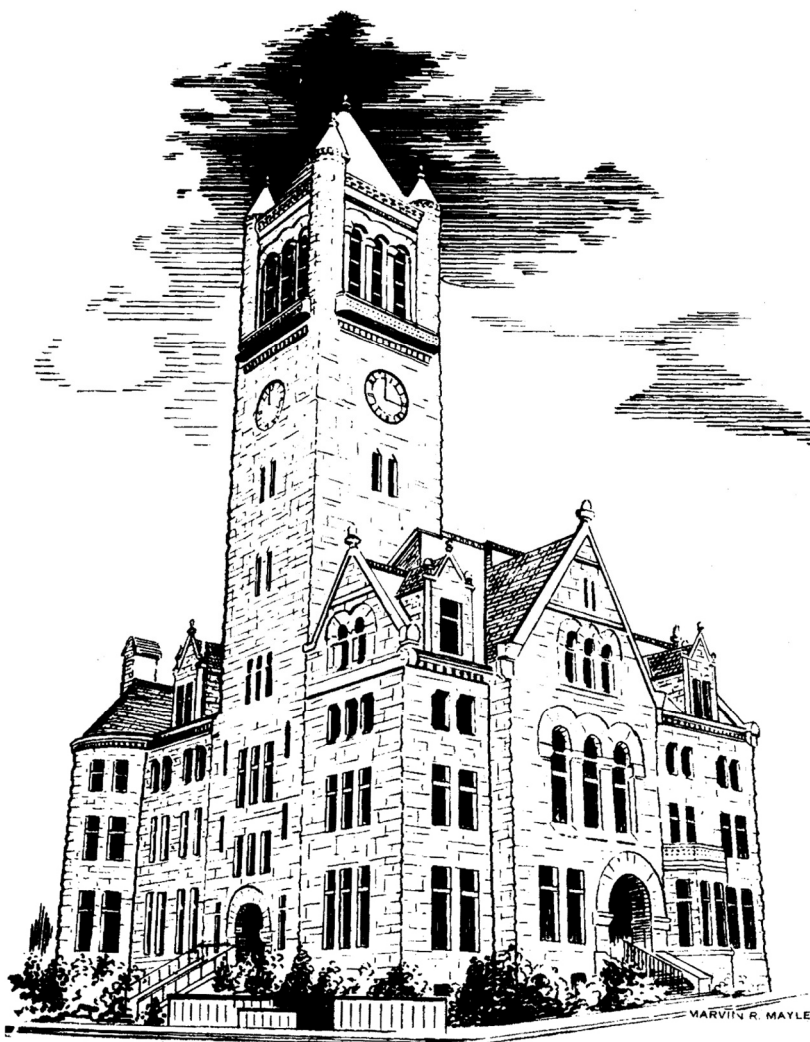


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ESTATE NOTICES

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

ROSE M. KOCHIS, late of South Union Township, Fayette County, PA (3)

Executrix: Janelle Kochis
c/o Higinbotham Law Offices
68 South Beeson Boulevard
Uniontown, PA 15401
Attorney: James E. Higinbotham

RAYMOND K. RAMAGE, a/k/a RAYMOND RAMAGE, late of Connellsville, Fayette County, PA (3)

Administrator: Michael L. Mays
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Michael L. Mays

RICHARD SACKETT, late of Uniontown, Fayette County, PA (3)

Administrator: Alberta M. Sackett
208 Hopwood Fairchance Road
Uniontown, PA 15401
c/o Seamon Law Offices
2101 About Town Place
Morgantown, WV 26508
Attorney: Christopher Deegan

CAROLYN A. SIKORA, late of South Union Township, Fayette County, PA (3)

Executrix: Jacqueline M. Verney
110 Independence Way
Mechanicsburg, PA 17050

Second Publication

PATRICIA ANN BROWN, late of Dunbar Borough, Fayette County, PA (2)

Administrator: Amy Lynn Gallagher
c/o 815A Memorial Boulevard
Connellsville, PA 15425
Attorney: Margaret Zylka House

JAMES DONALD BUNGARD, late of Wharton Township, Fayette County, PA (2)

Executor: Troy Allen Bungard
c/o 815A Memorial Boulevard
Connellsville, PA 15425
Attorney: Margaret Zylka House

LOUIS DALESSIO, late of Connellsville, Fayette County, PA (2)

Administrator: Roseanna Knisley
1955 South Creek Front Lane
P.O. Box 359
Hatch, Utah 87435
c/o Sepic Law
892 Vanderbilt Road
Connellsville, PA 15425
Attorney: Douglas Sepic

DOROTHY L. DUNLAP, late of Dunbar Township, Fayette County, PA (2)

Executor: Daniel Mark Dunlap and
George Thomas Dunlap
519 Donatello Drive
Irwin, PA 15642
c/o Bononi & Company
20 North Pennsylvania Avenue, Suite 201
Greensburg, PA 15601
Attorney: Keegan E. Miller

WILBUR E. FELTON, late of Connellsville, Fayette County, PA (2)

Executrix: Mary Catherine Piper
c/o Casini & Geibig, LLC
815B Memorial Boulevard
Connellsville, PA 15425
Attorney: Jennifer M. Casini

ROBERT FESTOG, late of Uniontown, Fayette County, PA (2)

Executrix: Cathryn Giffin
997 Treasure Lake
DuBois, PA 15801

EMIL GEORGE HAMBURG, late of Saltlick Township, Fayette County, PA ⁽²⁾

Administrator: Mary Lou Kuhns
c/o 815A Memorial Boulevard
Connellsville, PA 15425
Attorney: Margaret Zylka House

IVAN HAYDEN, late of Farmington, Fayette County, PA ⁽²⁾

Administrator: Richard Hayden
2187 Dinnerbell
Five Forks Road
Farmington, PA 15437
c/o Tremba Kinney, LLC
1310 Morrell Avenue, Suite C
Connellsville, PA 15425
Attorney: John Greiner

JOHN HUDOCK, a/k/a JOHN M. HUDOCK, a/k/a JOHN MICHAEL HUDOCK, late of Uniontown, Fayette County, PA ⁽²⁾

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

OPAL JORDAN, a/k/a OPAL K. JORDAN, late of Masontown Borough, Fayette County, PA ⁽²⁾

Executrix: Robin S. Jordan
c/o 9 Court Street
Uniontown, PA 15401
Attorney: Vincent J. Roskovensky, II

CYNTHIA MIHALKO, late of Uniontown, Fayette County, PA ⁽²⁾

Administratrix: Katherine A. Lacek
506 Stonebridge Court
Uniontown, PA 15401
c/o Tremba, Kinney, Greiner & Kerr
1310 Morrell Avenue, Suite C
Connellsville, PA 15425
Attorney: John Greiner

BEATRICE WAITE, a/k/a BEATRICE C. WAITE, late of Acme, Fayette County, PA ⁽²⁾

Executor: John R. Waite
80 Ballard Road
Bervard, North Carolina 28712
c/o Sebring & Associates
339 Old Haymaker Road, Suite 1101
Monroeville, PA 15146
Attorney: Brenda Sebring

First Publication

MARION BASINGER, late of 1250 Anderson Highway, Cumberland, Virginia 23040 ⁽¹⁾

Co-Executors: James Basinger and John Basinger
122 Sweitzer Road
Acme, PA 15610
c/o 17 North Diamond Street
Mount Pleasant, PA 15666
Attorney: Marvin Snyder

CHARLES JEFFREY BAXTER, late of South Union Township, Fayette County, PA ⁽¹⁾

Executor: Jeffrey Joshua Baxter
c/o DeHaas Law, LLC
51 East South Street
Uniontown, PA 15401
Attorney: Ernest P. DeHaas, III

WILLIAM FRANCIS BILLER, III, late of South Connellsville, Fayette County, PA ⁽¹⁾

Administrator: Babbette Miele
140 Lower Oliver 3
Uniontown, PA 15401
c/o Tremba, Kinney, Greiner & Kerr, LLC
302 West Otterman Street
Greensburg, PA 15601
Attorney: Timothy B. Kinney

JESSIE J. HUSAK, late of Bullskin Township, Fayette County, PA ⁽¹⁾

Executor: Richard S. Husak
243 Sweitzer Road
Mount Pleasant, PA 15666
c/o 17 North Diamond Street
Mount Pleasant, PA 15666
Attorney: Marvin D. Snyder

CONNIE A. MYERS, late of German Township, Fayette County, PA ⁽¹⁾

Executrix: Shauna R. Smith

c/o 52 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

PAUL ALLEN SANDUSKY, late of
Connellsville, Fayette County, PA (1)
Personal Representative:
Susan Jane Sandusky
c/o 208 South Arch Street, Suite 2
Connellsville, PA 15425
Attorney: Richard A. Husband

RALPH SUTTON, a/k/a RALPH EVERETT SUTTON, a/k/a RALPH E. SUTTON, late of
Georges Township, Fayette County, PA (1)
Executrix: Jacqueline J. Sutton
c/o Kopas Law Offices
556 Morgantown Road
Uniontown, PA 15401
Attorney: John Kopas

SUSAN M. WAITE, late of Bullskin Township,
Fayette County, PA (1)
Co-Executors: Lydia A. Snyder and
Courtney A. Snyder
730 Maxwell Avenue
Boulder, Colorado 80304
c/o 231 South Main Street, Suite 402
Greensburg, PA 15601
Attorney: Marilyn M. Gaut

LEGAL NOTICES

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA CIVIL ACTION – LAW

No. 949 of 2024 G.D.

JUDGE: LINDA R. CORDARO

KELLI E. BROOKS,
Plaintiff,
vs.

ROBERT L. DANIELS, LINDA LEE,
DANIELS and their successors and/or
assigns generally,
Defendants.

NOTICE TO DEFENDANTS, ROBERT L. DANIELS, LINDA LEE DANIELS, AND THEIR HEIRS, SUCCESSORS, AND/OR, ASSIGNS GENERALLY

You, your heirs, successors, and assigns have been named as Defendants in an action instituted by Plaintiff, Kelli E. Brooks, against you in this Court. Plaintiff alleges in the Complaint in Action to Quiet Title, that they should be named as the rightful owner to the title of said property and that the Defendants, Robert L. Daniels, Linda Lee Daniels, their heirs, successors, and assigns should be forever barred from asserting any right, title, interest, or claim in said property located at 173 Van Drive, Connellsville, Fayette County, Pennsylvania, 15425, Tax Parcel ID 04-35-0042.

The service of this Complaint by publication is made pursuant to an Order of Court dated May 21, 2024, and filed at the above term and number.

You are hereby notified to plead to the Complaint in this action of which the above is a brief summary within twenty (20) days from today.

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 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.

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.

**PENNSYLVANIA LAWYER
REFERRAL SERVICE
PENNSYLVANIA BAR ASSOCIATION
100 SOUTH STREET
P. O. BOX 186
HARRISBURG, PA 17108
PHONE: 1-800-692-7375**

By: David D. Tamasy, Esquire
Watson Mundorff, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Phone: 724-626-8882

**NOTICE OF ACTION IN MORTGAGE
FORECLOSURE
IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW NO. 2023-01125**

**PennyMac Loan Services, LLC
vs.
ERICA T. MICKENS;**

NOTICE

**TO: ALL OTHER HEIRS OF , KNOWN OR
UNKNOWN**

**NOTICE OF SHERIFF'S SALE
OF REAL PROPERTY**

TAKE NOTICE that the real estate located at 59 Madison Avenue, Uniontown, Pennsylvania 15401, is scheduled to be sold at Sheriff's Sale on September 19, 2024 at 2.00 PM at <https://fayette.pa.realforeclose.com>, to enforce the Court Judgment of \$71,103.07 obtained by PennyMac Loan Services, LLC against you.

Property situated in Fayette County

BEING premises: 59 Madison Avenue,
Uniontown, Pennsylvania 15401

Tax Parcel: 38040655

Improvements consist of residential
property.

Sold as the property of Robert L. Mickens
and Erica T. Mickens

TERMS OF SALE: The purchaser at sale must pay the full amount of his/her bid by two o'clock P.M. on the day of the sale, and if complied with, a deed will be tendered by the Sheriff at the next Court of Common Pleas for Fayette County conveying to the purchaser all the right, title and claim which the said defendant has in and to the said property at the time of levying the same. If the above conditions are not complied with on the part of the purchaser, the property will again be offered for sale by the Sheriff at three o'clock P.M., on the same day. The said purchaser will be held liable for the deficiencies and additional costs of said sale.

TAKE NOTICE that a Schedule of Distribution will be filed by the Sheriff on a date specified by the Sheriff not later than thirty (30) days after sale. Distribution will be made in accordance with the schedule unless exceptions are filed thereto within 10 days after the filing of the schedule.

Powers Kirn, LLC
Attorneys for Plaintiff
8 Neshaminy Interplex, Suite 215
Trevose, PA 19053
215.942.2090
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION
NO.22 ADOPT 2024

IN RE: ADOPTION OF
HARVI MOON

TO: Gideon Wilson

NOTICE

A petition has been filed asking the Court to put an end to all rights you have to your child, Harvi Moon. The court has set a hearing to consider ending your rights to your child. That hearing will be held in Courtroom No. 4 of the Fayette County Courthouse, Uniontown, Fayette County, Pennsylvania, on **Friday, June 14, 2024 at 9:30 a.m.** Your presence is required at the hearing. You should contact Fayette County Children and Youth Services or their counsel Ewing Newcomer Esq., to obtain a copy of the petition prior to the hearing. You are warned that even if you fail to appear at the scheduled hearing the hearing will go on without you and your rights to your child may be ended by the court without your being there.

Your rights may also be subject to termination pursuant to subsection (d) if you fail to file wither an acknowledgement of paternity or claim of paternity pursuant to Section 5103 (relating to acknowledgment and claim of paternity), and fail to either appear at the hearing for the purpose of objecting to the termination of your rights or file a written objection to such termination with the court prior to the hearing.

YOU HAVE A RIGHT TO BE REPRESENTED AT THE HEARING BY A LAWYER. 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. 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.

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IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION
NO. 2 ADOPT 2024

IN RE: ADOPTION OF
JOSIE JOHNSTON

NOTICE

TO: Robert Johnston

A petition has been filed asking the Court to put an end to all rights you have to your child, Josie Johnston. The court has set a hearing to consider ending your rights to your child. That hearing will be held in Courtroom No. 4 of the Fayette County Courthouse, Uniontown, Fayette County, Pennsylvania, on Thursday, **June 20, 2024 at 1:30 p.m.** Your presence is required at the hearing. You should contact Fayette County Children and Youth Services or their counsel Ewing Newcomer Esq., to obtain a copy of the petition prior to the hearing. You are warned that even if you fail to appear at the scheduled hearing the hearing will go on without you and your rights to your child may be ended by the court without your being there.

Your rights may also be subject to termination pursuant to subsection (d) if you fail to file wither an acknowledgement of paternity or claim of paternity pursuant to Section 5103 (relating to acknowledgment and claim of paternity), and fail to either appear at the hearing for the purpose of objecting to the termination of your rights or file a written objection to such termination with the court prior to the hearing.

YOU HAVE A RIGHT TO BE REPRESENTED AT THE HEARING BY A LAWYER. 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. 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
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JOHN F. WARMAN

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JUDICIAL OPINION

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

McKENZIE M. GOFORTH, :
Plaintiff, :
vs. :
JASON E. GOFORTH, : No. 188 of 2016, G.D.
Defendant. : Honorable Nancy D. Vernon

OPINION AND ORDER

VERNON, J. May 20, 2024

Before the Court is the remand from the Memorandum Opinion of the Superior Court of Pennsylvania, vacating this Court’s Order dated July 19, 2022, and directing an evidentiary hearing on Attorney Kevin Henderson’s potential conflict of interest.

Prior to the schedule hearing, an “Affidavit” was filed by Jason Goforth, dated October 23, 2023, detailing the history of his fee agreement and professional relationship with Attorney Henderson, acknowledging the potential conflict of interest as identified by the Superior Court, and expressly waiving any such conflict. At the time set for hearing, Attorney Henderson entered into evidence a fee agreement, dated July 26, 2018, signed by Defendant Jason E. Goforth for representation in a divorce action initiated by Plaintiff McKenzie M. Goforth. N.T., 10/31/2023, at 15-16; Exhibit 1.

Pertinent to the potential conflict of interest, Confessions of Judgment were filed in the Court of Common Pleas of Fayette County by Paul Mongell on April 18, 2019, at Docket No. 1933 of 2019 G.D., and by The Huntington National Bank on September 6, 2019, at Docket No. 827 of 2019. Id. at 18, 25; Exhibits 2 and 3. McKenzie Goforth and Jason Goforth were preparing to sell the marital residence in November 2020 when the title company revealed the liens against Jason Goforth. McKenzie Goforth’s counsel filed a Petition for Special Relief on November 24, 2020, requesting this Court to permit the sale of the marital residence and to hold Jason Goforth’s portion of the sale proceeds in escrow. Jason Goforth testified that he did not learn of these liens until a Petition for Special Relief was filed. Id. at 25. Contradictorily, he also testified that he “probably got served at some point right on that date, September 6th” and that “[a] lot of documents come in the mail.” Id. at 25, 45.

Jason Goforth further testified that it was his idea to ask Attorney Henderson to be paid out of the proceeds of the sale of the house. Id. at 25-26. Under questioning by Attorney Henderson, Jason Goforth testified that the two discussed a potential conflict regarding the payment of attorney’s fees instead of paying the creditors, that Attorney Henderson explained he may be paid while Jason Goforth may not receive any proceeds from the sale of the marital residence, and that Jason Goforth “expressly” consented to Attorney Henderson’s filing of a Petition for Counsel Fees evidenced by his verification to the petition. Id. at 26.

Attorney Henderson asked Jason Goforth, “Did we also discuss as the [a]ppeal went forward, a potential conflict between the two of us regarding your legal issues under that Order and my legal issues under that Order regarding my petition for counsel fees?” Id. at 28. To which Jason Goforth responded, “Yes.” Id. Goforth also answered affirmatively to the question, “After our discussion, did you expressly consent to waiving any conflict that we might have had regarding those issues?” Id. Goforth confirmed that he was satisfied with Attorney Henderson’s representation, that he did not feel Attorney Henderson breached any fiduciary duty or confidential duty, that his representation was zealous, and that he did not want to retain another attorney. Id. at 30. Attorney Henderson’s final question, “And even though there is a conflict, or potential conflict between the two of us over the sale proceeds of your marital home, you have given your express consent for me to proceed in this matter. Is that correct?” Id. at 31. Jason Goforth answered, “That’s correct.” Id.

Plaintiff McKenzie M. Goforth did not participate in the evidentiary hearing. Counsel for the third-party lienholders were present for the hearing and participated but Jason Goforth’s testimony and affidavit regarding the potential conflict of interest would be unable to be contradicted. As such, the Court finds that Jason Goforth has waived any conflict of interest in Attorney Kevin Henderson’s representation to include the conflict in Attorney Henderson pursuing payment of his attorney’s fees instead of distributing any proceeds from the sale of the marital residence to the third-party creditor lienholders.

Turning now to the directive of the Superior Court, this Court incorporates its prior decision by Order dated July 19, 2022, and will issue further discussion in support.

As noted supra a Complaint in Confession of Judgment was filed by Paul Mongell on April 18, 2019, in the amount of \$521,652.47, and by The Huntington National Bank on September 6, 2019, for \$150,368.07.

While married, McKenzie M. Goforth and Jason E. Goforth were the owners of a residence located at 115 Frisbee Avenue, Connellsville, Pennsylvania and held the property as tenants by the entireties during the marriage. McKenzie Goforth initiated a divorce action in July 2018. A Marital Settlement Agreement was reached, dated July 2, 2020, and at Section 4.1 directs the parties to list the marital residence for sale reciting, “The parties acknowledge that Wife has paid the mortgage since August, 2019. The net proceeds of sale, less the mortgage payoff, transfer taxes and other costs of sale, shall be divided by allocating forty percent (40%) to Husband and sixty percent (60%) to Wife.” Under Section 8, Legal Advice and Fees, the Marital Settlement Agreement provides that each party shall pay their own respective attorney fees and all legal services rendered. A divorce decree was entered on August 19, 2020, which by operation of law converted their ownership of the marital residence to tenants in common. 23 Pa.C.S.A. §3507.

This is where the controversy arises. Attorney Henderson alleges that he is entitled to payment of his attorney’s fees for representation of Jason Goforth in the divorce action from the proceeds of the sale of the marital residence prior to the payment of the third-party lienholders.

At the time set for closing on the sale of the marital residence, McKenzie Goforth's attorney identified the liens against Jason Goforth as a cloud on the title and filed a Petition for Special Relief with this Court requesting this Court to permit the sale of the marital residence and directing that Jason Goforth's "share of the real estate proceeds can be held in escrow for further resolution between the two creditors: Paul Mongell and Huntington Bank." See, Petition for Special Relief at ¶12, emphasis added. The Petition further recites that the relief requested "benefits both parties and Husband's creditors to have this sale proceed." Id. at 6. During the presentation of the Petition for Special Relief, counsel for McKenzie Goforth averred to this Court, "Through extensive negotiation with all counsel involved over the past week since the filing of the Motion, they have all consented to the new form of the Order." Motion's Court N.T., 12/7/2020, at 2. Service of the Petition for Special Relief was made on all parties including Attorney Henderson and counsel for the lienholders. The docket supports that Attorney Henderson, on behalf of Jason Goforth, did not contest the Petition for Special Relief of record nor did he appear to object in Motion's Court.

The Court then entered the consented Order, dated December 7, 2020, directing the sale of the property, and releasing the judgment in favor of The Huntington National Bank and Paul Mongell as to this asset. The Order further directed that, "The net real estate proceeds after costs of sale, satisfaction of the PNC mortgage, and disbursements to Wife under the Marital Settlement Agreement dated July 2, 2020, shall be paid into the escrow account of Kevin Henderson Esquire, to be held without release until further order of court setting forth the applicability and priority of liens and ordering distribution of proceeds."

On December 30, 2020, The Huntington National Bank filed a Petition for Rule to Show Cause against Jason Goforth why the proceeds of the sale of the residence at 115 Frisbee Avenue, Connellsville should not be distributed to The Huntington National Bank and Paul Mongell in partial payment of the liens.

On January 29, 2021, Attorney Henderson on behalf of Jason Goforth filed a Response to Petition for Rule to Show Cause. Therein, Attorney Henderson claimed the sale of the marital residence "was performed without [his] knowledge or consent [...]." See, Response to Petition for Rule to Show Cause at Footnote 1 and ¶54. In his response, Attorney Henderson argued on behalf of Jason Goforth that the property in question was subject to a divorce proceeding, remained in custodia legis of the Court, and was not subject to attachment by third-party creditors. He also argued that married parties are free to enter into a settlement agreement while still married without the worry of third-party creditor attachment. Attorney Henderson further argued that economic injustice would result to Jason Goforth if the Court did not permit him to recover his net sale proceeds. Specifically, he alleges that Goforth would not have signed the Marital Settlement Agreement if he knew that he was not going to receive the proceeds from the sale of the marital residence.

Attorney Henderson on behalf of Jason Goforth then responded to the "Priority of Liens" arguing that the third-party creditors' liens should not take priority over his attorney's fees. In support of this argument, Attorney Henderson cited his fee agreement with Defendant, purportedly executed on July 26, 2018, which provided for Attorney Henderson's fees to be paid from the "gross costs of your sale so that before any net

proceeds are received by you, the Firm's unpaid balance shall be paid first." See, Response at ¶46. Attorney Henderson tenuously argues that his Fee Agreement was incorporated in the Marital Settlement Agreement, which was then incorporated into the Divorce Decree, which would permit this Court to award his legal fees to be paid from the "gross" proceeds.

Four days later, Attorney Henderson filed a "Petition for Special Relief: Counsel Fees," similarly arguing that the distribution requires the payment of his attorney's fees from the gross proceeds as he "did not review or approve the closing document for the marital home" and that the "contractual obligation requires [Attorney Henderson] to be paid first [...]." See, Petition for Special Relief at ¶15.

The Court held a hearing on the lienholders' Petition for Rule to Show Cause and on Attorney Henderson's Petition for Special Relief: Counsel Fees on February 8, 2021. At this hearing, Attorney Henderson blamed the title company at the closing for not including his fees as gross costs in the settlement of the sale. See, Argument on Order in Lieu of Rule and Counsel Fee Proceedings N.T., 2/8/2021, at 14-15. Attorney Henderson stated, "I did not get any documents to even know that it closed until weeks and weeks later." Id. at 16. Attorney Henderson argued to invoke the Court's "equity power" that "Mr. Goforth bargained for his 40 percent of the sale of his house" and that "a very inequitable result here because Mr. Goforth bargained for this consideration in his marital settlement agreement." Id. at 17 and 18.

Turning to the request for attorney's fees, the following exchange occurred:

THE COURT: Okay, so if your attorney's fees have not been reduced to judgment, how do you supersede that of a judgment creditor?

MR. HENDERSON: By the agreement I had with Mr. Goforth because my attorney fees were supposed to come off of the closing statement.

THE COURT: But that wouldn't be enforceable unless you have a judgment for attorney's fees.

MR. HENDERSON: Your Honor, I understand that. The issue is my fees are gross out of the sale. Theirs are net because they've only touched with Mr. Goforth (inaudible). They're only going to grab onto whatever he has. My fees are taken before he has anything. They were supposed to be part of the gross proceeds of the cost of the sale pursuant to our agreement and that was our understanding when we entered into the settlement agreement.

THE COURT: Is that part of the settlement agreement when the property was sold that your attorney fees were coming out of there?

MR. HENDERSON: Yes, and Mr. Goforth is here to –

THE COURT: Is it on the Settlement Sheet?

MR. HENDERSON: No. And that’s the issue because the closing occurred without my knowledge or consent. And I did not see anything. I did not approve anything because I was going to hand them an invoice and say put this on pursuant to our contract, and that’s what it was. Mr. Goforth is here –

THE COURT: If you represent one of the parties to the marital property and there was a sale, how is it that you knew nothing about it?

MR. HENDERSON: I don’t know -- I don’t know. That’s what I’m trying to find out myself because I did get in contact -- they had contacted me in November and told me there was an issue of some sort regarding one confession of judgment that they discovered.

N.T., 2/8/2021, at 37-38.

The theory by which Attorney Henderson is making his claim to attorney’s fees has evolved throughout the proceedings. Originally, Attorney Henderson claimed his right to the attorney’s fees derived from the “gross” proceeds of the sale, relying on the Court’s Order providing the lienholders with only the “net” proceeds. Attorney Henderson then sought to invoke this Court’s equitable powers through its jurisdiction in the divorce proceedings arguing that Jason Goforth was entitled to the proceeds through incorporation of the Marital Settlement Agreement into the Divorce Decree. Now, only after remand from the Superior Court, Attorney Henderson alleges his right to payment is an “equitable lien” that would take priority over the recorded liens of Paul Mongell and The Huntington National Bank. The Court will address each theory seriatim.

First, Attorney Henderson claims that his fees should have been included in the gross proceeds and were not because he did not have knowledge or consent of the sale of the marital residence. The Court finds this incredulous claim is belied by the record. Attorney Hendreson’s “Invoice” was submitted as an exhibit at both the hearing in February 2021 and again in October 2023. A review establishes the following line items:

DATE	DESCRIPTION
10/19/2020	Client Meeting re sale of property and finalizing case
11/17/2020	Email Derek Ferace (title issue) w/attachment
11/20/2020	Research into propity (sic) of liens and attachment
11/23/2020	Client Strategy Meeting (re lien)
12/2/2020	Review email and proposed order
12/2/2020	reviews email from Wade Doerr response
12/3/2020	reviews emails from Wade Doerr and James Conte (7 emails)
12/3/2020	T/B Wade Doerr
12/4/2020	Review emails and attachments from Conte, Doerr response (6 emails,
1 response)	
12/5/2020	Emails from Conte and Doerr (5 total w/attachments)
12/6/2020	T/C Jim Conte
12/6/2020	Email from Jim Conte
12/7/2020	Email from Jim Conte
12/9/2020	Review Order

12/9/2020

Email from Wade Doerr

See, N.T., 10/31/2023, Exhibit B and N.T., 2/8/2021, Exhibit 2. Wade Doerr and James Conte are the attorneys for the third-party lienholders.

Attorney Henderson's billing directly contradicts that he did not know about the sale of the marital residence. The statements by Attorney Heid in Motion's Court on December 7, 2020, prior to the sale of the marital residence, that negotiations took place over the first week of December 2020 among all the parties and that everyone consented to the Order establish that Attorney Henderson knew a sale of the marital residence was occurring. The billing invoice also establishes that Attorney Henderson discussed the sale of the property with Jason Goforth on October 19, 2020, that he was aware of a title issue as early as November 17, 2020, that he began researching priority of liens on November 20, 2020, and that he received notice of this Court's Order directing the sale of the marital property on December 9, 2020. The Court also highlights the averment in the Petition for Special Relief, agreed to by Attorney Henderson, that "the share of the real estate proceeds can be held in escrow for further resolution between the two creditors: Paul Mongell and Huntington Bank." See, Petition for Special Relief at ¶12, emphasis added. Attorney Henderson made no claim to attorney's fees at that stage. He did not object to the Court distributing the Jason Goforth's proceeds to "the two creditors: Paul Mongell and Huntington Bank." He did not allege that his attorney's fees should have been included as costs. As such, Attorney Henderson's fees were properly excluded in the gross proceeds as it was not a cost of the sale, and he is not entitled to relief on this theory.

Attorney Henderson's second theory that his legal fees attached through his Fee Agreement which he alleges was incorporated into the Marital Settlement Agreement which was then also incorporated into the Divorce Decree. The documents disprove this theory. The attorney's fees provision of the Marital Settlement Agreement is standard language that each party shall pay their own attorney's fees and does not address paying attorney's fees from the proceeds of the sale of the residence. The Court finds that the Fee Agreement was not incorporated into the Marital Settlement Agreement. The Court thereby declines to hold the proceeds of the sale of the marital residence in custodia legis. The Court directed the sale of the marital property and does not continue to hold title to the property in the divorce proceedings. At issue now are the proceeds of the sale, not the title. The Court finds dispositive that during the divorce proceedings Jason Goforth did not disclose the Confessions of Judgment, which were filed of record and served upon him, particularly when he executed the Marital Settlement Agreement. Any allegation that he did not know of the judgments is dubious as service was properly made, by mail in The Huntington National Bank action and in person by the Sheriff with Paul Mongell. In further support of his knowledge of the judgments, Jason Goforth's account at PNC Bank was subject to garnishment in October 2019 when the Marital Settlement Agreement was not entered until July 2020. Attorney Henderson argued throughout that Jason Goforth is getting no benefit from his Marital Settlement Agreement bargain. Contrary, Goforth is receiving the benefit of money that he owes being paid to his creditors of record on valid liens. As such, this cause of action fails as we decline to assert custodia legis of the marital property.

Only following remand from the Superior Court did Attorney Henderson add the third theory to allege his attorney's fees were an "equitable lien." Attorney Henderson argued, "I have a lien as well, an equitable lien because [Jason Goforth] gave it to me. [...] I get the gross proceeds, they get the net proceeds. So if I get it first, they get what's ever left. Ah, and that's what they agreed to in the Court Order in December of 2020." N.T., 10/31/2023, at 80.

"An equitable lien arises from an obligation, usually monetary in nature, owing by one person to another, a res to which that obligation attaches, and an intent by all parties that the property serve as security for the payment of the obligation." *Kern v. Kern*, 892 A.2d 1, 8 (Pa.Super. 2005). A right to an equitable lien requires evidence that is "clear, precise and indubitable as to the intention of the parties." Before the lien can be imposed upon a particular parcel of property to secure a debt, "there must be an agreement sufficiently clear and unambiguous evidencing such intent." *Mermon v. Mermon*, 390 A.2d 796, 799 (Pa.Super. 1978).

Attorney Henderson alleges that his Fee Agreement is where the equitable lien arises. This payment arrangement was never disclosed in the Marital Settlement Agreement or during the negotiation of the sale of the marital residence. Attorney Henderson presents no authority that an attorney's equitable lien created by virtue of a fee agreement could be considered as effective or attached to property by law to supersede the priority of recorded liens. The recorded liens automatically attached upon the entry of a divorce decree when the property became held as tenants in common by operation of law. An attorney's fee created by virtue of a fee agreement does not have priority over these recorded, valid judgments.

Contrary to Attorney Henderson's assertion, the lienholders did not agree to this priority in the Court Order. The Order of December is clear as to what is to be deducted from the gross proceeds and enumerates deductions only for the "costs of sale, satisfaction of the PNC mortgage, and disbursement to Wife under the Marital Settlement Agreement dated July 2, 2020."

This Court refuses to allow a secret agreement between attorney and client to subvert recorded liens and defeat creditors. "[U]pon divorce, entireties property is converted automatically to a tenancy in common. See 23 Pa.C.S.A. § 3507(a). Contrary to the protections granted to property owned by the entireties, property owned in common is not immune from creditors of only one of the owners." *Silverblatt v. Brown*, 241 A.3d 469 (Pa.Super. 2020). Here, a decree in divorce was entered on August 19, 2020, terminating the divorce proceedings. The ownership of McKenzie Goforth and Jason Goforth automatically converted to tenants in common upon the divorce and the lien of the judgment creditors against Jason Goforth attached on that date. 42 Pa. C.S.A. § 4303(a). In rendering our decision, we find persuasive the non-precedential decision of the Superior Court of Pennsylvania in *Silverblatt v. Brown*, 243 A.3d 469 (Pa.Super. 2020). In *Silverblatt*, the Superior Court affirmed the lower court's decision declining to extend custodia legis over the proceeds of the sale of the marital residence finding that custodia legis ended once the divorce decree was entered and the court directed that the proceeds of the sale of the marital residence be disbursed.

Accordingly, by prior Order and upon consent of the parties, because no litigation remained pending as the divorce was finalized, this Court permitted the sale of the marital residence and directed that Jason Goforth's 40% interest in the real estate proceeds be held in escrow for further resolution between the creditors. The lienholders of record then agreed to a division of the proceeds with 75% distributed to Paul Mongell and 25% to the Huntington National Bank.

WHEREFORE, we will enter the following ORDER denying Attorney Henderson's Petition for Special Relief: Counsel Fees and directing distribution of the proceeds to Paul Mongell and The Huntington National Bank.

ORDER

AND NOW, this 20th day of May, 2024, following remand from the Superior Court of Pennsylvania, after an evidentiary hearing, and upon the Record, it is hereby ORDERED and DECREED that the Petition for Special Relief: Counsel Fees is DENIED. It is further ORDERED and DECREED that Attorney Henderson is directed to release the proceeds for the sale of the marital residence at 115 Frisbee Avenue, Connellsville as held in his escrow to Paul Mongell (75%) and The Huntington National Bank (25%) as partial payment of the judgment liens at Docket Nos. 1933 of 2019, G.D. and 827 of 2019, G.D.

BY THE COURT:
NANCY D. VERNON, JUDGE

ATTEST:
Prothonotary

LUNCH & LEARN SERIES

The Fayette County Bar Association's next presentation in its Lunch & Learn Series will be:

- Date: **Wednesday, June 26th from 12:00 p.m. to 1:30 p.m.**
- Location: **Courtroom No. 4 of the Fayette County Courthouse**
- Discussion topics: **Avoiding Problems in the Preparation of Prenuptial Agreements and Marital Settlement Agreements**
- Presenters: **Samuel J. Davis, Esquire**

CLE Credit

1.5 hours of Substantive CLE credit for the program. The fees are as follows:

Members of the FCBA

- \$5 fee for attendance without CLE Credit
- \$15 fee for attendance with CLE Credit

Attorneys admitted to practice in Pennsylvania after January 1, 2019

- \$5 fee for attendance with CLE Credit

Non-members of the FCBA

- \$15 fee for attendance without CLE Credit
- \$40 fee for attendance with CLE Credit

**** All fees to be paid at the door ****
A light lunch will be provided.

RSVP

If interested in attending, please call Cindy at the Bar office at 724-437-7994 or email to cindy@fcbar.org on or before Monday, June 24th.

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