

06-1911-CD
Marcin Walter vs Kephart Trucking Co

Walter Marcin vs Kephart Trucking et al
2006-1911-CD

Date: 10/27/2008

Time: 10:27 AM

Page 1 of 2

Clearfield County Court of Common Pleas

User: LMILLER

ROA Report

Case: 2006-01911-CD

Current Judge: Paul E. Cherry

Walter Marcinvs.Kephart Trucking Company, et al

Civil Other-COUNT

Date	Judge
11/16/2006	New Case Filed.
	Filing: Record Out of County Writ of Execution, from Monroe County case number 2006-08129 Paid by: Jacksonfiorentino LLC Receipt number: 1916484 Dated: 11/16/2006 Amount: \$20.00 (Check) Issued to Sheriff.
8/6/2007	✓ Copy of Amended Order from Monroe County: Judgment amount is Amended to \$153,137.00.
1/17/2008	✓ Petition For Stay of Execution on behalf of Kephart Trucking Co., filed by s/ Dwight L. Koerber, Jr., Esquire. 3CC Atty. Koerber
	✓ Order, this 17th day of Jan., 2008, a stay is granted. A Rule Returnable is issued upon Plaintiff. Hearing thereon on the 30th day of April, 2008 at 9:00 a.m. Courtroom 2. by The court, /s/ Paul E. cherry, Judge. 4CC Atty. Koerber (will serve)
1/28/2008	✓ Certificate of Service, on the 17th day of Jan., 2008, served a copy of the Petition for Stay of Execution and the Order upon Janet Jackson, Esquire by First Class Mail. Filed by s/ Dwight L. Koerber, Jr., Esquire. 3CC Atty.
4/16/2008	✓ Petition to Dismiss Writ of Execution, filed by s/ Dwight L. Koerber, Jr., Esquire. 3CC Atty. Koerber
4/18/2008	✓ Order, this 18th day of April, 2008, upon consideration of the Petition to Dismiss Writ of Execution, it is Ordered that Respondent Walter Marcin is directed to show cause why the Writ of Execution filed herein should not be dismissed. Rule Returnable and hearing thereon is scheduled for the 30th day of April, 2008, at 9:00 a.m. By The Court, /s/ Paul E. Cherry, Judge. 3CC Atty. Koerber
4/22/2008	✓ Certificate of Service, filed. That on the 18th day of April 2008, served a true Paul E. Cherry and correct copy of the April 18, 2008 Scheduling Order in the above-captioned matter via first class mail to Janet Jackson Esq., filed by s/ Dwight L. Koerber Jr. Esq. 3 CC Atty Koerber.
4/30/2008	✓ Answer to Petition to Dismiss Writ of Execution, filed by Atty. for Plaintiff. 5 Paul E. Cherry Cert. to Atty.
	✓ Answer to Petition for Stay of Execution, filed by Atty. for Plaintiff 5 Cert. to Paul E. Cherry Atty.
5/1/2008	✓ Order, this 30th day of April, 2008, upon agreement of the parties, the Writ of Paul E. Cherry Execution is stayed pending decision from the Commonwealth Court. Counsel for Kephart Trucking Company shall have no more than 15 days from today's date to file brief and counsel for Plaintiff shall have no more than 10 days thereafter to file a responsive brief. By The Court, /s/ Paul E. Cherry, Judge. 2CC Atty: Bresset, Koerber; 1CC Sheriff (without memo)
5/13/2008	✓ Praeclipe to Withdraw Petition to Dismiss Writ of Execution, filed by s/ Dwight L. Koerber, Jr., Esquire. 4CC Atty. Koerber
7/30/2008	✓ Motion to Compel Compliance with Settlement Agreement, filed by s/Stephen Bresset, Esq. One CC Attorney Bresset
8/4/2008	✓ Rule to Show Cause, this 4th day of August, 2008, upon consideration of the Paul E. Cherry Motion to Compel Compliance With Settlement Agreement, a Rule is issued upon the Defendant, Kephart Trucking Co. Rule Returnable for Answer and Hearing on the 15th day of Sept., 2008, at 10:15 a.m., Courtroom 1. by The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1 CC Atty. Bressett
8/11/2008	✓ Preliminary Objections on behalf of Defendant Kephart Trucking Co., filed by Paul E. Cherry s/ Dwight L. Koerber Esq. 4CC Atty Koerber.

Date: 10/27/2008

Clearfield County Court of Common Pleas

User: LMILLER

Time: 10:27 AM

ROA Report

Page 2 of 2

Case: 2006-01911-CD

Current Judge: Paul E. Cherry

Walter Marcinvs.Kephart Trucking Company, et al

Civil Other-COUNT

Date	Judge	
8/12/2008	✓ Order, this 11th day of August, 2008, upon consideration of the Preliminary Objections filed by Defendant Kephart Trucking Co., it is Ordered that the Order entered on Aug. 4, 2008, scheduling a Rule Returnable Hearing for Sept. 15, 2008, is cancelled. Argument on the Preliminary Objections filed by Defendant shall be held on Sept. 15, 2008. Upon completion of argument, the Court will enter a separate scheduling Order for Briefs, if any, which it deems appropriate. By The Court, /s/ Paul E. Cherry, Judge. 4CC Atty. Koerber	Paul E. Cherry
8/14/2008	✓ Certificate of Service, filed. That on August 8, 2008, a time stamped copy of Paul E. Cherry the Rule to Show Cause dated August 4, 2008, issued on the Motion to Compel Compliance with Settlement Agreement was served by first class mail on Dwight L. Koerber Jr Esq., filed by s/ Lois E. Rehm. No CC.	
9/15/2008	✓ Answer to Preliminary Objections, filed by Atty. Bressett 4 Cert. to Atty.	Paul E. Cherry
9/19/2008	✓ Order, this 15th day of Sept., 2008, this being the day and date set for Argument on Defendant Kephart Trucking's Preliminary Objections, it is Ordered that Defendant Kephart Trucking shall have 10 days from this date to file appropriate brief and that Plaintiff shall have 7 days thereafter to file responsive brief, if so desired. By The Court, /s/ Paul e. Cherry, Judge. 1C Atty; Koerber, Bressett; 1CC Cura Group, 200 Lake Drive East, Ste. 110, Cherry Hill, NJ 08002	Paul E. Cherry
9/29/2008	✓ Praeclipe to Affix Verification, filed. Please affix and attach the enclosed Verification of Plaintiff's Attorney, Janet Jackson Esq., to the Motion for Compel Compliance, filed in the above captioned matter, filed by s/ Stephen G. Bressett Esq. 1CC Atty Bressett.	Paul E. Cherry
9/30/2008	✓ Returned mail, Order, dated September 15, 2008, to Cura Group III Inc @ 200 Lake Drive East, Ste 110, Cherry Hill, NJ 08002, no further address in file.	Paul E. Cherry

COPY

COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

WALTER MARCIN,

Plaintiff

vs.

KEPHART TRUCKING CO, and
CURA GROUP III, INC.,

Defendants

NO. 8129 Civil 2006

NO. 10416 Civil 2006

06-1911-CO

PETITION TO OPEN OR STRIKE
JUDGMENT

AMENDED ORDER

AND NOW, this 18th day of July, 2007, following a hearing on Kephart Trucking Co.'s motion for reconsideration and modification of the order of July 3, 2007, IT IS ORDERED that the July 3, 2007 order shall be amended as follows:

1. Defendant Kephart Trucking Co.'s petitions to open or strike the judgments in No. 8129 Civil 2006 are denied.
2. The stay of execution previously imposed is vacated.
3. The judgment filed on October 17, 2006 in the amount of \$136,577.41 in favor of Plaintiff Walter Marcin and against Defendants Kephart Trucking Co. and Cura Group III, Inc. at No. 8129 Civil 2006 is hereby amended to reflect a judgment in the amount of One Hundred Fifty Three Thousand One Hundred Thirty Seven (\$153,137.00) Dollars.

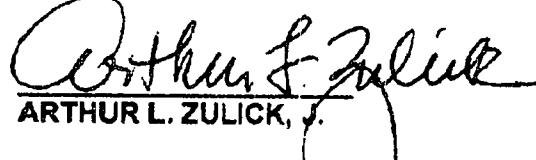
The Prothonotary is directed to mark the judgment docket accordingly.

FILED
01:44 PM
AUG 06 2007

William A. Shaw-
Prothonotary/Clerk of Courts

4. The judgment filed by Plaintiff Walter Marcin against the same two defendants at No. 10416 Civil 2006, on December 27, 2006 is hereby stricken. The Prothonotary is directed to mark the judgment docket accordingly.

BY THE COURT:


ARTHUR L. ZULICK, J.

cc: Janet Jackson, Esquire
Stephen G. Bresset, Esquire
Jane Roach, Esquire
Dwight L. Koerber, Jr.
Cura Group, III, Inc.

PROTHONOTARY
JUL 18 2007 P 3 13
GEORGE COUNTY, MD
PROTHONOTARY

(A)

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

Walter Marcin

*

Plaintiff

*

Vs.

*

Kephart Trucking Co.

Docket No. 06-1911-CD

and

*

Cura Group III, Inc.

*

Defendants

*

Type of Pleading:

PETITION FOR STAY OF EXECUTION ON
BEHALF OF KEPHART TRUCKING CO.

Filed on Behalf of:

Defendant:

Kephart Trucking Co.

Counsel of Record for
This Party:

Dwight L. Koerber, Jr.
Pa. I.D. No. 16332

110 North Second Street
P. O. Box 1320
Clearfield, PA 16830
(814) 765-9611

FILED
01/14/09 3:01 PM
JAN 19 2009

3 CC
Atty Koerber
(68)

William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

Walter Marcin	*
Plaintiff	*
	*
Vs.	*
Kephart Trucking Co.	Docket No. 06-1911-CD
and	*
Cura Group III, Inc.	*
Defendants	*

PETITION FOR STAY OF EXECUTION ON BEHALF OF KEPHART TRUCKING CO.

COMES NOW, Kephart Trucking Co., by and through its attorney, Dwight L. Koerber, Jr., Esquire, and files the within Petition requesting the Court to enter a stay of execution.

1. Petitioner is Kephart Trucking Co., which has an address of P. O. Box 386, Bigler, Pennsylvania, 16825.
2. Respondent is Walter Marcin, who has an address of R.R. #1, Box 263, Canadensis, Pennsylvania, 18325.
3. The Petition for Stay of Execution is directed to a Sheriff's Sale scheduled January 18, 2008 at 10:00 a.m.. See Exhibit A, attached hereto.
4. This matter arises out of a workers' compensation proceeding where a judgment was entered against Kephart Trucking Co. after it had been dismissed as a party in the workers' compensation proceeding.

5. After the judgment was transferred from the Bureau of Workers' Compensation to the Court of Common Pleas of Monroe County in docket number 8129-CV-06 and docket number 10416-CV-06, Petitioner filed a Petition to Reopen the Judgment.

6. Following a hearing in Monroe County, a ruling was made that the Petition to Reopen Judgment before the Court of Common Pleas was a collateral attack upon the ruling of the Bureau of Workers' Compensation.

7. Kephart Trucking Co. thereupon filed a petition appealing the erroneous workers' compensation decision, entitling it as an appeal, *nunc pro tunc*, identified as Bureau Number 2351573. Such appeal was filed on May 1, 2007.

8. The proceeding now pending before the Bureau of Workers' Compensation has been pending since May 1, 2007, with no ruling being made whatsoever. If the ruling is in favor of Kephart Trucking Co., the entire judgment upon which the Writ of Execution is based herein will be set aside.

9. The amount of the judgment herein is One Hundred Fifty-Three Thousand One Hundred Thirty-Seven (\$153,137.00) Dollars. Of the amount of money in question, Kephart Trucking Co. has already paid Seventy-Five Thousand (\$75,000.00) Dollars, which it did prior to the time that it realized that the judgment had been obtained through improper, deceptive and misleading practices.

10. Accordingly, the remaining sum of money unpaid under the judgment is Seventy-Eight Thousand One Hundred Thirty-Seven (\$78,137.00) Dollars.

11. On January 17, 2008, Petitioner filed a Motion for Stay and made the attached posting of One Hundred Thousand (\$100,000.00) Dollars with the Prothonotary of Monroe County. Attached hereto as Exhibit A is a true and correct copy of the posting of security in the amount of One Hundred Thousand (\$100,000.00) Dollars.

12. The One Hundred Thousand (\$100,000.00) Dollars is an amount in excess of One Hundred Twenty (120%) Per Cent of the judgment and as such is clearly sufficient to cover the judgment in question.

13. Petitioner seeks a stay of the Writ of Execution, doing so pursuant to Rule 3121 of the Pennsylvania Rules of Civil Procedure. Under the provisions of Rule 3121 of the Pennsylvania Rules of Civil Procedure, this Court has the right to issue a stay for any legal or equitable grounds. Petitioner submits there are highly equitable and legal grounds for granting a stay for the following reasons:

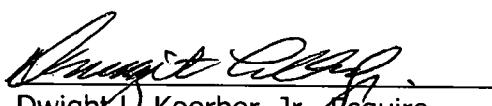
(a) The parties continue to wait for a ruling from the Workers' Compensation Appeal Board in Bureau Claim Number 2351753, and Kephart Trucking Co. had been assured by its workers' compensation counsel of the extremely high probability that a decision would have been rendered by this time.

(b) The case in question involves a proceeding where Kephart Trucking Co. had already been dismissed as a party and should have never had a judgment entered against it but one was entered only because Kephart Trucking Co.'s name remained on the caption line. Counsel for the underlying Claimant knew of the Stipulation dismissing Kephart Trucking Co. and it intentionally withheld such information as the case proceeded with Kephart Trucking Co. being unrepresented by counsel.

(c) There would be untold harm and immeasurable damage done to Kephart Trucking Co. if its four vehicles that are the subject of this Writ of Execution were sold and later learned that it prevailed on the merits of the appeal now pending before the Bureau of Workers' Compensation.

WHEREFORE, Petitioner Kephart Trucking Co. prays that an Order be entered granting a Stay of Execution on the Sheriff's Sale scheduled for January 18, 2008 at 10:00 a.m. in this matter.

Respectfully submitted,



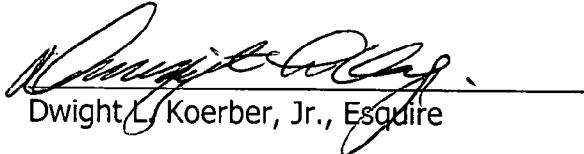
Dwight L. Koerber, Jr., Esquire
Attorney for Defendant:
Kephart Trucking Co.

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of January, 2008, a copy of the foregoing pleading was served by United States First Class Mail on the following:

Janet Jackson, Esquire
JACKSON FIORENTINO, LLC
607 Monroe Street, P.O. Box 698
Stroudsburg, PA 18360

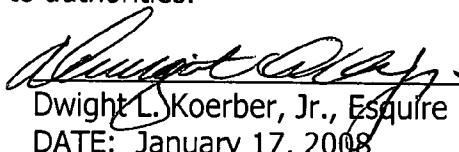
Chester A. Hawkins, Sheriff
CLEARFIELD COUNTY
Clearfield County Courthouse
Second and Market Streets
Clearfield, PA 16830



Dwight L. Koerber, Jr., Esquire

VERIFICATION

I verify that the facts set forth in the foregoing petition are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.


Dwight L. Koerber, Jr., Esquire
DATE: January 17, 2008

SHERIFF'S SALE

BY VIRTUE OF A WRIT OF EXECUTION

ISSUED OUT OF THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA AND TO ME DIRECTED, THERE WILL BE EXPOSED TO PUBLIC SALE,
AT THE BUSINESS 983 WOODLAND-BIGLER HIGHWAY, BIGLER, PA

LOCATED IN THE TOWNSHIP OF BRADFORD
ON FRIDAY THE 18TH DAY OF JANUARY
A. D. 2008, AT 10:00 O'CLOCK, A . M. ON THE
FOLLOWING PROPERTY:

- (1) - ONE- TRUCK TRACTOR #130 - BLUE - VIN #4V2VDBCE3MN639962
- (1) - ONE- TRUCK TRACTOR #341- BLUE- VIN #1FUYDWEBXYLH17693
- (1) - ONE-TRUCK TRACTOR #¹⁶³~~100~~ -BLUE- VIN #^{1M1AA13Y3RW030721}~~1M1AA13Y8RW042497~~
- (1) - ONE-TRUCK TRACTOR #353-BLUE-VIN#1FUYDWEB91LG47867

SEIZED, TAKEN IN EXECUTION AND TO BE SOLD AS THE PROPERTY OF
KEPHART TRUCKING COMPANY CURA GROUP III, INC.

CHESTER A. HAWKINS, SHERIFF
SHERIFF'S OFFICE, CLEARFIELD, PA., November 29, 2007

NOTICE: All claims to the property must be filed with the sheriff before sale and all
claims to the proceeds before distribution; a sheriff's schedule of distribution
will be on file in his office, five (5) days after sale; and distribution
will be made in accordance with the schedule unless exceptions are filed
within ten (10) days thereafter.

CASE # 06-1911-CD

JANE ROACH MAUGHAN, ESQUIRE
ATTORNEY ID # 34270
LAW OFFICE OF JANE MAUGHAN, P.C.
726 ANN STREET
STROUDSBURG, PA 18360
PHONE: (570) 421-7009
Attorney for Defendant Kephart Trucking Co.

PROTHONOTARY
2000 JAN 17 A 11:37
MONROE COUNTY, PA

COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

WALTER MARCIN
R.R. #1, BOX 263
CANADENSIS, PA 18325

Plaintiff,
vs.

KEPHART TRUCKING CO.
P.O. BOX 386
BIGLER, PA 16825

AND

CURA GROUP III, INC.
200 LAKE DRIVE EAST, SUITE 110
CHERRY HILL, NJ 08002

Defendants.

CIVIL ACTION NO: 8129-CV-06
AND 10416-CV-06

PRAECIPE FOR POSTING OF RULE 1731(a) SECURITY

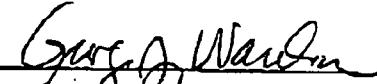
TO THE PROTHONOTARY:

In accordance with Pennsylvania Rule of Appellate Procedure 1731(a) please accept the attached Cashier's Check from Northwest Savings Bank in the amount of \$100,000.00 as security during the period of the appeal.

EXHIBIT B


By :
JANE ROACH MAUGHAN, ESQUIRE
ATTORNEY ID # 34270
LAW OFFICE OF JANE MAUGHAN, P.C.
726 ANN STREET
STROUDSBURG, PA 18360
PHONE: (570) 421-7009

Received, this 17th day of January, 2008, One Hundred Thousand Dollars
(\$100,000.00) in posted security.



George J. Wardin
Prothonotary

J. M. Premer
Deputy

cc: Jane Roach Maughan, Esquire
Dwight L. Koerber, Jr.
Janet Jackson, Esquire
Stephen Bresset, Esquire
Cura Group III, Inc.
200 Lake Drive East, Suite 110
Cherry Hill, NJ 08002

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

*

WALTER MARCIN,
Plaintiff

*

-VS-

*

Docket No. 06-1911-CD

KEPHART TRUCKING CO.,
AND CURA GROUP, III, INC.,
Defendants

*

*

Type of pleading:
ORDER

Filed on behalf of:
DEFENDANT, Kephart
Trucking Co.

Counsel of record for this party:

Dwight L. Koerber, Jr., Esquire
PA I.D. No. 16332

110 North Second Street
P. O. Box 1320
Clearfield, PA 16830
(814) 765-9611

FILED 4 CC
01/17/2008 Atty Koerber
JAN 17 2008 (will serve)

William A. Shaw
Prothonotary/Clerk of Courts
GK

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

*

WALTER MARCIN,
Plaintiff

*

-vs-

*

Docket No. 06-1911-CD

KEPHART TRUCKING CO.,
AND CURA GROUP, III, INC.,
Defendants

*

*

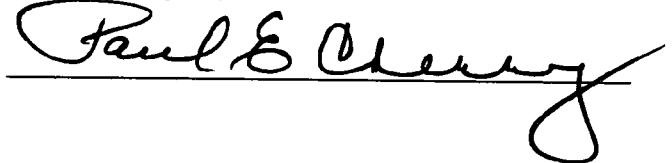
ORDER

AND NOW, this 17th day of January, 2008, upon consideration
of the request for stay of execution filed by Kephart Trucking Co., it is the ORDER AND
DECREE OF THIS COURT that a stay is hereby granted pursuant to the provisions of
Pa.R.C.P. 3121, as this Court finds that there are sufficient legal and equitable reasons
to stay the Writ of Execution until a ruling is made by the Workers' Compensation
Appeal Board in the underlying claim involving the judgment herein, such claim being
Bureau Claim No. 2351753.

This Court finds that the \$100,000.00 security posted with the Prothonotary of
Monroe County, Pennsylvania, is sufficient security to cover the cost of judgment if the
judgment should continue to be effective after a ruling by the Bureau of Workers'
Compensation in Bureau Claim No. 2351753.

A RULE RETURNABLE is hereby issued upon Plaintiff Walter Marcin to show cause why the equitable reasons set forth by Kephart Trucking Co. are not sufficient to warrant continuation of the stay pending a final ruling by the Bureau of Workers' Compensation in Claim No. 2351753. HEARING THEREON on the 30th day of April, 2008, at 9:00 o'clock (A.M.), at the Clearfield County Courthouse, Second and Market Streets, Clearfield, Pennsylvania, in Court Room No. 2.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul E. Cherry". The signature is fluid and cursive, with "Paul E." on the first line and "Cherry" on the second line.

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

Walter Marcin *
Plaintiff
*
Vs.
*
Kephart Trucking Co. Docket No. 06-1911-CD
and
Cura Group III, Inc.
Defendants *

Type of Pleading:
CERTIFICATE OF SERVICE

Filed on Behalf of:
Defendant:
Kephart Trucking Co.

Counsel of Record for
This Party:

Dwight L. Koerber, Jr.
Pa. I.D. No. 16332

110 North Second Street
P. O. Box 1320
Clearfield, PA 16830
(814) 765-9611

FILED
O 3:47 P.M. GK
JAN 25 2008 3cc Amy

William A. Shaw
Prothonotary/Clerk of Courts

(6P)

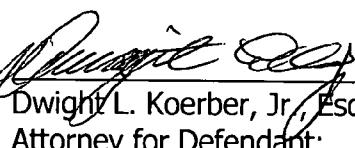
**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

Walter Marcin *
Plaintiff
*
Vs.
*
Kephart Trucking Co. * Docket No. 06-1911-CD
and
Cura Group III, Inc.
Defendants *

CERTIFICATE OF SERVICE

This is to certify that on the 17th day of January 2008, the undersigned served a true and correct copy of the Petition for Stay of Execution on Behalf of Kephart Trucking Co. and the Order entered in the above-captioned matter upon counsel for Plaintiff. Such documents were served via United States First Class Mail upon the following:

Janet Jackson, Esquire
JACKSONFIORENTINO, LLC
607 Monroe Street
P.O. Box 698
Stroudsburg, PA 18360


Dwight L. Koerber, Jr., Esquire
Attorney for Defendant:
Kephart Trucking Co.

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

Walter Marcin *
Plaintiff
*
Vs.
Kephart Trucking Co. * Docket No. 06-1911-CD
and
Cura Group III, Inc.
Defendants *

Type of Pleading:
PETITION TO DISMISS
WRIT OF EXECUTION

Filed on Behalf of:
Defendant:
Kephart Trucking Co.

Counsel of Record for
This Party:

Dwight L. Koerber, Jr.
Pa. I.D. No. 16332

110 North Second Street
P. O. Box 1320
Clearfield, PA 16830
(814) 765-9611

FILED 3cc
03/16/08 Atty Koerber
APR 16 2008
GL

William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

Walter Marcin *
Plaintiff *
Vs. *
Kephart Trucking Co. * Docket No. 06-1911-CD
and *
Cura Group III, Inc. *
Defendants *

PETITION TO DISMISS WRIT OF EXECUTION

COMES NOW, Petitioner, Kephart Trucking Co., by and through its attorney, Dwight L. Koerber, Jr., Esquire, and files the within Petition seeking to dismiss the Writ of Execution entered by Plaintiff Walter Marcin in this matter.

1. Petitioner is Kephart Trucking Co., which has an address of P. O. Box 386, Bigler, Pennsylvania, 16825.

2. Respondent is Walter Marcin, who has an address of R.R. #1, Box 263, Canadensis, Pennsylvania, 18325, and who is represented in this matter and in proceedings relative to this case by Janet Jackson, Esquire, with an address of JACKSONFIORENTINO, LLC, 607 Monroe Street, P.O. Box 698, Stroudsburg, PA, 18301.

3. On January 17, 2008, this Honorable Court entered an Order granting a Stay of the Writ of Execution filed on behalf of Walter Marcin, based upon the representations made by Petitioner Kephart Trucking Co. that the underlying judgment

that the Plaintiff was relying upon was flawed and contrary to rulings made before the Bureau of Workers' Compensation.

4. Attached hereto as Exhibit A is a true and correct copy of the Order entered by this Honorable Court, staying the Writ of Execution, pending a decision by the Workers' Compensation Appeal Board.

5. On April 14, 2008, the Workers' Compensation Appeal Board issued an Order, granting the Nunc Pro Tunc Petition filed on behalf of Kephart Trucking Co. and totally dismissing the penalty petitions that Respondent had relied upon in order to file the Writ of Execution. Attached hereto as Exhibit B is a true and correct copy of the April 14, 2008 Order.

6. Of particular importance to the position of Kephart Trucking Co. is the finding made on page 8 of the April 14, 2008 decision by the Workers' Compensation Appeal Board which reads as follows:

"After carefully reviewing the record, we believe that Kephart is entitled to relief in this case. WCJ Kutz had dismissed the claim petition against Kephart pursuant to a written stipulation entered into with Claimant's counsel and which the parties submitted to the WCJ who adopted it in his June 19, 2003 Decision and Order. As a result, there was no award against Kephart upon which to base a penalty since Kephart was not responsible for this claim."

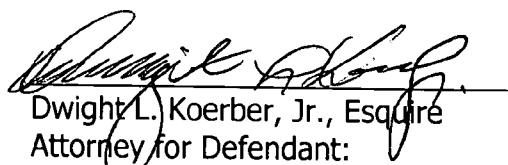
7. Based upon the findings of the Workers' Compensation Appeal Board it is manifestly clear that the Writ of Execution was improvidently and improperly entered and for that reason this Honorable Court should enter an order dismissing the Writ of

Execution and discontinuing any enforcement action by Walter Marcin in Clearfield County.

8. There is currently scheduled before this Honorable Court a Show Cause Hearing for this case on April 30, 2008 at 9:00 a.m. and Petitioner now respectfully requests that a new scheduling order be entered directing that the within Petition, seeking to dismiss the Writ of Execution, be entered so that this matter may be finally resolved and disposed of at that time.

WHEREFORE, Petitioner Kephart Trucking Co. prays that its Petition be granted and that an order be entered by this Honorable Court dismissing the Writ of Execution filed on behalf of Respondent Walter Marcin, with such relief based upon the April 14, 2008 decision of the Workers' Compensation Appeal Board.

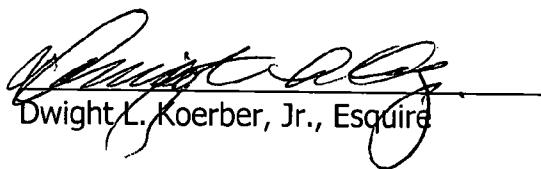
Respectfully submitted,



Dwight L. Koerber, Jr., Esquire
Attorney for Defendant:
Kephart Trucking Co.

VERIFICATION

I verify that the facts set forth in the foregoing document are true and correct to the best of my information, knowledge and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.



Dwight L. Koerber, Jr., Esquire

DATED: April 16, 2008

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

Walter Marcin

*

Plaintiff

*

Vs.

*

Kephart Trucking Co.

Docket No. 06-1911-CD

and

*

Cura Group III, Inc.

*

Defendants

*

CERTIFICATE OF SERVICE

This is to certify that on the 16th day of April 2008, the undersigned

served a true and correct copy of the Petition To Dismiss Writ of Execution in the above-captioned matter upon counsel for Plaintiff. Such documents were served via United States First Class Mail upon the following:

Janet Jackson, Esquire
JACKSONFIORENTINO, LLC
607 Monroe Street
P.O. Box 698
Stroudsburg, PA 18360

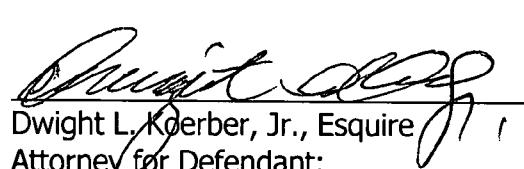

Dwight L. Koerber, Jr., Esquire
Attorney for Defendant:
Kephart Trucking Co.

EXHIBIT A

Attached hereto as Exhibit A is a true and correct copy of Order of the Court of Common Pleas of Clearfield County entered on January 17, 2008.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

*

WALTER MARCIN,
Plaintiff

*

-VS-

*

Docket No. 06-1911-CD

KEPHART TRUCKING CO.,
AND CURA GROUP, III, INC.,
Defendants

*

*

Type of pleading:
ORDER

Filed on behalf of:
DEFENDANT, Kephart
Trucking Co.

Counsel of record for this party:

Dwight L. Koerber, Jr., Esquire
PA I.D. No. 16332

110 North Second Street
P. O. Box 1320
Clearfield, PA 16830
(814) 765-9611

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WALTER MARCIN,
Plaintiff

-VS-

KEPHART TRUCKING CO.,
AND CURA GROUP, III, INC.,
Defendants

*

*

*

Docket No. 06-1911-CD

ORDER

AND NOW, this 17th day of January, 2008, upon consideration
of the request for stay of execution filed by Kephart Trucking Co., it is the ORDER AND
DECREE OF THIS COURT that a stay is hereby granted pursuant to the provisions of
Pa.R.C.P. 3121, as this Court finds that there are sufficient legal and equitable reasons
to stay the Writ of Execution until a ruling is made by the Workers' Compensation
Appeal Board in the underlying claim involving the judgment herein, such claim being
Bureau Claim No. 2351753.

This Court finds that the \$100,000.00 security posted with the Prothonotary of
Monroe County, Pennsylvania, is sufficient security to cover the cost of judgment if the
judgment should continue to be effective after a ruling by the Bureau of Workers'
Compensation in Bureau Claim No. 2351753.

A RULE RETURNABLE is hereby issued upon Plaintiff Walter Marcin to show cause why the equitable reasons set forth by Kephart Trucking Co. are not sufficient to warrant continuation of the stay pending a final ruling by the Bureau of Workers' Compensation in Claim No. 2351753. HEARING THEREON on the 30th day of April, 2008, at 9:00 o'clock (A.M.), at the Clearfield County Courthouse, Second and Market Streets, Clearfield, Pennsylvania, in Court Room No. 2.

BY THE COURT:

/s/ Paul E. Cherry

I hereby certify this to be a true and attested copy of the original statement filed in this case.

JAN 17 2008

Attest.

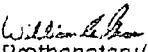

William D. Bissell
Prothonotary/
Clerk of Courts

EXHIBIT B

Attached hereto as Exhibit B is a true and correct copy of the April 14, 2008 Order of the Workers' Compensation Appeal Board.

WORKERS' COMPENSATION APPEAL BOARD
CAPITOL ASSOCIATES BUILDING
901 N. 7th STREET, 3RD FLOOR SOUTH
HARRISBURG, PA 17102-1412
(717) 783-7838

WALTER MARCIN

v.

KEPHART TRUCKING CO

Case Number: A07-0967

Opinion Mailing Date: 4/14/2008

Attached is a copy of an Opinion from the Workers' Compensation Appeal Board filed this date in the above-captioned case. An appeal to the Commonwealth Court of Pennsylvania may be taken by any party aggrieved by the Board's decision, provided such appeal is taken within (30) days after the mailing date of the Board's decision. The Board has nothing to do with the filing or processing of further appeals to the Court. Further appeals may be filed in person or by mail (accompanied by U.S. Postal Services Form 3817) with the Prothonotary of the Commonwealth Court of Pennsylvania, Room 624 Irvis Office Building, Harrisburg, PA, 17120.

Attachment

Claimant

WALTER MARCIN
RR 1 BOX 263
CANADENSIS, PA 18325

Claimant Counsel(s)

JANET JACKSON, ESQ.
607 MONROE STREET
P.O. BOX 698
STROUDSBURG, PA 18360-2173

Defendant(s)

KEPHART TRUCKING CO
P.O. BOX 386
BIGLER, PA 16825

Insurance Carrier(s)

RISK ENTERPRISE MANAGEMENT
SUITE 1600
615 CHESTNUT STREET
PHILADELPHIA, PA 19106

Defendant Counsel(s)

JAMES STRADER, ESQ.
2 PPG PLACE, SUITE 400
PITTSBURGH, PA 15222

CURA GROUP

5050 WEST LEMON STREET
TAMPA, FL 33609

TIG INDEMNITY CO
1560 VALLEY CENTER PKWY
P.O. BOX 6100
BETHLEHEM, PA 18017

ROSS CARROZZA, ESQ.
SUITE 400
401 ADAMS AVENUE
SCRANTON, PA 18510

COMMONWEALTH CHIEF COUNSEL
1171 S. CAMERON STREET RM 327
HARRISBURG, PA 17104-2501

WORKERS' COMPENSATION APPEAL BOARD
CAPITOL ASSOCIATES BUILDING
901 N. 7th STREET, 3RD FLOOR SOUTH
HARRISBURG, PA 17102-1412
(717) 783-7838

WALTER MARCIN

v.

KEPHART TRUCKING CO

Case Number: A07-0973

Opinion Mailing Date: 4/14/2008

Attached is a copy of an Opinion from the Workers' Compensation Appeal Board filed this date in the above-captioned case. An appeal to the Commonwealth Court of Pennsylvania may be taken by any party aggrieved by the Board's decision, provided such appeal is taken within (30) days after the mailing date of the Board's decision. The Board has nothing to do with the filing or processing of further appeals to the Court. Further appeals may be filed in person or by mail (accompanied by U.S. Postal Services Form 3817) with the Prothonotary of the Commonwealth Court of Pennsylvania, Room 624 Irvis Office Building, Harrisburg, PA, 17120.

Attachment

Claimant

WALTER MARCIN
RR 1 BOX 263
CANADENSIS, PA 18325

Claimant Counsel(s)

JANET JACKSON, ESQ.
607 MONROE STREET
P.O. BOX 698
STROUDSBURG, PA 18360-2173

Defendant(s)

KEPHART TRUCKING CO
P.O. BOX 386
BIGLER, PA 16825

Insurance Carrier(s)

RISK ENTERPRISE MANAGEMENT
SUITE 1600
615 CHESTNUT STREET
PHILADELPHIA, PA 19106

Defendant Counsel(s)

JAMES STRADER, ESQ.
2 PPG PLACE, SUITE 400
PITTSBURGH, PA 15222

CURA GROUP

5050 WEST LEMON STREET
TAMPA, FL 33609

TIG INDEMNITY CO

1560 VALLEY CENTER PKWY
P.O. BOX 6100
BETHLEHEM, PA 18017

SHARON MCGRAIL-SZABO, ESQ
5100 TILGHMAN ST, SUITE 230
ALLENTOWN, PA 18104

02 HR LLC

2031 NW 53RD STREET
FORT LAUDERDALE, FL 33309

ROSS CARROZZA, ESQ.
SUITE 400
401 ADAMS AVENUE
SCRANTON, PA 18510

COMM CHIEF COUNSEL

1171 S. CAMERON STREET RM 327
HARRISBURG, PA 17104-2501

WORKERS' COMPENSATION APPEAL BOARD
CAPITOL ASSOCIATES BUILDING
901 N. 7th STREET, 3RD FLOOR SOUTH
HARRISBURG, PA 17102-1412
(717) 783-7838

WALTER MARCIN

v.

KEPHART TRUCKING CO

Case Number: A07-0974

Opinion Mailing Date: 4/14/2008

Attached is a copy of an Opinion from the Workers' Compensation Appeal Board filed this date in the above-captioned case. An appeal to the Commonwealth Court of Pennsylvania may be taken by any party aggrieved by the Board's decision, provided such appeal is taken within (30) days after the mailing date of the Board's decision. The Board has nothing to do with the filing or processing of further appeals to the Court. Further appeals may be filed in person or by mail (accompanied by U.S. Postal Services Form 3817) with the Prothonotary of the Commonwealth Court of Pennsylvania, Room 624 Irvis Office Building, Harrisburg, PA, 17120.

Attachment

Claimant

WALTER MARCIN
RR 1 BOX 263
CANADENSIS, PA 18325

Claimant Counsel(s)

JANET JACKSON, ESQ.
607 MONROE STREET
P.O. BOX 698
STROUDSBURG, PA 18360-2173

Defendant(s)

KEPHART TRUCKING CO
P.O. BOX 386
BIGLER, PA 16825

Insurance Carrier(s)

RISK ENTERPRISE MANAGEMENT
SUITE 1600
615 CHESTNUT STREET
PHILADELPHIA, PA 19106

Defendant Counsel(s)

JAMES STRADER, ESQ.
2 PPG PLACE, SUITE 400
PITTSBURGH, PA 15222

CURA GROUP

5050 WEST LEMON STREET
TAMPA, FL 33609

TIG INDEMNITY CO

1560 VALLEY CENTER PKWY
P.O. BOX 6100
BETHLEHEM, PA 18017

SHARON MCGRAIL-SZABO, ES

5100 TILGHMAN ST, SUITE 230
ALLENTOWN, PA 18104

02 HR LLC

2031 NW 53RD STREET
FORT LAUDERDALE, FL 33309

ROSS CARROZZA, ESQ.

SUITE 400
401 ADAMS AVENUE
SCRANTON, PA 18510

COMM CHIEF COUNSEL

1171 S. CAMERON STREET RM 327
HARRISBURG, PA 17104-2501

WORKERS' COMPENSATION APPEAL BOARD
CAPITOL ASSOCIATES BUILDING
901 N. 7th STREET, 3RD FLOOR SOUTH
HARRISBURG, PA 17102-1412
(717) 783-7838

WALTER MARCIN v. KEPHART TRUCKING CO Case Number: A07-0967

Claimant

WALTER MARCIN
RR 1 BOX 263
CANADensis, PA 18325

Claimant Counsel(s)

JANET JACKSON, ESQ.
607 MONROE STREET
P.O. BOX 698
STROUDSBURG, PA 18360-2173

Opinion Date: 04/14/2008

Filed By: Defendant

From Order of: JUDGE JOSEPH
SEBASTIANELLI

APPEAL GRANTED; MODIFIED IN PART;
VACATED IN PART

OPINION

Defendant(s)

KEPHART TRUCKING CO
P.O. BOX 386
BIGLER, PA 16825

Insurance Carrier(s)

RISK ENTERPRISE MANAGEMENT
SUITE 1600
615 CHESTNUT STREET
PHILADELPHIA, PA 19106

Defendant Counsel(s)

JAMES STRADER, ESQ.
2 PPG PLACE, SUITE 400
PITTSBURGH, PA 15222

CURA GROUP

5050 WEST LEMON STREET
TAMPA, FL 33609

TIG INDEMNITY CO
1560 VALLEY CENTER PKWY
P.O. BOX 6100
BETHLEHEM, PA 18017

ROSS CARROZZA, ESQ.
SUITE 400
401 ADAMS AVENUE
SCRANTON, PA 18510

COMMONWEALTH CHIEF COUNSEL
1171 S. CAMERON STREET RM 327
HARRISBURG, PA 17104-2501

WORKERS' COMPENSATION APPEAL BOARD
CAPITOL ASSOCIATES BUILDING
901 N. 7th STREET, 3RD FLOOR SOUTH
HARRISBURG, PA 17102-1412
(717) 783-7838

WALTER MARCIN v. KEPHART TRUCKING CO Case Number: A07-0973

Claimant

WALTER MARCIN
RR 1 BOX 263
CANADENSIS, PA 18325

Claimant Counsel(s)

JANET JACKSON, ESQ.
607 MONROE STREET
P.O. BOX 698
STROUDSBURG, PA 18360-2173

Opinion Date: 04/14/2008

Filed By: Defendant

From Order of: JUDGE JOSEPH
SEBASTIANELLI

APPEAL GRANTED; MODIFIED IN PART;
VACATED IN PART

OPINION

Defendant(s)

KEPHART TRUCKING CO
P.O. BOX 386
BIGLER, PA 16825

Insurance Carrier(s)

RISK ENTERPRISE MANAGEMENT
SUITE 1600
615 CHESTNUT STREET
PHILADELPHIA, PA 19106

Defendant Counsel(s)

JAMES STRADER, ESQ.
2 PPG PLACE, SUITE 400
PITTSBURGH, PA 15222

CURA GROUP

5050 WEST LEMON STREET
TAMPA, FL 33609

TIG INDEMNITY CO
1560 VALLEY CENTER PKWY
P.O. BOX 6100
BETHLEHEM, PA 18017

SHARON MCGRAIL-SZABO, ES
5100 TILGHMAN ST, SUITE 230
ALLENTOWN, PA 18104

02 HR LLC

2031 NW 53RD STREET
FORT LAUDERDALE, FL 33309

ROSS CARROZZA, ESQ.
SUITE 400
401 ADAMS AVENUE
SCRANTON, PA 18510

COMM CHIEF COUNSEL

1171 S. CAMERON STREET RM 327
HARRISBURG, PA 17104-2501

WORKERS' COMPENSATION APPEAL BOARD
CAPITOL ASSOCIATES BUILDING
901 N. 7th STREET, 3RD FLOOR SOUTH
HARRISBURG, PA 17102-1412
(717) 783-7838

WALTER MARCIN v. KEPHART TRUCKING CO Case Number: A07-0974

Claimant

WALTER MARCIN
RR 1 BOX 263
CANADENSIS, PA 18325

Claimant Counsel(s)

JANET JACKSON, ESQ.
607 MONROE STREET
P.O. BOX 698
STROUDSBURG, PA 18360-2173

Opinion Date: 04/14/2008

Filed By: Defendant

From Order of: JUDGE JOSEPH
SEBASTIANELLI

APPEAL GRANTED; MODIFIED IN PART;
VACATED IN PART

OPINION

Defendant(s)

KEPHART TRUCKING CO
P.O. BOX 386
BIGLER, PA 16825

Insurance Carrier(s)

RISK ENTERPRISE MANAGEMENT
SUITE 1600
615 CHESTNUT STREET
PHILADELPHIA, PA 19106

Defendant Counsel(s)

JAMES STRADER, ESQ.
2 PPG PLACE, SUITE 400
PITTSBURGH, PA 15222

CURA GROUP

5050 WEST LEMON STREET
TAMPA, FL 33609

TIG INDEMNITY CO

1560 VALLEY CENTER PKWY
P.O. BOX 6100
BETHLEHEM, PA 18017

SHARON MCGRAIL-SZABO, ES
5100 TILGHMAN ST, SUITE 230
ALLENTOWN, PA 18104

02 HR LLC

2031 NW 53RD STREET
FORT LAUDERDALE, FL 33309

ROSS CARROZZA, ESQ.
SUITE 400
401 ADAMS AVENUE
SCRANTON, PA 18510

COMM CHIEF COUNSEL

1171 S. CAMERON STREET RM 327
HARRISBURG, PA 17104-2501

OPINION

KREBS, COMMISSIONER:

Before the Workers' Compensation Appeal Board (Board) are the nunc pro tunc Appeals of Kephart Trucking Co. (Kephart) from three Decisions and Orders of Workers' Compensation Judge (WCJ) Joseph Sebastianelli granting Walter Marcin's (Claimant) three Petitions for Penalties (Penalty Petitions) filed against Defendant. On October 19, 2001, Claimant filed a Claim Petition alleging that on January 16, 2001, he sustained a work-related injury while working for Kephart. Subsequently, the parties entered into a stipulation of fact with America's PEO, Inc./The Cura Group, Inc. (Cura), which resolved the Petition. Specifically, the stipulation stated:

4. Additional Defendant, America's PEO, was a benefits outsourcing company that sold its services to Kephart Trucking. America's PEO was purchased by The Cura Group in November of 2001. The Cura Group's mailing address is 5050 W. Lemon Street, Tampa FL 33609. The parties acknowledge America's PEO was and is Claimant's defacto employer.

15. By their signatures hereon, the parties hereby request that the Workers' Compensation Judge Grant Claimant's Claim Petition as against America's PEO/The Cura Group in accordance with this stipulation. The parties further request that the Workers' Compensation Judge deny and dismiss Claimant's Claim Petition as against Kephart Trucking and TIG/Managed Comp.

In a Decision and Order circulated on June 19, 2003 (2003 Decision), WCJ Thomas Kutz (WCJ Kutz) adopted the stipulation, and as recited in it, granted the Claim Petition as against Cura and dismissed the Claim Petition with

respect to Defendant Kephart.¹ In spite of this, Kephart Trucking Company's name remained on the caption of the case as a defendant. Subsequently, a Compromise and Release agreement was entered into with Claimant which named Kephart as the employer and Cura as the insurer. In a Decision and Order circulated on March 2, 2005 (March 2005 Decision), WCJ Kutz granted the Petition for Compromise & Release Agreement, and ordered "Defendant" to pay Claimant a \$175,000.00 settlement in four installments. [March 2005 Decision, Order]

In the 2003 Decision wherein WCJ Kutz dismissed the Claim petition against Kephart Trucking, Kephart was represented by Ross Carrozza, Esquire of the law firm of Marshall, Dennehey, Warner Coleman & Goggin in Scranton and TIG Indemnity Company (Cura) was represented by Sharon McGrail-Szabo, Esquire of the law firm of Swartz Campbell, L.L.C. in Allentown. The Decision adopting the Compromise and Release lists the only counsel of record for Defendant as Sharon McGrail-Szabo, Esquire of the Swartz Campbell law firm who represented Cura, indicating that Kephart's counsel did not participate in the Compromise and Release proceedings.

On June 27, 2005, Claimant filed a Penalty Petition (Penalty Petition 1) alleging that "Employer/Insurer has delayed payment of Claimant's 2nd installment check pursuant to the Compromise and Release Agreement dated

¹ Claimant in his brief argues that the Stipulation and the 2003 Decision of WCJ Kutz adopting the Stipulation were not made a part of the record of the proceedings on the Penalty Petitions which are the subject of this appeal and therefore we may not consider them in this case. We note that the Board may take administrative notice of a properly filed bureau document which is adopted by a decision and order of a WCJ and which in this instance is binding on Claimant as the law of the case.

February 28, 2005 and Judge Kutz's Decision Circulated on March 2, 2005." [Penalty Petition 1]. The Penalty Petition listed only Sharon McGrail-Szabo, Esquire of the Swartz Campbell law firm as counsel for respondent and she appeared at a hearing held before WCJ Joseph B. Sebastianelli on July 18, 2005. In a Decision and Order circulated on August 30, 2005 (August 2005 Decision), the WCJ granted Penalty Petition 1, determining that Defendant violated the Act by failing to timely pay Claimant's second settlement installment. [August 2005 Decision]

On October 6, 2005, Claimant filed another Penalty Petition (Penalty Petition 2), alleging that "Employer/Insurer" delayed payment of Claimant's third settlement installment. This Penalty Petition did not list any counsel for defendant and no one appeared on behalf of Cura or Kephart at the hearing held before WCJ Sebastianelli on November 8, 2005. In a Decision and Order circulated on November 21, 2005 (November 2005 Decision), the WCJ granted Penalty Petition 2, determining that Defendant violated the Act by failing to timely pay Claimant's third settlement installment. [November 2005 Decision, Conclusion of Law 2]

On December 30, 2005, Claimant filed a Penalty Petition (Penalty Petition 3), alleging that "Employer/Insurer" delayed payment of Claimant's fourth settlement installment. This Penalty Petition did not list any counsel for defendant and no one appeared on behalf of Cura or Kephart at the hearing held before WCJ Sebastianelli on January 31, 2006. In a Decision and Order circulated on May 15, 2006 (May 2006 Decision), the WCJ granted Penalty Petition 3,

determining that Defendant violated the Act by failing to timely pay Claimant's fourth settlement installment. [2006 Decision, Conclusion of Law 2]

Subsequently, the Claimant had the WCJ's Orders granting the Penalty Petitions entered as a judgment against Kephart Trucking Company in the Court of Common Pleas of Monroe County Pennsylvania² and secured Writs of Execution against Kephart and is seeking to execute on Kephart's assets in Clearfield County.³

On May 1, 2007 Kephart filed appeals, nunc pro tunc, of the August 2005 Decision, the November 2005 Decision, and the May 2006 Decision.

The Board's scope of review is limited to a determination of whether the WCJ committed an error of law or whether substantial evidence supports the WCJ's findings. Bethenergy Mines, Inc. v. W.C.A.B. (Skirpan), 612 A.2d 434 (Pa. 1992). Functioning as an appellate body, the Board's role is not to reweigh evidence or review witnesses' credibility, but to determine whether, upon considering the evidence as a whole, the WCJ's findings have sufficient support in the record. Lehigh County Vo-Tech Sch. v. W.C.A.B. (Wolfe), 652 A.2d 797 (Pa. 1995). Credibility determinations are within the WCJ's exclusive province and, absent arbitrary and capricious action, we cannot disturb the findings of fact made below. Id.

² We take administrative notice of the proceedings in the Court of Common Pleas of Monroe County at No. 10416-CV-06 and No. 8129-CV-06 which are now on appeal to the Superior Court at Docket No. 2299 EDA 2007.

³ As part of Kephart's nunc pro tunc appeal, we have received a copy of an Order of the Court of Common Pleas of Clearfield County at Docket No. 06-1911-CD granting a stay of execution pending a decision of the Worker's Compensation Appeal Board.

Claimant filed a Motion to Quash Defendant's nunc pro tunc Appeals, asserting that Defendant has not set forth a valid basis for an extension of the twenty-day statutory period in which an appellant must file an appeal of a WCJ's order, as set forth in Section 423 of the Act, 77 P.S. § 853.

Section 423 of the Act⁴ provides that any party in interest may take an appeal within twenty days after notice of the WCJ's decision has been served. The timeliness of an appeal is jurisdictional and must be strictly enforced. Manolovich v. W.C.A.B. (Kay Jewelers), 694 A.2d 405 (Pa. Cmwlth. 1997). The limitation period imposed by Section 423 can be extended in the presence of fraud, coercion, duress, or breakdown in the agency's operation, City of Phila. v. W.C.A.B. (Operacz), 706 A.2d 1292 (Pa. Cmwlth. 1998), or in cases of non-negligent conduct on the part of the appellant. Weikel v. W.C.A.B. (PECO), 840 A.2d 1082 (Pa. Cmwlth. 2004). An extension of the statutory period in which to file an appeal cannot be based on simple failure of a party to take an appeal within that period. Wertman v. W.C.A.B. (Am. Nickeloid Co.), 426 A.2d 205 (Pa. Cmwlth. 1981).

The WCJ's Decisions were circulated on August 30, 2005, November 21, 2005, and May 15, 2006, making September 19, 2005, December 12, 2005, and

⁴ Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §§1-1041.4; 2501-2708.

June 5, 2006 the last days for filing the respective appeals.⁵ The envelope containing Defendant's Notices of Appeal is post-marked May 1, 2007.

Kephart alleges that the WCJ erred in granting Claimant's Penalty Petitions filed against it because the parties' stipulation which was adopted by WCJ Kutz stated that Cura was Claimant's "de facto" employer. Kephart alleges that it did not respond or appear before the WCJ regarding the Petitions because it believed it had been dismissed from the proceedings by Order of Workers' Compensation Judge Kutz and assumed that its name remained on the caption because it had been the original party named. [Appeal of Kephart Trucking Company Nunc Pro Tunc, pg. 3] Kephart argues that its untimely Appeals should be considered by the Board because, following the approval of the stipulation, "the inclusion of its name as a party and the entry of Orders against it were the result of intentional and fraudulent conduct on the part of [Claimant's attorney] . . ." [Id. at pg. 4] Kephart argues that there has been a breakdown in the court's operation, in that it was not a party to the compromise and release agreement that the WCJ determined it had violated, and because the 2003 Decision dismissed Kephart from the case. [Id. at pgs. 2, 4] Furthermore, upon learning that the penalty orders were being asserted against Kephart in addition to Cura, who had the responsibility for payment of this claim under the WCJ Kutz's March 2003 Decision and the subsequent Compromise and Release,

⁵ "When any period of time is referred to in any statute, . . . [w]henever the last day of any such period shall fall on Saturday or Sunday . . . such day shall be omitted from the computation." 1 Pa.C.S. § 1908.

Kephart acted promptly to attempt to open the judgment in the Court of Common Pleas of Monroe County and take these nunc pro tunc appeals to the Board.

After carefully reviewing the record, we believe that Kephart is entitled to relief in this case. WCJ Kutz had dismissed the Claim Petition against Kephart pursuant to a written stipulation entered into with Claimant's counsel and which the parties submitted to the WCJ who adopted it in his June 19, 2003 Decision and Order. As a result, there was no award against Kephart upon which to base a penalty since Kephart was not responsible for this claim. To hold otherwise would be to say that Kephart and its counsel could not rely on a stipulation from Claimant's counsel that dismissed Kephart from the case. Admissions by counsel are binding on a client. Piper Aircraft Corp. v. W.C.A.B. (Bibey), 485 A.2d 906 (Pa. Cmwlth. 1985). In this case the admission was a written stipulation which was adopted by a WCJ. We note that counsel for the Claimant who entered into the stipulation dismissing the claim against Kephart, continued to represent Claimant throughout the remaining proceedings including the penalty proceedings before WCJ Sebastianelli.⁶

We hold that in light of the fact that the orders of WCJ Sebastianelli assessing penalties against "Defendant" which was assumed by Kephart to mean "Cura" based on Kephart being dismissed from the case in 2003, Kephart was not negligent in this case and has acted with reasonable diligence in filing

⁶ We also note that counsel for Kephart was not listed by Claimant on any of the Penalty Petitions since this serves to underscore that Claimant believed that Cura alone was responsible for this claim pursuant to the stipulation of dismissal that Claimant entered into with counsel for Kephart.

this appeal nunc pro tunc once it became aware that the penalty awards were being asserted against it rather than Cura. See City of Phila. v. Tirrell, 906 A.2d 663, 667 (Pa. Cmwlth. 2006) (holding that an appellant seeking permission to file a nunc pro tunc appeal must proceed with reasonable diligence once he knows of the necessity to take action and an application must be filed within a reasonable time after the occurrence of the excusing circumstance)⁷ In this case, the orders of WCJ Sebastianelli assessing penalties against "Defendant" are ambiguous in so far as it can be interpreted to mean that penalties are assessed against Kephart, who is identified on the case caption as the employer even though it had been dismissed from any liability for this claim years earlier. As a result, we will grant Kephart's nunc pro tunc appeal and modify the Orders of the WCJ in these appeals at A07-0967, A07-0973 and A07-0974 to state that the Penalty Petitions are Granted against Defendant The Cura Group III, Inc. as identified in the Compromise and Release agreement. The Orders are vacated as to any penalty assessed against Kephart Trucking, Inc.

Accordingly, we enter the following:

⁷ A further consideration is that Claimant, having knowingly sought to assert the penalty awards against a party whom he previously dismissed, should not be allowed to complain of Kephart's attempt to have this matter heard on the merits by proceeding nunc pro tunc in this appeal.

ORDER

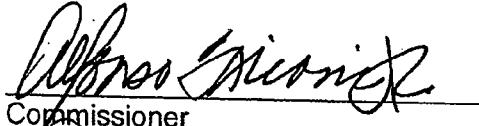
Defendant's nunc pro tunc Appeals are hereby **GRANTED**. The Orders of the WCJ in these appeals at A07-0967, A07-0973 and A07-0974 are **MODIFIED** to state that the Penalty Petitions are Granted against Defendant The Cura Group III, Inc. as identified in the Compromise and Release agreement. The Orders are **VACATED** as to any penalty assessed against Kephart Trucking, Inc.

BY THE BOARD

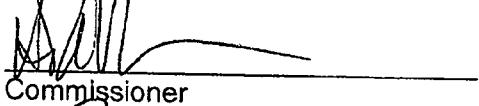


Robert A. Krebs, Commissioner

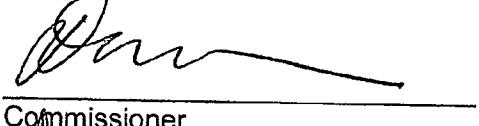
CONCURRED IN BY



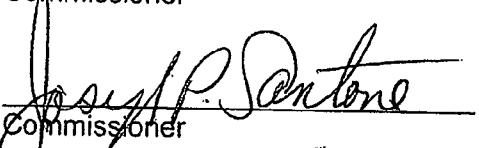
Alfonso Gironick
Commissioner



[unclear]
Commissioner



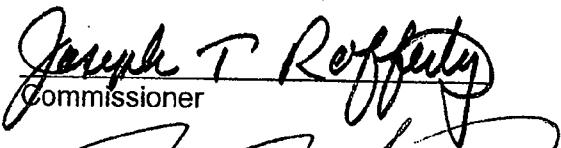
[unclear]
Commissioner



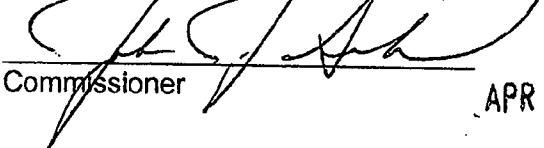
Joseph P. Santone
Commissioner



Robert M. Hayes
Commissioner



Joseph T. Rofferty
Commissioner



[unclear]
Commissioner

APR 14 2008

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Walter Marcin *
Plaintiff *
Vs. *
Kephart Trucking Co. * Docket No. 06-1911-CD
and *
Cura Group III, Inc. *
Defendants *

ORDER

AND NOW this 18th day of April 2008 upon consideration of the Petition to Dismiss Writ of Execution filed by Defendant Kephart Trucking Co., and in view of the affirmative finding in support of the position of Kephart Trucking Co. by the Workers' Compensation Appeal Board by decision dated April 14, 2008 in Docket Numbers A07-0967, A07-0973 and A07-0974, it is the Order and Decree of this Court that Respondent Walter Marcin is directed to show cause why the Writ of Execution filed herein should not be dismissed. Rule Returnable and hearing thereon is scheduled for the 30th day of April 2008, at 9:00 a.m. at the Clearfield County Courthouse, Second and Market Streets, Clearfield, PA.

By the Court:


Paul E. Cherry, Judge

FILED 3cc
04/19/2008 Atty Kaerber
APR 18 2008
RJD

William A. Shaw
Prothonotary/Clerk of Courts

FILED

APR 18 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 4/18/08

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) _____ Plaintiff(s) Attorney _____ Officer
____ Defendant(s) _____ Defendant(s) Attorney _____

Special Instructions:

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

Walter Marcin *
Plaintiff
*
Vs.
Kephart Trucking Co. * Docket No. 06-1911-CD
and
Cura Group III, Inc. *
Defendants *
*

Type of Pleading:
CERTIFICATE OF SERVICE

Filed on Behalf of:
Defendant:
Kephart Trucking Co.

Counsel of Record for
This Party:

Dwight L. Koerber, Jr.
Pa. I.D. No. 16332

110 North Second Street
P. O. Box 1320
Clearfield, PA 16830
(814) 765-9611

FILED 3cc Atty
013.20cm Koerber
APR 22 2008


William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

Walter Marcin

*

Plaintiff

*

vs.

*

Docket No. 06-1911-CD

Kephart Trucking Co.

and

Cura Group III, Inc.

*

Defendants

*

CERTIFICATE OF SERVICE

This is to certify that on the 18th day of April 2008, the undersigned served a true and correct copy of the April 18, 2008 Scheduling Order in the above-captioned matter upon counsel for Plaintiff. Such document was served via United States First Class Mail upon the following:

Janet Jackson, Esquire
JACKSONFIORENTINO, LLC
607 Monroe Street
P.O. Box 698
Stroudsburg, PA 18360

Dwight L. Koerber, Jr., Esquire
Attorney for Defendant:
Kephart Trucking Co.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION

O
FILED
0146PM OK
APR 29 2008 5CC A/H
William A. Shaw
Prothonotary/Clerk of Courts

WALTER MARCIN,

Plaintiff

vs.

DOCKET NO. 06-1911-CD

KEPHART TRUCKING CO. and CURA
GROUP III, INC.,

Defendants

ANSWER TO PETITION TO DISMISS WRIT OF EXECUTION

COMES NOW, Walter Marcin, Plaintiff, by his attorneys, Janet Jackson, Esq. and Bresset & Santora, LLC. And states his Answer to the Petition to Dismiss Writ of Execution as follows:

1. It is admitted that Kephart Trucking Co. maintains a business location in Bigler, Pennsylvania, as well as in the State of Ohio.
2. It is admitted that Janet Jackson is one of the counsel that represents Walter Marcin, together with Stephen G. Bresset of Bresset & Santora, LLC.
3. It is admitted that an Order was entered; however, said Order was entered without jurisdiction as the issue had been previously raised by the Petitioner herein before the Court of Common Pleas of Monroe County and a dispositive unappealed Order was entered. This attendant proceeding seeks to have a Court of equal jurisdiction over rule or modify the decision of the Honorable Arthur L. Zulick, of the Court of Common Pleas of Monroe County.

4. It is admitted that this Court has entered an interim Order in the absence of jurisdiction and premised, at best, on an interim Order.

5. This averment is denied to the extent it attempts to interpret the Order of the Workers' Compensation Appeal Board (WCAB) as that interim Order has or will be the subject of an appeal to the Commonwealth Court and will likely be reversed as the WCAB has exceeded its jurisdiction and entered a procedurally defective Order.

6. This averment is denied to the extent it attempts to interpret the Order of the Workers' Compensation Appeal Board (WCAB) as that interim Order has or will be the subject of an appeal to the Commonwealth Court and will likely be reversed as the WCAB has exceeded its jurisdiction and entered a procedurally defective Order.

7. This averment is denied as this Court lacks jurisdiction over this issue, which had been previously raised by the Petitioner herein before the Court of Common Pleas of Monroe County, which entered a dispositive and an unappealed Order. This attendant proceeding seeks to have a Court of equal jurisdiction over rule, modify or alter the decision of the Court of Common Pleas of Monroe County and the relief sought herein is not available under the provisions of Rules 3119, 3121 or 3143, Pa.R.C.P.

8. It is admitted that a hearing is set for April 30, 2008. The remainder of this averment is denied as this Court lacks jurisdiction over this issue, which had been previously raised by the Petitioner herein before the Court of Common Pleas of Monroe County, which entered a dispositive and an unappealed Order. This attendant proceeding seeks to have a Court of equal jurisdiction over rule, modify or alter the decision of the Court of Common Pleas of Monroe

County and the relief sought herein is not available under the provisions of Rules 3119, 3121 or 3143, Pa.R.C.P.

It is further averred that this Motion is premised on an Order which is not final and is contradicted by the prior decision of the Court of Common Pleas, which denied the Kephart request for relief from the judgment and is currently on appeal to the Superior Court of Pennsylvania and is further subject to the settlement agreement entered into between Marcin and Kephart Trucking Co.

WHEREFORE, the Respondent, Walter Marcin, prays that this Petition be dismissed or denied.

Respectfully submitted,

BRESSET & SANTORA, LLC.

BY:

STEPHEN G. BRESSET, ESQUIRE
701 Main Street, Suite 400
Stroudsburg, PA 18360
Attorney for Plaintiff

JACKSON FIORENTINO, LLC.

BY:

JANET JACKSON, ESQUIRE
Attorney I.D. #42627
607 Monroe Street
Stroudsburg, PA 18360
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION

WALTER MARCIN, :

Plaintiff :

vs. : DOCKET NO. 06-1911-CD

KEPHART TRUCKING CO. and CURA
GROUP III, INC., :

Defendants :

CERTIFICATE OF SERVICE

I, LOIS E. REHM, Secretary to Stephen G. Bresset, Esquire, Attorney for Plaintiff, do
hereby certify that on April 25, 2008, a true and correct copy of the foregoing Answer to Petition
to Dismiss Writ of Execution, was served by First Class Mail, Postage Prepaid, upon :

Dwight L. Koerber, Jr., Esquire
110 North Second Street
P O Box 1320
Clearfield, PA 16830

Jane Roach Maughan, Esq.
726 Ann Street
Stroudsburg, PA 18360


LOIS E. REHM

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION

WALTER MARCIN,

Plaintiff

vs.

DOCKET NO. 06-1911-CD

KEPHART TRUCKING CO. and CURA
GROUP III, INC.,

Defendants

FILED
1:49 PM 06
APR 29 2008

5cc Atty

William A. Shaw
Prothonotary/Clerk of Courts

ANSWER TO PETITION FOR STAY OF EXECUTION

COMES NOW, Walter Marcin, Plaintiff, by his attorneys, Janet Jackson, Esq. and Bresset & Santora, LLC. And states his Answer to the Petition for Stay of Execution as follows:

1. It is admitted that Kephart Trucking maintains an office location in Bigler, Pennsylvania, 16825.
2. Admitted.
3. It is admitted that the sale, scheduled for several weeks, was most recently scheduled for January 18, 2008, and that Kephart created its own exigencies when it delayed the effort to seek any relief until the eve of the sale.
4. The existence of the judgment is admitted and further that the validity of the judgment has been confirmed in the Court of Common Pleas of Monroe County. That determination is presently before the Superior Court of Pennsylvania. The issues raised by Kephart in the attendant Petition have been previously raised, considered and denied by the Court of Common

Pleas of Monroe County. The failure of Kephart to disclose those prior determinations or to actively conceal them are wrongful and divest this Court of jurisdiction on the basis of collateral estoppel, res judicata and prior pending proceeding or *lis pendens*.

5. This averment as to the procedural history is admitted. By way of further answer it is averred that this Petition is precluded by the doctrines of collateral estoppel, res judicata and prior pending proceeding or *lis pendens*. A copy of the decision of the Court of Common Pleas in response to the Petition of Kephart for a stay of execution is attached hereto, made a part hereof and marked as Exhibit "A".

6. The averment is a conclusion of law to the extent that it seeks to interpret the decision of the Court of Common Pleas of Monroe County, which is attached hereto, made a part hereof and marked as Exhibit "B".

7. It is admitted that a Petition for Appeal *Nunc Pro Tunc* was filed by Kephart Trucking, which was granted by the Workers' Compensation Appeal Board (WCAB) and is presently on appeal to the Commonwealth Court of Pennsylvania.

8. It is admitted that a Petition for Appeal *Nunc Pro Tunc* was filed by Kephart Trucking, which was granted by the Workers' Compensation Appeal Board (WCAB) and is presently on appeal to the Commonwealth Court of Pennsylvania. By way of further answer, the averment which attempts to interpret the relief sought and any relief granted is a conclusion of law and subject to the disposition of the appeal to the Commonwealth Court of Pennsylvania.

9. This averment is denied as Kephart Trucking, through its counsel, entered into a Settlement Agreement with Marcin and paid \$75,000.00 on the basis of that settlement.

10. It is admitted that Seventy-Eight Thousand One Hundred Thirty-Seven (\$78,137.00), plus interest and costs remains outstanding and due to Walter Marcin pursuant to that judgment.

11. The proceedings in the Court of Common Pleas is admitted; however, the precise relief sought herein was specifically requested and denied by the Court of Common Pleas of Monroe County and was not disclosed in the attendant Petition. The relief sought in the attendant Petition is precluded by the doctrines of collateral estoppel, *res judicata* and prior pending proceeding or *lis pendens*.

12. It is admitted that the posted security, if it continues to earn a reasonable amount of interest, is a valid amount of security at this time subject to the assessment of further damages.

13. This averment is a conclusion of law to which no response is required. The decision of the Court of Common Pleas of Monroe County is presently before the Superior Court and the decision of the WCAB is not final, as it is on appeal to the Commonwealth Court of Pennsylvania. It is further averred that this Petition and any relief sought in this Petition is precluded by the doctrines of collateral estoppel, *res judicata* and prior pending proceeding or *lis pendens* and is filed and maintained in bad faith with no good faith basis and has intentionally refused to disclose the prior decision of the Court of Common Pleas of Monroe County.

WHEREFORE, the Plaintiff/Respondent, Walter Marcin prays that the Petition be denied and that the Respondent be awarded reasonable counsel fees and costs for the defense of this

Petition which fails to set forth prior dispositions of the same issue in a court of equal jurisdiction.

Respectfully submitted,

BRESSET & SANTORA, LLC.

BY:

STEPHEN G. BRESSET, ESQUIRE
701 Main Street, Suite 400
Stroudsburg, PA 18360
Attorney for Plaintiff

JACKSON FIORENTINO, LLC.

BY:

JANET JACKSON, ESQUIRE
Attorney I.D. #42627
607 Monroe Street
Stroudsburg, PA 18360
Attorney for Plaintiff

COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

WALTER MARCIN,

: NO. 8129 Civil 2006
: NO. 10416 Civil 2006

Plaintiff

vs.

KEPHART TRUCKING CO. and
CURA GROUP III, INC.,

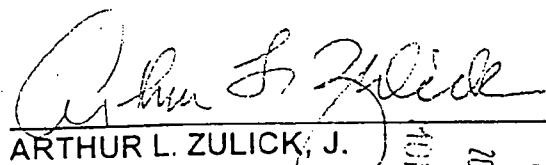
Defendants

ORDER

AND NOW, 17th day of January, 2008, upon consideration of the motion for confirmation of automatic stay of proceedings filed by Kephart Trucking Co. and following a conference between the Court and counsel, IT IS ORDERED as follows:

1. The request to stay the proceedings pursuant to P.R.A.P. 1731(a) is hereby denied as to any executions filed before the entry of security pursuant to P.R.A.P. 1735.
2. While the Monroe County Prothonotary is holding the \$100,000.00 deposit from Kephart Trucking Company, that deposit shall be held in a separate interest bearing bank account by the Prothonotary.

BY THE COURT:


ARTHUR L. ZULICK, J.

cc: Jane Roach Maughan, Esquire
Dwight L. Koerber, Jr., Esquire
Janet Jackson, Esquire
Stephen G. Bresset, Esquire
Cura Group, III, Inc.

PROTHONOTARY
MONROE COUNTY, PA
2008 JAN 17 P.M. 17
EXHIBIT "A"

COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

WALTER MARCIN,	:	NO. 8129 Civil 2006
	:	NO. 10416 Civil 2006
Plaintiff	:	
	:	
vs.	:	
	:	
KEPHART TRUCKING CO. and	:	PETITION TO OPEN OR STRIKE
CURA GROUP III, INC.,	:	JUDGMENT
Defendants	:	
	:	

OPINION

This matter is before the court on Defendant Kephart Trucking Co.'s (Kephart) petitions entitled "Petition to Reopen and Strike Judgment and other Equitable Relief" filed at No. 8129 Civil 2006 and 10416 Civil 2006 on January 16, 2007. The cases began when Plaintiff Walter Marcin (Marcin) filed a praecipe to enter judgment against Kephart on October 17, 2006 at No. 8129 Civil 2006 based upon a series of worker's compensation decisions entered against Kephart as Marcin's employer. The Prothonotary entered judgment against Kephart in favor of Marcin in the amount of \$136,577.41 as requested by Marcin's praecipe.

Marcin again entered a judgment against Kephart at No. 10416 Civil 2006 in the amount of \$153,137.07, on the same worker's compensation decisions. This judgment was for a higher amount because the total judgment amount was apparently incorrectly calculated in the judgment at No. 8129 Civil 2006.

Kephart filed a petition to "reopen" and to strike the judgments in each case on January 16, 2007. After rules were issued, Marcin filed an answer, new matter and counterclaim to each petition on February 7, 2007 and on the same day, filed separate preliminary objections to the petitions.

Marcin filed an amended writ of execution in No. 10416 on March 27, 2007. Kephart filed a motion for a stay and for a status conference on March 29, 2007, which was granted. Following the status conference, an order issued on April 19, 2007, consolidating the two cases, staying execution and setting a date for hearing on the petitions to open or strike the judgments for June 29, 2007.

Marcin's preliminary objections were denied by my order of June 7, 2007. At the hearing on June 29, 2007, the parties appeared and presented evidence on disputed issues of fact.

FINDINGS OF FACT

1. Walter Marcin filed a claim petition for worker's compensation with the Bureau of Workers' Compensation of the Commonwealth of Pennsylvania on or about October 19, 2001.

2. The petition named Kephart as Marcin's employer.

3. Kephart filed an answer on or about January 24, 2007. The answer contended in part that Kephart was not Marcin's employer. *Kephart's exhibit 8.*

4. Kephart filed a "Petition for Joinder of Additional Defendant" on or about April 23, 2002, seeking to join a company named UJEX as an "Additional Employer" and

State Worker's Insurance Fund as "Additional Carrier." *Kephart Exhibit 17*. At the time this petition was filed, TIG Indemnity Company was listed as Kephart's insurer in the matter. *Id.*

5. On or about July 26, 2002, Kephart's counsel filed a motion to dismiss Kephart and TIG/Managed Comp. from the proceedings, contending *inter alia* that UJEX was the proper employer of Marcin, not Kephart. *Kephart Exhibit 20*.

6. On June 4, 2003, the parties submitted a stipulation to the Honorable Thomas M. Kutz, Worker's Compensation Judge. The stipulation included the following paragraphs:

2. Original Defendant, Kephart Trucking, was Claimant's employer on January 16, 2001...

3. Original Defendant, TIG/Managed Comp. was the insurer for the Defendant, Kephart Trucking on January 16, 2001...

4. Additional Defendant, America's PEO, was a benefits outsourcing company that sold its services to Kephart Trucking. America's PEO was purchased by the Cura Group in November of 2001. The Cura Group's mailing address is 5050 W. Lemon Street, Tampa, FL 33609. The parties acknowledge America's PEO was and is Claimant's de facto employer.

...7. Because of confusion regarding the employer's insured status, a Notice of Compensation Payable was never issued....Claimant shall continue to receive (total disability benefits) from Additional Defendant, The Cura Group...

8. Additional Defendant, the Cura Group, shall also continue to be liable for the payment of medical expenses...

...15. By their signatures hereon, the parties hereby request that the Workers' Compensation Judge grant Claimant's Claim Petition as against America's PEO/The Cura Group in accordance with the terms of this stipulation. The parties further request that the Worker's Compensation Judge deny and

dismiss Claimant's Claim Petition as against Kephart Trucking and TIG/Managed Comp. *Kephart's Exhibit 22.*

7. This stipulation was approved by Judge Kutz, with the following language:

AND NOW, this 18th day of June, 2003, the Stipulation of Facts is APPROVED and made an ORDER of this Workers' Compensation Judge. The parties are directed to abide by all the terms and provisions of their Stipulation of Facts as they have addressed them within the Stipulation itself. *Kephart Exhibit 22.*

8. On or about July 22, 2003, Marcin filed a Penalty Petition, alleging that Marcin was not being paid required benefits. The petition named Kephart as the employer and UJEX as the "Insurer or Third Party Administrator." *Kephart Exhibit 23.*

9. On or about September 19, 2003, Marcin filed another penalty petition, again alleging that Marcin was not receiving required benefits. This petition named Kephart as the employer and the Cura Group as the insurer. *Kephart Exhibit 24.*

10. On September 24, 2003, Judge Kutz rendered a decision on these penalty petitions. His first finding of fact was the following:

1. On July 22, 2003, Claimant, Walter Marcin, filed a Penalty Petition against the employer, Kephart Trucking Co., and naming UJEX and the insurer/administrator. This petition was assigned to this Judge on August 4, 2003. On August 7, 2003, Claimant, through counsel, mailed to this Judge a revised Penalty Petition, listing Cura Group III, Inc. as the insurer/administrator. (See WCJ Exb. #1) Hereafter both the employer and the Cura Group III, Inc. are identified as the Defendant. *Kephart Exhibit 25.*

11. This finding contained a footnote, which provided as follows:

At the time this Petition was assigned to this Judge, the Bureau of Workers' Compensation identified TIG Indemnity Company as a party. However, during prior proceedings regarding the Claimant's claim, the parties agreed that TIG and its counsel, Marshall, Dennehey, Warner Coleman & Goggin should be excused from the proceedings and an order releasing these entities was circulated by this

Judge. By letter dated August 29, 2003, (WCJ Exb. #2) the law firm of Marshall, Dennehey, Warner, Coleman & Goggin again requested it and TIG be excused from these proceedings. During the September 4, 2004 hearing, Claimant and Defendant's Counsel stated their agreement to this request. Accordingly, TIG and its counsel shall be released from these proceedings by this Decision and Order. *Kephart Exhibit 25.*

12. Judge Kutz's order of September 24, 2003 provided as follows:

AND NOW, this 24th day of September, 2003, Claimant's Penalty Petition is GRANTED.

Defendant is directed to pay \$2,390.60 directly to Claimant. And further, Defendant is directed to make future payment of Claimant's benefits in a timely and consistent manner, the same to be paid in accordance with the provisions of the Pennsylvania Workers' Compensation Act and the terms and conditions of the Parties' Stipulation of Fact referred to in this decision.

And Finally, TIG and its counsel, Marshall, Dennehey, Warner, Coleman & Goggin, are released from these proceedings by this Decision and Order. *Id.*

13. On November 5, 2003, Judge Kutz entered another penalty order against Kephart and the Cura Group. This order's findings of fact again identified both Kephart and the Cura Group as "Defendant." *Kephart's Exhibit 26.* Both Kephart and its attorneys, Maureen Herron, Esq. and Marshall, Dennehey, Warner, Coleman & Goggin, were given notice of this penalty order. *Id.*

14. On February 28, 2005 a Compromise and Release Agreement was entered into between Marcin as Employee, Kephart as Employer and the Cura Group III, Inc., as Insurer or Third Party Administrator. The agreement provided that Marcin would receive \$175,000.00. payable in installments. The agreement was signed by Marcin, and his attorney, Janet Jackson, Esq. Stephen Zakos, Esq. signed the agreement on a

signature line marked "Employer/Insurer/Third Party Administrator." *Kephart Exhibit 30.*

The agreement provided in Paragraph 1:

1. "(T)his is an agreement in the case of the above-listed employee and the above listed employer, insurer or third party administrator in regards to an injury or occupational disease.

Kephart was the "above listed employer" on the agreement. *Id.*

15. Judge Kutz took testimony before accepting the compromise. See *Kephart Exhibit 33*. During a hearing held on February 28, 2005, Stephen W. Zakos, Esq. appeared as counsel for Defendant. Judge Kutz introduced the case as follows:

Judge Kutz: This is the case of Walter Marcin v. Kephart Trucking Company. It's before me on Claimant's penalty petition. However, I will note that this morning the parties have provided to me a compromise and release agreement. And it is my understanding the petition is being amended to a petition seeking approval of that agreement, is that correct? *Id. at NT3.*

During the same hearing, Attorney Zakos questioned Mr. Marcin in part as follows:

Q: Hi Mr. Marcin. My name is Stephen Zakos. I'm here on behalf of your employer. You were asked earlier by the judge about paragraph four and the injuries that you sustained. My understanding is that you had an accident where you had a low back injury on January 16, 2001. Is that correct? *NT 16, 17.*

...Q: And while you were employed by Kephart Trucking Company, did you have any other accidents or injuries that caused you to be hurt? *NT 17.*

...Q: And you understand, Sir, that in exchange for the Hundred and Seventy Five Thousand Dollars, that any injuries you may have had while working for Kephart are also being released in exchange for the Hundred and Seventy Five Thousand Dollars? *NT 18.*

Q: Sir, you understand that after today and after twenty-one days after today when the payments begin to be made, that if you should have to be out of work for some reason, you cannot get weekly wage loss benefits anymore from Kephart or Cura Group? *NT 19.*

Q: And, you also understand that should you require medical care, medications, physical therapy or any other type of medical treatment after today, that that will not be the responsibility of Kephart or Cura Group, but rather will be your own responsibility? *NT 19.*

16. Judge Kutz entered an order on March 2, 2005, granting the petition for compromise and release. The order was accompanied by findings of fact. The first finding by the Judge was that Kephart Trucking Co. was the employer. The findings again lumped Kephart and Cura collectively as the "Defendant." *Kephart Exhibit 34.* Counsel named for Kephart on the notice of this decision was Sharon McGrail-Szabo, Esq., whose name also appeared in the transcript identified above as an attorney for Kephart. See *Kephart Exhibit 33.* Kephart and TIG Indemnity Company also received notice of the decision. *Id.*

17. On or about June 23, 2005, Marcin's counsel filed a penalty petition, alleging that Marcin had received the first \$50,000.00 of the settlement, but not the second installment of \$50,000.00, which was overdue under the terms of the agreement. *Kephart Exhibit 35.*

18. On July 18, 2005, Judge Sebastianelli held a hearing on the petition and thereafter awarded a penalty against the "Defendant." *Kephart Exhibit 36.* Kephart received notice of this decision. Sharon McGrail-Szabo, Esq. was listed as counsel on the notice page of the decision.

19. In September, 2005, Attorney McGrail-Szabo terminated her representation of Cura due to Cura's refusal to pay the compensation and penalties due Marcin.

20. Additional penalty petitions were filed by Marcin because he did not receive his third promised installment of \$50,000.00 and his fourth installment of \$50,000.00. Apparently Marcin did receive the second installment after the penalty hearing in July, 2005. *Kephart Exhibit 40.*

21. The last order of the Workers' Compensation Bureau, dated on or about May 15, 2006, assessed unpaid installments, medical expenses and penalties of approximately \$60,000.00 against Kephart and Cura Group in the total amount of \$153,137.07. *Id.*

22. Marcin filed a praecipe for judgment in this court pursuant to Section 921 of the Workers' Compensation Act at No 8129 Civil 2006 on October 17, 2006 in the amount of \$136,577.41.

23. Kephart received notice of the entry of this judgment after it was filed and referred it to its counsel, Dwight L. Koerber, Jr., Esq. by October 30, 2006.

24. At the same time, the praecipe for judgment was filed on October 17, 2006, Marcin's counsel filed a praecipe for writ of execution.

25. On December 27, 2006, Marcin filed a praecipe for a second entry of judgment at No. 10416 Civil 2006 in the amount of \$153,137.07, which was the amount ordered in Judge Sebastianelli's penalty order of May 15, 2006.¹

¹ These two judgments seek payment of the same debt, that being the amount ordered by Judge Sebastianelli on May 15, 2006. See *Kephart's Exhibit 40*. In Marcin's brief, counsel states that the second judgment had "more complete calculations."

26. Attorney Koerber learned on December 26, 2006 from the Clinton County, Pennsylvania Sheriff's Department that a writ of execution had been filed and that an execution upon Kephart's assets was imminent.

27. On December 28, 2006, Attorney Koerber wrote a letter to Janet Jackson, Esq. agreeing on behalf of Kephart to a payment schedule over the next month to pay the balance of monies owed to Marcin, in exchange for which Marcin halted the execution on Kephart's assets.

28. Kephart paid \$75,000.00 of those payments to Marcin, but not the remainder.

29. On January 2, 2007, Attorney Koerber learned from counsel hired by Kephart that a provision which apparently dismissed Kephart from the workers' compensation litigation appeared in Paragraph 15 of the Stipulation approved by Judge Kutz on June 18, 2003.

30. Attorney Koerber filed the "Petition to Reopen and Strike" judgments in this matter January 16, 2007.

31. Marcin renewed the writ of execution on March 27, 2007. Kephart applied for a stay of execution which was granted on April 4, 2007, and which remains in effect.

32. After April 19, 2007, Kephart filed an Appeal *nunc pro tunc* which has been scheduled for consideration by the Workers' Compensation Appeal Board on July 25, 2007.

DISCUSSION

The statutory authority for entry of a judgment on an unpaid workers' compensation award is found in Section 428 of the Workers' Compensation Act, 77 P.S. § 921². Under this provision, when an employer has not paid benefits within 30 days of an award, a claimant is entitled to have the prothonotary issue a judgment for the entire amount owed. A judgment entered under this statute will only be lifted if the employer establishes one or more of the following:

1. that there was no order granting compensation;
2. that 30 days had not passed since the order fixing payment;
3. a supersedeas was granted, *Horner v.C.S. Myers & Sons, Inc.*, 721 A.2d 394 (Pa.Cmwlth.1998), or
4. that the amount owed has been paid. *Sober v. Pennsylvania Manufacturers Association*, 220 Pa.Super. 22, 276 A.2d 322 (1971).

² Section 921 provides that: Whenever the employer, who has accepted and complied with the provisions of section three hundred five, shall be in default in compensation payments for thirty days or more, the employee or dependents entitled to compensation thereunder may file a certified copy of the agreement and the order of the department approving the same or of the award or order with the prothonotary of the court of common pleas of any county, and the prothonotary shall enter the entire balance payable under the agreement, award or order to be payable to the employee or his dependents, as a judgment against the employer or insurer liable under such agreement or award. Where the compensation so payable is for a total and permanent disability, the judgment shall be in the amount of thirty thousand dollars less such amount as the employer shall have actually paid pursuant to such agreement or award. Such judgment shall be a lien against property of the employer or insurer liable under such agreement or award and execution may issue thereon forthwith.

A claim that there was an error before the workers' compensation judge is not a basis for lifting the judgment. *Kurtz v. Allied Corp.*, 127 Pa.Cmwlth. 384, 561 A.2d 1294 (1989), *Clayton v. The City of Philadelphia*, 910 A.2d 93, 97 (Pa. Cmwlth. 2006).

Marcin obtained an order granting him compensation in this case, which was not paid in full. He did not receive payments required by the March 2, 2005 order of the workers' compensation judge. No supersedeas was requested by Kephart or granted by the Workers' Compensation Appeal Board.

Kephart's argument for lifting the Marcin judgments is that Kephart was not Marcin's employer. The parties filed a stipulation on June 4, 2003 in which they agreed that Kephart was the employer of Marcin, and that America's PEO Group was the "defacto employer." *Kephart's Exhibit 22*. The stipulation provided that Judge Kutz would "grant Claimant's Claim Petition as against America's PEO/The Cura Group..." *Id.* The parties further agreed to request Judge Kutz to "deny and dismiss Claimant's Claim Petition as against Kephart Trucking and TIG/Managed Comp." *Id.* This stipulation was "approved and made an order" by Judge Kutz on June 18, 2003.

This was not the end of the matter for Kephart, however. The following month, on July 22, 2003, Marcin filed a penalty petition alleging that Marcin was not being paid required benefits. That petition named Kephart as the employer. A second penalty petition was filed on September 19, 2003. That petition made similar allegations, again naming Kephart as the employer. On September 24, 2003, Judge Kutz entered another

order finding Kephart to be the employer, and ordering Kephart and the Cura Group to pay Marcin the overdue benefits.

Kephart argues that it was dismissed from the litigation by Judge Kutz's order of June 18, 2003, and that it no longer had counsel in the litigation or believed that it was a party. However, a review of the September 24, 2003 order reveals that Kephart's counsel, Maureen Herron, Esq. of the firm of Marshall, Dennehey, Warner, Coleman and Goggin was given notice of the order. The order also specifically dismissed TIG "and its counsel from these proceedings." *Kephart's Exhibit 25*. The order did not state that Kephart was dismissed from the proceedings; in fact it found Kephart liable for a penalty of \$2,390.60. The order did not excuse Kephart's counsel from the proceedings either.

Attorney Herron, Kephart's counsel, received notice of the next penalty order of November 5, 2003, in which Judge Kutz again assessed against a penalty against Kephart in the amount of \$1,434.16. No action was taken at any time after the order of September 24, 2003 by Kephart to challenge its continuing involvement in the litigation. That Kephart was considered by the court to be the employer liable to Marcin was obvious from the orders of September 24, 2003, and November 5, 2003 which were mailed to Attorney Herron and Kephart, and the later orders of March 2, 2005, July 18, 2005 and May 15, 2006 mailed to Kephart.

Kephart has asked this court, years after the unappealed decisions in workers' compensation court, to reopen that litigation and to examine the meaning of a

paragraph in a stipulation that Kephart might have used at the time to challenge its continued involvement as a party, but did not.

Kephart's petition to open is a collateral attack on a judgment of the workers' compensation court which I am not permitted to entertain. As Judge Pellegrini stated in *Clayton, supra*, "an employer cannot challenge the propriety of the underlying award as a defense to the entering of judgment filed pursuant to Section 428 of the Act." *Id. at 98.*

Kephart cited the case of *Beck v. Pennsylvania R. Co.* 274 Pa. 161, 163, 117 A. 799 (Pa. 1922) in support of its argument. There the Pennsylvania Railroad Company was being operated by the United States Department of Railroads when Beck was injured. Beck's claim petition was against his employer, the Pennsylvania Railroad Company, but the commutation petition was filed by the federal agency. A federal statute in effect at the time provided that no execution could be made on a carrier to collect damages from an injury sustained by a worker while the carrier was under federal control. The workers' compensation court order provided :"*(t)he said defendant is directed to pay to claimant forthwith in a lump sum the present value of the remaining payments under the agreement together with all unpaid compensation to date.*" When the injured worker levied on the Pennsylvania Railroad Company to obtain payment, the lower court opened the judgment, due to the ambiguity of who was the "said defendant," the Pennsylvania Railroad Company or the United States Railroad Administration.

The Pennsylvania Supreme Court reversed the lower court's opening of the judgment, but stayed the execution, citing the federal statute and the ambiguity created

by the workers compensation decision, which did not clearly identify who was intended by the term "defendant." . The court stated:

This looseness of language, under the situation presented to us, can only be cleared up by the board, and, unless it is, justice in the case cannot be reached, as plaintiff has a judgment which it cannot enforce, and defendant a lien against its property that it cannot discharge save by payment, which it may not be equitable that it shall make.

Beck v. Pennsylvania R. Co. 274 Pa. 161, 164-165, 117 A. 799,800 (Pa.1922).

The *Beck* case actually supports Marcin's position in this litigation because the supreme court said it was error for the lower court to open the judgment in spite of the ambiguity. The present case also differs in that there was no ambiguity in the decisions of the workers' compensation judges. The decisions after June 18, 2003 clearly held Kephart liable for compensation and penalties, and gave Kephart, and at times his counsel, notice of those determinations. What is not clear is why Kephart was included in the litigation after Kephart was dismissed on June 18, 2003 and why the court allowed an attorney who did not represent Kephart to sign a Compromise and Release Agreement on Kephart's behalf which thereafter received court approval.

The time for Kephart to complain about its involvement in the litigation was in the years it was a party to the workers' compensation case. Kephart is now pursuing a request to file an appeal nunc pro tunc in that litigation. However, absent some modification of the workers' compensation decision itself, Mr. Marcin has the right to use this court's powers to collect the compensation he was awarded.

CONCLUSIONS OF LAW

1. Walter Marcin properly filed certified copies of his compensation award with this court in order to obtain a judgment to collect unpaid amounts pursuant to 77 P.S. §921.
2. Kephart Trucking Co. has failed to establish a proper basis to strike or open the judgments filed to enforce the workers' compensation decisions.

COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

WALTER MARCIN, : NO. 8129 Civil 2006
: NO. 10416 Civil 2006

Plaintiff

vs.

KEPHART TRUCKING CO. and : PETITION TO OPEN OR STRIKE
CURA GROUP III, INC., : JUDGMENT

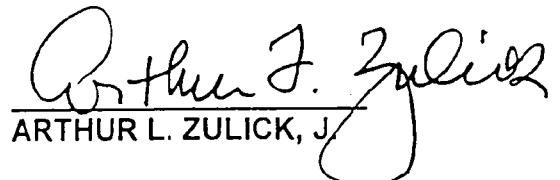
Defendants

ORDER

AND NOW, this 3rd day of July, 2007, following a hearing and consideration of the pleadings, briefs and arguments of the parties, IT IS ORDERED as follows:

1. Defendant Kephart Trucking Co.'s petitions to open or strike the judgments in these matters are denied.
2. The stay of execution previously imposed is vacated.

BY THE COURT:


ARTHUR L. ZULICK, J.

cc: Janet Jackson, Esquire
Stephen G. Bresset, Esquire
Jane Roach, Esquire
Dwight L. Koerber, Jr.
Cura Group, III, Inc.

ALZ2007-041

2007 JUL 3 P 3:27
ARTHUR L. ZULICK, J.

COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

WALTER MARCIN, : NO. 8129 Civil 2006
: NO. 10416 Civil 2006

Plaintiff :

vs. :

KEPHART TRUCKING CO. and : PETITION TO OPEN OR STRIKE
CURA GROUP III, INC., : JUDGMENT

Defendants :

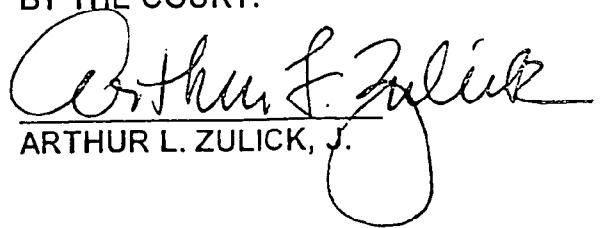
AMENDED ORDER

AND NOW, this 18th day of July, 2007, following a hearing on Kephart Trucking Co.'s motion for reconsideration and modification of the order of July 3, 2007, IT IS ORDERED that the July 3, 2007 order shall be amended as follows:

1. Defendant Kephart Trucking Co.'s petitions to open or strike the judgments in No. 8129 Civil 2006 are **denied**.
2. The stay of execution previously imposed is **vacated**.
3. The judgment filed on October 17, 2006 in the amount of \$136,577.41 in favor of Plaintiff Walter Marcin and against Defendants Kephart Trucking Co. and Cura Group III, Inc. at No. 8129 Civil 2006 is hereby **amended** to reflect a judgment in the amount of One Hundred Fifty Three Thousand One Hundred Thirty Seven (\$153,137.00) Dollars. The Prothonotary is directed to mark the judgment docket accordingly.

4. The judgment filed by Plaintiff Walter Marcin against the same two defendants at No. 10416 Civil 2006, on December 27, 2006 is hereby **stricken**. The Prothonotary is directed to mark the judgment docket accordingly.

BY THE COURT:


ARTHUR L. ZULICK, J.

cc: Janet Jackson, Esquire
Stephen G. Bresset, Esquire
Jane Roach, Esquire
Dwight L. Koerber, Jr.
Cura Group, III, Inc.

PROTHONOTARY
101-02-18 P 3 15
RECEIVED
CLERK'S OFFICE
COURT OF COMMON PLEAS
COLUMBUS, OHIO

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION

WALTER MARCIN, :

Plaintiff : :

vs. : DOCKET NO. 06-1911-CD

KEPHART TRUCKING CO. and CURA
GROUP III, INC., :

Defendants : :

CERTIFICATE OF SERVICE

I, LOIS E. REHM, Secretary to Stephen G. Bresset, Esquire, Attorney for Plaintiff, do hereby certify that on April 25, 2008, a true and correct copy of the foregoing Answer to Petition for Stay of Execution, was served by First Class Mail, Postage Prepaid, upon :

Dwight L. Koerber, Jr., Esquire
110 North Second Street
P O Box 1320
Clearfield, PA 16830

Jane Roach Maughan, Esq.
726 Ann Street
Stroudsburg, PA 18360


LOIS E. REHM

UA

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WALTER MARCIN

-vs-

No. 06-1911-CD

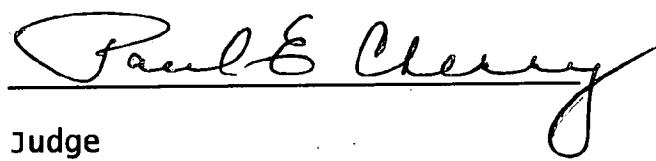
KEPHART TRUCKING CO., and
CURA GROUP, III, INC.

O R D E R

AND NOW, this 30th day of April, 2008, upon
agreement of the parties, the Writ of Execution shall be and
is hereby stayed pending decision from the Commonwealth
Court.

Counsel for Kephart Trucking Company shall have no
more than fifteen (15) days from today's date to file brief
with regard to the Petition to Dismiss Writ of Execution.
Counsel for Plaintiff shall have no more than ten (10) days
thereafter to file a responsive brief.

BY THE COURT,



Judge

FILED
01/31/08
MAY 01 2008
2CC Atty: Bresser
Hoerber

William A. Shaw
Prothonotary/Clerk of Courts
1CC Sheriff
(without memo)

(64)

FILED

MAY 01 2008

**William A. Shaw
Prothonotary/Clerk of Courts**

DATE: 5/1/08

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

**Plaintiff(s) Plaintiff(s) Attorney Other
 Defendant(s) Defendant(s) Attorney**

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Walter Marcin *
Plaintiff
*
Vs.
Kephart Trucking Co. * Docket No. 06-1911-CD
and
Cura Group III, Inc.
Defendants *

Type of Pleading:
PRAECIPE TO WITHDRAW
PETITION TO DISMISS
WRIT OF EXECUTION

Filed on Behalf of:
Defendant:
Kephart Trucking Co.

Counsel of Record for
This Party:

Dwight L. Koerber, Jr.
Pa. I.D. No. 16332

110 North Second Street
P. O. Box 1320
Clearfield, PA 16830
(814) 765-9611

FILED 4cc
05/30/08
MAY 13 2008
Atty Koerber
CR

William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

Walter Marcin

*

Plaintiff

*

Vs.

*

Kephart Trucking Co.

Docket No. 06-1911-CD

and

*

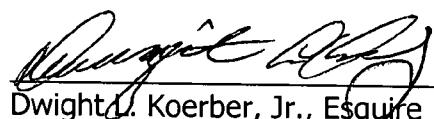
Cura Group III, Inc.
Defendants

*

PRAECIPE TO WITHDRAW PETITION TO DISMISS WRIT OF EXECUTION

ON BEHALF of Kephart Trucking Co., I hereby withdraw the Petition to Dismiss
the Writ of Execution which I filed on behalf of Kephart Trucking Co. on April 16, 2008.

Respectfully submitted,



Dwight L. Koerber, Jr., Esquire
Attorney for Defendant:
Kephart Trucking Co.

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

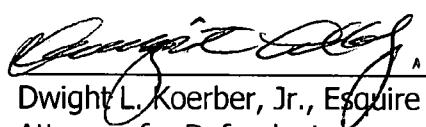
Walter Marcin *
Plaintiff
*
Vs.
*
Kephart Trucking Co. * Docket No. 06-1911-CD
and
Cura Group III, Inc.
Defendants *

CERTIFICATE OF SERVICE

This is to certify that on the 13 day of July 2008, the undersigned served a true and correct copy of the Praeclipe to Withdraw the Petition To Dismiss Writ of Execution in the above-captioned matter upon counsel for Plaintiff. Such documents were served via United States First Class Mail upon the following:

Janet Jackson, Esquire
JACKSONFIORENTINO, LLC
607 Monroe Street
P.O. Box 698
Stroudsburg, PA 18360

Stephen G. Bresset, Esquire
BRESSET & SANTORA, LLC
701 Main Street, Suite 400
Stroudsburg, PA 18360



Dwight L. Koerber, Jr., Esquire
Attorney for Defendant:
Kephart Trucking Co.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION

WALTER MARCIN, :

Plaintiff :

vs. : DOCKET NO. 06-1911-CD

KEPHART TRUCKING CO. and CURA
GROUP III, INC., :

Defendants :

RULE TO SHOW CAUSE

AND NOW, this 4th day of August, 2008, upon consideration of the attached Motion to Compel Compliance With Settlement Agreement, a Rule is issued upon the Defendant, Kephart Trucking Co., to show just cause, if any exists, why the Motion should not be granted.

RULE RETURNABLE for Answer and Hearing on the 15th day of September, 2008, at 10:15 o'clock A.m., Courtroom No. 1, Clearfield County Courthouse, 230 East Market Street, Clearfield, PA 16830.

BY THE COURT:


J.

FILED
04.00 AM 1^{cc}
AUG 04 2008 Amy Bressett
610
William A. Shaw
Prothonotary/Clerk of Courts

FILED

AUG 04 2008

**William A. Shaw
Prothonotary/Clerk of Courts**

DATE: 8/4/08

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION

WALTER MARCIN, :
Plaintiff :
vs. : DOCKET NO. 06-1911-CD
KEPHART TRUCKING CO. and CURA :
GROUP III, INC., :
Defendants :

FILED
M 11:32 AM
JUL 30 2008
B62 William A. Shaw
Prothonotary/Clerk of Courts
ICC Atty

MOTION TO COMPEL COMPLIANCE WITH SETTLEMENT AGREEMENT

COMES NOW, Walter Marcin, Plaintiff, by his attorneys, Bresset & Santora, LLC. and states his Motion as follows:

1. That the Movant is Walter Marcin, the Plaintiff in the above-captioned matter.
2. That the Respondent is Kephart Trucking Co., Inc. the Defendant in the above referenced proceeding.
3. That on the 26th day of December, 2006, the Respondent/Defendant contacted counsel for the Movant/Plaintiff by phone and left a voice mail message that set forth the intention of his client to tender an offer of settlement, which included the payment of \$75,000.00 on or before December 29, 2006, by certified check and the balance of the settlement to be paid no later than January 15, 2007. A copy of the letter which confirmed those terms is attached hereto, made a part hereof and marked as Exhibit "A".

4. That by letter dated December 27, 2007, Kephart Trucking Co. set forth their understanding of the terms of a settlement between the parties which were:
 - (a) The payment of a total of \$155,791.57 payable through a payment of \$75,000.00 by certified or bank check on or before December 29, 2006;
 - (b) The payment of \$65,000.00 on January 15, 2007, by bank or certified check; and
 - (c) The payment of \$15,791.57 on January 31 2007, by bank or certified check.
5. That pursuant to the terms set forth by Kephart Trucking Co., the settlement terms were required to be accepted at or before noon on December 28, 2006, to assure payment of the \$75,000.00 on December 29, 2006. A copy of the December 27, 2006, letter is attached hereto, made a part hereof and marked as Exhibit "B".
6. That the parties continued to negotiate and refine the terms of their settlement through a further exchange of letters on December 27, 2006.
7. Pursuant to a letter dated December 27, 2006, the agreement was further modified with an increased amount of the settlement to a total of \$163,291.57, with the final payment increased to \$23,297.57, as evidenced by the annexed letter dated December 27, 2008, which is marked as Exhibit "C".
8. That on December 28, 2006, Kephart confirmed the terms of the settlement in the amount of \$163,291.57 and the dates on which the payments were to be made and confirmed that the liability existed. A copy of that letter is attached hereto, made a part hereof and marked as Exhibit "D".

9. That a final confirmation of all settlement terms were set forth by Kephart in the correspondence of December 29, 2006. A copy of that letter is attached hereto, made a part hereof and marked as Exhibit "E".

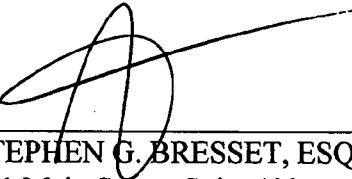
10. That the initial payment of \$75,000.00 was sent and received by Marcin pursuant to that correspondence and the terms of settlement set forth in the letter of December 29, 2006.

11. That contrary to the terms of the settlement agreement Kephart ceased all further payments and has failed to comply with the terms of the settlement agreement and has unilaterally breached the terms of that settlement.

WHEREFORE, the Movant prays that the Defendant be ordered to comply with the terms of the settlement agreement agreed to between the parties and that the Movant be awarded counsel fees and costs associated with this action.

Respectfully submitted,

BRESSET & SANTORA, LLC.

BY: 

STEPHEN G. BRESSET, ESQUIRE
701 Main Street, Suite 400
Stroudsburg, PA 18360
Attorney for Plaintiff

JACKSON FIORENTINO, LLC
ATTORNEYS AT LAW

JANET JACKSON
JAMES R. FIORENTINO

LEO P. JACKSON
DOMINICK A. LOCKWOOD (1988-2002)

***Please reply to Stroudsburg**

December 27, 2006

VIA TELEFAX: (814) 765-9503
and FIRST CLASS MAIL

Dwight Koerber, Esquire
110 N. Second Street
P.O. Box 1320
Clearfield, PA 16830

Re: Walter Marcin vs. Kephart Trucking

Dear Attorney Koerber:

I acknowledge receipt of your telephone message of December 26, 2006. My client has authorized me to speak to you regarding your proposal to pay \$75,000.00 by certified check on Friday, December 29, 2006 with the balance paid no later than January 15, 2007. I enclose herewith an amended judgement filed today. Please note that the judgement entered is for the sum set forth in Conclusion of Law Number 5 of Judge Sebastianelli's decision circulated on May 15, 2006, a copy of which is attached to the judgement.

Please note that unless your client acknowledges the efficacy of the judgement, makes the payment by certified check as proposed and agrees to pay the full award plus statutory interest no later than January 15, 2007, my client insists that we move forward to execute the judgement.

As per my message to your staff, I can be reached directly at 610-657-6413. I look forward to your call. S

Sincerely,



JANET JACKSON

JJ/tm
Enclosures

***STROUDSBURG:** 607 MONROE STREET, P.O. BOX 698, STROUDSBURG, PA 18360
TELEPHONE: 570-421-1066 FAX: 570-421-7776 TOLL FREE: 800-834-9260

BETHLEHEM: 60 WEST BROAD STREET, SUITE 201, BETHLEHEM, PA 18018
TELEPHONE: 610-954-9801 FAX: 610-317-2740 TOLL FREE: 866-954-9801

EXHIBIT "A"

LAW OFFICES
OF
DWIGHT L. KOERBER, JR.

Attorney at Law
110 North Second Street

Dwight L. Koerber, Jr.
Telephone (814) 765-9611

P. O. Box 1320
Clearfield, PA 16830

FAXED
Q:33

Facsimile (814) 765-9503
Email: dkoerber@atlanticbb.net

December 27, 2006

Janet Jackson, Esquire
JACKSON FIORENTINO, LLC
607 Monroe Street, P.O. Box 698
Stroudsburg, PA 18360

**VIA FAX: (570) 421-7776
AND U.S. FIRST CLASS MAIL**

RE: WALTER MARCIN v.
KEPHART TRUCKING CO.

Dear Ms. Jackson:

In response to your letter of December 27, 2006, and upon consideration of the Praeclipe for Entry of Judgment, Kephart Trucking Co. is prepared to pay the Amended Complaint in the amount of \$155,791.57. We would present payment directly to you, and not through the Sheriff of Clearfield County, with the understanding that you would satisfy the Writ of Execution and satisfy the judgment and amended judgment entered against Kephart Trucking Co. pursuant to 77 P.S. §921 and Pa.R.C.P. 237, through payment as follows:

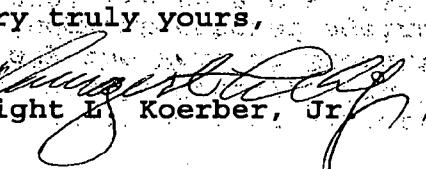
(1) On this Friday, December 29, 2006, I will send to you, with faxed copy, a certified check or a bank check in the amount of \$75,000.00.

(2) On January 15, 2007, I will send to you, with faxed copy, a certified or a bank check in the amount of \$65,000.00.

(3) On January 31, 2007, I will send to you, with a faxed copy, a certified or a bank check in the amount of \$15,791.57.

Please review this payment schedule with your client, and then be in touch with me as soon as possible. I will need to hear an affirmative response by noon tomorrow in order to have the \$75,000.00 payment made by Friday, December 29, 2006.

Very truly yours,


Dwight L. Koerber, Jr.

cc: Kephart Trucking Co.
James D. Strader, Esquire
John Pion, Esquire
DLK/jsr

Exhibit "B"

JACKSON FIORENTINO, LLC
ATTORNEYS AT LAW

JANET JACKSON
JAMES R. FIORENTINO

LEO P. JACKSON
DOMINICK A. LOCKWOOD (1988-2002)

***Please reply to Stroudsburg**

December 27, 2006

VIA TELEFAX: (814) 765-9503

Dwight Koerber, Esquire
110 N. Second Street
P.O. Box 1320
Clearfield, PA 16830

Re: Walter Marcin vs. Kephart Trucking

Dear Attorney Koerber:

I am in receipt of your telefax correspondence dated December 27, 2006. Please be advised my client is willing to resolve the matter on the terms you set forth with one amendment. As per our telephone discussion, my client is entitled to ten (10%) percent statutory interest to all sums due and owing pursuant to the terms of the Workers' Compensation Act and Judge Sebastianelli's Order dated May 15, 2006. My client will compromise his position if payments are made in accordance with your letter with the final payment to be in the sum of \$23,297.57 representing a \$7,5000.00 increase i.e. 10% of the \$75,000.00 that remains payable under the original Compromise and Release Agreement. If your client agrees to these terms and acknowledges the validity of the judgement, we can proceed as outlined in your letter.

I continue to be able to be reached at 610-657-6413.

Sincerely,



JANET JACKSON

JJ/tm

***STROUDSBURG:** 607 MONROE STREET, P.O. BOX 698, STROUDSBURG, PA 18360
TELEPHONE: 570-421-1066 FAX: 570-421-7776 TOLL FREE: 800-834-9260

BETHLEHEM: 60 WEST BROAD STREET, SUITE 201, BETHLEHEM, PA 18018
TELEPHONE: 610-954-9801 FAX: 610-317-2740 TOLL FREE: 866-954-9801

EXHIBIT "C"

**LAW OFFICES
OF
DWIGHT L. KOERBER, JR.**

Attorney at Law

*110 North Second Street
P. O. Box 1320
Clearfield, PA 16830*

Facsimile (814) 765-9503

*Dwight L. Koerber, Jr.
Telephone (814) 765-9611*

Email: dkoerber@atlanticbb.net

December 28, 2006

Janet Jackson, Esquire
JACKSONFIORENTINO, LLC
607 Monroe Street
P.O. Box 698
Stroudsburg, PA 18360

Via Fax: 570-421-7776
& U.S. First Class Mail

Re: Walter Marcin v. Kephart Trucking Co.

Dear Ms. Jackson:

Kephart Trucking Co. hereby accepts the payment terms in your fax letter of December 27, 2006. We will include the additional payment of \$7,500.00, in the payment schedule. Your letter does not specifically state when it would be paid, but I am assuming it would be in the payment for January 31, 2007, as that is the date when the residual payments would be made.

Accordingly, I am confirming that the three following installments will be paid:

- (1) On this Friday, December 29, 2006, I will send to you, with faxed copy, a certified check or a bank check in the amount of \$75,000.00.
- (2) On January 15, 2007, I will send to you, with faxed copy, a certified or a bank check in the amount of \$65,000.00.
- (3) On January 31, 2007, I will send to you, with a faxed copy, a certified or a bank check in the amount of \$23,291.57 (rather than the \$15,791.57 specified in my letter of December 27, 2006).

Concerning your request that Kephart Trucking Co. acknowledge the validity of the judgment, on behalf of Kephart Trucking Co. I acknowledge that you have followed appropriate procedures to have it entered with the Court of Common Pleas of Monroe County and that you have properly amended the judgment. Kephart Trucking Co. reserves all rights to pursue third parties for the manner in which the judgment was entered against it, but acknowledges that the proceedings in the workers' compensation case are final and binding against it.

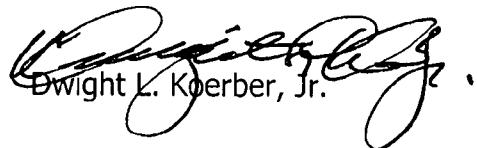
EXHIBIT "D"

Janet Jackson, Esquire
JACKSONFIORENTINO, LLC
December 28, 2006
Page 2

Finally, please be advised that I have spoken with the Sheriff of Clearfield County and have told him that we are in the midst of final settlement negotiations. He has asked that you fax to him a letter, Attention Cindy, at 814-765-5915 confirming that a settlement is under way with a statement that he should not proceed any further with the levy.

Because we were able to avoid having a levy actually served, there are fees that have been added to the judgment that I believe will be refunded. To the extent that such fees are refunded, we would ask that they be reimbursed to Kephart Trucking Co.

Very truly yours,



Dwight L. Koerber, Jr.

DLK/sah

cc: Mr. Timothy L. Kephart
James D. Strader, Esquire
John T. Pion, Esquire

Janet - Please fax the CF
Co. Sheriff today containing
there is no need to continue
with wait of execution & to return it
to you. 

LAW OFFICES
OF
DWIGHT L. KOERBER, JR.

Attorney at Law

110 North Second Street

P. O. Box 1320

Clearfield, PA 16830

Facsimile (814) 765-9503

Email: dkoerber@atlanticbb.net

Dwight L. Koerber, Jr.
Telephone (814) 765-9611

December 29, 2006

Janet Jackson, Esquire
JACKSONFIORENTINO, LLC
607 Monroe Street
P.O. Box 698
Stroudsburg, PA 18360

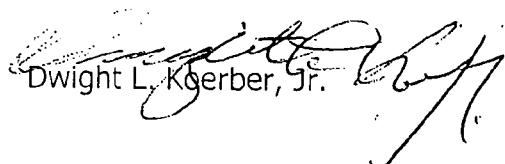
Via Fax: 570-421-7776
Via Fax: 610-866-3095
& U.S. First Class Mail

Re: Walter Marcin v. Kephart Trucking Co.

Dear Ms. Jackson:

Pursuant to the final terms which are set forth in my correspondence of December 28, 2006, which you and I confirmed through our phone conversations, I am enclosing herewith a certified check in the amount of \$75,000.00 made payable to Janet Jackson, Esquire, as attorney for Walter Marcin. We will follow through with the two additional payments, \$65,000.00 on January 15, 2007 and \$23,291.57 on January 31, 2007. Please advise how the payee should be shown for those checks.

Very truly yours,



Dwight L. Koerber, Jr.

DLK/sah

Enclosure: Check (\$75,000.00)
cc: Mr. Timothy L. Kephart
James D. Strader, Esquire
John T. Pion, Esquire

EXHIBIT "E"

Recd 1/3/07

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION

WALTER MARCIN, :

Plaintiff :

vs. : DOCKET NO. 06-1911-CD

KEPHART TRUCKING CO. and CURA
GROUP III, INC., :

Defendants :

CERTIFICATE OF SERVICE

I, LOIS E. REHM, Secretary to Stephen G. Bresset, Esquire, Attorney for Plaintiff, do hereby certify that on July 28, 2008, a true and correct copy of the foregoing Motion to Compel Compliance with Settlement Agreement, was served by First Class Mail, Postage Prepaid, upon :

Dwight L. Koerber, Jr., Esquire
110 North Second Street
P O Box 1320
Clearfield, PA 16830
Attorney for Defendant, Kephart Trucking Co.


LOIS E. REHM

COURT OF COMMON PLEAS OF MONROE COUNTY
CIVIL DIVISION

Page 1 of 6
CLEANED & FILED

2006-1911-C0

Plaintiff(s)
MARCIAN WALTER

Case No: 2006-08129

(vs)

Defendant(s)
KEPHART TRUCKING COMPANY
CURA GROUP III INC

WRIT OF EXECUTION
NOTICE

This paper is a WRIT OF EXECUTION. It has been issued because there is a judgment against you. It may cause your property to be held or taken to pay the judgment. You may have legal rights to prevent your property from being taken. A lawyer can advise you more specifically of these rights. If you wish to exercise your rights, you must act promptly.

(1) You are directed to

The law provides that certain property cannot be taken. Such property is said to be exempt. There is a debtor's exemption of \$300. There are other exemptions which may be applicable to you. Attached is a summary of some of the major exemptions. You may have other exemptions or other rights.

(2) You are directed to

If you have an exemption, you should do the following promptly:

- (1) Fill out the attached claim form and demand for a prompt hearing.
- (2) Deliver the form or mail it to the Sheriff's Office at the address noted.

You should come to the court ready to explain your exemption. If you do not come to court and prove your exemption, you may lose some of your property.

FILED

NOV 16 2006

W/3-001
William A. Shaw
Prothonotary/Clerk of Courts

ISSUED TO

SHAW
CLERK

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

MONROE COUNTY BAR ASSOCIATION
LAWYER REFERRAL SERVICE
PHONE: (570) 424-7288
913 MAIN STREET
STROUDSBURG, PA 18360

RECEIVED

OCT 24 2006

COURT OF COMMON PLEAS OF MONROE COUNTY
CIVIL DIVISION

Page 2 of 6

MARCIW WALTER (vs) KEPHART TRUCKING COMPANY
Case No: 2006-08129

WRIT OF EXECUTION
(Money Judgments)
(Rule 3252)

Commonwealth of Pennsylvania
County of MONROE

To the Sheriff of CLEARFIELD COUNTY:

To satisfy the judgment, interest, attorney's commission and costs
against: KEPHART TRUCKING COMPANY

- (1) You are directed to levy upon the property of the defendant(s)
and to sell his, her, or their, interest therein:
- (2) You are also directed to attach the property of the
defendant(s) not levied upon in the possession of
as Garnishee(s).

(Specifically describe Property)

IF THE PROPERTY OF THE DEFENDANT NOT LEVIED UPON AND NOT
SUBJECT TO ATTACHMENT IS FOUND IN THE POSSESSION OF ANYONE
OTHER THAN THE NAMED GARNISHEE(s), YOU ARE DIRECTED TO
NOTIFY HIM THAT HE HAS BEEN ADDED AS A GARNISHEE AND IS
ENJOINED AS ABOVE STATED.

COURT OF COMMON PLEAS OF MONROE COUNTY
CIVIL DIVISION

Page 3 of 6

MARCIW WALTER (vs) KEPHART TRUCKING COMPANY
Case No: 2006-08129

and to notify the Garnishee(s) that

- (a) An attachment has been issued.
- (b) The garnishee(s) is enjoined from paying any debt to or the account of the defendant(s) and from delivering any property of the defendant(s) or otherwise disposing thereof.
- (c) If property of the defendant(s) not levied upon and subject to attachment is found in possession of anyone other than the named garnishee(s), you are directed to notify him that he has been added as a garnishee and is enjoined as above stated.

JUDGMENT AMOUNT.....	\$136,577.41
INTEREST.....	N/A.
CLERK'S FEE.....	\$54.50
SHERIFF.....	\$100.00
ATTORNEY'S FEES.....	\$2,500.00
PD JUDGMENT.....	\$24.50
PD SAT.....	\$5.00
PD WRIT.....	\$15.00

George J. Warden
Prothonotary

By Paul K. Hallack, Deputy

10/17/2006
Date Sealed

Attorney for Plaintiff:

JACKSON LEO P
607 MONROE STREET

STROUDSBURG, PA 18360

COURT OF COMMON PLEAS OF MONROE COUNTY
CIVIL DIVISION

Page 4 of 6

MARCIAN WALTER (vs) KEPHART TRUCKING COMPANY
Case No: 2006-08129

CLAIM FOR EXEMPTION

To the Sheriff:

I, the above-named defendant, claim exemption of property from levy or attachment:

(1) From my personal property in my possession which has been levied upon,

(a) I desire that my \$300 statutory exemption to

(i) _____ set aside in kind (specify property to be set aside in kind); _____

(ii) _____ paid in cash following the sale of the property levied upon; or

(b) I claim the following exemption (specify property and basis for exemption): _____

(2) From my property which is in the possession of a third party, I claim the following exemptions:

(a) My \$300 statutory exemption: _____ in cash
_____ in kind (specify property): _____

(b) Social Security benefits on deposit in the amount of:

(c) Other (specify amount and basis of exemption):

MAJOR EXEMPTIONS UNDER PENNSYLVANIA AND FEDERAL LAW

1. \$300 statutory exemption
2. Bibles, school books, sewing machines, uniforms and equipment
3. Most wages and unemployment compensation
4. Social Security benefits
5. Certain retirement funds and accounts
6. Certain veteran and armed forces benefits
7. Certain insurance proceeds
8. Such other exemptions as may be provided by law

COURT OF COMMON PLEAS OF MONROE COUNTY
CIVIL DIVISION

Page 5 of 6

MARCIAN WALTER (vs) KEPHART TRUCKING COMPANY
Case No: 2006-08129

I request a prompt court hearing to determine the exemption.
Notice of the hearing should be given to me at:

I verify that the statements made in this Claim for Exemption are true and correct. I understand that false statements herein are made subject to the penalties of 18 PA C.S. 4909 relating to unsworn falsification to authorities.

Date

(Defendant)

THIS CLAIM TO BE FILED WITH THE OFFICE
OF THE SHERIFF OF MONROE COUNTY

MONROE COUNTY SHERIFFS OFFICE

MONROE COUNTY COURTHOUSE
7TH AND MONROE STREETS
STROUDSBURG, PA 18360

COURT OF COMMON PLEAS OF MONROE COUNTY
CIVIL DIVISION

Page 6 of 6

MARCIWALTER (vs) KEPHART TRUCKING COMPANY
Case No: 2006-08129

KEPHART TRUCKING COMPANY

P O BOX 386

BIGLER, PA 16825

COURT OF COMMON PLEAS OF MONROE COUNTY
CIVIL DIVISION

Page 6 of 6

MARCI WALTER (vs) KEPHART TRUCKING COMPANY
Case No: 2006-08129

KEPHART TRUCKING COMPANY

P O BOX 386

BIGLER, PA 16825

14

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

Walter Marcin *
Plaintiff
*
Vs.
*
Kephart Trucking Co. Docket No. 06-1911-CD
and
Cura Group III, Inc.
Defendants *

Type of Pleading:
PRELIMINARY OBJECTIONS ON
BEHALF OF DEFENDANT
KEPHART TRUCKING CO.

Filed on Behalf of:
Defendant:
Kephart Trucking Co.

Counsel of Record for
This Party:

Dwight L. Koerber, Jr.
Pa. I.D. No. 16332

110 North Second Street
P. O. Box 1320
Clearfield, PA 16830
(814) 765-9611

FILED 4CC ATT
9/12/30 cm
AUG 11 2008

William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

Walter Marcin *
Plaintiff *

Vs. *

Kephart Trucking Co. * Docket No. 06-1911-CD
and *
Cura Group III, Inc. *
Defendants *

**PRELIMINARY OBJECTIONS ON BEHALF OF DEFENDANT
KEPHART TRUCKING CO.**

COMES NOW, Defendant Kephart Trucking Co., by and through its attorney, Dwight L. Koerber, Jr., Esquire, and files the within Preliminary Objections to the Motion to Compel Compliance with Settlement Agreement filed on July 30, 2008, on behalf of Plaintiff Walter Marcin.

I. LACK OF JURISDICTION

1. Pa. R.C.P. 1028(a)(1) provides that Preliminary Objections may be filed for lack of jurisdiction over the subject matter of the action.
2. This Honorable Court does not have jurisdiction over the Motion to Compel Compliance with Settlement Agreement, inasmuch as there is currently no proceeding pending before this Court involving a cause of action or an alleged cause of

action. To the contrary, all that is pending before this Honorable Court is a Writ of Execution transferred from Monroe County in Case Number 2006-08129.

3. Attached hereto as Exhibit A is a true and correct copy of the docket entries in this matter, confirming that there is no proceeding within which to file a Motion to Compel Compliance with Settlement Agreement, but instead solely a Writ of Execution proceeding.

4. With no proceeding or action pending, there is no jurisdiction with the Court of Common Pleas of Clearfield County to adjudicate the Motion filed by Plaintiff.

WHEREFORE, Defendant Kephart Trucking Co. prays that its Preliminary Objections be sustained upon a finding that this Honorable Court has no jurisdiction to rule upon the Motion to Compel Compliance with Settlement Agreement that the Plaintiff has filed.

II.
FAILURE TO CONFORM WITH RULE OF COURT

5. Pa. R.C.P. 1028(a)(2) provides that Preliminary Objections may be filed for the failure of a pleading to conform to a rule of law or rule of Court.

6. The Motion to Compel filed herein is in nonconformity with Pa. R.C.P. 1024, pertaining to verifications, as subsection (a) requires that every pleading which contains an averment of fact not appearing of record in the action or containing a denial of fact shall be verified.

7. The Motion filed herein has no verification. Moreover, the alleged averment of fact that the Motion is based upon does not appear of record in the action, inasmuch as there is no cause of action that has been alleged in this case when it was opened on November 16, 2006, as only a Writ of Execution is involved.

8. By failing to file a Motion that is supported by a verification and by failing to present allegations that pertain to an alleged cause of action, the Motion to Compel as filed herein violates Pa. R.C.P. 1028(a)(2) and Pa. R.C.P. 1024(a).

WHEREFORE, Defendant Kephart Trucking Co. prays that its Preliminary Objections be sustained and that the Motion to Compel be dismissed.

III. PENDENCY OF PRIOR ACTION

9. Pa. R.C.P. 1028 provides that Preliminary Objections may be filed based upon pendency of a prior action.

10. In the instant case, the identical allegations that Plaintiff has filed in its Motion to Compel were already filed with the Court of Common Pleas of Monroe County in docket number 2006-08129.

11. Attached hereto as Exhibit B is a true and correct copy of the Order of Judge Zulick of the Court of Common Pleas of Monroe County, as entered on July 3, 2007, with finding of fact number 27 in that Order, set forth at page 9, specifically addressing the identical issues which the Plaintiff is now seeking to present through its Motion to Compel.

12. The proceeding before Judge Zulick in Monroe County has been appealed to the Superior Court and by Order filed by the Superior Court on May 29, 2008 remanded to the Court of Common Pleas of Monroe County. Thereafter, an Order by Judge Zulick has been entered on August 1, 2008, directing further proceedings be conducted by the Workers' Compensation Appeal Board in the underlying proceeding.

13. So that this Court is aware of the additional Orders besides the July 3, 2007 Order of Judge Zulick, we are attaching hereto as Exhibit C a copy of the remand Order from the Superior Court dated May 29, 2008 and as Exhibit D a copy of Judge Zulick's August 1, 2008 Order, requesting further clarification and adjudication by the Workers' Compensation Appeal Board.

14. In view of the fact that the identical issues now raised were presented to Judge Zulick and in view of the fact that this proceeding is now pending, Pa. R.C.P. 1028(a)(6) provides for the granting of Preliminary Objections because of the pendency of the prior action in Monroe County.

WHEREFORE, Defendant Kephart Trucking Co. prays that its Preliminary Objections based upon pendency of a prior action be sustained and that the Motion to Compel filed by the Plaintiff be dismissed.

Respectfully submitted,

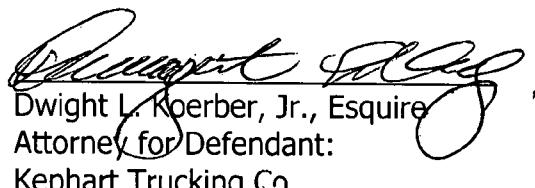

Dwight L. Koerber, Jr., Esquire
Attorney for Defendant:
Kephart Trucking Co.

EXHIBIT A

Attached hereto as Exhibit A is a true and correct copy of the docket entries.

Date: 7/30/2008

Time: 01:06 PM

Page 1 of 1

Clearfield County Court of Common Pleas

ROA Report

Case: 2006-01911-CD

Current Judge: Paul E. Cherry

Walter Marcinvs. Kephart Trucking Company, Cura Group III, Inc.

User: BHUDSON

Civil Other-COUNT

Date		Judge
11/16/2006	New Case Filed. Filing: Record Out of County Writ of Execution, from Monroe County case number 2006-08129. Paid by: Jacksonfiorentino LLC Receipt number: 1916484 Dated: 11/16/2006 Amount: \$20.00 (Check) Issued to Sheriff.	No Judge No Judge
8/6/2007	Copy of Amended Order from Monroe County: Judgment amount is Amended to \$153,137.00.	No Judge
1/17/2008	Petition For Stay of Execution on behalf of Kephart Trucking Co., filed by s/ Dwight L. Koerber, Jr., Esquire. 3CC Atty. Koerber Order, this 17th day of Jan., 2008, a stay is granted. A Rule Returnable is issued upon Plaintiff. Hearing thereon on the 30th day of April, 2008 at 9:00 a.m. Courtroom 2. by The court, /s/ Paul E. Cherry, Judge. 4CC Atty. Koerber (will serve)	No Judge Paul E. Cherry
1/28/2008	Certificate of Service, on the 17th day of Jan., 2008, served a copy of the Petition for Stay of Execution and the Order upon Janet Jackson, Esquire by First Class Mail. Filed by s/ Dwight L. Koerber, Jr., Esquire. 3CC Atty.	Paul E. Cherry
4/16/2008	Petition to Dismiss Writ of Execution, filed by s/ Dwight L. Koerber, Jr., Esquire. 3CC Atty. Koerber	Paul E. Cherry
4/18/2008	Order, this 18th day of April, 2008, upon consideration of the Petition to Dismiss Writ of Execution, it is Ordered that Respondent Walter Marcin is directed to show cause why the Writ of Execution filed herein should not be dismissed. Rule Returnable and hearing thereon is scheduled for the 30th day of April, 2008, at 9:00 a.m. By The Court, /s/ Paul E. Cherry, Judge. 3CC Atty. Koerber	Paul E. Cherry
4/22/2008	Certificate of Service, filed. That on the 18th day of April 2008, served a true and correct copy of the April 18, 2008 Scheduling Order in the above-captioned matter via first class mail to Janet Jackson Esq., filed by s/ Dwight L. Koerber Jr. Esq. 3 CC Atty Koerber.	Paul E. Cherry
4/30/2008	Answer to Petition to Dismiss Writ of Execution, filed by Atty. for Plaintiff. 5 Paul E. Cherry Answer to Petition for Stay of Execution, filed by Atty. for Plaintiff 5 Cert. to Paul E. Cherry Atty.	Paul E. Cherry
5/1/2008	Order, this 30th day of April, 2008, upon agreement of the parties, the Writ of Execution is stayed pending decision from the Commonwealth Court. Counsel for Kephart Trucking Company shall have no more than 15 days from today's date to file brief and counsel for Plaintiff shall have no more than 10 days thereafter to file a responsive brief. By The Court, /s/ Paul E. Cherry, Judge. 2CC Atty: Bresset, Koerber, 1CC Sheriff (without memo)	Paul E. Cherry
5/13/2008	Praecipe to Withdraw Petition to Dismiss Writ of Execution, filed by s/ Dwight L. Koerber, Jr., Esquire. 4CC Atty. Koerber	Paul E. Cherry
7/30/2008	Motion to Compel Compliance with Settlement Agreement, filed by s/Stephen Bresset, Esq. One CC Attorney Bresset	Paul E. Cherry

EXHIBIT B

Attached hereto as Exhibit B is a true and correct copy the July 3, 2007 Order of Judge Zulick of the Court of Common Pleas of Monroe County.

**COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA**

WALTER MARCIN,	:	NO. 8129 Civil 2006
Plaintiff		NO. 10416 Civil 2006
 vs.		
KEPHART TRUCKING CO. and CURA GROUP III, INC.,	:	PETITION TO OPEN OR STRIKE JUDGMENT
Defendants		

OPINION

This matter is before the court on Defendant Kephart Trucking Co.'s (Kephart) petitions entitled "Petition to Reopen and Strike Judgment and other Equitable Relief" filed at No. 8129 Civil 2006 and 10416 Civil 2006 on January 16, 2007. The cases began when Plaintiff Walter Marcin (Marcin) filed a praecipe to enter judgment against Kephart on October 17, 2006 at No. 8129 Civil 2006 based upon a series of worker's compensation decisions entered against Kephart as Marcin's employer. The Prothonotary entered judgment against Kephart in favor of Marcin in the amount of \$136,577.41 as requested by Marcin's praecipe.

Marcin again entered a judgment against Kephart at No. 10416 Civil 2006 in the amount of \$153,137.07, on the same worker's compensation decisions. This judgment was for a higher amount because the total judgment amount was apparently incorrectly calculated in the judgment at No. 8129 Civil 2006.

Kephart filed a petition to "reopen" and to strike the judgments in each case on January 16, 2007. After rules were issued, Marcin filed an answer, new matter and counterclaim to each petition on February 7, 2007 and on the same day, filed separate preliminary objections to the petitions.

Marcin filed an amended writ of execution in No. 10416 on March 27, 2007. Kephart filed a motion for a stay and for a status conference on March 29, 2007, which was granted. Following the status conference, an order issued on April 19, 2007, consolidating the two cases, staying execution and setting a date for hearing on the petitions to open or strike the judgments for June 29, 2007.

Marcin's preliminary objections were denied by my order of June 7, 2007. At the hearing on June 29, 2007, the parties appeared and presented evidence on disputed issues of fact.

FINDINGS OF FACT

1. Walter Marcin filed a claim petition for worker's compensation with the Bureau of Workers' Compensation of the Commonwealth of Pennsylvania on or about October 19, 2001.
2. The petition named Kephart as Marcin's employer.
3. Kephart filed an answer on or about January 24, 2007. The answer contended in part that Kephart was not Marcin's employer. *Kephart's exhibit 8.*
4. Kephart filed a "Petition for Joinder of Additional Defendant" on or about April 23, 2002, seeking to join a company named UJEX as an "Additional Employer" and

State Worker's Insurance Fund as "Additional Carrier." *Kephart Exhibit 17*. At the time this petition was filed, TIG Indemnity Company was listed as Kephart's insurer in the matter. *Id.*

5. On or about July 26, 2002, Kephart's counsel filed a motion to dismiss Kephart and TIG/Managed Comp. from the proceedings, contending *inter alia* that UJEX was the proper employer of Marcin, not Kephart. *Kephart Exhibit 20*.

6. On June 4, 2003, the parties submitted a stipulation to the Honorable Thomas M. Kutz, Worker's Compensation Judge. The stipulation included the following paragraphs:

2. Original Defendant, Kephart Trucking, was Claimant's employer on January 16, 2001...

3. Original Defendant, TIG/Managed Comp. was the insurer for the Defendant, Kephart Trucking on January 16, 2001...

4. Additional Defendant, America's PEO, was a benefits outsourcing company that sold its services to Kephart Trucking. America's PEO was purchased by the Cura Group in November of 2001. The Cura Group's mailing address is 5050 W. Lemon Street, Tampa, FL 33609. The parties acknowledge America's PEO was and is Claimant's de facto employer.

...7. Because of confusion regarding the employer's insured status, a Notice of Compensation Payable was never issued....Claimant shall continue to receive (total disability benefits) from Additional Defendant, The Cura Group...

8. Additional Defendant, the Cura Group, shall also continue to be liable for the payment of medical expenses...

...15. By their signatures hereon, the parties hereby request that the Workers' Compensation Judge grant Claimant's Claim Petition as against America's PEO/The Cura Group in accordance with the terms of this stipulation. The parties further request that the Worker's Compensation Judge deny and

dismiss Claimant's Claim Petition as against Kephart Trucking and TIG/Managed Comp. *Kephart's Exhibit 22.*

7. This stipulation was approved by Judge Kutz, with the following language:

AND NOW, this 18th day of June, 2003, the Stipulation of Facts is APPROVED and made an ORDER of this Workers' Compensation Judge. The parties are directed to abide by all the terms and provisions of their Stipulation of Facts as they have addressed them within the Stipulation itself. *Kephart Exhibit 22.*

8. On or about July 22, 2003, Marcin filed a Penalty Petition, alleging that Marcin was not being paid required benefits. The petition named Kephart as the employer and UJEX as the "Insurer or Third Party Administrator." *Kephart Exhibit 23.*

9. On or about September 19, 2003, Marcin filed another penalty petition, again alleging that Marcin was not receiving required benefits. This petition named Kephart as the employer and the Cura Group as the insurer. *Kephart Exhibit 24.*

10. On September 24, 2003, Judge Kutz rendered a decision on these penalty petitions. His first finding of fact was the following:

1. On July 22, 2003, Claimant, Walter Marcin, filed a Penalty Petition against the employer, Kephart Trucking Co., and naming UJEX and the insurer/administrator. This petition was assigned to this Judge on August 4, 2003. On August 7, 2003, Claimant, through counsel, mailed to this Judge a revised Penalty Petition, listing Cura Group III, Inc. as the insurer/administrator. (See WCJ Exb. #1) Hereafter both the employer and the Cura Group III, Inc. are identified as the Defendant. *Kephart Exhibit 25.*

11. This finding contained a footnote, which provided as follows:

At the time this Petition was assigned to this Judge, the Bureau of Workers' Compensation identified TIG Indemnity Company as a party. However, during prior proceedings regarding the Claimant's claim, the parties agreed that TIG and its counsel, Marshall, Dennehey, Warner Coleman & Goggin should be excused from the proceedings and an order releasing these entities was circulated by this

Judge. By letter dated August 29, 2003, (WCJ Exb. #2) the law firm of Marshall, Dennehey, Warner, Coleman & Goggin again requested it and TIG be excused from these proceedings. During the September 4, 2004 hearing, Claimant and Defendant's Counsel stated their agreement to this request. Accordingly, TIG and its counsel shall be released from these proceedings by this Decision and Order. *Kephart Exhibit 25.*

12. Judge Kutz's order of September 24, 2003 provided as follows:

AND NOW, this 24th day of September, 2003, Claimant's Penalty Petition is GRANTED.

Defendant is directed to pay \$2,390.60 directly to Claimant. And further, Defendant is directed to make future payment of Claimant's benefits in a timely and consistent manner, the same to be paid in accordance with the provisions of the Pennsylvania Workers' Compensation Act and the terms and conditions of the Parties' Stipulation of Fact referred to in this decision.

And Finally, TIG and its counsel, Marshall, Dennehey, Warner, Coleman & Goggin, are released from these proceedings by this Decision and Order. *Id.*

13. On November 5, 2003, Judge Kutz entered another penalty order against Kephart and the Cura Group. This order's findings of fact again identified both Kephart and the Cura Group as "Defendant." *Kephart's Exhibit 26.* Both Kephart and its attorneys, Maureen Herron, Esq. and Marshall, Dennehey, Warner, Coleman & Goggin, were given notice of this penalty order. *Id.*

14. On February 28, 2005 a Compromise and Release Agreement was entered into between Marcin as Employee, Kephart as Employer and the Cura Group III, Inc., as Insurer or Third Party Administrator. The agreement provided that Marcin would receive \$175,000.00. payable in installments. The agreement was signed by Marcin, and his attorney, Janet Jackson, Esq. Stephen Zakos, Esq. signed the agreement on a

signature line marked "Employer Insurer/Third Party Administrator." *Kephart Exhibit 30.*

The agreement provided in Paragraph 1:

1. "(T)his is an agreement in the case of the above-listed employee and the above listed employer, insurer or third party administrator in regards to an injury or occupational disease.

Kephart was the "above listed employer" on the agreement. *Id.*

15. Judge Kutz took testimony before accepting the compromise. See *Kephart Exhibit 33*. During a hearing held on February 28, 2005, Stephen W. Zakos, Esq. appeared as counsel for Defendant. Judge Kutz introduced the case as follows:

Judge Kutz: This is the case of Walter Marcin v. Kephart Trucking Company. It's before me on Claimant's penalty petition. However, I will note that this morning the parties have provided to me a compromise and release agreement. And it is my understanding the petition is being amended to a petition seeking approval of that agreement, is that correct? *Id. at NT3.*

During the same hearing, Attorney Zakos questioned Mr. Marcin in part as follows:

Q: Hi Mr. Marcin. My name is Stephen Zakos. I'm here on behalf of your employer. You were asked earlier by the judge about paragraph four and the injuries that you sustained. My understanding is that you had an accident where you had a low back injury on January 16, 2001. Is that correct? *NT 16, 17.*

...Q: And while you were employed by Kephart Trucking Company, did you have any other accidents or injuries that caused you to be hurt? *NT 17.*

...Q: And you understand, Sir, that in exchange for the Hundred and Seventy Five Thousand Dollars, that any injuries you may have had while working for Kephart are also being released in exchange for the Hundred and Seventy Five Thousand Dollars? *NT18.*

Q: Sir, you understand that after today and after twenty-one days after today when the payments begin to be made, that if you should have to be out of work for some reason, you cannot get weekly wage loss benefits anymore from Kephart or Cura Group? *NT 19.*

Q: And, you also understand that should you require medical care, medications, physical therapy or any other type of medical treatment after today, that that will not be the responsibility of Kephart or Cura Group, but rather will be your own responsibility? *NT 19.*

16. Judge Kutz entered an order on March 2, 2005, granting the petition for compromise and release. The order was accompanied by findings of fact. The first finding by the Judge was that Kephart Trucking Co. was the employer. The findings again lumped Kephart and Cura collectively as the "Defendant." *Kephart Exhibit 34.* Counsel named for Kephart on the notice of this decision was Sharon McGrail-Szabo, Esq., whose name also appeared in the transcript identified above as an attorney for Kephart. See *Kephart Exhibit 33.* Kephart and TIG Indemnity Company also received notice of the decision. *Id.*

17. On or about June 23, 2005, Marcin's counsel filed a penalty petition, alleging that Marcin had received the first \$50,000.00 of the settlement, but not the second installment of \$50,000.00, which was overdue under the terms of the agreement. *Kephart Exhibit 35.*

18. On July 18, 2005, Judge Sebastianelli held a hearing on the petition and thereafter awarded a penalty against the "Defendant." *Kephart Exhibit 36.* Kephart received notice of this decision. Sharon McGrail-Szabo, Esq. was listed as counsel on the notice page of the decision.

19. In September, 2005, Attorney McGrail-Szabo terminated her representation of Cura due to Cura's refusal to pay the compensation and penalties due Marcin.

20. Additional penalty petitions were filed by Marcin because he did not receive his third promised installment of \$50,000.00 and his fourth installment of \$50,000.00. Apparently Marcin did receive the second installment after the penalty hearing in July, 2005. *Kephart Exhibit 40.*

21. The last order of the Workers' Compensation Bureau, dated on or about May 15, 2006, assessed unpaid installments, medical expenses and penalties of approximately \$60,000.00 against Kephart and Cura Group in the total amount of \$153,137.07. *Id.*

22. Marcin filed a praecipe for judgment in this court pursuant to Section 921 of the Workers' Compensation Act at No 8129 Civil 2006 on October 17, 2006 in the amount of \$136,577.41.

23. Kephart received notice of the entry of this judgment after it was filed and referred it to its counsel, Dwight L. Koerber, Jr., Esq. by October 30, 2006.

24. At the same time, the praecipe for judgment was filed on October 17, 2006, Marcin's counsel filed a praecipe for writ of execution.

25. On December 27, 2006, Marcin filed a praecipe for a second entry of judgment at No. 10416 Civil 2006 in the amount of \$153,137.07, which was the amount ordered in Judge Sebastianelli's penalty order of May 15, 2006.¹

¹ These two judgments seek payment of the same debt, that being the amount ordered by Judge Sebastianelli on May 15, 2006. See *Kephart's Exhibit 40*. In Marcin's brief, counsel states that the second judgment had "more complete calculations."

26. Attorney Koerber learned on December 26, 2006 from the Clinton County, Pennsylvania Sheriff's Department that a writ of execution had been filed and that an execution upon Kephart's assets was imminent.

27. On December 28, 2006, Attorney Koerber wrote a letter to Janet Jackson, Esq. agreeing on behalf of Kephart to a payment schedule over the next month to pay the balance of monies owed to Marcin, in exchange for which Marcin halted the execution on Kephart's assets.

28. Kephart paid \$75,000.00 of those payments to Marcin, but not the remainder.

29. On January 2, 2007, Attorney Koerber learned from counsel hired by Kephart that a provision which apparently dismissed Kephart from the workers' compensation litigation appeared in Paragraph 15 of the Stipulation approved by Judge Kutz on June 18, 2003.

30. Attorney Koerber filed the "Petition to Reopen and Strike" judgments in this matter January 16, 2007.

31. Marcin renewed the writ of execution on March 27, 2007. Kephart applied for a stay of execution which was granted on April 4, 2007, and which remains in effect.

32. After April 19, 2007, Kephart filed an Appeal *nunc pro tunc* which has been scheduled for consideration by the Workers' Compensation Appeal Board on July 25, 2007.

DISCUSSION

The statutory authority for entry of a judgment on an unpaid workers' compensation award is found in Section 428 of the Workers' Compensation Act, 77 P.S. § 921². Under this provision, when an employer has not paid benefits within 30 days of an award, a claimant is entitled to have the prothonotary issue a judgment for the entire amount owed. A judgment entered under this statute will only be lifted if the employer establishes one or more of the following:

1. that there was no order granting compensation;
2. that 30 days had not passed since the order fixing payment;
3. a supersedeas was granted, *Horner v. C.S. Myers & Sons, Inc.*, 721 A.2d 394 (Pa.Cmwlth.1998), or
4. that the amount owed has been paid. *Sober v. Pennsylvania Manufacturers Association*, 220 Pa.Super. 22, 276 A.2d 322 (1971).

² Section 921 provides that:

Whenever the employer, who has accepted and complied with the provisions of section three hundred five, shall be in default in compensation payments for thirty days or more, the employee or dependents entitled to compensation thereunder may file a certified copy of the agreement and the order of the department approving the same or of the award or order with the prothonotary of the court of common pleas of any county, and the prothonotary shall enter the entire balance payable under the agreement, award or order to be payable to the employee or his dependents, as a judgment against the employer or insurer liable under such agreement or award. Where the compensation so payable is for a total and permanent disability, the judgment shall be in the amount of thirty thousand dollars less such amount as the employer shall have actually paid pursuant to such agreement or award. Such judgment shall be a lien against property of the employer or insurer liable under such agreement or award and execution may issue thereon forthwith.

A claim that there was an error before the workers' compensation judge is not a basis for lifting the judgment. *Kurtz v. Allied Corp.*, 127 Pa.Cmwth. 384, 561 A.2d 1294 (1989), *Clayton v. The City of Philadelphia*, 910 A.2d 93, 97 (Pa. Cmwth. 2006).

Marcin obtained an order granting him compensation in this case, which was not paid in full. He did not receive payments required by the March 2, 2005 order of the workers' compensation judge. No supersedeas was requested by Kephart or granted by the Workers' Compensation Appeal Board.

Kephart's argument for lifting the Marcin judgments is that Kephart was not Marcin's employer. The parties filed a stipulation on June 4, 2003 in which they agreed that Kephart was the employer of Marcin, and that America's PEO Group was the "defacto employer." *Kephart's Exhibit 22*. The stipulation provided that Judge Kutz would "grant Claimant's Claim Petition as against America's PEO/The Cura Group..." *Id.* The parties further agreed to request Judge Kutz to "deny and dismiss Claimant's Claim Petition as against Kephart Trucking and TIG/Managed Comp." *Id.* This stipulation was "approved and made an order" by Judge Kutz on June 18, 2003.

This was not the end of the matter for Kephart, however. The following month, on July 22, 2003, Marcin filed a penalty petition alleging that Marcin was not being paid required benefits. That petition named Kephart as the employer. A second penalty petition was filed on September 19, 2003. That petition made similar allegations, again naming Kephart as the employer. On September 24, 2003, Judge Kutz entered another

order finding Kephart to be the employer, and ordering Kephart and the Cura Group to pay Marcin the overdue benefits.

Kephart argues that it was dismissed from the litigation by Judge Kutz's order of June 18, 2003, and that it no longer had counsel in the litigation or believed that it was a party. However, a review of the September 24, 2003 order reveals that Kephart's counsel, Maureen Herron, Esq. of the firm of Marshall, Dennehey, Warner, Coleman and Goggin was given notice of the order. The order also specifically dismissed TIG "and its counsel from these proceedings." *Kephart's Exhibit 25*. The order did not state that Kephart was dismissed from the proceedings; in fact it found Kephart liable for a penalty of \$2,390.60. The order did not excuse Kephart's counsel from the proceedings either.

Attorney Herron, Kephart's counsel, received notice of the next penalty order of November 5, 2003, in which Judge Kutz again assessed against a penalty against Kephart in the amount of \$1,434.16. No action was taken at any time after the order of September 24, 2003 by Kephart to challenge its continuing involvement in the litigation. That Kephart was considered by the court to be the employer liable to Marcin was obvious from the orders of September 24, 2003, and November 5, 2003 which were mailed to Attorney Herron and Kephart, and the later orders of March 2, 2005, July 18, 2005 and May 15, 2006 mailed to Kephart.

Kephart has asked this court, years after the unappealed decisions in workers' compensation court, to reopen that litigation and to examine the meaning of a

paragraph in a stipulation that Kephart might have used at the time to challenge its continued involvement as a party, but did not.

Kephart's petition to open is a collateral attack on a judgment of the workers' compensation court which I am not permitted to entertain. As Judge Pellegrini stated in *Clayton, supra*, "an employer cannot challenge the propriety of the underlying award as a defense to the entering of judgment filed pursuant to Section 428 of the Act." *Id. at 98.*

Kephart cited the case of *Beck v. Pennsylvania R. Co.* 274 Pa. 161, 163, 117 A. 799 (Pa. 1922) in support of its argument. There the Pennsylvania Railroad Company was being operated by the United States Department of Railroads when Beck was injured. Beck's claim petition was against his employer, the Pennsylvania Railroad Company, but the commutation petition was filed by the federal agency. A federal statute in effect at the time provided that no execution could be made on a carrier to collect damages from an injury sustained by a worker while the carrier was under federal control. The workers' compensation court order provided :"(t)he said defendant is directed to pay to claimant forthwith in a lump sum the present value of the remaining payments under the agreement together with all unpaid compensation to date." When the injured worker levied on the Pennsylvania Railroad Company to obtain payment, the lower court opened the judgment, due to the ambiguity of who was the "said defendant," the Pennsylvania Railroad Company or the United States Railroad Administration.

The Pennsylvania Supreme Court reversed the lower court's opening of the judgment, but stayed the execution, citing the federal statute and the ambiguity created

by the workers compensation decision, which did not clearly identify who was intended by the term "defendant." . The court stated:

This looseness of language, under the situation presented to us, can only be cleared up by the board, and, unless it is, justice in the case cannot be reached, as plaintiff has a judgment which it cannot enforce, and defendant a lien against its property that it cannot discharge save by payment, which it may not be equitable that it shall make.

Beck v. Pennsylvania R. Co. 274 Pa. 161, 164-165, 117 A. 799,800 (Pa.1922).

The *Beck* case actually supports Marcin's position in this litigation because the supreme court said it was error for the lower court to open the judgment in spite of the ambiguity. The present case also differs in that there was no ambiguity in the decisions of the workers' compensation judges. The decisions after June 18, 2003 clearly held Kephart liable for compensation and penalties, and gave Kephart, and at times his counsel, notice of those determinations. What is not clear is why Kephart was included in the litigation after Kephart was dismissed on June 18, 2003 and why the court allowed an attorney who did not represent Kephart to sign a Compromise and Release Agreement on Kephart's behalf which thereafter received court approval.

The time for Kephart to complain about its involvement in the litigation was in the years it was a party to the workers' compensation case. Kephart is now pursuing a request to file an appeal nunc pro tunc in that litigation. However, absent some modification of the workers' compensation decision itself, Mr. Marcin has the right to use this court's powers to collect the compensation he was awarded.

CONCLUSIONS OF LAW

1. Walter Marcin properly filed certified copies of his compensation award with this court in order to obtain a judgment to collect unpaid amounts pursuant to 77 P.S. §921.
2. Kephart Trucking Co. has failed to establish a proper basis to strike or open the judgments filed to enforce the workers' compensation decisions.

COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

WALTER MARCIN,

: NO. 8129 Civil 2006

: NO. 10416 Civil 2006

Plaintiff

vs.

KEPHART TRUCKING CO. and
CURA GROUP III, INC.,

: PETITION TO OPEN OR STRIKE
: JUDGMENT

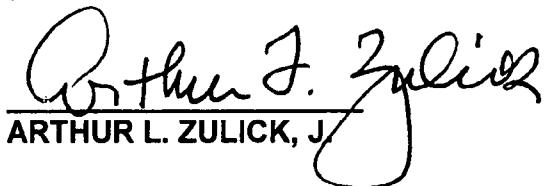
Defendants

ORDER

AND NOW, this 3rd day of July, 2007, following a hearing and consideration of the pleadings, briefs and arguments of the parties, IT IS ORDERED as follows:

1. Defendant Kephart Trucking Co.'s petitions to open or strike the judgments in these matters are **denied**.
2. The stay of execution previously imposed is **vacated**.

BY THE COURT:


ARTHUR L. ZULICK, J.

cc: Janet Jackson, Esquire
Stephen G. Bresset, Esquire
Jane Roach, Esquire
Dwight L. Koerber, Jr.
Cura Group, III, Inc.

ALZ2007-041

PROTHONOTARY
2007 JUL - 3 P 3:27
MONROE COUNTY, PA

EXHIBIT C

Attached hereto as Exhibit C is a copy of the remand Order from the Superior Court dated May 29, 2008.

WALTER MARCIN : IN THE SUPERIOR COURT OF
V. : PENNSYLVANIA
KEPHART TRUCKING CO. AND CURA :
GROUP III, INC. :
APPEAL OF: KEPHART TRUCKING CO. : No. 2299 EDA 2007

Appeal from the Order entered July 18, 2007
In the Court of Common Pleas of Monroe County
Civil No. 10416-CV-06; 8129-CV-06

BEFORE: FORD ELLIOTT, PJ, ALLEN and KELLY, JJ.

JUDGMENT ORDER **FILED May 29, 2008**

We consider the appeal and application for relief filed by Appellant, Kephart Trucking Co. Appellee, Walter Marcin, won a workers' compensation award against Appellant and had judgment entered against it in the Monroe County Court of Common Pleas. The trial court denied Appellant's petition to reopen and strike the judgment, prompting this appeal.

While litigating this case before the trial court, Appellant simultaneously sought relief with the Workers' Compensation Appeal Board (WCAB). At the time that Appellant filed its appellate brief with this Court, the WCAB's decision was pending. (See Appellant's Brief at 15). Appellant subsequently filed the application for relief with this Court, indicating that the WCAB has issued its ruling, modifying in part the underlying workers' compensation order. Significantly, it vacated the penalties assessed against Appellant. (Order of Workers' Compensation Appeal Board, dated 4/14/08;

J.A22042/05

Exh. 1 to Appellant's Application for Relief, filed 5/16/08). Thus, that portion of the workers' compensation order, on which the trial court's judgment against Appellant was based, is no longer in force.

Accordingly, we hereby GRANT Appellant's request for a remand so that the trial court may address the effect of the WCAB's decision.¹

Application for Relief granted. Jurisdiction relinquished.

Judgment Entered.



Prothonotary

Date: _____

¹ In its application for relief, Appellant also requested, "The [trial] court should be directed to stay the proceedings pending the final resolution of [Appellee's] appeal to the Commonwealth Court." (Application for Relief at ¶ 12). After contacting both the WCAB and Commonwealth Court, our Prothonotary has learned that no such appeal has been filed. Nevertheless, in light of our disposition, we DENY Appellant's request for this Court to direct the trial court to stay these proceedings.

EXHIBIT D

Attached hereto as Exhibit D is a copy of Judge Zulick's Order, requesting further clarification and adjudication by the Workers' Compensation Appeal Board.

COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

WALTER MARCIN,

: NO. 8129 Civil 2006
: NO. 10416 Civil 2006

Plaintiff

vs.

KEPHART TRUCKING CO. and
CURA GROUP III, INC.,

Defendants

ORDER

AND NOW, this 1st day of August, 2008, following a hearing held on July 21, 2008 pursuant to the order of the Superior Court of Pennsylvania filed May 29, 2008 remanding this matter to this court, and after argument and consideration of the parties' briefs the court finds as follows:

1. The Worker's Compensation Appeal Board's order dated April 14, 2008 vacated the penalties assessed against Kephart Trucking Co. (Kephart) in the underlying workers' compensation award in favor of Walter Marcin.
2. These penalties formed a material part of the workers' compensation award which was the basis for the entry of judgment against Kephart by order of July 3, 2007.
3. A material portion of the workers' compensation order upon which this court's order of 18 July, 2007 was based is no longer in force.

4. Counsel for Walter Marcin has advised the court that the decision of the Workers' Compensation Appeal Board is being appealed.

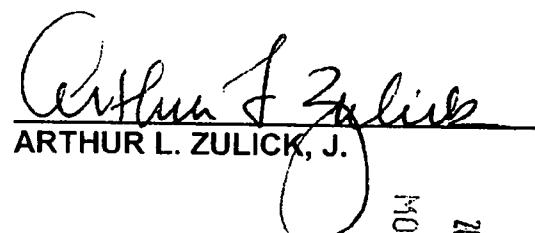
5. Counsel for Kephart has advised the court that the Workers' Compensation Appeal Board will be requested to vacate the entire remaining workers' compensation award to Marcin from Kephart.

IT IS THEREFORE ORDERED as follows:

1. Execution proceedings on the judgment entered pursuant to the order of July 18, 2007 in this case are **STAYED** pending further order of court.

2. Kephart's obligation to post a supersedeas bond to stay further proceedings is discharged, and any monies posted by Kephart with the Prothonotary for that purpose shall be returned to Kephart together with any interest which has accrued on that deposit.

BY THE COURT:


ARTHUR L. ZULICK, J.

cc: Janet Jackson, Esquire
Stephen G. Bresset, Esquire
Jane Roach Maughan, Esquire

PROTHONOTARY
2008 AUG - 4 A 9:52
MONROE COUNTY, PA

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

Walter Marcin

*

Plaintiff

*

Vs.

*

Kephart Trucking Co.

Docket No. 06-1911-CD

and

*

Cura Group III, Inc.

*

Defendants

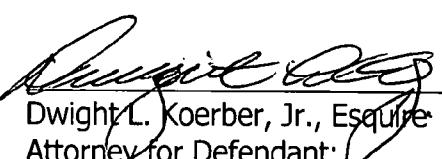
*

CERTIFICATE OF SERVICE

This is to certify that on the 11th day of August 2008, the undersigned served a true and correct copy of the Preliminary Objections on Behalf of Defendant Kephart Trucking Co. upon counsel for Plaintiff. Such documents were served via United States First Class Mail upon the following:

Stephen G. Bresset, Esquire
BRESSET & SANTORA, LLC
701 Main Street, Suite 400
Stroudsburg, PA 18360

Janet Jackson, Esquire
JACKSONFIORENTINO, LLC
607 Monroe Street
P.O. Box 698
Stroudsburg, PA 18360


Dwight L. Koerber, Jr., Esquire
Attorney for Defendant:
Kephart Trucking Co.

JK

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

Walter Marcin *
Plaintiff *

Vs. *

Kephart Trucking Co. * Docket No. 06-1911-CD
and *
Cura Group III, Inc. *
Defendants *

ORDER

AND NOW, this 11th day of August 2008, upon consideration of the Preliminary Objections filed by Defendant Kephart Trucking Co., it is the Order and Decree of this Court that the Order entered herein on August 4, 2008, scheduling a Rule Returnable Hearing for September 15, 2008 is cancelled, and in lieu thereof, Argument on the Preliminary Objections filed by Defendant shall be held on September 15, 2008. Upon completion of argument, the Court will enter a separate scheduling Order for Briefs, if any, which it deems appropriate.

By the Court,


Paul E. Cherry, Judge

FILED 4CC
010 49781 Atty Koerber
AUG 12 2008 (GIO)

William A. Shaw
Prothonotary/Clerk of Courts

FILED

AUG 12 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/12/08

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION

WALTER MARCIN,

Plaintiff

vs. : DOCKET NO. 06-1911-CD

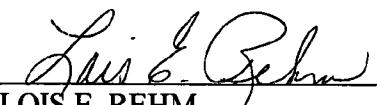
KEPHART TRUCKING CO. and CURA
GROUP III, INC.,

Defendants

CERTIFICATE OF SERVICE

I, LOIS E. REHM, Secretary to Stephen G. Bresset, Esquire, Attorney for Plaintiff, do hereby certify that on August 8, 2008, a time-stamped copy of the Rule to Show Cause dated August 4, 2008, issued on the Motion to Compel Compliance with Settlement Agreement, was served by First Class Mail, Postage Prepaid, upon :

Dwight L. Koerber, Jr., Esquire
110 North Second Street
P O Box 1320
Clearfield, PA 16830
Attorney for Defendant, Kephart Trucking Co.



LOIS E. REHM

FILED NOCC
MILLER
AUG 14 2008
W.A. Shaw
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION

FILED *P*

SEP 15 2008

William A. Shaw
Prothonotary/Clerk of Courts

01-8145/ur

4 sent to ATR

WALTER MARCIN, :
Plaintiff :
vs. : DOCKET NO. 06-1911-CD
KEPHART TRUCKING CO. and CURA :
GROUP III, INC., :
Defendants :

ANSWER TO PRELIMINARY OBJECTIONS

COMES NOW, Walter Marcin, Plaintiff, by his attorneys, Bresset & Santora, LLC. and states his Answer to the Preliminary Objections as follows:

1. This averment is denied as the provisions of Rule 206.7, Pa.R.C.P. limit a response to a Rule to Show Cause to an Answer and Preliminary Objections are not permitted as the Petition is not considered a pleading subject to Preliminary Objections.
2. This averment is denied as the genesis of the settlement was the threatened enforcement of the judgment and writ of execution through the Sheriff of Clearfield County.
3. This averment is denied as the genesis of the settlement was the threatened enforcement of the judgment and writ of execution through the Sheriff of Clearfield County.
4. This averment is denied as the genesis of the settlement was the threatened enforcement of the judgment and writ of execution through the Sheriff of Clearfield County.

WHEREFORE, the Plaintiff prays that the Preliminary Objections be dismissed and denied.

5. This averment is denied as the provisions of Rule 206.7, Pa.R.C.P. limit a response to a Rule to Show Cause to an Answer and Preliminary Objections are not permitted as the Petition is not considered a pleading subject to Preliminary Objections.

6. This averment is denied as the provisions of Rule 206.7, Pa.R.C.P. limit a response to a Rule to Show Cause to an Answer and Preliminary Objections are not permitted as the Petition is not considered a pleading subject to Preliminary Objections.

7. This averment is denied as the averments have been of record and it is further averred that this averment is denied as the provisions of Rule 206.7, Pa.R.C.P. limit a response to a Rule to Show Cause to an Answer and Preliminary Objections are not permitted as the Petition is not considered a pleading subject to Preliminary Objections.

8. This averment is denied as the averments have been of record and it is further averred that this averment is denied as the provisions of Rule 206.7, Pa.R.C.P. limit a response to a Rule to Show Cause to an Answer and Preliminary Objections are not permitted as the Petition is not considered a pleading subject to Preliminary Objections.

9. This averment is denied as the provisions of Rule 206.7, Pa.R.C.P. limit a response to a Rule to Show Cause to an Answer and Preliminary Objections are not permitted as the Petition is not considered a pleading subject to Preliminary Objections.

10. It is admitted that a similar issue was raised in response to the Motion filed by Kephart Trucking in Monroe County. It is denied that the issue was or could have been reached in the proceeding in Monroe County, as evidenced by the Opinion of that Court.

11. It is admitted that a similar issue was raised in response to the Motion filed by Kephart Trucking in Monroe County. It is denied that the issue was or could have been reached in the proceeding in Monroe County, as evidenced by the Opinion of that Court.

12. The admission of the documents which are submitted in this matter as evidence in Monroe County is admitted. The issue of enforcement of the settlement agreement was not and could not have been addressed by the Court of Common Pleas of Monroe County as the scope of inquiry was circumspect as set forth in Judge Zulick's Opinion.

13. The Order of various Courts are admitted. By way of further answer, it is averred that they are not, in any manner, dispositive of the issues attendant to this Motion.

14. This averment is denied as this issue is not pending in any proceeding in Monroe County. By way of further answer, it is averred that this averment is denied as the provisions of Rule 206.7, Pa.R.C.P. limit a response to a Rule to Show Cause to an Answer and Preliminary Objections are not permitted as the Petition is not considered a pleading subject to Preliminary Objections.

WHEREFORE, the Plaintiff prays that the Preliminary Objections be dismissed and denied.

Respectfully submitted,

BRESSET & SANTORA, LLC.

BY:

STEPHEN G. BRESSET, ESQUIRE
701 Main Street, Suite 400
Stroudsburg, PA 18360
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WALTER MARCIN }
VS } NO. 06-1911-CD
KEPHART TRUCKING CO. AND }
CURA GROUP, III, INC. }

ORDER

NOW, this 15th day of September, 2008, this being the day and date set for Argument on Defendant Kephart Trucking's Preliminary Objections, following argument, it is the ORDER of this Court that Defendant Kephart Trucking shall have Ten (10) Days from this date to file appropriate brief and that Plaintiff shall have Seven (7) Days thereafter to file responsive brief, if so desired.

BY THE COURT,

Paul E Cleary
Judge

Judge

FILED (G10)
01/13/2011
SEP 19 2008
ICC Attns:
Koosber
Bressel

William A. Shaw
Prothonotary/Clerk of Courts

ICC Cura Group
200 Lake Drive East, Ste. 110
Cherry Hill, NJ 08002

FILED

SEP 19 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 21/09/08

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s) Plaintiff(s) Attorney Other
Caro Group Defendant(s) Defendant(s) Attorney

Other
 Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
COMMONWEALTH OF PENNSYLVANIA
CIVIL DIVISION

WALTER MARCIN, :

Plaintiff :

vs. : DOCKET NO. 06-1911-CD

KEPHART TRUCKING CO. and CURA
GROUP III, INC., :

Defendants :

PRAECIPE TO AFFIX VERIFICATION

Please affix and attach the enclosed Verification of Plaintiff's Attorney, Janet Jackson, Esquire, to the Motion to Compel Compliance, filed in the above-captioned matter.

Respectfully submitted,

BRESSET & SANTORA, LLC.

BY:

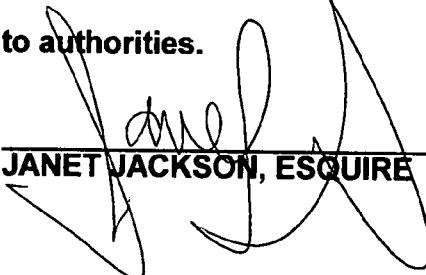
STEPHEN G. BRESSET, ESQUIRE
701 Main Street, Suite 400
Stroudsburg, PA 18360
Attorney for Plaintiff

Dated: September 25, 2008

FILED 1CC A/H
m 12:18 pm
SEP 29 2008
Bresset
WM
William A. Shaw
Prothonotary/Clerk of Courts

VERIFICATION

I, JANET JACKSON, ESQUIRE, verify that I am counsel of record for the Plaintiff, Walter Marcin; that the matters set forth in the Motion to Compel Compliance are either matters of record, conclusions of law or otherwise known to me as counsel such that the verification of a party is not required under the Rules of Civil Procedure, and that the facts set forth in the Motion are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.


JANET JACKSON, ESQUIRE

APPLICATION

Leave a statement which makes her/him liable to supplement to the penalties of 18 P.A. C.S.A. Section 1002 of the Act of June 26, 1923, relating to the sale of intoxicating liquors, and which makes him/her liable to a fine of \$500.00 for each offense committed in the State of Pennsylvania.

COLLECTIVE AGREEMENT

ARTICLE FIFTEEN

FILED

SEP 29 2008

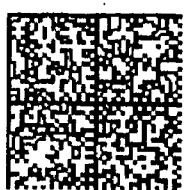
William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM A. SHAW
PROTHONOTARY
and CLERK of COURTS
P.O. BOX 549
CLEARFIELD, PENNSYLVANIA 16830

FILED
SEP 30 2008

William A. Shaw
Prothonotary/Clerk of Courts

File
Further
no address on



Hasler

016H16505405

\$00.420
09/19/2008

Mailed From 16830

US POSTAGE

UTF

Cura Group, III, Inc.
200 Lake Drive East, Ste. 110
Cherry

NIXIE DAD
NOT RETIRED

CHARGEBOOKS49

BC: 1600

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WALTER MARCIN }
VS } NO. 06-1911-CD
KEPHART TRUCKING CO. AND }
CURA GROUP, III, INC. }

ORDER

NOW, this 15th day of September, 2008, this being the day and date set for Argument on Defendant Kephart Trucking's Preliminary Objections, following argument, it is the ORDER of this Court that Defendant Kephart Trucking shall have Ten (10) Days from this date to file appropriate brief and that Plaintiff shall have Seven (7) Days thereafter to file responsive brief, if so desired.

BY THE COURT.

/S/ Paul E. Cherry

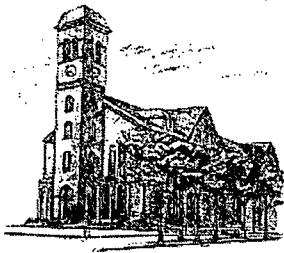
Judge

I hereby certify this to be a true and attested copy of the original statement filed in this case.

SEP 19 2008

Attest,

William L. Brown
Prothonotary/
Clerk of Courts



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

Jacki Kendrick
Deputy Prothonotary/Clerk of Courts

Bonnie Hudson
Administrative Assistant

David S. Ammerman
Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ www.clearfieldco.org

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

DATE: 01/08

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s) Plaintiff(s) Attorney Other

Cura Group

Defendant(s) Defendant(s) Attorney

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

24
WALTER MARCIN,
Plaintiff

vs.

NO. 06-1911-CD

KEPHART TRUCKING CO.,
and CURA GROUP, III, INC.,
Defendants

FILED

OCT 24 2008

5 0/3:55/2008 G/C
William A. Shaw
Prothonotary/Clerk of Courts

CFAT TO ATTY
S. B. RUESS
D. KORNBLUH

CURA Group.

ORDER

AND NOW, this 24th day of October, 2008, in light of the pending proceedings in Monroe County, Pennsylvania, it is the **ORDER** of this Court that all matters pertaining to the parties' cause of action, in the above captioned case, are hereby **STAYED**, pending final disposition in Monroe County.

BY THE COURT,


PAUL E. CHERRY
Judge

FILED
OCT 24 2008
William A Shaw
Prothonotary/Clerk of Courts

DATE: 10-24-08

You are responsible for serving all appropriate parties.
The Prothonotary's Office has provided service to the following parties:
Plaintiff(s) Defendant(s) Attorney Other S. B.

Curia Group III, I
266 Law Office of Mark Farn
Cleary, Hiltz, V.J., Ste 110
Cleary Hiltz V.J. Ste 110

86002

WILLIAM A. SHAW
PROTHONOTARY
and CLERK of COURTS
P.O. BOX 549
CLEARFIELD, PENNSYLVANIA 16830

FILED No further
m 10:58 Bala address
NOV 03 2008 in file.

William A. Shaw
Prothonotary/Clerk of Courts

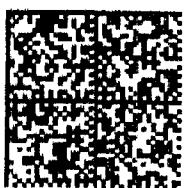
Cura Group III, Inc.
200 Lake Drive East, Ste. 110
Cherry Hill, N.J. 08002

卷之三

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

BC: 16830054949 *2343-16579-27-38
..... UNABLE TO FORWARD.....

0000040540



Hasler

016H16505405

\$00.420

10/21/2008
Mailed From 16830
US POSTAGE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WALTER MARCIN,
Plaintiff

vs. : NO. 06-1911-CD

KEPHART TRUCKING CO.,
and CURA GROUP, III, INC.,
Defendants

ORDER

AND NOW, this 24th day of October, 2008, in light of the pending proceedings in Monroe County, Pennsylvania, it is the **ORDER** of this Court that all matters pertaining to the parties' cause of action, in the above captioned case, are hereby **STAYED**, pending final disposition in Monroe County.

BY THE COURT,

/s/ Paul E. Cherry

PAUL E. CHERRY
Judge

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

OCT 24 2008

Attest.

William L. Cherry
Prothonotary/
Clerk of Courts

Special Instructions:

Defendant(s) Plaintiff(s) Attorney

Plaintiff(s) Plaintiff(s) Attorney Other

The Prothonotary's office has provided service to the following parties:

You are responsible for serving all appropriate parties.

DATE: 10-24-05

Prothonotary
William A. Shaw



Sincerely,

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

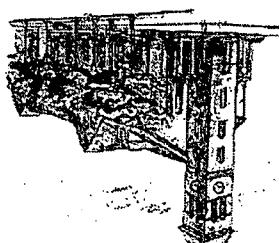
From: William A. Shaw, Prothonotary

To: All Concerned Parties

PO Box 549, Clearfield, PA 16830 • Phone: (814) 765-2641 Ext. 1330 • Fax: (814) 765-7659 • www.clearfieldco.org

Prothonotary/Clerk of Courts Deputy Prothonotary/Clerk of Courts Adminstrative Assistant Solicitor
William A. Shaw Jackie Kenedick Bonnie Hudson David S. Ammerman

Clearfield County Office of the Prothonotary and Clerk of Courts



FILED

NOV 03 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 20481
NO: 06-1911-CD

PLAINTIFF: MARCIN WALTER
VS.
DEFENDANT: KEPHART TRUCKING COMPANY CURA GROUP III, INC.
Execution PERSONAL PROPERTY

SHERIFF RETURN

DATE RECEIVED WRIT: 11/16/2006

LEVY TAKEN 8/8/2007 @ 9:30 AM

POSTED 9/18/2007 @ 11:25 AM

SALE HELD

SOLD TO

SOLD FOR AMOUNT PLUS COSTS

WRIT RETURNED 6/19/2020

AC
S FILED
OILSTON, JR.
JUN 19 2020
BRIAN K. SPENCER
PROTHONOTARY & CLERK OF COURTS

DETAILS

12/28/2006 @ 2:20 PM SERVED KEPHART TRUCKING COMPANY CURA GROUP III, INC.

SERVED KEPHART TRUCKING COMPANY CURA GROUP III, INC, DEFENDANT, AT 110 N. 2ND STREET, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO DWIGHT KOERBER, ATTORNEY FOR KEPHART TRUCKING COMPANY CURA GROUP III, INC.

A TRUE AND ATTESTED COPY OF THE ORIGINAL WRIT OF EXECUTION AND BY MAKING KNOWN TO THEM THE CONTENTS THEREOF.

@ SERVED

NOW, DECEMBER 28, 2006 RECEIVED A FAX LETTER FROM THE PLAINTIFF'S ATTORNEY TO DISREGARD THE MATTER UNTIL FURTHER NOTICE.

@ SERVED

NOW, APRIL 6, 2007 RECEIVED AN ORDER OF COURT FROM MONROE COUNTY TO STAY THE EXECUTION, CONFERENCE TO BE HELD APRIL 19, 2007

@ SERVED

NOW, MAY 1, 2008 RECEIVED AN ORDER OF COURT OF THE COMMONWEALTH OF CLEARFIELD COUNTY THE WRIT OF EXECUTION IS STAYED PENDING DECISION FROM THE COMMONWEALTH COURT.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 20481
NO: 06-1911-CD

PLAINTIFF: MARCIN WALTER

vs.

DEFENDANT: KEPHART TRUCKING COMPANY CURA GROUP III, INC.

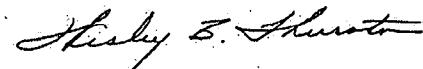
Execution PERSONAL PROPERTY

SHERIFF RETURN

Sheriff Thurston \$139.58

SURCHARGE \$20.00 PAID BY ATTORNEY

So Answers,



Wesley B Thurston
Sheriff

MARIN WALTER

VS
KEPHART TRUCKING COMPANY CURA GROUP III, INC.

1 12/28/200 @ 2:20 PM SERVED KEPHART TRUCKING COMPANY CURE GROUP III, INC.

SERVED KEPHART TRUCKING COMPANY CURE GROUP III, INC, DEFENDANT, AT 110 N. 2ND STREET, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO DWIGHT KOERBER, ATTORNEY FOR KEPHART TRUCKING A TRUE AND ATTESTED COPY OF THE ORIGINAL WRIT OF EXECUTION AND BY MAKING KNOWN TO THEM THE CONTENTS THEREOF.

2 @ SERVED

NOW, DECEMBER 28, 2006 RECEIVED A FAX LETTER FROM THE PLAINTIFF'S ATTORNEY TO DISREGARD THE MATTER UNTIL FURTHER NOTICE.

3 @ SERVED

NOW, APRIL 6, 2007 RECEIVED AN ORDER OF COURT FROM MONROE COUNTY TO STAY THE EXECUTION, CONFERENCE TO BE HELD APRIL 19, 2007

4 @ SERVED

NOW, MAY 1, 2008 RECEIVED AN ORDER OF COURT OF THE COMMONWEALTH OF CLEARFIELD COUNTY THE WRIT OF EXECUTION IS STAYED PENDING DECISION FROM THE COMMONWEALTH COURT.

@ SERVED

NOW, JULY 5, 2007 RECEIVED AN ORDER OF COURT FROM THE COMMONWEALTH OF MONROE COUNTY PETITIONS TO OPEN OR STRIKE JUDGMENT IN THESE MATTERS ARE DENIED AND THE STAY OF EXECUTION

8/8/2007 @ 9:30 AM SERVED KEPHART TRUCKING COMPANY CURE GROUP III, INC.

SERVED KEPHART TRUCKING COMPANY CURE GROUP III, INC., DEFENDANT, AT 983 BIGLER WOODLAND HIGHWAY, BIGLER, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO TIM KEPHART OWNER OF KEPHART A TRUE AND ATTESTED COPY OF THE ORIGINAL WRIT OF EXECUTION AND BY MAKING KNOWN TO HIM THE CONTENTS THEREOF.

9/18/2007 @ 11:25 AM SERVED KEPHART TRUCKING COMPANY CURE GROUP III, INC.

SERVED KEPHART TRUCKING COMPANY CURE GROUP III, INC., DEFENDANT, AT 983 BIGLER WOODLAND HIGHWAY, BIGLER, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO RHONDA COWFER, EXECUTIVE A NOTICE OF SALE AND BY MAKING KNOWN TO HER THE CONTENTS THEREOF.

MARIN WALTER

VS
KEPHART TRUCKING COMPANY CURA GROUP III, INC.

@ SERVED

NOW, OCTOBER 24, 2007 RECEIVED A FAX LETTER FROM THE PLAINTIFF'S ATTORNEY TO ADJOURN THE SHERIFF SALE SET FOR OCTOBER 26, 2007, THE VEHICLES LEVIED ARE NOT OWNED BY KEPHART TRUCKING.

11/21/200 @ 11:00 AM SERVED

ANOTHER LEVY WAS TAKEN AT KEPHART TRUCKING COMPANY CURA GROUP III, INC.

@ SERVED

NOW, DECEMBER 27, 2007 RECEIVED A FAX LETTER FROM THE PLAINTIFF'S ATTORNEY, THE VINS FROM THE LEVY DO NOT SHOW OWNERSHIP BY KEPHART TRUCKING. A REQUEST TO RE-LEVY PROPERTY FOR SALE.

1/8/2008 @ 11:00 AM SERVED KEPHART TRUCKING COMPANY CURA GROUP III, INC.

SERVED KEPHART TRUCKING COMPANY CURA GROUP III, INC., DEFENDANT, AT 983 BIGLER WOODLAND HWY, BIGLER, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO DAVE KEPHART, OWNER OF KEPHART TRUCKING A NOTICE OF SALE AND BY MAKING KNOWN TO HIM THE CONTENTS THEREOF.

@ SERVED

NOW, JANUARY 11, 2008 RECEIVED A FAX LETTER FROM THE PLAINTIFF'S ATTORNEY TO ADJOURN THE SHERIFF SALE SET FOR JANUARY 18, 2008.

@ SERVED

NOW, JANUARY 17, 2008 RECEIVED AN ORDER OF COURT FROM COMMONWEALTH OF CLEARFIELD COUNTY GRANTING A STAY UNTIL RULING IS MADE BY THE WORKERS COMPENSATION APPEAL BOARD.

@ SERVED

NOW, JUNE 19, 2020 RETURN WRIT AS TIME EXPIRED, INFORMED BY THE ATTORNEY CASE SETTLED AND CLOSED.

JACKSON FIORENTINO, LLC
ATTORNEYS AT LAW

JANET JACKSON
JAMES R. FIORENTINO

LEO P. JACKSON
DOMINICK A. LOCKWOOD (1988-2002)

*Please reply to Stroudsburg

December 28, 2006

VIA TELEFAX: **814-765-5915**

Clearfield County Sheriff's Office
ATTN: CINDY
230 East Market Street
Clearfield, PA 16830

Re: Walter Marcin vs. Kephart Trucking

Dear Cindy:

This is to confirm that we do not want you go to forward with the execution regarding the above referenced matter until further notice.

If you require anything further from me, please advise.

Sincerely,



JANET JACKSON

JJ/tm

cc: Dwight Koerber, Esquire via telefax: 814-765-9503

*STROUDSBURG: 607 MONROE STREET, P.O. BOX 698, STROUDSBURG, PA 18360
TELEPHONE: 570-421-1066 FAX: 570-421-7776 TOLL FREE: 800-834-9260

BETHLEHEM: 60 WEST BROAD STREET, SUITE 201, BETHLEHEM, PA 18018
TELEPHONE: 610-954-9801 FAX: 610-317-2740 TOLL FREE: 866-954-9801

COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

WALTER MARCIN,
Plaintiff

NO. 8129 Civil 2006
NO. 10416 Civil 2006

vs.

KEPHART TRUCKING CO. and
CURA GROUP III, INC.,

PETITION TO OPEN OR STRIKE
JUDGMENT

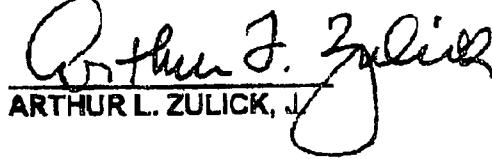
Defendants

ORDER

AND NOW, this 3rd day of July, 2007, following a hearing and consideration of the pleadings, briefs and arguments of the parties, IT IS ORDERED as follows:

1. Defendant Kephart Trucking Co.'s petitions to open or strike the judgments in these matters are denied.
2. The stay of execution previously imposed is vacated.

BY THE COURT:


ARTHUR L. ZULICK, J.

cc: Janet Jackson, Esquire
Stephen G. Bresset, Esquire
Jane Roach, Esquire
Dwight L. Koerber, Jr.
Cura Group, III, Inc.

ALZ2007-041

MONROE COUNTY PA
2007 JUL - 3 P 3428
PRIORITY

COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIAWALTER MARCIN
R.R. #1, BOX 263
CANADENSIS, PA 18325CIVIL ACTION NO: 8129-CV-06
AND 10416-CV-06Plaintiff,
vs.KEPHART TRUCKING CO.
P.O. BOX 386
BIGLER, PA 16825

AND

CURA GROUP III, INC.
200 LAKE DRIVE EAST, SUITE 110
CHERRY HILL, NJ 08002

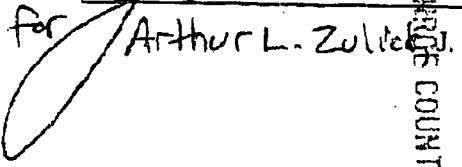
Defendants.

ORDER

AND NOW, this 4th day of April 2007, upon Motion of Defendant Kephart Trucking Company to Reopen Judgment And to Strike Judgment and Amended Writ of Execution, For Stay and for Sanctions and Other Equitable Relief, it is ORDERED that pending Status Conference, all further enforcement of the judgment filed by Plaintiff is hereby STAYED.

The parties are ORDERED to appear for Status Conference on the 19th day of April 2007, in Courtroom 5, at 9:00 o'clock A.M., Monroe County Courthouse, Stroudsburg, Pennsylvania. The stay granted by this order shall remain in effect only until the status conference and further order of court to be issued at that time.

BY THE COURT:


for Arthur L. Zulick
MONROE COUNTY, PA

cc: Jane Roach, Esquire
Dwight L. Koerber, Jr.
Janet Jackson, Esquire
Cura Group III, Inc.
200 Lake Drive East, Suite 110
Cherry Hill, NJ 08002

Sheriff

RECEIVED

APR 08 2007

2007 APR - 5 A # 26

PROTHONOTARY

BRESSET & SANTORA, LLC**Attorneys At Law**

701 MAIN STREET, SUITE 400

STROUDSBURG, PA 18360

PHONE (570) 476-3240

FAX (570) 476-3243

Stephen G. Bresset, Esquire

606 Church Street
Honesdale, PA 18431
Phone (570) 253-5953
Fax (570) 253-2926

Ronald V. Santora, Esquire

1188 Wyoming Avenue
Forty Fort, PA 18704
Phone (570) 287-3660
Fax (570) 287-3666

Please reply to Stroudsburg

October 24, 2007

VIA FAX ONLY: 814-765-5915**ATTENTION: Cindy
Clearfield County Sheriff's Office****RE: Marcin vs. Kephart Trucking Co.**

Dear Cindy:

In reference to the above matter, and as we discussed earlier this week, the sale set for October 26, 2007, must be adjourned as the vehicles which were levied on are not owned by Kephart Trucking. I had sent to you by fax a list of vehicles which are registered as owned by Kephart and for which levy will be attempted. In the event that they are not available for levy, please advise my office and we will proceed to levy against office items and bank accounts to satisfy this judgment.

Thank you for your consideration in this regard.

Very truly yours,

STEPHEN G. BRESSET

SGB/ler

cc: Janet Jackson, Esq., via fax only
Mr. Walter Marcin

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

WALTER MARCIN

-vs-

No. 06-1911-CD

KEPHART TRUCKING CO., and
CURA GROUP, III, INC.

O R D E R

AND NOW, this 30th day of April, 2008, upon
agreement of the parties, the Writ of Execution shall be and
is hereby stayed pending decision from the Commonwealth
Court.

Counsel for Kephart Trucking Company shall have no
more than fifteen (15) days from today's date to file brief
with regard to the Petition to Dismiss Writ of Execution.
Counsel for Plaintiff shall have no more than ten (10) days
thereafter to file a responsive brief.

BY THE COURT,

/s/ Paul E. Cherry

Judge

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

MAY 01 2008

Attest.

Walter E. Cherry
Prothonotary
Clerk of Courts