

# FAYETTE LEGAL JOURNAL

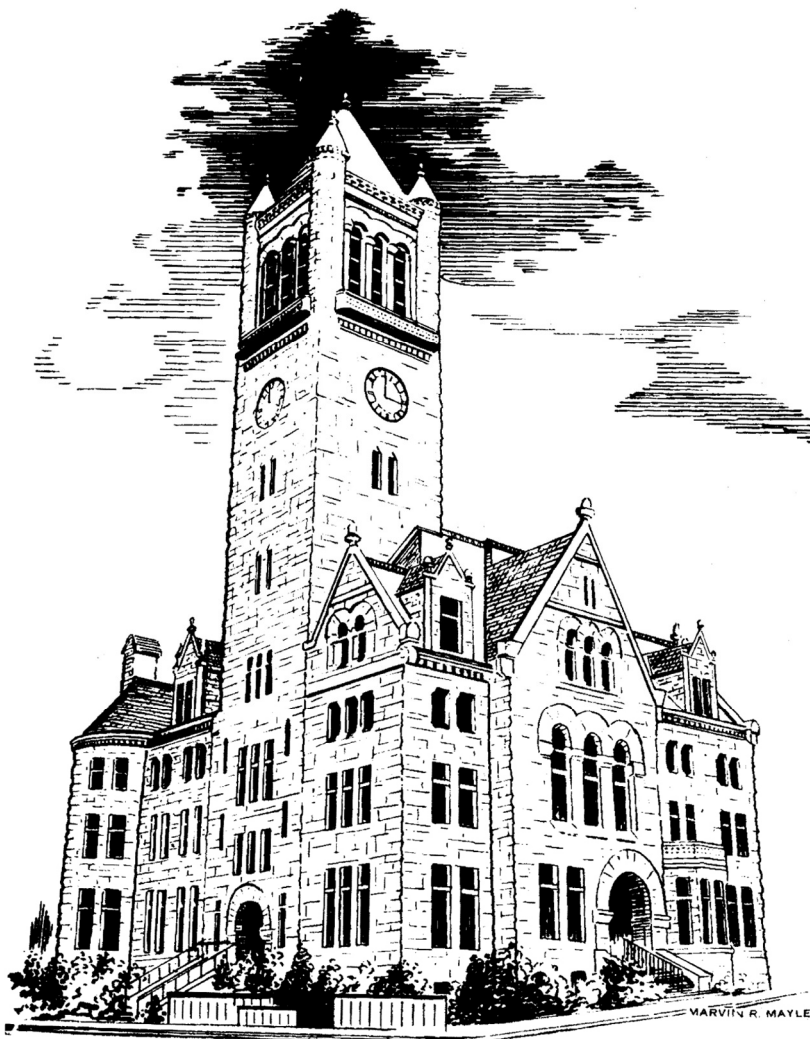
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## FAYETTE LEGAL JOURNAL

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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

**ANNA LOUISE FRANKS**, late of Springhill Township, Fayette County, PA <sup>(3)</sup>

*Administrator:* Howard Franks  
c/o P.O. Box 622  
Smithfield, PA 15478  
*Attorney:* Charity Grimm Krupa

**JAMES GLISAN, a/k/a JAMES E. GLISAN**, late of Henry Clay Township, Fayette County, PA <sup>(3)</sup>

*Executor:* Leroy E. Glisan  
c/o Higinbotham Law Offices  
45 East Main Street, Suite 500  
Uniontown, PA 15401  
*Attorney:* James Higinbotham

**CAROL HANKINS**, late of North Union Township, Fayette County, PA <sup>(3)</sup>

*Personal Representative:*  
John L. Hankins, III  
340 Osona Lane  
Mars, PA 16046  
c/o Gould Cooksey Fennell  
979 Beachland Boulevard  
Vero Beach, FL 32963  
*Attorney:* Dillon Roberts

**MARY KATHERINE LANGOR**, late of Dunbar Township, Fayette County, PA <sup>(3)</sup>

*Personal Representative:* Mary M. Maddas  
c/o Watson Mundorff, LLP  
720 Vanderbilt Road  
Connellsville, PA 15425  
*Attorney:* Robert A. Gordon

**JANET E. STRONCHECK**, late of Dunbar Township, Fayette County, PA <sup>(3)</sup>

*Executor:* John J. Stroncheck  
c/o Quatrini Rafferty, P.C.  
550 E. Pittsburgh Street  
Greensburg, PA 15601  
*Attorney:* David S. DeRose

**ROBERT LYNN WADE**, late of Smithfield, Fayette County, PA <sup>(3)</sup>

*Personal Representatives:* Lora D. Koontz and William L. Wade  
c/o P.O. Box 622  
Smithfield, PA 15478  
*Attorney:* Charity Grimm Krupa

**CAROLINE A. ZIVNOSKA, a/k/a CAROLINE ANNE ZIVNOSKA**, late of South Connellsville Borough, Fayette County, PA <sup>(3)</sup>

*Personal Representatives:*  
Lou Ann Mellinger and Kathleen Shearer  
c/o Watson Mundorff, LLP  
720 Vanderbilt Road  
Connellsville, PA 15425  
*Attorney:* Robert A. Gordon

### Second Publication

**EVELYN M. CANISTRA**, late of Bradenton, Manatee County, Florida <sup>(2)</sup>

*Personal Representative:* Toni Cicchetti  
c/o Davis and Davis  
107 East Main Street  
Uniontown, PA 15401  
*Attorney:* Gary J. Frankhouser

**RUTH ROSLYN DUNHAM**, late of Springhill, Fayette County, PA <sup>(2)</sup>

*Personal Representative:* Debra Dunham  
c/o P.O. Box 622  
Smithfield, PA 15478  
*Attorney:* Charity Grimm Krupa

**MARGARET KURCINA HYNEK, a/k/a MARGARET HYNEK, a/k/a MARGARET KURCINA**, late of South Union Township, Fayette County, PA <sup>(2)</sup>

*Administrator:* Brett M. Gibson  
c/o Zebley Mehalov & White, P.C.  
18 Mill Street Square  
P.O. Box 2123

Uniontown, PA 15401  
*Attorney:* Mark M. Mehalov

457 Haddonfield Road, Ste.700  
 Cherry Hill, NJ 08002  
*Attorney:* Kristen L. Behrens

**AMERIGO G. SABATINI**, late of Redstone Township, Fayette County, PA (2)  
*Administrator:* Joyce Epley  
 c/o P.O. Box 622  
 Smithfield, PA 15478  
*Attorney:* Charity Grimm Krupa

**JOHN W. STROHM a/k/a John WILLIAM STROHM**, late of Wharton Township, Fayette County, PA (2)  
*Personal Representative:* James R. Strohm  
 c/o Watson Mundorff, LLP  
 720 Vanderbilt Road  
 Connellsville, PA 15425  
*Attorney:* Timothy J. Witt

### First Publication

**BERTHA DANKO**, late of Washington Township, Fayette County, PA (1)  
*Administratrix:* Tanya R. Danko  
 415 Victoria Street  
 Belle Vernon, PA 15012  
 c/o 300 Fallowfield Avenue  
 Charleroi, PA 15022  
*Attorney:* Richard C. Mudrick

**DOROTHY L. GESSO**, late of North Union Township, Fayette County, PA (1)  
*Executor:* Darryl J. Gesso  
 c/o Zebley Mehalov & White, P.C.  
 18 Mill Street Square  
 P.O. Box 2123  
 Uniontown, PA 15401  
*Attorney:* Mark M. Mehalov

**DOROTHY J. MCFARLAND**, late of Uniontown, Fayette County, PA (1)  
*Administratrix:* Shannon Shaffer  
 c/o Fitzsimmons and Barclay  
 55 East Church Street, Suite 102  
 Uniontown, PA 15401  
*Attorney:* Ralph K. Barclay, Jr.

**RAUL BERNAL MORALES**, late of Uniontown, Fayette County, PA (1)  
*Administratrix:* Kristen L. Behrens  
 c/o Kristen L. Behrens, Dilworth Paxson, LLP

## LEGAL NOTICES

### 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 14, 2020, for a limited liability company known as Johnson Family Restaurant, 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: restaurant/bar 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

Pursuant to Purdon's PA Statutes, Title 53, Chapter 88, Section 8841(d) of the Consolidated County Assessment Law, notice is hereby given that the assessment roll from which real estate taxes will be levied for the 2022 tax year is open for inspection in the Fayette County Department of Assessment. Any person(s) who may be aggrieved by said valuation(s) may file a formal statement of appeal in writing on or before August 1, 2021 with the Department for consideration to have effect for the 2022 calendar year. No appeal can be considered if not properly filed by this legal deadline. Forms for such appeal can be obtained from the Department of Assessment or found on line at <http://property.co.fayette.pa.us/appeals.aspx> .

Harry J. Brownfield, Esq., CPE  
 Director of Assessment

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**NOTICE**

Notice is hereby given that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania for a business corporation which has been incorporated under the Provisions of the Business Corporation Law of 1988. The name of the Corporation is Whitetail Excavating, Inc.

Daniel M. Flynn, Esq.  
Michael D. Flynn & Assoc. P.C.  
2770 South Park Rd.  
Bethel Park, PA 15102.

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**NOTICE**

NOTICE is hereby given of the administration of The Paul Anthony Mongell Irrevocable Trust u/a/d February 26, 2004. Paul Anthony Mongell, of Fayette County, Pennsylvania died April 8, 2020.

All persons having claims against The Paul Anthony Mongell Irrevocable Trust u/a/d February 26, 2004 are requested to make known the same to the Trustee or attorney named below. All persons indebted to The Paul Anthony Mongell Irrevocable Trust u/a/d February 26, 2004 are requested to make payment without delay to the Trustee or attorney named - PNC Bank, National Association.

Weston P. Pesillo, c/o Tucker Arensberg, P.C.  
1500 One PPG Place  
Pittsburgh, PA 15222

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**SHERIFF'S SALE**

Date of Sale: September 23, 2021

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, September 23, 2021, 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. (1 of 3)

James Custer  
Sheriff Of Fayette County

STERN AND EISENBERG, PC  
ANDREW J. MARLEY, ESQ.

No. 2307 of 2018 GD  
No. 93 of 2021 ED

**HSBC Bank USA, N.A., as Trustee for the registered holders of First NLC Trust 2007-1 Mortgage-Backed Certificates, Series 2007-1 Plaintiff**

v.

**Any and All Known and Unknown Heirs, Executors, Administrators and Devises of the Estate of Patricia A. Triplett a/k/a Patricia Ann Triplett a/k/a Patricia Triplett, deceased and Kenneth E. Triplett, solely in his capacity as heir to the Estate of Patricia A. Triplett a/k/a Patricia Ann Triplett a/k/a Patricia Triplett, deceased**

**Defendant(s)**

SITUATE IN THE THIRD WARD OF THE BOROUGH OF MASONTOWN, FAYETTE COUNTY, PENNSYLVANIA, BEING KNOWN AS 3 Virginia Avenue, Masontown, PA 15461

PARCEL NO. 21020078  
IMPROVEMENTS - RESIDENTIAL  
REAL ESTATE

SOLD AS THE PROPERTY OF - Any and All Known and Unknown Heirs, Executors, Administrators and Devises of the Estate of Patricia A. Triplett a/k/a Patricia Ann Triplett a/k/a Patricia Triplett, deceased and Kenneth E. Triplett, solely in his capacity as heir to the Estate of Patricia A. Triplett a/k/a Patricia Ann Triplett a/k/a Patricia Triplett, deceased

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

No. 2073 of 2019 GD  
 No. 91 of 2021 ED

**WINTRUST MORTGAGE, A DIVISION OF  
 BARRINGTON BANK & TRUST CO., N.A.  
 9700 W. Higgins Road., Suite 300  
 Rosemont, IL 60018**

**Plaintiff  
 vs.**

**NANCY ENGLE Solely in Her Capacity as  
 Heir of Woodrow Allen Shaffer Deceased  
 J.D. GRUBB Solely in His Capacity as Heir of  
 Woodrow Allen Shaffer Deceased  
 SHIRLEY MILLER Solely in Her Capacity  
 as Heir of Woodrow Allen Shaffer Deceased  
 DAVID SHAFFER Solely in His Capacity as  
 Heir of Woodrow Allen Shaffer Deceased  
 HARRY SHAFFER Solely in His Capacity as  
 Heir of Woodrow Allen Shaffer Deceased  
 ROBERT SHAFFER Solely in His Capacity  
 as Heir of Woodrow Allen Shaffer Deceased  
 RUSSELL SHAFFER Solely in His Capacity  
 as Heir of Woodrow Allen Shaffer Deceased  
 18 Cramer Avenue  
 Uniontown, PA 15401**

**Defendant(s)**

ALL THAT CERTAIN LOT OF LAND  
 SITUATE IN CITY OF UNIONTOWN,  
 COUNTY OF FAYETTE AND  
 COMMONWEALTH OF PENNSYLVANIA.

BEING KNOWN AS: 18 CRAMER  
 AVENUE, UNIONTOWN, PA 15401

TAX PARCEL #38-15-0221

IMPROVEMENTS: A RESIDENTIAL  
 DWELLING

SOLD AS THE PROPERTY OF: NANCY  
 ENGLE Solely in Her Capacity as Heir of  
 Woodrow Allen Shaffer Deceased, J.D. GRUBB  
 Solely in His Capacity as Heir of Woodrow  
 Allen Shaffer Deceased, SHIRLEY MILLER  
 Solely in Her Capacity as Heir of Woodrow  
 Allen Shaffer Deceased, DAVID SHAFFER  
 Solely in His Capacity as Heir of Woodrow  
 Allen Shaffer Deceased, HARRY SHAFFER  
 Solely in His Capacity as Heir of Woodrow  
 Allen Shaffer Deceased, ROBERT SHAFFER  
 Solely in His Capacity as Heir of Woodrow  
 Allen Shaffer Deceased AND RUSSELL  
 SHAFFER Solely in His Capacity as Heir of  
 Woodrow Allen Shaffer Deceased

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

No. 1037 of 2020 GD  
 No. 97 of 2021 ED

**U.S. BANK NATIONAL ASSOCIATION, AS  
 INDENTURE TRUSTEE, FOR THE CIM  
 TRUST 2016-3, MORTGAGE- BACKED  
 NOTES, SERIES 2016-3**

**3217 S. Decker Lake Drive  
 Salt Lake City, UT 84119  
 Plaintiff**

**vs.**

**SCOTT NEWELL Solely in His Capacity as  
 Heir of Connie E. Newell Deceased  
 VALERIE NEWELL AKA VALERIE  
 GUALAZZI Solely in Her Capacity as Heir of  
 Connie E. Newell Deceased  
 ROBIN NICKLOW Solely in Her Capacity as  
 Heir of Connie E. Newell Deceased  
 1147 South Pittsburgh Street  
 Connellsville, PA 15425  
 Defendant(s)**

ALL THAT CERTAIN LOT OF LAND  
 SITUATE IN CITY OF CONNELLSVILLE,  
 COUNTY OF FAYETTE AND  
 COMMONWEALTH OF PENNSYLVANIA.

BEING KNOWN AS: 1147 SOUTH  
 PITTSBURGH STREET, CONNELLSVILLE,  
 PA 15425

TAX PARCEL #05-15-0259

IMPROVEMENTS: A RESIDENTIAL  
 DWELLING

SOLD AS THE PROPERTY OF: SCOTT  
 NEWELL Solely in His Capacity as Heir of  
 Connie E. Newell Deceased, VALERIE  
 NEWELL AKA VALERIE GUALAZZI Solely  
 in Her Capacity as Heir of Connie E. Newell  
 Deceased AND ROBIN NICKLOW Solely in  
 Her Capacity as Heir of Connie E. Newell  
 Deceased

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

No. 2186 of 2019 GD  
No. 104 of 2021 ED

**PNC BANK, NATIONAL ASSOCIATION**  
**3232 Newmark Drive**  
**Miamisburg, OH 45342**

**Plaintiff**

vs.

**JOSEPH A. SHAY**  
**Mortgagor(s) and Record Owner(s)**  
**170 Easy Street#**  
**Uniontown, PA 15401**

**Defendant(s)**

ALL THAT CERTAIN LOT OF LAND  
SITUATE IN CITY OF UNIONTOWN,  
COUNTY OF FAYETTE AND  
COMMONWEALTH OF PENNSYLVANIA.

BEING KNOWN AS: 170 EASY  
STREET, UNIONTOWN, PA 15401

TAX PARCEL #38-10-0066

IMPROVEMENTS: A RESIDENTIAL  
DWELLING

SOLD AS THE PROPERTY OF: JOSEPH  
A. SHAY

---

McCABE, WEISBERG & CONWAY, LLC  
123 South Broad Street, Suite 1400  
Philadelphia, PA 19109  
(215) 790-1010

No. 1870 of 2019 GD  
No. 81 of 2021 ED

**SunTrust Bank s/b/a Suntrust Mortgage, Inc.**

**Plaintiff**

v.

**Candie Tringes**  
**Defendant**

ALL that certain lot of land situate in  
Redstone Township, Fayette County,  
Commonwealth of Pennsylvania, being a portion  
of Lot No. 110 and a portion of Lot No. 111 in  
the Vankirk Addition to Republic, Pennsylvania,  
a plan of which is recorded in the Recorder of  
Deeds Office of Fayette County, Pennsylvania,  
in Plan Book Volume 4, pages 8 and 9. Said lot  
is more particularly Bounded and described as  
follows:

BEGINNING at a point in the center of the

New Salem and Merrittstown public road at  
corner or in line of the westerly side of North  
Street; thence along the westerly line of said  
North Street from the center of said road, North  
29 degrees 54 minutes East 150 feet to the  
southerly side of Oak Alley; thence along the  
southerly side of Oak Alley, North 60 degrees  
13 minutes West 90 feet to a point at the  
dividing line between the eastern half of Lot No.  
111 and the western half of Lot No. 111; thence  
along said dividing line, South 29 degrees 54  
minutes West 60.57 feet to a mark on wall;  
thence by land now or formerly of Martin Lebak  
and wife, South 60 degrees 13 minutes East  
16.68 feet to a post; thence by same, South 22  
degrees 48 minutes East 8.05 feet to a post;  
thence by same, South 2 degrees 59 minutes  
East 13.80 feet to a post; thence by same, South  
25 degrees 31 minutes West 8.82 feet to a post;  
thence by same, South 30 degrees 6 minutes  
West 64.15 feet to a point in the center if the  
above mentioned public road; thence along the  
center line of the above mentioned public road,  
South 60 degrees 13 minutes East 58.96 feet to  
the place of beginning.

All that certain piece or parcel or Tract of  
land situate in Redstone Township, Fayette  
County, Pennsylvania, and being known as 1032  
Main Street, Republic, Pennsylvania 15475.

Being known as: 1032 Main Street,  
Republic, Pennsylvania 15475

Title vesting in Candie Tringes by deed  
from James Frinzi dated June 26, 2015 and  
recorded July 2, 2015 in Deed Book 3281, Page  
1396 Instrument Number 201500006919.

Tax Parcel Number: 30-24-0199

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\*\*\* END SHERIFF'S SALES \*\*\*

---



## **WARMAN ABSTRACT & RESEARCH LLC**

**JOHN F. WARMAN**

**518 Madison Drive**

**Smithfield, PA 15478**

**724-322-6529**

**johnfranciswarman@gmail.com**

**COMMERCIAL/RESIDENTIAL/CURRENT OWNER/MINERAL TITLE**

**A DECADE OF EXPERIENCE**

**E&O INSURED**

**WILL TRAVEL**

**ACCEPTING NEW CLIENTS**

**JUDICIAL OPINION**

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

Kickerz Bar & Grill, LLC,	:	
Plaintiff,	:	
v.	:	
	:	
Racce LLC, d/b/a Live Wire Reloaded and	:	
Robert Cummings,	:	No. 1804 of 2020
Defendants.	:	Honorable Linda R. Cordaro

**OPINION**

Cordaro, J.

April 20, 2021

**SUMMARY**

Plaintiff entered into an agreement to purchase a liquor license from Defendants, free and clear from all liens. Plaintiff paid the required amount into an escrow account for the purchase of the license, but Defendants refused to transfer the liquor license.

Plaintiff filed a Complaint and a Motion for Preliminary Injunction. After a Hearing, this Court granted Plaintiff's Motion for Preliminary Injunction, and ordered that Defendants transfer the liquor license to Plaintiff. Defendants now appeal this Court's Order granting the Preliminary Injunction.

**BACKGROUND**

By Agreement dated March 11, 2020, Shana Fischer entered into two contracts with Robert Cummings-one for the purchase of his business for \$30,000-\$5,000 of which Ms. Fischer had already deposited at the time the contract was signed-and a second for the purchase of a liquor license belonging to Mr. Cummings for \$30,000. Injunctive Relief Proceedings, Exhibits 4 and 5. The contract for the liquor license also stated that "[a]ny and all debt including but not limited to taxes, leins (sic), judgements (sic) or fines before March 11, 2020 will be the full responsibility of the Seller." Ex. 5. The Seller in the contracts was identified as Robert Cummings. Exhibits 4 and 5. The total amount Ms. Fischer owed to Mr. Cummings was \$60,000. Proceedings at 12.

Prior to March 11, 2020, Mr. Cummings owned Racce, LLC, which does business as Live Wire Reloaded. Live Wire Reloaded is a bar and restaurant located in McClellandtown, Pennsylvania. On March 11, 2020, Ms. Fischer filed a Certificate of Organized Domestic Limited Liability Company with the Pennsylvania Department of State, designating her company as "Kickerz Bar & Grill, LLC"-which is the Plaintiff in this Action. Proceedings, Ex. 1. The agreement between Ms. Fischer and Mr. Cummings is that Ms. Fischer would pay Mr. Cummings for his business and liquor license, and then she would operate her own bar and restaurant at the same location.

The liquor license at issue was owned by Racce, LLC and Mr. Cummings, and was

registered to 1411 McClellandtown Road, which is where the Live Wire Reloaded premises was located. The property on which Live Wire Reloaded was located is owned by Geno Tiberi. Proceedings at 15. Mr. Cummings was a tenant of Mr. Tiberi, and after taking over the business at the same location, Ms. Fischer was to then become the tenant of Mr. Tiberi.

After entering into the Agreements with Mr. Cummings, Ms. Fischer discovered that there was a lien on the liquor license. Proceedings at 17. Plaintiffs Exhibit 6 shows Robert Cummings and Racce, LLC as debtors to Tiberi's Inn, LLC, and that collateral for the debt includes "Pennsylvania Liquor License No. R11065." On June 19, 2020, Mr. Tiberi told Ms. Fischer that there was an outstanding balance of \$24,500 in order to pay off the lien for the liquor license. Proceedings at 19. Mr. Cummings had originally purchased the liquor license from Mr. Tiberi, but Mr. Cummings did not pay in full, which was why there was a lien on the license. Proceedings at 38-39.

Ms. Fischer was told by the Pennsylvania Liquor Control Board that the lien would need to be released before the Board would transfer the liquor license from Racce, LLC to Kickerz Bar and Grill. Proceedings at 20. By June 19, 2020, Ms. Fischer had paid Mr. Cummings \$30,000 for the business, and had also deposited \$24,500 into a separate escrow account in order to pay off the lien that was held by Mr. Tiberi. Proceedings at 19-22.

After Ms. Fischer made all of the required payments to Mr. Cummings, and deposited the \$24,500 into a separate bank account that would be used to pay off the lien, Mr. Cummings indicated to Ms. Fischer that he was not going to sign a final document that would complete the liquor license transfer. Proceedings at 35. In September of 2020, Mr. Cummings demanded additional payments from Ms. Fischer, and then indicated that he was planning to transfer the liquor license to a different location in another township. Proceedings at 42-43. As a result of Mr. Cummings's actions, Ms. Fischer was no longer able to serve alcohol at Kickerz Bar & Grill.

On October 13, 2020, Ms. Fischer filed a Complaint for Specific Performance and for Injunctive Relief. The specific performance was for Mr. Cummings to follow through with his agreement to sell the liquor license to Ms. Fischer and Kickerz Bar & Grill, and the injunctive relief was for Mr. Cummings to not transfer the liquor license to a location in a different township.

This Court held a Hearing on Plaintiffs Motion for Preliminary Injunction on January 29, 2021, at which time Ms. Fischer testified to the foregoing facts. Counsel for Defendants did not present any testimony at the Hearing, and Mr. Cummings did not appear at the Hearing. At the end of the Hearing, this Court found in favor of Plaintiff and stated the reasons for doing so on the record. Proceedings at 71.

On February 19, 2021, Defendants filed a Notice of Appeal to the Superior Court. {1} Defendants filed a Concise Statement of Issues raised on Appeal on March 23, 2021.

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{1} As this Court noted in its May 3, 2021 Order directing Defendants to file a Statement of Issues raised on Appeal, Defendants failed to serve their Notice of Appeal concurrently on the undersigned, which is required by Pa.RAP. 906(2).

## ISSUES ON APPEAL

Appellants raise two issues on appeal:

1. Did the trial court commit an error of law and abuse its discretion where no reasonable grounds exist for the trial court's finding that Plaintiff Kickerz [B]ar and Grill LLC established each of the essential prerequisites for the grant of the preliminary injunction[?]
2. Did the trial court commit an error of law by divesting itself of subject matter jurisdiction in declaring an interest in an indispensable 3rd party[:] Tiberi's Inn LLC[?]

## DISCUSSION

## FIRST ISSUE ON APPEAL

Defendants' first issue on appeal alleges that this Court erred by finding that Plaintiff established each of the essential prerequisites for granting a preliminary injunction. In deciding whether to grant a preliminary injunction, a trial court must determine that the petitioner has successfully established six "essential prerequisites." *Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003); *Warehime v. Warehime*, 860 A.2d 41, 46-47 (Pa. 2004). If the petitioner fails to establish any one of the prerequisites, there is no need to address the others; the motion for preliminary injunction must be denied. *County of Allegheny v. Commonwealth*, 544 A.2d 1305, 1307 (Pa. 1988). In order to be granted a preliminary injunction, the petitioner must show that:

- 1) An injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages;
- 2) Greater injury would result from refusing an injunction than from granting it, and the issuance of an injunction will not substantially harm other interested parties in the proceedings;
- 3) A preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct;
- 4) It is likely to prevail on the merits;
- 5) The injunction it seeks is reasonably suited to abate the offending activity; and
- 6) A preliminary injunction will not adversely affect the public interest.

*Summit Towne Centre* at 1001.

This Court addressed the six essential prerequisites at the Hearing (Proceedings at 71), but the following discussion elaborates this Court's decision.

1. The Injunction is Necessary to Prevent Irreparable Harm.

The first prerequisite that the party seeking a preliminary injunction must show is that "an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages." Summit Towne Centre at 1001. Further, "[a]n injury is regarded as irreparable if it will cause damage [that] can be estimated only by conjecture and not by an accurate pecuniary standard." West Penn Specialty MSO, Inc. v. Nolan, 737 A.2d 295, 299 (Pa. Super. 1999).

This Court was satisfied that Plaintiff met this standard. Mr. Cummings's action in agreeing to sell Ms. Fischer the liquor license and then not following through with the sale essentially barred Ms. Fischer from operating her establishment, Kickerz Bar & Grill. Ms. Fischer testified that the establishment was set up specifically as a bar, and that she needs the liquor license in order to stay in business. Proceedings at 48. After Mr. Cummings related that he intended to transfer the liquor license to another location, Ms. Fischer lost the ability to sell alcohol at her bar and began losing profits as a result of Mr. Cummings's actions.

Further, Ms. Fischer testified that if Mr. Cummings transferred the liquor license to a different location in another township, then there would be a five-year period during which the license could not be transferred back to where her establishment is located. Proceedings at 43. This Court believed that the Preliminary Injunction in this matter was necessary to stop that from happening.

The continued delay of transferring the liquor license to Ms. Fischer would clearly result in damage that cannot be estimated in an accurate pecuniary standard. That damage was therefore immediate and irreparable, and Ms. Fischer satisfied the first prerequisite.

2. Greater Injury will Result from Refusing Injunction.

Second, the petitioner must show that "greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings." Summit Towne Centre at 1001.

Here, Ms. Fischer's business cannot operate as she intended if the Injunction was not granted. Ms. Fischer testified that her business, Kickerz Bar & Grill, was designed to operate as a bar and that she agreed to purchase the liquor license from Mr. Cummings for that purpose. Ms. Fischer also testified that Kickerz Bar & Grill lost profits last year as a result of Mr. Cummings refusing to follow through with the deal he entered into and transferring the liquor license to Ms. Fischer. If the Injunction was refused, Ms. Fischer would have continued to operate her business at a loss, and she also would not have been in possession of that which she is entitled to by contract—the liquor license. As a result, this Court found that Ms. Fischer satisfied the second prerequisite.

3. The Injunction will Restore the Parties to their Prior Status.

Third, the petitioner must show that "a preliminary injunction will properly restore

the parties to their status as it existed immediately prior to the alleged wrongful conduct." Summit Towne Centre at 1001.

Here, the parties agreed to the sale of a liquor license for an agreed sum of money. The liquor license was to be free and clear of all liens, and any liens on the license would be the responsibility of the Seller, Mr. Cummings. After contracting with Mr. Cummings, Ms. Fischer discovered that there was a lien in the amount of \$24,500 on the liquor license, and that the lien was held by Mr. Tiberi. Ms. Fischer then paid \$24,500 into an escrow account in order to pay off the lien to Mr. Tiberi and obtain the liquor license free and clear. At that moment in time, Ms. Fischer had satisfied her obligations under the agreement. As a result, Ms. Fischer was legally entitled to the liquor license held by Mr. Cummings.

The Preliminary Injunction restored the parties to their proper status as it existed immediately prior to Mr. Cummings withholding the liquor license from Ms. Fischer.

4. Kickerz Bar & Grill is Likely to Prevail on the Merits.

Fourth, the party seeking a preliminary injunction must show that "the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits." Summit Towne Centre at 1001. Further, "[f]or a right to be 'clear,' it must be more than merely 'viable' or 'plausible.'" *Ambrogi v. Reber*, 932 A.2d 969,980 (Pa. Super. 2007), citing *Anglo-American Insurance Company v. Molin*, 691 A.2d 929, 933-934 (Pa. 1997).

Here, Kickerz Bar & Grill is likely to prevail on the merits of the case for the reasons stated above: Ms. Fischer entered into an agreement with Mr. Cummings to purchase the liquor license, Ms. Fischer satisfied her obligations under the agreement, and the only reason that Ms. Fischer did not receive the liquor license is because Mr. Cummings withheld the license from her without any apparent reason. As such, Kickerz Bar & Grill is likely to prevail on the merits of the case.

5. The Injunction is Reasonably Suited to Abate the Offending Activity.

Fifth, the petitioner must show that "the injunction it seeks is reasonably suited to abate the offending activity." Summit Towne Centre at 1001. In granting the preliminary injunction, this Court ordered Mr. Cummings to transfer the liquor license to Ms. Fischer. This injunction is reasonably suited to abate the offending activity.

6. The Injunction will not Adversely Affect the Public Interest.

Sixth, and lastly, the party seeking an injunction must show that "a preliminary injunction will not adversely affect the public interest." Summit Towne Centre at 1001. The court's enforcement of contracts is clearly within the public interest. *Hendricks v. Hendricks*, 175 A.3d 323,332 (Pa. Super. 2017) (Citing the trial court's opinion, "[t]he public interest is served by enforcing... contractual obligations...").

For these reasons, Plaintiff satisfied each of the six essential prerequisites, and the Preliminary Injunction issued in this matter was proper.

## SECOND ISSUE ON APPEAL

Appellants' second issue on appeal is that this Court erred by "divesting itself of subject matter jurisdiction in declaring an interest in an indispensable 3rd party[:] Tiberi's Inn LLC."

First, this Court never divested itself of any jurisdiction in this matter. The issue of subject-matter jurisdiction was never even raised by Defendants at or before the Hearing. Additionally, Defendant's second issue is somewhat nonsensical-if this Court had divested itself of subject-matter jurisdiction, then it would not have held a Hearing on the matter.

Second, this Court never "declared an interest in an indispensable third party." In fact, this Court never "declared an interest" in any party, and it is not apparent what Defendants mean by such a statement.

In his closing argument at the Hearing, Counsel for Defendants argued that Mr. Tiberi was an indispensable party. Proceedings at 68. To the degree that this is what Defendants are referring to here, this Court notes that: 1) Defendants never objected to any testimony regarding Mr. Tiberi, and 2) if they believed Mr. Tiberi was an indispensable party, Defendants could have called Mr. Tiberi to testify at the Hearing.

## CONCLUSION

For the foregoing reasons, this Court respectfully requests that the Preliminary Injunction in this matter be affirmed.

By the Court:  
Linda R. Cordaro, Judge

Attest:  
Prothonotary

April 20, 2021







**FAYETTE COUNTY**  


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