

Lebanon County Legal Journal

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

Vol. 51

Lebanon, Pennsylvania, April 2, 2014

No. 27

Public Notices

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ORPHANS' COURT DIVISION NOTICES
PETITION FOR NAME CHANGE
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Opinion

**FEDERAL NATIONAL MORTGAGE ASSOCIATION vs. CARRANZA
No. 2013-00656**

Published every Wednesday. Advertisements must be at Room 305,
Municipal Building, 400 South Eighth Street, Lebanon PA, 17042
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

717-228-4411; www.lebanoncountylegaljournal.org

**Owned and published by the Lebanon County Bar Association
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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 DONNA K. DRUM, late of Lebanon City, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Beverly A. Hibsichman, Executor
709 Deerbrook Road
Bel Air MD 21014

Kenneth C. Sandoe, Esquire
Steiner, Sandoe & Cooper, Attorneys

ESTATE OF ESTHER H. EBERSOLE, late of Lebanon, deceased. Letters Testamentary have been granted to the undersigned Executor.

Curvin D. Ebersole, Executor
Darrel L. Ebersole, Executor
245 Village Drive
Lebanon PA 17042

Randall M. Fischer, Attorney

ESTATE OF GEORGE E. FUNK, late of Palmyra Borough, Lebanon County, deceased. Letters Testamentary have been granted to the undersigned Executor.

Gerald J. Brinser, Executor
6 East Main Street
P.O. Box 323
Palmyra PA 17078

Keith D. Wagner, Attorney

ESTATE OF VERDA E. LAYSER, late of Palmyra Borough, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Andrew P. Layser, Executor
430 W. Township Line Road
Downingtown PA 19335

ESTATE OF VINCENT A. MIONE, late of Lebanon City, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Samuel A. Mione, Executor
c/o Timothy D. Sheffey, Esquire
Reilly, Wolfson, Sheffey, Schrum and Lundberg
1601 Cornwall Road
Lebanon PA 17042

ESTATE OF RUTH W. NEIFFER, late of West Cornwall Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Janet R. Neiffer, Executor
2316 Harvey John Avenue
Lebanon PA 17042

Or to
David L. Allebach, Jr., Esquire
Yergey, Daylor, Allebach, Scheffey,
Picardi
1129 East High Street
P.O. Box 776
Pottstown PA 19464-0776

ESTATE OF ESTHER S. SNAVELY, late of Jackson Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

David L. Peters, Executor
804 Maple Lane
Lebanon PA 17046

Thomas S. Long, Esquire
Siegrist, Koller, Brightbill, Long & Feeman
315 South Eighth Street
Lebanon PA 17042

ESTATE OF JOHN M. WENGER a/k/a John Martin Wenger, late of South Londonderry Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Rebecca B. DeWees
c/o Patrick M. Reb, Esquire
547 South Tenth Street
Lebanon PA 17042

SECOND PUBLICATION

ESTATE OF MATILDA L. BITTENBENDER, late of Jackson Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Emily B. Bittenbender, Executor
176 Waterton Road
Shichshinny PA 18655

Thomas N. Cooper, Esquire
Steiner, Sandoe & Cooper, Attorneys

ESTATE OF FAYE H. SAYER, a/k/a Faye Sayer, late of Myerstown Borough, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Donald S. Sayer, Executor
214A Main Street
Oley PA 19547

Or to:
Walter M. Diener, Jr., Esquire
Kozloff Stoudt
2640 Westview Drive
Wyomissing PA 19610

ESTATE OF ANNA U. SHOTT, late of Lebanon City, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

James W. Umberger, Executor
c/o Timothy D. Sheffey, Esquire
Reilly, Wolfson, Sheffey, Schrum and
Lundberg
1601 Cornwall Road
Lebanon PA 17042

ESTATE OF RUBY I. SMITH, late of North Londonderry Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Dennis E. Smith, Executor
4460 Pasture Drive
Elizabethtown PA 17022

Chad J. Julius, Esquire
Jacobson, Julius & McPartland
8150 Derry Street
Suite A
Harrisburg PA 17111

ESTATE OF GILBERT L. WEAVER, SR., late of Palmyra, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Sandra L. Lake, Executor
c/o Jacqueline A. Kelly, Esquire
Jan L. Brown & Associates
845 Sir Thomas Court, Suite 12
Harrisburg PA 17109

THIRD PUBLICATION

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

Kim Arnold, Executor
46 Palm Lane
Lebanon PA 17042

Thomas N. Cooper, Esquire
Steiner, Sandoe & Cooper, Attorneys

ESTATE OF MARION K. LENKER a/k/a Marion Koppenhaver Lenker, late of Lebanon City, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Jane Lenker Wenrich, Executrix
12 Bendigo Street
Tower City PA 17980

Joseph D. Kerwin, Esquire
Kerwin & Kerwin, LLP
4245 State Route 209
Elizabethville PA 17023

ESTATE OF PHYLLIS A. WASSERMAN, late of Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executors.

Lynn B. Levengood, Executor
Neal B. Levengood, Executor
c/o Anthony J. Fitzgibbons, Esqurie
279 North Zinn's Mill Road
Lebanon PA 17042

TRUSTEE'S NOTICE FOR LOGAN FAMILY TRUST, HILDA E. LOGAN, Trustee, late of StoneRidge Poplar Run, Myerstown, PA 17067, deceased. Judith Ann Nelson states that she is Successor Trustee of the Logan Family Trust, and all persons indebted to the trust are requested to make payment, and those having claims to present the same, without delay, to:

Judith Ann Nelson, Successor Trustee
P. O. Box 168
Speculator NY 12164
First Successor Trustee

or to her attorney, Brian R. Ott, Esq.
Barley Snyder,
50 N. Fifth St.
P.O. Box 942
Reading, PA 19603-0942

**ORPHANS' COURT DIVISION
NOTICES**

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 Monday, April 7, 2014, at 10 a.m. in Courtroom No. 1, Municipal Building, City of Lebanon.

First and partial accounts with proposed schedule of distribution filed by executors or administrators

1. **Allwein, William P.**, deceased; Thomas A. Allwein, Executor; Samuel J. Trueblook, Attorney

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, PA

CHANGE OF NAME

In Re: Change of name of Christian R. Degruchy-Donough No. 2014-00539

Notice is hereby given that on March 20, 2014, the petition of Krystal J. Degruchy was filed in the Court of Common Pleas of Lebanon County, requesting an order to change the name of Christian R. Degruchy-Donough from **Christian R. Degruchy-Donough to Christian R. Degruchy**. The Court has fixed April 11, 2014 at 8:30 a.m. before The Honorable Samuel A. Kline in Courtroom No. 2 of the Lebanon County Municipal Building, 400 South Eighth Street, Lebanon PA 17042, 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.

Colleen S. Gallo, Esquire
Reilly, Wolfson, Sheffey, Schrum and
Lundberg, LLP
1601 Cornwall Road
Lebanon PA 17042
Attorney for the Petitioner

**In Re: Change of name of Theodora
Heather Hermes No. 2014-00441**

To: Ata Zandieh

Notice is hereby given that a Petition to Change Name was filed by Theodora Heather Hermes on March 5, 2014 at the Prothonotary's office of the Court of Common Pleas of Lebanon County, PA at action No. 2014-00441, requesting an order to change the name of **Theodora Heather Hermes to Theodora Heather Sakellarides**. The Court has fixed May 15, 2014, at 3 p.m. in Courtroom No. 4 of the Lebanon County Municipal Building, 400 South Eighth Street, Lebanon PA 17042, as the time, date and place for the hearing on said petition, when and where all interested parties may appear and show cause, if any, why the request of the petitioner should not be granted.

You are in default because you have failed to enter a written appearance personally or by attorney and file in writing with the court your defenses or objections to the claims set forth against you. Unless you act within ten (10) days from the date of this notice, a judgment may be entered against you without a hearing and you may lose your property or other important rights. You should take this paper to your lawyer at once. If you do not have a lawyer, go to or telephone the office set forth below. This office can provide you with information about hiring a lawyer. If you cannot afford to hire a lawyer, this office may be able to provide you with information about agencies that may offer legal services to eligible persons at a reduced fee or no fee.

Andrew J. Morrow, Esquire
Attorney for Petitioner
242 South Eighth Street
Lebanon PA 17042

MidPenn Legal Services
513 Chestnut Street
Lebanon PA 17042
717-274-2834

**NOTICE OF MORTGAGE
FORECLOSURE**

**In the Court of Common Pleas of
Lebanon, Pennsylvania, Civil Division
No. 2013-02265**

Affinity Bank, a division of First Priority Bank, successor to Affinity Bank of Pennsylvania, Plaintiff

vs.

Paul Curran and Mary C. Curran, as Mortgagors, and Ata Zandieh, as Real Owner, Defendants

**In the Court of Common Pleas of
Lebanon, Pennsylvania, Civil Division
No. 2013-02432**

Fulton Bank, N.A., Plaintiff

vs.

Magen L. Oliviero, in Capacity as
Administratrix of the Estate of Chad
Michael Ulrich

Unknown Heirs, Successors, Assigns,
and all Persons, Firms, or Associations
Claiming Right, Title or Interest from or
under Chad Michael Ulrich, Deceased,
Defendants

**To: Unknown Heirs, Successors,
Assigns, And All Persons, Firms, Or
Associations Claiming Right, Title Or
Interest From Or Under Chad Michael
Ulrich, Deceased**

You are hereby notified that on December 16, 2013, Plaintiff, Fulton Bank, N.A., filed a Mortgage Foreclosure Complaint endorsed with a Notice to Defend, against you in the Court of Common Pleas of Lebanon County Pennsylvania, docketed to No. 2013-02432. Wherein Plaintiff seeks to foreclose on the mortgage secured on your property located at **3 Morgan Drive, Lebanon, PA 17042-8802**, whereupon your property would be sold by the Sheriff of Lebanon County.

You are hereby notified to plead to the above referenced Complaint on or before 20 days from the date of this publication or a Judgment will be entered against you.

Notice: If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the plaintiff. You may lose money or property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer, go to or telephone the office set forth below. This office can provide you with information about hiring a lawyer. If you cannot afford to hire a lawyer, this office may be able to provide you with information about agencies that may offer legal services to eligible persons at a reduced fee or no fee.

MidPenn Legal Services
513 Chestnut Street
Lebanon PA 17042
717-274-2834

FEDERAL NATIONAL MORTGAGE ASSOCIATION vs. CARRANZA
No. 2013-00656

Civil Action – Mortgage Foreclosure - Motion for Summary Judgment – Nanty-Glo Rule – Testimonial Affidavit – Credibility Determination – Pa.R.C.P. No. 213.

1. Pennsylvania’s longstanding rule for oral testimony and summary judgment flows from the case *Borough of Nanty-Glo v. American Surety Company of New York*, 309 Pa. 236 (1932).
2. While the purpose of a motion for summary judgment is to avoid unnecessary litigation, such motion may not be used to provide for trial by affidavits or trial by depositions. That such a so-called trial by testimonial affidavit is prohibited cannot be emphasized too strongly.
3. The purpose behind the *Nanty-Glo* rule is clear. However true and indisputable the evidence may appear to be following the pleadings, testimony must be tested by cross-examination and a fact-finder must make a credibility determination regarding the statements. Without this vital step, a grant of summary judgment would undermine the truth-seeking process by assuming the speaker is automatically accurate and honest.
4. Where admissions exist from the non-moving party to supplement the testimonial affidavits of the movant, summary judgment can be awarded. Similarly, summary judgment motions that are supported with documentary proof also can survive a *Nanty-Glo* challenge.
5. In the context of a mortgage foreclosure, *Nanty-Glo* precludes a Court from awarding summary judgment to a plaintiff whose only basis for standing is a testimonial affidavit from an employee—or an employee of one of its agents. Requiring a mortgagor to refute a testimonial affidavit by which a bank claims ownership of the mortgage would be an impossible burden that the *Nanty-Glo* rule was created to preclude.
6. Rule 213 of the Pennsylvania Rules of Civil Procedure permits a Court to require a hearing on any issue pertinent to the ultimate resolution of the dispute at hand.
7. The Court denied Plaintiff’s Motion for Summary Judgment. It held that a testimonial affidavit alone is insufficient to chronicle a series of assignments and/or mergers that are predicates to a plaintiff’s right of recovery in a mortgage foreclosure action.
8. In addition, the Court scheduled a hearing at which the Plaintiff will be required to present documentary and/or testimonial evidence in support of its claim that it is the proper party plaintiff. If the Court finds that Plaintiff is, in fact, the proper party entitled to relief, it will allow the above-referenced case to proceed with respect to the substantive question

**FEDERAL NATIONAL MORTGAGE ASSOCIATION vs. CARRANZA
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of whether the Defendant is in default and whether the Plaintiff is entitled to the relief requested.

9. Stating that the Defendant also will have to present his evidence at the Rule 213 hearing, the Court denied Defendant's Motion for Summary Judgment..

Motions for Summary Judgment and Motion for Judgment on the Pleadings. C.P. of Lebanon County, Civil Action-Law, No. 2013-00656.

IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY
PENNSYLVANIA No. 2013-00656
CIVIL ACTION – LAW

FEDERAL NATIONAL MORTGAGE ASSOCIATION, Plaintiff

vs.

GONZALO CARRANZA, Defendant

ORDER OF COURT

AND NOW, to wit, this 11th day of February, 2014, upon consideration of Plaintiff and Defendant's Motions for Summary Judgment, and in consideration of Plaintiff's Motion for Judgment on the Pleadings, the Order of this Court is as follows:

1. A factual Hearing will be conducted on May 6, 2014 commencing at 9:00 a.m. in Courtroom No. 3 to specifically address the issue of whether the Plaintiff has standing to pursue its claim.

2. All other issues will be stayed pending a determination of this issue.

APPEARANCES:

**Martha E. Von Rosenstiel, Esq. , For Federal National Mortgage Association
MARTHA E. VON ROSENSTIEL, P.C.**

**Jillian M. Copeland, Esquire, For Gonzalo Carranza
MIDPENN LEGAL SERVICES**

**FEDERAL NATIONAL MORTGAGE ASSOCIATION vs. CARRANZA
No. 2013-00656**

Opinion, Charles, J., February 11, 2014

With increasing frequency, mortgage foreclosure actions are being filed by financial institutions who are either successors in interest or assignees of the original mortgage. Also with increasing frequency, mortgage foreclosure defendants are challenging the standing of the named plaintiff because documents substantiating the mortgage, note, assignment and/or merger of financial institutions are either omitted or admitted to be lost. When the above scenario arises, one or both of the parties almost invariably asks us to resolve the issue via a Motion for Summary Judgment. In the past, we usually issued relatively abbreviated Court Orders to address the Summary Judgment Motions. Today, we issue this Opinion to explain that when a financial institution fails to cross its t's and dot its i's with respect to assignments, mergers, and retention of documents, we will not grant summary judgment. Rather, we send the dispute forward for a factual hearing at which the question of standing can be addressed and determined.

I. FACTUAL AND PROCEDURAL BACKGROUND

On March 24, 2005, Gonzalo Carranza (“DEFENDANT”) purchased real estate located at 524 West Queen Street, Annville, PA 17003 (hereafter “PREMISES”). At the time of the purchase, DEFENDANT executed both a Mortgage and a Note to finance the purchase PREMISES. The Mortgage was executed in favor of the Mortgage Electronic Registration Systems, Inc. (“MERS”) as Nominee for Philadelphia Financial Mortgage, and was recorded on April 1, 2005. The Note was executed in favor of Philadelphia Financial Mortgage.

On April 12, 2013, Federal National Mortgage Association (hereafter “PLAINTIFF”) filed a Complaint in Mortgage Foreclosure, claiming that DEFENDANT defaulted on his monthly payments. The Complaint alleges that DEFENDANT’s monthly installments of principal and interest had not been made in conformity with the terms of the Mortgage since December of 2012. On June 11, 2013, DEFENDANT filed his Answer to Complaint and New Matter. In his New Matter, he explained that PLAINTIFF does not possess the Note, and PLAINTIFF’s ability to bring an action in foreclosure rests upon its possession of the Note. DEFENDANT posited that because PLAINTIFF does not possess the Note, it is not the real party in interest and the case should therefore be dismissed. PLAINTIFF filed its Reply to DEFENDANT’s New Matter on August 9, 2013, alleging that it did, in fact, possess the Note.

Since possession of the Mortgage and Note are relevant in determining the real party in interest, we must trace the transfers of each to determine the current holder. With respect to the Mortgage, it appears that the parties agree on the following timeline:

FEDERAL NATIONAL MORTGAGE ASSOCIATION vs. CARRANZA
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3/24/2005 Executed in favor of MERS, Inc., as Nominee for Philadelphia Financial Mortgage, a Division of Leesport Bank

4/1/2005 Mortgage recorded, Lebanon County Recorder of Deeds, Mortgage Book 2060, Page 4982

Unknown Assigned to Chase Home Finance, LLC

1/9/2007 Assignment recorded

Unknown Merger – Chase Home Finance, LLC, and JPMorgan Chase Bank. JP Morgan Chase Bank is successor by merger

10/13/2011 Assigned to Federal National Mortgage Association (PLAINTIFF), assignment recorded

With respect to the Note, however, the parties dispute the timeline. The following transactions are evidenced by the record:

3/24/2005 Executed in favor of Philadelphia Financial Mortgage, a Division of Leesport Bank

Unknown Assignment filed, transferring interest to JPMorgan Chase Bank, NA

Nothing was produced to us to document any transfer of the Note from JP Morgan Chase to PLAINTIFF.

On October 4, 2013, PLAINTIFF filed a Motion for Summary Judgment or, in the alternative, a Motion for Judgment on the Pleadings. DEFENDANT filed his Cross-Motion for Summary Judgment on October 31, 2013. The issues are now before us for review.

II. DISCUSSION

A. PLAINTIFF's Motion for Summary Judgment

In support of its Motion for Summary Judgment, PLAINTIFF argues that the Pleadings reveal no genuine issues of material fact with respect to (a) DEFENDANT's obligations to PLAINTIFF pursuant to a Note and Mortgage; (b) DEFENDANT's default in his obligation to make payments pursuant to the aforementioned documents; (c) the amount of the indebtedness DEFENDANT owes to PLAINTIFF pursuant to the aforementioned

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documents; and (d) that PLAINTIFF is entitled to judgment as a matter of law. PLAINTIFF relies upon the supporting Affidavit of Lisa Lubbers, an authorized representative of Seterus, Inc. (the mortgage servicing agent for PLAINTIFF), to prove the amount of indebtedness of DEFENDANT to PLAINTIFF.

PLAINTIFF argues that DEFENDANT's Answer containing New Matter does not dispute the legitimacy of PLAINTIFF's standing. In addition, PLAINTIFF points out that DEFENDANT has never challenged the contents of Ms. Lubbers' Affidavit. With respect to the pleadings, we note that DEFENDANT consistently challenged PLAINTIFF's viability; the Answer and New Matter specifically alleges that PLAINTIFF is not "the real party in interest." With respect to Ms. Lubbers' Affidavit, it is simply not sufficient to justify an award of Summary Judgment.

Pennsylvania's longstanding rule for oral testimony and summary judgment flows from the case *Borough of Nanty-Glo v. American Surety Company of New York*, 309 Pa. 236 (1932). While the purpose of a motion for summary judgment is to avoid unnecessary litigation, such motion may not "be used to provide for trial by affidavits or trial by depositions." *Goodrich-Amram*. 2d §1035.1, p.423. That such a so-called trial by testimonial affidavit "is prohibited cannot be emphasized too strongly." *Curran v. Philadelphia Newspapers, Inc.*, 497 Pa. 163, 183 (1981).

In *Nanty-Glo*, the Pennsylvania Supreme Court ordered a new trial after the lower court granted plaintiff Nanty-Glo's Motion for Binding Instruction and directed a verdict in their favor. Plaintiff, a borough in Cambria County, Pennsylvania, relied on the testimony of two witnesses to prove that a shortage in tax collections was the type of loss insured against by defendant, American Surety. This testimony, if true, was sufficient to establish Plaintiff's case. Even though defendant offered no evidence tending to contradict the testimony, the Supreme Court held that the "trial judge, in directing a verdict for plaintiff, took from the jury the opportunity of passing upon the truth of this oral testimony setting forth matters essential to plaintiff's recovery." *Nanty-Glo*, 309 Pa. at 238. Since 1932, *Nanty-Glo* has most often been cited in a summary judgment context:

[W]here the moving party relies exclusively on oral testimony, either through testimonial affidavits or deposition testimony, to establish the absence of a genuine issue of material fact except where the moving party supports the motion by using admissions of the opposing party or the opposing party's own witnesses.

Lineberger v. Wyeth, 894 A.2d 141, 149 (Pa.Super. 2006) (quoting *First Philson Bank, N.A. v. Hartford Fire Ins. Co.*, 727 A.2d 584, 587 (Pa.Super. 1999), appeal denied, 747 A.2d 901 (Pa. 1999)).

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Applying *Nanty-Glo* to the use of affidavits, the court in *Harn v. Milwaukee Tool* referred to the Nanty-Glo rule as the “demeanor evidence doctrine,” and found that “it forecloses entry of summary judgment when questions of credibility leave a genuine issue of material fact.” *Harn v. Milwaukee Tool & Machine Co., Inc.*, 33 Pa. D. & C. 3d 632, 634-35 (Com.Pl. Beaver Cnty. 1984). This means that where the party moving for summary judgment “can prevail only by use of testimonial affidavit, the credibility of the affiant creates a genuine issue of fact so that summary judgment is not appropriate.” *Id.* at 635.

The purpose behind the *Nanty-Glo* rule is clear. However true and indisputable the evidence may appear to be following the pleadings, testimony must be tested by cross examination and a fact-finder must make a credibility determination regarding the statements. Without this vital step, a grant of summary judgment would undermine the truth-seeking process by assuming the speaker is automatically accurate and honest.

Of course, *Nanty-Glo* does not apply to every summary judgment motion. For example, where admissions exist from the non-moving party to supplement the testimonial affidavits of the movant, summary judgment can be awarded. In the recent case of *DeArmitt v. New York Life Ins. Co.*, 73 A.3d 578 (Pa.Super. 2013), the Court stated:

Testimonial affidavits of the moving party or his witnesses, not documentary, even if uncontradicted, will not afford sufficient basis for the entry of summary judgment, since the credibility of the testimony is still a matter for the [fact-finder]... If, however, the moving party supports its motion for summary judgment with admissions by the opposing party, *Nanty-Glo* does not bar entry of summary judgment.

Id. at 595, quoting in part *Penn Center House v. Hoffman*, 553 A.2d 900, 903 (Pa. 19889). More pertinent to this dispute, summary judgment motions that are supported with documentary proof can survive a *Nanty-Glo* challenge. In *Pittsburgh Outdoor Advertising v. Surowski*, 64 A.2d 854 (Pa.Super. 1949), the Court awarded judgment for the Plaintiff notwithstanding a *Nanty-Glo* argument. The Court reasoned:

A directed verdict for the Plaintiff was proper...based upon the uncontradicted documentary evidence of the two surveys...If the oral testimony had all been omitted in the present case, there would remain sufficient documentary evidence to entitle the Plaintiff to binding instructions, thus distinguishing this action on its face from the *Nanty-Glo* case.

Id. at 856.

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In the context of a mortgage foreclosure, *Nanty-Glo* precludes us from awarding summary judgment to a plaintiff whose only basis for standing is a testimonial affidavit from an employee – or an employee of one of its “agents.” In this era when financial institutions serially sell mortgages into “bundles” containing thousands of similar mortgages that are then leveraged for staggering amounts of money, it would be impractical and maybe even impossible to expect a private citizen to have the resources necessary to trace how, when and where a mortgage is transferred between financial entities. Stated simply, requiring a mortgagor to refute a testimonial affidavit by which a bank claims ownership of the mortgage would be an impossible burden. In our opinion, this is precisely the type of impossible burden that the *Nanty-Glo* rule was created to preclude.

In this case, we have not been provided with documents to establish the chain of assignments by which PLAINTIFF now claims a right to foreclosure. Moreover, it is patently obvious that the DEFENDANT has not admitted that PLAINTIFF is in fact the correct holder of the Mortgage and Note he originally signed in 2005. Thus *Nanty-Glo* prohibits us from awarding Summary Judgment to PLAINTIFF.

Rule 213 of the Pennsylvania Rules of Civil Procedure permits a Court to require a hearing on any issue pertinent to the ultimate resolution of the dispute at hand. In this case, we will be scheduling a hearing at which the PLAINTIFF will be required to present documentary and/or testimonial evidence in support of its claim that it is the proper party plaintiff. At a hearing, any such evidence will be subject to cross-examination. Moreover, a contested hearing will permit this Court to render a factual finding with respect to whether PLAINTIFF is in fact entitled to proceed with this litigation. If we find that PLAINTIFF is in fact the proper party entitled to relief, we will allow the above-referenced case to proceed with respect to the substantive question of whether the DEFENDANT is in default and whether the PLAINTIFF is entitled to relief requested.¹

For today, we will deny PLAINTIFF’s Motion for Summary Judgment. We hold that a testamentary affidavit alone is insufficient to chronicle a series of assignments and/or mergers that are predicates to a plaintiff’s right of recovery. In essence, we declare that the issue of standing will be determined at a factual hearing and not via a Motion for Summary Judgment.

B. DEFENDANT’s Motion for Summary Judgment

Although we are not now prepared to conclusively declare that PLAINTIFF is the proper party to pursue mortgage foreclosure against DEFENDANT, neither are we prepared to declare that PLAINTIFF is not the actual party which can pursue relief. For reasons very

¹ If in fact PLAINTIFF is the legitimate party in interest, we would entertain a subsequent Motion for Summary Judgment regarding the issues of default and entitlement to relief and would again consider documents such as those presented by PLAINTIFF in the Motion for Summary Judgment that is now before us.

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similar to the ones articulated in the preceding section of this Opinion, we decline to enter any final decision via summary judgment. Rather, the question of whether PLAINTIFF has standing to pursue relief will be addressed via factual hearing. Thus, we will deny DEFENDANT's Motion for Summary Judgment. Like PLAINTIFF, the DEFENDANT will have to present his evidence and arguments at the time of the factual hearing that will be scheduled via a Court Order entered simultaneous with this Opinion.