

**SCOTT BURGAUER and MONICA
BURGAUER, husband and wife,
Plaintiffs,**

**: IN THE COURT OF COMMON PLEAS
:
: LAWRENCE COUNTY, PENNSYLVANIA**

vs.

: NO. 10334 of 2017, C.A.

**MIKE PERROTTA CONTRACTOR, LLC
and MICHAEL PERROTTA,
Individually,
Defendants.**

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APPEARANCES

For the Plaintiffs:

**David C. Weber, Esquire
Cranberry Professional Park
501 Smith Drive, Suite 3
Cranberry Twp, PA 16066**

**For the Defendants and
Anna Perrotta:**

**Dai Rosenblum, Esquire
254 New Castle Road
Suite B
Butler, PA 16001**

OPINION

Hodge, J.

March 17, 2022

This matter was before the Court for argument on January 31, 2022, on three issues, which will be summarized as follows:

Plaintiff has filed a Motion for Leave to Join as Additional Defendants, Michele Perrotta and Anna Perrotta, as Husband and Wife; and Anna Perrotta, Individually. Included in this issue are the Defendants' response to the Motion for Leave to Join; the Defendants' Motion to Take Admissions to New Matter Contained in Plaintiffs' Motion; Plaintiffs' Motion to Strike Anna Perrotta's Answer and New Matter; and Defendants' Answer to Plaintiffs' Motion to Strike.

The second issue is a motion by Anna Perrotta for sanctions against the Plaintiffs and the Lynch Law Group, for filing a frivolous Motion for Summary Judgment.

The third issue is the Plaintiffs' Amended Motion for Sanctions, to which the Defendants had filed a response to the Motion for Sanctions.

During the course of the Court's preparation of this Opinion and Order, the Court has ascertained from review of the docket entries, that counsel for the Plaintiff has filed a Writ of Summons on behalf of the Plaintiffs versus Anna Perrotta, Individually and Anna Perrotta and Michele Perrotta, Husband and Wife, as of February 24, 2022. This Writ of Summons was filed by counsel for the Plaintiffs prior to the Court's resolution of the Motion for Leave to Join as Additional Defendants, Michele Perrotta and Anna Perrotta, as Husband and Wife, and Anna Perrotta, Individually.

I. Plaintiffs' Motion for Leave to Join, as Defendants, Michele Perrotta and Anna Perrotta, as Husband and Wife, and Anna Perrotta Individually.

The underlying factual background of this case, as taken from the Plaintiffs' brief in support of the Motion for Leave, and from the Court's independent review of the docket entries in this case, is that the Plaintiffs initiated this action with the filing of a Complaint on April 4, 2017, alleging, inter alia, breach of contract and fraud in connection with Defendants' roof shingle installation work on Plaintiffs' home, specifically, Plaintiffs' complaint against Defendant, Michael Perrotta, individually, and Mike Perrotta Contractor, LLC, claims of fraud, breach of contract, breach of warranties, unjust enrichment, negligence, violation of the Pennsylvania Home Improvement Consumer Protection Act, violations of Pennsylvania Unfair Trade Practices and Consumer Protection Law, and piercing the corporate veil/alter ego.

During the pendency of the litigation, Michael Perrotta, individually, declared bankruptcy and filed a petition pursuant to Chapter 7 of the United States Bankruptcy Code. Mike Perrotta Contractor, LLC, was not a named party to the bankruptcy action.

The filing of the petition for relief under the United States Bankruptcy Code operated as an automatic stay of any proceedings before this Court.

Plaintiffs allege that during discovery proceedings in the bankruptcy action, that they learned that 100% of the membership interest in Mike Perrotta Contractor, LLC, was held by the Perrotta's tenancy by the entirety estate, that Anna Perrotta is an owner of Mike Perrotta Contractor, LLC, and that Anna Perrotta substantially allegedly controlled the finances of Mike Perrotta Contractor, LLC.

Plaintiffs' arguments relative to piercing the corporate veil of the limited liability company, are summarized as follows:

- 1) That Mr. & Mrs. Perrotta acted in concert to create Mike Perrotta Contractor, LLC, with joint funds during their marriage, establishing unity of time, marriage and title pursuant to 23 Pa. C.S.A. Section 3501(b);
- 2) That Mrs. Perrotta signed the Mike Perrotta Contractor, LLC's resolution dated January 23, 2008;
- 3) That Mrs. Perrotta operated the finances of Mike Perrotta Contractor, LLC for several years and performed managerial tasks;
- 4) That Mrs. Perrotta was an apparent point of contact between Mike Perrotta Contractor, LLC and the United States Environmental Protection Agency;
- 5) That Mrs. Perrotta engaged in management, control and improper comingling of personal and company funds with checking account and credit cards;
- 6) That Mrs. Perrotta deposited a down payment check from the Plaintiffs at a time when Mike Perrotta Contractor, LLC had almost no other assets; and

7) Mike Perrotta Contractor, LLC funds were directly used to pay medical expenses which contained notes stating "Anna".

Plaintiffs go on to argue that because Mike Perrotta Contractor, LLC is clearly property of the Perrotta's entireties estate, its liabilities are not divided between Michele Perrotta and Anna Perrotta, but rather must accrue against the complete tenancy by the entireties corpus.

The Plaintiffs further argue that pursuant to a Consented Order of Court in the United States Bankruptcy Court for the Western District of Pennsylvania dated April 23, 2021, that Michele Perrotta, a/k/a Michael Perrotta, a/k/a Mike Perrotta Contractor, LLC, agree that judgment shall be entered in favor of the Plaintiffs and against Michele Perrotta, a/k/a Michael Perrotta, a/k/a Mike Perrotta Contractor, LLC, in the amount of \$396,829.02, which claim is excepted from discharge based upon fraudulent representations in the United States Bankruptcy Court, with the named Defendants agreeing pursuant to the Consent Order, that Defendant shall not oppose, contest, object or otherwise seek to block, delay or defeat and shall not cause Mike Perrotta Contractor, LLC to oppose, contest, object or otherwise seek to block, delay or defeat, a Motion for Judgment on the Pleadings or a Motion for Summary Judgment, or the entry of a Consent Judgment, negotiated pursuant to this Consent Order, for \$396,829.02, against Michael Perrotta, a/k/a Michele Perrotta, a/k/a Mike Perrotta and Mike Perrotta Contractor, LLC, in Case No. 10334-17 in the Court of Common Pleas of Lawrence County.

Plaintiff argues that because Mike Perrotta Contractor, LLC admitted liability in this matter, thus exposing it to entry of judgment, it is appropriate to join Mrs. Perrotta

as a Defendant in her capacity as spousal owner of the tenancy by the entireties estate, which contains 100% ownership of Defendant, Mike Perrotta Contractor, LLC.

Defendants, in their responsive brief, presented a counter-statement of the case in the form of an Answer and New Matter, referred the Court to the original proposal submitted by Mr. Perrotta, of Mike Perrotta Contractor, LLC, dated March 1, 2016, to the Plaintiffs, for the purpose of "removal and disposal of existing roofing material" dated March 1, 2016.

Plaintiffs signed the acceptance of the proposal on March 8, 2016. There is no mention in the written proposal of the presence of asbestos.

According to Mr. Burgauer's sworn deposition testimony in the bankruptcy case, he made Mr. Perrotta aware of the presence of asbestos on March 8, 2016. Had not Mr. Perrotta and Mike Perrotta Contractor, LLC agreed to the entry of judgment against them in the United States Bankruptcy Court, that there would be an obvious and apparent question of fact relative to whether or not the Plaintiffs advised the Defendants of the presence of asbestos in the shingles to be removed from the roof, prior to the Defendants preparation of the contract proposal.

The jest of the Plaintiffs' case against Mr. Perrotta was based upon fraud, which is non-dischargeable under the United States Bankruptcy Code, but to which Mr. Perrotta may have had a full and complete defense because the Plaintiffs concealed the presence of asbestos. However, apparently because Mr. Perrotta knew that even if the Plaintiffs prevailed in objecting to his discharge, they could not execute against his

exempt assets, he consented to a judgment of non-dischargability pursuant to the Bankruptcy Court Order of April 23, 2021.

The Bankruptcy Court Order of April 23, 2021 goes on to provide that Anna Perrotta may contest any Motion for Judgment on the Pleadings or Motion for Summary Judgment, and may do so without any bearing on whether or not she may be joined in the case. . . . This Consent Order shall not have preclusive effect with any attempted joinder of Anna Perrotta, nor shall it be a determinative piece of evidence supporting a possible Order joining Anna Perrotta in Case No. 10334-17 in the Court of Common Pleas of Lawrence County.

Pennsylvania Rule of Civil Procedure 2229, "Permission Joinder", states as follows:

(b) A plaintiff may join as defendants persons against whom the plaintiff asserts any right to relief jointly, severally, separately or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences if any common question of law or fact affecting the liabilities of all such persons will arise in the action.

Pursuant to Pennsylvania Rule of Civil Procedure 2253, "Time for Filing Praecipe or Complaint", provides as follows:

(a) Except as provided by Rule 1041.1(e), neither a praecipe for a writ to join an additional defendant nor a complaint if the joinder is commenced by complaint, shall be filed later than. . .

It is undisputed that on January 23, 2008, Mr. & Mrs. Perrotta formed a limited liability company known as Mike Perrotta Contractor, LLC, with Mrs. Perrotta signing the Resolution, thereby creating in her, a membership ownership interest in the LLC.

During the course of operation of the business, it was apparent that Anna Perrotta worked as an office manager/bookkeeper.

The LLC was created by the Perrottas as tenancy by the entireties property, with each spouse being a member of the LLC.

The Court has reviewed the provisions of the Pennsylvania Uniform Limited Liability Company Act of 2016, which was a substantial reenactment of the prior statute, and is now found at 15 Pa. C.S.A. Section 8811, et seq.

Pursuant to 15 Pa. C.S.A. Section 8818(a), "Characteristics of Limited Liability Company", subdivision "a" provides as follows:

(a) Separate entity – a limited liability company is an entity distinct from its member or members.

In addition, the Pennsylvania Limited Liability Company Act of 2016 provides in Section 8834, "Liability Member or Managers", as follows:

(a) General Rule – A debt, obligation or other liability of a limited liability company is solely the debt, obligation or other liability of the company. A member or manager is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation or other liability of the company solely by reason of being or acting as a member or manager. This subdivision applies regardless of:

1. Whether the company has a single member or multiple members; and
2. The dissolution, winding up or termination of the company.

Clearly the contract at issue in this case was a contract by and between the Plaintiffs and Michael Perrotta, Individually, and Mike Perrotta Contractor, LLC.

Mrs. Perrotta, as a member of the LLC, is not a party to the contract nor is she liable for the debts of the LLC.

Plaintiffs seek to get around this situation by arguing that the Court should pierce the corporate veil of the LLC and allow his clients to proceed to file a complaint against Mrs. Perrotta, individually.

Plaintiffs cite the Court to the case of Lumax Industries, Inc. vs. Aultman, 543 Pa. 38, 669 A.2d 893 (1995), wherein the Pennsylvania Supreme Court stated the law relative to piercing the corporate veil as follows:

“. . . there is a strong presumption in Pennsylvania against piercing the corporate veil. Wedner v. Unemployment Board, 449 Pa. 460, 464, 296 A.2d 792, 794 (1972) (Any court must start from the general rule that the corporate entity should be recognized and upheld, unless specific, unusual circumstances call for an exemption. . . Care should be taken on all occasions to avoid making the entire theory of corporate entity useless. Zubik v. Zubik, 384 F.2d 267, 273 (3d Cir. 1967). Also, the general rule is that a corporation shall be regarded as an independent entity even if its stock is owned entirely by one person. College Watercolor Group, Inc. v. William H Newbauer, Inc., 468 Pa. 103, 117, 360 A.2d 200, 207 (1976).

Commonwealth Court has set out the factors to be considered in disregarding the corporate form as follows:

Undercapitalization, failure to adhere to corporate formalities, substantial intermingling of corporate and personal affairs and use of the corporate form to perpetrate a fraud. Department of Environmental Resources v. Peggs Run Coal Co, 55 Comwlth Ct. 312, 423 A.2d 765 (1980). Kaites v. Dept. of Environmental Resources, 108 Pa. Cmwlth. 267, 273, 529 A.2d 1148, 1151 (1987). See also Watercolor Group v. Newbauer, 468 Pa. at 117, 360 A.2d at 207, (corporate veil may be pierced whenever one in control of a corporation uses that control or corporate assets to further his personal interests).

The law as outlined by the Supreme Court in Lumax, supra, was substantially restated by the Pennsylvania Supreme Court in a decision in the case of Mortimer vs. McCool, 255 A.3d 261 (2021), again recognizing a strong presumption in Pennsylvania against piercing the corporate veil.

Plaintiffs argue that Mrs. Perrotta's functioning as an office manager/bookkeeper; that her being a point of contact with communications with the Environmental Protection Agency; that under capitalization of the LLC, are all factors which the Court should consider in its analysis in the Plaintiffs' argument that the corporate veil should be pierced.

However, the Court, in reference to the Limited Liability Statute, Section 8834, supra, and the strong presumption against piercing the corporate veil as set forth in the appellate cases previously cited, declines to pierce the corporate veil, as the Court believes that the functioning of Mrs. Perrotta as the office manager or bookkeeper, is not sufficient; that her being a point of contact, as office manager, with the Environmental Protection Agency, is not sufficient; that her being the person depositing the Plaintiffs' downpayment check into the LLC bank account, is not sufficient; that the Plaintiffs' argument that the LLC was undercapitalized is without merit, in that the LLC was not a business such as an insurance company which would require significant capital funds in order to function; and that the payment of personal expenses out of the LLC account was very minimal, at best.

All of these factors as alleged by the Plaintiffs, even combined, fail to convince the Court that it is appropriate to pierce the corporate veil of the LLC in this case.

Accordingly, the Court will deny the Plaintiffs' Request to Pierce the Corporate Veil.

The Court must look at whether or not a permissive joinder of Mrs. Perrotta, more than sixty (60) days after filing of the initial complaint is in any manner appropriate.

The Court concludes that the Plaintiffs are simply overreaching in their desire to add Mrs. Perrotta as a party Defendant in this case. Clearly, the contract by and between the parties was by and between Michael Perrotta and Mike Perrotta Contractor, LLC. Mrs. Perrotta, as a member of the LLC, simply is not liable for the debt of the LLC. In addition, Mrs. Perrotta was not the party or individual who performed the work of the contract, nor is there any indication that she was involved in the bid proposal.

The Plaintiffs also desire to now join "Michele Perrotta" as a Defendant, as the husband of Anna Perrotta. "Michele Perrotta" is the same person as "Michael Perrotta", already a party to this case, but with a different spelling of his first name. The Court will also deny this part of Plaintiffs' motion as "Michele Perrotta" is already a party to this case.

Plaintiffs choose to ignore the likelihood that the Plaintiffs concealed the presence of asbestos in the shingles, which the Defendant, through the discovery process, ascertained that in 2015-2016, Plaintiffs were aware that there was asbestos in the shingles pursuant to their dealings with Jesse Drespling Contracting, LLC, who submitted a prior proposal for removal of the shingles, which proposal was detailed relative to the presence of asbestos in an amount significantly higher than that submitted by Mike Perrotta Contractor, LLC.

For these reasons, the Court denies the Plaintiffs' Motion to Join Anna Perrotta, an Individual, as a Party Defendant in this case.

In arriving at the Court's decision on these issues, the Court has reviewed the arguments set forth in Defendants' response to the Motion for Leave to Join; the Defendants' Motions to Take Admissions to New Matter contained in Plaintiffs' Motions; Plaintiffs' Motion to Strike Anna Perrotta's Answer and New Matter; and Defendants' Answer to Plaintiffs' Motion to Strike, with the Court accepting and incorporating in this Opinion, the argument which have merit, and disregarding the arguments which the Court believes are lacking in persuasive value.

II. Motion by Anna Perrotta for Sanctions Against the Plaintiffs, Scott Burgauer and Monica Burgauer, and the Lynch Law Group, LLC, for filing a frivolous Motion for Summary Judgment in a frivolous and vexatious Motion for Preliminary Injunction.

Anna Perrotta has filed a Motion for Sanctions against the Plaintiffs relative to the motion styled "Uncontested Motion for Summary Judgment", said motion being filed on June 28, 2021.

Plaintiffs seeks judgment against "Anna Perrotta" who is already bound by Mr. Perrotta's action in tying the Defendant, Mike Perrotta Contractor, LLC to this judgment in accordance with Pennsylvania Law regarding tenancy by the entireties property.

As of the date of filing of the Motion for Summary Judgment, Anna Perrotta had not been joined as a party to this case, nor had she been served with any complaint or any other document professing to join her as a party defendant.

The filing of the Motion for Summary Judgment was contrary to the Consent Order of the Bankruptcy Court for the Western District of Pennsylvania dated April 23, 2021, which clearly states that Anna Perrotta may contest the Motion for Judgment on the Pleadings or Motion for Summary Judgment, and may do so without any bearing on whether or not she may be joined in that case . . . This Consent Order shall not have any preclusive effect with any attempted joinder of Anna Perrotta nor shall it be a determinative piece of evidence supporting a possible Order joining Anna Perrotta in Case No. 10344-17 in the Court of Common Pleas of Lawrence County.

This Court, in its Order dated July 8, 2021, denied the “uncontested summary judgment motion” in that Anna Perrotta had not been named as a party defendant and was never served with the complaint or any other pleading.

Contemporaneously with the Plaintiffs’ Uncontested Motion for Summary Judgment, the Plaintiffs filed a Motion for Preliminary Injunction, seeking to set aside a conveyance of entireties property from the Defendant, Michele Perrotta and his wife, the non-party Anna Perrotta, to Anna Perrotta.

Despite the fact that counsel for Anna Perrotta, via email to the Lynch Law Group dated July 6, 2021, cited various cases, including Klebach vs. Mellon Bank, N.A., 388 Pa. Super 203, 565 A.2d 448 (1989), as its legal authority that a conveyance of entireties property from a defendant and his non-party spouse to non-debtor spouse in her sole name does not violate the Pennsylvania Uniform Voidable Transactions Act, counsel for the Plaintiff proceeded to file the Uncontested Motion for Summary Judgment and Petition for Preliminary Injunction.

The trial court, cited the Klebach case in its Order of Court for the proposition cited by counsel for the Defendant and due to the absence of authority in support of the Motion for Preliminary Injunction from counsel for the Plaintiff, this Court dismissed the Motion for Preliminary Injunction on July 8, 2021.

Anna Perrotta seeks counsel fees from the Plaintiffs and their attorney, Lynch Law Group, pursuant to the provisions of 42 Pa. C.S.A. Section 2503(9), which provides as follows:

The following participants shall be entitled to a reasonable counsel fee as part of the taxable cause of the matter: Any participant who is awarded counsel fees because the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith.

The Plaintiffs, immediately upon the filing of this Court's Order of July 8, 2021, in response to the Court's Order, did voluntarily withdraw their "Uncontested" Motion for Summary Judgment on the record with this case.

Immediately thereafter, Anna Perrotta did file her Motions for Sanctions which is the subject of part of the Opinion and Order.

Clearly, the Court may award counsel fees because the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith. 42 Pa. C.S.A. 2503(9). Such award represented an attempt to curtail the filing of lawsuits which are frivolous or otherwise improper. See Thunberg vs. Strause, 545 Pa. 607, 682 A.2d 295, 300 (1996). See also Miller vs. Nelson, 768 A.2d 858 (2001).

The reckless pursuit of a claim which plainly lacks legal merit warrants an award of counsel fees. See In Re: Estate of Liscio, 432 Pa. Super 440, 638 A.2d 1019 (1994), appeal denied, 536 Pa. 679, 652 A.2d 1324 (1994).

The Superior Court of Pennsylvania also discussed this issue in the matter of In Re: Barns Foundation, 74 A.3d 129, 136 (Pa. Super 2013), wherein the Superior Court had held that due to the lack of case law on the specific issue of the Plaintiff's petition to correct the record, the Superior Court held that they could not find that the petition was brought purely for purpose of annoyance, nor was it so plainly obdurate or vexatious as to warrant the award of counsel fees. As a result, the Superior Court held that the trial court abused its discretion in awarding Defendant counsel fees under Section 2502(7).

Counsel for Anna Perrotta is seeking the award of counsel fees in the sum of \$1,900.00 for his time spent in opposing the Motion for Summary Judgment filed by the Plaintiffs against Anna Perrotta, as an unjoined party defendant in this case.

Because the Plaintiffs attempted to file an Uncontested Motion for Summary Judgment against Anna Perrotta, who had never been joined as a party defendant in this case, nor served with any type of process; and because the plain reading of the Order of the Bankruptcy Court dated April 23, 2021, clearly set forth that the Bankruptcy Court Order was in no matter addressing the validity of a Motion for Summary Judgment, Motion for Judgment on the Pleadings, or any attempts to join Anna Perrotta as a party defendant in the litigation in the Court of Common Pleas of Lawrence County, Pennsylvania, the act of the Plaintiffs and their counsel and the filing of a "Uncontested Motion for Summary Judgment" against a person who was not a party to the litigation, had never participated as a party to the underlying litigation, and for whom the Bankruptcy Court Order did not address the issue of whether or not she

should be a party to the litigation, the Court finds that the conduct of the Plaintiffs and the Lynch Law Group in filing the Uncontested Motion for Summary Judgment was vexatious and in bad faith, and as a result, the Court will enter an Order granting counsel fees to Attorney Dai Rosenblum for his actions in responding to the Uncontested Motion for Summary Judgment in the sum of \$1,900.00.

III. Plaintiffs' Motion for Sanctions Based Upon Violations of Pennsylvania Rule of Appellate Procedure 4019(c).

Plaintiffs' seek sanctions against the Defendant, Mike Perrotta Contractor, LLC and Michele Perrotta, Individually, for Defendants continued and deliberate attempts to mislead the Plaintiffs, frustrate discovery and unnecessary delay resolution of the matter.

Plaintiffs allege that the Defendants efforts to delay discovery began on or about October 16, 2018, when they failed to provide full and complete answers to Plaintiffs' Second Set of Interrogatories and Request for Production of Documents.

Plaintiffs served their responses on November 28, 2018, but certain responses were insufficient and/or complete.

On or about January 30, 2019, Defendants served upon Plaintiffs, a one page letter supplementing their prior responses to Plaintiffs requests. Plaintiffs believe that the Defendants' letter failed to adequately respond to their requests, and on February 11, 2019, Plaintiffs filed a Motion to Compel More Specific Responses to Plaintiffs' Second Set of Interrogatories and Request for Production of Documents.

On April 29, 2019, following oral argument, the trial court granted Plaintiffs' Motion to Compel.

Plaintiffs allege that the Defendants violated that Court Order and failed to provide discovery responses, which were directed to information under the control of Huntington Bank and an account owned by Mike Perrotta Contractor, LLC.

Plaintiffs filed a subsequent Motion for Sanctions against the Defendants on March 6, 2020.

On March 11, 2020, Defendant, Michele Perrotta, filed for Chapter 7 Bankruptcy, which stayed the original Motion for Sanctions. Mike Perrotta Contractor, LLC did not declare bankruptcy, but was identified as "also known as" entity in the Chapter 7 petition.

The Plaintiffs obtained leave from the automatic stay of the Bankruptcy Court on June 24, 2021 in the instant action.

Apparently, there was a serious technical problem with the information received from Huntington Bank, in that the Defendants were unable to open the CD with the information from the bank.

To date, the Plaintiffs' original Motion to Compel Discovery remains outstanding.

By way of response, the Defendants refer to the Bankruptcy Court Order of April 23, 2021, which Order provided, among other things, for the entry of judgment in favor of the Plaintiffs and against the Defendant in that Plaintiffs were found to have a valid allowed claim against the Defendant in the amount of \$396,829.02, which claim is exempted from discharge under 11 U.S.C. 523(a)(2)(A) for false pretenses, false representation or actual fraud.

The Bankruptcy Court Order goes on to further provide, that “outstanding depositions of Christian Perrotta, Anna Perrotta and Monica Burgauer, are canceled, and Defendants’ responses to Plaintiffs’ Second Set of Request for Production of Documents and Plaintiffs’ First Set for Request for Admission shall not be made”.

The sum and substance of the Defendants’ response to the Motion for Sanctions is that the entry of the Court Order of April 23, 2021, establishing the judgment in favor of the Plaintiffs and against Mike Perrotta, and the following language of the Order relative to discovery issues as quoted above, makes the Motion for Sanctions moot, as the Consent Order resolving the adversary proceedings has been entered.

After review of the case law cited by this Court and Part No. 2 of its Opinion relative to the award of counsel fees for the Defendants, in the Defendants’ Motion for Sanctions, and upon the Court’s review of the Bankruptcy Court Order of April 23, 2021, the Court denies the Plaintiffs’ request for counsel fees relative to the failure to comply with the Motions to Compel Discovery responses in this case, as the Bankruptcy Court Order has made that issue moot, due to the entry of judgment against the Defendant, Mike Perrotta, as outlined above.

In addition, counsel for the Plaintiffs, at oral argument, did not submit any itemized statement detailing the claim for counsel fees for violation of the Court’s Order to Compel Discovery Responses.

As a result, the Court will enter an Order denying the Plaintiffs’ Motion for Sanctions.


IV. Plaintiffs' Filing of Writ of Summons.

In that counsel for the Plaintiffs filed a Writ of Summons against Anna Perrotta, Individually, and Anna Perrotta and Michele Perrotta, Husband and Wife, prematurely, prior to the Court's resolution of the first issue in this Opinion and Order, the Court will, as part of the Order, sua sponte, strike from the record the Writ of Summons filed by counsel for the Plaintiffs in this matter, as the Writ was filed prematurely and without regard by counsel for the Plaintiffs as to the Court's resolution of the Motion for Leave to Join Anna Perrotta, Individually, and Anna Perrotta and Michele Perrotta, Husband and Wife, as party Defendants in this case.

5. Further proceedings in this matter shall be in accordance with the Pennsylvania Rules of Civil Procedure.

6. The Prothonotary shall provide notice of entry of this Order to counsel for Plaintiffs, David C. Weber, Esquire; counsel for Anna Perrotta, Dai Rosenblum, Esquire; Mike Perrotta Contractor, LLC and Michael Perrotta, Individually, at their last known address as contained in the Court's file; and Lawrence County Court Administration.

BY THE COURT:


_____ J.
John W. Hodge
Judge