

Pisanchyn Law Firm
Michael J. Pisanchyn Jr., Esquire
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Scranton, PA 18503
(570) 344-1234

Counsel for Plaintiff

Michael Dennin,

Plaintiff

v.

Olyphant Borough; Olyphant Borough Council;
Mayor Jonathan Sedlak; Cosmo J. Mustacchio,
Individually, as Olyphant Borough Manager
and as Olyphant Borough Solicitor;
James Baldan individually and as Olyphant
Council Member; Robert Hudak, as Olyphant
Council Member; Michael Abda, individually
and as Olyphant Council Member;
Dina Harrington, individually, and as Olyphant
Council Member; Jerry Tully, individually,
and as Olyphant Council Member;
David Krukovitz, individually, and as Olyphant
Council Member; Elizabeth Frushon, as
Olyphant Council Member;
John Doe 1 Co-Conspirator ; John Doe 2
Co-Conspirator; John Doe 3 Co-Conspirator;
John Doe 4, Land Surveyor; John Doe 5 Land
Surveyor; John Doe 6 Land Surveyor;
John Doe 7 Land Surveyor; John Doe 8 Land
Surveyor

Defendants

In the Court of Common
Pleas of Lackawanna County

Docket No.

25 CV 3469

RECEIVED
CLERK OF COURT
LACKAWANNA COUNTY
2025 MAY -6 P 12:55
RECORDS CIVIL DIVISION

Jury Trial Demanded

COMPLAINT

THE PARTIES

1. The Plaintiff, Michael Dennin is an adult individual who lives in the Borough of Olyphant Lackawanna County, Pennsylvania.

2. Defendant, Olyphant Borough is a municipal corporation incorporated and organized under the laws of the Commonwealth of Pennsylvania with a business address of 113 Willow Ave, Olyphant Pennsylvania.
3. Defendant, Olyphant Borough Council is a corporation incorporated and organized under the laws of the Commonwealth of Pennsylvania with a business address of 113 Willow Ave, Olyphant Pennsylvania.
4. Defendant, Mayor Jonathan Sedlak is an adult individual with and address of 113 Willow Ave, Olyphant Pennsylvania.
5. Defendant, Cosmo J. Mustacchio, individually whose address is presently unknown.
6. Defendants, Cosmo J. Mustacchio, as Olyphant Borough Solicitor and Olyphant Borough Manager, are adult individuals with an address of 113 Willow Ave, Olyphant Pennsylvania.
7. Defendant, James Baldan, individually, is an adult individual with an address of Beech Street, Olyphant Pennsylvania.
8. Defendant, James Baldan as Olyphant Council Member, is an adult individual with an address of 113 Willow Ave, Olyphant Pennsylvania.
9. Defendant, Robert Hudack as Olyphant Council Member, is an adult individual with an address of 113 Willow Ave, Olyphant Pennsylvania.
10. Defendant Michael Abda, individually, is an adult individual with an address of Church Street, Olyphant Pennsylvania.
11. Defendant Michael Abda, as Olyphant Council Member, is an adult individual with and address of 113 Willow Ave, Olyphant Pennsylvania.
12. Defendant Dina Harrington, individually, is an adult individual with an address of Olyphant Pennsylvania.

13. Defendant, Dina Harrington, as Olyphant Council Member, is an adult individual with an address of 113 Willow Ave, Olyphant Pennsylvania.
14. Defendant, Jerry Tully, individually, is an adult individual with an address of Olyphant Pennsylvania.
15. Defendant, Jerry Tully, as Olyphant Council Member, is an adult individual with an address of 113 Willow Ave, Olyphant Pennsylvania.
16. Defendant David Krukovitz, individually, is an adult individual with and address of East Scott Street, Olyphant Pennsylvania.
17. Defendant David Krukovitz, as Olyphant Council Member, is an adult individual with an address of 113 Willow Ave, Olyphant Pennsylvania.
18. Defendant Elizabeth Frushon, as Olyphant Council Member, is an adult individual with as address of 113 Willow Ave, Olyphant Pennsylvania.
19. Defendant John Doe 1-3 Co-Conspirator are individual and or Corporation(s) with presently unknown business address who conducts regular and systematic business in Lackawanna County.
20. It is believed and therefore averred that at all times material and relevant hereto, Defendants John Doe 1-3 Co-Conspirators conspired with the named Defendants as set forth more fully below.
21. As to all the John Doe Co-Conspirator Defendants, the actual name(s) is/are unknown to the Plaintiff after having conducted a reasonable investigation and a reasonable search to determine the actual name has been conducted.
22. Defendants John Doe 4-8 Land Surveyor, is/was a corporation, company, individual, and/or entity duly operating and doing business under the laws of the Commonwealth of

Pennsylvania that regularly conducts substantial, systematic, and continuous business in Lackawanna and other counties in Pennsylvania.

23. It is believed and therefore averred that at all times material and relevant hereto, Defendants John Doe 4-8 Land Surveyor, was the person/entity who was responsible for conducting a land survey on the property located at 105-109 Delaware Avenue, Olyphant Pennsylvania 18447.
24. As to all the John Doe Land Surveyor Defendants, the actual name is unknown to the Plaintiff after having conducted a reasonable investigation and a reasonable search to determine the actual name has been conducted.

THE FACTS

25. On October 6, 2023, the Times Tribune published an article titled “Three problematic downtown properties slated for new developments” in which Olyphant Borough Councilman, James Baldan was quoted as saying that the Borough of Olyphant is seeking grant funding to build a pocket park at the property located a 105 Delaware Ave because “variety is what it takes to have many people come to the downtown. . . we just don’t want to be a driver-by. We want to be a destination.”
26. On July 5, 2024, the Times Tribune published an article titled “John Basalyga to buy OTOWN Bar & Grill in Olyphant”
27. Within the July 5, 2024 article it stated “Olyphant borough and Basalyga are currently negotiating a potential sale of a lot next to OTOWN at 105 Delaware Ave., which Basalyga would turn into a patio for outdoor dining.”
28. The July 5, 2024 article goes on to say “Olyphant purchased the property for \$30,000 in June 2020. Two years later, the borough razed a rundown, long-vacant building on the land with

the intention of constructing a pocket park in its place, spending nearly \$45,000 on the demolition.”

29. The July 5, 2024 article then says “Basalyga approached the borough about buying the land at a council work session about two months ago, council President Jimmy Baldan said. The borough and Basalyga are now each having realtors appraise the property, he said”

30. The July 5, 2024 article also reported that “Olyphant recently renovated its nearby Queen City Station, which Baldan said was in part because of Basalyga possibly acquiring the pocket park site.”

31. The Borough of Olyphant and the Olyphant Borough Defendants, failed to make public notice of the sale of the subject property.

32. It is believed and therefore averred that the Borough of Olyphant and the Olyphant Borough Defendants intended on selling the property without making proper public notice with the hopes that it would not be challenged.

33. After it became public knowledge, only through the article published by the Times Tribune, that the property was for sale, Counsel for Plaintiff sent a letter to the Olyphant Borough Defendants informing them of the lack of notice and inquiring as to the previous plans for a park. (See Exhibit “A”)

34. On November 13, 2024, the Times Tribune published an article titled “Olyphant to consider auctioning off Delaware Ave lot” which stated Olyphant is considering auctioning off a plot of borough-owned land on Delaware Avenue eyed by developer John Basalyga to expand his new Queen City Tavern.”

35. The November 13, 2024 article also stated that “Borough council will meet Tuesday at 6:30 to vote on a resolution authorizing the sale of an empty lot at 105-109 Delaware Ave.,

according to a public notice published Saturday in The Times-Tribune. If council approves the resolution, the borough will hold a public auction Dec. 3 at 7 p.m. inside the Olyphant Municipal Building, 113 Willow Ave.”

36. On or about November 19, 2024, the Olyphant Borough Defendants authored and/or voted on Borough of Olyphant Resolution No.8 of 2024. (Attached as Exhibit “B”) (hereafter referred to as Resolution 8)
37. Resolution 8, a writing, forms the basis for claims outlined within this Complaint.
38. A copy of Resolution 8 is attached hereto. (Exhibit “B”)
39. Resolution 8 authorized the sale of property owned by the Borough of Olyphant, known as 105-107-109 Delaware Avenue, by public auction, and authorized the public sale of the property and set forth the terms and conditions of said sale.
40. The Plaintiff posted the bid security of \$7,100.00 in compliance with the terms and conditions of Resolution 8.
41. Pursuant to the terms of the conditions in Resolution 8, the Plaintiff won the auction held on December 3, 2024.
42. The Plaintiff won the auction with a bid of \$130,000.
43. Thereafter the Defendants have done everything they can to prevent the buyer from actually purchasing the property despite everyone stating Plaintiff over-paid which is odd and leads to further proof of the intentional, reckless and/or negligent actions of all Defendants.
44. On December 4, 2024, the Time Tribune published an article titled “Vacant lot auction next to Queen City Tavern in Olyphant turns into bidding war” wherein John Basalyga was quoted as saying “The \$130,000 price was ‘way more than it’s even worth’. . . The land probably is worth maybe \$10,000, that’s it. . . When it got to \$100,000, I’m like ‘Alright,

honestly, I'm going to keep bidding. I'm going to drive the number up because, whatever it goes to, it's going to go to the borough. The borough is going to win, and I think the borough is the only one that won last night, so I got the number up to \$130,000. . . If he wants to do that, let him pay for it." (Exhibit "C" 12/4/24 Times Article)

45. In light of paragraph 44, it would seem the Borough would obviously do everything in its power to move forward with the sale.

46. However, the Council Defendants, Manager and Solicitor have done everything it could to derail Plaintiff from purchasing the property in direct contravention to their fiduciary and other duties and in fact acted both vindictively and in their own personal best interests and not to the offices they swore and oath to do so as evidenced below.

47. On December 6, 2024, after having won the property at auction, counsel for Plaintiff sent correspondence to Defendant Mustacchio/Counsel for Olyphant Borough Defendants, informing them that an adjacent property owner is/has been using the property for the storage of personal property, and requested that the Olyphant Borough Defendants have the personal property removed. (See Exhibit D Page 1)

48. On December 9, 2024, Defendant Mustacchio/Counsel for Olyphant Defendants, responded saying that there was no property being stored on the subject property, that the Borough of Olyphant had conducted a survey of the subject property, that the Plaintiff is not a "new buyer" of the subject property, and that Counsel for Plaintiff's December 6, 2024 email was the first time Defendant Mustacchio learned of the deck being built encroaching upon the subject property. (See Exhibit D Page 3)

49. Oddly enough within the email sent by Plaintiff there are pictures showing the property being stored on Borough property but despite this the Defendants did nothing to have the

property removed despite this clearly causing delays in having the property purchased by Plaintiff.

50. There was no reasonable reason the Defendants would do this and it is believed and therefore averred it was for personal gain or being vindictive and further there was no public comment or resolution allowing this property to be stored on Borough property.
51. On December 10, 2024, Defendant Mustacchio/Counsel for Olyphant Borough Defendants, sent correspondence to the Plaintiff directly, as well as Counsel for Plaintiff, with a Sales Agreement attached, and with an additional term to the contract within the body of the email that “time is of the essence.” (See Exhibit D Page 3)
52. This terms was never in the resolution and was trying to be inserted as an additional term to the agreement after an offer, acceptance and consideration i.e. a valid contract.
53. It is believed and therefore averred that Defendants Mustachhio did this for personal gain and or not in the best interest of this offices he had held.
54. On December 16, 2024, Counsel for Plaintiff, responded that all non-borough personal property should be removed from the subject property, a copy of the deed provided, and a demonstration of good and clear marketable title be shown to the Plaintiff. (See Exhibit D Page 4)
55. Within the December 16, 2024 email, the Plaintiff also informed Defendant Mustacchio/Counsel for Olyphant Borough Defendants that it was beginning to appear as though the Defendants are intentionally trying to cause a breach and that once all non-borough personal property was removed and “good and clear marketable title with no non-borough property” the Plaintiff would arrange for a check to be given to the borough and a signed deed provided to the Plaintiff. (See Exhibit D Page 4)

56. Finally, this December 16, 2024 correspondence stated that the Plaintiff would not continue “begging” for the Defendants to comply with the terms of the sale.
57. On December 17, 2024, Defendant Mustacchio/Counsel for Olyphant Borough Defendants, responded to Counsel for Plaintiff’s December 16, 2024 email stating that he does not believe the subject property was “under contract” and requested that the Plaintiff sign a sales agreement. (See Exhibit D Page 5)
58. Clearly, with the Plaintiff over-paying for the property the Defendants had a fiduciary and other duties to be sure the sale went through and tax-payers would receive the benefit.
59. Instead the Defendants continued its reckless course of conduct to do anything it could to refuse to sell the property to the Plaintiff and to try to sell the property to other persons or entities as was predicted in the letter delineated in paragraph 61 herein.
60. On December 19, 2024, Counsel for Plaintiff emailed Defendant Mustacchio/Counsel for Olyphant Borough Defendants outlining “the history of this matter.” (See Exhibit D Pages 5-8)
61. Within this December 19, 2024 email, Counsel for Plaintiff outlined the following:
- a. An article printed in The Times-Tribune on or about July 5, 2024 reported, “Olyphant Borough and Basalyga are currently negotiating a potential sale of a lot next to O-Town at 105 Delaware Ave. . .”
 - b. Olyphant Council President was quoted as saying that Olyphant Borough renovated Queen City Station in part because Basalyga may acquire the property at 105 Delaware Ave.
 - c. As a result of that article The Pisanchyn Law Firm sent an email to Defendant Mustacchio/Counsel for Olyphant Borough Defendants informing them that

Olyphant Borough never provided notice that the property was for sale, when the sale was to occur, and that a sale was already being negotiated.

- d. Prior to the property at 105-109 Delaware Ave being auctioned, it was being considered that the property be turned into a public park.
- e. After O-Town Tavern was purchased by John Basalyga, the Olyphant Borough Defendants decided to sell the property to John Basalyga.
- f. The decision to sell the property to John Basalyga instead of turning it in to a public park was led by Councilman Michael Abda.
- g. Olyphant Borough Council was quoted as actually negotiating the sale of the 105-109 Delaware Ave property.
- h. Olyphant Borough Council renovated the Queen City Station because John Basalyga was going to purchase the 105-109 Delaware Ave property.
- i. Prior to the sale of the property, John Basalyga began storing his personal property on the 105-109 Delaware Ave property, which was still owned by the Borough of Olyphant.
- j. Prior to the December 3, 2024 auction of the 105-109 Delaware Ave property, a deck of an adjacent property was being built encroaching onto the 105-109 Delaware Ave property.
- k. The property where this deck is being built is owned by the nephew of Councilman Abda.
- l. After the Plaintiff was the winning bidder at the auction, construction of the deck stopped.

- m. After the auction, John Basalyga was quoted as saying “The land probably is worth maybe \$10,000, that’s it.” “When it got to \$100,000, I’m like, ‘Alright, honestly, I’m going to keep bidding. I’m going to driver the number up. . .”
 - n. John Basalyga was quoted as saying that he intentionally drove up the price of the property knowing the proceeds would go to the borough.
62. It is believed and therefore averred that in exchange for allowing John Basalyga to store his personal property on the Olyphant Borough property located at 105-109 Delaware Ave, John Basalyga would drive up the price of the property at auction or allowed to purchase the poperty.
63. On the December 19, 2024 email to Defendant Mustacchio and the Olyphant Borough Defendants, Counsel for Plaintiff pointed out that the proposed sales agreement did not account for the \$7,200.00 already paid by the Plaintiff. (See Exhibit D Page 8)
64. It is believed and therefore averred that Defendant Mustacchio and the Olyphant Borough Defendants intentionally and knowingly added new/additional terms to the contract to intentionally cause a breach.
65. On December 20, 2024, Defendant Mustacchio sent correspondence to Counsel for Plaintiff adding a “time is of the essence” term. (See Exhibit D Page 9)
66. Within this correspondence, Defendant Mustacchio asserted that no contract had been entered into by the Plaintiff and Defendants and required the proposed sales agreement be signed by the Plaintiff prior to December 30, 2024 as the Olyphant Borough Defendants would not grant an extension of that deadline.
67. On December 26, 2024, Defendant Mustacchio/Counsel for Olyphant Borough Defendants, sent correspondence to Counsel for the Plaintiff informing that they had recently viewed the

survey of the property and conducted an on-site examination of the subject property, and it has come to their attention that “further encroachments may be present.” (See Exhibit D Page 9-10)

68. The December 26, 2024 correspondence from Defendant Mustacchio went on to say “Although this information is provided to you as it became known to the Borough of Olyphant this does not excuse your continued duty to do your due diligence in all matters relevant to the purchase of the Lot in question by your client.”
69. It is believed and therefore averred that the Mustacchio Defendants and Olyphant Borough Defendants were in possession of this knowledge prior to December 26, 2024, and intentionally/knowingly/fraudulently concealed it from the Plaintiff.
70. Counsel for Plaintiff responded to the December 26, 2024 email from Mustacchio stating that he had been informing Defendant Mustacchio and the Borough of Olyphant for weeks about the encroachments onto the Delaware Ave property which included pictures of the encroachments, with no response. (See Exhibit D Page 10-12)
71. Counsel for Plaintiff further informed Defendant Mustacchio and the Olyphant Borough Defendants that as of December 26, 2024, the Plaintiff was still ready, willing and able to close on the property, and asked that the December 30, 2024 deadline be extended.
72. Despite disclosing to the Plaintiff that several encroachments existed on the property just four days prior to the date originally set for closing, the Defendant Mustacchio and/or the Olyphant Borough Defendants refused to extend the deadline.
73. It is believed and therefore averred that this refusal to extend the deadline was done intentionally/knowingly in order to cause a breach.
74. Further, a review of what was going on shortly before the auction is also telling.

75. In this regard, right before the auction Abda's nephew began to have a large deck being built off of his property onto the property at issue.
76. It is believed and therefore averred that this deck was so much over on the property it would only be done believing that someone else was going to win the bid for that property and allow the deck to be built.
77. Further, as soon as the Plaintiff won the bid the work on the deck oddly enough ceased to continue until which time the Borough finally issued a stop work order after a letter was sent by Plaintiff requesting they do so.
78. On December 27, 2024, Defendant Mustacchio emailed counsel for Plaintiff stating that in an effort to resolve the encroachment issues, the Borough would use all available authority to remove the deck from Councilman Abda's nephew's building; and to extend the closing date to January 6, 2025 at noon and then further until it is determined solely by the Borough whether the encroachment issues can be resolved by either (i) that the Plaintiff be returned his \$1,000.00 down payment despite having paid a \$7,100.00 down payment, or (ii) take a \$2,106.00 discount of the purchase price and be responsible for resolving the encroachments on his own. (Exhibit D Pages 12-13)
79. Defendant Mustacchio, through comments to the media, provided legal advice to John Basalyga, instead of placing the interests of Olyphant Borough and its citizens ahead of John Basalyga.
80. It is believed and therefore averred that Defendant Mustacchio provided legal theories to John Basalyga for which to use to acquire the subject property.
81. It is believed and therefore averred that Defendant Mustachio did not send correspondence to John Basalyga requesting that the encroachments to the property be removed.

82. In fact, the legal theory Mustacchio researched and reviewed and quoted to the Newspaper concerning adverse possession is inapplicable because adverse possession does not apply to a Municipality.
83. As such, the Borough should have or must send to Queen city a letter advising of the encroachment and also clearing title so Plaintiff can purchase the property as per the terms of the contract when the winning bid was won i.e., offer accepted.
84. Should the Borough wanted to have a sales contracted signed or any other terms it potentially had the right to require that in the offer/Resolution but in fact never did so but rather tried to insert these additional terms after the contract was consummated.
85. It is believed and therefore averred that the Olyphant Borough Defendants intentionally allowed the encroachments to remain to cause a breach in the contract.
86. It is believed and therefore averred that Defendant Mustacchio has a conflict of interest in acting as both the Olyphant Borough Manager and as the Olyphant Borough Solicitor (gets paid for doing both) generally and specially in regard to this matter.
87. Defendant Mustacchio owes two conflicting duties to the Borough of Olyphant and its citizens when acting as both the Borough Manager and Borough Solicitor.
88. Due to but not limited to these conflicts, this Defendant acted for his own personal benefit but also recklessly, and/or negligently caused harm to Plaintiff.
89. Through forcing this breach, the Borough of Olyphant lost out on the sale of the property which the Plaintiff was paying approximately \$60,000 above the appraised value.
90. It is believed and therefore averred that Defendant Mustacchio acted outside the scope of his roles as borough manager and borough solicitor.

91. It is believed and therefore averred that Defendants Baldan, Abda, Harrington, Tully, and Krukovitz, acted outside the scope of their roles as members of Olyphant Borough Council.
92. On January 3, 2025, Counsel for Plaintiff sent correspondence to Defendant Mustacchio inquiring about the Borough of Olyphant's knowledge of the encroachments, the price reduction offered, and asking about steps taken to remove the encroachments. (See Exhibit D Pages 15- 19)
93. Defendant Mustacchio without any authorization came up with his own calculation to reduce the price of the property without any Resolution of Council and as such this was illegal.
94. It is believed and therefore averred that Defendant Mustacchio gave improper legal advice to Council and others and never disclosed any conflicts
95. It is believed and therefore averred that if Defendant Mustacchio did so Council would have acted appropriately.
96. On January 7, 2025, prior to the Borough Council meeting scheduled for that day, Counsel for Plaintiff sent Defendant Mustacchio photographs of the encroachments on the property at 105-109 Delaware Ave, and informing that the Plaintiff was ready to close once they are removed. (See Exhibit D Page 19-25)
97. Also in this January 7, 2025 correspondence, Counsel for Plaintiff expressed concern in the Borough of Olyphant doing "everything in its power to submarine an over \$60,000 highest bid over the appraised value" and its failure to do the simplest thing of sending a letter to those with encroachments on the property asking them to be removed.
98. It is believed and therefore averred that because the Borough of Olyphant and the Olyphant Borough Defendants intentionally caused a breach in which the Borough of Olyphant and its

tax payers were to receive \$60,000 in excess of the appraised value of the property, its shows their true intention was never to sell the property to the Plaintiff.

99. It is believed and therefore averred that in addition to the facts outlined above in paragraph 98, that the Borough of Olyphant was already in negotiations to sell the property to John Basalyga since at least July 5, 2024, and ensured the property would not be sold to the Plaintiff.
100. On January 7, 2025, at a Borough Council meeting, the Olyphant Borough Defendants (a) declared the Plaintiff's bid disqualified and/or null and void due to the failure to execute a sales agreement, (b) decided that the Plaintiff's \$7,100.00 bid security was forfeited because of the failure to execute a sales agreement, and (c) that the bid auction initiated on December 3, 2024 was closed.
101. It was vindictive and reckless for the Defendants to seize and take the \$7,100 from Plaintiff despite his stating he was ready, willing and able to close on the property and it is believed and averred the Defendants did this because of the publicity they received by the Times Tribune and the letters sent by Plaintiff's attorney.
102. On January 8, 2025, Defendant Mustacchio sent correspondence to the Plaintiff's Counsel outlining the actions taken at the January 7, 2025 council meeting. (See Exhibit D Page 26)
103. On January 7, 2025, Olyphant Borough Council voted that the Plaintiff's bid was disqualified and/or declared null and void.
104. On January 7, 2025, Olyphant Borough Council voted that the Plaintiff's bid security of \$7,100 was forfeited to the Borough of Olyphant.

105. On January 7, 2025, Olyphant Borough Council voted that the bid auction initiated on December 3, 2024 was closed and concluded and no further action is to be taken until further resolution of Olyphant Borough Council.
106. The Olyphant Borough Defendants intentionally and maliciously caused a breach of the contract which would have benefited the citizenry of Olyphant.
107. The Plaintiff was to pay \$60,000 over the appraised value of property, to which the Defendants intentionally caused a breach further evidencing the conspiracy more fully outlined below.
108. After the Plaintiff's bid was voided by the Defendants, Defendant Mustacchio was informed of this pending litigation and to prevent the loss/deletion of evidence, including electronic evidence stored on computers and phones.
109. Defendants Mustacchio, in his capacity as Olyphant Borough Solicitor, was informed of this pending litigation and to inform the members of council that they should also prevent the loss/deletion of evidence, including electronic evidence stored on computers and phones.
110. As of the filing of this complaint, John Basalyga and/or corporate entities for which he owns or is a stake holder, is/are being allowed to use the subject property for personal use/storage/renovations to his business.
111. As of the filing of this complaint, neither the Borough of Olyphant nor any of the Defendants have contacted John Basalyga or any of the corporate entities for which he owns or is a stake holder to remove the encroachments.
112. The Defendants have fulfilled the purpose of their intentional breach of the contract to sell the subject property to the Plaintiff.

113. The Plaintiff has been denied the use, possession, and benefit of the property for which he entered into a contract to purchase while John Basalyga or any of the corporate entities for which he owns or is a stake holder are the *de facto* owner/possessor of the property.

114. Plaintiff has sustained numerous damages including loss of use of the property, loss of business proceeds, loss of business, economic loss and other numerous losses due to the Defendants actions and inactions.

COUNT I
BREACH OF CONTRACT

Plaintiff v. Olyphant Borough; Olyphant Borough Council; Mayor Jonathan Sedlak; Cosmo J. Mustacchio, Individually, as Olyphant Borough Manager and as Olyphant Borough Solicitor; James Baldan individually and as Olyphant Council Member; Robert Hudak, as Olyphant Council Member; Michael Abda, individually and as Olyphant Council Member; Dina Harrington, individually, and as Olyphant Council Member; Jerry Tully, individually, and as Olyphant Council Member; David Krukovitz, individually, and as Olyphant Council Member; Elizabeth Frushon, as Olyphant Council Member

115. Plaintiff incorporates by reference paragraph 1 through 114 as well as the whole complaint as if fully set forth herein at length.

116. On or about November 19, 2024, the Olyphant Borough Defendants authored and/or voted on Borough of Olyphant Resolution No.8 of 2024. (Attached as Exhibit “B”) (hereafter referred to as Resolution 8)

117. To the extent the deed, correspondence, emails can be considered part of the contract they are not being attached because some contain confidential information and other materials and further, these documents will be provided to the Defendants via discovery and also are being requested through discovery from Defendants and once received will be attached to the Complaint if proper.

118. A valid offer to sell the property was made via Resolution 8 with all of the conditions set forth within it.

119. The Plaintiff won the auction held on December 3, 2024.
120. The Plaintiff met and/or complied with all of the conditions and terms created by the Borough itself.
121. There was an offer from the Defendants and it was accepted by the Plaintiff with consideration.
122. A contract was formed when the Plaintiff's bid was accepted.
123. The Plaintiff acquired a vested interest in the property "at the fall of the hammer."
124. The Defendants have the capacity to enter into contracts.
125. There terms and conditions were set forth in the Borough's own resolution and Plaintiff relied on these when bidding on the property
126. The Borough itself made all of the conditions which were required for the sale and specifically did not include that a sales agreement was required.
127. Further, the Borough did not include numerous other conditions and requirements it tried to subsequently add to the sales agreement it demanded be signed by Plaintiff.
128. After the auction, and after a contract was formed, the Defendants began trying to add additional terms.
129. The Defendants breached the contract entered into with the Plaintiff.
130. The Defendants refused to accept payment from the Plaintiff.
131. The Defendants prevented the Plaintiff from performing his obligations under the contract.
132. The Plaintiff did not agree to a modification.
133. All condition(s) precedent occurred, requiring the Defendants' performance.
134. The parties did not enter into a subsequent contract cancelling the contract which is the subject of this action.

135. The Plaintiff did not waive the Defendants' obligations under the contract.
136. The Defendants failed to perform their obligations under the contract.
137. The Defendants failed to demonstrate clear/marketable title.
138. The Defendants failed to obtain clear/marketable title.
139. The Plaintiff made all reasonable efforts to mitigate/avoid/reduce his damages.
140. Despite his efforts to mitigate/avoid/reduce his damages, the Plaintiff still incurred damages.
141. The Defendants intentionally, recklessly, and/or negligently refused to sell the property to Plaintiff because of but not limited to their relationship with John Doe 1-3 Co-Conspirator.
142. The Defendants from the beginning had a plan to sell the property to Co-Conspirator as evidenced by:
- a) The Times Tribune Article stating the property was already being sold
 - b) Comments in that article by Borough Council President Baldan
 - c) The fact that Queen City Tavern had already begun storing its personal property on the Borough property before the auction
 - d) The fact that Councilmen Abda's nephew began to build a deck on Borough property and it is believed and therefore averred there was an agreement between John Doe 1-3 Co-conspirators to have a quid pro quo between these persons
 - e) The Borough currently allowing persons and entities to use the property at issue; and
 - f) Numerous other evidence as set forth in the documents attached hereto and actions and in-actions by Defendants
143. As a result of the Defendants' breach the Plaintiff has suffered and continues to suffer damages.

144. As a result of the Defendants' breach the Plaintiff has incurred additional costs.

145. As a result of the Defendants' breach the Plaintiff has lost future revenue.

146. The Plaintiff is entitled to direct and consequential damages.

147. The Plaintiff is entitled to reliance damages.

148. The Plaintiff is entitle to unjust enrichment damages.

149. The Plaintiff is entitled to nominal damages.

WHEREFORE, the Plaintiff, Michael Dennin, respectfully requests judgement in his favor and against the Defendants in an amount in excess of FIFTY THOUSAND (\$50,000.00) DOLLARS in addition to compensatory damages, punitive damages, interest and such other relief as this Honorable Court deems just and proper.

COUNT II
BREACH OF IMPLIED DUTY OF GOOD FAITH AND FAIR DEALING

Plaintiff v. Olyphant Borough; Olyphant Borough Council; Mayor Jonathan Sedlak; Cosmo J. Mustacchio, Individually, as Olyphant Borough Manager and as Olyphant Borough Solicitor; James Baldan individually and as Olyphant Council Member; Robert Hudak, as Olyphant Council Member; Michael Abda, individually and as Olyphant Council Member; Dina Harrington, individually, and as Olyphant Council Member; Jerry Tully, individually, and as Olyphant Council Member; David Krukovitz, individually, and as Olyphant Council Member; Elizabeth Frushon, as Olyphant Council Member

150. Plaintiff incorporates by reference paragraph 1 through 149 as well as the whole complaint if fully set forth herein at length.

151. The duty of good faith and fair dealing is implied in every contract.

152. The Defendants owed the Plaintiff a duty to perform their obligations under the contract in a reasonable manner consistent with the contract's purpose.

153. The Defendants acted unreasonably in contravention to the Plaintiff's reasonable expectations.

154. The Defendants exercised their discretion in an unreasonable way.
155. The Defendants failed to extend the December 30, 2024 deadline to close despite disclosing to the Plaintiff for the first time on December 27, 2024 that there were several encroachments on the property.
156. The Defendants failed to simply ask the owner(s) of the encroaching properties to remove the encroachments.
157. The Defendants failed to take any steps to remove the encroachments.
158. The Defendants offered legal theories to individuals not party to the contract/third parties, which they could use to try to obtain portions of the property under contract with the Plaintiff.
159. The Defendants breached the implied duty of good faith and fair dealing by but not limited to:
- a. Never intending to perform their obligations under the contract;
 - b. Having a fraudulent bidder present to bid solely for the purpose of increasing the price;
 - c. Not disclosing that the subject property has multiple encroachments;
 - d. Not disclosing that the subject property does not have clean marketable title;
 - e. Not disclosing that an Defendant/Olyphant Borough Councilmember had/has an interest in the contract;
 - f. Not disclosing that an Defendant/Olyphant Borough Councilmember had/has a financial interest in the contract;
 - g. Not disclosing that an Defendant/Olyphant Borough Councilmember had/has an interest in an adjoining property;

- h. Not disclosing that an Defendant/Olyphant Borough Councilmember had a financial interest in an adjoining property;
- i. Not disclosing that an Defendant/Olyphant Borough Councilmember had a financial interest in an adjoining property which was encroaching on the subject property for sale.
- j. Knowing that additional terms would be added to the contract after its formation and forming a contract with the Plaintiff anyway;
- k. Knowing that additional terms would be added to the contract for the purpose of forcing the Plaintiff to “walk away” from the contract;
- l. Knowing that the Plaintiff was not the person the Defendants preferred to purchase the property, did everything in their power to prevent the sale including intentionally breaching the contract;
- m. Creating delays and then refusing to extend the closing date.
- n. Not responding to the Plaintiff’s reasonable inquiries, then asserting that the Plaintiff had not done his due diligence;
- o. Preventing the Plaintiff from doing his due diligence.

160. Defendant knew and/or should have known that their numerous actions and inactions would cause the Plaintiff to suffer damages.

161. The Defendants allowed and/or encouraged its members to act negligently, recklessly, intentionally in violating the aforementioned duties to the Plaintiff.

162. The Defendants allowed and/or encouraged its members to act negligently, recklessly, intentionally in their actions/inactions causing damages to the Plaintiff.

WHEREFORE, the Plaintiff, Michael Dennin, respectfully requests judgement in his favor and against the Defendants in an amount in excess of FIFTY THOUSAND (\$50,000.00) DOLLARS in addition to compensatory damages, punitive damages, interest and such other relief as this Honorable Court deems just and proper.

COUNT III

FRAUD/INTENTIONAL MISREPRESENTATION

Plaintiff v. Olyphant Borough; Olyphant Borough Council; Mayor Jonathan Sedlak; Cosmo J. Mustacchio, Individually, as Olyphant Borough Manager and as Olyphant Borough Solicitor; James Baldan individually and as Olyphant Council Member; Robert Hudak, as Olyphant Council Member; Michael Abda, individually and as Olyphant Council Member; Dina Harrington, individually, and as Olyphant Council Member; Jerry Tully, individually, and as Olyphant Council Member; David Krukovitz, individually, and as Olyphant Council Member; Elizabeth Frushon, as Olyphant Council Member

163. Plaintiff incorporates by reference paragraph 1 through 162 as well as the whole complaint if fully set forth herein at length.

164. Defendants made a misrepresentation of a material fact to the Plaintiff.

165. The Plaintiff would not have entered into the contract had the Defendants not misrepresented the following, but not limited to:

- a. That they never intended to perform their obligations under the contract;
- b. That the auction have a fraudulent bidder present to increase the price;
- c. That the subject property has multiple encroachments;
- d. That the subject property does not have clean marketable title;
- e. That an Olyphant Borough Councilmember had an interest in the contract;
- f. That an Olyphant Borough Councilmember had a financial interest in the contract;
- g. That an Olyphant Borough Councilmember had an interest in an adjoining property;

- h. That an Olyphant Borough Councilmember had a financial interest in an adjoining property;
- i. That an Olyphant Borough Councilmember had a financial interest in an adjoining property which was encroaching on the subject property for sale.
- j. That additional terms would be added to the contract after its formation;
- k. All the issues delineated on the correspondence sent by Plaintiff to Defendants

166. The facts outlined in Paragraph 142 (a-k) are material, and the Plaintiff would not have entered into the contract had he known the truth.

167. The Defendants knew the misrepresentations they were making and still proceeded with the formation of the contract.

168. The Plaintiff believed the aforementioned misrepresentations.

169. The Plaintiff thought the aforementioned misrepresentations were true.

170. The Defendants' misrepresentations were the factual cause of the Plaintiff's harm.

WHEREFORE, the Plaintiff, Michael Dennin, respectfully requests judgement in his favor and against the Defendants in an amount in excess of FIFTY THOUSAND (\$50,000.00) DOLLARS in addition to compensatory damages, punitive damages, interest and such other relief as this Honorable Court deems just and proper.

COUNT IV
FRAUD/INTENTIONAL CONCEALMENT

Plaintiff v. Olyphant Borough; Olyphant Borough Council; Mayor Jonathan Sedlak; Cosmo J. Mustacchio, Individually, as Olyphant Borough Manager and as Olyphant Borough Solicitor; James Baldan individually and as Olyphant Council Member; Robert Hudak, individually, and as Olyphant Council Member; Michael Abda, individually and as Olyphant Council Member; Dina Harrington, individually, and as Olyphant Council Member; Jerry Tully, individually, and as Olyphant Council Member; David Krukovitz, individually, and as Olyphant Council Member; Elizabeth Frushon, individually, and as Olyphant Council Member

171. Plaintiff incorporates by reference paragraph 1 through 170 as well as the whole complaint if fully set forth herein at length.

172. The Defendants intended to deceive the Plaintiff about a material fact by purposely concealing material facts that the Defendant knew.

173. The Defendants intended prevent further inquiry by the Plaintiff into a material matter by purposely concealing a material fact that the Defendants knew.

174. The Plaintiff would not have entered into the contract had he known the fact(s) which the Defendants intentionally concealed.

175. The Defendants' concealment of the fact was a factual cause of harm suffered by the Plaintiff.

176. The Defendants intentionally concealed but the following, but not limited to the following facts:

- a. The property for sale did not have clean marketable title;
- b. The property for sale had encroachments from adjacent properties;
- c. The property for sale was being used as storage by John Basalyga;
- d. An Olyphant Borough Councilmember had an interest in the contract;
- e. An Olyphant Borough Councilmember had a financial interest in the contract;
- f. An Olyphant Borough Councilmember had an interest in an adjoining property;
- g. An Olyphant Borough Councilmember had a financial interest in an adjoining property;
- h. An Olyphant Borough Councilmember had a financial interest in an adjoining property which was encroaching upon the property for sale;

- i. That the Defendants never intended to perform their obligations under the contract;
- j. That the auction would have a fraudulent bidder present only to increase the price of the property;
- k. That the subject property has multiple encroachments;
- l. All the issues delineated on the correspondence sent by Plaintiff to Defendants

177. Had the Plaintiff known of any of these facts the Plaintiff would not have entered into the contract.

178. Had the Plaintiff known of any of these facts the Plaintiff would have made further inquiry.

WHEREFORE, the Plaintiff, Michael Dennin, respectfully requests judgement in his favor and against the Defendants in an amount in excess of FIFTY THOUSAND (\$50,000.00) DOLLARS in addition to compensatory damages, punitive damages, interest and such other relief as this Honorable Court deems just and proper.

COUNT V
FRAUD/FRAUDULENT OMISSION

Plaintiff v. Olyphant Borough; Olyphant Borough Council; Mayor Jonathan Sedlak; Cosmo J. Mustacchio, Individually, as Olyphant Borough Manager and as Olyphant Borough Solicitor; James Baldan individually and as Olyphant Council Member; Robert Hudak, as Olyphant Council Member; Michael Abda, individually and as Olyphant Council Member; Dina Harrington, individually, and as Olyphant Council Member; Jerry Tully, individually, and as Olyphant Council Member; David Krukovitz, individually, and as Olyphant Council Member; Elizabeth Frushon, as Olyphant Council Member

179. Plaintiff incorporates by reference paragraph 1 through 178 as well as the whole complaint if fully set forth herein at length.

180. The Defendant owed the Plaintiff a duty to disclose to the Plaintiff all material facts the Defendants knew concerning the sale of 105-109 Delaware Ave.

181. The Defendants failed to disclose to the Plaintiff material facts concerning the sale of 105-109 Delaware Ave.

182. The Defendants failed to disclose facts that had they been disclosed, the Plaintiff would not have entered into the contract for the sale of 105-109 Delaware Ave.

183. The Defendants knew the Plaintiff would not have entered into the sale had the facts been disclosed.

184. The Plaintiff suffered harm as a result of entering into the sale for 105-109 Delaware Ave.

185. The Defendants failed to disclose but not limited to the following facts:

- a. The property for sale did not have clean marketable title;
- b. The property for sale had encroachments from adjacent properties;
- c. The property for sale was being used as storage by John Basalyga;
- d. An Olyphant Borough Councilmember had an interest in the contract;
- e. An Olyphant Borough Councilmember had a financial interest in the contract;
- f. An Olyphant Borough Councilmember had an interest in an adjoining property;
- g. An Olyphant Borough Councilmember had a financial interest in an adjoining property;
- h. An Olyphant Borough Councilmember had a financial interest in an adjoining property which was encroaching upon the property for sale;
- i. That the Defendants never intended to perform their obligations under the contract;
- j. That the auction would have a fraudulent bidder present only to increase the price of the property;
- k. That the subject property has multiple encroachments;

1. All the issues delineated on the correspondence sent by Plaintiff to Defendants
186. The Defendants intentionally failed to disclose these facts knowing that it would cause the
Plaintiff to refrain from entering into the contract for the sale of 105-109 Delaware Ave.

WHEREFORE, the Plaintiff, Michael Dennin, respectfully requests judgement in his favor
and against the Defendants in an amount in excess of FIFTY THOUSAND (\$50,000.00)
DOLLARS in addition to compensatory damages, punitive damages, interest and such other
relief as this Honorable Court deems just and proper.

COUNT VI
FRAUD/NEGLIGENT MISREPRESENTATION

**Plaintiff v. Olyphant Borough; Olyphant Borough Council; Mayor Jonathan Sedlak;
Cosmo J. Mustacchio, Individually, as Olyphant Borough Manager and as Olyphant
Borough Solicitor; James Baldan individually and as Olyphant Council Member; Robert
Hudak, as Olyphant Council Member; Michael Abda, individually and as Olyphant
Council Member; Dina Harrington, individually, and as Olyphant Council Member; Jerry
Tully, individually, and as Olyphant Council Member; David Krukovitz, individually, and
as Olyphant Council Member; Elizabeth Frushon, as Olyphant Council Member**

187. Plaintiff incorporates by reference paragraph 1 through 186 as well as the whole complaint
as if fully set forth herein at length.

188. The Defendants owed the Plaintiff a duty to provide accurate information concerning the
property at 105-109 Delaware Ave.

189. The Defendants negligently made a misrepresentation of material fact(s) to the Plaintiff.

190. Had the facts not been misrepresented to the Plaintiff, the Plaintiff would not have entered
into the contract to purchase the property.

191. The Defendants failed to exercise reasonable care or competence in obtaining or
communication the representation.

192. The misrepresentation was a factual cause of harm to the Plaintiff.

193. The Defendants failed to make reasonable investigation of the truth of their statements.

194. The Defendants misrepresentations include but are not limited to:

- a. The property for sale did not have clean marketable title;
- b. The property for sale had encroachments from adjacent properties;
- c. The property for sale was being used as storage by John Basalyga;
- d. An Olyphant Borough Councilmember had an interest in the contract;
- e. An Olyphant Borough Councilmember had a financial interest in the contract;
- f. An Olyphant Borough Councilmember had an interest in an adjoining property;
- g. An Olyphant Borough Councilmember had a financial interest in an adjoining property;
- h. An Olyphant Borough Councilmember had a financial interest in an adjoining property which was encroaching upon the property for sale;
- i. That the Defendants never intended to perform their obligations under the contract;
- j. That the auction would have a fraudulent bidder present only to increase the price of the property;
- k. That the subject property has multiple encroachments;
- l. All the issues delineated on the correspondence sent by Plaintiff to Defendants

195. As a result the Plaintiff suffered damages

WHEREFORE, the Plaintiff, Michael Dennin, respectfully requests judgement in his favor and against the Defendants in an amount in excess of FIFTY THOUSAND (\$50,000.00) DOLLARS in addition to compensatory damages, punitive damages, interest and such other relief as this Honorable Court deems just and proper.

COUNT VIII

INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS

**Plaintiff v. Olyphant Borough; Olyphant Borough Council; Mayor Jonathan Sedlak;
Cosmo J. Mustacchio, Individually, as Olyphant Borough Manager and as Olyphant
Borough Solicitor; James Baldan individually and as Olyphant Council Member; Robert
Hudak, as Olyphant Council Member; Michael Abda, individually and as Olyphant
Council Member; Dina Harrington, individually, and as Olyphant Council Member; Jerry
Tully, individually, and as Olyphant Council Member; David Krukovitz, individually, and
as Olyphant Council Member; Elizabeth Frushon, as Olyphant Council Member;
Defendant John Doe 1-3 Co-Conspirators**

196. Plaintiff incorporates by reference paragraph 1 through 195 as well as the whole complaint if fully set forth herein at length.
197. Defendant John Doe 1-3 Co-Conspirator(s) intentionally induced or otherwise intentionally caused the Olyphant Borough Defendants not to perform the contract with the Plaintiff.
198. Defendant John Doe 1-3 Co-Conspirator(s) intentionally induced or otherwise prevented the Olyphant Borough Defendants from performing.
199. Defendant John Doe 1-3 Co-Conspirator(s) intentionally induced or otherwise caused the performance of the contract to be more expensive.
200. Absent the Defendant John Doe 1-3 Co-Conspirator(s) actions/inactions, the Olyphant Borough Defendants would have performed their obligations under the contract.
201. No privilege existed to interfere with the contract.
202. In the alternative, if a privilege existed to interfere with the contract, said privilege was abused.
203. The Plaintiff is entitled to the monetary loss of the benefits of the contract.
204. The Plaintiff is entitled to the monetary loss of the benefits of the prospective contractual relationship.
205. The Plaintiff is entitled to be compensated for all monetary losses.

206. The Plaintiff is entitled to be compensated for harm to his reputation.

207. The Plaintiff is entitled to be compensated for emotional distress.

WHEREFORE, the Plaintiff, Michael Dennin, respectfully requests judgement in his favor and against the Defendants in an amount in excess of FIFTY THOUSAND (\$50,000.00) DOLLARS in addition to compensatory damages, punitive damages, interest and such other relief as this Honorable Court deems just and proper.

COUNT IX

TORTIOUS INTERFERENCE WITH ECONOMIC ADVANTAGE

Plaintiff v. Olyphant Borough; Olyphant Borough Council; Mayor Jonathan Sedlak; Cosmo J. Mustacchio, Individually, as Olyphant Borough Manager and as Olyphant Borough Solicitor; James Baldan individually and as Olyphant Council Member; Robert Hudak, as Olyphant Council Member; Michael Abda, individually and as Olyphant Council Member; Dina Harrington, individually, and as Olyphant Council Member; Jerry Tully, individually, and as Olyphant Council Member; David Krukovitz, individually, and as Olyphant Council Member; Elizabeth Frushon, as Olyphant Council Member; Defendant John Doe 1-3 Co-Conspirator(s)

208. Plaintiff incorporates by reference paragraph 1 through 207 as well as the whole complaint if fully set forth herein at length.

209. Defendant John Doe 1-3 Co-Conspirator(s) have tortuously interfered with Plaintiff's ability to obtain the property without properly providing it to the Plaintiff.

210. Defendant John Doe 1-3 Co-Conspirator(s) have diverted business opportunities and financial benefits away from the Plaintiff by not providing it to him, who would have accepted it.

211. As a result of the conduct of Defendant(s), Plaintiffs has been detrimentally impacted by having to seek another property especially in the current climate wherein there very few if

any available, and none that are the same/similar that could replace the losses the Plaintiff has incurred.

212. Plaintiff believes that Defendants refusing to perform their obligations under the contract are a direct result of one/some/all of Defendants' unilateral conduct.

213. As a direct result of the conduct of Defendants, the Plaintiff has suffered damages as set forth herein.

214. The conduct of Defendants was and is intentional, willful, malicious, extreme, and outrageous and warrants the imposition of punitive damages.

WHEREFORE, the Plaintiff, Michael Dennin, respectfully requests judgement in his favor and against the Defendants in an amount in excess of FIFTY THOUSAND (\$50,000.00) DOLLARS in addition to compensatory damages, punitive damages, interest and such other relief as this Honorable Court deems just and proper.

COUNT X
NEGLIGENCE

Plaintiff v. Olyphant Borough; Olyphant Borough Council; Mayor Jonathan Sedlak; Cosmo J. Mustacchio, Individually, as Olyphant Borough Manager and as Olyphant Borough Solicitor; James Baldan individually and as Olyphant Council Member; Robert Hudak, as Olyphant Council Member; Michael Abda, individually and as Olyphant Council Member; Dina Harrington, individually, and as Olyphant Council Member; Jerry Tully, individually, and as Olyphant Council Member; David Krukovitz, individually, and as Olyphant Council Member; Elizabeth Frushon, as Olyphant Council Member; Defendant John Doe 1-3 Co-Conspirator(s); Defendants John Doe 4-8 Land Surveyor

215. Plaintiff incorporates by reference paragraph 1 through 214 as well as the whole complaint as if fully set forth herein at length.

216. At all times pertinent hereto, Defendants owed to Plaintiff a duty to but not limited to being truthful, not misrepresent terms, not acting post hoc, not taking away Plaintiff's rights.
217. At all times pertinent hereto, Defendants owed to Plaintiffs a duty to act reasonably and not act maliciously toward Plaintiff.
218. At all times pertinent hereto, Defendants owed to Plaintiff a duty to advise the conditions of the property.
219. At all times pertinent hereto, Defendants owed to Plaintiff a duty not to intentionally/fraudulently drive up the price of the property during auction.
220. At all times pertinent hereto, Defendants owed to Plaintiff a duty to allow a fair opportunity to purchase the property.
221. At all times pertinent hereto, Defendants took an active part, and/or made a substantial contribution, in the commission of these torts upon Plaintiff by in through the below and aforementioned actions and/or inactions after having actual knowledge of the issues that caused Plaintiffs' injuries/damages.
222. At all times pertinent hereto, Defendants knew or should have known that their actions and inactions were improper.
223. At all times pertinent hereto, Defendants owed Plaintiffs a duty not to expose Plaintiff to a foreseeable and unreasonable risk.
224. At all times pertinent hereto, Defendant owed Plaintiffs a duty to use reasonable prudence.
225. At all times pertinent hereto, Defendant failed to conform to the duties including those identified throughout the Complaint, despite the fact that Defendants had actual or constructive knowledge that such failure created a reasonable likelihood that if not Plaintiffs would sustain damages.

226. The subject incident was caused solely by the negligence, carelessness and/or recklessness of the Defendants with their prior knowledge/intent, and their breaches of the duties owed, which include, but are not limited to the following:

- a) Failing to act reasonably and to try to deprive Plaintiffs of what was due and owing to them;
- b) Failing to warn Plaintiffs of the issues, including the aforementioned as set forth in this this civil complaint, despite actual or constructive knowledge thereof;
- c) Failing to rectify the issues caused by the Defendants failure to disclose the alleged issues with the property;
- d) Failing to follow policies and/or procedures, rules, law, Bylaws and the like;
- e) Failing to have policies in place to ensure the issues stated in this complaint did not occur and to reasonably have proper Bylaws, notice requirements, voting requirements and the like;
- f) Act in borough citizens' best interests and/or not for their personal benefit or their friends/third-parties personal benefit;
- g) Exposing Plaintiff to a foreseeable and unreasonable risk of damages;
- h) Failing to use reasonable prudence;
- i) Failing to allow only persons qualified to become officers and/or that would put the interests of the Borough before their personal/financial interests;
- j) Failing to conform to the duties delineated in this Complaint, despite actual or constructive knowledge that such failure created a reasonable likelihood that the Plaintiff would expend significant and substantial damages;

- k) Knowing that the lack of proper documentation, no documentation and the other actions and inactions would cause any actions taken to be invalid; and/or
- l) Failing to abide by any duty owed to Plaintiff, as set forth in the foregoing Paragraphs, as well as the entirety of this Complaint.

227. Defendants knew and/or should have known that their numerous actions and inactions would cause the Plaintiff to sustain damages.

228. The Defendants allowed, and/or encouraged, its members to act negligently and recklessly.

229. The Defendants owed Plaintiff a duty to use reasonable care in the performance of their professional duties.

230. The Defendants violated their duty of care in not using the same care a person in the same profession would use.

231. As a further result of the incident, Plaintiff has undergone great mental anguish or other damages, and Plaintiff may continue to suffer therefrom for an indefinite period of time in the future, to their great detriment and loss.

232. As a further result of the incident, Plaintiff has been and may be obliged to hire attorneys and expend a substantial portion of costs, fees and the like.

233. As a direct and proximate result of the recklessness, negligence and carelessness of Defendant, Plaintiff has and will continue to suffer damages well into the future, to their detriment and loss.

234. By reason of the aforementioned, Plaintiff has or may hereafter incur other financial expenses or losses that do or may exceed the amounts which they may otherwise be entitled to recover, including but not limited to other various expenses and consequential replacement loss of the property.

WHEREFORE, the Plaintiff, Michael Dennin, respectfully requests judgement in his favor and against the Defendants in an amount in excess of FIFTY THOUSAND (\$50,000.00) DOLLARS in addition to compensatory damages, punitive damages, interest and such other relief as this Honorable Court deems just and proper.

COUNT XII
SPECIFIC PERFORMANCE

Plaintiff v. Olyphant Borough; Olyphant Borough Council; Mayor Jonathan Sedlak; Cosmo J. Mustacchio, Individually, as Olyphant Borough Manager and as Olyphant Borough Solicitor; James Baldan individually and as Olyphant Council Member; Robert Hudak, as Olyphant Council Member; Michael Abda, individually and as Olyphant Council Member; Dina Harrington, individually, and as Olyphant Council Member; Jerry Tully, individually, and as Olyphant Council Member; David Krukovitz, individually, and as Olyphant Council Member; Elizabeth Frushon, as Olyphant Council Member

235. Plaintiff incorporates by reference paragraph 1 through 234 as well as the whole complaint if fully set forth herein at length.

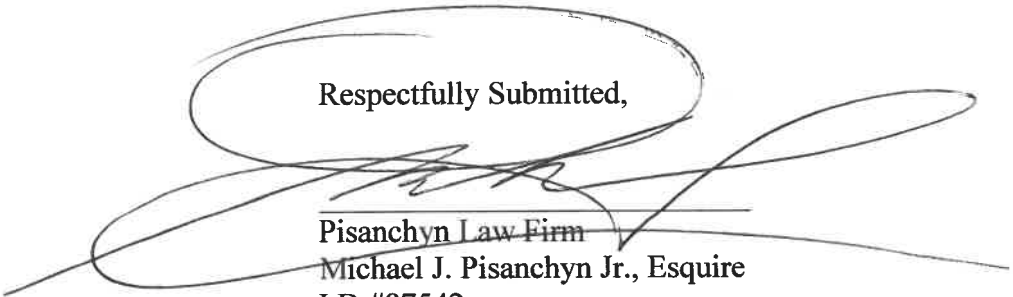
236. The Plaintiff has damages that are set forth throughout this complaint.

237. These damages include economic damages for the loss of the property value, the loss of use of the property for years upon years into the foreseeable future for the Plaintiff and his family and heirs, fees and costs, punitive damages for the reckless and outrageous actions and inactions in addition thereto specific performance for but not limited to the reasons set forth below.

238. The property is unique and there are no others like it.

WHEREFORE, the Plaintiff, Michael Dennin, respectfully requests judgement in his favor and against the Defendants and that Specific Performance be ORDERED ordering the Defendants to transfer, in fee simple, the deed to the property located at 105-109 Delaware Ave.

Respectfully Submitted,



Pisanchyn Law Firm
Michael J. Pisanchyn Jr., Esquire
I.D.#87542
524 Biden Street
Scranton, PA 18503
(570) 344-1234

EXHIBIT A

LETTER FROM ATTORNEY SERRA TO BOROUGH
OF OLYPHANT



Pittsburgh: (412) 261-1212

570-383-7818 and olyphantclerks@comcast.net



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Delaware Ave., ..” This article has caused great concern among numerous taxpayers, residents and business owners of Olyphant because it references the same piece of property that the Borough lead them to believe would be used for a pocket park. More specifically, the recent article is extremely concerning to my clients for the following reasons:

- 1) The borough never provided notice that the pocket park was no longer being pursued;
- 2) The borough never provided notice that the land located at 105 Delaware Avenue was for sale, when the sale would occur and where the sale would take place (to assure everyone had a fair opportunity to purchase the property and the borough could receive the maximum sale price to benefit the borough);
- 3) The borough never provided notice that borough council was negotiating the sale of borough property with a private citizen;
(See The Times-Tribune article quoting council President Jimmy Baldwin as stating, “Basalyga approached the borough about buying the land at a council work session about two months ago);
- 4) If the above article is true and accurate, why has council failed to inform the residents and taxpayers of Olyphant Borough for over 60 days, after which they only learned about the sale of the property through an article written in the newspaper;
- 5) If the borough received any public funding to help acquire, demolish or move forward with building the pocket park, what happens to these funds and do they have to be returned; and
- 6) Why would plans to develop a piece of property that would benefit the public change so quickly, where now only one person is set to make a profit, without taxpayers and residents of Olyphant having the opportunity for public comment?

As also reported in The Times-Tribune, “Olyphant purchased the Delaware Avenue property for \$30,000.00 in June of 2020. Two years later, the borough razed a run-down, long vacant building on the land with the intentions of constructing a pocket park in its place, spending nearly \$45,000.00 on the demolition.” This too raises several questions: 1) Was any additional money spent on the project, including any use of Olyphant DPW time; and 2) did/does Council intend on recouping all of its costs through the sale of the Delaware Avenue property or keeping the property for the pocket park if it is not able to recoup all of its costs?

Finally, Olyphant council has reportedly stated “Olyphant recently renovated its nearby Queen City Station, which Baldwin said was in part because of Basalyga possibly acquiring the pocket park site.” This is extremely concerning and a slap in the face to my clients, who have all helped sustain downtown Olyphant for years, to be told by council they renovated the downtown because of one private business owner.

In light of the above, my clients’ feel the key question(s) the borough should be asking is what would benefit Olyphant and its residents more, while at the same time bringing the best “vibe” and people to downtown Olyphant. a) A public pocket park where people can bring their families, friends and pets; or, b) expanding a private restaurant that would offer the same menu as the three existing (four including the current O-town) restaurants located within 50 yards of

105 Delaware Avenue while taking away a public park. It is my clients' proposition that the answer is obvious. A free public park for the community would certainly benefit Olyphant much more than apartments, another patio and one person making a profit.

We understand that private citizens and businesses like to make money. However, it is our belief that government entities such as Olyphant council are charged with doing the right thing and making sure that public facilities are built as opposed to private development.

Although our clients have heard from others that council members have already said this deal with the private developer to take away the public park and expand the fourth restaurant within fifty yards of each other is already done despite no notice or opportunity to be heard, on behalf of our clients we urge Council to do the right thing in this case and continue moving forward with building the pocket park.

In fact, we have secured an anonymous donor who has agreed to fully-fund the building and completion of the pocket park, with the only conditions including: 1) the pocket park look similar to or the same as the existing pocket park behind the Federal Courthouse in Scranton; and 2) that it always remains a park for public use. This means the pocket park can be built with no further time, money or effort from council and once completed will immediately be available for the entire Olyphant community. Surely, the one-time sale and money (which will likely barely cover the costs the Borough has incurred in purchase and demolition of the property) has no comparison to the community enjoying a park for generations to come. Please review and let us know if you are in agreement with the above proposal.

If council rejects the above proposal, we would ask that the Borough also list the parks located at Fern Hill, the Flats and other similar parks located within the Borough for private sale, as there is no difference in the sale of those parks verse the sale of the pocket park.

As always, we thank you ahead of time for your anticipated cooperation and kind considerations in this matter. Should you wish to talk about this matter in more detail, please feel free to call me at any time.

Sincerely,

A handwritten signature in dark ink, appearing to read 'St Serra', with a stylized flourish at the end.

Steven M. Serra, Esquire

EXHIBIT B

RESOLUTION 8

Borough of Olyphant
Resolution No. 8 Of 2024

A Resolution authorizing the sale of a certain property owned by the Borough of Olyphant (Borough) known as 105-107-109 Delaware Avenue, Olyphant Pennsylvania, Lackawanna County, PA Tax ID No. 11410050025 (Premises), at Public Auction upon certain terms and conditions; setting forth the manner of public notice as required by Section 1201 of the Borough Code of the Commonwealth of Pennsylvania and the required adoption of this Resolution by the Borough Council with the acceptance of the Mayor of the Borough; setting forth the terms and conditions of sale; providing for the posting of Security to enforce compliance with the Rules of the Public Auction and in order to secure payment to the Borough of the sale price as concluded by the Public Auction; setting forth the effective date of this Resolution.

Whereas, Section 1201 of the Borough Code of the Commonwealth of Pennsylvania (Code) authorizes the sale of Real Estate, which is owned by a Pennsylvania Borough, by Public Auction provided that due Public Notice of the Public Auction is made by the Borough consistent with the Code and provided that Borough Council adopts a Resolution authorizing the Public Auction.

Whereas, the Borough has expended public funds toward the acquisition and demolition of the Premises in order to abate its blighted and unsafe condition which endangered the health, safety and welfare of the residents of the Borough.

Whereas, the Borough, as adopted by the Council of the Borough and as approved by the Mayor of the Borough, hereby authorizes the public sale of the Premises at Public Auction upon the terms and conditions as set forth in this Resolution.

Whereas, mandatory Public Notice shall be made by publication in a newspaper of general circulation in the Borough, one (1) time at least ten (10) days prior to the date fixed for the Public Auction; the date of the Public Auction shall be announced in the Public Notice and the confirmation of the sale of the subject property shall only be made at the Public Auction.

Whereas, the following terms and conditions shall be included within the Public Notice and shall regulate the conduct of the Public Auction and any confirmation of sale as affirmed by the Council of the Borough and as accepted by the Mayor of the Borough and this Resolution will take effect immediately upon adoption hereof.

(1) The Public Auction will be held on December 3, 2024 at 7:00 PM, at the Olyphant Municipal Building, 113 Willow Avenue, Olyphant PA and the initial, minimum Bid shall be at least in the amount of \$71,300.00 which is established and based upon the real estate appraisal as requested and received by the Borough.

(1)

EXHIBIT "X"

(2) Subsequent to the initial Bid additional Bids must be in amounts that equal or exceed \$1,000.00 each; the transfer of title and the payment to the Borough must be concluded by 4:00 P.M. on December 30, 2024 unless said date and time is extended in writing by the Borough; the recording fees and transfer tax to be paid in full by buyer; the conveyance to be subject to the reservation by Borough of a certain perpetual underground storm water drainage easement and temporary work area easement as set forth on Exhibit "A" attached hereto, the same intended to be set forth in the Deed of Conveyance.

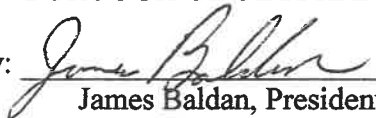
(3) The posting of Bid Security in the amount of ten (10%) per cent of the Fair Market Value above mentioned which is rounded to \$7,100.00; the security may be in the form of cash, Bond or guaranteed bank draft; the Bid Security must be posted by 12:00 Noon of the date of Public Auction which is December 3, 2024 at 7:00 PM.

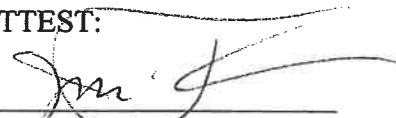
(4) The posting of Bid Security is certification by the Bidder that adequate funds are available for the Bidder to complete the sale in a timely manner as aforesaid in the event that the Bidder is confirmed as the successful Bidder.

(5) Failure of any Bidder to comply with any of the terms and conditions as set forth above will cause a disqualification of a Bidder from participating in the Public Auction and/or will cause a forfeit of the Bid Security as submitted, in the event that non-compliance occurs subsequent to the posting of the Bid Security.

IN WITNESS WHEREOF, the Council of the Borough of Olyphant sitting in Regular session duly assembled, this 19th day of November, 2024, hereby authorizes the sale of the subject Premises consistent with all of the terms and conditions regulating the Public Auction as set forth in Numbers 1 through 5 above.

BOROUGH OF OLYPHANT

By: 
James Baldan, President
Olyphant Borough Council

ATTEST:

John Tomeho, Secretary

Approved this 19th day of November, 2024.

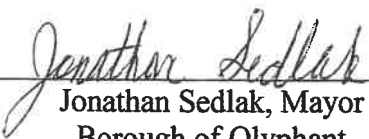

Jonathan Sedlak, Mayor
Borough of Olyphant

EXHIBIT C

December 4, 2024 Times Article

LOCAL NEWS

Vacant lot auction next to Queen City Tavern in Olyphant turns into bidding war

The borough auctioned off the vacant lot at 105-109 Delaware Ave.



Olyphant's empty lot next to the former OTOWN Bar and Grill — now the Queen City Tavern — on Lackawanna Avenue at Delaware Avenue on July 5, 2024. (TIMES-TRIBUNE FILE)

By **FRANK LESNEFSKY** | flesnefsky@scrantontimes.com | The Times-Tribune

UPDATED: December 4, 2024 at 5:41 PM EST

An auction for a vacant, borough-owned lot on Delaware Avenue became a bidding war Tuesday night.

Mike Dennin, who told The Times-Tribune in May that he is the owner of the Bar and Company at 415 W. Lackawanna Ave., outbid Queen City Tavern owner John Basalyga for the empty lot at 105-109 Delaware Ave. that abuts Basalyga's tavern at 400 W. Lackawanna Ave. Dennin's winning bid came in at \$130,000 for the land, which had a minimum bid of \$71,300 based on the borough's appraisal, borough manager and solicitor C.J. Mustacchio said.

Attorney Michael Pisanchyn, who founded the limited liability company that owns the Bar and Company property, emphasized in a text message that Bar and Company did not buy the lot.

Olyphant Borough initially bought the property in June 2020 for \$30,000 and then spent \$44,745 to tear down a blighted, vacant building on the land two years later. Best known as Tony's Pizza Palace in the mid-20th century, the building had housed movie theaters, pizza shops, a dance hall, a Chinese restaurant and, most recently, an indoor racetrack for remote-controlled cars in the 1990s before sitting vacant for two decades and falling into disrepair.

Borough officials discussed turning the land into a pocket park, senior center or parking lot, with the pocket park idea gaining some traction, though the town never officially decided on a use.

Basalyga approached borough council earlier this year about buying the lot next to his tavern — the former OTOWN Bar & Grill — to use for outdoor dining. In response to a July 6 article in The Times-Tribune about Basalyga's intent to buy the land, Scranton-based Pisanchyn Law Firm attorney Steven M. Serra sent Olyphant a letter urging the borough to turn the land into a pocket park rather than sell it to Basalyga. The July letter, which said “several residents and business owners from Olyphant” had contacted the law firm with concerns regarding the pocket park, told the borough there was an anonymous donor who would fully fund the construction and completion of the pocket park with the conditions that it must look similar to or the same as the pocket park in downtown Scranton at Linden Street and Wyoming Avenue, and that it must always remain a park for public use.



“A free public park for the community would certainly benefit Olyphant much more than apartments, another patio and one private business making a profit,” Serra wrote in the letter.

The letter noted the positive impact a pocket park would have on the town and raised concerns over the borough selling the land to Basalyga without putting it out to bid. In response to the letter, Mustacchio refuted in July that Olyphant had agreed to sell the land to Basalyga, saying at the time that the borough had not yet decided what to do with the property and that if it were sold, it would have to be put out to bid.

A limited liability company, Payton Realty LLC, owns the Bar and Company property after buying the building a decade ago, according to a property transaction recorded Aug. 22, 2014. Payton Realty also owns the Pisanchyn Law building at 524 Biden St., Scranton, according to a deed recorded April 17, 2009. Michael Pisanchyn, who founded and owns the Pisanchyn Law Firm, according to its website, was listed as the sole organizer of Payton Realty when it filed a certificate of organization with the state on March 11, 2009. A Feb. 26, 2018, state filing changed Payton Realty's address from a residential address in Olyphant to 524 Spruce St. — now Biden Street — in Scranton.

Dennin did not disclose his plans for the land with the borough, Mustacchio said.

"The borough was interested in seeing something done with the land, seeing it developed," Mustacchio said. "This is a free country, and the law says we have to put this out either for a sealed bid or an auction bid, so that's what we did, and anybody could buy it for any reason."

Reached by phone Wednesday, Basalyga said Dennin's bid was "a spiteful move," and the value of the land came from being next to his tavern. The \$130,000 price was "way more than it's even worth," he said.

"The land probably is worth maybe \$10,000, that's it," he said. "When it got to \$100,000, I'm like, 'Alright, honestly, I'm going to keep bidding. I'm going to drive the number up because, whatever it goes to, it's going to go to the borough. The borough is going to win,' and I think the borough is the only one that won last night, so I got the number up to \$130,000. ... If he wants to do that, let him pay for it."

Basalyga had envisioned building a one-story addition on the land with a folding glass wall that could open up for diners, as well as outdoor patio seating.

With those plans scrapped, Basalyga said his backup plan is to build upward rather than outward. The OTOWN had an underutilized second-floor event space that he now intends to convert into a "Nashville-type" design to build a patio with a view and a covered roof.

~~"Basically a covered second floor but I'll have the ability to open up some of~~

“You said you’re going to build a park, now build a park,” he said. “Do what you said you’re going to do because you wanted it so bad, and you know, it’s obvious that they wanted to halt my expansion.”

In a texted statement, Dennin contended Basalyga tried to purchase the property “without having the borough put it to bid or for cheap.” Basalyga said he only asked the borough if they would be interested in selling the land.

“When he was called out for doing that he had the opportunity to bid on the property and lost to another bidder,” Dennin wrote. “He obviously doesn’t believe in Olyphant as much we do or he wouldn’t have let that happen. Now he is trying to say something about spite which shows his jealousy as he had just as much opportunity to obtain the property but failed to do so. For him to say that just because he was out bid is absurd and petty.”

The borough will now prepare a deed, and Dennin could conduct a title search, though the borough did a title search for the property before buying it, Mustacchio said. The sale is supposed to be settled by Dec. 30, though it could be extended, he said.

Originally Published: December 4, 2024 at 5:01 PM EST

Around the Web

REVCONTENT

Better Than Edibles: Cruise Chews Are Now Legal in Pennsylvania

Cruise Chews

EXHIBIT D

Correspondence Between Counsel for Plaintiff and
Olyphant Borough Solicitor

From: Attorney Pisanchyn
Sent: Friday, December 6, 2024 3:16 PM
To: Olyphant1@comcast.net
Subject: Screenshot 2024-12-06 at 3.09.30 PM

CJ.

My client's understanding is these posts are the property line. Further, he has evidence for the past 6 months the property in the pictures has been stored there. Please accept this email as a right to know request for any written or oral information about agreement of the borough to allow the owner of that building next store to allow its property to be stored on borough property while putting up parking barricades not allowing anyone else to use it.

Also, please do not move anything from the property other than non borough property or do anything to change the property while the sale is pending without notice and consent by the buyer. My client is starting to believe the borough is single him out.

Thanks in advance and if you would like to talk about this issue, feel free to call me on my cell at 5703574384. Thanks and have a great day.

Attached photo sent with email

Excuse errors produced/sent from Iphone

Michael J. Pisanchyn Jr., Esquire

The Pisanchyn Law Firm

Excellent Attorneys

Ph: 1800-444-5309

Fax: 570-346-9455

Email: attorney@pisanchyn.com

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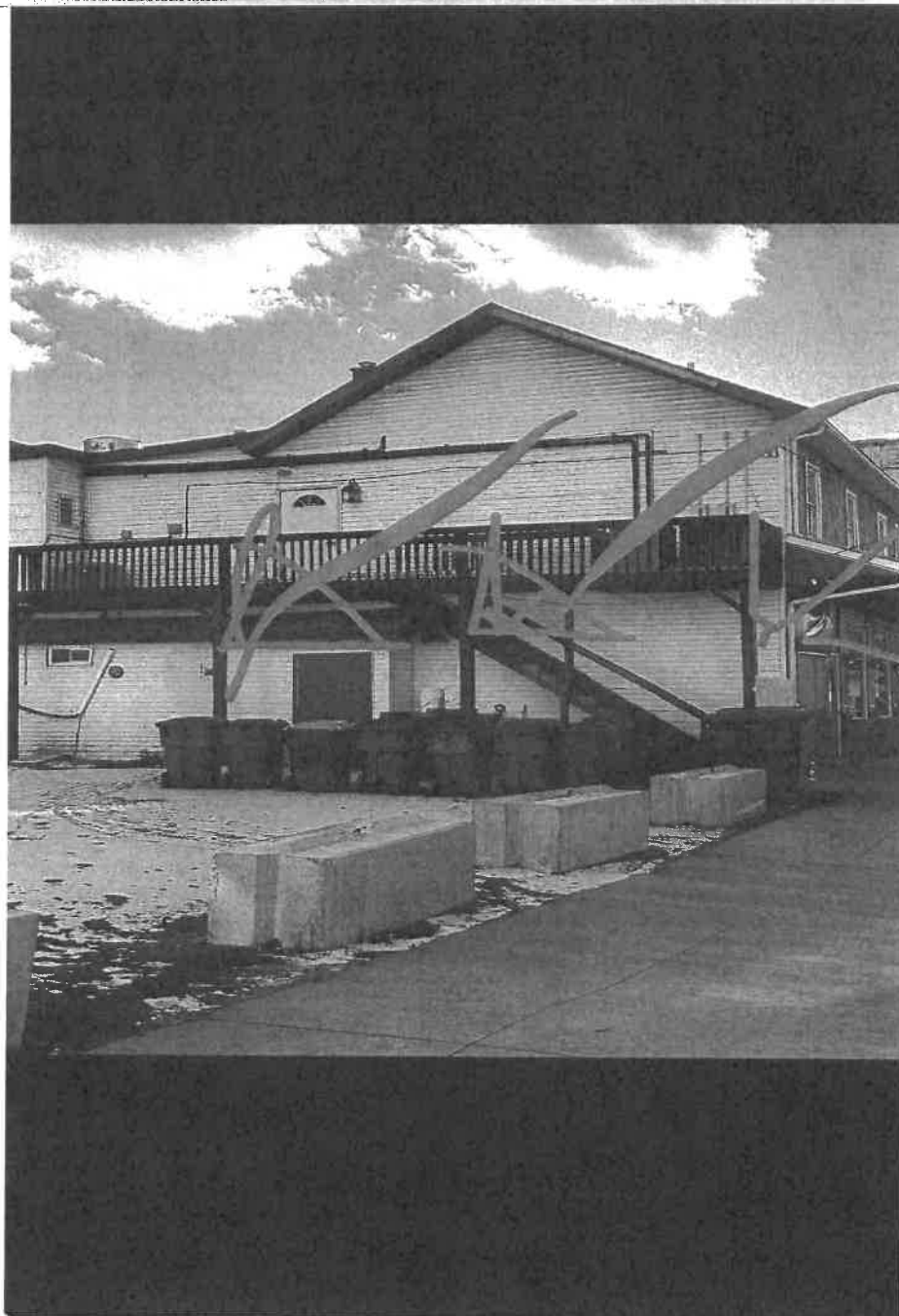
www.pisanchyn.com

3:09



< Sent

View recent photos



From: Olyphant1@comcast.net <Olyphant1@comcast.net>

Sent: Monday, December 9, 2024 3:04 PM

To: Attorney <attorney@pisanchyn.com>

Subject: RE: View recent photos

Dear Mr. Pisanchyn:

There are so many inaccuracies in your three (3) emails that you sent to me regarding the Lot owned by the Borough of Olyphant located at 105-109 Delaware Avenue, Olyphant PA that I will only address here the major corrections:

- (1) There is no property being "stored" on the subject Lot. No permission has been give to anyone to store property. I have offered to explain this issue to Mr. Dennin at our meeting.
- (2) Mr. Dennin never asked me to store property on the subject Lot; he did assert, which I of course disputed, that he now owns the concrete blocks which are located on the subject Lot and owned by the Borough of Olyphant; Mr. Dennin then asked that I remove the blocks immediately, which I declined to do at this point.
- (3) I don't know what "posts" you are referring to as indicating the property line of the subject Lot but I did mention to you and to Mr. Dennin that the Borough had a survey performed.
- (4) I also told you that in my legal opinion there is, as of this date, no "new buyer" of the subject Lot as you maintain and I also informed you that the parties have not yet had the opportunity to enter into a Sales Agreement for the subject Lot which would set forth the terms and conditions of sale.
- (5) Your last email is the first time I have been informed of a deck being built on the subject Lot. Based upon the above, the additional inaccuracies not set forth here, and in view of your threats to sue the Borough of Olyphant it will be my course of action to maintain the status quo until at least a Sales Agreement in concluded between the parties and/or a more rational understanding of these matters is recognized.

C.J. Mustacchio, Esquire

From: C.J. Mustacchio <olyphant1@comcast.net>

Sent: Tuesday, December 10, 2024 3:16 PM

To: Attorney <attorney@pisanchyn.com>; mdennin@live.com

Subject: Sales Agreement-105-109 Delaware St

Michael Pisanchyn

Michael Dennin

Attached is the Sales Agreement for the sale of the above-referenced Property. Please contact me as to when we can meet to execute the same or make two (2) copies and send both signed copies back to me for the Borough Officials to execute and I will send you a fully executed counterpart. Time is of the essence.

CJ Mustacchio

From: Attorney Pisanchyn

Sent: Monday, December 16, 2024 11:29 AM

To: C.J. Mustacchio <olyphant1@comcast.net>

Subject: RE: Sales Agreement-105-109 Delaware St

Be advised that until all non-borough property is off the land under contract with the highest bidder, nothing further can occur concerning purchasing the land. The winning bidder is beginning to believe that you and the Borough are doing this intentionally in hopes to have the sale fall through. Be advised that if the Borough does this, there certainly will be litigation as a result of the Borough's actions and inactions.

Further, the winning bidder is not going to rush around last minute to get this done. As such, I respectfully suggest that all non-Borough property be removed within the next day or two. As of today, there is still a dumpster and garbage cans on the property. Once these are removed, please let me know and I will relay this to the winning bidder who will inspect the property. Once it is demonstrated good and clear marketable title with no non-Borough property is on it, then a date and time *30 days after* can be arranged for the check to be given to the borough and at the same time a signed deed provided to the buyer as per the resolution. In the meantime, please send over the proposed deed.

Thanks in advance and we will not be begging for the above to occur (non-Borough property to be removed, deed sent) so please do so timely. This should be sent to Council as its now been over 10 days since a formal letter was sent alerting Council to the non-Borough property with no action being taken.

Excuse errors produced/sent from Iphone

Michael J. Pisanchyn Jr., Esquire

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Excellent Attorneys

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Email: attorney@pisanchyn.com

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From: C.J. Mustacchio <olyphant1@comcast.net>
Sent: Tuesday, December 17, 2024 3:06 PM
To: Attorney <attorney@pisanchyn.com>
Subject: RE: Sales Agreement-105-109 Delaware St
Mr. Pisanchyn:

This is in response to your email correspondence dated 12/16/2024.
To be clear, the property known as 105-109 Delaware Avenue, Olyphant, PA 18447 (Premises) is not under contract with your client as you attempt to set forth in your email above-referenced. You have not entered into a Sales Agreement regarding the Premises as is required for the conveyance of land under the Law of the Commonwealth of Pennsylvania. As a consequence of your failure to execute a Sales Agreement you have not acquired any rights in the Premises, not any equitable interest and certainly not any legal interest. In fact I take the content of your email as a refusal to enter into the required Sales Agreement. On two (2) different occasions I have sent to you a standard Sales Agreement which contains standard provisions consistent with the standard of legal practice in the Commonwealth and locally. Finally, I hereby state the total disagreement of the Borough of Olyphant with your assertions and/or proposals as contained in the balance of your 12/16/2024 email. Please be guided accordingly, time is of the essence.

C.J. Mustacchio, Esquire
Olyphant Borough Solicitor

From: Attorney Pisanchyn
Sent: Thursday, December 19, 2024 8:00 AM
To: C.J. Mustacchio <olyphant1@comcast.net>
Subject: RE: Sales Agreement-105-109 Delaware St

Dear Borough Solicitor and Council:

First, I hope all is well and both you and your families are having a happy holiday season. Next, I am now in receipt of the email dated December 17, 2024. In that regard, please allow me to set for the history of this matter.

An article printed in The Times-Tribune on or about July 5, 2024, reported, "Olyphant Borough and Basalyga are currently negotiating a potential sale of a lot next to OTOWN at 105 Delaware Ave., .." In fact Council President was quoted

and stated Olyphant recently renovated its nearby Queen City Station, which Baldan said was in part because of Basalyga possibly acquiring the pocket park site.” <https://www.thetimes-tribune.com/2024/07/05/john-basalyga-to-buy-otown-bar-grill-in-olyphant/> As a result of that article, the Pisanchyn Law Firm sent an email to you and Council with several concerns including: The borough never provided notice that the pocket park was no longer being pursued; The borough never provided notice that the land located at 105 Delaware Avenue was for sale, when the sale would occur and where the sale would take place (to assure everyone had a fair opportunity to purchase the property and the borough could receive the maximum sale price to benefit the borough); The borough never provided notice that borough council was negotiating the sale of borough property with a private citizen; (See The Times-Tribune article quoting council President Jimmy Baldwin as stating, “Basalyga approached the borough about buying the land at a council work session about two months ago); Presumably, as a result of the email the Pisanchyn Law Firm sent, Council then passed a Resolution which stated the terms and conditions of the sale which included a public auction.

My client believes that coincidences can occur but after six or seven in a row it seems more than happenstance. Curiously, my client noted that only once the new buyer purchased O-Town

- a) the plans for the pocket park immediately changed to selling the property which it is our understanding was Led by Councilman Michael Abda;
- b) Council was quoted as negotiating with Basaglia and in fact renovated the Queen City Station because Basaglia was acquiring the pocket park site;
- c) at this time Basaglia began to store his property on the site including a dumpster and 10 large garbage cans while every other Olyphant Tax Payer was excluded from using the property;
- d) then a week or so before the auction it was noted a deck was being built which clearly extended by about five feet over the property line;
- e) even more odd, the deck immediately stopped being built once a different bidder then Queen City Tavern won the bid;
- f) it was recently learned that the owner of the deck that was being built is owned by the nephew of Councilmen Abda who is his Uncle.

If these coincidence were not enough there is more.

g) After the auction, Basaglia was directly quoted as stating "The land probably is worth maybe \$10,000, that's it," he said. "When it got to \$100,000, I'm like, 'Alright, honestly, I'm going to keep bidding. I'm going to drive the number up..." as specifically reported by the Times, "Basalyga said he intentionally drove up the price of the property when bidding exceeded \$100,000 knowing the proceeds would go to the borough."

This gives the winning bidder great concern as it is hoped that there wasn't a quid pro quo that the Borough may have had wherein the Borough allowed the property to be stored and in turn the bid was driven up. This is especially in light of you, C.J., stating the "Borough has an agreement with John where he is allowed to keep that property there." Please answer the simple question---is/was there an agreement to allow the property to be stored and continued to be stored there?

Even more so an email was sent to you and Council about 10 days ago requesting the non-borough property be removed from the lot so the winning bidder can purchase the lot. You would think this would be a simple issue and the Borough would just say yes we will have the property removed---well you would be mistaken.

Despite pictures being sent to you and pictures being in the Times clearly demonstrating non-Borough property is on the lot which is being sold, and knowing Mr. Shigo the code enforcement officer was at the property, no action has been taken concerning the dumpster and garbage cans which still remain on the property. In light of the losing bidder stating the property is only worth \$10,000 and no more than \$100,000 and the winning bidder paying \$130,000 you would think the Borough would be delighted and doing everything possible to get the additional money for the benefit of the tax-payers. Nope, you would be wrong—instead you and Council refuse to have the deck and the Basaglia property removed presumably because you are going to try to cause issues with the sale. We know council has a survey, we know the code enforcement officer has stated the deck is over the property line and from a review of the pictures, even as published in the Times, the dumpster and large garbage cans are further on the property then the deck without any enforcement whatsoever.

Then even more coincidental, despite the tax-payers potentially getting at between \$30,000 (if worth 100 like losing bidder stated) or \$120,000 (if land only worth 10 like was stated) you and Council instead of working with the winning bidder to buy the property are now trying to say there is “no contract.” This is crazy because even a first year law student would know that in order to have a contract there must be an offer—see the Borough’s Resolution—an acceptance—see the winning bid and then consideration—see the \$7,200 the winning bidder paid to the Borough. Speaking of that, it is either incompetence or even more nefarious that within the Sales Agreement the Borough proposed there is no accounting for the money paid by the winning bidder—coincidence? We know what is not coincidence is the fact that the Resolution the Borough and presumably you drafted states absolutely nothing about entering into a sales agreement. Now after the Borough does not like and has been targeting the winning bidder, you and Council want to add additional terms and conditions into the sale in hopes of submarining the purchase. You as an attorney clearly know that adding additional term and conditions for a contract that has already been entered into is not proper. There seems to many coincidences to be coincidental and is beginning to verge on corruption.

It is truly a shame this letter has to be sent to both you and Council as in normal course the property would just have been requested to be removed by the Borough and this is what makes it so odd. The questions posed in the Newspaper 10 days ago still stands—1) Does/Did the Borough or you have an agreement concerning allowing the property to remain on Borough property and 2) is this property going to be moved? The winning bidder who DOES have a contract with the Borough as per the terms and conditions of the Resolution, would like to close on the property 30 days after an inspection shows no non-borough property is on the land. We ask you and the Borough stop with the actions and inactions precluding this sale, stop targeting the winning bidder and stop playing games. As such, and as previously requested, please send over a proposed deed and let us know when the property is moved so an inspection can be completed to show free/clear title and a closing set to exchange the deed and check.

Excuse errors produced/sent from Iphone
Michael J. Pisanchyn Jr., Esquire
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From: C.J. Mustacchio <olyphant1@comcast.net>

Sent: Friday, December 20, 2024 1:28 PM

To: Attorney <attorney@pisanchyn.com>

Subject: RE: Sales Agreement-105-109 Delaware St

Mr. Pisanchyn:

- The Borough is proceeding in a manner so that it can convey the subject property at closing free of any encroachments, however your client had and continues to have a duty to inspect the property prior to the Public Auction or Sale. As per zoning enforcement a Stop Work Order was issued by the Olyphant Borough Code Enforcement Officer on December 10, 2024 regarding the deck construction and it is being removed, also the adjacent business know as the Queen City Tavern has been directed to pull back the refuse collection receptacles inside its own property line. As to the remainder of your email I incorporate by reference my email directed to your attention and dated December 17, 2024. Finally, the auction in which your client participated replaced only the private negotiation which ordinarily would have taken place if the property was privately owned. The public auction does not act as a substitute or waiver of the public law of the Commonwealth of Pennsylvania which requires that a contract for the sale of land be set forth in writing. The Public Auction in this instance was regulated by the terms and conditions as contained in Olyphant Borough Resolution No. 8 of 2024 (Resolution). By virtue of the Resolution the transfer of title and the payment to the Borough must be concluded by 4:00 P.M. on December 30, 2024 unless said date and time is extended in writing by the Borough of Olyphant. Consistent with the Resolution the posting of Bid Security by your client, in order for him to participate in the Public Auction, acted as his certification that he would close on the subject premises by December 30, 2024 by 4:00 P.M. No extension of the December 30, 2024 closing date and time will be granted by the Borough without your client's prior execution of the Sales Agreement which has been sent to you on two (2) prior occasions. Time is of the essence please be guided accordingly.

C. J. Mustacchio, Esquire

From: C.J. Mustacchio <olyphant1@comcast.net>

Sent: Thursday, December 26, 2024 12:09 PM

To: Attorney <attorney@pisanchyn.com>

Subject: Borough Lot @ 105-109 Delaware Avenue, Olyphant PA

Mr. Pisanchyn:

Upon the review of the property survey completed by the Borough of Olyphant and upon a further on-site examination of the property itself it has come to the attention of the Borough that further encroachments may be present. The deck of the Queen City Tavern, which has been present long before the purchase by the Borough, appears to protrude out over the subject property and the deck support posts may also be over the property line. The Borough does not know how long the deck has been in its present location. A stop work order was issued to NAB Holdings, LLC (Barrett Property) to eliminate this encroachment. Although this information is provided to you as it became known to the Borough of Olyphant this does not excuse your continued duty to do your due diligence in all matters relevant to the purchase of the Lot in question by your client.

C.J. Mustacchio, Esquire

From: Attorney Pisanchyn

Sent: Thursday, December 26, 2024 1:49 PM

To: C.J. Mustacchio <olyphant1@comcast.net>

Subject: RE: Borough Lot @ 105-109 Delaware Avenue, Olyphant PA

Both you and Council are unbelievable. I on behalf of the winning bidder have been sending email concerning the many issues with the property for now well over 20 days. See the attached email sending pictures concerning the very posts your email of 12/26/24 of 20 day before. Despite us sending at least four emails with pictures, you and the Borough have done little to nothing to move this process along. In fact, it took over 14 days for you to have the garbage cans and dumpsters removed from the property. As of today, the post and the other deck which it owned by Councilmen Abda's Nephew is still on the property. Further, the Borough clearly had a survey completed and are you trying to tell me that this surveyor didn't advised the Borough that there was property built on the land it owned. That too is unbelievable. I don't expect an answer other than "you dispute what's in this email since you cannot even answer if Council had an agreement to allow the garbage cans and dumpster of Queen City to be on the land for months.

As we have advised you and the Borough since the bid was won, the Buyer is willing and able to close on the property as was defined in the Resolution. Despite this, you continually try to add new terms to the sale including term like "time is of the essence" that were never in the resolution or part of any agreement. In one

of your email of 12/20/24, you state that “The public auction does not act as a substitute or waiver of the public law of the Commonwealth of Pennsylvania which requires that a contract for the sale of land be set forth in writing.” Interestingly, you do not cite to any legal authority for this proposition—in fact, if the Borough wanted the winning auction to sign a sales agreement, it would have stated simply when the winning bidder wins they will enter into a sales agreement with the Borough and xyz are the terms. As you are fully aware, the Resolution never stated this and in fact either you or the Borough are inappropriately trying to add terms and conditions into the agreement.

Your email dated the same date states “No extension of the December 30, 2024 closing date and time will be granted by the Borough ...” This too is unbelievable in light of several factors including 1) the winning bidder is and has been ready to close and advised they would give a check once the deed was provided to them to review and also all non-borough property is removed. This doesn’t seem like a big ask.

2) there still is a huge deck on the property from Councilmen Abda’s nephew and also now from Queen City tavern; and

3) you being quoted in the Times when the property was initially won by the bidder was “The borough will now prepare a deed, and Dennin could conduct a title search, though the borough did a title search for the property before buying it, Mustacchio said. The sale is supposed to be settled by Dec. 30, though it could be extended, he said.”

Now all of a sudden the Borough is sending emails stating that the sale will not be extended despite it being the Borough who is preventing the sale because it cannot give free, clear and non-encroached title. No one ever would purchase property with multiple other persons having structures on the property they were going to purchase—you’re an attorney and you well know that. So again, the winning bidder implores both you and the Borough to do the right thing, a) stop playing games, b) get the non-borough structures of the property my client has a contract with and you are currently holding thousands of dollars of and c) extend the sale until the Borough can sell the property free and clear with the structures off the property. As stated in numerous emails now, the buyer is ready to close and provide a check to pay in full, it is the Borough or you that is holding this sale up.

This is now the 6th email that has had to be sent to you and the Borough. It is abundantly clear now that you and the Borough are targeting and harassing the winning bidder. You both are driving up his legal fees by playing games as demonstrated by the attached emails. You are doing everything in your power to submarine this sale despite, even the losing bidder stating, the Borough will be getting over \$30,000 more than the property is worth.

You and Council are do everything in your power to prevent the winning bidder from purchasing the property and to try to rebid it. You are very close to if not at the point litigation will ensue. After six emails, sending pictures of the issues almost nothing has been addressed by you or Council. Please be advised all of the above and especially that the winning bidder is ready and willing to close. As requested on three occasions, send over a proposed deed, get the non-borough property off the land and extend the sale date to 30 days after the non-borough property is removed---this isn't too hard except for you and council making it. Unbelievable

Excuse errors produced/sent from Iphone

Michael J. Pisanchyn Jr., Esquire

The Pisanchyn Law Firm

Excellent Attorneys

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From: C.J. Mustacchio <olyphant1@comcast.net>

Sent: Friday, December 27, 2024 11:49 AM

To: Attorney <attorney@pisanchyn.com>

Subject: 105-109 Delaware Ave. Lot

In view of the discovery of an encroachment of the Queen City Tavern Building on and above the subject premises above-mentioned the following is submitted by the Borough of Olyphant (Borough) for consideration in an effort to resolve the encroachment issues:

(1) At this point it is assumed that any encroachments of the Barrett Building (Barrett) will be removed consistent with the stop work order already issued by the Borough. If these encroachments are not resolved in a timely manner by Barrett the Borough will use all available authority to remove the same.

(2) Regarding the Queen City Tavern Building (Queen City) Encroachment it has been determined that the Borough has in its possession a building renovation plan submitted in the year 2000 by a predecessor in title to the current Owner of Queen City; said plan showing the existence of the deck encroachment in question. Further record examination is ongoing however based upon the documentation it may not be possible to remove said encroachment as the current owner may have a claim of right which if asserted as an adverse possession it could serve as a basis for the continuance of the encroachment.

(3) The execution of a standard Sales Agreement between the parties is now even more important in view of the Queen City Encroachment and also in order to provide possible methods or solutions to resolve these issues.

(4) The date for your client to execute a revised Sales Agreement and deliver the same to the Borough to be set at January 6, 2025 by 12:00 Noon. Subsequent to the delivery of an executed Sales Agreement by your client the Borough will extend the closing date for additional period(s) until it is determined by the Borough if the Queen City Encroachment Issue can be resolved by one (1) of the methods to be set forth in the revised Sales Agreement as follows:

(A) The Buyer does not desire to purchase the property subject to the Queen City Encroachment and the \$1000.00 down payment to be made by the **BUYER** under the Sales Agreement shall be promptly returned to Buyer and the Agreement shall then become void and the **SELLER** and **BUYER** shall be released of any further liability hereunder, or (B) The Buyer will buy the property however to due to the Queen City Encroachment the purchase price would be adjusted downward by \$2,106.00 calculated by determining the per cent of the area of encroachment in comparison to the area of the lot based upon the \$130,000.00 sales price. (Queen City Encroachment is comprised of 1.62% of the entire lot area). If this option is elected the Buyer would then be responsible for attempting to resolve the Queen City Encroachment if he desired.

C.J. Mustacchio, Esquire



From: Attorney
Sent: Friday, January 3, 2025 4:13 PM
To: C.J. Mustacchio <olyphant1@comcast.net>
Subject: Re: 105-109 Delaware Ave. Lot

And yours and Council is directed to the email dated today. Please be sure they get a copy and also advise if Councilmen Abda will be participating in any meeting on the issue or vote. Thanks in advance.

Sent from iPhone so please excuse errors
Michael J. Pisanchyn Jr., Esquire
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On Jan 3, 2025, at 4:06 PM, C.J. Mustacchio <olyphant1@comcast.net> wrote:

Mr. Pisanchyn:

You attention is again directed to my email dated December 27, 2024.

C.J. Mustacchio, Esquire

On 01/03/2025 9:13 AM EST Attorney <attorney@pisanchyn.com> wrote:

Dear CJ:

First, I hope all is well and both you and Council has had a great holiday season so far. Next, I am responding to your email dated December 27, 2024. First, I do note that in your previous emails you (you/your throughout this email refers to both you and Council) had stated that the buyer should do their due diligence concerning the property. This later seemed odd when you were quoted in the Newspaper stating on behalf of the Borough "This really wasn't a survey done for that (Delaware Avenue) lot," he said. "That's why we really didn't *pay attention* to it," concerning a survey the Borough clearly had which they would or should have been notified of the JBas encroachment. Can you advise when the Borough first became aware of the Queen City encroachment and if the surveyor told the Borough about this previously? (Is this unreasonable to request?) In related matters, sending an email on December 27 giving 3 business days to respond to a proposal is completely and unequivocally unreasonable especially when these pillars were inquired about on December 6, 2024 by me for the highest bidder. I would hope Council agrees? (Is this unreasonable to request?)

Then reading the Newspaper it would seem that you are acting as the attorney for Jbas Reality or Queen City when you were quoted as stating,

"the borough offered the price reduction after seeing plans submitted in 2000 that showed the deck was already there 24-plus years ago." Then stating, "There's a major question as to whether or not (Basalyga) can be

required to remove that encroachment,” he said Basalyga could have a claim to keep the deck as an adverse possession, according to Mustacchio.

This is crazy since your job as a Solicitor and Borough Manager (I am not commenting on if there is a conflict) is to make sure Olyphant and its property is protected. Here you are seemingly giving legal advice to a Business owner through your public comments instead of sending a letter requesting the Queen City property be removed.

Did you send a letter, because with your seemingly very friendly relationship with Mr. Basaglia and Queen City, maybe they would agree to remove it so Olyphant, as Basaglia has stated, can get the additional \$30,000 more than the property was worth? So simply was a letter even sent and what was the response? (Is this unreasonable to request?) Even more, you and the Borough have still not provided the information concerning the building permit you publically comment on to the Newspaper to the highest bidder to evaluate and obviously we ask you do so and stop stalling. Can Council please do so immediately? (Is this unreasonable to request?)

Then instead of calling me to discuss the matter, you make unreasonable ridiculous offers to reduce the value of the property by some absurd formula you created in your head as opposed to seeing what would work for the highest bidder when it is the Borough who is causing the delay and sale to not go through. We find this odd especially in light of your quote in the Newspaper (when last article you stated you could not comment because of pending litigation) “This is a standard practice for proceeding with a real estate sale,” he said. “If you’re not satisfied with the title and you don’t want to purchase it with an adjustment taking subject to whatever you’re complaining about, you walk away from the deal.” First, this is not standard practice and it is apparent you and Council are doing everything you can to increase the costs to the highest bidder for attorney’s fees by making me send numerous emails and also you both trying to make Mr. Dennin “walk away from the deal.” Your and Council’s pattern in regard to discriminating and retaliating and other actions and inactions against Mr. Dennin is well documented in these emails.

You also had previously wrote that it is the law of the Commonwealth to have a sales agreement. It is our position this statement is incorrect, however, if you provide me authority for this proposition then Mr. Dennin has stated he would then execute a sales agreement which would be consistent with the Resolution but will not agree to any other new terms and conditions such as but not limited to you

continually trying to add a release clause for you and the Borough concerning liability. Please immediately provide this authority for consideration? (Is this unreasonable to request?)

Also, we believe a reasonable proposal is to have the Borough remove all the non-Borough property (there is still decking on Councilmen Abda's nephew's property that has to be removed and also these decks in light of the property line should not be able to be rebuilt—please confirm both these via email to me) and once this is done, then within 30 days the highest bidder will pay the money and close on the property. (Is this unreasonable to request? Because it is imperative that all of these questions be answered by your and Council self-imposed deadline for Mr. Dennin to due his due diligence as you have requested----in that regard, can you also have Council advise what is the big hurry and time of the essence on its part when it is the Borough causing the issues and delays not the purchaser?)

As I am sure you are aware Title 42 Section 5527.1 (f)(2) states concerning adverse possession:

(f) **(Nonapplicability).**--This section shall not apply to real property that is:(2) owned by the United States, the Commonwealth, a local government.

In the Newspaper, seemingly advocating for the property who may assert adverse possession, you state this may not apply. Can you please send to me the authority you rely upon? Is it best for you to be making these public comments when you are supposed to be representing the Borough who someone may bring an adverse possession claim against? Don't you believe its best to have the additional property remain with Olyphant so there is no issues and the sale where Olyphant gets over \$30,000 more than the property is worth, even according to your friend Basaligia, is what is best for Olyphant? All reasonable questions we would like answers to?

Regardless, it would seem the best course of action and what the highest bidder is requesting is that the Borough send to Queen City or the property owners who still have their property encroaching the property the highest bidder intends on buying (this includes the other deck that is still up on Councilmen Abda's nephew's building that is non-permitted under Borough code)

- 1) a letter requesting they remove the property. (Is this unreasonable to request?) Should they agree it's over and the property can close.
- 2) If not then we would ask the Borough to move forward to have the Court remove the property with the highest bidder being a party in interest to interplead in the matter since in light of your statements, we have grave concerns with whose side you may be on. . (Is this unreasonable to request?)

If need be, then once the Court would decides if the property is to remain with the Borough, then Mr. Dennin will close on the property within 30 days if he chooses after knowing what would occur on this issue. This is only fair as he did not cause this issue, and is not interested in buying a headache. He would consider entering into a reasonable sales agreement concerning this consistent with the Resolution and this email once we receive authority from you that it is required under the law of the Commonwealth as you previously represented.

Currently, Mr. Dennin has a contract with the Borough for the property in light of several factors, a) the Resolution is an offer, b) he has accepted it at the auction by being the highest bidder and c) you have and are still currently retaining over \$7,000 of his money which has not been accounted for by you and he is sustaining damage of loss of use and interest/investment potential while you and the Borough continue to play these games. This is addition to the now 7 or 8 lengthy email that I have been required to send. *We ask you both stop, be reasonable and do what is necessary to remove the non-borough property and encroachments so he or his Corporation can purchase the property and the Olyphant Tax-payers not loose over \$30,000 of money they can use to reduce taxes or other much needed projects.*

Mr. Dennin has not caused any delay or issues and is an innocent person who has done nothing but be the highest bidder over-paying for the property. You would think you would be happy and grateful. Instead, the Borough's continues to try to submarine him by adding terms like "time is of the essence," (which can you let us know why all of a sudden with these many issues you/Council insist on non-extending this matter so the parties can ease tension and try to come to an agreement) which is very concerning in light of the Borough also saying do your "due diligence." Due diligence can't be done in three business days. Then through reading the Newspaper we read "If Dennin does not execute and deliver a sales agreement for the property by noon Monday, Mustacchio anticipates adding it to

the agenda for borough council's meeting Tuesday, where council could decide what action to take next, Mustacchio said."

This is even more crazy and seems intentional because you and the Borough know I the highest bidder's attorney celebrates Christmas eve and Christmas (like many other Borough residence since there is a church on East Lackawanna Avenue of the same faith) on January 6 and 7 the same days you and the Borough have apparently set Deadlines and for a meeting to discuss these matters. Be advised that Mr. Dennin's attorney is unavailable for those days due to the holiday and these deadlines and meetings needs to be postponed so he can have his represented present to make a record. Please answer the questions posed herein and they are material to the highest bidder's "due diligence" and trying to amicably resolve this/these issues.

As always, we thank you ahead of time for your anticipated cooperation and kind considerations in all of these regards. May you and Councils families have a happy holiday season and if any of them celebrate Russian Orthodox Christmas, may it be merry.

Mike

Sent from iphone so excuse errors

Michael J. Pisanchyn Jr., Esquire

From: Attorney <attorney@pisanchyn.com>

Sent: Tuesday, January 7, 2025 1:54 PM

To: Olyphant1@comcast.net

Subject:

Please see photos of the property as recent as 130pm 1/7/25 showing the deck from both councilmen Abda' nephew's property and Jbas Queen City property along with the trash, trash cans and dumpster still on the property.

Also, the highest bidder is ready and willing to close when these are removed. As per our last email we have tried to resolve any issues but it seems the Borough and you are hell-bent on refusing to sell it to him. This is predictable as you can see from the email chains between the Borough.

Last, please accept this email as a spoliation request to be sure that every member of council (we likely will be including each one personally since we believe they are acting and have acted outside their scope of duties as council) notify their cell phone carriers to save and not destroy any texts or data whatsoever between themselves, you as borough manager, solicitors or personally as well as anything concerning Anthony Barret, Nick Davitt (person who built the deck 4 feet over the property line a few days before the auction and as soon as Jbas didn't win the bid stopped finishing the deck) or Jbas reality, John Basaglia or any of their representatives

If litigation ensues we will be likely sending subpoenas shortly for this information. Also, once suit is filed we would like to schedule depositions of every member of council as well as you personally, as Borough Manager and Solicitor, and also the surveyor who surveyed the property as well as John Basaglia. You and the Borough refuse to answer the questions the highest bidder has posed for over a month now and he intends on obtaining the answers to the serious questions posed.

We will work with your schedule but did want to give you advanced notice. Again, most importantly take immediate steps to preserve all and any potential evidence including emails, text, all data, personal and business cell phones meeting minutes, work session minutes, all communication between council or its members concerning the land at issue and the like including the conversations and issues before the first letter was sent by the Pisanchyn Law Firm when the Times reported the property would be sold to JBas and the fountain in Olyphant was installed partially in light of him obtaining the property

The highest bidder believes what you are doing borders on corruption and he intends to pursue all and any legal recourse in light of you refusing to answer any question posed to you and council and also refusing to identify any terms or conditions in the resolution he has failed to follow. We have given the Borough too numerous emails to count and the opportunity to do the right thing, fix the issue and sell the property to the highest bidder. We have already heard that you and Council are angry about the stories in the newspaper and now are spitefully going to do everything possible to not sell the property to the highest bidder. It is also shameful you refuse to continue to meeting to discuss the matter when I have advised you it is my Christmas today and cannot attend the meeting. Thanks

for your attention to this matter.

Sent from iPhone so please excuse errors

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Exhibit D 22



Exhibit D 23

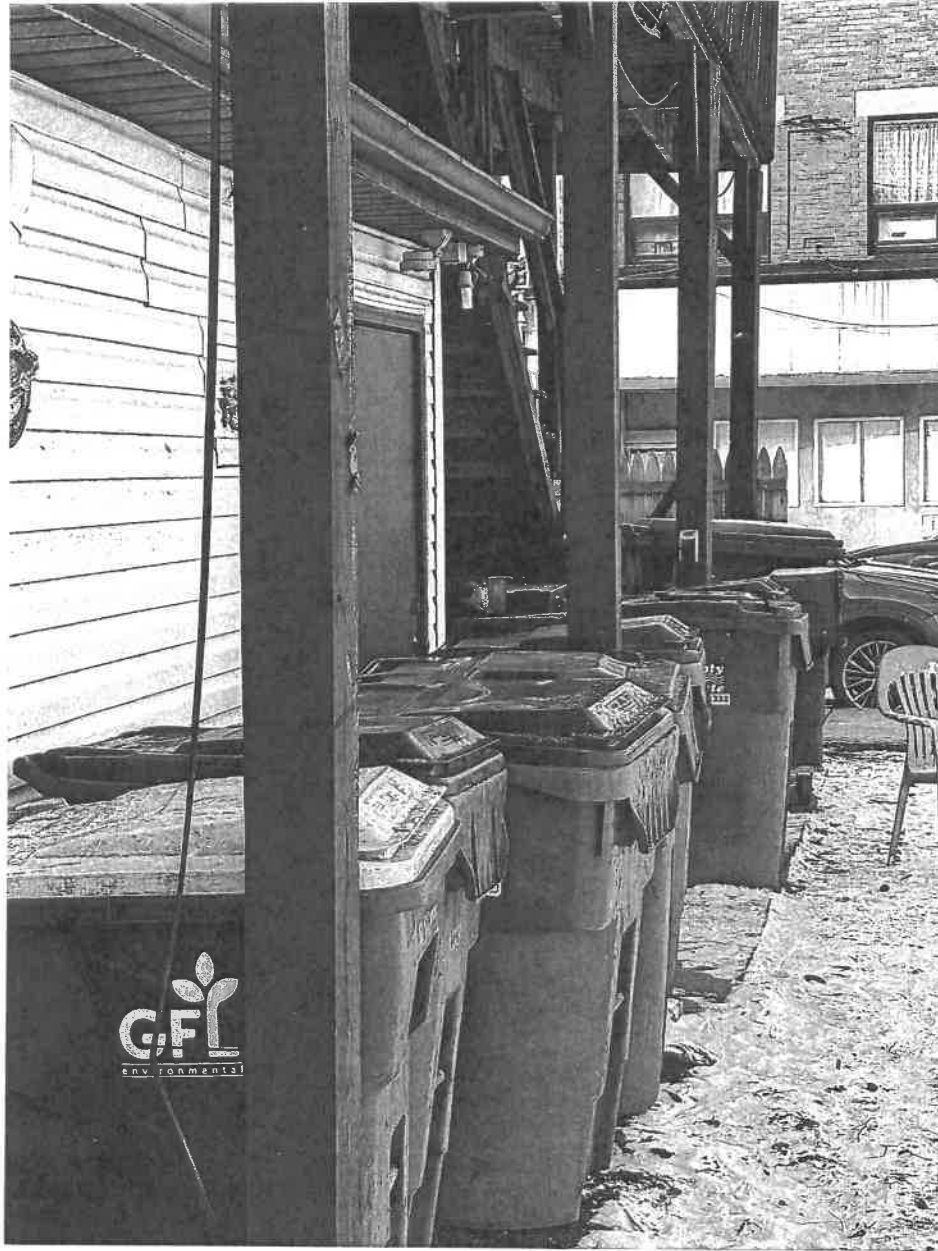


Exhibit D 24



First, I hope all is well. Next, Please send the minutes of the meeting including who voted on what and if Councilmen Abda voted. Also be advised we do not believe proper notice of the hearing, the required time period and/or due process was given to the highest bidder.

It's a shame the borough would do everything in its power to submarine a over \$60,000 highest bid over the appraised value without even sending a letter asking the property that is in the Borough property be removed. We know John Basaglia and believe he is a good man and if you had sent him a letter he would have considered it. You and council not doing this shows your true intent.

We will be filing paperwork shortly and will forward a courtesy copy to your attention. In the meantime, be absolutely sure you advised each member of council to notify their phone carriers to preserve all and any data including text messages among other council members about me, Mr. Deninn Basaglia the property and issue and any and everything related to this matter. We also have heard your computer sometimes has problems and you throw it out. Please be advised to keep your current computer and under no circumstances so anything to it to delete information. It is our intent to have a forensic computer analysis on it. This is a request to preserve all electronic records and written documentation in all and any format. Should you or council not do this we will be requesting spoliation consequences. This is extremely important and we have now sent this to you in two occasions. If anything is altered, destroyed or not produced this will show intentional destruction of evidence for this Matter. Thanks in advance and Have a great day.

Mike

Sent from iPhone so please excuse errors

Michael J. Pisanchyn Jr., Esquire

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On Jan 8, 2025, at 10:18 AM, C.J. Mustacchio <olyphant1@comcast.net> wrote:

Mr. Pisanchyn:

Please see attached correspondence which is Notice of the action taken by Olyphant Borough Council with regard to the Proceeding above-referenced.

C.J. Mustacchio
<Weber-Letter-Notice of Disqualification.pdf>

VERIFICATION

I, Michael Dennin, being duly sworn according to Pennsylvania law, deposes and says that she/he is the Plaintiff in the foregoing action; that the attached Complaint is based upon information which she/he has furnished to counsel and information which has been gathered by counsel in the preparation of the lawsuit. The language of the Complaint is that of counsel and not of the Plaintiff. Plaintiff has read the Complaint and, to the extent that the Complaint is based upon information which she/he has given to counsel, it is true and correct to the best of his/her knowledge, information, and belief. To the extent that the content of the Complaint is that of counsel, Plaintiff has relied upon counsel in making this Verification. If the foregoing contains averments which are inconsistent in fact, signer has been unable, after reasonable investigation, to ascertain which of the inconsistent averments are true, but signer has knowledge or information sufficient to form a belief that one of them is true. I understand that this verification is made subject to the provisions of 18 Pa. C.S.A. §4904, pertaining to unsworn falsification to authorities.


Michael Dennin