

Lebanon County Legal Journal

The official legal periodical for Lebanon County
containing the decisions rendered in the 52nd Judicial District

Vol. 55

Lebanon, Pennsylvania, December 20, 2017

No. 21

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Published every Wednesday. Advertisements must be sent to
LCBA, 547 South 10th Street, Lebanon PA 17042
or emailed to lebcobar@verizon.net
by 11 a.m. of preceding Monday.

Lebanon County Legal Journal, per bound volume.....\$95.00
Advance Sheets, per year.....\$97.75
Single copy, advance sheets.....\$4.00

717-273-3113; www.lebanoncountylegaljournal.org

Owned and published by the Lebanon County Bar Association

**Paul W. Kilgore, Esq., Chair
Stephanie Axarlis, Esq., Editor
Jennifer Wentzel, Esq., Editor**

DECEDENTS' ESTATES

NOTICE IS HEREBY GIVEN that Letters Testamentary or of Administration have been granted in the following estates. All persons indebted to the said estate are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

FIRST PUBLICATION

ESTATE OF HARRY W. ARNDT, a/k/a Harry Woods Arndt, late of the Township of Annville, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Susan Durham, Executrix
2475 Enola Road
Carlisle PA 17013

Or to:
Theresa L. Shade Wix, Esq.
Wix, Wenger & Weidner
4705 Duke Street
Harrisburg PA 17109-3041

ESTATE OF JOYCE L. DONMOYER, late of the County of Lebanon and Commonwealth of Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Todd D. Donmoyer, Executor
458 N. Lancaster St.
Jonestown, PA 17038

Daryl J. Gerber, Esquire,
The Law Office of Daryl J. Gerber
46 E. Main Street
Palmyra, PA 17078

ESTATE OF EUGENE L. DUKE, late of South Lebanon Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Michael S. Duke, Executor
c/o Reilly Wolfson Law Office
1601 Cornwall Road
Lebanon, PA 17042

ESTATE OF GEORGE T. EVANS, late of Millcreek Township, Lebanon County, Pennsylvania, deceased. Letters of Administration have been granted to the undersigned Administrator.

Tammy L. Sutch, Administrator
Kevin M. Richards, Esquire
P.O. Box 1140
Lebanon, PA 17042-1140

ESTATE OF WILBURR. SATTASAHN, late of North Annville Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Ronald D. Miller, Executor
c/o Keith D. Wagner
P. O. Box 323
Palmyra, PA 17078
Attorney

ESTATE OF FERN L. SHUE, late of Palmyra Borough, Lebanon County, PA, deceased. Letters Testamentary on said estate have been granted to the undersigned Executor.

Eugene H. Shue, Executor
c/o Laucks & Laucks, PC
105 West Broadway
Red Lion, PA 17356

Attorney: David M. Laucks, Esq.
LAUCKS & LAUCKS, PC
105 West Broadway
Red Lion, PA 17356

ESTATE OF GORDON JOSEPH STOLL, JR., a/k/a Gordon Joseph Stoll, late of Lebanon, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Elaine G. Stoll, Executrix
c/o Patrick M. Reb, Esq.
547 South Tenth Street
Lebanon PA 17042
717-274-6620

SECOND PUBLICATION

ESTATE OF LUCILLE M. BRUBAKER, late of Jackson Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Co-Executors.

Jeffrey R. Brubaker, Co-Executor
Lisa B. Henry, Co-Executor
Kelly J. Fox, Co-Executor
c/o Zimmerman Law Office
466 Jonestown Road
Jonestown PA 17038

John M. Zimmerman, Esq.
Attorney for the Estate

ESTATE OF JOHN R. FORDYCE, late of Lebanon City, Lebanon County, Pennsylvania, deceased. Letters of Administration have been granted to the undersigned Administrator.

Scott R. Fordyce, Administrator
c/o Jon F. Arnold, Esquire
410 Chestnut Street
Lebanon, PA 17042

ESTATE OF JEAN L. HAIN, late of the Borough of Myerstown, County of Lebanon and Commonwealth of Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executors.

John E. Hain, Executor
545 Stracks Dam Road
Myerstown, PA 17067

Nickolas Hain, Executor
541 Stracks Dam Road
Myerstown, PA 17067

William H. Sturm, Jr., Esquire
Steiner & Sandoe, Attorneys

ESTATE OF WALTER A. HERR, late of the County of Lebanon, PA, deceased. Letters Testamentary have been granted to the undersigned Executrices.

Larry L. Herr, Executor
2007 Birch Road
Lebanon, PA 17042

Priscilla H. Swanger, Executrix
2003 Birch Road
Lebanon, PA 17042

Paul W. Kilgore, Esquire
Spitler, Kilgore & Enck, PC
522 South 8th Street
Lebanon, PA 17042
Attorney

ESTATE OF EARL B. HIGLEY, late of Jackson Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Jerry E. Higley, Executor
c/o Gerald J. Brinser, Esq.
P. O. Box 323
Palmyra, PA 17078
Attorney

ESTATE OF ANNA MAE LUCIOTTI, late of Annville Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Richard F. Luciotti, Executor

John E. Feather, Jr., Esquire
Feather and Feather, P.C.
22 West Main Street
Annville, PA 17003
Attorney

ESTATE OF JOHN D. REINBOLD, late of North Cornwall Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Co-Executors.

Thomas K. Reinbold, Co-Executor
John D. Reinbold, Jr., Co-Executor
Kevin M. Richards, Esquire
P.O. Box 1140
Lebanon, PA 17042-1140

ESTATE OF JENNIFER A. SANDERS, late of North Londonderry Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Devan S. Waibel, Executor
c/o Keith D. Wagner
P. O. Box 323
Palmyra, PA 17078
Attorney

ESTATE OF JEAN B. SCHWAB, late of the Township of Jackson, County of Lebanon and Commonwealth of Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Janette Lebo, Executor
43 Rehrersburg Road
Richland, PA 17087

Timothy T. Engler, Esquire
Steiner & Sandoe, Attorneys

ESTATE OF SANDRA C. WOOD, late of Myerstown Borough, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Diane M. Brewer, Executor
9 E. Richland Avenue
Myerstown, PA 17067
Thomas S. Long, Attorney

ESTATE OF MIRIAM A. YEAGLEY, late of Cleona, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Beth Ann Hostetter, Executrix

John E. Feather, Jr., Esquire
Feather and Feather, P.C.
22 West Main Street
Annville, PA 17003
Attorney

THIRD PUBLICATION

ESTATE OF ERNESTINE A. FENNER, late of Jackson Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Larry A. Fenner, Executor
c/o John E. Feather, Jr., Esquire
Feather and Feather, P.C.
22 West Main Street
Annville, PA 17003
Attorney

ESTATE OF JANE D. GURNEE, late of 830 South Railroad Street of Palmyra Township, Lebanon County, Pennsylvania, deceased. Letters of Administration on the above estate having been granted to the undersigned, all persons indebted to the estate are requested to make payment, and those having claims to present the same, without delay, to the undersigned Administrator.

Elizabeth Darrach, Administrator
c/o Lengert & Raiders LLC
210 West Penn Avenue
PO Box 223
Robesonia, PA 19551

Attorney: Rich Raiders, Esquire
Lengert & Raiders LLC
210 West Penn Avenue
PO Box 223
Robesonia, PA 19551

ESTATE OF WILLIAM F. LUDWIG, late of Union Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Edward L. Ludwig, Executor
126 South Center Street
Fredericksburg, PA 17026

Bret M. Wiest, Esquire
Buzgon Davis Law Offices
P.O. Box 49
525 South Eighth Street
Lebanon, PA 17042

ESTATE OF GLADYS A. SHERRID, late of South Lebanon Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

David C. Sherrid, Executor
1639B Donegal Springs Rd.
Mt. Joy, PA 17552
Thomas S. Long, Attorney

ESTATE OF LOIS I. STOUFFER, late of the City of Lebanon, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executors.

Debra L. Stouffer, Jack L. Stouffer and
Tamela J. Fisher
c/o Reilly Wolfson Law Office
1601 Cornwall Road
Lebanon, PA 17042

**ORPHANS' COURT DIVISION
NOTICES**

Court of Common Pleas of Lebanon
County

Notice is hereby given that the following accounts in decedents estates, Guardianships and trusts have been filed in the Office of the Register of Wills and Clerk of Orphans' Court of Lebanon County, and that the same will be presented to the Court of Common Pleas-Orphans' Court Division of said County for Confirmation NISI on Tuesday, January 2, 2018 at 10:00 A.M. in Courtroom No. 1, Municipal Building, City of Lebanon.

**FIRST AND FINAL ACCOUNTS
WITH PROPOSED SCHEDULE
OF DISTRIBUTION FILED BY
EXECUTORS OR ADMINISTRATORS**

1. Seltzer, Lorraine M., dec'd., Rodney A. Seltzer, Exr., Timothy T. Engler, Atty.

All of the aforesaid accounts and statements of Proposed Distribution will be confirmed ABSOLUTELY as of course by the said Orphans' Court except those to which exemptions are filed within twenty (20) days after the same are confirmed NISI.

**DAWN L. RESANOVICH
REGISTER OF WILLS AND CLERK OF
ORPHANS' COURT
LEBANON COUNTY, PENNSYLVANIA**

**NOTICE OF VEHICLE TITLE
TRANSFER**

Billy J. Davis. You are hereby notified that you are required to appear for a Title Transfer of a Vehicle-2001 Ford Truck-VIN # 1FMZU77E61UA41535. Case # CI-17-09948 Carrion, Jr, Angelo vs. Davis, Billy J. on December 27th, 2017 at 9:30 AM in Lancaster County Courthouse, Courtroom #1, 50 North Duke Street, Lancaster, PA 17605-3480.

**NOTICE OF PURGE OF INACTIVE
PROCEEDINGS**

NOTICE IS HEREBY GIVEN to all parties, to, and persons having any interest in, any cases, actions and proceedings of any nature pending in the Court of Common Pleas of Lebanon County, Pennsylvania, Civil Action Division, and to their respective counsel, that all said cases, actions and proceedings in which no steps or proceedings have been taken for two years or more will be terminated with prejudice on December 29, 2017, and no further proceedings therein shall be allowed without prior approval of said Court for cause shown.

BARBARA A. SMITH
Prothonotary
Of the Court of Common Pleas
Of Lebanon County, Pennsylvania

ARTICLES OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State at Harrisburg, Pennsylvania on December 4, 2017, effective January 1, 2018, incorporating Henock Ayalew, P.C. as a professional corporation under the provisions of the Business Corporation Law of 1988.

Frederick S. Wolfson, Esquire
REILLY WOLFSON
1601 Cornwall Road
Lebanon, PA 17042

NOTICE OF NAME CHANGE

INTHECOURTOFCOMMONPLEASOF
LEBANON COUNTY PENNSYLVANIA
CIVIL ACTION – LAW No. 2017-
01872

NOTICE

Notice is hereby given that on the 6th day of December, 2017, the Petition of Debra Francis Werner a/k/a Debra Lynn Francis Werner a/k/a Debra Lynn Francis-Werner was filed in the above Court requesting an Order to change her name from Debra Francis Werner a/k/a Debra Lynn Francis Werner to Debra Lynn Francis-Werner. The Court has fixed the 18th day of January, 2018, at 8:30 a.m. before The Honorable Bradford H. Charles, in Courtroom No. 3 of the Lebanon County Municipal Building, 400 South 8th Street, Lebanon, Pennsylvania, as the time and place for the Hearing of said Petition, where any and all interested parties may appear and show cause, if any they have, why the request of Petitioner should not be granted.

Melissa J. Noyes, Esquire
Reilly Wolfson
1601 Cornwall Road
Lebanon, PA 17042
(717) 273-3733
Attorney for Petitioner

**SAINTY RENEWABLE ENERGY INVESTMENT HOLDING, INC. V.
ENERGY SYSTEMS & INSTALLATIONS, INC., ET AL. NO. 2015-00869**

*Civil Action-Law-Breach of Contract-Judgment on the Pleadings-Responsive Pleading-
Effect of General Denial-Amendment of Pleadings*

Before the Court is Plaintiff's Motion for Judgment on the Pleadings with regard to its First Amended Complaint filed against Defendant Cory C. Wolff ("Wolff"), as well as a Motion for Leave to File an Amended Answer filed by Wolff.

1. Pa.R.C.P. Rule 1034 provides that any party may move for judgment on the pleadings after the relevant pleadings are closed but within such time as not unreasonably to delay trial.
2. When ruling on a motion for judgment on the pleadings, the court may consider only the pleadings and any documents properly attached thereto and must accept as true all allegations of the nonmoving party. Judgment on the pleadings may be granted where the pleadings evidence that there are no material facts in dispute so as to necessitate a jury trial.
3. Pa.R.C.P. Rule 1029(b) provides that a party responding to a pleading to which a response is required must admit or deny with specificity factual averments in the pleading. Averments in a pleading to which a response is required are admitted when not denied specifically or by necessary implication.
4. Pa.R.C.P. Rule 1033 provides that a party may at any time change the form of action, correct the name of a party or amend a pleading either by filed consent of the adverse party or by leave of court.
5. The trial court has broad discretion in determining whether to allow amendment of a pleading.
6. An amendment to a pleading should be permitted unless it is against a positive rule of law or where the amendment would surprise or would prejudice the opposing party.
7. In light of the fact that Wolff filed a Motion for Leave of Court to Amend the Answer to the First Amended Complaint in which he indicates that must add additional information to his answer in order to support the denials of his Answer, entry of judgment on the pleadings would be inappropriate, and Wolff will be afforded leave to file an Amended Answer to the First Amended Complaint.

L.C.C.C.P. No. 2015-00869, Opinion by Charles T. Jones, Jr., Judge, May 22, 2017.

**SAINTY RENEWABLE ENERGY INVESTMENT HOLDING, INC. V.
ENERGY SYSTEMS & INSTALLATIONS, INC., ET AL. NO. 2015-00869**

IN THE COURT OF COMMON PLEAS
OF LEBANON COUNTY, PENNSYLVANIA
CIVIL DIVISION No. 2015-00869

Sainty Renewable Energy Investment Holding, Inc., Plaintiff

v.

Energy Systems & Installations, Inc. et al., Defendant

:

ORDER

AND NOW, this 22nd day of May, 2017, after careful consideration of the record, Plaintiff's Motion for Judgment on the Pleadings is hereby denied. Defendant Cory C. Wolff's Motion for Leave to File an Amended Answer is hereby granted. Defendant Wolff shall file an Amended Answer within sixty (60) days of the date of this order.

BY THE COURT:

CHARLES T. JONES, JR., J.

**SAINTY RENEWABLE ENERGY INVESTMENT HOLDING, INC. V.
ENERGY SYSTEMS & INSTALLATIONS, INC., ET AL. NO. 2015-00869**

APPEARANCES:

Maurice Mitts, Esquire

For Plaintiff

Kevin Watson, Esquire

For Defendant

OPINION BY JONES, JR., J.:

Before the Court is Plaintiff's Motion for Judgment on the Pleadings and Defendant's Motion for Leave to File an Amended Answer.

PROCEDURAL AND FACTUAL HISTORY

On May 14, 2015, Plaintiff filed a Praecipe to Issue Writ of Summons against Defendant and Wolff. The Praecipe to Issue Writ of Summons was filed as a result of alleged breaches of contract, conversion and misrepresentations committed by Defendant. On May 22, 2015, Plaintiff served the Writ of Summons on Defendant.

On May 22, 2015, Plaintiff served Wolff with Plaintiff's first set of Interrogatories. After filing the initial Writ of Summons, Plaintiff received information regarding Defendant selling its assets to Beneficial Holdings, Inc. (hereinafter "Beneficial" and BFHJ Energy Solutions, LLC, d/b/a Beneficial Energy Solutions, LLC (hereinafter "BFHJ"). On June 3, 2015, Plaintiff filed an additional Writ of Summons against Beneficial and BFHJ. As a result of the additional Writ of Summons, Plaintiff served Wolff a second set of Interrogatories on June 8, 2015. Additionally, Plaintiff served Wolff with Plaintiff's first set of Requests for Production of Documents on May 22, 2015 and the second set of Requests for Production of Documents on June 8, 2015.

Plaintiff filed its Complaint on June 7, 2016 and subsequently filed its First Amended Complaint on July 5, 2016. On June 22, 2016, Wolff's counsel indicated that he would no longer be representing Wolff. Wolff filed his pro se answer to Plaintiff's First Amended Complaint on August 16, 2016. On March 29, 2017, the Court granted Plaintiff's Motion to Compel Corey C. Wolff's Responses to Interrogations and gave Defendant sixty (60) days to respond.

The Court is aware of multiple issues pending before the Court in this matter, including

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Plaintiff's Motion for Judgment on the Pleadings, filed by Plaintiff on December 21, 2016 for Argument Court on February 24, 2017, and Defendant's Motion for Leave to File an Amended Answer, filed by Defendant on February 6, 2017 for Argument Court on March 31, 2017. Because these two matters are interconnected, the Court will address both issues at this time. The matters are now ripe for disposition, and will be addressed separately.

DISCUSSION

A. Plaintiff's Motion for Judgment on the Pleadings

Plaintiff states that a party may move for judgment on the pleadings "after the relevant pleadings are closed, but within such time as not to unreasonably delay the trial [.]"
Pa.R.C.P. 1034(a). Plaintiff further states that when ruling on a motion for judgment on the pleadings, a court may only consider the pleadings and any documents properly attached and must accept as true all allegations of the non-moving party. **Pfister v. City of Phila.**, 963 A.2d 593 (Pa.Cmwlth.2009). Additionally, Plaintiff avers that judgment on the pleadings should be granted "where the pleadings evidence that there are no material facts in dispute such that a trial jury would be necessary." **Maryland Cas. Co. v. Odyssey Contracting Corp.**, 894 A.2d 750 (Pa. Super. 2006).

Plaintiff argues that under Pennsylvania law, a party responding to a pleading to which a responsive pleading is required must admit or deny with specificity the pleading's factual averments. **Pa.R.Civ.P. 1029(b)**. Further, Plaintiff argues that pursuant to Pennsylvania Rule of Civil Procedure 1029(b), "Averments in a pleading to which a response is required are admitted when not denied specifically or by necessary implication. **Id.** Plaintiff states that Pennsylvania courts have held that responding to an allegation with the word "denied" is "an insufficient responsive pleading, tantamount to an admission" that "fails to demonstrate even the most rudimentary good faith compliance with [the] rules." **Bogley, Harting & Reese, Inc. v. Stuart**, 11 Pa. D. & C.3d 303, 307 (Pa. Com. Pl. 1979).

Plaintiff argues that Defendant Wolff has failed to comply with the pleading requirements set forth in the Pennsylvania Rules of Civil Procedure. Plaintiff claims that Defendant Wolff has only asserted general denials to the material allegations in the First Amended Complaint. Plaintiff argues that for the reasons mentioned above, Defendant Wolff's general denials should be treated as admissions, and therefore, the Court should grant Plaintiff's Motion for Judgment on the Pleadings because no dispute of material facts remain.

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Further, Plaintiff argues that it is well-settled Pennsylvania law that Defendant Wolff's pro se status does not excuse him from following the Pennsylvania Rules of Civil Procedure. **Dunyan v. Pennsylvania Police**, 2015 WL 5167017 (Pa. Commw. Ct. Feb. 2, 2015). For the reasons mentioned above, Plaintiff argues that the Court should grant Plaintiff's Motion for Judgment on the Pleadings.

Defendant Wolff argues that a Motion for Leave of the Court to Amend the Answer to the First Amended Complaint is currently pending with the Court. Defendant Wolff acknowledges that more information is needed in the Answer to sufficiently support his denials, and that as it stands right now, his Answer is not in compliance with the Pennsylvania Rules of Civil Procedure.

The Court finds that a Judgment on the Pleadings is inappropriate at this time. Defendant shall file an Amended Answer to the First Amended Complaint within sixty (60) days of this Order. If Defendant Wolff still fails to comply with the Pennsylvania Rules of Civil Procedure, Plaintiff can petition the Court to revisit the issue.

B. Defendant's Motion for Leave to Amend Answer to First Amended Complaint

Defendant Wolff argues that pursuant to Pa. R.Civ.P. 1033, "[a] party, either by filed consent of the adverse party or by leave of the court, may at any time change the form of action, correct the name of a party or amend his pleading. **Pa.R.Civ.P. 1033**. Further, Defendant Wolff states that the court has broad discretion in determining whether to allow an amendment. **Capobianchi v. BIC Corp.**, 666 A.2d 344 (Pa. Super. 1995). Defendant Wolff also argues that amendments should be permitted unless they are against a positive rule of law or where the amendment will surprise or prejudice the opposing party. **Horowitz v. Universal Underwriters Ins. Co.**, 580 A.2d 395 (Pa. Super. 1990). For the reasons mentioned above, Defendant Wolff argues that the Court should grant his Motion for Leave to Amend his Answer to the First Amended Complaint.

Plaintiff argues that Defendant Wolff's claim that his Answer was filed pro se is false. Plaintiff states that the docket shows that Defendant Wolff was represented at the time he filed his Answer. Further, even if he was not represented, Defendant Wolff's pro se status is not an excuse for his failure to comply with the Pennsylvania Rules of Civil Procedure. **Groch v. Unemployment Comp. Bd. Of Review**, 472 A.2d 286 (Pa. Cmwlth. 1984).

Plaintiff additionally argues that Plaintiff would be significantly prejudiced if Defendant Wolff is permitted to file the proposed Amended Answer. Plaintiff asserts that Defendant

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Wolff is seeking to change some of his admissions into denials, add new information and add affirmative defenses. Plaintiff argues that pursuant to Pa. R. Civ. P. 1030, Defendant Wolff is no longer permitted to assert new affirmative defenses. For the reasons mentioned above, Plaintiff argues that the Court should deny Defendant Wolff's Motion for Leave to Amend his Answer to the First Amended Complaint.

This Court finds that pursuant to Pa. R. Civ. P. 1033, Defendant Wolff shall have the opportunity to amend this original answer to the first Amended Complaint. Defendant Wolff's Motion for Leave to Amend his Answer to First Amended Complaint is hereby granted. As stated above, Defendant Wolff has sixty (60) days from the date of this order to file an Amended Answer to the First Amended Complaint.

CONCLUSION

For the reasons set forth above, Plaintiff's Motion for Judgment on the Pleadings is hereby denied. Defendant, Cory C. Wolff's Motion for Leave to File an Amended Answer is hereby granted