

Adams County Legal Journal

Vol. 66

June 14, 2024

No. 7

IN THIS ISSUE:

**H&M HOLDINGS GROUP, LLC,
ASSIGNEE OF MEMBERS FIRST FEDERAL
CREDIT UNION**

v.

ALAN K. PATRONO

Invest With Experience

The right financial partner will help you plan for the future and manage investments with your best interest in mind. Our disciplined, common sense approach to investment management is customized to meet your objectives.

acnb.com | 1.888.334.2262



**Trust & Investment
Services**

Securities and Insurance Products are: NOT FDIC INSURED • MAY LOSE VALUE • NOT BANK GUARANTEED • NOT A DEPOSIT • NOT INSURED BY ANY FEDERAL GOVERNMENT ENTITY

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published weekly by Adams County Bar Association, Edward G. Puhl, Esq., Editor; Dr. B. Bohleke (since 2019), Business Manager.

Business Office – 117 BALTIMORE STREET, ROOM 305, GETTYSBURG, PA 17325-2313. Telephone: (717) 337-9812

Copyright© 1959 by Wm. W. Gaunt & Sons, Inc., for Adams County Bar Association, Gettysburg, PA 17325. All rights reserved.

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following account with statements of proposed distribution filed therewith have been filed in the Office of Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County-Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts entering decrees of distribution on 06/21/2024, 08:30 a.m.

HAAS—Orphans' Court Action Number – OC-42-2024. Petition for Adjudication/Statement of Proposed Distribution. Estate of JIMMY JOE HAAS, late of Adams County, Pennsylvania.

SNAPP—Orphan's Court Action Number – OC-46-2024. Petition for Adjudication/Statement of Proposed Distribution. Estate of JEANETTE K. SNAPP, late of Adams County, Pennsylvania.

JAKO—Orphan's Court Action Number – OC-54-2024. Petition for Adjudication/Statement of Proposed Distribution. Estate of JOHNNY F. JAKO, late of Adams County, Pennsylvania.

Kelly A. Lawver
Clerk of Courts

6/7 & 6/14

FICTITIOUS NAME REGISTRATION

NOTICE IS HEREBY GIVEN that on May 23, 2024, a certificate was filed under the Fictitious Name Act, in the Office of the Secretary of the Commonwealth of Pennsylvania, setting forth that Aydus, LLC, a Pennsylvania limited liability company is the only entity owning or interested in a business known as **Jester's Computer Services**, and the location where the business is and will be located is 24 Sunfish Trail, Fairfield, PA 17320.

G. Steven McKonly, Esquire

6/14

CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on April 30, 2024, Logan J. Carbaugh and Madyson T. Henley filed a petition for name change in the Court of Common Pleas of Adams County, Pennsylvania requesting a decree to change the name of the minor Delaney Marie Henley to Delaney Marie Carbaugh. The court has affixed July 19, 2024, at 10:30 a.m. in Courtroom No. 4, Third Floor of the Adams County Courthouse as the time and place for the hearing of said petition, when and where all persons interested may appear and show cause, if any they have, why the Petition should not be granted.

06/14

NOTICE OF WINDING UP of Wm. F. Hill & Associates, Inc.

NOTICE IS HEREBY GIVEN TO ALL persons interested or who may be affected, that **Wm. F. Hill & Associates, Inc.**, with its registered office at 207 Baltimore Street, Gettysburg, Pennsylvania, a business corporation, has elected, pursuant to Resolution duly proposed at a meeting of the Board of Directors and approved at a meeting of the Shareholder, to voluntarily dissolve the corporation and intends to file Articles of Dissolution with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania. The Board of Directors is now engaged in winding up and settling the affairs of said corporation so that its corporate existence shall be ended under the provisions of the Pennsylvania Business Corporation Law of 1988, as amended.

Harold A. Eastman, Jr.
Barley Snyder, LLP
123 Baltimore Street, Suite 101
Gettysburg, PA 17325

6/14

H&M HOLDINGS GROUP, LLC, ASSIGNEE OF MEMBERS FIRST FEDERAL CREDIT UNION v. ALAN K. PATRONO.

Editor's Note: This same opinion was issued under separate docket numbers assigned to cases captioned H&M Holdings Group, LLC, assignee of Members First Federal Credit Union v. Jonathan Patrono, and H&M Holdings Group, LLC, assignee of Members First Federal Credit Union v. Jane H. Patrono.

1. Appellant, Alan Kim Patrono (“Appellant”), challenges this Court’s ruling that he waived the right to seek arbitration pursuant to the terms of the personal guarantee which is the subject of this litigation.
2. Just weeks prior to the commencement of trial—and after five years of litigation including an extensive history of discovery proceedings and the imposition of sanctions against them—the Patrono Defendants disclosed that they were in possession of as many as 74 boxes of documents related to this litigation which were not provided to Plaintiffs. Following hearing on Plaintiffs’ Request for Emergency Relief, this Court ordered the entry of judgment in favor of Plaintiffs and against Patrono Defendants on all causes of action which were scheduled for jury trial. In addition, the Court scheduled hearing to determine the amount of damages, legal fees, and punitive sanctions, if any.
3. On March 7, 2024, Patrono Defendants’ counsel, for the first time, forwarded correspondence to Plaintiffs’ counsel demanding the Confession of Judgment action be submitted to arbitration. The correspondence spawned an emergency Motion for Special Relief from Plaintiffs, a Petition to Compel Arbitration from Patrono Defendants, an Emergency Motion to Strike the Petition to Compel Arbitration from Plaintiffs, an Emergency Motion for Stay of Proceedings filed by Patrono Defendants, and an Opposition in Reply filed by Plaintiffs.¹ On April 4, 2024, this Court entered an

¹ This 20-day window in the six-year history of this litigation provides a snapshot of the litigious nature of the parties’ dispute. Prior to its transfer from Cumberland

Order denying Patrono Defendants’ Petition to Compel Arbitration as waived. It is this Order that is the subject of the current appeal.

4. It is well-settled that [a]s a matter of public policy, our courts favor the settlement of disputes by arbitration. Nevertheless, the right to enforce an arbitration clause can be waived. Waiver may be established by a party’s express declaration or by a party’s undisputed acts or language so inconsistent with a purpose to stand on the contract provisions as to leave no opportunity for a reasonable inference to the contrary.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, 2018-SU-1293, No. 519 MDA 2024

Paige Macdonald-Matthes, Esquire,
and Jennifer L. Bruce, Esquire, Attorneys for Plaintiffs
Ronald L. Finck, Esquire,
and Aaron D. Martin, Esquire, Attorneys for Defendants
George, P. J., June 3, 2024

OPINION PURSUANT TO Pa. R.A. P. 1925(a)

Appellant, Alan Kim Patrono (“Appellant”), challenges this Court’s ruling that he has waived the right to seek arbitration pursuant to the terms of the personal guarantee which is the subject of this litigation.² As the procedural history is critical to resolution of the current issue, it will be summarized hereinbelow.

The cornerstone of this multifaceted, complex litigation is a failed business venture undertaken by members of the Hauser family in approximately 2006. Around that time, the sole Hauser heirs of Helen Hauser formed Hauser Estate, Inc. (“Hauser Estate”) and

County to Adams County, the Confession of Judgment record exceeded 3,000 pages. The current record in this litigation exceeds 10,000 pages.

² The procedural history, which will be set forth in greater detail in this Opinion, recognizes that the cause of action subject to this appeal is only one piece of a larger complex litigation involving a host of claims and counterclaims. This cause of action relates to Appellees’ efforts to confess judgment against the Appellant pursuant to a Confession of Judgment clause contained in a personal guarantee executed by Appellant to secure credit provided to a now-bankrupt entity. As the Confession of Judgment action was severed from other aspects of the litigation, it will be referred to separately throughout this Opinion.

another corporate entity, Hauser Family Farms, LLC (“HFF”)³ to operate a wine business and vineyards. The corporate entities were created through Appellant’s law office.⁴ Over time, at the behest of Jonathan Patrono, the family’s two corporate entities ventured into the cider business. The overarching theme of this litigation is the breakdown of the business relationships due to allegations of self-dealing, legal malpractice, and actual fraud. Ultimately, the primary corporate entity, Hauser Estate, successfully filed bankruptcy.

Within the umbrella of this general history is the focus of this appeal which originates from personal guarantees securing financing for Hauser Estate in an amount of approximately \$1.5 million dollars. The loans secured by the guarantees were made by Members 1st Federal Credit Union (“Members 1st”) to Hauser Estate. All notes were secured by personal guarantees executed by Melinda Davis, Hannah Hauser, Jane Patrono, Appellant, and Jonathan Patrono. When Members 1st threatened to pursue collection of the loans against the parties pursuant to the personal guarantees, H&M Holdings Group, LLC (“H&M”) intervened to buy the notes from Members 1st at full face value.⁵ After doing so, H&M initiated litigation to collect the assigned debt solely from the Patrono Defendants. Initially, litigation was commenced in Adams County on July 27, 2018 when H&M filed Confession of Judgments against the Patrono Defendants pursuant to the terms of the personal

³ Plaintiffs/Appellees Melinda Davis and Hannah Hauser and Defendant Jane Patrono are sisters and the sole heirs of their mother’s estate. The other individual Defendants include Jane Patrono, who is the wife of Appellant Alan Patrono, and two children of Jane and Alan Patrono, Polly Patrono and Jonathan Patrono. As Polly Patrono is not a party to the Confession of Judgment action, her participation in this aspect of the litigation is minimal. Therefore, as used throughout the remainder of this Opinion, “Patrono Defendants” will refer only to Alan Patrono, Jane Patrono, and Jonathan Patrono. Incidentally, each of the Patrono Defendants executed personal guarantees and are the subject of individual Confessions of Judgment. Each also has filed appeal identical to this appeal.

⁴ Alan Patrono and Jonathan Patrono are licensed Pennsylvania attorneys.

⁵ Melinda Davis and Hannah Hauser are the sole stockholders of H&M.

guarantees.⁶ On August 23, 2018, for a reason not clear in the record, H&M filed a second Complaint in Confession of Judgment.

On August 24, 2018, the Patrono Defendants filed a Petition to Strike or Open Confessed Judgment with Request for Stay of Execution. The Petition raised 13 different grounds to either strike or open the confessed judgments.⁷ Notably, the Patrono Defendants did not raise a demand for arbitration. Perhaps foreshadowing the nature of the litigation that was to follow, the Adams County action involved several discovery disputes and emergency motions for relief. Additionally, efforts at mediation entered by agreement of the parties proved unsuccessful. Ultimately, approximately 15 months later, on November 1, 2019, the Honorable Thomas Campbell granted Patrono Defendants' Petition to Strike the Confessed Judgments.

On November 27, 2019, H&M initiated Confession of Judgment actions against the Patrono Defendants in the Court of Common Pleas of Cumberland County. The Confession of Judgment actions were once again met by a Petition to Strike and Open filed by each of the Patrono Defendants. Each Petition was approximately 30 pages in length consisting of 212 paragraphs. The Petitions alleged numerous bases for relief but did not raise any demand for arbitration.⁸

⁶ The litigation is filed at Adams County Civil No's. 2018-SU-813, 2018-SU-814, and 2018-SU-815.

⁷ In support of the Petition to Strike, the Patrono Defendants alleged: (1) failure to attach warrant on the loan; (2) failure to verify complaint; (3) failure to file original warrant or affidavit; (4) violation of Pa. R. Civ. P. 2958.4; (5) confessed judgment included items not authorized by warrant; (6) excessive attorney fees; and (7) failure to give notice required by Pa. R. Civ. P. 236. In support of the Petition to Open Confessed Judgment, the Patrono Defendants alleged: (1) no money was due on the loan; (2) a breach of duty of good faith/fiduciary duties; (3) violation of governance agreement; (4) the notes had been discharged; (5) the amount of confessed judgments was subject to contribution; and (6) extensive attorney fees.

⁸ In regard to the Petition to Strike, the Patrono Defendants alleged: (1) copies of the warrants failed to be attached to the complaint; (2) the confessions included items not authorized by the warrant; and (3) the confessions violated Pa. R. Civ. P. 2952(a)(5). In support of the Petition to Open, the Patrono Defendants alleged: (1) the default had been cured; (2) breach of a duty of good faith; (3) violation of

On January 17, 2020, Cumberland County Judge Matthew Smith entered an Order scheduling argument, permitting 45 days for discovery, and staying execution on the judgments. Discovery was rigorously pursued and, in keeping with the pattern of this litigation, resulted in numerous discovery disputes and at least one motion for protective order. During this time, the parties availed themselves of both depositions and written interrogatories. Following argument on July 14, 2020, Judge Smith denied the Petition to Strike. Thereafter, the parties apparently met with the Court for purposes of identifying future scheduling on the remaining Petition to Open.

Once again for reasons unclear in the record, on July 29, 2020, H&M filed an Amended Complaint for Confession of Judgment and discovery recommenced. Unsurprisingly, the additional discovery again resulted in dispute which led to issues of discovery being referred to a master. Ultimately, after three days of testimony on February 23, 2021, February 24, 2021, and March 1, 2021, Judge Smith entered an Order opening the judgments.⁹ In an Opinion accompanying his March 11, 2021 Order, Judge Smith determined that there existed an issue concerning the date of default on the notes, which justified the opening of the judgments. He further opined that although he reached no conclusion as to whether H&M was a “sham” corporate entity, the defense, if proven, was meritorious and that sufficient evidence existed to require submission to a factfinder.¹⁰ Following Judge Smith’s Order, and by agreement of the parties, the Cumberland County litigation was transferred to the jurisdiction of the Adams County Court of

the governance agreement; (4) H&M was a sham corporation; (5) the Defendants were entitled to an offset for payments due from other creditors; (6) the amounts alleged in the confessions were incorrect; and (7) *res adjudicata* and law of the case prohibited the Cumberland County actions.

⁹ A trial court may open a confessed judgment if the petitioner (1) acts promptly, (2) alleges a meritorious defense, and (3) can produce sufficient evidence to require submission of the case to a jury. ***Pops PCE TT, LP v. R&R Restaurant Group, LLC***, 208 A.3d 79, 85-86 (Pa. Super. 2019).

¹⁰ In his ruling, Judge Smith did not act upon the claims related to breach of fiduciary duty or whether a second confession of judgment action in Cumberland County was proper following the litigation on the Confession of Judgment filed in Adams County.

Common Pleas on April 30, 2021. It is these actions which are the subject of the current appeal.

In addition to the procedural maneuvering occurring in the Confession of Judgment actions, concurrent litigation was initiated in Adams County on December 11, 2018 when Plaintiffs filed a *Lis Pendens* on the Patrono Defendants' properties accompanied by a Writ of Summons.¹¹ In the *Lis Pendens* litigation, the record was dormant until the Court, *sua sponte*, due to the case's inactivity, listed the matter for a pre-trial conference on October 2, 2020.¹² The Court's action apparently spawned activity as the Patrono Defendants filed a Rule to File Complaint on October 16, 2020.

At the pre-trial conference held on October 27, 2020, it was discovered that Plaintiffs/Appellees had also filed a Complaint against the Patrono Defendants in Dauphin County on October 30, 2019.¹³ The parties discussed the timing for the filing of a Complaint in the Adams County action as well as consolidation of the numerous actions in three separate counties. The subsequent Complaint was met by Preliminary Objections, which resulted in the filing of an Amended Complaint on December 21, 2020. In an effort to bring some sense to the numerous litigations, following a status conference on August 16, 2021, and by agreement of the parties, the Confession of Judgment action transferred from Cumberland County was stayed and Plaintiffs/Appellees were directed to file a Third Amended Complaint incorporating all other causes of action alleged in either the Adams or Dauphin County litigations.

On September 7, 2021, Melinda Davis, Hannah Hauser, and H&M filed a Third Amended Complaint against the Patrono Defendants.¹⁴ On September 28, 2021, all Defendants filed an

¹¹ It was the commencement of this action which generated the controlling docket number in these matters.

¹² At the time of this Court's action in listing the matter for conference, the Court was unaware of the Cumberland County litigation.

¹³ The Dauphin County action was listed at 2019-CV-7967. The action apparently consisted of claims related to breach of fiduciary duties, legal malpractice, and fraud. The Dauphin County action was subsequently transferred to this jurisdiction by stipulation of the parties on December 23, 2020.

¹⁴ With the exception of the Confession of Judgment actions, the Third Amended Complaint is the controlling pleading in this litigation and included Polly Patrono,

Answer, New Matter, and Counterclaim, which included counterclaims for breach of fiduciary duty and breach of the governance agreement. Both of these counterclaims had also previously been raised as defenses in the Confession of Judgment action. Additionally, the concept of offset was raised in both the Answer, New Matter, and Counterclaim as well as the Patronos' defense to the Confession of Judgment actions.

Over the course of the next several years, the litigation became considerably more adversarial. Discovery disputes arose with frequency. Petitions and motions for emergency relief were the norm rather than the exception. Sanctions were sought against both the parties and counsel. Ultimately, the numerous claims between the parties crept to final resolution.

In early 2023, the Court severed the causes of action related to the *Lis Pendens* actions. The crux of the *Lis Pendens* claims alleged the fraudulent transfer of real estate by the Patrono Defendants.¹⁵ By Order dated June 16, 2023, this Court entered judgment in favor of Plaintiffs and against Patrono Defendants directing Defendants be enjoined from transferring or encumbering their real estate. The Court also set a hearing on the propriety and amount, if any, of punitive damages and legal fees. Concurrent with its Order, the Court made Findings of Fact including that the Patrono Defendants intentionally transferred numerous titles to the real estate in an effort to protect the properties from collection in the event judgment was entered against them in the pending related litigation. This Court concluded that the transfers were made with actual fraudulent intent

Attorney John Murphy, Patrono & Murphy, LLC, and Apple Leaf Abstracting & Settlement Company. These Defendants are unrelated to the subject of the current appeal. Attorney Murphy has subsequently been removed as a Defendant in this matter.

¹⁵ As mentioned, these causes of action originated in Adams County in an apparent effort by Plaintiffs to preserve the collectability of a judgment, if any, against Patrono Defendants' real estate assets in the event they were successful in the Confession of Judgment action or the then-pending litigation in Dauphin County.

pursuant to 12 Pa. C.S.A. § 5104(a)(1) (relating to fraudulent transfers to avoid creditors).¹⁶

The remaining causes of action and the counterclaims, with the exception of the Confession of Judgment action, were on the cusp of reaching conclusion when they were scheduled for jury trial in October of 2023. Unfortunately, the litigation never proceeded to trial. Just weeks prior to the commencement of trial—and after five years of litigation including an extensive history of discovery proceedings and the imposition of sanctions against them—the Patrono Defendants disclosed that they were in possession of as many as 74 boxes of documents related to this litigation which were not provided to Plaintiffs.¹⁷ Following hearing on Plaintiffs’ Request for Emergency Relief, this Court ordered the entry of judgment in favor of Plaintiffs and against Patrono Defendants on all causes of action which were scheduled for jury trial. In addition, the Court scheduled hearing to determine the amount of damages, legal fees, and punitive sanctions, if any.¹⁸ By separate Order entered February 8, 2024, the Court scheduled the unresolved claims related to the Confession of Judgment action for non-jury trial on May 20, 2024. The scheduling Order granted the parties an additional period of time to conclude discovery.

On March 7, 2024, Patrono Defendants’ counsel, for the first time, forwarded correspondence to Plaintiffs’ counsel demanding the Confession of Judgment action be submitted to arbitration. The correspondence spawned an emergency Motion for Special Relief from Plaintiffs, a Petition to Compel Arbitration from Patrono Defendants, an Emergency Motion to Strike the Petition to Compel Arbitration from Plaintiffs, an Emergency Motion for Stay of Proceedings filed by Patrono Defendants, and an Opposition in

¹⁶ The Court’s Order is currently the subject of a pending concurrent appeal before the Pennsylvania Superior Court. As such, a hearing on damages, punitive sanctions, and legal fees has not been held.

¹⁷ As of this writing, the actual number of boxes is unknown as the Patrono Defendants’ testimony was both unclear, and at times, contradictory.

¹⁸ The Court’s Order entering judgment in favor of Plaintiffs and against Patrono Defendants for discovery violations is also the subject of separate concurrent appeal to the Pennsylvania Superior Court.

Reply filed by Plaintiffs.¹⁹ On April 4, 2024, this Court entered an Order denying Patrono Defendants' Petition to Compel Arbitration as waived. It is this Order that is the subject of the current appeal.

The primary target of Patrono Defendants' challenge is the Court's finding that their right to pursue arbitration pursuant to the terms of the personal guarantees has been waived.

An appellate court's scope of review in determining whether the trial court erred in refusing to compel arbitration is limited to determining whether the trial court's findings are supported by substantial evidence and whether the trial court abused its discretion. *Samuel J. Marranca Gen. Contracting Co., Inc. v. Amerimar Cherry Hill Associates Limited Partnership*, 610 A.2d 499, 500 (Pa. Super. 1992). The framework for guiding a trial court's exercise of discretion is succinctly identified by the Superior Court in *Stanley-Laman Group, Ltd. v. Hyldahl*, as follows:

It is well-settled that [a]s a matter of public policy, our courts favor the settlement of disputes by arbitration. Nevertheless, the right to enforce an arbitration clause can be waived. Waiver may be established by a party's express declaration or by a party's undisputed acts or language so inconsistent with a purpose to stand on the contract provisions as to leave no opportunity for a reasonable inference to the contrary. A party's acceptance of the regular channels of the judicial process can demonstrate its waiver of arbitration. However, a waiver of a right to proceed to arbitration pursuant to the term of a contract providing for binding arbitration should not be lightly inferred and unless one's conduct has gained him an undue advantage or resulted in prejudice to another he should not be held to have relinquished the right.

¹⁹ This 20-day window in the six-year history of this litigation provides a snapshot of the litigious nature of the parties' dispute. Prior to its transfer from Cumberland County to Adams County, the Confession of Judgment record exceeded 3,000 pages. The current record in this litigation exceeds 10,000 pages.

938 A.2d 378, 382-83 (Pa. Super. 2007) (citations and quotations omitted).

Among the factors to look at in determining whether a party has accepted the judicial process are whether the party (1) fail[ed] to raise the issue of arbitration promptly, (2) engage[d] in discovery, (3) file[d] pretrial motions which do not raise the issue of arbitration, (4) wait[ed] for adverse rulings on pretrial motions before asserting arbitration, or (5) wait[ed] until the case is ready for trial before asserting arbitration.

O'Donnell v. Hovnanian Enterprises, Inc., 29 A.3d 1183, 1187 (Pa. Super. 2011) (quotations omitted).

Instantly, Patrono Defendants unquestionably failed to raise the issue of arbitration promptly. Litigation concerning the guaranty contracts commenced in Adams County in July of 2018 and was active through November of 2019. Although the litigation was a separate action, it involved the same parties and the same contract. Patrono Defendants submitted to the jurisdiction of the court rather than demanding arbitration as evidenced by their efforts to defend the action on numerous grounds, none of which were a demand for arbitration. Indeed, Patrono Defendants agreed to submit the matter to mediation while the action was pending rather than seek enforcement of the compulsory arbitration clause. Their clear intent to submit the matter to the jurisdiction of the court inconsistent with the contractual provisions for arbitration was ultimately rewarded by the Court granting their requested relief. Although this litigation occurred in a different case, it involved the same contract and is circumstantially indicative of the Appellant's willingness to submit to the jurisdiction of the Court, rather than arbitration, for the resolution of issues related to the underlying contract.

Even should consideration of the earlier litigation be entirely excluded, a very similar history occurred in the current action which was initiated in Cumberland County approximately four-and-a-half years ago. Rather than promptly raising the issue of arbitration, Patrono Defendants chose to submit to the jurisdiction of the court by challenging the confession of judgment clause contained in the

contract on 13 separate bases; none of which involved a demand for arbitration. Once again, Appellant availed himself of extensive discovery, which included court involvement, and rulings, on several occasions. Throughout the process, Patrono Defendants, two of whom are licensed attorneys, repeatedly took advantage of trial processes in which they secured favorable rulings. Indeed, Patrono Defendants expressly agreed to submit to the jurisdiction of this Court by stipulation to transfer this litigation from the Cumberland County Court of Common Pleas to the Adams County Court of Common Pleas without once raising a demand for arbitration.

Although the Confession of Judgment action procedurally paused for some period of time, it was unquestionably interwoven in the overarching litigation involving the parties, which was extremely active for over four additional years. Intensive discovery occurred relating to mutual issues in all cases. Factual and legal issues critical to all causes of action, including the Confession of Judgment action, were collectively argued and explored.²⁰ Any suggestion that the pause in scheduling the Confession of Judgment action justifies any inaction on the part of Patrono Defendants in demanding arbitration simply defies an active record to the contrary. Incredulously, prior to demanding arbitration, Patrono Defendants have actually availed themselves of appellate relief on a number of matters involved in this litigation. Despite the lengthy history, it was only after this matter was on the eve of trial that Patrono Defendants made their first demand for arbitration.

Coincidentally, this demand occurred only after the Court had made adverse findings that Patrono Defendants took action to defraud creditors and imposed sanctions for discovery violations. The undue advantage gained by Patrono Defendants in actively pursuing this litigation through extensive discovery and court hearings, some of which produced favorable rulings, only to now seek arbitration weeks before trial is self-apparent.

²⁰ For instance, Patrono Defendants' defense in the Confession of Judgment action raises a claim against Plaintiffs for an alleged breach of fiduciary duty, which is essentially identical to the counterclaim raised in other aspects of this litigation and for which extensive discovery by all parties has been continuously conducted.

Similarly, the unnecessary delay and expense that will be incurred by transferring this matter to arbitration is unquestionably prejudicial at this late date. It is simply unrealistic to expect an arbitrator to acquaint himself or herself with over five years of complex litigation involving a host of interrelated claims already reviewed by Judges in at least two jurisdictions in a manner which does justice to a party's right to the timely resolution of disputes. It is equally unfair and prejudicial to actively engage a party in over five years of extremely adversarial and expensive litigation before the Court only to argue, within weeks of reaching conclusion, it was all for naught. Appellant's conduct in this litigation fits squarely within the factors outlined by the Superior Court in determining whether a party has accepted the judicial process in lieu of an arbitration clause.

Appellant claims the Court erred in implicitly finding waiver based solely on a late invocation of the arbitration provision. Appellant cites *Keystone Tech. Grp., Inc. v. Kerr Grp., Inc.*, 824 A.2d 1223, 1227 n.5 (Pa. Super. 2003), for the proposition that the question of whether a party's demand for arbitration is timely is for the arbitrators rather than the courts. It appears, however, that this argument confuses issues of timeliness, as defined by the document which requests arbitration, with those related to waiver due to a party's submission to the jurisdiction of the Court.

It is true our Supreme Court has indicated that where one party to an agreement to arbitrate seeks to enjoin the other from proceeding to arbitration on the basis of timeliness of the request, judicial inquiry is limited to the question of whether an agreement to arbitrate was entered into and whether the dispute falls within the scope of the arbitration provision. *Muhlenberg Twp. School District Auth. v. Pa. Fortunato Construction Co.*, 460 Pa. 260, 333 A.2d 184 (1975). Subsequent appellate cases, including *Keystone Tech.*, have repeated this general proposition. In *Muhlenberg Twp.*, the issue before the Court was whether "the demand for arbitration came too late under the governing terms of the contract." *Id.* at 186. The *Muhlenberg* Court determined that where an issue relates to whether a demand for arbitration was timely raised pursuant to the terms of the arbitration agreement, the issue is properly for the board

of arbitration, rather than the courts, as it “relates to the contract.”
See id.

Prevailing appellate authority, however, has reached a different conclusion where an issue of waiver relates to whether the party has voluntarily submitted itself to judicial process in lieu of arbitration. In these instances, the issue relates to the viability or continued existence of the arbitration provision in light of the parties’ conduct. While the timeliness of raising a demand for arbitration is certainly a consideration, it is only one of six factors identified by our appellate courts in deciding whether a party has accepted judicial process to constitute waiver of a claim of arbitration. *See O’Donnell v. Hovnanian Enters., Inc.*, *supra*. Indeed, appellate authority, including Appellant’s cited case, *Keystone Tech.*, have recognized the Court’s ability to address issues related to waiver based upon a party’s conduct in submitting to court jurisdiction. *See, e.g., Samuel J. Marranca Gen. Contracting Co.*, 610 A.2d at 501 (holding defendant’s conduct amounted to waiver); *Goral v. Fox Ridge, Inc.*, 683 A.2d 931, 934 (Pa. Super. 1996) (holding that the trial court properly denied defendants’ motion to compel arbitration where they “sought relief in the first instance from the trial court; failing success in that forum, and only then, they sought to proceed to the alternative forum of arbitration”); *GE Lancaster Investments, LLC v. Am. Exp. Tax & Bus. Servs., Inc.*, 920 A.2d 850 (Pa. Super. 2007); *cf. Keystone Tech. Grp., Inc. v. Kerr Grp., Inc.*, 824 A.2d 1223 (Pa. Super. 2003) (finding no waiver of right to arbitration where the docket showed only plaintiff’s filing of the complaint, the sheriff’s proof of service, and the defendant’s filing of preliminary objections, before plaintiff’s motion to compel arbitration); *Kwalick v. Bosacco*, 478 A.2d 50, 52 (Pa. Super. 1984) (holding “the mere filing of a complaint or an answer without resulting prejudice to the objecting party will not justify a finding of waiver of the right to arbitration.”) (quotation omitted). The current issue clearly fits within the teachings of those cases as the issue presented to this Court, and currently the subject of this appeal, is whether Appellant, by his actions, has submitted to court jurisdiction. As such, it is an issue which is properly subject to Court resolution. Thus, Appellant’s challenge on this basis lacks merit.

For the foregoing reasons, it is respectfully requested that the appeal in this matter be dismissed.²¹

²¹ Patrono Defendants suggest that the Court erred in not conducting an evidentiary hearing before making its finding. Evidentiary hearings are unnecessary where the court's finding is based solely upon the undisputed record. *Moyer v. Leone*, 260 A.3d 245, 255 (Pa. Super. 2021) (“[N]o hearing is necessary where the facts are undisputed.”).

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary of or administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION**ESTATE OF VIOLET MARIE CONNELLY, DEC'D**

Late of Carroll Valley Borough, Fairfield, Adams County, Pennsylvania
 Administrator: Randy Lee Carter, Jr., 26 Blue Ridge Trail, Fairfield, PA 17320
 Attorney: Matthew R. Battersby, Esq., Battersby Law Office, P.O. Box 215, Fairfield, PA 17320

ESTATE OF CHARLENE E. FELTON, DEC'D

Late of Franklin Township, Adams County, Pennsylvania
 Administratrix: Anita S. Perez-Thomas, 232 Table Rock Road, Gettysburg, PA 17325
 Attorney: Puhl & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF TROY RICK HEININGER, DEC'D

Late of Straban Township, Adams County, Pennsylvania
 Administratrix: Alexis Q. Heininger, 1025 Teeter Road, Littlestown, PA 17340
 Attorney: Clayton A. Lingg, Esq., Mooney Law, 230 York Street, Hanover, PA 17331

ESTATE OF RUSSELL J. LESTER A/K/A RUSSELL J. LESTER, SR., DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania
 Executor: Brandin A. Lester, 987 Harney Road, Littlestown, PA 17340
 Attorney: Clayton A. Lingg, Esq., Mooney Law, 230 York Street, Hanover, PA 17331

ESTATE OF LEVERE J. LONG, DEC'D

Late of Bonneauville Borough, Adams County, Pennsylvania
 Executor: Peter J. Long, 105 Oak Drive, New Oxford, PA 17350
 Attorney: David K. James, III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MELISHA FAYE MARTINEZ, DEC'D

Late of Liberty Township, Adams County, Pennsylvania
 Executrix: Sandra Jean Valentine, 591 Tract Road, Fairfield, PA 17320
 Attorney: Bernard A. Yannetti, Hartman & Yannetti, Inc., Law Office, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF RICHARD J. NEIDERER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania
 Executrix: Phyllis M. Neiderer, c/o Gates & Gates, P.C., 250 York Street, Hanover, PA 17331
 Attorney: Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

ESTATE OF PRUDENCE D. RUTH, DEC'D

Late of Hamilton Township, Abbotstown, Adams County, Pennsylvania
 Executor: Tim Ruth, 509 Tapeworm Road, New Oxford, PA 17350
 Attorney: John A. Wolfe, Esq., Wolfe, Rice, & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF JOSEPH A. SHRADER, DEC'D

Late of Littlestown Borough, Adams County, Pennsylvania
 Co-Executors: Lawrence J. Shrader, 450 Willow Lane, York Springs, PA 17372; Brenda A. Moore, 43154 Gum Spring Drive, Leonardtown, MD 20605; Darlene M. Shrader, 153 Cemetery Street, Littlestown, PA 17340
 Attorney: David K. James, III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF LORETTA A. SMITH, DEC'D

Late of McSherrystown Borough, Adams County, Pennsylvania
 Executor: Tony A. Smith, c/o Strausbaugh Law, PLLC, 1201 West Elm Avenue, Suite #2, Hanover, PA 17331
 Attorney: Scott J. Strausbaugh, Esq., Strausbaugh Law, PLLC, 1201 West Elm Avenue, Suite #2, Hanover, PA 17331

ESTATE OF THOMAS EVAN VANSCOYOC, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Co-Executrices: Cassie Lynn VanScoyoc & Megan Rose VanScoyoc, c/o Gates & Gates, P.C., 250 York Street, Hanover, PA 17331
 Attorney: Rachel L. Gates, Esq., Gates & Gates, P.C. 250 York Street, Hanover, PA 17331

ESTATE OF GERTRUDE MARIE ZYWAN, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania
 Administratrix: Joyce Ann Zywan, 5412 Overdale Lane, Raleigh, NC 27603
 Attorney: Thomas R. Nell, Esq., 130 W. King St., Box 1019, East Berlin, PA 17316

SECOND PUBLICATION**ESTATE OF WAYNE E. BOYER, DEC'D**

Late of Latimore Township, Adams County, Pennsylvania
 Administratrix: Helen L. Boyer, c/o CGA Law Firm, PC, P.O. Box 606, East Berlin, PA 17316
 Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, P.O. Box 606, East Berlin, PA 17316

ESTATE OF SANDRA L. CATCHINGS, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
 Co-Executors: Brian P. Kump and Olivia M. Allen, c/o Barbara Jo Entwistle, Esq., Entwistle & Roberts, P.C., 37 West Middle Street, Gettysburg, PA 17325
 Attorney: Barbara Jo Entwistle, Esq., Entwistle & Roberts, P.C., 37 West Middle Street, Gettysburg, PA 17325

Continued on page 18

(SECOND PUBLICATION CONTINUED)

ESTATE OF WILLIAM D. GRAHAM, III
a/k/a WILLIAM DALTON GRAHAM, III,
DEC'D

Late of Reading Township, Adams
County, Pennsylvania

Executor: Chad M. Graham c/o Laura M.
Mercuri, Esq., Duffy North, 104 North
York Road, Hatboro, PA 19040

Attorney: Laura M. Mercuri, Esq., Duffy
North, 104 North York Road, Hatboro,
PA 19040

THIRD PUBLICATION

ESTATE OF MARTHA JAYNE GERBER,
DEC'D

Late of Germany Township, Adams
County, Pennsylvania

Executor: Joshua Gerber, c/o Edward P.
Seeber, Esq., JSDC Law Offices, Suite
C-400, 555 Gettysburg Pike,
Mechanicsburg, PA 17055

Attorney: Edward P. Seeber, Esq., JSDC
Law Offices, Suite C-400, 555
Gettysburg Pike, Mechanicsburg, PA
17055
717-533-3280

ESTATE OF JILL C. HARL a/k/a JILL ANNE
CAMPBELL HARL, DEC'D

Late of Hamilton Township, Adams
County, Pennsylvania

Executrix: Emilie M. McCall, c/o Gates &
Gates, P.C., 250 York Street, Hanover,
PA 17331

Attorney: Rachel L. Gates, Esq., Gates &
Gates, P.C., 250 York Street, Hanover,
PA 17331

ESTATE OF DENISE E. LOCKWOOD a/k/a
DENISE EVA LOCKWOOD, DEC'D

Late of Carroll Valley Borough, Fairfield,
Adams County, Pennsylvania

Executrix: Rita M. Tedder, P.O. Box 445,
Mont Vernon, NH 03057

Attorney: Matthew R. Battersby, Esq.,
Battersby Law Office, P.O. Box 215,
Fairfield, PA 17320

**Chances are, your clients have certain organizations and
causes they care deeply about.**

Show them you get it.

Help your clients bring their dreams to fruition with free philanthropic planning
tools and ongoing support from the Adams County Community Foundation.

Expertise in all areas of gift planning

Free, confidential consultations

Respect for your client relationships

Facilitation of charitable giving in Adams County and beyond

To find out more:

**Contact Ralph M. Serpe, 717-337-0060
rserpe@adamscountycf.org**



25 South 4th Street
Gettysburg, PA 17325
www.adamscountycf.org



Good for your clients. Good for our community. Good for you.