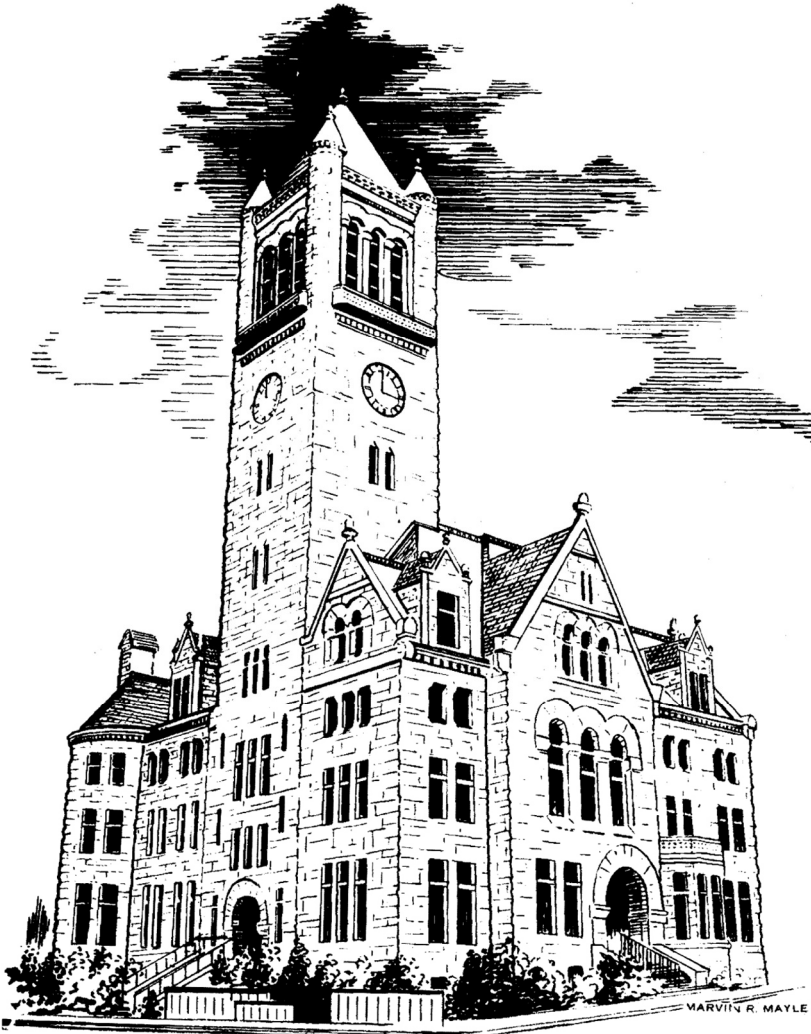


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ESTATE NOTICES

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

BETTY JEAN ACKLIN, a/k/a BETTY J. ACKLIN, late of Newell Borough, Fayette County, PA (3)

Executor: Gregory A. Acklin
c/o Goodwin Como, P.C.
108 North Beeson Boulevard, Suite 400
Uniontown, PA 15401
Attorney: Amanda M. Como

SUSAN L. ALESANTRINO, a/k/a SUSAN LEE ALESANTRINO, late of South Connellsville Borough, Fayette County, PA (3)

Personal Representative:
Julie F. Alesantrino
c/o Watson Mundorff, LLP
720 Vanderbilt Road
Connellsville, PA 15401
Attorney: Robert A. Gordon

MURIEL J. BOOHER, late of Bullskin Township, Fayette County, PA (3)

Co-Executors: Dennis Booher and Gilbert E. Booher, Jr.
1806 West Loucks Avenue
Scottdale, PA 15683
c/o 231 South Main Street, Suite 402
Greensburg, PA 15601
Attorney: Marilyn M. Gaut

RUTH ANN HANZES, late of North Union Township, Fayette County, PA (3)

Administrator: Gregory Allen Hanzes
107 East Main Street
Uniontown, PA 15401
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Gary J. Frankhouser

CLARENCE ELLSWORTH OLIVER, late of Uniontown, Fayette County, PA (3)

Executrix: Tonya Copeland
c/o 11 Pittsburgh Street
Uniontown, PA 15401
Attorney: Thomas W. Shaffer

CHARLES R. PAPKE, late of Uniontown, Fayette County, PA (3)

Executrix: Lida R. Harshbarger
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

JOEL RUGG, a/k/a JOEL JAMES RUGG, late of Markleysburg, Fayette County, PA (3)

Administrator: Janelle Rugg
165 Clover Top Road
Markleysburg, PA 15459
c/o Conti Law
986 Brodhead Road
Moon Township, PA 15108
Attorney: Michele Conti

Second Publication

ANN CARDENAS, late of South Union Township, Fayette County, PA (2)

Executrix: Mera Cardenas
c/o 4 North Beeson Boulevard
Uniontown, PA 15401
Attorney: Sheryl R. Heid

DOLORES FISHER, a/k/a DOLORES I. FISHER, late of Washington Township, Fayette County, PA (2)

Executor: Allen L. Fisher
113 Green Commons Drive
Pittsburgh, PA 15243
c/o Willman & Silvaggio, LLP
5500 Corporate Drive, Suite 150
Pittsburgh, PA 15237
Attorney: Joseph Silvaggio

ERNEST W. FRANKS, late of Nicholson Township, Fayette County, PA (2)

Co-Executrix: Diane Patterson
Co-Executor: Donald Franks
18 Highhouse Street
Smithfield, PA 15478

c/o 76 East Main Street
 Uniontown, PA 15401
Attorney: Douglas S. Sholtis

TERRY KATKO, late of South Union Township, Fayette County, PA (2)
Administrator: Dona Rae Shupe McGukin
 225 Half King Colony Road
 Farmington, PA 15437
 c/o Mitchell Law Office
 902 First Street
 P.O. Box 310
 Hiller, PA 15444
Attorney: Herbert G. Mitchell, Jr.

WILLIAM H. KAYLOR, a/k/a WILLIAM HERMAN KAYLOR, late of South Connellsville Borough, Fayette County, PA (2)
Personal Representative: Bart Lee Kaylor
 c/o Watson Mundorff, LLP
 720 Vanderbilt Road
 Connellsville, PA 15425
Attorney: Robert A. Gordon

MYRNA D. MALIK, a/k/a MYRNA DOLORES MALIK, late of Upper Tyrone Township, Fayette County, PA (2)
Co-Executrix: Lori L. Wilttrout and Darla K. Loucks
 c/o Proden & O'Brien
 99 East Main Street
 Uniontown, PA 15401
Attorney: Wendy L. O'Brien

FLORENCE J. MYERS, late of Connellsville, Fayette County, PA (2)
Personal Representatives: Mary Koontz and Kathleen Schott
 c/o Watson Mundorff, LLP
 720 Vanderbilt Road
 Connellsville, PA 15425
Attorney: Timothy J. Witt

GENEVIEVE A. OPALINSKI, a/k/a GENEVIEVE OPALINSKI, late of Scottdale, Fayette County, PA (2)
Personal Representatives: Sandra Younklin and Vincent J. Opalinski
 c/o George & George
 92 East Main Street
 Uniontown, PA 15401
Attorney: Joseph M. George

GEORGE EARL REESE, late of Saltlick Township, Fayette County, PA (2)
Executrix: 133 North Carroll Street
 Bruceton, Tennessee 38317
 c/o King Legal Group
 114 North Maple Avenue
 Greensburg, PA 15601
Attorney: Robert W. King

RONALD E. SHOW, late of Masontown, Fayette County, PA (2)
Executrix: Paula Weidel
 c/o 11 Pittsburgh Street
 Uniontown, PA 15401
Attorney: Thomas W. Shaffer

MATTHEW TATE, a/k/a MATTHEW ALLEN TATE, late of Springhill Township, Fayette County, PA (2)
Administratrix: Shelly Tate
 c/o Kopas Law Office
 556 Morgantown Road
 Uniontown, PA 15401
Attorney: John Kopas

VERLAINE WILSON, late of Dunbar Township, Fayette County, PA (2)
Executrix: Diane Hillen
 301 Upper Sandy Hollow Road
 Vanderbilt, PA 15486
 c/o 68 Old Clairton Road
 Pittsburgh, PA 15236
Attorney: D. Scott Lautner

MAE M. WISE, late of McClellandtown, Fayette County, PA (2)
Administratrix: Susan A. Parsons
 c/o Monaghan & Monaghan, LLP
 57 East Main Street
 Uniontown, PA 15401
Attorney: Gary D. Monaghan

LORNA P. YAUGER, late of Lemont Furnace, Fayette County, PA (2)
Executrix: Tresa L. Lowman
 c/o 45 East Main Street, Suite 400
 Uniontown, PA 15401
Attorney: Charles C. Gentile

First Publication

FRANCES ANTOLIK, late of Uniontown,
Fayette County, PA (1)

Administrator: James Antolik
c/o 84 East Main Street
Uniontown, PA 15401
Attorney: Vincent M. Tiberi

ANTHONY LAZZARI, late of Springfield
Township, Fayette County, PA (1)

Administratrix: Mary G. Winkleblech
123 Union Street
New Eagle, PA 15067
c/o 1202 West Main Street
Monongahela, PA 15063
Attorney: James W. Haines, Jr.

BERNARD D. LEWIS, late of Uniontown,
Fayette County, PA (1)

Executrix: Tina Bendishaw
115 Evans Street
Uniontown, PA 15401

ROGER LUPPOLD, late of Dunbar Township,
Fayette County, PA (1)

Personal Representative: Mark D. Luppold
c/o 208 South Arch Street, Suite 2
Connellsville, PA 15425
Attorney: Richard Husband

JOHN PLEVA, late of Franklin Township,
Fayette County, PA (1)

Executor: Frank Pleva
1413 Greensburg Pike
West Newton, PA 15089
c/o Watson Mundorff, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Timothy J. Witt

MARY M. TRESSLER, late of South
Connellsville Borough, Fayette County, PA (1)

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

LEGAL NOTICES

NOTICE

Notice is hereby given that a Beyond Pkg. Inc., a Pennsylvania business corporation with its principal office at 6009 Woodland Road, Gibsonia PA 15044-9168 has been filed with and approved by the Department of State for the Commonwealth of Pennsylvania in Harrisburg, Pennsylvania on April 14, 2023 for the purpose of obtaining a certificate of incorporation of a business corporation organized under the Commonwealth of Pennsylvania Business Corporation Law of 1988 as amended.

The name of the corporation is Beyond Pkg. Inc.

The purpose of the corporation is to engage in and do any lawful act concerning any and all lawful business for which corporations may be incorporated under the Business Corporation Law, as amended.

Donald McCue Law Firm, P.C.
813 Blackstone Road
Connellsville, PA 15425

CIVIL ACTION
COURT OF COMMON PLEAS
FAYETTE COUNTY, PA
CIVIL ACTION-LAW
NO. 2022-01723
NOTICE OF ACTION IN
MORTGAGE FORECLOSURE

SPECIALIZED LOAN SERVICING LLC,
Plaintiff

v.

AMANDA L. MCCREARY, IN HER
CAPACITY AS EXECUTRIX AND HEIR OF
THE ESTATE OF EARL L. MCCREARY; et
al, Defendants

To: UNKNOWN HEIRS, SUCCESSORS,
ASSIGNS, AND ALL PERSONS, FIRMS, OR
ASSOCIATIONS, CLAIMING RIGHT, TITLE,
OR INTEREST, FROM OR UNDER EARL L.
MCCREARY Defendant(s), 18 CENTER
STREET FAYETTE CITY, PA 15438

COMPLAINT IN
MORTGAGE FORECLOSURE

You are hereby notified that Plaintiff,
SPECIALIZED LOAN SERVICING LLC, has
filed a Mortgage Foreclosure Complaint

endorsed with a Notice to Defend, against you in the Court of Common Pleas of FAYETTE County, PA docketed to No. 2022-01723, seeking to foreclose the mortgage secured on your property located, 18 CENTER STREET FAYETTE CITY, PA 15438.

NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in this notice you must take action within twenty (20) days after the 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. 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 THE INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

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ATTORNEYS FOR PLAINTIFF
Jonathan M. Etkowicz, Esq.
ID No. 208786
133 Gaither Drive, Suite F
Mt. Laurel, NJ 08054
855-225-6906

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, June 5, 2023, at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2617-0391	GLEN F. STRICKLER, JR., deceased	Judith E. Strickler, Executrix
2619-0665	BEATRICE MAE HISSEM, deceased	Carol Shreve, Executrix
2621-0019	WILLIAM H. THOMAS, JR., deceased	Bruce Thomas, Administrator
2622-0081	GREGORY M. ZERAMBO, JR., deceased	Gregory R. Stark, Administrator

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

Tuesday, June 20, 2023, at 9:30 A.M.

in Courtroom No. 5 of the **Honorable Joseph M. George, Jr.** or his chambers, Third 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 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, June 5, 2023, at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2622-0014	ANNA ROSE MUZIKA, deceased	Theodore Muzika, Co-Executor and Rose Marie Muzika, Co-Executor

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

Tuesday, June 20, 2023, at 9:30 A.M.

in Courtroom No. 1 of the **Honorable Steve P. Leskinen** or his chambers, Second 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.

WARMAN ABSTRACT & RESEARCH LLC

JOHN F. WARMAN

518 Madison Drive

Smithfield, PA 15478

724-322-6529

johnfranciswarman@gmail.com

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JUDICIAL OPINION

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

PENNTXVENTURES,LLCand PTV 1252,	:
Plaintiffs,	:
v.	:
CITY OF UNIONTOWN,	: No. 2165 of 2022, G.D.
Defendant.	: President Judge Steve P. Leskinen

OPINION AND ORDER

LESKINEN, P.J.

May 12, 2023

Before the Court are the Preliminary Objections of Defendant, City of Uniontown, to Plaintiffs' Complaint in Mandamus. Defendant raises two Preliminary Objections: legal insufficiency of a pleading (demurrer) and the pendency of a prior action at No. 2023 of 2022, G.D. (/is pendens). After consideration of the pleadings in this matter, and the oral argument on the Preliminary Objections held on March 2nd, 2023, the Court hereby issues the following Opinion and Order:

FACTUAL AND PROCEDURAL HISTORY

Plaintiffs, PennTex Ventures, LLC, and PTV 1252 filed a land development application and associated plan with the City of Uniontown to build a retail store (Dollar General) on a parcel of land in the City of Uniontown. After a hearing on the matter, the City of Uniontown Planning Commission voted to recommend denial of Plaintiffs' Plan by resolution dated August 24th, 2022. On September 22nd, 2022, the City Council voted in an oral 3-2 decision to approve the recommendation of the Uniontown Planning Commission to deny Plaintiffs' Petition for Final Land Development. The City Council did not issue any written notice of decision with fifteen (15) days of its decision, as Plaintiffs argue was required under Section 508 of the Pennsylvania Municipalities Planning Code ("MPC") (Pennsylvania Municipalities Planning Code, 53 P.S. §10508). Under Section 508(3), a failure to comply with this requirement for a written decision shall be deemed an approval of the application as presented. Plaintiffs filed a Land Use Appeal at No. 2023 of 2022, G.D., and the instant Complaint in Mandamus at No. 2165 of 2022, G.D.

Preliminary Objection: Pendency of Prior Action (Lis Pendens)
Pa. R.C.P. No. 1028(a)(6)

Defendant raises its first Preliminary Objection under Pa. R.C.P. No. 1028(a)(6), the pendency of a prior action (/is pendens), based on the Land Use Appeal filed at No. 2023 of 2022, G.D. "A party asserting the defense of lis pendens must show that the case is the same, the parties the same, and the rights asserted and relief prayed for the same." *Norristown Auto Co. v. Hand*, 562 A.2d 902, 904 (Pa. Super 1989). "This three-pronged identity test must be strictly applied when a party is seeking to dismiss a claim

under the doctrine of *lis pendens*." *Id.* "This court has refused to dismiss causes of action under the doctrine of *lis pendens* in cases where the later cause of action derived from the same contract or events that formed the basis of the prior action but the right asserted and/or the relief sought in the two actions were not the same." *Id.*

For the purposes of this analysis, the Court takes judicial notice of the Land Use Appeal filed at No. 2023 of 2022, G.D. In that Appeal; Plaintiffs raise the issue of City's alleged failure to issue a written decision under MPC §508 as the third reason for their appeal, along with claims of an error of law and/or an abuse of discretion and claims under the doctrines of equitable estoppel and the vested rights doctrine. However, though both cases invoke the alleged failure to issue a written decision, this Court cannot find that the rights asserted and the relief prayed for are the same in both cases.

In the Land Use Appeal, Plaintiffs seek a reversal of the Planning Commission's decision. In comparison, the action for mandamus seeks to compel the official performance of a ministerial act or a mandatory duty to which Plaintiffs have a clear legal right. Plaintiffs would be entitled to prevail in the mandamus action if they can establish a clear legal right to relief, a corresponding non-discretionary duty on the part of the City, and the lack of another adequate or appropriate remedy. *Lehigh Asphalt Paving and Const. Co. v. Bd. Of Supervisors of East Penn Township*, 830 A.2d 1063, 1070 (Pa. Cmwlth. 2003). An action in mandamus is the appropriate means to obtain recognition of a deemed approval of proposed land development plans. *Id.* The courts have also recognized that a land use appeal and an action for mandamus may be pled in the alternative. *Stoner v. Township of Lower Merion*, 587 A.2d 879,884 (Pa. Cmwlth. 1991). The Land Use Appeal would typically be decided on the merits of the case as presented to the Planning Commission and City of Uniontown, whereas the mandamus action would be predicated on a right to relief due to the City's failure to issue a written decision.

This Court also recognizes that a land use appeal under Section 1005-A of the MPC (53 P.S. § 11005-A) may be decided solely on the certified record without taking additional evidence. A trial court faces compulsion to hear additional evidence in a zoning case only where the party seeking the hearing demonstrates that the record is incomplete because the party was denied an opportunity to be heard fully, or because relevant testimony was offered and excluded." *Wimer Realty, LLC v. Township of Wilmington*, 206 A.3d 627, 644 (Pa. Cmwlth. 2019) (distinguished on other grounds). Neither party has invoked either of these exceptions. If this Court, at its discretion, declines to take additional evidence in the Land Use Appeal, the parties may not have the opportunity to supplement the record with additional evidence relating to the issue of a deemed approval.

The Court notes that the Norristown court recognized that the party raising the defense of *lis pendens* has other recourse to minimize the duplicative costs and effort in maintaining two separate cases. The party raising the defense "can ask that the action in which the defense is being raised be abated, that it be stayed pending the outcome of the prior litigation, or that the actions be consolidated." *Norristown*, at 905. Defendants offered consolidation as an alternative relief sought under its *lis pendens* objection, though neither party raised this issue at oral arguments. The Court is not opposed to considering any requests for consolidation, a stay of one of the matters, or some other

form of abatement in the future, but finds that such a request has not been developed enough to render a decision at this time.

Therefore, this Court finds that Defendant's Preliminary Objection based on the pendency of a prior action should be denied.

Preliminary Objection: Legal Insufficiency of a Pleading (Demurrer)
Pa. R.C.P. 1028(a)(4)

This Court must next consider Defendant's Preliminary Objection based on the legal insufficiency of a pleading (demurrer). "Preliminary Objections in the nature of a demurrer require the court to resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by a demurrer." *Bailey v. Storlazzi*, 729 A.2d 1206, 1211 (Pa. Super. 1999) (distinguished on other grounds). "In order to sustain a demurrer, it is essential that the face of the complaint indicate that its claims may not be sustained and that the law will not permit recovery." *Id.* "If there is any doubt, it should be resolved by the overruling of the demurrer." *Id.*

In their Complaint, Plaintiffs claim that the City of Uniontown had an obligation under Section 508 of the MPC (53 P.S. § 10508) to provide a written decision of their denial (specifying the defects in the application and the requirements which have not been met) within fifteen (15) days of its September 22nd, 2022, vote to approve the recommendation of the Planning Commission to deny Plaintiffs' Petition for Final Land Development.

Defendant's objection is predicated on the idea that the City's Subdivision and Land Development Ordinance (SALDO) delegated the exclusive authority to approve or deny land development plans to the City of Uniontown Planning Commission, and thus that the Planning Commission's written decision on the Petition met the requirements of Section 508 of the MPC.

As the oral argument on the Preliminary Objections made clear, this question of delegation is not a simple one. Rather, it involves the consideration of the original ordinances and the subsequent changes, enactments, and repeals of various enabling statutes, as well as the precise timeline of when these changes occurred. Though this Court finds that this issue speaks to the merits of the case and will likely have to be resolved eventually, it is well beyond the scope of the pleadings for the purpose of Preliminary Objections.

Plaintiffs aver in their Complaint at ¶14 that the City Council held a vote on September 22nd, 2022, to "Approve the Recommendation of the Uniontown Planning Commission to Deny the Petition for final Land Development of Penntex Ventures and Dollar General." This was accomplished by an oral vote of 3-2 to approve the Planning Commission's recommendation to deny the Petition. On its face, it appears that this vote by the City Council was an essential step in the process and that the City Council had the ability to decline to accept the recommendation of the Planning Council through their vote. Any further consideration of this issue would require additional evidence to resolve and would be outside the scope of the pleadings for the purposes of Preliminary

Objections.

Therefore, this Court finds that Defendant's Preliminary Objection in the nature of a demurrer should also be denied.

WHEREFORE, the Court issues the following Order:

ORDER

AND NOW, this 12th of May, 2023, upon the consideration of Defendant's Preliminary Objections, a review of the pleadings, and the oral arguments made by the parties, the Court ORDERS as follows:

Defendant's Preliminary Objections are hereby DENIED. This denial does not preclude any party from pursuing a motion for consolidation, a stay of one of the matters involving the parties, or some other form of abatement to minimize the effort and expense of maintaining two separate cases.

BY THE COURT:
STEVE P. LESKINEN,
PRESIDENT JUDGE

ATTEST:
Prothonotary

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