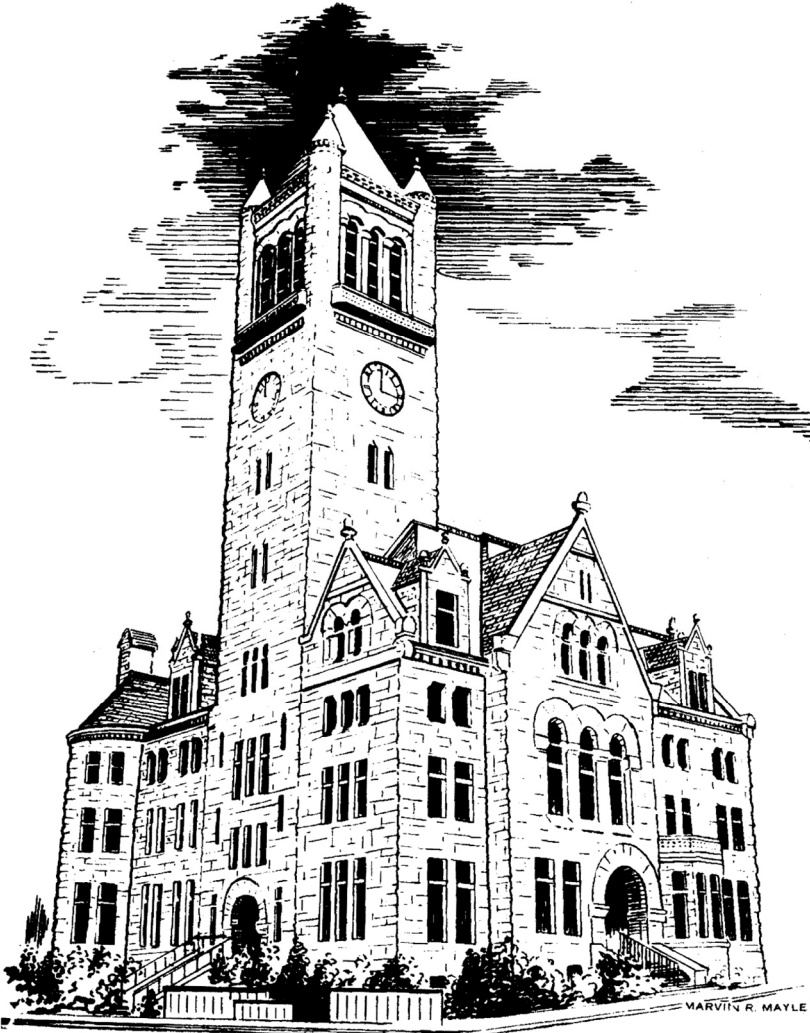


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ESTATE NOTICES

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

RONALD J. BUKOWSKI, late of Franklin Township, Fayette County, PA ⁽³⁾

Personal Representative:

Timothy P. Bukowski
c/o Watson Mundorff, LLP
720 Vanderbilt Road
Connellsville, PA 15425

Attorney: David D. Tamasy

NAOMI J. EICHER, late of Springfield Township, Fayette County, PA ⁽³⁾

Executrices: Linda Eicher, Sheila Porterfield, Marcia Miller and Susan May
c/o 815 A Memorial Boulevard
Connellsville, PA 15425

Attorney: Margaret Z. House

WILMA A. FRANKO, late of Brownsville, Fayette County, PA ⁽³⁾

Executor: John Ball
c/o 51 East South Street
Uniontown, PA 15401

Attorney: Anthony S. Dedola, Jr.

WINONA R. HIGINBOTHAM, late of Georges Township, Fayette County, PA ⁽³⁾

Executrix: Sharon Lee Higinbotham-Butchko
c/o Higinbotham Law Offices
68 South Beeson Boulevard
Uniontown, PA 15401

Attorney: James E. Higinbotham, Jr.

PAUL KLINK, a/k/a PAUL E. KLINK, JR., late of Dunbar Township, Fayette County, PA ⁽³⁾

Administratrix: Sue A. Klink

163 Cow Rock Road

Dunbar, PA 15431

c/o Tremba Kinney Greiner & Kerr

1310 Morrell Avenue, Suite C

Connellsville, PA 15425

Attorney: John Greiner

HELEN MINIAFEE, a/k/a HELEN ELIZABETH MINIAFEE, late of Fayette County, PA ⁽³⁾

Administratrix: Kim Chandler

80 Stewart Avenue

Uniontown, PA 15401

c/o Fieschko & Associates, Inc.

300 Cedar Boulevard, Suite 202

Pittsburgh, PA 15228

Attorney: Joseph Fieschko

Second Publication

MICHAEL A. FUGOZZOTTO, JR., late of Nicholson Township, Fayette County, PA ⁽²⁾

Administrator: Michael Fugozzotto, III

c/o Proden & O'Brien

99 East Main Street

Uniontown, PA 15401

Attorney: Wendy L. O'Brien

DEANNA CAROL HIXSON, a/k/a DIANA HIXSON, late of Mesa, Maricopa County, AZ

Executor: Robert David Hixson ⁽²⁾

c/o Goodwin Como, P.C.

108 North Beeson Boulevard, Suite 400

Uniontown, PA 15401

Attorney: Benjamin F. Goodwin

DORIS ELAINE TANNER, late of Georges Township, Fayette County, PA ⁽²⁾

Administratrix: Christine L. Gipe

1157 Georges-Fairchance Road

Smithfield, PA 15478

Attorney: Douglas S. Sholtis

First Publication

PENNY E. JORDAN, PENNY ELLEN JORDAN, a/k/a PENNY JORDAN, a/k/a PENNY ELLEN MCGAUGHEY, late of Springhill Township, Fayette County, PA ⁽¹⁾
Administratrix: Ashley McCourt
 c/o Davis & Davis
 107 East Main Street
 Uniontown, PA 15401
Attorney: James T. Davis

SANDRA KING, late of Adah, Fayette County, PA ⁽¹⁾
Executor: Jeffrey Gibson
 166 West Maranta Road
 Mooresville, North Carolina 28117
 c/o Myers Law Group, LLC
 17025 Perry Highway
 Warrendale, PA 15086
Attorney: Kate Cleary Lennen

STANLEY C. KNUPSKY, late of Menallen Township, Fayette County, PA ⁽¹⁾
Executrix: Natasha Sigwalt
 c/o Davis & Davis
 107 East Main Street
 Uniontown, PA 15401
Attorney: Jeremy J. Davis

CHARLES A. VALENTIC, late of South Union Township, Fayette County, PA ⁽¹⁾
Executrix: Julie A. Tupta
 48 Burlington Avenue
 Uniontown, PA 15401
 c/o Loftis Law, LLC
 1650 Broadway Avenue, Floor 1
 Pittsburgh, PA 15216
Attorney: Megan Loftis

LEGAL NOTICES

IN RE: SIMS, LINDA D.
 Case No. 24-20837 CMB Chapter 7

Real Estate Located at : 28 Millview Street,
 Uniontown PA 15401
 Tax I.D. Nos. 38-04-0513 and 38-04-0514
 Date of Sale: 1/28/2025 at 1:30 p.m.
 A Zoom Video Conference Hearing will be held
 on 01/28/2025 at 1:30 p.m. via the Zoom
 Video Conference Application
 To participate in and join a Zoom Hearing,
 please initiate and use the following link at least
 ten (10) minutes prior to the scheduled Zoom
 Hearing time:
<https://www.zoomgov.com/j/16143800191>
 or alternatively, you may use the following:
 Meeting ID: 16143800191
 Objections due by: 12/31/2024
 Initial Offer \$54,500.00
 Higher and better offers will be considered at the
 hearing.
 Hand Money required: \$2,000.00
 (Cash or Certified Funds Only)
 Contact: Robert H. Slone, Trustee
 223 South Maple Ave
 Greensburg PA 15601
 Ph# 724-834-2990
 For more information
www.pawb.uscourts.gov/easi.htm

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION
ACTION TO QUIET TITLE
NO. 2325 OF 2024 G.D.
JUDGE NANCY D VERNON

JOSEPH A. CHOLOCK,
Plaintiff,
vs.

ROBERT MYERS, his successors, heirs,
Personal representatives and assigns,
generally,
Defendants.

TO: ROBERT MYERS, his heirs,
successors and assigns, generally,

You are hereby notified that Joseph A. Cholock, has filed a complaint at the above number and term in the above-mentioned court in an action to quiet title wherein it is alleged that he is the owner in possession of that certain lot of land situate in in the City of Uniontown, Fayette County, Pennsylvania having an address of 120 Bailey Avenue, Uniontown, Pennsylvania.

Title to the above-described property was conveyed to Robert Myers, a single man, by a deed from Robert D. Manges and Terri Manges, his wife, dated June 6, 2018 and recorded in the Office of the Recorder of Deeds of Fayette County, Pennsylvania in Record Book 3374, page 1121.

Said complaint sets forth that the plaintiff is the owner in fee simple of the above-described premises. The complaint was filed for the purpose of barring all of your right, title, and interest, or claim in and to all or a portion of said premises.

NOTICE

You are hereby notified that you have been sued in court. If you wish to defend against the claim set forth in the complaint and in the within advertisement, you must take action within twenty (20) days after the last advertisement of this notice by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claim set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may entered against you by the court without further notice or 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 NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GOT TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

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100 SOUTH STREET
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HARRISBURG, PA 17108
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By Jason F. Adams, Esq.
Adams Law Offices, PC
55 E. Church Street
Uniontown, PA 15401

WARMAN ABSTRACT & RESEARCH LLC

JOHN F. WARMAN
 518 Madison Drive
 Smithfield, PA 15478
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JUDICIAL OPINION

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

GREGORY SWARTZ JR. and SARAH	:	
SWARTZ, husband and wife,	:	
Plaintiffs,	:	
v.	:	
JOHNSON MASONRY RESTORATION	:	
AND TOMMY JOHNSON,	:	No. 1011 of 2024
Defendants.	:	President Judge Steve P.

OPINION AND ORDER

LESKINEN, P.J.

November 8, 2024

Before the Court are the Preliminary Objections of Defendants, Johnson Masonry Restoration and Tommy Johnson. (Collectively, "Johnson.") Upon consideration of the Objections and the briefs and arguments offered by the parties, the Court issues this Opinion and Order overruling the Preliminary Objections.

In June of 2022, the Swartzes contracted with Johnson to perform certain masonry, restoration, and waterproofing work on their residence in Uniontown, Pennsylvania. Johnson began work on August 3rd, 2022, and completed work on August 10th, 2022, for which the Swartzes paid \$10,000.00 cash. Shortly after the work was completed, the Swartzes allege that they noticed issues with mold and water damage as well as some cosmetic repairs that had not been completed. They claim Johnson never returned to finish or correct the work and never provided them with a copy of the contract, despite repeated requests. In January of 2024, the Swartzes filed a civil action against Johnson in the Magisterial District Courts and on May 10th, 2024, Judgment was entered in their favor and against Johnson. Johnson filed a timely appeal and the Swartzes filed a complaint in this Court on June 4th, 2024 seeking in excess of \$10,000.00 in damages.

The Complaint includes counts for breach of contract, negligence, violations of the Home Improvement Consumer Protection Act (HICPA), and violations of the Unfair Trade Practices and Consumer Protection Law (UTPCPL). {1} Johnson filed Preliminary Objections. The first Objection seeks the dismissal of the HICPA count on the basis that Johnson is not a home improvement contractor under the Act and that the Act does not provide a private cause of action. The Second Objection seeks the dismissal of the UTPCPL count for a failure to aver the required specific allegations of fraud.

{1} Home Improvement Consumer Protection Act, 73 P.S. §517.1, et seq., Act of Oct. 17, 2008, P.L. 1645, No. 132, as amended; Unfair Trade Practices and Consumer Protection Law, 73 P.S. §201-1, et seq., Act of Dec. 17, 1968, P.L. 1224, No. 387, as amended.

§517.2 of the HICPA sets forth the definitions of "contractor" and "home improvement" relevant to this case. The definition of "contractor" includes in part, "Any person who owns and operates a home improvement business or who undertakes, offers to undertake, or agrees to perform any home improvement." The definition goes on to specifically exclude "a person for whom the total cash value of all that person's home improvements is less than \$5,000 during the previous taxable year." "Home improvement" is defined as work done on a private residence for which the agreed upon cash price is more than \$500, including repair, replacement, remodeling, installation, alteration, improvement, or rehabilitation; and the construction, replacement, installation, or improvement of, porches, roofs, doors, windows, and waterproofing. (Irrelevant items omitted.)

The Swartzes aver that the work at issue included fixing the chimney, pouring cement, adding a custom doorway, waterproofing a room, beam restoration, removing a railing, repairing pillars, and fixing areas with cosmetic damage at their residence. This is clearly the type of work defined as "home improvement" in the HICPA. For the purposes of an initial pleading, it is sufficient to reference a specific statutory definition and aver that Johnson's work falls under that definition without the need to separately aver each element of the statutory definition in the complaint.

To the extent that Johnson argues that they are excluded from the definition of a contractor as "stonemasons for primarily business customers," there is nothing in any of the relevant definitions that excludes masonry work, and the distinction between commercial and residential work is addressed by the requirement in the definition of "contractor" that the service provider must have performed \$5,000 or more in "home improvements" in the previous taxable year. {2} Further, the Swartzes aver that they found Johnson on the website Angie's List (n/k/a Angi) which serves as a directory specifically for residential services and repairs. {3}

Johnson also objects on the basis that the HICPA does not provide for a private right of action. §517.10 provides that a violation of any of the provisions of this act shall be deemed a violation of the UTPCPL. The UTPCPL includes a provision creating a private right of action in §201-9.2. "The HICPA functions much like an expansion upon the UTPCPL: Violations of the HICPA are treated as violations of the UTPCPL, and no provision of the HICPA precludes any right a consumer may have under the UTPCPL." Office of Attorney General by Henry v. Gillece Services, LP, 320 A.3d 790, 797 (Pa. Cmwlth. 2024). Though the Swartzes have pied their HICPA claim with sufficient specificity, because the enforcement mechanism lies in the UTPCPL, it should be pied as a UTPCPL count grounded in a violation of the HICPA rather than as an HICPA count. The Swartzes did so here, including the HICPA claim under the UTPCPL claim along with a second UTPCPL claim grounded in fraud. Therefore, the Objection to Count III would be sustained to the extent that the HICPA is not an independent cause of action, but Plaintiff must be permitted to amend the pleading to aver the relevant facts in support of the UTPCPL claim.

{2} Of note, this project alone would meet the minimum requirement to consider Johnson a "contractor" for the following tax year under the statutory definition.

{3} The Court takes judicial notice that as of November, 2024, Johnson's profile on the Angi site includes 31 reviews from residential projects, including 13 reviews in 2021 and 7 reviews in 2020.

Johnson's second Preliminary Objection seeks the dismissal of the UTPCPL count for a failure to aver fraud with specificity. §201-2 of the UTPCPL sets forth 21 categories of "unfair methods of competition" and "unfair or deceptive acts or practices" that are prohibited acts under §201-3. The Complaint does not identify which of the prohibited acts in which Johnson engaged, stating only in Paragraph 32 that "Defendants violated the [UTPCPL] by perpetrating a fraud upon Plaintiffs." §201- 2(4)(xxi), known as the "catchall provision" includes "engaging in any other fraudulent or deceptive conduct which creates a likelihood of misunderstanding." To maintain an action under the catchall provision of the UTPCPL, a plaintiff must establish that:

1. They purchased or leased good or services primarily for a personal, family, or household purpose;
2. They suffered an ascertainable loss of money or property;
3. The loss occurred as a result of the use or employment by a vendor of a method, act, or practice declared unlawful by the UTPCPL; and
4. The consumer justifiably relied upon the unfair or deceptive business practice when making the purchasing decision.

Gregg v. Ameriprise Financial, Inc., 664 Pa. 567, 582 (Pa. 2021). The catchall provision was originally limited to fraudulent conduct but was amended in 1996 to include any fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding. *Id.* at 583. Under Gregg, a UTPCPL claim based on fraudulent conduct requires intent, but a claim based on deceptive conduct is a strict liability claim that does not require a plaintiff to show carelessness or an intent to deceive. *Id.* at 587 and 591. Here, the Swartzes invoke fraud, which must be averred with particularity under Pa. R.C.P. 1019. If the Swartzes intend to proceed with a fraud claim under the catchall provision, it should be specifically identified as such with sufficient averments of fact to address both the elements for a cause of action under the catchall provision and the elements of fraud.

WHEREFORE, the Court issues the following Order:

ORDER

AND NOW, this 8th day of November, 2024, upon consideration of the Defendants' Preliminary Objections and the briefs and arguments offered by the parties, the Court hereby ORDERS and DIRECTS that the Objections are SUSTAINED, with leave to amend, in accordance with the preceding Opinion, Plaintiffs shall have twenty (20) days to file an Amended Complaint and Defendants shall then have twenty (20) days from the service of the Amended Complaint to file an Answer.

The Court further ORDERS and DIRECTS that this matter shall be referred to arbitration pursuant to F.C.R. 1303. The Fayette County Court Administrator is DIRECTED to schedule this case for the next available arbitration date at least sixty days from the date of this order.

BY THE COURT:
STEVE. P. LESKINEN,
PRESIDENT JUDGE

ATTEST:
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