed in the course of a party's business and supplied for the guidance of others in a transaction, on which justifiable and detrimental reliance by a reasonably foreseeable person might be shown to have occurred.

Id. at 518. In contradiction to *CoreLogic's* main argument, the *Audler* Court never holds that all state-law causes of action are preempted by federal law.

Finally, *CoreLogic* cites to *Gunter*, *supra*, in support of its argument that state law claims are preempted by federal law. However, the holding in *Gunter* is in reference to state law claims regarding the handling of flood insurance claims. *Gunter* at 772.

The distinction between state law claims related to the handling of flood insurance claims versus the procurement of a flood insurance policy is made clear by *Williams v. Standard Fire Ins. Co.*, 892 F. Supp. 2d 615, 619 (M.D.Pa. 2012). The Court in *Williams* acknowledges that state law claims related to the handling of claims under a flood insurance policy are preempted by federal law. *Id.* at 620. However, the *Williams* Court also holds that state law claims related to the procurement of a flood insurance policy are not preempted by federal law. *Id.*

In *Williams*, the court addressed a situation similar to the one currently before this Court where home purchasers brought an action against a flood determination company because the company incorrectly determined that a property was not in a flood zone prior to the buyers purchasing it. After the purchasers bought the property, a second flood determination was made, which determined that the property was not located in an insurable flood zone at all. The insurance company subsequently revoked the home purchaser's flood insurance policy. The *Williams* Court found that the action related to the procurement of a flood insurance policy—rather than the handing of a flood insurance claim—and as such was not preempted by federal law. *Id.* at 619-23.

CoreLogic acknowledges the *Williams* decision, but first describes it as an "outlier." Defendant's Motion for Summary Judgment at 54, n. 8. *CoreLogic* then goes on to mischaracterize the *Williams* holding in its Reply in Support of its Motion for

Summary Judgment: “[s]ignificantly, however, the Williams [C]ourt permitted plaintiffs’ state law claims because plaintiffs did not have an insurance policy and, therefore, the National Flood Insurance Act (“NFIA”) was not implicated.” This is misleading. What the Williams Court held was that the plaintiffs’ state law claims were not preempted by federal law. The Williams Court then alternatively states that, even if preemption did apply, the state law claims could still proceed because the plaintiffs did not have an insurance policy. *Id.* at 622.

The holding in Williams does not appear to conflict with the federal circuit court cases cited by CoreLogic. {8} To reiterate, while the federal flood insurance laws do not provide for a federal private cause of action against a flood determination company, individual state laws determine whether a state cause of action exists. State causes of action related to the handling of flood insurance claims are preempted by the federal flood insurance laws. However, state causes of action related to the procurement of a flood insurance policy are not preempted by federal law. This Court finds the Middle District of Pennsylvania’s holding in Williams to be both highly persuasive-as a federal court sitting in Pennsylvania-and applicable to the facts in the Action currently before this Court. As a result, the Gallaghers’ Negligence and Negligent Misrepresentation claims are not preempted by federal law.

2. Duty Arising from Flood Zone Determination

CoreLogic’s second argument is that CoreLogic owed no duty to the Gallaghers in connection with the flood determination at issue. To recover on the basis of negligence, plaintiffs must establish the following four elements:

1. A duty or obligation recognized by law;
2. A breach of that duty;
3. A causal connection between the actor’s breach of the duty and the resulting injury; and
4. Actual loss or damage suffered by complainant.

Williams, *supra*, at 623-24 (citing *Lux v. Gerald E. Ort Trucking, Inc.*, 887 A.2d 1281, 1286 (Pa.Super.Ct.2005)).

CoreLogic’s assertion that it owed the Gallaghers no duty in connection with its flood zone determination is in direct conflict with the holding in Williams. Once it determined that the state law claims were not preempted by federal law, the Williams Court applied Pennsylvania law to determine whether the defendant in that case owed the plaintiffs a duty to properly determine the flood zone. *Id.* at 624. The Williams Court declined to agree with defendant’s argument that no duty existed, and concluded instead that whether defendant failed to properly determine the flood zone was a genuine issue of material fact precluding summary judgment. *Id.*

{8} Even if the holding in Williams did conflict with federal court decisions in other circuits or district courts, CoreLogic does not cite any cases from the Third Circuit or the United States Supreme Court that would overturn the holding in Williams.

Likewise, whether CoreLogic failed to properly determine the flood zone in 2012 is a genuine issue of material fact, which precludes summary judgment on the matter.

3. Reliance on Flood Zone Determination

CoreLogic's third and fourth arguments will be addressed together. CoreLogic's third argument is that the Gallaghers cannot establish that they relied on the flood zone determination. CoreLogic's fourth argument is that, alternatively, even if the Gallaghers relied on the flood zone determination, that reliance was unjustifiable. Negligent misrepresentation requires proof of:

1. A misrepresentation of a material fact;
2. Made under circumstances in which the misrepresenter ought to have known its falsity;
3. With an intent to induce another to act on it; and
4. Which results in injury to a party acting in justifiable reliance on the misrepresentation.

Bilt-Rite Contractors, Inc. v. The Architectural Studio, 866 A.2d 270, 277 (Pa. 2005) (internal citation omitted).

Whether the Gallaghers relied on the 2012 Flood Zone Determination is a question of fact, which precludes summary judgment on the matter. As noted above, the Gallaghers misstate in their Complaint that the 2012 Appraisal was based on the 2012 Flood Zone Determination, and that they relied on the 2012 Appraisal in determining whether to purchase the Property. However, even if the Gallaghers did not know about the 2012 Flood Zone Determination when they purchased the Property, the Determination still had far-reaching effects. For example, if the 2012 Determination had shown that the Property was in a high-risk flood zone, the Gallaghers might have known that their flood insurance premiums would have been \$2,400 per year instead of \$400 per year, which may have impacted their decision to purchase the home. They also might have known that flood insurance was mandatory because the Property is located in a Special Flood Hazard Area. These are questions of fact that preclude summary judgment.

The question regarding reliance here is not so much whether the Gallaghers relied directly on the 2012 Flood Zone Determination, but whether they relied on the effects of such Determination. This includes the allegation that the 2012 Determination provided information to the insurance broker, who in turn based its insurance policy for the Gallaghers on that false information. It is justifiable that the Gallaghers would have relied on that information when purchasing the Property.

Finally, CoreLogic maintains that the Gallaghers cannot show that CoreLogic made the 2012 Determination "with the intent to induce" the Gallaghers into purchasing the Property, which is an element of Negligent Misrepresentation. It appears unlikely that a flood zone determination company would make a false representation with the intent to

induce a home purchaser into purchasing a property. However, this is a question of fact and summary judgment is not appropriate on this issue.

4. Causation of Damages

CoreLogic's final argument is that it did not cause the Gallaghers' purported damages.

To prove causation, the breach of a duty must be both the proximate cause and the actual cause of an injury. *Eckroth v. Pennsylvania Electric Inc.*, 12 A.3d 422, 427 (Pa. Super. Ct. 2010) (internal citation omitted). Actual cause, also known as "but-for cause," is "[t]he cause without which the event could not have occurred." Black's Law Dictionary 265 (10th ed. 2014). Proximate cause is "a wrongful act [that] was a substantial factor in bringing about [a] plaintiffs harm." *Eckroth* at 428 (citing *Lux v. Gerald E. Ort Trucking, Inc.*, 887 A.2d 1281, 1286 (Pa. Super. Ct. 2005)). In Pennsylvania, "[t]he determination of proximate cause is 'primarily a problem of law' and must, as a threshold matter, be 'determined by the judge and it must be established before the question of actual cause is put to the jury.'" *Eckroth* at 427-28 (citing *Brown v. Philadelphia College of Osteopathic Medicine*, 760 A.2d 863, 868 (Pa. Super. Ct. 2000)).

The Superior Court in *Eckroth* used Section 433 of the Restatement of Torts, Second in making a determination as to whether negligent conduct is a substantial factor in producing an injury. *Eckroth* at 428. That Section states:

§ 433. Considerations Important in Determining Whether Negligent Conduct is Substantial Factor in Producing Harm.

The following considerations are in themselves or in combination with one another important in determining whether the actor's conduct is a substantial factor in bringing about harm to another:

- (a) the number of other factors which contribute in producing the harm and the extent of the effect [that] they have in producing it;
- (b) whether the actor's conduct has created a force or series of forces [that] are in continuous and active operation up to the time of the harm, or has created a situation harmless unless acted upon by other forces for which the actor is not responsible; [and]
- (c) lapse of time.

Section 433 of the Restatement of Torts, Second.

Applying Section 433 to the facts in the Action currently before the Court, this Court finds that CoreLogic's 2012 Determination was a substantial factor in bringing about the Gallaghers' harm. First, CoreLogic's conduct of incorrectly identifying the Flood Zone Determination in 2012 caused the insurance broker to relay to the Gallaghers that 1) their Property was not in a high-risk flood zone, and 2) that flood insurance was optional and the premiums would cost \$400 per year. This is not a harmless

situation. Because of the 2012 Determination, the Gallaghers did not have accurate information when they made the decision to purchase their Property. They also did not have accurate information when they put money into improvements for their Property.

Second, CoreLogic's 2012 Determination actually changed correct information to incorrect information. The 2012 Appraisal, which occurred before the 2012 Determination, listed the Property as being in Flood Zone AE-a high-risk flood zone. The subsequent 2012 Determination then stated that the Property was in Flood Zone X-a low-to-moderate-risk flood zone. Without CoreLogic's Determination, the information available to the Gallaghers would have been that their Property was in a high-risk flood zone area. This may have affected not only the decision of whether to buy the Property, but also the purchase price for the Property and whether to invest money into the Property after purchase.

CoreLogic's actions also indirectly led the Gallaghers to believe that flood insurance for the Property was optional and that the premiums were \$400 per year. Had CoreLogic made the correct Determination in 2012, the Gallaghers would have known that flood insurance was mandatory, as their Property was in a high-risk flood zone, and that the premiums were \$2,400 per year-which does not even include the yearly rate increases that the Gallaghers faced. This information, if correctly provided to the Gallaghers prior to purchase, may also have affected their decisions on whether to purchase the Property at all, what price to pay for it, and whether to invest money in it.

CoreLogic, by its own admission, is a company that "exist[s] for the primary purpose of performing flood zone determinations..." Defendant's Motion for Summary Judgment at ¶ 46. It is not unreasonable to expect that these companies make the correct flood zone determinations when that is their primary purpose for existence. It is also not unreasonable to expect that when they do not, they are held accountable for the foreseeable damages that incorrect determinations can cause.

CONCLUSION

For the foregoing reasons, this Court finds that Plaintiffs' claims are not preempted by federal law and that Plaintiffs have raised issues of material fact such that summary judgment is not appropriate. As a result, Defendant's Motion for Summary Judgment is denied.

ORDER

AND NOW, this 3rd day of April, 2020, for the reasons outlined in this Court's accompanying Opinion, it is hereby ORDERED and DIRECTED that Defendant's Motion for Summary Judgment is DENIED.

BY THE COURT:
Linda R. Cordaro, Judge

ATTEST:
Prothonotary

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