

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL ACTION—LAW

COLUMBIA CONCERNED CITIZENS :
ASSOCIATION, by Norman B. Meiskey, III, : No. CI-19-02441
Frank J. Doutrich, and JoAnn V. Fritz, :
as Trustees ad Litem, : Hon. Leonard G. Brown, III
Plaintiff :
v. :
BOROUGH OF COLUMBIA, : ACTION FOR
Defendant : DECLARATORY JUDGMENT
AND PERMANENT INJUNCTION
JURY TRIAL DEMANDED

ORDER

AND NOW, this _____ day of April, 2019, pursuant to Lancaster County Rule of Civil Procedure 1028(c).B and Lancaster County Local Rules 206.1(a), 206.4(c), and 206.7, it is hereby ordered that:

1. A rule is issued upon the Plaintiffs to show cause why the Defendant is not entitled to the relief requested.
2. The Plaintiffs shall file an answer to the Preliminary Objections within twenty days of service.
3. The Preliminary Objections shall be decided under Pa.R.C.P. No. 206.7.
4. Discovery shall be completed within forty-five days of service of the Answer.
5. The Defendant shall file a brief in support of the Preliminary Objections within twenty days after the discovery deadline. Any party opposing the Preliminary Objections shall file a responsive Brief within ten days of service of the Defendant's Brief. The Defendant may file a Reply Brief within five business days of service of a responsive brief. After all briefs have been filed, the Prothonotary shall notify the assigned Judge and forward the file to chambers for disposition. Any party may request oral argument by filing a Praeceptum requesting it when filing their brief.
6. The Defendant shall provide notice of the entry of this Order to all parties.
7. All proceedings to stay meanwhile.

Date: _____

Hon. Leonard G. Brown, III

Neil L. Albert, Esquire
Attorney I.D. No. 23368
Zimmerman, Pfannebecker, Nuffort & Albert, LLP
22 South Duke Street
Lancaster, PA 17602
(717) 299-0711

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

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BOROUGH OF COLUMBIA, : DECLARATORY JUDGMENT
Defendant : AND PERMANENT INJUNCTION
: JURY TRIAL DEMANDED

PROthonotary's OFFICE
LANCASTER, PA
2019 APR -4 PM 3:30
ENTERED AND FILED

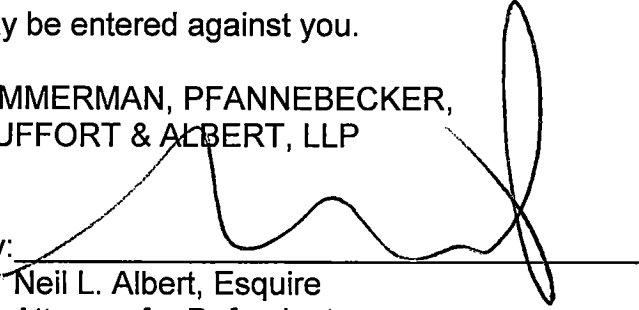
NOTICE TO PLEAD

TO: COLUMBIA CONCERNED CITIZENS ASSOCIATION,
BY NORMAN B. MEISKEY, III, FRANK J. DOUTRICH,
AND JOANN V. FRITZ, AS TRUSTEES AD LITEM

You are hereby notified to file a written response to the Preliminary Objections Pursuant to Pa.R.C.P. 1028(a)(5) Respecting Lack of Capacity to Sue within twenty (20) days from service hereof or a judgment may be entered against you.

ZIMMERMAN, PFANNEBECKER,
NUFFORT & ALBERT, LLP

Dated: 4/4/19

By: 
Neil L. Albert, Esquire
Attorney for Defendant
Attorney I.D. No. 23368

Neil L. Albert, Esquire
Attorney I.D. No. 23368
Zimmerman, Pfannebecker, Nuffort & Albert, LLP
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as Trustees ad Litem,	:	Hon. Leonard G. Brown, III
Plaintiff	:	
	:	
v.	:	ACTION FOR
	:	DECLARATORY JUDGMENT
BOROUGH OF COLUMBIA,	:	AND PERMANENT INJUNCTION
Defendant	:	JURY TRIAL DEMANDED

PROTHONOTARY'S OFFICE
LANCASTER, PA

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**PRELIMINARY OBJECTIONS PURSUANT TO
Pa.R.C.P. 1028(a)(5) RESPECTING LACK OF CAPACITY TO SUE**

1. This action has been brought by three taxpayers of the Borough of Columbia.
2. All three of the Plaintiffs are private citizens.
3. The suit was brought to challenge the legality of Ordinance 897-2018, which established the Commercial Revolving Loan Program.
4. The Commercial Revolving Loan Program has been used to fund a loan of \$250,000 to the Murphy Acquisition Group, LLC, on or about May 4, 2018, as related in paragraph 17 to Plaintiff's Complaint.

5. Plaintiffs have not alleged that they have a financial interest in Murphy Acquisition Group, LLC.
6. Plaintiffs have not alleged that they are creditors or bondholders of Murphy Acquisition Group, LLC.
7. Plaintiffs have not alleged that they have a financial connection with Murphy Acquisition Group, LLC.
8. Plaintiffs have not alleged that they engage in any business competition with Murphy Acquisition Group, LLC.
9. Plaintiffs have not alleged that they own real estate in close proximity to the property of Murphy Acquisition Group, LLC.
10. Plaintiffs have alleged no special relationship between themselves and Murphy Acquisition Group, LLC.
11. Plaintiffs have alleged no basis for standing other than their status as taxpayers of the Borough of Columbia.
12. On May 27, 2015, Defendant sold its sewer conveyance system and customer base to the Lancaster Area Sewer Authority which resulted in a one-time financial gain to Defendant in an amount in excess of the loan involved in this case.
13. The 2019 Tax Ordinance, No. 907, raising the millage, was enacted December 13, 2018.
14. The 2019 Tax Ordinance was enacted eight months after the loan was made.
15. The amount of the loan was \$250,000.
16. The 2019 Tax Ordinance generates \$3,385,159 in property tax revenue.

17. The funds utilized to fund the loan did not come from the 2019 Tax Ordinance and could not have come from 2019 taxes.

18. No challenge has been filed by Plaintiffs or anyone else as to the constitutionality or validity of the 2019 Tax Ordinance.

19. Even if the Commercial Revolving Loan Program was declared unconstitutional, it would not affect the 2019 Tax Ordinance.

20. Plaintiffs have alleged no basis on which standing can be granted.

21. Pennsylvania does not allow taxpayers to have standing.

22. Plaintiffs have failed to allege any negative impact in a real and direct fashion and have failed to show a substantial direct and immediate interest in the subject matter of this action.

23. The interest of the taxpayers does not surpass the common interest of all citizens of the Borough of Columbia.

WHEREFORE, Defendant, Borough of Columbia, requests that the Preliminary Objections be sustained and the action dismissed.

Respectfully submitted,

ZIMMERMAN, PFANNEBECKER,
NUFFORT & ALBERT, LLP

Dated: 4/4/19

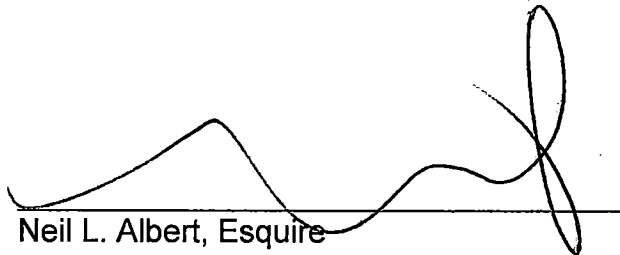
By: 

Neil L. Albert, Esquire
Attorney for Defendant
Attorney I.D. No. 23368
22 South Duke Street
Lancaster, PA 17602
(717) 299-0711

VERIFICATION

I, Neil L. Albert, Esquire, of the law firm of ZIMMERMAN, PFANNEBECKER, NUFFORT & ALBERT, LLP, verify that I am the solicitor for Defendant, Borough of Columbia, herein and that I have its permission to sign this Verification on its behalf. I further verify the statements made in the foregoing Preliminary Objections Pursuant to Pa.R.C.P. 1028(a)(5) Respecting Lack of Capacity to Sue are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

DATED: 4/4/19


Neil L. Albert, Esquire

Neil L. Albert, Esquire
Attorney I.D. No. 23368
Zimmerman, Pfannebecker, Nuffort & Albert, LLP
22 South Duke Street
Lancaster, PA 17602
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CERTIFICATE OF SERVICE

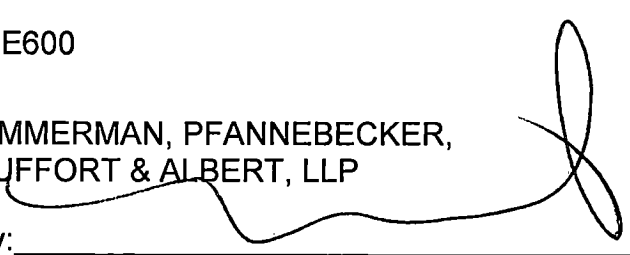
I, Neil L. Albert, Esquire, hereby certify that, on the date set forth below, I did cause a true and correct copy of the Preliminary Objections Pursuant to Pa.R.C.P. 1028(a)(5) Respecting Lack of Capacity to Sue to be served upon the person and in the manner indicated below, which service satisfies the requirements of the Pennsylvania Rules of Civil Procedure and the Lancaster County, Pennsylvania, Rules of Civil Procedure.

Service by email and first class mail, addressed as follows:

Sarah L. Doyle, Esq.
(sdoyle@stockandleader.com)
Stock And Leader
Susquehanna Commerce Center
221 West Philadelphia Street, Suite E600
York, PA 17401

ZIMMERMAN, PFANNEBECKER,
NUFFORT & ALBERT, LLP

Dated: 4/4/19

By: 
Neil L. Albert, Esquire
Attorney for Defendant
Attorney I.D. No. 23368