

# Lawrence Law Journal

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STEVENSON  
V.  
SALLMEN

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**THE LAWRENCE COUNTY BAR ASSOCIATION**

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# Lawrence Law Journal

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### MOTION COURT

Civil, Criminal and Family Motion Court will be held on an emergency basis only the following dates:

February 22, 23 and 24, 2023

Please contact Court Administration.

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## ESTATE NOTICES

Notice is hereby given that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims against the estate of the decedent shall make known the same to the person(s) named or to his/her/their attorney and all persons indebted to the decedent shall make payment to the person(s) named without delay.

### FIRST PUBLICATION

#### **Kennedy, Sandra M.**

Late of Union Township, Lawrence County, Pennsylvania

Executor: Joseph P. Kennedy

Attorney: Deborah A. Shaw, 1906 Wilmington Rd., New Castle, PA 16105, 724-856-9894

#### **Maietta, Peter J.**

Late of New Castle, Lawrence County, Pennsylvania

Executrix: Mary Jo Capone, 308 Mt. Vernon Dr., Ellwood City, PA 16117

Attorney: Charles P. Sapienza, 713 Wilmington Ave., New Castle, PA 16101

#### **Mayer, William M., Jr.**

a/k/a Mayer, William Martin, Jr.

Late of Lawrence County, Pennsylvania

Executor: Robert Carl Johnson

Attorney: Edward Leymarie, Jr., Leymarie Clark Long, P.C., 423 Sixth St., Ellwood City, PA 16117

#### **Miksza, Daniel V.**

Late of New Castle, Lawrence County, Pennsylvania

Executrix: Leann A. Knox, New Castle, Lawrence County, Pennsylvania

Attorney: Ryan C. Long, Leymarie Clark Long, P.C., 423 Sixth St., Ellwood City, PA 16117

#### **Podner, Jack Earl**

Late of Wilmington Township, Lawrence County, Pennsylvania

Executor: Paul M. Rea and Erna Craig-Rea

Attorney: Clark & Clark Law, P.C., Robert D. Clark, Jr., 201 N. Market St., New Wilmington, PA 16142

#### **Pogozelec, David L.**

Late of Wayne Township, Lawrence County, Pennsylvania

Administrator: Ray Kaminski, 602 Market St., Zelenople, PA 16063

Attorney: Gregory S. Fox, Fox & Fox, P.C., 323 Sixth St. Ellwood City, PA 16117

#### **Tetmire, Connie Sue**

Late of Lawrence County, Pennsylvania

Executrix: Autumn Marie Tetmire

Attorney: Edward Leymarie, Jr., Leymarie Clark Long, P.C., 423 Sixth St., Ellwood City, PA 16117

## SECOND PUBLICATION

#### **McClurg, Mary A.**

Late of New Wilmington Borough, Lawrence County, Pennsylvania

Executor: Robert J. McClurg, 480 Carpenters Corners Rd., Clarks Mills, PA 16114

Attorney: none

#### **Salle, Ernestine**

Late of Neshannock Township, Lawrence County, Pennsylvania

Executor: Timothy E. Salle, 20 Cochran Dr., New Castle, PA 16105

Attorney: Joseph J. Kearney, 29 East North St., P.O. Box 51, New Castle, PA 16103-0051

## THIRD PUBLICATION

#### **Brown, Robert David**

Late of New Castle, Lawrence County, Pennsylvania

Executor: Barry A. Brown, 2104 Pulaski Rd., New Castle, PA 16105

Attorney: Louis Pomerico, 2910 Wilmington Rd., New Castle, PA 16105, 724-658-7759

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## NOTICE OF FICTITIOUS NAME

Notice is hereby given that a Registration of Fictitious Name was filed with the Department of State, Commonwealth of Pennsylvania at Harrisburg, by Pittsburgh Transport Refrigeration, Inc. for the fictitious name, **CJS Sales**, which Fictitious Name has been filed under the provisions of the Fictitious Names Act. The principal address of the filer and the business is 171 Many Springs Farm Road, Portersville, PA 16051.

Robert D. Clark, Jr.

201 N. Market St.

New Wilmington, PA 16142

L.C.L.J. - January 23, 2023

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## NOTICE

To All Persons Interested, You Will Take Notice:

That the following accounts and statements of proposed distribution or request for audit of Executors, Administrators, Trustees and Guardians, Etc., have been filed in the Orphans' Court of the Court of Common Pleas of Lawrence County, Pennsylvania.

The accounts and statements of proposed distribution are opening for examination.

All parties in interest have the right to file written objections to the account or statement of proposed distribution as *provided by law and rules of court*.

The said accounts will be presented to the Court for audit, distribution of assets and final confirmation on February 17, 2023 at 9:00 a.m. e.s.t., at which time all parties in interest will have the opportunity to be heard.

**FIRST AND FINAL ACCOUNTS OF  
DISTRIBUTION  
FEBRUARY 17, 2023**

10022/22 O.C.A. First and Final Account of Cassandra Marie Reed Vansickles, Executrix for the Estate of Ronald F. Reed, Deceased.

10001/23 O.C.A. First and Final Account of Richard Hamm, Executor of the Estate of Kathy Ann Smith, Deceased.

10015/19 O.C.A. Second Supplemental and Final Account of Barbara J. Crawford and John D. Thompson, Executors of the Estate of Verna J. Thompson, Deceased.

Jodi Klabon-Esoldo, Prothonotary, Clerk of Courts and Orphans' Court

L.C.L.J. - January 23 and 30, 2023

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**Stevenson v. Sallmen**
**Preliminary Objections – Notice of Appeal from Magisterial District Judge – Erroneous Designation of Parties – Complaint – Pa.R.Civ. P. 1017 – Pa.R.Civ.P. 1018(f) – Pa.R.C.P.M.D.J. 1002(a) – Absence of Notice of Judgment**

A Complaint filed by the Plaintiff who is erroneously designated in a Notice of Appeal from Magisterial District Judge as the “defendant” will not be dismissed when the caption of the action can easily be remedied.

An appeal from the decision of a magisterial district judge will not be dismissed where prejudice to the appellee cannot be demonstrated by the failure of the appellant to attach a Notice of Judgment to the Notice of Appeal from Magisterial District Judge.

Preliminary Objections – Court of Common Pleas of Lawrence County, Pennsylvania, No. 10134 of 2022, C.A.

*Max A. Schmierer*, attorney for Plaintiffs

*Louis M. Perrotta*, attorney for Defendants

**OPINION**

COX, J.

October 31, 2022

This case is before the Court for disposition of the Preliminary Objections to Defendants’ Complaint filed by the plaintiffs Michael Stevenson, Sr., and Nicole Stevenson (hereinafter “Stevensons”) which assert the Complaint filed by the defendants Joseph Sallmen and Michelle Sallmen (hereinafter “Sallmens”) should be stricken as Pa.R.C.P. 1017 does not permit the filing of a Complaint by a defendant. In addition, the Stevensons contend the appeal concerning Case No. MJ-53302-CV-0000136-2021 should be dismissed as the Sallmens failed to attach a copy of the Notice of Judgment from the Magisterial District Court associated with that case to their Notice of Appeal as required by Pa.R.C.P.M.D.J. 1002.

On February 22, 2022, the Sallmens filed a Notice of Appeal from the Magisterial District Judge Judgment pertaining to Case Nos. MJ-53302-CV-0000126-2021 (hereinafter “Case No. 126 of 2021”) and MJ-53302-CV-0000136-2021 (hereinafter “Case No. 136 of 2021”). Case No. 126 of 2021 was commenced by the Stevensons arising from an alleged breach of an Agreement of Sale executed on February 25, 2021, for the purchase of real property located at 2581 Skyhill Road, Edinburg, Lawrence County, Pennsylvania, in which the Sallmens agreed to sell the subject property to the Stevensons. Case No. 136 of 2021 was initiated by the Sallmens asserting counterclaims against the Stevensons. In both of those cases, Magisterial District Judge Jennifer L. Nicholson entered judgment in favor

of the Stevensons and against the Sallmens. The Notice of Appeal filed by the Sallmens included a copy of the Notice of Judgment from Magisterial District Court for Case No. 126 of 2021 but did not include the same for Case No. 136 of 2021.

The Sallmens filed their *pro se* Notice of Appeal from Magisterial District Judge seeking to appeal Magisterial District Judge Nicholson's decisions for Case Nos. 126 of 2021 and 136 of 2021. However, the Notice of Appeal indicated the Stevensons were the plaintiffs and the Sallmens were the defendants despite the Sallmens' intentions to file a Complaint and pursue their claims. In addition, the Sallmens filed a Praecipe to Enter Rule to File Complaint despite claiming to be the plaintiffs in this action. On March 8, 2022, the Stevensons filed a *pro se* Answer requesting the decision of Magisterial District Judge Nicholson be upheld. The Sallmens then filed a Complaint on April 7, 2022, asserting a claim for breach of contract against the Stevensons for expenses paid by the Sallmens in anticipation of the Stevensons purchasing the subject property.

On May 3, 2022, the Sallmens filed a Notice of Intention to Take Default Judgment. The Stevensons responded by filing the current Preliminary Objections to Defendants' Complaint, which assert the Sallmens' Complaint should be dismissed as Pa.R.C.P. 1017 does not permit defendants to file a Complaint.

Pa.R.C.P. 1017(a) limits pleadings to the following:

- 1) a complaint and an answer thereto,
- 2) a reply if the answer contains new matter, a counterclaim or a cross-claim,
- 3) a counter-reply if the reply to a counterclaim or cross-claim contains new matter,
- 4) a preliminary objection and a response thereto.

As it relates to captioning of a civil action, Pa.R.C.P. 1018(f) states, "No Action or proceeding may be dismissed by reason of an erroneous caption or docketing, but the court on motion of any party or on its own motion may correct the caption or direct appropriate docketing." A suit should not be dismissed due to being improperly captioned when that trivial detail can be corrected through amendment and is not a reason to dismiss the entire complaint. See Com. ex rel. Specter v. Bauer, 261 A.2d 573 (Pa. 1970); Fox v. County of Clearfield, 2011 WL 10845573 (Pa. Cmwlth. 2011).

In the current case, the Stevensons insist the Complaint should be dismissed as an impermissible pleading pursuant to Pa.R.C.P. 1017 due to the Sallmens being listed in the caption as defendants. Conversely, the

Sallmens insist the Prothonotary mistakenly listed them as defendants and that does not constitute a reason to strike their Complaint. It is apparent the Sallmens being listed as defendants in the caption of this action is not grounds for dismissing their Complaint as it can easily be remedied through an amendment. In fact, the Sallmens indicated they have a Motion to Correct Docket drafted which they intend to present. It must be noted that the caption lists the Sallmens as the defendants as a result of the manner in which they captioned this case in their Notice of Appeal as they indicated the Stevensons were the plaintiffs and the Sallmens were the defendants. It was not an error or mistake by the Prothonotary but was the result of the way the Sallmens' Notice of Appeal was stylized. Therefore, the Stevensons' first Preliminary Objection for failure to comply with Pa.R.C.P. 1017 is overruled.

Next, the Stevensons argue the Sallmens' claim for breach of contract is improper as they did not perfect an appeal of Case No. 136 of 2021 due to their failure to attach the Notice of Judgment of Magisterial District Court for that case to the Notice of Appeal.

Pa.R.C.P.M.D.J. 1002(a) states:

A party aggrieved by a judgment for money, or a judgment affecting the delivery of possession of real property arising out of a nonresidential lease, may appeal the judgment within 30 days after the date of the entry of the judgment by ***filing with the prothonotary of the court of common pleas a notice of appeal on a form that shall be prescribed by the State Court Administrator together with a copy of the Notice of Judgment issued by the magisterial district judge.*** The prothonotary shall not accept an appeal from an aggrieved party that is presented for filing more than 30 days after the date of entry of the judgment without leave of court and upon good cause shown. (emphasis added).

The Comments to Pa.R.C.P.M.D.J. state, "A copy of the Notice of Judgment must be filed since it will contain the separate entries required by Pa.R.C.P.M.D.J. No. 514A and will be needed by the prothonotary." A Notice of Judgment must contain entries for the following: "(1) for any amount of rent that remains due; (2) for any amount of damages for unjust detention; (3) for any physical damages to the leasehold premises; (4) for the costs of the proceeding; and (5) for the amount of any security deposit applied as an offset to the judgment, if applicable." Pa.R.C.P.M.D.J. 514A. It is important to recognize the Superior Court of Pennsylvania has determined an appellant should be permitted to file an appeal *nunc pro tunc* when the prothonotary refused to accept his or her timely filed Notice of Appeal due to the failure to attach a Notice of Judgment from the decision of the Magisterial District Judge. McKeown v. Bailey, 731 A.2d 628, 631

(Pa. Super. 1999).

In McKeown, the appellee filed suit with the Magisterial District Judge seeking damages against the appellants on a breach of contract claim regarding five percent of the sale price of a parcel of land. The appellants appeared at the hearing on that claim pro se and the Magisterial District Judge entered a judgment in favor of the appellee. The appellants filed a timely Notice of Appeal on October 23, 1997, but failed to attach a Notice of Judgment. The Prothonotary's Office did not docket the Notice of Appeal due to the failure to attach a Notice of Judgment. On November 7, 1997, the Prothonotary's Office contacted the appellants' counsel to inform him the Notice of Judgment was not received and the Notice of Appeal was not time-stamped nor docketed as a result of not receiving the Notice of Judgment. The appellants then requested the trial court declare the appeal timely or permit them to file an appeal *nunc pro tunc*. However, the trial court denied those requests and judgment was entered in favor of the appellee. The appellants subsequently appealed to the Superior Court of Pennsylvania.

The McKeown Court recognized the failure to file a timely notice of appeal implicates the jurisdiction of the court to entertain the cause of action. Id., 731 A.2d at 630. However, Pa.R.C.P.M.D.J. 1002A permits the filing of a notice of appeal after the 30-day period with leave of court and upon good cause shown, which means a legally sufficient reason. Id., 731 A.2d at 631. The Court noted the Notice of Appeal filed by the appellants was received by the Prothonotary well within the 30-day timeframe, but was not docketed. Moreover, the Prothonotary's Office did not notify the appellants the Notice of Appeal was not docketed due to being incomplete without the Notice of Judgment being attached. Id. Based upon those circumstances, the McKeown Court held the trial court abused its discretion in denying the appellants' petition to appeal *nunc pro tunc*. Id.

The Court further acknowledged the Comments to Rule 1002A explain the Notice of Judgment is necessary as it contains the information needed for the Prothonotary pertaining to the judgment issued by the Magisterial District Judge. Id. However, that section applies to judgments by a Magisterial District Judge concerning the recovery of real property in landlord/tenant disputes, which does not apply to the McKeown case. Id. As such, it was not for the Prothonotary to determine whether a notice of judgment was required before docketing the notice of appeal. The McKeown Court instructed appeals *nunc pro tunc* are permitted where the petitioning party has made an "honest effort" and where the party was in "substantial compliance" with the rules. Id., 731 A.2d at 632. The Court determined the appellants made an honest effort and were in substantial compliance with the relevant procedural rules. Id. Therefore, the Superior Court reversed the decision of the trial court to deny the appellants' motion to appeal *nunc*



*pro tunc*. Id.

In the case *sub judice*, the Sallmens filed a timely Notice of Appeal for Case Nos. 126 of 2021, and 136 of 2021, but only attached the Notice of Judgment pertaining to Case No. 126 of 2021. However, the Disposition and Judgment Summaries of the Notice of Judgment for Case No. 126 of 2021 contained information as it pertains to the disposition of Case No. 136 of 2021 as well. In fact, that Notice of Judgment complies with all of the requirements of Pa.R.C.P.M.D.J. 514A, which includes the amount of damages awarded and the costs of the proceeding. There is nothing to demonstrate the Stevensons would be prejudiced by the Sallmens' breach of contract claim proceeding despite their failure to attach the Notice of Judgment for Case No. 136 of 2021.

If this Court accepted the Stevensons' argument and dismissed the Sallmens' appeal for the failure to attach the Notice of Judgment for Case No. 136 of 2021, the Sallmens would be entitled to appeal this matter *nunc pro tunc* in conformance with the McKeown decision. Essentially, dismissing the Sallmens' appeal as it pertains to Case No. 136 of 2021 would only act to further delay the proceedings and require both parties to incur more costs resulting from the presentation of a motion to appeal *nunc pro tunc*. The Court finds this additional step would be unnecessary as the Sallmens' Notice of Appeal for both cases and the Notice of Judgment for Case No. 126 of 2021 contained all of the information required by the applicable procedural rules. Thus, the Stevensons' second Preliminary Objection seeking dismissal of the Sallmens' breach of contract claim is overruled.

Based upon the foregoing, the Stevensons' Preliminary Objections are overruled in their entirety.

### ORDER OF COURT

NOW this 31st day of October, 2022, this case was before the Court on September 26, 2022, for oral argument on the Preliminary Objections to Defendants' Complaint filed by the Plaintiffs Michael Stevenson, Sr. and Nicole Stevenson, the parties appeared through counsel, the Plaintiffs represented through counsel, Max A. Schmierer, Esquire, and the Defendants Joseph Sallmen and Michelle Sallmen, represented through counsel, Louis M. Perrotta, Esquire, and after consideration of the arguments and briefs presented and submitted by counsel and a complete review of the record, the Court entered the following Order and it is ORDERED, ADJUDGED and DECREED as follows:

1. In accordance with the attached Opinion, the Preliminary Objections to the Defendants' Complaint are OVERRULED in their entirety.
2. Joseph Sallmen and Michelle Sallmen shall file a Motion to Amend

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Caption to correct any alleged issues in the manner this case is currently captioned.

3. Michael Stevenson, Sr., and Nicole Stevenson shall file an Answer to the Complaint filed on behalf of Joseph Sallmen and Michelle Sallmen within thirty (30) days from the date of disposition on the aforementioned Motion to Amend Caption.

4. The Prothonotary of Lawrence County shall properly serve notice of this Order and attached Opinion upon counsel of record.

BY THE COURT:

J. Craig Cox, Judge

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