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I. FACTUAL BACKGROUND and PROCEDURAL HISTORY

On August 8, 2016, this Court entered an Order Overruling the Preliminary Objections filed by the Defendant-Nursing Homes to the Plaintiff's Complaint. The Maple Village, Inc. and Evangelical Services for the Aging, Inc. filed a timely Notice of Appeal to the Superior Court. This Court submits this Opinion pursuant to Rule 1925(a) of the Pennsylvania Rules of Appellate Procedure as the reasons in support of the Order dated August 8, 2016.

The factual background is set forth in the Complaint of Ms. Iris McGrane, dated May 23, 2016:

“1. This lawsuit concerns the shameful attempt by a non-profit, faith-based continuing care facility to bilk tens of thousands of dollars from an elderly woman who was denied occupancy in Defendants' facility.

2. Plaintiff Iris McGrane is 92 years old. By good fortune she survived the bombing of London in World War II, and made a productive life for herself in Philadelphia as a secretary, then vocational teacher in the Philadelphia Public School System, then business owner, eventually earning her doctorate degree in Education from Temple University. She saved just enough money to afford a residence in a senior living community as she reached advanced age. In 2014, Ms. McGrane submitted an application to join one of Defendants' faith-based continuing care facilities.

[3.] Defendants accepted Ms. McGrane's application, subject to immediate payment of nearly \$150,000 in entrance fees. Yet, months later, when Ms. McGrane prepared to occupy a residence in Defendants' facility Defendants refused to allow her to join the community. At that time, Defendants informed Ms. McGrane that her entrance fee would be returned in its entirety.

4. Shockingly, Defendants have refused to return over \$35,000 of Mrs. McGrane's payments. What's more, Defendants held over \$150,000 of Ms. McGrane's funds for nearly one year after she was denied occupancy at the community. Only after Plaintiff retained counsel and commenced suit did Defendants return a portion of Ms. McGrane's money.

5. With this action, which commenced by Writ of Summons on February 2, 2016, Ms. McGrane seeks recompense for Defendants' unscrupulous conduct in violation of, *inter alia*, the Pennsylvania Unfair Trade Practices and Consumer Protection Laws and the Continuing-Care Provider Registration and Disclosure Act, and in breach of the Residency Agreement executed by Ms. McGrane in September 2014."

This litigation encompasses claims of fraud, conversion, unjust enrichment and more, filed by Ms. McGrane. Plaintiff-Appellee was born on July 13, 1923. This dispute arises from Ms. McGrane's efforts to move into the Wesley Enhanced Living Upper Moreland continuing care facility which is operated by Maple Village, Inc. and Evangelical Services for the Aging, Inc., the Defendant-Nursing Home-Appellants.

Plaintiff-McGrane is now 93 years old. She exhibits odors due to personal hygiene difficulties. Odors were evident in September, 2014 when Ms. McGrane first visited Wesley. Compl., at ¶¶20-24, 53. During her first visit, the Nursing Home Appellants interviewed Ms. McGrane and determined that she had approximately \$150,000.00 in liquid assets and a home worth \$84,000.00. Compl., at ¶¶25-26. The Appellants informed Ms. McGrane that she would be accepted into Wesley's independent living community and

scheduled signing of a Residency Agreement for September 11, 2014. Compl., at ¶29. The Nursing Home set Ms. McGrane's entrance fee at \$147,900.00 -- a number strikingly close to the Nursing Home's valuation of her liquid assets. Compl., at ¶¶26, 30.

On September 7, 2014, Plaintiff-McGrane submitted a \$1,000.00 deposit and a Residency Application requesting a move-in date of January, 2015. Compl., at ¶31. On September 11, 2014, Ms. McGrane signed an agreement showing her occupancy date as September 11, 2014, and designating her unit as 341. Compl., at ¶¶38, 40-41. When Plaintiff-McGrane asked to see the unit, the Nursing Home said it was under renovation and could not be visited for two weeks. Compl., at ¶42. The Nursing Home offered a rent incentive if Ms. McGrane signed the agreement and paid the entrance fee that day. Compl., at ¶44. Appellants provided no disclosure statement pursuant to the Continuing Care Provider Registration and Disclosure Act, 40 P.S. § 3207. Compl., at ¶39.

In September and October, 2014, Ms. McGrane informed Appellants she was not yet ready to move to Wesley. From November, 2014 to May, 2015, Plaintiff-McGrane made monthly rent payments in person on seven occasions. Compl., at ¶51. In February, 2015, Plaintiff-McGrane attended an event at the Nursing Home and the executive director, Robyn Kulp, said she had some "concerns," but did not elaborate. Compl., at ¶52. In April, 2015, Plaintiff-McGrane informed the Nursing Home that she was preparing to move. Compl., at ¶55. Emails indicate that Appellants told Ms. McGrane, in April and May, 2015, that they were concerned about hygiene, hoarding and insects, and that her move depended upon a home visit. Compl., at ¶¶58, 59. Appellants conducted a home visit on May 14, 2015 and told Ms. McGrane that she would not be accepted into Wesley.

Compl., at ¶60. The Nursing Homes repeatedly promised to refund Plaintiff-McGrane's entrance fee. Compl., at ¶¶59-60, 70. Appellants returned nothing until March, 2016 when they repaid \$121,968.20. Compl., at ¶72. The Nursing Homes retain \$35,000 of the monies Ms. McGrane paid in entrance fees and rent. Compl., at ¶72.

Ms. McGrane commenced this action by Writ of Summons on February 2, 2016. The Nursing Home Appellants responded to pre-complaint discovery requests April 21, 2016. McGrane Memorandum, at 5. On May 4, 2016, Appellants filed a Praecipe and Rule to File a Complaint. On May 23, 2016, Ms. McGrane provided a Complaint alleging breach of contract, violation of the Continuing Care Provider Act, violation of the Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), unjust enrichment, and conversion. The Nursing Home Appellants attended a Case Management Conference on May 31, 2016. The Nursing Homes filed Preliminary Objections at issue on July 6, 2016 which were Overruled on August 8, 2016.

II. LEGAL DISCUSSION

This Court did not err in overruling Appellants' Preliminary Objections. The Nursing Homes attempted to invoke an arbitration provision in the Residence Agreement. They objected to certain language in Plaintiff's Complaint. They demanded greater factual specificity. They demurred to allegations of UTPCPL violations, unjust enrichment and conversion. "When considering preliminary objections, all material facts set forth in the challenged pleadings are admitted as true, as well as all inferences reasonably deducible therefrom." Adams v. Hellings Builders, Inc., WL 4522278, at *2 (Pa. Superior Ct. 2016). A Preliminary Objection in the nature of a demurrer should only be sustained where the

law says with certainty that no recovery is possible. See Donaldson v. Davidson Bros., WL 3902896, *3 (Pa. Superior Ct. 2016). For the reasons set forth below arbitration is not required in the instant matter. All other issues should be quashed as these Nursing Homes appeal an unappealable interlocutory order. For the reasons which follow, all Preliminary Objections were appropriately Overruled.

A. The Nursing Home Appellants Waived Their Right to Rely on An Arbitration Clause in the Residency Agreement.

These Defendant-Appellants waived their right to rely on an arbitration agreement. In GE Lancaster Investments, LLC v. American Express. Tax & Business Services, Inc., 920 A.2d 850 (Pa. Superior Ct. 2007), the Superior Court set forth the circumstances under which a party waives the right to invoke a contractual arbitration clause as follows, at 853-854:

“A party’s acceptance of the regular channels of the judicial process can demonstrate its waiver of arbitration. *See Smay v. E.R. Stuebner, Inc.*, 864 A.2d 1266, 1278 (Pa.Super.2004) . . . ‘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.’ *Kwalick v. Bosacco*, 329 Pa.Super. 235, 478 A.2d 50, 52 (1984).”

The GE Lancaster Investments Court held that a party may avail itself of the judicial process in such a way as to constitute waiver of an arbitration clause even before a complaint is filed. See GE Lancaster Investments, 920 A.2d at 855. The Court pointed

out that a party could have filed a motion to compel arbitration at any time after a writ of summons was filed, but instead sought favorable rulings in opposition to the plaintiff's quest for pre-complaint discovery. See GE Lancaster Investments, 920 A.2d at 855-56.

Subsequently, in O'Donnell v. Hovnanian Enterprises, Inc., 29 A.3d 1183, 1188 (Pa. Superior Ct. 2011), the Superior Court held that a party waived its right to compel arbitration where the party filed preliminary objections without raising arbitration, and waited until it had received dismissal of a specific count to raise the arbitration issue. The Court agreed that the litigant seeking to compel arbitration showed conscious engagement with the judicial process by allowing the preliminary objections process to go on for months. O'Donnell, 29 A.3d 1189. The O'Donnell Court also explained at 1187:

“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.”

The Superior Court neither indicated that these factors were mandatory, nor how they should be weighed, but merely stated that they should be considered. See O'Donnell, 29 A.3d at 1187. See also Stanley-Laman Grp., Ltd. v. Hyldahl, 939 A.2d 378, 387 (Pa. Superior Ct. 2007), (listing the same factors as “among the factors to look at to determine whether a party has accepted the judicial process”).

In this case, it was apparent when considering the Preliminary Objections, that the Nursing Home Defendants did embrace the judicial process. Counsel and the Nursing Homes waived their right to compel arbitration. The Nursing Home Defendants responded

to pre-complaint discovery, and did not raise the issue of arbitration during pre-complaint discovery, or in their praecipe to file a Complaint. O'Donnell, 29 A.3d at 1187. Further, these Defendants took advantage of Pennsylvania Rule of Civil Procedure 1037 which provides that the Prothonotary must issue a rule to file a complaint within 20 days upon praecipe of the defendant. Through this mechanism of the judicial process the Nursing Homes demonstrated conscious engagement with litigation like that shown by the O'Donnell defendants through their use of preliminary objections. O'Donnell, 29 A.3d 1189. The Nursing Home-Appellants and their counsel also entered into a Stipulation to Amend Parties including Joinder. **All parties** agreed that they “wish to proceed with the action notwithstanding any contrary Rule of Civil Procedure” See Court Exhibit “A” attached hereto (13 pages).

An inference of waiver of an arbitration clause is only appropriate where conduct has resulted in an undue advantage or prejudice. The record reveals the Nursing Home Appellants indeed gained undue advantage. See GE Lancaster Investments, 920 A.2d at 853–54. These Appellants have gained the benefit of a detailed, 128-paragraph Complaint pled with all of the specificity required by Pennsylvania courts. See Pa.R.C.P. 1019; Donaldson, WL 3902896 *7 (Pa. Superior Ct. 2016), (“Pennsylvania is a fact-pleading state. . . . The complaint must not only apprise the defendant of the claim being asserted, but it must also summarize the essential facts to support the claim.”). There is no evidence in the record to suggest that a similar pleading standard would be employed in arbitration. Moreover, any costs incurred in preparing the Complaint, and responding to Preliminary Objections are wasted if Plaintiff-McGrane must re-initiate litigation elsewhere. See GE

Lancaster Investments, 920 A.2d at 855 (explaining that additional costs associated with going to arbitration after opposing party participated in the judicial process were a form of prejudice).

The O'Donnell Court concluded such conscious engagement, “was inconsistent with a purpose to stand on the contract arbitration provision.” O'Donnell, 29 A.3d 1189 (quoting Goral v. Fox Ridge, Inc., 683 A.2d 931, 933 (Pa. Superior Ct. 1996)). As in GE Lancaster Investments, 920 A.2d at 856, defense counsel and the Nursing Homes could have filed a motion to compel arbitration at any time after Plaintiff-McGrane filed the Writ of Summons. Instead, these Defendant-Appellants participated in discovery, and compelled Plaintiff-McGrane's further engagement in the judicial process. Therefore, having gained advantage by use of the judicial process, Appellants cannot now stand on the contractual arbitration provision. See GE Lancaster Investments, 920 A.2d at 855.

Finally, it must be noted that even as defense counsel prepared Preliminary Objections, these Nursing Home Defendant-Appellants were engaging in the judicial process when counsel submitted broad and detailed legal challenges and factual rebuttals in their Memoranda.

Defendant-Appellants' Memorandum, dated July 6, 2016, page 11:

“Herein, when Plaintiff paid the entrance fee and executed the Agreement in September, 2014, she acquired possession and use of her unit. Plaintiff has not alleged any specific attempt by Defendants to prevent her from moving in her unit until April, 2015 – seven months after acquiring possession and use of her unit – at which time Defendants requested an assessment as to her level of care pursuant to the Agreement due to health concerns relating to Plaintiff and the impact on the community. Therefore, Plaintiff's allegation of

violation of §3214(c) fails to satisfy the language of said statutory provision, in that residency in the community was not precluded under the terms of the Agreement; rather, the level of care of her residency was at issue.”

Defendant-Appellants’ Supplemental Memorandum, dated July 29, 2016, page 2:

“Plaintiff argues that Defendants induced Plaintiff to file a Complaint in contravention of the arbitration provision, which states in part – “This means you will not be able to file a lawsuit in any Court. . . .” – and therefore Defendants are guilty or procedural gamesmanship. Defendants were merely trying to ascertain the subject matter of this action so that they could respond accordingly. Note also that since the arbitration provision prohibits Plaintiff from filing “a lawsuit in any court,” why did she file the lawsuit in court as opposed to ADR Options, Inc.”

Plaintiff has suffered no prejudice. Plaintiff would have had to make the same allegations with ADR Options, Inc. anyway had this action been initiated in, or transferred to ADR earlier and Defendants filed a motion to compel arbitration earlier. As to additional costs in ADR, Plaintiff executed an Agreement and agreed to arbitration. By filing this lawsuit in court, she risked having this lawsuit transferred to ADR and thus subject to the cost of arbitration.”

Thus, these Nursing Homes filed an “Answer” to the Complaint while at the same time resting on the notion that these same entities have not engaged in the judicial process.

B. Plaintiff-McGrane’s Claims Against Evangelical Services and the Statutory Claims Are Not Subject to the Arbitration Agreement.

This Court must comment that, Trial Judges in Pennsylvania routinely hear cases which may be bifurcated between jury trials followed by non-jury matters by the same judge who heard the facts, i.e., contribution and indemnification, insurance bad faith, and others. To the extent that Ms. McGrane has asserted claims, statutory or otherwise, which

may warrant a bench trial, the appropriate remedy per First Judicial District Protocols, is to file a Motion in Limine with the Trial Judge. Counsel and the Court can then determine the appropriate management of the litigation.

Evangelical Services for the Aging, Inc.

Because Appellant-Evangelical Services was not a signatory to the Residency Agreement, Ms. McGrane's claims against that entity are not subject to an arbitration provision. See Burkett v. St. Francis Country House, 133 A.3d 22, 26 (Pa. Superior Ct. 2016); Elwyn v. DeLuca, 48 A.3d 457, 461 (Pa. Superior Ct. 2012). Ms. McGrane's statutory claim under the Continuing Care Act alleges a violation occurring before execution of the contract. Thus, it is beyond the scope of that contract. See Midomo Co. v. Presbyterian Housing Development Company, 739 A.2d 180, 189 (Pa. Super. Ct. 1999) (explaining that issues preceding lease agreement were not subject to its arbitration clause). Similarly, Plaintiff-McGrane's UTPCPL claims allege deceitful practices independent of any breach of the residency agreement. See Setlock v. Pinebrook Personal Care and Retirement Center, 56 A.3d 904, 911, n. 5 (Pa. Superior Ct. 2012). The arbitration provision at issue states:

“15.1(a) Contractual and/or Property Damage Disputes. Any controversy, dispute, disagreement or claim of any kind or nature, arising from, or relating to this Agreement, or concerning any rights arising from or relating to an alleged breach of this Agreement, . . . shall be settled exclusively by arbitration.”

In Burkett v. St. Francis Country House, *supra*, 133 A.3d at 28, (quoting Elwyn v. DeLuca, *supra*, 48 A.3d at 461):

“In general, only parties to an arbitration agreement are subject to arbitration. However, a nonparty, such as a third-party beneficiary, may fall within the scope of an arbitration agreement if that is the parties’ intent.”

“[A]rbitration agreements are to be strictly construed and such agreement[s] should not be extended by implication.” Burkett, 133 A.3d at 28. Here, there is no indication of intent to include Evangelical Services in the arbitration provision. See Residency Agreement, §15.1(a).

In Elwyn v. DeLuca, *supra*, the Court determined that an arbitration clause could not be extended to apply to a breach of fiduciary claim against a non-signatory board member of a signatory organization. See Elwyn, 48 A.3d at 464. The provision in Elwyn restricted itself to matters arising from or related to the contract. Elwyn, 48 A.3d at 463. The Elwyn Court said the matter before it was distinguishable from its earlier ruling in Dodds v. Pulte Home Corporation., 909 A.2d 348, 352 (Pa. Superior Ct. 2006), where the Superior Court allowed extension of an arbitration agreement to a non-signatory parent company because its interest were intertwined with the signatories. See Elwyn, 48 A.3d at 463. The Elwyn Court noted that the agreement in Dodds was not limited to matters arising from or related to the contract, but also encompassed matters relating to the purchase of a home. The Dodds Court noted that its plaintiff’s claims of fraud against the non-signatory party related to the purchase of a home, and thus were covered by the language of the arbitration agreement. Dodds, 909 A.2d at 350.

In the case at bar, the arbitration provision is restricted to claims arising from or relating to the residency agreement. See Residency Agreement, §15.1(a). The allegations against Evangelical Services consist of statutory causes of action arising under the Unfair Trade Practices and Consumer Protection Law and the Continuing Care Act, as well as common law claims for conversion and unjust enrichment. See Compl., at ¶¶83, 99, 116, 123. As these claims do not arise from the Residency Agreement there is no legal or factual justification for extending the coverage of the Agreement to the non-signatory Evangelical Services. See Elwyn, 48 A.3d at 463-64. The Nursing Home relies on Dodds, 909 A.2d at 352, which is distinguishable from the present matter for the same reasons the Elwyn Court distinguished it. See Elwyn, 48 A.3d at 463. The agreement here is restricted to matters arising from or relating to the residency agreement, however, the claims against Evangelical Services are independent of duties created by the agreement. See Elwyn, 48 A.3d at 463; Dodds, 909 A.2d at 350; Compl., at ¶¶83, 99, 116, 123.

Continuing Care Act

Plaintiff-McGrane's statutory claims are not within the scope of the arbitration agreement. The Superior Court has said that the determination of whether an arbitration clause applies "hinges on whether the dispute arises out of the contract." Setlock, 56 A.3d at 910. In a footnote the Setlock Court registered its disagreement with an earlier finding that parties agreeing to an arbitration clause intend to submit all disputes to arbitration whether they sound in tort or contract. Setlock 56 A.3d at 909-910, n. 5. The Setlock Court concluded that the scope of the agreement was controlling. Setlock 56 A.3d at 909-910, n.

5. The Court rejected the extension of an arbitration clause to cover a wrongful death tort action because it was distinct from anything contemplated by the terms of the agreement. Setlock 56 A.3d at 911.

Here Plaintiff-McGrane alleges that Defendants failed to provide the disclosure statement required by the Continuing Care Act at 40 P.S. §3207. See Compl., at ¶76. The statute declares, at 40 P.S. §3207:

“(a) At the time of or prior to the execution of a contract to provide continuing care or at the time of or prior to the transfer of any money or other property to a provider by or on behalf of a prospective resident, whichever shall first occur, the provider shall deliver a disclosure statement to the person with whom the contract is to be entered into . . .”

Ms. McGrane tendered a \$1000.00 deposit on September 7, 2014, and alleges that she received no disclosure statement. See Compl., at ¶¶33, 39. The act further provides that if a person is precluded “through illness injury or incapacity” from becoming a resident under the terms of an agreement, the agreement is automatically rescinded and monies must be refunded. 40 P.S. §3214(c). Plaintiff-McGrane alleges that the Nursing Homes have failed to return all of her money. Compl., ¶80. Accordingly, Ms. McGrane alleged the breach of statutorily created duties distinct from those created by the agreement. Setlock 56 A.3d at 911. Indeed because Ms. McGrane paid a deposit to the Nursing Homes before executing the Agreement, Appellants’ duty to provide a disclosure statement began before a contract existed. See Compl., at 40-46. Therefore these statutory claims are not within the scope of the Residency Agreement covering disputes arising from or relating to the Agreement. See Residency Agreement §15.1(a).

Pennsylvania Unfair Trade Practices and Consumer Protection Law

Similarly, Plaintiff-McGrane's UTPCPL claims allege that the Nursing Homes engaged in deceitful practices by (1) accepting Ms. McGrane's payments without intending to allow her to move in, (2) waiting to inform Ms. McGrane that she would not be accepted until she declared her intent to move in, and (3) failing to return her funds while making repeated promises to do so. See Compl., at ¶¶88-92; McGrane Memorandum, at 12-13. The UTPCPL declares unfair methods of competition or deceptive practices unlawful. 73 P.S. §201-3. The UTPCPL "catchall" provision defines, as an unfair method of competition, "Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding." 73 P.S. §201-2 (xxi).

The Superior Court recently reiterated that the UTPCPL catchall provision renders actionable both fraudulent and negligent misrepresentation. Dixon v. Northwestern Mutual, WL 4485482, at *8 (Pa. Superior Ct. 2016). Fraudulent misrepresentation requires a showing that the defendant intended to mislead the plaintiff into reliance on a misrepresentation. See Kostrycky v. Pentron Lab. Techs., LLC, 52 A.3d 333, 339 (Pa. Superior Ct. 2012). Negligent misrepresentation merely requires that a defendant ought to have known a representation was false, and intended to induce plaintiff's reliance on the representation. Telwell Inc. v. Grandbridge Real Estate Capital, LLC, WL 4035675, at *8 (Pa. Superior Ct., 2016).

The Dixon Court held that a UTPCPL claim alleging negligent misrepresentation alleged breach of a duty imposed by law regardless of contract. See Dixon, WL 4485482, at *7; See also Telwell, WL 4035675, at *8 (explaining that a fraudulent misrepresentation

claim sounds in tort rather than contract). Here Plaintiff-McGrane alleged that the Nursing Home knowingly deceived her because they never intended to allow her to occupy the unit for which she paid and falsely promised a refund. See Compl., at ¶¶85, 86, 96, 99. Therefore, these assertions of fraudulent misrepresentation allege a breach of duties imposed by law under the UTPCPL, and are beyond the scope of the residency agreement. 73 P.S. §201-2 (xxi); Dixon, WL 4485482, at *7; Telwell, WL 4035675, at *8; Setlock 56 A.3d at 911.

C. The Issues Raised Are Interlocutory and Not Appealable.

Aside from the questionable attempt to invoke an arbitration clause, the Court's determinations to overrule Defendant-Appellants' Preliminary Objections are interlocutory and cannot be appealed. See Rule 311 of the Pennsylvania Rules of Appellate Procedure; Chase Manhattan Mortgage Corp. v. Hodes, 784 A.2d 144, 144 (Pa. Superior 2001), (holding orders dealing with the pleadings not appealable upon denial of preliminary objections); Continental Bank & Trust Co. v. Kyle, 436 A.2d 1216, 1216 (Pa. Superior Ct. 1981), (stating that demurrers are not appealable upon denial of preliminary objections). An appeal may only be taken from: (1) a final order or an order certified by the trial court as a final order; (2) an interlocutory order as of right; (3) an interlocutory order by permission; (4) or a collateral order. Pa. R.A.P. 311, 341(b). Hodes, 784 A.2d at 144. Generally, orders overruling preliminary objections are interlocutory and not appealable as

of right. Burkett v. St. Francis Country Home, *supra*, 133 A.3d at 26. An order is only final where it disposes of all claims and parties in an action. Pa.R.A.P. 341(b)(1); Hodes, 784 A.2d at 144.

This Court's Order disposed of no claims or parties and concerns no topic that would make it appealable as of right. See Hodes, 784 A.2d at 144; Pa.R.A.P. 311. Therefore, this Court's Order was neither final nor appealable as of right except with respect to the arbitration clause. In Hodes, the Superior Court explained that orders were not collateral because they concerned the pleadings of the underlying case, and thus were inextricably intertwined with the merits of the case. Hodes, 784 A.2d at 144. For this reason, the instant appeal should be quashed as an interlocutory appeal not subject to an exception with regard to all of Defendants objections other than their request to compel arbitration. See Burkett, 133 A.3d at 26; Hodes, 784 A.2d at 144; Continental Bank v. Kyle, *supra*, 436 A.2d at 216.

D. Even If The Issues Were Appealable, Appellants' Preliminary Objections Have No Merit.

The Nursing Homes would strike several allegations from Plaintiff-McGrane's Complaint for failure to conform to a rule of law; however, even if this objection were appealable, it lacks merit for the reasons set forth below. Appellants' objections to a failure to conform to a rule of law fall into four categories. First, the Nursing Homes assert that several allegations lack sufficient specificity. Second, the Nursing Homes argue that certain averments violate the Parol Evidence Rule. Defendants' Memorandum, at 9-10. Third, the Nursing Homes object that Plaintiff-McGrane is not entitled to a jury trial with

regard to her statutory claims. Defendants' Memorandum, at 7. Finally, the Nursing Homes asserts that Plaintiff McGrane's statutory claims violate the relevant statutes. This Court does not agree.

Rule 1019(a) Challenge to Specificity

When each paragraph of the Complaint is read in the context of the Complaint as a whole the challenges are baseless. See Estate of Denmark ex rel. Hurst v. Williams, 117 A.3d 300, 306 (Pa. Superior Ct. 2015); Yacoub v. Lehigh Valley Med. Associates, P.C., 805 A.2d 579, 588 (Pa. Superior Ct. 2002). The Superior Court instructs in the Estate of Demark at 117 A.3d 306:

“A complaint must give a defendant fair notice of the plaintiff's claims and a summary of the material facts that support those claims. Pa.R.C.P. 1019(a). In assessing whether particular paragraphs in a complaint satisfy this requirement, they must be read in context with all other allegations in the complaint to determine whether the defendant has been provided adequate notice of the claim against which it must defend.”

Ms. McGrane's Complaint is extraordinarily detailed and comprehensive. It provides clear and straight forward causes of action grounded on fraud, misrepresentations, conversion and more.

The Nursing Homes challenge Complaint Paragraphs 72, 95, and 98 under Pa.R.C.P. 1019(a). See Defendant's Memorandum at 10, 12, and 13. Appellants find Paragraph 72 objectionable because it contains the words “and despite wrongful conduct throughout.” See Defendant's Memorandum at 10. Paragraph 72 follows several allegations that Appellants accepted Ms. McGrane's money without allowing her to occupy

a unit, waited until Ms. McGrane wanted to move in to block her from doing so, and chose an unavailable unit and an impossible occupancy date. See Compl., at ¶¶42, 43, 50, 51, 56, 57. Read in the context of all other allegations, therefore, Paragraph 72 adequately communicates the wrongful conduct alleged. See Estate of Denmark, 117 A.3d at 306; Yacoub, 805 A.2d at 588, Compl., at ¶72.

Paragraph 95 asserts “Defendants furthered their deceptive conduct by using a Residency Agreement that is misleading, confusing, and inconsistent with the applicable legal standard.” Appellants assert that Paragraph 95 does not identify the applicable legal standard nor states what is misleading or confusing. Defendants’ Memorandum, at 12. Paragraphs 81 and 82, however, allege that the Residency Agreement failed to comply with the Continuing Care Act’s cancellation notice requirements, 40 P.S. §3214(a)(7). The applicable legal standard has been identified. Paragraph 96 points out that the Agreement provided for an occupancy date of September 11, 2014, which was an impossibility, making clear the element of the contract alleged to be misleading or confusing. Compl., at ¶96.

Finally, Appellants object that Paragraph 98 includes the words “misrepresentations, deception, acts and omission,” without specific allegations. See Compl., at ¶98; Defendants Memorandum, at 13. Paragraph 89 alleges that Defendants took steps to prevent occupancy only after Ms. McGrane prepared to move-in as opposed to merely writing checks. Compl., at ¶89. Paragraph 90, alleges that Defendants promised

a refund of the entrance fee. Compl., at ¶90. Thus Paragraphs 72, 95, and 98, are adequately specific when read in the context of all other allegations. See Estate of Denmark, 117 A.3d at 306; Yacoub, 805 A.2d at 588.

Parol Evidence Rule

Appellants are not entitled to strike factual allegation from Ms. McGrane's Complaint for failure to conform to a rule of law under Pa. R.C.P. 1028(a)(2) by application of the Parol Evidence Rule. Yocca v. Pittsburgh Steelers Sports, Inc., 854 A.2d 425, 436 (Pa 2004), states:

“Where the parties, without any fraud or mistake, have deliberately put their engagements in writing, the law declares the writing to be not only the best, but the only, evidence of their agreement. . . . [A]nd unless fraud, accident or mistake be averred, the writing constitutes the agreement between the parties, and its terms and agreements cannot be added to nor subtracted from by parol evidence.”

Again, with these arguments defense counsel engages in the substance of the litigation and avails himself of the judicial process.

Appellants view Paragraphs 20-38, Paragraphs 40-44, and Paragraph 87 of the Complaint as Parol Evidence. See Memorandum, at 9, 12. These paragraphs detail Ms. McGrane's experience visiting Wesley, disclosing financial information, the determination of the entrance fee, the paying of a deposit, and the fact that Ms. McGrane was presented with an agreement drafted by these Nursing Home Appellants. See Compl., ¶¶20-38. Paragraphs 40-44 explain that the unit Ms. McGrane had previously requested was unavailable, that she was given a unit that was under renovation, that the occupancy date was listed as September 11, 2014 even though that unit was not available, and that Ms.

McGrane was offered a “rent incentive.” Compl., at ¶¶40-44. Finally, Paragraph 87 alleges that Appellants entered a contract with Plaintiff, demanding her life savings, without obtaining a medical examination. Compl., at ¶84. The Parol Evidence Rule bars use of extrinsic evidence to add or subtract from the terms of an agreement reduced to a writing. See Yocca, 854 A.2d at 436.

To the extent that Parol Evidence is applicable to Count II of the Complaint, the Parol Evidence Rule specifically does not apply to preclude evidence of misrepresentations and justifiable reliance on those representations as set forth in the UTPCPL claims. See Toy v. Metropolitan Life Insurance Co., 928 A.2d 186, 206 (Pa. 2007); Boehm v. Riversource Life Ins. Co., 117 A.3d 308, 326 (Pa. Superior Ct. 2015). Even a plaintiff’s failure to read a contract does not preclude the use of Parol Evidence to show justifiable reliance. Toy, 928 A.2d at 207.

The instant action alleges breach of duties that are independent of any contract. The averments regarding when Ms. McGrane signed the agreement, and when she paid her deposit, are pertinent to violation of the disclosure and refund requirements of the Continuing Care Act. See Continuing Care Act at 40 P.S. §§3207, 3214(c); Compl., at ¶¶31, 33, 38.

Appellants would also strike paragraphs that have nothing to do with the contract such as, a mail solicitation offer promising 25% off entrance fees. Additionally, these Nursing Home Appellants had access to Ms. McGrane’s financial information facilitating the calculation of entrance fees amounting to Plaintiff McGrane’s life savings. See Compl., at ¶¶20, 21, 25, 26, 27, 32, 87. The UTPCPL, 73 P.S. §§201-2 (xxi), 201-3, renders

unlawful deceptive conduct likely to confuse or mislead. Therefore, the deceptive calculation of her fees, and misrepresentations in an advertisement violate a duty apart from the contract. See Dixon, WL 4485482, at *7 (explaining that negligent misrepresentation claims were not contract claims); Telwell, WL 4035675, at *8 (explaining that a fraudulent misrepresentation claim sounds in tort rather than contract).

Disputed paragraphs also pertain to Appellants' opportunities to observe Ms. McGrane's hygiene, Appellants' disinterest in obtaining a medical form prior to Plaintiff-McGrane's decision to actually move-in, and Appellants' statements that Ms. McGrane would be "accepted" into Wesley. See Compl., at ¶¶22, 23, 25, 29, 34, 35, 36, 37. These are all relevant to the tort claim that these Nursing Home Appellants deceptively delayed rejection of Plaintiff-McGrane until she chose to avail herself of her unit. See McGrane Memorandum, at 12-13. Such allegations are unrelated to the contract. See Telwell, WL 4035675, at *8.

To the extent that Appellee-McGrane's UTPCPL claims concern the Residency Agreement, they constitute an allegation of fraud in the execution asserting that agreed upon terms were omitted from the contract by fraud. See Toy, 928 A.2d at 206; Boehm, 117 A.3d at 326. Ms. McGrane alleges "Defendants furthered their deceptive conduct by using a Residency Agreement that was misleading and confusing," and elaborates that the occupancy date written in the agreement was an impossibility at the time of execution. See Compl., at ¶¶95-97. Thus, all of the paragraphs pertaining to Ms. McGrane's selection of a unit, the availability of the unit, move-in dates, and the rent incentive, pertain to the

question of whether fraud prevented the contract from memorializing the terms to which Plaintiff-McGrane agreed, and are not precluded by the Parol Evidence Rule. See Toy, 928 A.2d at 206; Boehm, 117 A.3d at 326; Compl., ¶¶24, 28, 31, 40, 41, 42, 43, 44.

In sum none of the disputed allegations are barred by the Parol Evidence. See Toy, 928 A.2d at 206; See 73 P.S. §§ 201-2 (xxi), 201-3; Telwell, WL 4035675, at *8; Boehm, 117 A.3d at 326.

Jury Demand

It is incumbent on counsel to prepare a “Civil Cover Sheet,” request a jury trial and then pay the jury fee or suffer a waiver. See Rule 1007.1 of the Pennsylvania Rules of Civil Procedure and Phila. Local Rule *1007.1.

As indicated earlier in this Opinion, to the extent that the UTPCPL claims and the claims filed pursuant to the Continuing Care Act are not entitled to a jury’s consideration, these matters are handled administratively at Case Management Conferences, with Trial Team Leaders and with the Trial Judge by Motions in Limine.

The Statutory Claims

Contrary to Appellants’ contentions, the Court overruled the Preliminary Objections to the statutory claims where, as here, the claims are supported by the facts as pled. At the Preliminary Objection stage, facts as pled by the non-movant are taken as true. Plaintiff-Appellee did present sufficient facts to support broken promises of payment, negligent misrepresentation, and fraudulent misrepresentation per the Pennsylvania Unfair Trade Practices and Consumer Protection Law. This statute, if proven, entitled Ms. McGrane to recover counsel fees and treble damages. See also, Continua Care Act.

Here, Plaintiff-Appellee did present sufficient facts to support the Nursing Homes' failure to tender her refund of substantial monies due to rescission of the Agreement. Again, this is not the proper procedural juncture to raise factual challenges about whether and why the Nursing Home Appellants prevented Ms. McGrane from moving into her residence.

E. Ms. McGrane's Complaint Does Not Contain Scandalous or Impertinent Matters.

Our courts have held that the standard for determining whether allegations should be stricken as scandalous or impertinent is whether they are "legally relevant to plaintiffs' cause or whether they could have any influence in leading to the result." See Jefferies v. Hoffman, 207 A.2d 774, 775 (Pa. 1965). See also Hudock v. Donegal Mutual Insurance Co., 264 A.2d 668, 671, n.3 (Pa. 1970), (explaining matter irrelevant to cause of action should have been objected to as impertinent).

The Nursing Home-Appellants object to Paragraphs 42 and 44, which state that Appellants "pressed" Ms. McGrane to sign the agreement and pay on September 11, 2014, while Paragraph 44 says that Defendants "'coaxed' her to sign with a rent incentive." Compl., at ¶¶42, 44. Appellants point out that Plaintiff-McGrane has not alleged undue coercion or fraud in the inducement, and suggest these allegations are irrelevant. See Defendants' Memorandum 9. As explained above, however, Ms. McGrane alleges that the Nursing Home deceived her about the terms of the Agreement. See Compl., at ¶¶95-96. Therefore, Paragraphs 42 and 44 are relevant to fraud in the execution. See Toy, 928 A.2d at 206; Boehm, 117 A.3d at 326.

Appellants label several other paragraphs “scandalous or impertinent.” See Defendants’ Memorandum, at 8-9. Paragraph 1 uses the words “shameful,” and “bilked,” while Paragraphs 4 and 5 use the words “shockingly,” and “unscrupulous.” Compl., at ¶¶1, 4, 5. While Appellants might prefer less critical vocabulary these characterizations are not irrelevant. See Jefferies, 207 A.2d at 775. Appellee-McGrane seeks treble damages for her UTPCPL claims, and in determining the availability of such damages courts, “should focus on the presence of intentional or reckless, wrongful conduct” Dibish v. Ameriprise Financial, Inc., 134 A.3d 1079, 1091 (Pa. Superior Ct. 2016); Compl. at ¶99. Therefore, whether the Nursing Homes’ conduct was “shameful,” “shocking,” and “unscrupulous,” and whether Appellants “bilked” Ms. McGrane, is relevant to her UTPCPL claim. See Dibish 134 A.3d at 1091.

In order to show fraudulent representation Appellee-McGrane must also plead that Appellants knew their representations were false, and intended to mislead Ms. McGrane into reliance. See Kostryckyj, 52 A.3d at 339. Paragraph 2, describing Ms. McGrane’s age, work history, and savings, reveals details about Ms. McGrane’s vulnerability to deception, elder abuse, and the possible notice and/or awareness of Appellants in their deceptive conduct. See Kostryckyj, 52 A.3d at 339 (explaining that fraudulent misrepresentation requires that Defendant intended to induce reliance on a misrepresentation). The averment that Ms. McGrane survived bombings in World War II is also relevant. In Reichman v. Wallach, 452 A.2d 501, 508 (Pa. Superior Ct. 1982), the Superior Court held that the fact that a plaintiff was a holocaust survivor could have been relevant to her condition caused by stress. Ms. McGrane’s wartime experience may render

her vulnerable to deception, or suggest that the Appellants knew about the likelihood of confusion. See Jefferies, 207 A.2d at 775; Kostrycky, 52 A.3d at 339; See Dibish 134 A.3d at 1091; Compl., at ¶¶1 , 2.

Paragraphs 30 and 46 state that the entrance fee was strikingly close to Ms. McGrane's life savings. Compl., at ¶¶30, 46. Paragraph 46 states:

“46. Also on September 11, 2014, Ms. McGrane tendered to Wesley an Entrance Fee in the amount of \$146,900, which encompassed virtually her entire life savings. Ms. McGrane's total Entrance Fee payment was \$147,900, including the \$1000 deposit tendered with her application.”

This is relevant to the allegation that these Appellants fraudulently endeavored to acquire as much money as possible by setting the fee only after gathering financial information. See Compl., at ¶¶26, 30, 86.

Finally, Paragraphs 53, 54, and 56, relate that Appellants had prior knowledge of Plaintiff-McGrane's hygiene challenges. Plaintiff avers:

“53. During Ms. McGrane's visits to Wesley between September 2014 and April 2015, Wesley employees observed Ms. McGrane's personal hygiene issues. As Sharon Margulies summarized in a May 2015 email, ‘Iris McGrane has had lunch at WEL Upper Moreland & participated in some programs since her contact signing date of 9/11/14, her own personal hygiene, is malodorous as well, with a strong urine stench.’

54. Nevertheless, Defendants were happy to continue taking payments from Ms. McGrane, and to retain her substantial Entrance Fee, so long as Ms. McGrane did not seek to move in to the Upper Moreland community.

55. In or about April 2015, Defendants were informed that Ms. McGrane was preparing to occupy Unit 341 at Wesley's Upper Moreland independent living facility.

56. Upon learning of Ms. McGrane's plans to move in to the Upper Moreland facility (as opposed to merely writing checks to Wesley each month), Defendants acted to prevent Ms. McGrane from occupying the facility."

They delayed taking action until they had extracted seven months of payments and Ms. McGrane was prepared to actually move in. See Compl., at ¶¶53, 54, 56, 86, 89. This information is directly relevant to her UTPCPL claim seeking treble damages for fraudulent misrepresentation. See Kostrycky, 52 A.3d at 339(setting forth requirements for fraudulent misrepresentation), Dibish 134 A.3d at 1091; Compl. at ¶88.

For these reasons, none of Plaintiff-McGrane's averments are scandalous or impertinent. See Jefferies, 207 A.2d at 775.

F. Preliminary Objections in the Nature Of Demurrer to Counts II, IV, and V of the Complaint Are Without Merit.

Appellants lodged Preliminary Objections in the nature of demurrer to Ms. McGrane's claims for unjust enrichment, conversion, and UTPCPL violations. See Defendants Memorandum, at 13-15. All of these assertions fail because Appellee-McGrane adequately states her claims. See Bruno v. Erie Insurance Co., 106 A.3d 48, 68 (Pa. 2014); Telwell, WL 4035675, at 8; Kostrycky, 52 A.3d at 339.

Unfair Trade Practices and Consumer Protection Law

Appellants' sole argument for demurrer to the UTPCPL claims is that Ms. McGrane cannot prove justifiable reliance because her claim is premised on representations made prior to entering an Agreement. Defendants Memorandum, at 14. For all of the reasons set forth in the above discussion of the Parol Evidence Rule, Ms. McGrane is not precluded

from demonstrating that she relied on the Nursing Home representations. See Telwell, WL 4035675, at *8, (holding negligent and fraudulent misrepresentation sounds in tort). Toy, 928 A.2d at 206, (stating that parol evidence rule does not apply to fraud in the execution).

Ms. McGrane alleges these Appellants breached duties that do not arise from the contract such as delaying their response to hygiene concerns, making repeated false promises of a refund, and calculating a fee that nearly equaled her life savings. See Compl., at ¶¶20, 21, 22, 23, 25, 26, 27, 30, 32, 34, 34, 36, 37, 87. These Paragraphs neither add to, nor subtract from a contract, but allege deceptive conduct apart from contract duties. Telwell, WL 4035675, at *8. Ms. McGrane's allegations also support the claim that the Appellants deceived her about the content of the Agreement by choosing an impossible occupancy date, and an unavailable unit, and telling her she was "accepted." See Compl., at ¶¶95-97. The Parol Evidence Rule does not apply to fraud in the execution claims. See Toy, 928 A.2d at 206. Therefore, Defendants demurrer as to UTPCPL claims were properly denied.

Unjust Enrichment

Plaintiff-McGrane states a claim for unjust enrichment against Evangelical Services because this Appellant was not a signatory to the Residency Agreement. Appellant's sole grounds for asserting failure to state a claim for unjust enrichment is that the equitable doctrine of unjust enrichment is not available when a relationship is governed by a contract. See Telwell, WL 4035675, at 6, (stating the elements of unjust enrichment); Defendants' Memorandum, at 15. However, Evangelical Services was not a signatory to the Agreement. See Defendants Memorandum, at 15. As discussed above, these Appellants

fail to cite, and research fails to reveal, any case extending the entirety of a contract to a non-signatory for the purposes of an unjust enrichment claim. See Defendants Memorandum, at 15. Therefore, Defendants' demurrer as to unjust enrichment was appropriately denied.

Conversion

Finally, Plaintiff-McGrane states a conversion claim. The gist of the action doctrine does not apply. See Bruno, 106 A.3d at 68; Kennedy v. Consol Energy Inc., 116 A.3d 626, 637 (Pa. Superior Ct. 2015). Appellants argue that failure to pay a debt is not conversion and that the gist of the action doctrine renders this a matter a contract claim. See Defendants' Memorandum, at 15. Conversion is "the deprivation of another's right of property . . . without the owner's consent and without lawful justification." Kennedy, 116 A.3d at 637. "Failure to pay a debt is not conversion." Epstein v. Saul Ewing, LLP, 7 A.3d 303, 314 (Pa. Superior Ct. 2010). **However, a demand for property and subsequent refusal to deliver it can constitute conversion.** Cf. PTSI, Inc. v. Haley, 71 A.3d 304, 313 (Pa. Superior Ct. 2013), (finding no conversion where item was returned upon demand). Ms. McGrane alleges that these Nursing Homes did not simply fail to pay a debt, rather, they promised to refund Ms. McGrane's entrance fee, and, they acknowledged her property therein, however, they also continued to hold her funds. See Compl., at ¶¶59, 60, 61, 64, 71, 72. Therefore, the law does not say with certainty that the refund due to Ms. McGrane was a debt. See Donaldson., WL 3902896, *3; PTSI, 71 A.3d at 313.

The gist of the action doctrine does not render Plaintiff-McGrane’s conversion claim a contract matter. See Bruno, 106 A.3d at 68. Generally, the gist of the action doctrine precludes plaintiffs from recasting ordinary contract claims as tort claims. See eToll, Inc. v. Elias/Savion Advert., Inc., 811 A.2d 10, 14 (Pa. 2002). Upon a lengthy examination of the application of the doctrine, our Supreme Court has adopted a duty-based analysis to determine whether the doctrine applies. See Bruno v. Erie Insurance Co., supra, 106 A.3d at 68:

“If the facts of a particular claim establish that the duty breached is one created by the parties by the terms of their contract – i.e., a specific promise to do something that a party would not ordinarily have been obligated to do but for the existence of the contract – then the claim is to be viewed as one for breach of contract.”

Here, it is alleged that these Appellants converted Ms. McGrane’s funds by virtue of their promises to refund her monies and failure to do so. See PTSI, 71 A.3d at 313; McGrane Memorandum, at 23, Compl., at ¶119. Therefore, the duties allegedly breached arise independently from the contract. See Bruno, 106 A.3d at 68. The Nursing Homes demurrer to conversion was properly denied.

III. CONCLUSION

For all of the reasons set forth above and pursuant to Rule 1925(a)(1), this Court submits this Opinion of the reasons for the Order dated August 8, 2016. The Preliminary Objections filed by these Nursing Home Defendant-Appellants were properly Overruled.

BY THE COURT:


FREDERICA A. MASSIAH-JACKSON, J.

222 Frontenac St
Hula, Pa 19111
215-725-2885

To: Wesley Enhanced
Ladies/Gentlemen

Re Apt 341

As requested this confirming the instructions given by my attorney to terminate the above apartment as of May 31st 2015. My monthly rental has been paid up to that date.

In return I accept your offer to return my initial payment made last September 11th.

As mentioned I will gladly return the keys to 341 to you.

I look forward to receiving the return of my payment.

Sincerely yours

Wesley Enhanced
Wesley Enhanced

7612 Frontenac Street
Philadelphia
Pennsylvania
19111
215 725 0385

To: Robyn Kulp, Executive Director
Wesley Enhanced Living
2315 Byberry Road
Haddon, Pa. 19050

November 16, 2015

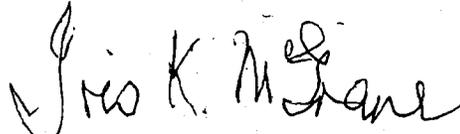
Dear Robyn,

Since I have heard no more from you, this is to ask why my money has not been returned.

Remember I did not receive your letter dated September 1, 2014 until a copy was handed to me here on May 15, 2015 when Sharon Margulies said my money would be returned. Your letter outlined monies due at settlement on September 11, 2014 as well as mentioned my apartment had been changed to 341. No exterminator was with Sharon as I had hoped. I also did not receive your residential agreement until you sent me a copy and received by me on June 29, 2015. I did receive Wesley's May letter inviting my residency in your assisted living program.

I hope you will now return my hard earned retirement savings.

Respectfully and sincerely yours,


Iris K. McGrane

THE D'ARRO FIRM, P.C.

.....Attorneys at Law
The Biddle House
1325 SPRUCE STREET
PHILADELPHIA, PA 19107
215.546.6620 215.546.7795 Fax
E-mail: Darro.law@comcast.net

Francesco G. D'Arro
Also Admitted in U.S. District Court
for the E.D. of Pennsylvania

Offices:
Philadelphia County
Delaware County

February 3, 2016

CERTIFIED MAIL 7015 1520 0001 6205 3514

Mr. Jeff Petty
President & Chief Executive Officer
Wesley Enhanced Living Upper Moreland
101 East County Line Rd., Ste. 200
Hatboro, PA 19040

**RE: Iris K. McGrane vs. Wesley Enhanced Living; et al.
Philadelphia CCP 160200493**

Dear Mr. Petty:

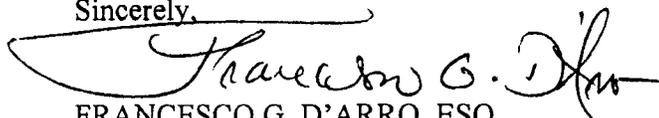
Please be advised that I represent Iris McGrane. Enclosed is a Writ of Summons naming Wesley Enhanced Living Upper Moreland and Maple Village as defendants in my client's lawsuit. If your organizations have an attorney, you should promptly provide this letter and contents to your attorney.

As I believe you are aware, our client applied for residency at your facility in Upper Moreland, and from September 2014 through May 2015 she transferred no less than \$148,100.00 of her life savings to Wesley Enhanced Living. In May 2015, Ms. McGrane was informed that Wesley would no longer permit her to move into the facility, although a full refund would be issued. However, despite repeated requests by Ms. McGrane and assurances by your representatives, no refund has been issued. The purpose of this lawsuit is to claim the full refund along with punitive damages and legal fees pursuant to our theories of improprieties committed.

With respect to the lawsuit, I have enclosed Discovery in Aid of Filing of Complaint to which defendants are required to provide verified responses within thirty days. I also request and suggest that within these thirty days you contact me to make arrangements to resolve this claim, which will be by no later than Friday, March 4, 2016. After March 4th, we will inform the accrediting authorities of our client's circumstances, including but not limited to the departments of Human Services and Public Welfare, along with the Pennsylvania Attorney General. Thereafter, we will consider the option to inform the local news agencies.

I look forward to your anticipated cooperation in accord with the foregoing.

Sincerely,


FRANCESCO G. D'ARRO, ESQ.

Case ID: 160200493
Control No.: 16070736

THE D'ARRO FIRM, P.C.
BY: FRANCESCO G. D'ARRO, ESQUIRE
Identification No.: 88219
1325 Spruce St.
Philadelphia, PA 19107
215.546.6620
215.546-7795 (fax)
Darro.Law@verizon.net

Attorney for Plaintiff Iris McGrane

IRIS McGRANE	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
	:	CIVIL ACTION - LAW
	:	
Plaintiff	:	
vs.	:	
	:	
WESLEY ENHANCED LIVING UPPER	:	February 2016 Term
MORELAND	:	
	:	No.: 00493
	:	
And	:	
	:	
MAPLE VILLAGE	:	
	:	
	:	
Defendants	:	

CERTIFICATION OF SERVICE

I, Francesco G. D'Arro, Esquire hereby certify that Plaintiff's DISCOVERY REQUESTS IN AID OF FILING OF COMPLAINT, was served via regular, first class, prepaid mail on February 3, 2016, upon the following:

Mr. Jeff Petty
President & Chief Executive Officer
Director, Wesley Enhanced Living Upper Moreland
101 East County Line Rd., Ste. 200
Hatboro, PA 19040

By: _____/s/_____
FRANCESCO G. D'ARRO, ESQUIRE
Attorney for Plaintiff, Iris McGrane



MONTGOMERY COUNTY SHERIFF'S OFFICE ORDER FOR SERVICE

(Please prepare a separate request for service form for each defendant to be served by the Sheriff)

To: Sheriff Sean P. Kilkenny
Montgomery County Court House
P.O. Box 311
Norrstown, Pennsylvania 19401-0311
Phone: 610-278-3331 Fax: 610-278-3832

Date: February 3
Philadelphia, PA
Prothonotary No. 1463
Sheriff Cost: 69.



Attorney's Or Plaintiff's Name and Address: <u>Francesca E. D'Arro Esquire</u> <u>1325 Spruce St.</u> <u>Phila., PA 19107</u>	Civil Action	Writ of Execution Levy
	Confessed Judgment	Writ of Execution Attachment
	Complaint in Ejectment	Writ of Execution Garnishee
	Posting	Writ of Seizure
	Writ of Possession	Impoundment
	Other:	Court Order:

ATTY. ID# 88219 Telephone: 215-546-6630

IRIS K. McGRANE
 Vs. PLAINTIFF
Wesley Enhanced Living Upper Moreland
AND MAPLE VILLAGE DEFENDANT

Service Upon: Wesley Enhanced Living
 LOCATION (MUST HAVE VALID ADDRESS OR DIRECTIONS):
Upper Moreland
2815 Byberry Rd.
HATBORO, PA 19040

FOR SHERIFF USE ONLY SHERIFF'S RETURN

PERSON SERVED Dave Byrk

RELATIONSHIP/POSITION IPC

PLACE OF SERVICE Same

DATE OF SERVICE 2/17/16

TIME OF SERVICE 0910

NUMBER OF ATTEMPTS 1

DEPUTY WALKER

DEPUTY ✓

LAST DAY FOR SERVICE _____

SERVICE NOT MADE BECAUSE:

DATE:	TIME:	DEPUTY:	DEPUTY:
<input type="checkbox"/> NO SERVICE	<input type="checkbox"/> BAD ADDRESS	<input type="checkbox"/> UNKNOWN AT ADDRESS	<input type="checkbox"/> NEED BETTER ADDRESS
<input type="checkbox"/> MOVED	<input type="checkbox"/> BUILDING VACANT	<input type="checkbox"/> ADDRESS OUT OF COUNTY	<input type="checkbox"/> OTHER

POSSESSION TAKEN:

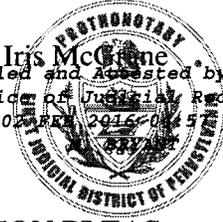
DATE: TIME: DEPUTY: DEPUTY:

ATTEMPTED SERVICE DATE & TIME	STAMP <div style="text-align: center; font-size: small;"> 876 V 8- 1/17/16 </div>
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THE D'ARRO FIRM, P.C.
 BY: FRANCESCO G. D'ARRO, ESQUIRE
 Identification No.: 88219
 1325 Spruce St.
 Philadelphia, PA 19107
 215.546.6620
 215.546-7795 (fax)
 Darro.Law@verizon.net

Attorney for Plaintiff Iris McGrane

Filed and Attested by the
 Officer of Judicial Records
 02/22/2016 04:57 pm



IRIS McGRANE :
 7612 Frontanac St. :
 Philadelphia, PA 19111 :

**COURT OF COMMON PLEAS
 PHILADELPHIA COUNTY
 CIVIL ACTION - LAW**

Plaintiff :

vs. :

No.:

WESLEY ENHANCED LIVING UPPER :
 MORELAND :
 2815 Byberry Rd. :
 Hatboro, PA 19040 :

And :

MAPLE VILLAGE :
 2815 Byberry Rd. :
 Hatboro, PA 19040 :

Defendants :

**PRAECIPE TO ISSUE WRIT OF SUMMONS
 CIVIL ACTION**

To the Prothonotary:

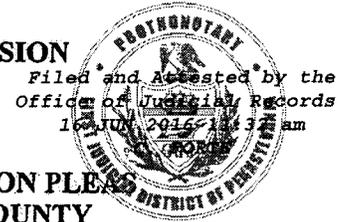
Kindly issue a Writ of Summons – Civil Action to the Defendants named in the above-captioned matter.

THE D'ARRO FIRM, P.C.

DATED: February 2, 2016

BY: _____/s/_____
 FRANCESCO G. D'ARRO, ESQ.
 Attorney for Plaintiff Iris McGrane

IN THE COURT OF COMMON PLEAS – LAW DIVISION
PHILADELPHIA COUNTY



IRIS McGRANE
:
:
Plaintiff :
:
vs. :
:
EVANGELICAL SERVICES FOR THE :
AGING, INC. :
:
And :
:
MAPLE VILLAGE, INC. :
:
Defendants :

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
CIVIL ACTION - LAW

February 2016 Term

No. 00493

**STIPULATION TO AMEND PARTIES, INCLUDING THE JOINDER OF
ADDITIONAL DEFENDANT EVANGELICAL SERVICES FOR THE AGING INC.**

Whereas, on February 2, 2016, Plaintiff Iris McGrane, through her undersigned counsel, filed a writ of summons naming the two defendants: 1.) Wesley Enhanced Living Upper Moreland, and 2.) Maple Village.

Whereas, on May 23, 2016, plaintiff filed a complaint, which instead named the two defendants: 1.) Evangelical Services for the Aging, Inc., and 2.) Maple Village, Inc.

Whereas, all the parties herein wish to proceed with the action notwithstanding any contrary Rule of Procedure or ambiguity in any Rule pertaining only to the method for joinder/amendment of party defendants, by plaintiff, in a complaint subsequent to a writ of summons. The parties therefore agree to the amendment of the named Maple Village Inc. and to the joinder of Evangelical Services for the Aging, Inc.

Now, therefore, counsel for each party, being authorized by their respective clients, have endorsed below, signifying their stipulation, as aforementioned, to the case caption and parties as captioned above.

Handwritten signature of Francesco G. D'Arro in black ink.

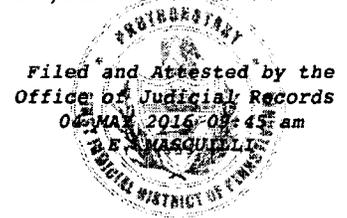
Francesco G. D'Arro, Esquire
The D'Arro Firm, P.C.
Counsel for Iris McGrane

Handwritten signature of Bruce D. Hess in black ink.

Bruce D. Hess, Esquire
Counsel for Evangelical Services for the
Aging, Inc. and Maple Village, Inc.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA
TRIAL DIVISION

HOWLAND, HESS, GUINAN, TORPEY,
CASSIDY & O'CONNELL, LLP
BY: BRUCE D. HESS, ESQUIRE
Identification No. 24602
2444 Huntingdon Pike
Huntingdon Valley, PA 19006
(215) 947-6240
bhess@howlandhess.com



Attorney for Defendants Wesley Enhanced Living at
Upper Moreland and Maple Village

IRIS K. MCGRANE :
 :
 vs. :
 : 16-02-000493
 WESLEY ENHANCED LIVING :
 At UPPER MORELAND :
 :
 and :
 :
 MAPLE VILLAGE :

PRAECIPE AND RULE TO FILE A COMPLAINT

TO THE PROTHONOTARY:

Issue rule on PLAINTIFF IRIS K. MCGRANE to file a Complaint in the above case within twenty (20) days after service of the rule or the Prothonotary, upon Praecipe, shall enter a judgment of non pros.

Date: 5/3/16

Signature: 
BRUCE D. HESS, ESQUIRE
ATTORNEY FOR DEFENDANTS

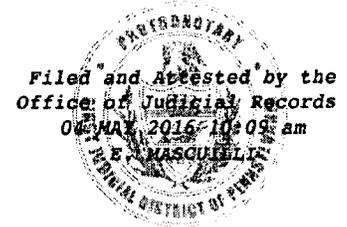
NOW, _____, _____, RULE ISSUED AS ABOVE.

Prothonotary _____
By _____


Case ID: 16020049
Case ID: 160200493
Control No.: 16070736

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA
TRIAL DIVISION

HOWLAND, HESS, GUINAN, TORPEY,
CASSIDY & O'CONNELL, LLP
BY: BRUCE D. HESS, ESQUIRE
Identification No. 24602
2444 Huntingdon Pike
Huntingdon Valley, PA 19006
(215) 947-6240
bhess@howlandhess.com



Attorney for Defendants Wesley Enhanced Living at
Upper Moreland and Maple Village

IRIS K. MCGRANE :
 :
 :
 vs. :
 : **16-02-00493**
 :
 WESLEY ENHANCED LIVING :
 At UPPER MORELAND :
 :
 :
 and :
 :
 :
 MAPLE VILLAGE :

I hereby certify that on the date listed below, I served a copy of the Rule to File Complaint
upon all other parties or their attorney of record by:

Regular First Class Mail

Certified Mail

Other

DATE: May 4, 2016



Bruce D. Hess, Esquire
Attorney for Defendants

Case ID: 160200493
Control No.: 16070736

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA
TRIAL DIVISION

HOWLAND, HESS, GUINAN, TORPEY,
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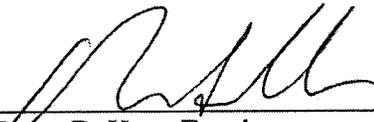
Attorney for Defendants Wesley Enhanced Living at
Upper Moreland and Maple Village

IRIS K. MCGRANE :
: vs. : 16-02-00493
: :
WESLEY ENHANCED LIVING :
At UPPER MORELAND :
: :
and :
: :
MAPLE VILLAGE :

I hereby certify that on the date listed below, I served a copy of the Rule to File Complaint upon all other parties or their attorney of record by:

- Regular First Class Mail
- Certified Mail
- Other

DATE: May 4, 2016



Bruce D. Hess, Esquire
Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA
TRIAL DIVISION

HOWLAND, HESS, GUNAN, TORPEY,
CASSIDY & O'CONNELL, LLP
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Attorney for Defendants Wesley Enhanced Living at
Upper Moreland and Maple Village

IRIS K. MCGRANE :
:
vs. :
: **16-02-000493**
WESLEY ENHANCED LIVING :
At UPPER MORELAND :
:
and :
:
MAPLE VILLAGE :

PRAECIPE AND RULE TO FILE A COMPLAINT

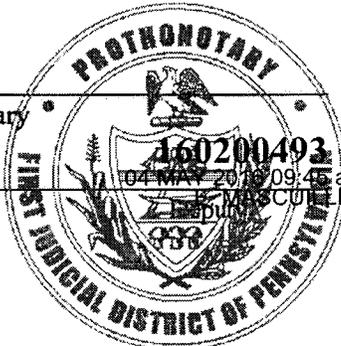
TO THE PROTHONOTARY:

Issue rule on PLAINTIFF IRIS K. MCGRANE to file a Complaint in the above case within twenty (20) days after service of the rule or the Prothonotary, upon Praecipe, shall enter a judgment of non pros.

Date: 5/3/16

Signature: 
BRUCE D. HESS, ESQUIRE
ATTORNEY FOR DEFENDANTS

NOW, _____, _____, RULE ISSUED AS ABOVE.

Prothonotary _____
By _____


DOCKETED

MAY 31 2016

BRIAN P. LAWLOR



IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL

MCGRANE

February Term 2016

VS

No. 00493

WESLEY ENHANCED LIVING UPPER
MORELAND E

CASE MANAGEMENT ORDER
STANDARD TRACK

Mcgrane Vs Wesley Enhan-CMOIS



16020049300020

AND NOW, *Tuesday, May 31, 2016*, it is Ordered that:

1. The case management and time standards adopted for standard track cases shall be applicable to this case and are hereby incorporated into this Order.
2. All *discovery* on the above matter shall be completed not later than *01-MAY-2017*.
3. *Plaintiff* shall identify and submit *curriculum vitae and expert reports* of all expert witnesses intended to testify at trial to all other parties not later than *01-MAY-2017*.
4. *Defendant and any additional defendants* shall identify and submit *curriculum vitae and expert reports* of all expert witnesses intended to testify at trial not later than *05-JUN-2017*.
5. All *pre-trial motions* shall be filed not later than *05-JUN-2017*.
6. A *settlement conference* may be scheduled at any time after *05-JUN-2017*. Prior to the settlement conference all counsel shall serve all opposing counsel and file a settlement memorandum containing the following:
 - (a). A concise summary of the nature of the case if plaintiff or of the defense if defendant or additional defendant;
 - (b). A statement by the plaintiff or all damages accumulated, including an itemization of injuries and all special damages claimed by categories and amount;
 - (c). Defendant shall identify all applicable insurance carriers, together with applicable limits of liability.
7. A *pre-trial conference* will be scheduled any time after *07-AUG-2017*. Fifteen days prior to pre-trial conference, all counsel shall serve all opposing counsel and file a pre-trial memorandum containing the following:

- (a). A concise summary of the nature of the case if plaintiff or the defense if defendant or additional defendant;
 - (b). A list of all witnesses who may be called to testify at trial by name and address. Counsel should expect witnesses not listed to be precluded from testifying at trial;
 - (c). A list of all exhibits the party intends to offer into evidence. All exhibits shall be pre-numbered and shall be exchanged among counsel prior to the conference. Counsel should expect any exhibit not listed to be precluded at trial;
 - (d). Plaintiff shall list an itemization of injuries or damages sustained together with all special damages claimed by category and amount. This list shall include as appropriate, computations of all past lost earnings and future lost earning capacity or medical expenses together with any other unliquidated damages claimed; and
 - (e). Defendant shall state its position regarding damages and shall identify all applicable insurance carriers, together with applicable limits of liability;
 - (f). Each counsel shall provide an estimate of the anticipated length of trial.
8. *It is expected that the case will be ready for trial 04-SEP-2017*, and counsel should anticipate trial to begin expeditiously thereafter.
9. All counsel are under a continuing obligation and are hereby ordered to serve a copy of this order upon all unrepresented parties and upon all counsel entering an appearance subsequent to the entry of this Order.

BY THE COURT:


ARNOLD NEW, J.
TEAM LEADER