MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

March 4, 2013

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	*PDK Enterprises, LLC and PDK Pools and Spas, LLC v. Tammy Capozzi and Michael Watt*
Document Received:	Notice of Motion
Name of Claimant:	PDK Enterprises, LLC & PDK Pools and Spas, LLC
Claimant's attorney:	Joseph G. Makowski, Esq.

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Jeremy Toth
Jeremy C. Toth
Second Assistant County Attorney
jeremy.toth@erie.gov

JCT:dld

Enclosure

PAID
CHECK ____ CASH ____
MAR 01 2013
ERIE COUNTY
CLERK'S OFFICE

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

PDK ENTERPRISES, LLC and,
PDK POOLS AND SPAS, LLC

Plaintiffs,

v.

TAMMY CAPOZZI and
MICHAEL WATT

Defendants.

NOTICE OF MOTION

Index No.: I 2009-12948

MOTION MADE BY: Defendants Tammy Capozzi and Michael Watt.

DATE, TIME AND PLACE OF HEARING: March 22, 2013 at 9:30 a.m./p.m. at the Special Term of the Supreme Court, Part 6.
92 Franklin Street Buffalo, N.Y. 14222

SUPPORTING PAPERS: Affidavits of Tammy Capozzi and Michael Watt, sworn to on February 28, 2013, together with the Affirmation of Joseph G. Makowski, Esq., dated March 1, 2013.

RELIEF REQUESTED: An Order directing Erie County through the offices of the Erie County Comptroller or Commissioner of Finance to release to Defendants Tammy Capozzi and Michael Watt the sum of Eleven Thousand Seventy-Nine Dollars and Ninety-Six Cents ($11,079.96); together with interest thereon.

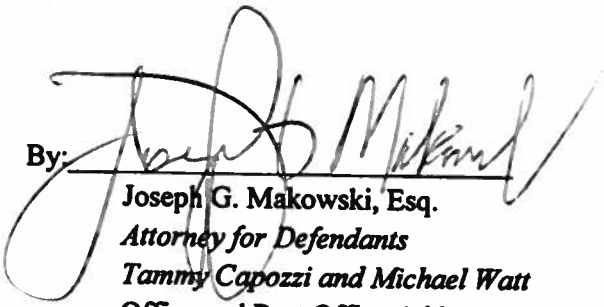
ANSWERING AFFIDAVITS: Answering affidavits, if any, to be provided to the court and to Defendants' counsel are requested no later than seven (7) days prior to the return date of this motion.

RECEIVED
MAR 1 - 2013
ERIE COUNTY
DEPARTMENT OF LAW

DATED: March 1, 2013

Yours, etc.

LAW OFFICE OF JOSEPH G. MAKOWSKI



By: _____

Joseph G. Makowski, Esq.
Attorney for Defendants
Tammy Capozzi and Michael Watt
Office and Post Office Address
329 Elmwood Avenue
Buffalo, NY 14222
(716) 881-1890
jmakowski@aol.com

TO: Michael Siragusa, Esq.
Erie County Attorney
Rath Building
95 Franklin Street
Buffalo, NY 14202

Stefan Mychajliw
Erie County Comptroller
Rath Building
95 Franklin Street
Buffalo, NY 14202

Joseph Maciejewski
Erie County Commissioner of Finance
Rath Building
95 Franklin Street
Buffalo, NY 14202

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

PDK ENTERPRISES, LLC and,
PDK POOLS AND SPAS, LLC

Plaintiffs,

AFFIDAVIT

v.

TAMMY CAPOZZI and
MICHAEL WATT

Defendants.

Index No.: I 2009-12948

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

TAMMY CAPOZZI and MICHAEL WATT, being duly sworn, deposes and says:

1. We are the Defendants in the above captioned action and as such have personal knowledge of the facts and circumstances set forth in this affidavit.

2. Deponents make this affidavit in support of our motion for the relief requested in the Notice of Motion for an Order directing Erie County through the offices of the Erie County Comptroller or Commissioner of Finance to release Eleven Thousand Seventy-Nine Dollars and Ninety-Six Cents ($11,079.96) paid by deponents to Erie County on February 9, 2009.

3. On September 22, 2008 Plaintiffs PDK Enterprises, LLC and PDK Pools and Spas, LLC, a Delaware Corporation, filed a Notice of Mechanic's Lien against Defendant's real property in the Town of Amherst concerning unlicensed contractor work purportedly performed on our premises in which deponents are owners in fee simple. A true copy of the September 22, 2008 Mechanic's Lien is annexed hereto as Exhibit "A" and made a part hereof.

4. On November 14, 2008 at the direction of our former attorney Kelly Zarcone, Esq., deponents paid Nine thousand Nine Hundred Eighty One Dollars ($9,981.00) into the court with the Erie County Clerk to secure payment on the Mechanic's Lien. On or before February 5, 2009 deponents deposited an additional Nine Hundred Ninety-Eight Dollars and Ten Cents ($998.10) with the Erie County Clerk. On February 5, 2009 the Erie County Clerk deposited Ten Thousand Nine Hundred Seventy Nine Dollars and Ten Cents ($10,979.10) with the Erie County Commissioner of Finance. A true copy of the record of the deposit of Ten Thousand Nine Hundred Seventy Nine Dollars and Ten Cents ($10,979.10) of deponents money by the Erie County Clerk to the Erie County Commissioner of Finance is annexed hereto as Exhibit "B" and made a part hereof.

5. Since September 22, 2008 no action has been taken by Plaintiffs to extend the Mechanic's Lien. Accordingly, Plaintiffs Mechanic's Lien was dismissed by operation of law on September 22, 2009.

6. On November 13, 2009 Plaintiffs filed a Notice of Pendency and an action to foreclose on the September 22, 2008 Mechanic's Lien placed against deponents residence. A true copy of the Notice of Pendency and Summons and Complaint in the action is annexed hereto as Exhibit "C" and made a part hereof.

7. On November 25, 2009 during the pendency of the action, Plaintiffs attorney David S. Widenor, Esq. entered into a Joint Stipulation with deponent's former attorney Kelly V. Zarcone, Esq. cancelling the September 22, 2008 Mechanic's Lien, November 13, 2009 Notice of

Pendency and action brought against deponents property. In relevant part the Joint Stipulation recites:

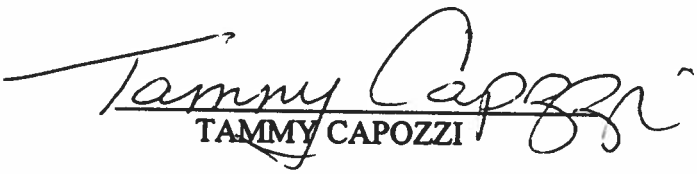
> **IT IS HEREBY JOINTLY STIPULATED TO AND AGREED** that:
> Pursuant to Rule 6514(d) of the Civil Practice Law and Rules, the Notice of Pendency filed in this action is hereby canceled because Defendants furnished an undertaking in the amount of nine thousand, nine hundred and eighty dollars ($9,981) and nine hundred and ninety-eight dollars and ten cents ($998.10) on February 5, 2009, prior to the commencement of the within referenced action and prior to the filing of the Lis Pendens. Consequently, there is and was at the time of filing, no action commenced that maintains a lien on the Subject Property or an action that relates to any interest in the Subject Property and a Lis Pendens and foreclosure action is improper.
> Plaintiffs also hereby cancel the action brought at Index Number 2009-12948, without prejudice understanding that no answer is currently necessary from Defendants.

A true copy of the November 24, 2009 Joint Stipulation of David S. Widenor PC and Zarcone Associates, PLLC and Attorneys Affirmation of David S. Widenor, Esq. is annexed hereto as Exhibit "D" and made a part hereof.

8. The action commenced by Plaintiffs in this court on November 13, 2009 was discontinued because Plaintiffs were not licensed to do business in the Town of Amherst or authorized to transact business in New York State and could not maintain the action. No subsequent legal action has ever been filed by Plaintiffs against deponents.

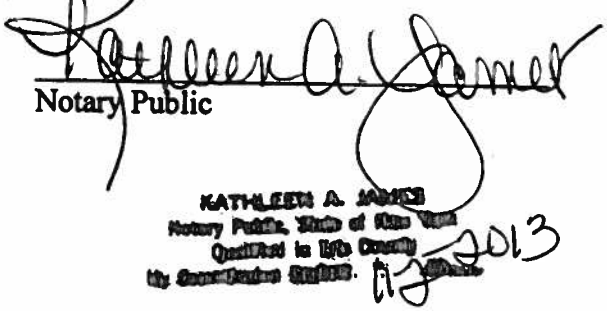
9. Deponent requests that Erie County through the offices of the Erie County Comptroller or the Erie County Commissioner of Finance release to deponents Eleven Thousand Seventy-Nine Dollars and Ninety-Six Cents ($11,079.96) together with accrued interest thereon.

10. There has been no previous request for the relief sought herein.



TAMMY CAPOZZI

Sworn to before me this 1st day of March, 2013.

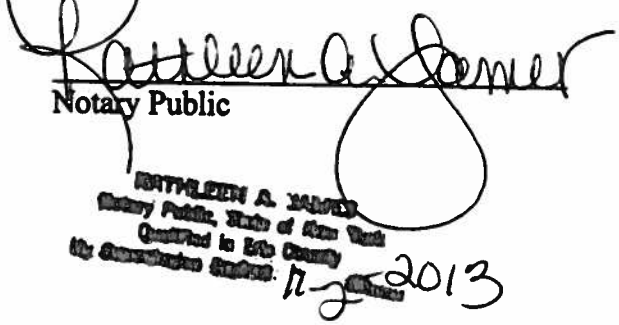


Notary Public

KATHLEEN A. JAMES
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 11-2-2013

MICHAEL WATT

Sworn to before me this 1st day of March, 2013.



Notary Public

KATHLEEN A. JAMES
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 11-2-2013

Exhibit A

365 - Notice of mechanic's lien, affidavit of service, individual, partnership or corporation - to be filed with County Clerk. Lien Law §3 et seq. 9-96

BlumbergExcelsior Publisher NYC 10013
www.blumberg.com

NOTICE OF MECHANIC'S LIEN

To the Clerk of the County of Erie

and all others whom it may concern.

Please Take Notice, that PDK Enterprises, L.L.C.
P.O. Box 6478, Leesburg, VA 20132; David Kumpf, PDK Representative and Installer 162 Willowcrest Drive, West Seneca, New York 14224 - Local Place Director

as lienor(s) have and claim a lien on the real property hereinafter described as follows:

(1) The names and residences of the lienor(s) are PDK Enterprises, L.L.C.
P.O. Box 6478, Leesburg, VA 20132; David Kumpf, PDK Representative and Installer 162 Willowcrest Drive, West Seneca, New York 14224

being a partnership corporation ■ LLC composed of Delaware LLC having duly made Application for authority to do business in NYS

whose business address is at 162 Willowcrest Drive, West Seneca, New York 14224
and whose principal place of business is at P.O. Box 6478, Leesburg, VA 20132

(1a) The name and address of lienor's attorney, if any Ann Leonard Anderson, Esq.
P.O.Box 45, Spring Brook, New York 14140

(2) The owner of the real property is Tammy Capozzi and Mike Watt, husband and wife
and the interest of the owner as far as known to the lienor(s) is fee simple

(3) The name of the person by whom the lienor(s) was (were) employed is Tammy Capozzi and Mike Watt
The name of the person to whom the lienor(s) furnished or is (are) to furnish material or for whom the lienor(s) performed or is (are) to perform professional services is Tammy Capozzi and Mike Watt
The name of the person with whom the contract was made is Mike Watt
The labor performed was installation of inground pool and spa upgrade and automation system

The material furnished was Pentair pump, Sta-Rite media filter, Pentair pool heater, Automation Panel, Turbo Cell, Remote Display, Function Remote, Valve Actuator and valves, PVC piping, various unions, elbows and reducers
The materials actually manufactured for but not delivered to the real property are None

The agreed price and value of the labor performed is $ installation included
The agreed price and value of the material furnished is $ $9,981.00 including installation
The agreed price and value of the material actually mfd. for but not delivered to the real prop. is $None
Total agreed price and value $$9,981.00

(5) The amount unpaid to the lienor(s) for said labor performed is $ installation included
The amount unpaid to the lienor(s) for said material furnished is $ $9,981.00 including installation
The amount unpaid to lienor(s) for material actually mfd. for but not delivered to the real prop. is $ None
Total amount unpaid $ 9,981.00

The total amount claimed for which this lien is filed is $$9,981.00 including material and labor

(6) The time when the first item of work was performed was June 9, 2008
The time when the first item of material was furnished was June 9, 2008
The time when the last item of work was performed was July 16, 2008
The time when the last item of material was furnished was July 16, 2008

(7) The property subject to the lien is situated in Town of Amherst, County of Erie, State of NY
60 Troy Del Way, Amherst, New York 14221-4504

That said labor and materials were performed and furnished for and used, and that the professional services rendered were used, in the improvement of the real property hereinbefore described. That 8 months (4 months if a single family dwelling) have not elapsed dating from the last item of work performed, or from the last items of materials furnished, or since the completion of the contract, or since the final performance of the work, or since the final furnishing of the material for which the lien is claimed.

Dated September 22, 2008

Alicia Green
Commonwealth of Virginia
Notary Public
Commission No. 7135811
My Commission Expires 02/29/2012

The name signed must be printed beneath
Paul Kumpf

Verification

STATE OF NEW YORK, COUNTY OF Erie ss.: INDIVIDUAL OR PARTNER

being duly sworn, says that deponent is (one of the co-partnership named in the within notice of lien and) the lienor(s) mentioned in the foregoing notice of lien; that deponent has read the said notice and knows the contents thereof, and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Sworn to before me on _____

STATE OF NEW YORK, COUNTY OF Erie ss.: CORPORATION

David Kumpf being duly sworn, says that deponent is the Local Office Director of PDK Enterprises, L.L.C. herein, that deponent has read the foregoing notice of lien and knows the contents thereof, and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters deponent believes it to be true. The reason why this verification is made by deponent is that deponent is an officer, to wit, the Local Office Director of PDK Enterprises, L.L.C. which is a DE L.L.C. corporation, and deponent is familiar with the facts and circumstances herein.

The sources of deponent's information and the grounds of deponent's belief as to all matters not therein stated upon deponent's knowledge are as follows: information provided by Paul Kumpf, President

Sworn to before me on ~~September~~ November 15, 2008 _____

Ann Leonard Anderson

Erie

10/19/09

Editor's note: Notice of Mechanic's Lien may be filed at any time during progress of the work and the furnishing of the materials, or, within eight months (four months if a single family dwelling) after the completion of the contract, or the final performance of the work, or the final furnishing of the materials. The Notice of Mechanic's Lien must be filed in the Clerk's office of the county where the property is situated. If such property is situated in two or more counties, file the Notice of Mechanic's Lien in the office of the Clerk of each county. See Lien Law §10.

FILED

DEC - 2 2008

ERIE COUNTY
CLERK'S OFFICE

Affidavit of Service of Notice of Mechanic's Lien on Owner, Agent or Attorney*

STATE OF NEW YORK, COUNTY OF Erie ss.:

The undersigned, being duly sworn, deposes and says that deponent is over 18 years of age and

on November 25, 2008 served the within Notice of Mechanic's Lien

on Tammy Capozzi and Mike Watt, husband and wife
the owner herein
at 60 Troy Del Way, Amherst, New York 14221

by delivering a true copy to said owner personally. Deponent knew the person so served to be the owner.

as the owner could not be found, by delivering a true copy to the *agent* *attorney* of the owner.

by leaving it at the last known place of residence of the owner in the city or town in which the real property or some part thereof is situated, with

a person of suitable age and discretion.

[redacted] by depositing a true copy of same, enclosed in a *certified* ~~*registered*~~ mail, postpaid, properly addressed wrapper, in an official depository of the United States Postal Service in New York State.

as the owner has no last known place of residence in the city or town in which the real property or some part thereof is situated, or the owner could not be found, and has no agent or attorney, by affixing a true copy thereof conspicuously on such property, at m. (between the hours of nine o'clock in the forenoon and four o'clock in the afternoon).

as the owner is a corporation, by personally delivering a true copy and leaving it with
the *president* *vice-president* *secretary* *clerk* *cashier* *treasurer* *director* *managing agent* of the corporation.

as the owner is a corporation, and no officer of the corporation could be found within the state, by affixing a true copy conspicuously on such property at m. (between the hours of nine o'clock in the forenoon and four o'clock in the afternoon).

as the owner is a corporation, by depositing a true copy of same, enclosed in a *certified* *registered* mail, postpaid, properly addressed wrapper, in an official depository of the United States Postal Service in New York State.

Sworn to before me on

_____

*Editor's note: Serve five days before or 30 days after filing the Notice of Mechanic's Lien. See Lien Law §11.

Affidavit of Service by Certified Mail*

STATE OF NEW YORK COUNTY OF ERIE ss.:

The undersigned, being duly sworn, deposes and says that deponent is over 18 years of age and

on November 25, 2008 the undersigned served the within Notice of Lien on

the ~~contractor~~ ~~subcontractor~~ ~~assignee~~ legal representative (attorney) Keily Zarone, Esq. and owners Tammy Capozzi + Mike Watt at 1416 Sweet Home Road, Suite 204, Amherst, NY 14228 + 60 Troy Del Way Lims, NY 14221, respectively by depositing a true copy of same, enclosed in a certified mail, postpaid, properly addressed wrapper, in an official depository of the United State Postal Service in New York State.

Richard P. Leonard

Sworn to before me on

November 25, 2008

Ann Leonard Anderson
Notary Public
Qualified in Erie County

Erie
10/19/09

*Editor's noteServe a copy of Notice of Mechanic's Lien on contractor or subcontractor simultaneously or within 30 days after filing Notice of Mechanic's Lien. File proof of service with County Clerk within 35 days after Notice of Mechanic's Lien is filed. See Lien Law §11-b.

Mechanic's Lien

PDK Enterprises, L.L.C. *Claimant*
David Kumpf, Rep/Install

Residence
162 Willowcrest, BFLO, NY 14224

Business Address P.O. Box 6478
Leesburg, VA 20132
PDK Enterprises, L.L.C.

against

Tamy Capozzi and Mike Watt, husband and wife *Owner*

PDK Enterprises, L.L.C *Contractor*

Notice of Lien

Amount $ 9,981.00

Filed November 14, 2008

Premises known as
60 Troy Del Way, Amherst,
New York 14221

Attorney(s) for Lienor
Post Office Address and Telephone Number
Ann Leonard Anderson, Esq.
P.O. Box 45
Spring Brook, New York 14140

Exhibit B

Erie County Clerk's Office, New York
Erie County Hall
92 Franklin Street
Buffalo, New York 14202

Tammy Capozzi
Mike Watt
Plaintiff

Vs.

PDK Enterprises LLC
Defendant

Re: Index No.

I, KATHLEEN C. HOCHUL, Clerk of the County of Erie, do this day deposit with the Erie County Commissioner of Finance, the sum of $ 9981.00 plus $ 998.10 in interest, the same having been paid to me by Tammy Capozzi + Mike Watt on the 5th day of Feb, 2009 and pursuant to

a) an Order of the _____ Court dated _____;

b) pending appeal of _____; or

c) the discharge of a Mechanic's Lien dated _____ and filed in the Erie County Clerk's Office under Q 200/8957.

Dated: 11/14/08

KATHLEEN C. HOCHUL,
Erie County Clerk

By: _____
Deputy County Clerk

Revised 12/03/08 PLPulwler

COVER SHEET REV 02-14-06

ERIE COUNTY CLERKS OFFICE
County Clerk's Recording Page

Return To:

Book: 98 Page: 3979
Page Count: 7
Doc Type: MONEY PD COURT
Rec Date: 02/05/2009
Rec Time: 02:52:40 PM
Control #: 2009021013
User ID: dm
Trans Num: 659973
DEED SEQ:
MTG SEQ:
UCC:
SCAR:
INDEX:

Party 1:
MONEY PD COURT

Party 2:
CAPOZZI TAMMY

Recording Fees:	
RECORDING5	$5.00
Total:	$5.00

Consideration Amount:	$10,979.10
BASIC	$0.00
SONYMA	$0.00
ADDL	$0.00
NFTA MT	$0.00
TRANSFER	$0.00
NFTA TT	$0.00

STATE OF NEW YORK
ERIE COUNTY CLERK'S OFFICE

WARNING - THIS SHEET CONSTITUTES THE CLERK'S ENDORSEMENT, REQUIRED BY SECTIONS 319&316-a (5) OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH. THIS IS NOT A BILL.

Kathleen C. Hochul
County Clerk

Exhibit C

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

FILED
PETITIONS & PROCESS
NOV 13 2009
ERIE COUNTY
CLERK'S OFFICE

PDK Enterprises, LLC, and
PDK Pools and Spas, LLC

Plaintiffs,

-v-

Tammy Capozzi and
Michael Watt

Defendants.

Notice of Pendency

Index No. 2009-12948

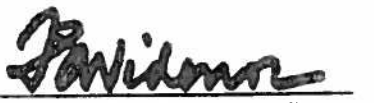
Mortgaged Premises:
60 Troy Del Way
Williamsville, New York 14221

NOTICE IS HEREBY GIVEN, and we Buffalo City Court upon a verified complaint of the above named plaintiffs against the above-named defendant for the foreclosure of a mechanics lien bearing the date of September 22, 2008 and filed and recorded on December 2, 2008 in the Erie County Clerk's Office to secure the sum of $9981 including material and labor;

AND NOTICE IS FURTHER GIVEN, that the premises affected by said foreclosure action on a mechanic's lien, and at the time of this note is situated as follows: ALL THAT TRACK OR PARCEL OF LAND, situated in the town of Amherst, County of Erie and state of New York, being part of Lot number Fifty-Four (54), Township Twelve (12), Range seven (7) of the Holland Land Company's Survey and further distinguished a Subdivision Lot Number Nine (9) as shown on a map entitled "Town and Country Estates", filed in the Erie County Clerk's office under cover number 1841;

The Clerk of the County of Erie is directed to index this action to the names of the Defendants.

Dated: Buffalo, New York
November 13, 2009

By: 

David S. Widenor, Esq.
Attorney for Plaintiffs
PDK Enterprises, LLC and
PDK Pools and Spas LLC
390 Elmwood Avenue
Buffalo, New York 14222
Telephone: (716) 898-8185

HELP FOR HOMEOWNERS IN FORECLOSURE

NEW YORK STATE LAW REQUIRES THAT WE SEND YOU THIS NOTICE ABOUT THE FORECLOSURE PROCESS. PLEASE READ IT CAREFULLY.

SUMMONS AND COMPLAINT

YOU ARE IN DANGER OF LOSING YOUR HOME. IF YOU FAIL TO RESPOND TO THE SUMMONS AND COMPLAINT IN THIS FORECLOSURE ACTION, YOU MAY LOSE YOUR HOME. PLEASE READ THE SUMMONS AND COMPLAINT CAREFULLY. YOU SHOULD IMMEDIATELY CONTACT AN ATTORNEY OR YOUR LOCAL LEGAL AID OFFICE TO OBTAIN ADVICE ON HOW TO PROTECT YOURSELF.

SOURCES OF INFORMATION AND ASSISTANCE

The State encourages you to become informed about your options in foreclosure. In addition to seeking assistance from an attorney or legal aid office, there are government agencies and non-profit organizations that you may contact for information about possible options, including trying to work with your lender during this process.

To locate an entity near you, you may call the toll-free helpline maintained by the New York State Banking Department at 1-877-BANK-NYS (1-877-226-5697) or visit the department`s website at WWW.BANKING.STATE.NY.US.

FORECLOSURE RESCUE SCAMS

Be careful of people who approach you with offers to "save" your home. There are individuals who watch for notices of foreclosure actions in order to unfairly profit from a homeowner`s distress. You should be extremely careful about any such promises and any suggestions that you pay them a fee or sign over your deed. State law requires anyone offering such services for profit to enter into a contract which fully describes the services they will perform and fees they will charge, and which prohibits them from taking any money from you until they have completed all such promised services.

§ 1303 NOTICE

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

PDK Enterprises, LLC.
Leesburg, Virginia 20132

PDK Pools and Spas, LLC.
15 Liberty Terrance
Cheektowaga, New York 14215

Plaintiffs,

-v-

Tammy Capozzi
60 Troy Del Way
Williamsville, New York 14221

Michael Watt
60 Troy Del Way
Williamsville, New York 14221

Defendants.

FILED
MOTIONS & PROCEEDINGS
NOV 13 2009
ERIE COUNTY
CLERK'S OFFICE

SUMMONS

Index No. 2009-12948

To the above-named Defendants:

YOU ARE HEREBY SUMMONED AND REQUIRED to serve upon Plaintiffs' attorneys, at the address stated below, a written Answer to the attached Complaint.

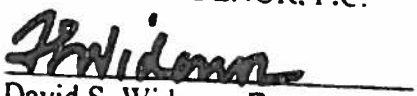
If this Summons is served upon you within the State of New York by personal service, you each must respond within **TWENTY (20)** days after service, not counting the day of service. If this Summons is not personally delivered to you within the State of New York, you each must respond within **THIRTY (30)** days after service is completed, as provided by law.

If you each do not respond to the attached Complaint within the applicable time limitation stated above, a Judgment will be entered against you, by default, for the relief demanded in the Complaint, without further notice to you.

This is an action seeking breach of contract, foreclosure on mechanics' lien, account stated. Venue is based on place the place of business of Plaintiffs.

DATED: November 13, 2009
Buffalo, New York

DAVID S. WIDENOR, P.C.



David S. Widenor, Esq.
Attorneys for Plaintiffs
PDK Enterprises LLC, and
PDK Pools and Spas LLC
390 Elmwood Avenue
Buffalo, NY 14222
Telephone (716) 898-8185

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

ERIE COUNTY
CLERK'S OFFICE

PDK Enterprises, LLC, and
PDK Pools and Spas, LLC

Plaintiffs,

-v-

Tammy Capozzi and
Michael Watt

Defendants.

VERIFIED COMPLAINT

Index No. 2009-12948

Plaintiffs, PDK Enterprises, LLC and PDK Pools and Spas, LLC ("**Plaintiffs**"), by their attorneys (or counsel, Davis Widenor, Esq.), as and for their Verified CPLR 3016(f) Complaint against the above-named defendants, Tammy Capozzi and Michael Watt ("**Defendants**"), alleges upon information and belief, as follows:

NATURE OF THE ACTION

1. The nature of this action is to foreclose upon a mechanics lien duly filed Erie County Clerk's office as a result of or performed by Plaintiffs on the Defendants' real property in the amount of $10,000 plus cost, interest and attorneys' fees. Plaintiffs to be performed by installing a residential pool (with all the amenities) for Defendant. Despite promising to remit payment in full upon completion of the project, Defendants has enjoyed the use and benefit of the pool but has wrongfully refused to pay Plaintiffs. Plaintiffs have repeatedly demanded payment in full from Defendants, and Defendants have without any legal justification refused payment. Plaintiffs have been forced to commence the within action. Plaintiffs for all work

performed In addition, Plaintiffs bring this Action for breach of contract, accounts stated, quantum merit, unjust enrichment and attorneys' fees.

THE PARTIES

2. Plaintiff, PDK Enterprises, LLC ("**Enterprises**"), is and was, at all material times herein mentioned, a corporation organized under the laws of the State of Delaware with its principal place of business at Leesburg, Virginia.

3. Plaintiff, PDK Pools and Spas, LLC ("**P&S**"), is and was, at all material times herein mentioned, a corporation organized under the laws of the State of Delaware with its principal place of business at 15 Liberty Terrance, Cheektowaga, New York.

4. Defendant, Tammy Capozzi ("**Capozzi**"), is and was, at all material times herein mentioned, an individual residing in the Town of Amherst, County of Erie, State of New York.

5. Defendant, Michael Watt ("Watt"), is and was, at all material times herein mentioned, an individual residing in the Town of Amherst, County of Erie, State of New York.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter in controversy pursuant to article 3 of the New York Civil Practice Law and Rules ("**CPLR**"). Pursuant to CPLR 503, the venue of this action is proper in the County of Erie, State of New York.

FACTS COMMON TO ALL CAUSES OF ACTION

7. On or about May 24, 2009, Watt approached Paul Kumpf (president of Plaintiff) and David Kumpf (agent of Plaintiffs) to provide an estimate to repair and update Defendants' pool filtration system.

8. At the time in May 24, 2009, Defendants' pool filtration system was non-functioning.

9. Plaintiffs' designed a new pool filtration system for Defendants.

10. Plaintiffs' provided Defendants with an initial estimate of twelve thousand dollars ($12.000), covering labor and materials for the new pool filtration system.

11. Defendants stated that Defendants could only afford a ten thousand dollar ($10.000) pool filtration system at that time.

12. To accommodate Defendants' budgetary constraints, Plaintiffs modified the new pool filtration system by eliminating certain features such as cleaning robot and decided to reuse the old pool pump, and limited the work to installation only ("**Modified Pool Filtration System**").

13. Defendants agreed to purchase Plaintiffs' Modified Pool Filtration System.

14. Defendants agreed to purchase Plaintiff's Modified Pool Filtration System at a cost of ten thousand dollars ($10.000).

15. On June 9, 2008, Defendants executed a contract with Plaintiffs for the installation of the Modified Pool Filtration System ("**Contract**").

16. A true and correct copy of the Contract is attached hereto, Marked **Exhibit "A"**, and incorporated herein by reference.

17. The Modified Pool Filtration System was fully installed and operational on July 16, 2008.

18. On July 25, 2008, Plaintiffs provided Defendants with an invoice for services rendered the terms of which was payment due upon receipt.

19. After hearing no response, Plaintiffs submitted a final payment request on August 11, 2008, which demand was ignored by Defendants.

20. On August 23. 2008. Plaintiffs submitted another demand for payment. which was again ignored by Defendants.

21. Despite duly performing. Defendants refused to pay and concocted excuses for non-payment despite the fact that the Modified Pool Filtration System was fully operational.

22. On September 22. 2008. Plaintiffs duly filed a notice of mechanic's lien.

23. A true and correct copy of the Notice of Mechanic's Lien is attached hereto. Marked **Exhibit "B"**. and incorporated by reference.

FIRST CAUSE OF ACTION
(Breach of Contract)

24. Plaintiffs repeat each and every allegation contained in the above paragraphs hereof. as though fully set forth herein at length.

25. Plaintiffs and Defendants entered into an enforceable Contract.

26. Plaintiffs duly performed all its obligations under the terms and conditions of the Contract.

27. Defendants have breached Countered by. among other ways. refusing to remit payment for services duly performed by Plaintiffs.

28. Based on the default in performance and resulting breach of the contractual obligations owed by Defendants to Plaintiffs. Plaintiffs are entitled to recover damages based on its loss due to the breach.

29. As the direct and proximate cause of the wrongful conduct of Defendants. Plaintiffs have been deprived of its benefit under the Contract in the amount of over $10.000 and is suffered additional expenses incurred as a result of Defendant's wrongful conduct in an amount to be determined at trial.

SECOND CAUSE OF ACTION
(Mechanics' Lien Foreclosure)

30. Plaintiffs repeat each and every allegation contained in the above paragraphs hereof, as though fully set forth herein at length.

31. On September 22, 2008, Plaintiffs duly caused a notice to be given in accordance with New York State law.

32. On September 22 Plaintiffs duly recorded a verified Mechanics Lien Claim, describing the building parcel in the labor, services, equipment, and materials to be furnished on the work of improvement at real property commonly known as 60 Troy Del Way in the Town of Amherst, County of Erie, and State of New York.

33. Plaintiffs filed the Mechanics' Lien on 60 Troy Del Way, which deed was filed at Book 11052 at page 3280, with a legal description of:

> all that tract or parcel of land, situated in the Town of Amherst, County of Erie and state of New York, being part of Lot Number Fifty-Four (54), Township Twelve (12), Range Seven (7) of the Holland Land Company's Survey and further distinguished as Subdivision Lot No. Nine (9) as shown on a map entitled "Town and County Estates", filed in the Erie County Clerk's Office under Cover No. 1841.

34. The cost of recording the mechanic's lien claim was fifteen dollars ($15), no part of which has been paid.

35. Defendants' claims on right, title, or interest in or to building parcel, each of which claim is junior in hereto Plaintiffs' claim.

THIRD CAUSE OF ACTION
(Unjust Enrichment)

36. Plaintiffs repeat each and every allegation contained in the above paragraphs hereof, as though fully set forth herein at length.

37. By virtue of Defendants' scheme or artifice to defraud Plaintiffs, Defendants now unfairly and unjustly hold the value of a Modified Pool Filtration System.

38. In acquiring the Modified Pool Filtration System under the circumstances set forth herein, Defendants' fraudulent activities are such that Defendants may not in good conscience be allowed to retain the stated value of the Modified Pool Filtration System.

39. Any further benefit to Defendants based on the use and enjoyment of the fraudulently converted Modified Pool Filtration System will only result in further unjust enrichment to Defendants at the expense of Plaintiffs.

40. Based on these facts and the nature of Defendants' actions, the court should find the existence of a constructive trust over the value of the Modified Pool Filtration System justly due Plaintiffs in favor of Plaintiffs, and declare Defendants trustee from the time of first possession of the Modified Pool Filtration System, until such time as an independent trustee can be appointed by this Court.

41. As a trustee of a constructive trust, Defendants should be made to account for any deterioration in the value of the Modified Pool Filtration System due to Defendants' conduct in improperly maintaining said Modified Pool Filtration System to Plaintiffs.

FOURTH CAUSE OF ACTION
(Account Stated, CPLR 3016(f))

42. Plaintiffs repeat each and every allegation contained in the above paragraphs hereof, as though fully set forth herein at length.

43. Plaintiffs submitted an invoice pursuant to the express terms of the Contract, itemizing Plaintiffs' services duly performed for Defendants, in the reasonable and agreed amount of $9,981.00.

44. The services provided by Plaintiffs and accepted by Defendants are listed as follows:

Quantity	Description	Unit Price	Amount
a. 1	Pentair 3 HO Challenger HP pump #345209	$1.270	$1.270
b. 1	Sta-Rite System 3 Modular 400SF Media Filter #S7M400	$1.347	$1.347
c. 1	250,000 BTU Pentair Master Temp Pool Heater #250	$2.992	$2.992
d. 1	AquaLogic PS-4 Automation Panel #AQL-PS-$	$1.416	$1416
e. 1	AquaLogic Turbo Cell #AQL – CL	$948	$948
f. 1	wired AquaLogic PS-4 Remote Display #AQL-WMW-PS4	$365	$365
g. 1	Wireless AquaLogic 6 Function Remote #AQL-SS-RF	$355	$355
h. 2	Goldline Value Actuator GVA-24 #GVA-24	$163	$326
i. 3	2" 2 Way Values – Jandy NeverLube #4716	$66	$198
j. 3	2" 3 Way Values – Jandy NeverLube #4716	$74	$222
k. 1	100' Flexible 2" PVC Piping	$318	$318
l. 6	10' Rigid 2" PVC Piping	$19	$114
m. 1	Various 2" Unions, Elbows, & Reducers	$110	$110

45. Defendants retain said invoice without objection.

46. A true and correct copy of the aforesaid invoice itemizing and detailing the account pursuant to CPLR 3016(f) is attached hereto, Marked Exhibit "C", and incorporated by reference.

47. Between on or about June 4 3008 and July 16, 2008, Plaintiffs, at the special insistence and request of Defendants, performed services for Defendants for a reasonable value and agreed to price of $9.981.

48. Defendants have not paid any portion of the amount due pursuant to the invoice.

FIFTH CAUSE OF ACTION
(Attorneys' Fees)

49. Plaintiffs repeat each and every allegation contained in the above paragraphs hereof, as though fully set forth herein at length.

50. Plaintiffs are entitled to recover its attorney's fees pursuant to the Contract duly entered into between Plaintiffs and Defendants.

51. Paragraph 10 of the Contract states:

> RECOVERY OF LITIGATION COSTS: in any legal action, arbitration or other proceedings are brought for the enforcement of this Agreement, or because of any alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or party shall be entitled to recover reasonable attorneys fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

52. Consequently, Plaintiffs, as the prevailing parties, are entitled to recover their attorneys' fees and other costs in enforcing their rights pursuant to the Contract.

53.

WHEREFORE, Plaintiffs demand judgment as follows:

A. on Plaintiffs' **FIRST CAUSE OF ACTION**, granting Plaintiffs against Defendants an award of compensatory damages in the amount of at least $10,000, or such greater amount as proven at trial, and costs or some other amount is deemed just and proper by this Court:

B. on Plaintiffs' **SECOND CAUSE OF ACTION**, granting Plaintiffs against Defendants an award of compensatory damages in the amount of at least $10,000, or such

greater amount as proven at trial, and costs or some other amount is deemed just and proper by this Court;

C. on Plaintiffs' **THIRD CAUSE OF ACTION**, granting Plaintiffs against Defendants an award of compensatory damages in the amount of at least $10,000, or such greater amount as proven at trial, and costs or some other amount is deemed just and proper by this Court;

D. on Plaintiffs' **FOURTH CAUSE OF ACTION**, granting Plaintiffs against Defendants an award of compensatory damages in the amount of at least $10,000, or such greater amount as proven at trial, and costs or some other amount is deemed just and proper by this Court;

E. on Plaintiffs' **FIFTH CAUSE OF ACTION**, granting Plaintiffs against Defendants an award of attorneys' fees and costs in the amount yet to be determine but in no event will be less than $5,000, or such greater amount as proven at trial, and costs or some other amount is deemed just and proper by this Court;

F. imposition of a constructive trust;

G. a temporary, preliminary and permanent injunction preventing Defendants from destroying, damaging, pledging, or decreasing in any way the value of the Modified Pool Filtration System;

H. post-judgment interest as allowed by law;

I. all pre-judgment interest as allowed by law;

J. for all costs and expenses; and

K. for such other and further relief as the Court deems just and proper.

DATED: November 10, 2009
Buffalo, New York

David S. Widenor, PC

David S. Widenor, Esq.
Attorneys for Plaintiffs
PDK Enterprises, LLC and
PDK Pools and Spas, LLC
390 Elmwood Avenue
Buffalo, New York 14222
Telephone 716-898-8185

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

PDK Enterprises, LLC, and
PDK Pools and Spas, LLC

Plaintiffs,

-v-

Index No. 2009-_____

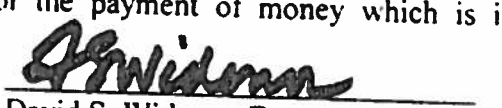
Tammy Capozzi and
Michael Watt

Defendants.

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ERIE) ss:
CITY OF BUFFALO)

DAVID S. WIDENOR, ESQ., being duly sworn, deposes and says that I am a member of the firm David S. Widenor P.C., attorneys for plaintiffs, PDK Enterprises LLC and PKD Pools and Spas LLC, and that I have read the attached Verified Complaint herein and all the contents thereof are true to my knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true. The grounds of my information and sources of my belief are conversations with plaintiff representative David Kumpf and documents kept in the ordinary course of business. I am making this affidavit because plaintiff PDK Enterprises LLC is not located in the County where my firm has its office and the action or defense is founded upon a written instrument for the payment of money which is in my possession.



David S. Widenor, Esq.

Sworn to before me this
13th day of November 2009

JENNIFER A HURLEY
Notary Public - State of New York
No. 02HU6091064
Qualified in Erie County
My Commission Expires 04/21/2011

EXHIBIT A

PDK Pools & Spas

P.O. Box 6478
Leesburg, VA 20132
Phone (703) 786-7939 Fax (540) 338 - 7541

Contract # 60
DATE: 06/04/08
G.C. License- #2705048065

To:
Tammy Capozzi
60 Troy Del Way
Amherst, NY 14221-4504
(716) 578-5444

Ship To:
Tammy Capozzi
60 Troy Del Way
Amherst, NY 14221-4504
(716) 578-5444

Comments or Special Instructions: Work is to be performed on an established pool/spa system. Installation requires new installation to mate to existing plumbing and electrical configuration. The work to be performed is to maximize and establish optimal performance from existing pool/spa configuration. All flow rate / pressure calculations rendered by Pentair technical engineering department based on current pool/spa configuration.

REPRESENTATIVE	P.O. NUMBER	SHIP DATE	SHIP VIA	F.O.B. POINT	TERMS
David Kumpf	716-430-6928	T.B.D.	Delivered	Residence	See T&C's

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
1	Pentair 3 HP Challenger HP pump #345209	1270.00	1270.00
1	Sta-Rite System 3 Modular 400SF Media Filter #S7M400	1347.00	1347.00
1	250,000 BTU Pentair Master Temp Pool Heater #250	2992.00	2992.00
1	AquaLogic PS-4 Automation Panel #AQL-PS-4	1416.00	1416.00
1	AquaLogic Turbo Cell #AQL-CL	948.00	948.00
1	Wired AquaLogic PS-4 Remote Display #AQL-WMW-PS-4	365.00	365.00
1	Wireless AquaLogic 6 Function Remote #AQL-SS-RF	355.00	355.00
2	Goldline Valve Actuator GVA-24 #GVA-24	163.00	326.00
3	2" 2 Way Valves – Jandy NeverLube #4716	66.00	198.00
3	2" 3 Way Valves – Jandy NeverLube #4716	74.00	222.00
1	100' Flexible 2" PVC Piping	318.00	318.00
6	10' Rigid 2" PVC Piping	19.00	114.00
1	Various 2" Unions, Elbows, & Reducers	110.00	110.00
	Installation Charges:		
1	Relocate and/or extend piping, gas line, and wiring from exterior of shed to interior. Reconfigure existing 1 ½ HP pump for 230 VAC. Install new filter, heater, jet pump, salt generator and full pool and spa automation and control system including all wired and remote units. *		INC
		SUBTOTAL	9,981.00
		SALES TAX	N/A
		SHIPPING & HANDLING	N/A
		TOTAL DUE	$9,981.00

Footnotes:

- This package includes all standard plumbing, electrical, misc. equipment and site excavation in this cost estimate.

a) Additional charges may apply due to unforeseen complications during installation. Owner will be notified if necessary. I.E. – Unexpected ground obstacles.

b) Additional charges may apply to unforeseen complications during electric and water installation procedures. Owner will be notified if necessary. I.E. – Service Size or valving Issues.

c) Work is limited to the replacement and automation of the pumping and filtration system only.

Terms and Conditions:

a. Contractor will not be held responsible for unforeseen problems or circumstances which arise from inadequate site drainage or incorrect deck installation or excessive ground water.

b. Contractor will not be held responsible for damage to underground lines (I.E. – telephone, sprinkler, electric, cable, gas, water or sewer).

c. Payment Schedule is as follows.

d. Deposit – 0%

e. Pool Startup – 100%

f. Total – 100% upon completion.

AGREED CONDITIONS:

1. ADDITION WORK AND COSTS: Seller shall not perform any additional work without homeowner's prior written authorization or verbal approval. Such additional work may include, but not limited to, the removal of underground obstacles, removing, refilling and compacting filled ground, control of water seepage or other unforeseen or unusual ground conditions, including but not limited to rock beyond the removal capability of equipment (skid steer loader) and shall be approved by both parties. Any such change-order shall be incorporated in, and become part of this contract.

2. IN THE EVENT THAT THE PROJECT IS MUTUALLY AGREED TO STOP DUE TO CONDITIONS AT THE SITE, it is agreed that the contractor is due his cost to that point including sales time, permits, labor, material, equipment time and delivery of pool cost.

3. PLAN AND DRAWING. On the reverse side of this contract is a description, dimensions, model name and approximate drawing location of pool at construction site-homeowner should be present when construction begins.

4. CONSTRUCTION TIME: Construction time of this project is approximate. These dates are subject to delays caused by customer obtaining financing, acts of God, rain and rain damage, strike, acts of omission brought on by Buyer and other reasons beyond seller's control which could not be reasonably anticipated by Seller.

5. RESPONSIBILITY FOR PROPERTY DAMAGE: This installation assumes that the existing pool, spa, gas line, electric service, shed, and related systems were installed according to generally accepted practices and are of sufficient integrity to accept improvements and upgrades to the system as noted in the design plans. Buyer acknowledges and holds Seller harmless from any and all damage directly or indirectly caused by the equipment used in upgrading the swimming pool and spa system.

6. USE OF POOL AND LIMITATION OF LIABILITY: Buyer agrees not to use or intentionally or otherwise permit others to use or swim in pool until Seller has expressly advised Buyer that the pool is ready for use. Buyer agrees, acknowledges and understands that Seller shall be held harmless for personal injuries or property damages sustained by all persons who use or swim in the pool prior to the time the Seller expressly advises Buyer that the pool is ready to use.

7. COURSE OF CONSTRUCTION OBLIGATIONS OF BUYER:

A. User agrees to provide access to the pool site for all personnel and equipment, as well as for the storage of any material or equipment to complete the construction of the pool. Any delays in construction brought on by Buyer for his failure to provide access and/or storage shall be the sole responsibility of Buyer.

B. Buyer agrees to all necessary water and electricity for construction.

C. Buyer agrees to indicate the exact request site of the pool and to accept responsibility for the proof being on his property.

D. Buyer acknowledges and represents that his property meets all existing building codes, and holds Seller harmless for any loss or damage incurred by all persons for Buyer's failure to comply with all existing building codes.

E. Buyer agrees to furnish his own, or contract out structural retaining walls for sloping grades under separate building permit if applicable.

F. Buyer agrees to have removed any large underground obstacles that exceed the ability of standard excavating machinery. (i.e. tree stumps)

G. Buyer agrees to contract his own natural gas or propane supplier for heated pool if applicable.

H. Buyer is responsible for own landscaping.

8. TRANSFER, RENEWAL, EXTENSIONS AND ASSIGNMENT: Buyer and seller agree that no transfer, renewal, extension or assignment of this Agreement or any interest therein, or any loss, injury to or destruction of the swimming pool shall release the Buyer from any obligation hereunder. This Agreement shall be binding on and shall insure to the Benefit of the Buyer and Seller and to their respective heirs, legal representatives, successors and assigns.

9. UNENFORCEABILITY OF PROVISIONS: In the event any provision of this contract shall be held ineffective, the remainder of this contract shall remain in full force and effect.

10. RECOVERY OF LITIGATION COSTS: If any legal action, arbitration or other proceedings are brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

11. ENTIRE AGREEMENT: This Agreement constitutes the entire Agreement between the parties, pertaining to the subject matter contained in it, and supersedes all prior and contemporaneous agreements, representations and understanding of the parties. No supplement, modification or amendment to this Agreement shall be binding, unless it is executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

12. CANCELLATION AND ACCEPTANCE.

A. Buyer may cancel this contract if it is solicited in person and Buyer signs it at a place other than the Seller's business shown on the contract, by sending notice of said cancellation by certified mail, return receipt requested, to the Seller at Seller's address shown on the contract which notice shall be postmarked not later than the third day (excluding Sundays and Holidays) following the date of signing the contract.

B. This agreement shall not be binding upon Seller until accepted by a duly authorized agent of the Seller. Upon acceptance of the Granting, neither part shall have the right to cancel same notwithstanding the terms of Paragraphs 12 A above.

13. BUYER'S ELECTRICAL SYSTEM: Buyer shall be responsible for a main electrical panel change or other upgrading of the electrical service because of building code deficiencies in existing service.

14. ARBITRATION: If at anytime, any controversy shall arise between the parties with respect to any matter arising out of, or relating to this contract, the formation or availability thereof, performance hereunder or the breach thereof, which the parties do not promptly adjust and determine, said controversy shall be decided by arbitration administered and in accordance with the Commercial arbitration Rules of the American Arbitration Association then obtaining unless waived. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final and judgment may be entered upon it in any court having jurisdiction thereof. The locale of any arbitration hearing will be determined as would the venue of any action pursuant to the laws of the state.

Notice to Owner:

Under the Mechanics Lien Law, any contractor who helps to improve your property, but is not paid for his or her work or supplies, has a right to place a lien on your home, land, or property where the work was performed and to sue you in court to obtain payment.

This means that after a court hearing, your home, land, and property could be sold by a court officer and the proceeds of the sale used to satisfy what you owe. This can happen even if you have paid your contractor in full if the contractor subcontractor, laborers, or suppliers remain unpaid.

To preserve their rights to file a claim or lien against your property, certain claimants such as subcontractor or material suppliers are each required to provide you with a document called an "Preliminary Notice." Contractors and laborers who contract with owners directly do not have to provide such notice since you are aware of their existence as an owner. A preliminary notice is not a lien against your property. Its purpose is to notify you of persons or entities that may have a right to file a lien against your property if they are not paid. In order to perfect their lien rights, a contractor, subcontractor, supplier, or laborer must file a mechanic's lien with the county recorder which then becomes a recorded lien against your property. Generally, the maximum time allowed for filing a mechanics lien against your property is 90 days after substantial completion of your project.

TO ENSURE EXTRA PROTECTION FOR YOURSELF AND YOUR PROPERTY, YOU MAY WISH TO TAKE ONE OR MORE OF THE FOLLOWING STEPS.

(1) Require that your contractor supply you with a payment and performance bond (not a license bond), which provides that the bonding company will either complete the project or pay damages up to the amount of the bond. This payment and performance bond as well as copy of the construction contract should be filed with the county recorder for your further protection. The payment and performance bond -- Will -- usually cost from 1 percent of the contract amount depending on the contractor's bonding ability. If a contractor cannot obtain such bonding, it may indicate his or her financial incapacity.

(2) Require that payments be made directly to subcontractors and material suppliers through a joint control. Funding services may be available, for a fee, in your area which will establish voucher or other means of payment to your contractor. These services may also provide you with a lien waiver and other forms of protection. Any joint control agreement should include the addendum, approved by a registrar.

(3) Issue joint checks for payment made out to both your contractor and subcontractors or material suppliers involved in the project. The joint checks should be made payable to the persons or entities which send preliminary notices to you. Those persons or entities have indicated that they may have lien rights on your property, therefore you need to protect yourself. This will help to insure that all persons due payment are actually paid.

(4) Upon making payment on any completed phase of the project, and before making any further payments, require your contractor to provide you with unconditional "Waiver and Release" forms signed by each material supplier, subcontractor, and laborer involved in that portion of the work for which payment was made. The statutory lien releases are set forth in exact language is Sections 3262 of the Civil Code. Most stationery stores will sell the "Waiver Release" forms if your contractor does not have them. The material suppliers, subcontractors, and laborers that you obtain releases from are those persons or entities who have filed preliminary notices with you. If you are not certain of the material suppliers, subcontractors, and laborers working on your project, you may obtain a list from your contractor. On projects involving improvements to a single-family residence or duplex owned by the individuals, the person signing those releases lose the right to file a mechanic's lien claim against your property. In other types of construction, this protection may still be important, but may not be complete.

To protect yourself under this option, you must be certain that a material supplier, subcontractors, and laborers have signed the "Waiver and Release" form. If a mechanic's lien has been filed against your property, it can only be voluntarily released by a recorded "Release of Mechanics Lien" signed by the person or entity that filed the "Mechanic's Lien" against your property unless the lawsuit to enforce the lien was not timely filed. You should not make any final payments until any and all such liens are removed. You should consult an attorney if a lien is filed against your property.

I have read and hereby acknowledge the agreed conditions:

PDK Enterprises, L.L.C.

_____
(Dealers Name)

_____ Date _____
(Buyer)

_____ Date _____
(Representative)

EXHIBIT B

365 - Notice of mechanic's lien, affidavit of service, individual, partnership or corporation - to be filed with County Clerk. Lien Law §3 et seq 9-96

BlumbergExcelsior, Publisher, NYC 10013
www.blumberg.com

NOTICE OF MECHANIC'S LIEN

To the Clerk of the County of Erie and all others whom it may concern:

Please Take Notice, that PDK Enterprises, L.L.C.
P.O. Box 6478, Leesburg, VA 20132; David Kumpf, PDK Representative and Installer 162 Willowcrest Drive, West Seneca, New York 14224 - Local Office Director

as lienor(s) have and claim a lien on the real property hereinafter described as follows:

(1) The names and residences of the lienor(s) are PDK Enterprises, L.L.C.
P.O. Box 6478, Leesburg, VA 20132; David Kumpf, PDK Representative and Installer 162 Willowcrest Drive, West Seneca, New York 14224

being a partnership corporation ■ LLC composed of Delaware LLC having duly made Application for authority to do business in NYS

whose business address is at 162 Willowcrest Drive, West Seneca, New York 14224
and whose principal place of business is at P.O. Box 6478, Leesburg, VA 20132

(1a) The name and address of lienor's attorney, if any Ann Leonard Anderson, Esq.
P.O.Box 45, Spring Brook, New York 14140

(2) The owner of the real property is Tammy Capozzi and Mike Watt, husband and wife
and the interest of the owner as far as known to the lienor(s) is fee simple

(3) The name of the person by whom the lienor(s) was (were) employed is Tammy Capozzi and Mike Watt
The name of the person to whom the lienor(s) furnished or is (are) to furnish material or for whom the lienor(s) performed or is (are) to perform professional services is Tammy Capozzi and Mike Watt
The name of the person with whom the contract was made is Mike Watt
The labor performed was installation of inground pool and spa upgrade and automation system

The material furnished was Pentair pump, Sta-Rite media filter, Pentair pool heater, Automation Panel, Turbo Cell, Remote Display, Function Remote, Valve Actuator and valves, PVC piping, various unions, elbows and reducers
The materials actually manufactured for but not delivered to the real property are None

The agreed price and value of the labor performed is $ installation included
The agreed price and value of the material furnished is $ $9,981.00 including installation
The agreed price and value of the material actually mfd. for but not delivered to the real prop. is $None
Total agreed price and value $$9,981.00

(5) The amount unpaid to the lienor(s) for said labor performed is $ installation included
The amount unpaid to the lienor(s) for said material furnished is $ $9,981.00 including installation
The amount unpaid to lienor(s) for material actually mfd. for but not delivered to the real prop. is $ None
Total amount unpaid $ 9,981.00
The total amount claimed for which this lien is filed is $$9,981.00 including material and labor

(6) The time when the first item of work was performed was June 9, 2008
The time when the first item of material was furnished was June 9, 2008
The time when the last item of work was performed was July 16, 2008
The time when the last item of material was furnished was July 16, 2008

(7) The property subject to the lien is situated in Town of Amherst, County of Erie, State of NY
60 Troy Del Way, Amherst, New York 14221-4504

That said labor and materials were performed and furnished for and used, and that the professional services rendered were used, in the improvement of the real property hereinbefore described. That 8 months (4 months if a single family dwelling) have not elapsed dating from the last item of work performed, or from the last items of materials furnished, or since the completion of the contract, or since the final performance of the work, or since the final furnishing of the material for which the lien is claimed.

Dated September 22, 2008

Alicia Green
Commonwealth of Virginia
Notary Public
Commission No. 7195311
My Commission Expires 07/29/2012

The name signed must be printed beneath
Paul Kumpf

Verification

STATE OF NEW YORK, COUNTY OF Erie ss.: INDIVIDUAL OR PARTNER

being duly sworn, says that deponent is (one of the co-partnership named in the within notice of lien and) the lienor(s) mentioned in the foregoing notice of lien; that deponent has read the said notice and knows the contents thereof, and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Sworn to before me on _____

STATE OF NEW YORK, COUNTY OF Erie ss.: CORPORATION

David Kumpf being duly sworn, says that deponent is the Local Office Director of PDK Enterprises, L.L.C. herein, that deponent has read the foregoing notice of lien and knows the contents thereof, and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters deponent believes it to be true. The reason why this verification is made by deponent is that deponent is an officer, to wit, the Local Office Director of PDK Enterprises, L.L.C. which is a DE L.L.C. corporation, and deponent is familiar with the facts and circumstances herein.

The sources of deponent's information and the grounds of deponent's belief as to all matters not therein stated upon deponent's knowledge are as follows: information provided by Paul Kumpf, President

Sworn to before me on ~~September~~ November 15, 2008 _____

Ann Leonard Anderson

Erie

10/19/09

Editor's note: Notice of Mechanic's Lien may be filed at any time during progress of the work and the furnishing of the materials, or, within eight months (four months if a single family dwelling) after the completion of the contract, or the final performance of the work, or the final furnishing of the materials. The Notice of Mechanic's Lien must be filed in the Clerk's office of the county where the property is situated. If such property is situated in two or more counties, file the Notice of Mechanic's Lien in the office of the Clerk of each county. See Lien Law § 10.

FILED

DEC - 2 2008

ERIE COUNTY
CLERK'S OFFICE

Affidavit of Service of Notice of Mechanic's Lien on Owner, Agent or Attorney*

STATE OF NEW YORK, COUNTY OF Erie ss:

The undersigned, being duly sworn, deposes and says that deponent is over 18 years of age and

on November 25, 2008 served the within Notice of Mechanic's Lien

on Tammy Capozzi and Mike Watt, husband and wife
the owner herein
at 60 Troy Del Way, Amherst, New York 14221

by delivering a true copy to said owner personally. Deponent knew the person so served to be the owner.

as the owner could not be found, by delivering a true copy to the *agent* *attorney* of the owner.

by leaving it at the last known place of residence of the owner in the city or town in which the real property or some part thereof is situated, with

a person of suitable age and discretion.

by depositing a true copy of same, enclosed in a *certified* ~~*registered*~~ mail, postpaid, properly addressed wrapper, in an official depository of the United States Postal Service in New York State.

as the owner has no last known place of residence in the city or town in which the real property or some part thereof is situated, or the owner could not be found, and has no agent or attorney, by affixing a true copy thereof conspicuously on such property, at m. (between the hours of nine o'clock in the forenoon and four o'clock in the afternoon).

as the owner is a corporation, by personally delivering a true copy and leaving it with the *president* *vice-president* *secretary* *clerk* *cashier* *treasurer* *director* *managing agent* of the corporation.

as the owner is a corporation, and no officer of the corporation could be found within the state, by affixing a true copy conspicuously on such property at m. (between the hours of nine o'clock in the forenoon and four o'clock in the afternoon).

as the owner is a corporation, by depositing a true copy of same, enclosed in a *certified* *registered* mail, postpaid, properly addressed wrapper, in an official depository of the United States Postal Service in New York State.

Sworn to before me on _____

*Editor's note: Serve five days before or 30 days after filing the Notice of Mechanic's Lien. See Lien Law §11.

Affidavit of Service by Certified Mail*

STATE OF NEW YORK. COUNTY OF ERIE ss.:

The undersigned. being duly sworn. deposes and says that deponent is over 18 years of age and

on November 25, 2008 the undersigned served the within Notice of Lien on

the ~~contractor~~ ~~subcontractor~~ ~~assignee~~ legal representative (attorney) Kelly Zarone, Esq. and owners Tammy Capozzi + Mike Watt at 1416 Sweet Home Road, Suite 104, Amherst, NY 14228 + 60 Troy Del Way Hms, NY 14221, respectively by depositing a true copy of same. enclosed in a certified mail. postpaid. properly addressed wrapper. in an official depository of the United State Postal Service in New York State.

Richard P. Leonard

Sworn to before me on

November 25, 2008

Ann Leonard Anderson
Notary Public
Qualified in Erie County

Erie County
10/19/09

*Editor's noteServe a copy of Notice of Mechanic's Lien on contractor or subcontractor simultaneously or within 30 days after filing Notice of Mechanic's Lien. File proof of service with County Clerk within 35 days after Notice of Mechanic's Lien is filed. See Lien Law §11-b.

Mechanic's Lien

PDK Enterprises, L.L.C. *Claimant*
David Kumpf, Rep/Install

Residence
162 Willowcrest, BFLO, NY 14224

Business Address P.O. Box 6478
Leesburg, VA 20132
PDK Enterprises, L.L.C.

against

Tamy Capozzi and Mike Watt, husband and wife *Owner*

PDK Enterprises, L.L.C *Contractor*

Notice of Lien

Amount $ 9,981.00

Filed November 14, 2008

Premises known as
60 Troy Del Way, Amherst, New York 14221

Attorney(s) for Lienor
Post Office Address and Telephone Number
Ann Leonard Anderson, Esq.
P.O. Box 45
Spring Brook, New York 14140

EXHIBIT C

PDK Pools & Spas

P.O. Box 6478
Leesburg, VA 20132
Phone (703) 786-7939 Fax (540) 338 - 7541

Contract # 60
DATE: 07/23/08
G.C. License- #2705048065

To:
Tammy Capozzi & Mike Watt
60 Troy Del Way
Amherst, NY 14221-4504
(716) 578-5444

Ship To:
Tammy Capozzi & Mike Watt
60 Troy Del Way
Amherst, NY 14221-4504
(716) 578-5444

Comments or Special Instructions: Outstanding debt for services rendered.

REPRESENTATIVE	P.O. NUMBER	SHIP DATE	SHIP VIA	F.O.B. POINT	TERMS
David Kumpf	716-430-6928	N/A	Delivered	Residence	Completed

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
1	Pentair 3 HP Challenger HP pump #345209	1270.00	1270.00
1	Sta-Rite System 3 Modular 40CSF Media Filter #S7M400	1347.00	1347.00
1	250,000 BTU Pentair Master Temp Pool Heater #250	2992.00	2992.00
1	AquaLogic PS-4 Automation Panel #AQL-PS-4	1416.00	1416.00
1	AquaLogic Turbo Cell #AQL-CL	948.00	948.00
1	Wired AquaLogic PS-4 Remote Display #AQL-WMW-PS-4	365.00	365.00
1	Wireless AquaLogic 6 Function Remote #AQL-SS-RF	355.00	355.00
2	Goldline Valve Actuator GVA-24 #GVA-24	163.00	326.00
3	2" 2 Way Valves – Jandy NeverLube #4716	66.00	198.00
3	2" 3 Way Valves – Jandy NeverLube #4716	74.00	222.00
1	100' Flexible 2" PVC Piping	318.00	318.00
6	10' Rigid 2" PVC Piping	19.00	114.00
1	Various 2" Unions, Elbows, & Reducers	110.00	110.00
	Installation Charges:		
1	Relocate and/or extend piping, gas line, and wiring from exterior of shed to interior. Reconfigure existing 1 ½ HP pump for 230 VAC. Install new filter, heater, jet pump, salt generator and full pool and spa automation and control system including all wired and remote units.		INC
1	Clean and treat pool – setup pool for salt water system – balance pool chemicals	350.00	COMP
		TOTAL DUE	$9,981.00

Work has been completed under the terms of the contract. Payment is due in full within 10 business days from the date of invoice by check or money order payable to the PDK representative below. Additional support will also be made available to answer questions, set or adjust pool parameters, and winterize the pool system for the remainder of 2008 pool season. Thank you for utilizing our services and we hope to be able to serve you in the future.

Paul J Kumpf
President
PDK Pools & Spas

David Kumpf
PDK Representative
162 Willowcrest Drive
West Seneca, NY 14224

Exhibit D

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

FILED
ACTIONS & PROCEEDINGS
NOV 25 2009
ERIE COUNTY
CLERK'S OFFICE

PDK ENTERPRISES. LLC AND
PDK POOLS AND SPAS. LLC,

PLAINTIFFS,

VS.

INDEX NO. I 2009-12948

TAMMY CAPOZZI AND
MICHAEL WATT

DEFENDANTS.

JOINT STIPULATION CONSENTING
TO CANCEL ACTION AND NOTICE OF PENDENCY

WHEREAS, on November 13, 2009, Plaintiffs erroneously filed a Notice of Pendency in this Action as against real property located in the Town of Amherst. County of Erie, State of New York commonly known as 60 Troy Del Way, Williamsville, New York 14221 ("**Subject Property**"); and

WHEREAS, on November 24, 2009, Defendants have been served with the Verified Complaint by mail and there time to answer has not yet expired;

IT IS HEREBY JOINTLY STIPLUTED TO AND AGREED that:

Pursuant to Rule 6514(d) of the Civil Practice Law and Rules, the Notice of Pendency filed in this Action is hereby canceled because Defendants furnished an undertaking in the amount of nine thousand, nine hundred and eighty dollars ($9,981) and nine hundred and ninety-eight dollars and ten cents ($998.10) on February 5, 2009, prior to the commencement of the within referenced

action and prior to the filing of the Lis Pendens. Consequently, there is and was at the time of filing, no action commenced that maintains a lien on the Subject Property or an action that relates to any interest in the Subject Property and a Lis Pendens and foreclosure action is improper.

Plaintiffs also hereby cancel the action brought at Index Number 2009-12948, without prejudice understanding that no answer is currently necessary from Defendants.

Dated: Buffalo, New York
November 24. 2009

DAVID S. WIDENOR, PC

By: _____
David S. Widenor, Esq.
Attorneys for Plaintiffs
PDK Enterprises, LLC and
PDK Pools and Spas, LLC
390 Elmwood Ave.
Buffalo, NY 14222
Telephone: 716-898-8185

ZARCONE ASSOCIATES, PLLC

By: _____
Kelly V. Zarcone, Esq.
Attorneys for Defendants
Tammy Capozzi and
Michael Wait
2350 North Forest Road, Suite 8
Amherst, New York 14068

STATE OF NEW YORK)
)SS.:
COUNTY OF ERIE)

On the 24 day of November in the year 2009, before me, the undersigned, personally appeared Kelly V. Zarcone, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

DAWN A. KESSLER
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
NO. 01KE6012847
MY COMMISSION EXPIRES FEBRUARY 22, 20 13

Notary Public

STATE OF NEW YORK)
)SS.:
COUNTY OF ERIE)

On the 25th day of November in the year 2009, before me, the undersigned, personally appeared David S. Widenor, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

JENNIFER A HURLEY
Notary Public - State of New York
No. 02HU6091064
Qualified in Erie County
My Commission Expires 04/21/2011

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

FILED
ACTIONS & PROCEEDINGS
NOV 25 2009
ERIE COUNTY
CLERK'S OFFICE

PDK ENTERPRISES, LLC AND
PDK POOLS AND SPAS, LLC,

PLAINTIFFS,

VS.

INDEX NO. I 2009-12948

TAMMY CAPOZZI AND
MICHAEL WATT

DEFENDANTS.

ATTORNEY AFFIRMATION

DAVID S. WIDENOR, ESQ., an attorney admitted to practice law in the courts of the State of New York and attorneys for defendants, affirms, pursuant to rule 2106 of the Civil Practice Law and Rules the following:

1. I am familiar with all the facts and circumstances surrounding this case as set forth herein, my information having been gathered from a thorough reading of the file in my possession, and thorough research into the facts and law of the instant matter.

2. On November 23, 2009, Defendants were served with the Complaint through Defendants' attorney and Defendants' time to answer has not yet answered the Complaint.

WHEREFORE, Plaintiffs hereby demand that the Notice of Pendency be canceled, directing the County Clerk of Erie County to cancel the Notices of Pendency.

Dated: Buffalo, New York
November 23, 2009

DAVID S. WIDENOR, PC

By:
David S. Widenor, Esq.
Attorneys for Plaintiffs
PDK Enterprises, LLC and
PDK Pools and Spas, LLC
390 Elmwood Ave.
Buffalo, NY 14222
Telephone: 716-898-8185

TO: Zarcone Associates, PLLC
Kelly V. Zarcone, Esq.
Attorneys for Defendants
2350 North Forest Road, Suite 8
Amherst, New York 14068

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

PDK ENTERPRISES, LLC and,
PDK POOLS AND SPAS, LLC

Plaintiffs,

AFFIRMATION

v.

TAMMY CAPOZZI and
MICHAEL WATT

Defendants.

Index No.: I 2009-12948

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:

JOSEPH G. MAKOWSKI, ESQ. pursuant to CPLR 2106 affirms the following under penalty of perjury:

1. I am an attorney at law duly admitted to practice before the courts of State of New York.

2. I represent Tammy Capozzi and Michael Watt, the Defendants in the above captioned action. In such capacity I have personal knowledge of the facts and circumstances set forth in this affirmation.

3. I make this affirmation in support of the application of Tammy Capozzi and Michael Watt for return of Ten Thousand Nine Hundred Seventy-Nine Dollars and Ten Cents ($10,979.10) in monies deposited by them with Erie County on or about February 9, 2009 together with accrued interest thereon.

4. Deponent has independently reviewed the status of this action by checking the Actions and Proceedings file of the Erie County Clerk. As a result of deponent's review of the records of

the Erie County Clerk, deponent learned that on February 5, 2009 monies previously deposited by my client with the Erie County Clerk totaling Ten Thousand Nine Hundred Seventy-Nine Dollars and Ten Cents ($10,979.10) were transferred to the Erie County Commissioner of Finance. A true copy of the documentation of the Erie County Clerk dated February 5, 2009 transferring Ten Thousand Nine Hundred Seventy-Nine Dollars and Ten Cents ($10,979.10)to the Commissioner of Finance is annexed hereto as Exhibit "A" and made a part hereof.

5. On March 1, 2013 your deponent spoke with and sent an email to Donald Urban, an employee of the Erie County Comptroller requesting confirmation that the Erie County Comptroller was still in receipt of the Ten Thousand Nine Hundred Seventy-Nine Dollars and Ten Cents ($10,979.10) of my clients' funds. Mr. Urban responded to deponent's email thus:

> It is confirmed that $10,979.10 is currently remains on deposit with our Office for the below referenced Mechanic's Lien under Action #3768. The balance including interest thru 1/31/13 was $11,079.96. The current balance is about $1.30 greater.

A true copy of the March 1, 2013 emails exchanged between deponent and Mr. Donald Urban of the Erie County Comptroller's Office are annexed hereto as Exhibit "B" and made a part hereof.

6. Deponent has reviewed the November 24, 2009 Joint Stipulation entered into by David Widenor, Esq. and Kelly Zarcone, Esq. which discontinued the Mechanic's Lien, Notice of Pendency and November 13, 2009 action commenced by Plaintiffs against Defendants. A true copy of the Joint Stipulation and Attorney Affirmation of David Widenor, Esq. are annexed hereto as Exhibit "C" and made a part hereof.

7. Upon receipt of an Order from this court authorizing Erie County to release Eleven Thousand Seventy-Nine Dollars and Ninety-Six Cents ($11,079.96) to my clients the November

24, 2009 Joint Stipulation of counsel and Attorney Affirmation of David Widenor, Esq. will be filed by deponent to dispose of the current action.

8. On behalf of Tammy Capozzi and Michael, deponent requests an Order directing Erie County through the offices of the Erie County Comptroller and Erie County Commissioner of Finance to release Eleven Thousand Seventy-Nine Dollars and Ninety-Six Cents ($11,079.96) to Tammy Capozzi and Michael Watt.

DATED: Buffalo, New York
March 1, 2013

By: _____
JOSEPH G. MAKOWSKI, ESQ.

Exhibit A

Erie County Clerk's Office, New York
Erie County Hall
92 Franklin Street
Buffalo, New York 14202

Tammy Capozzi
Mike Watt
Plaintiff

Vs.

PDK Enterprises LLC
Defendant

Re: Index No.

I, KATHLEEN C. HOCHUL, Clerk of the County of Erie, do this day deposit with the Erie County Commissioner of Finance, the sum of $ 9981.00 plus $ 998.10 in interest, the same having been paid to me by Tammy Capozzi + Mike Watt on the 5th day of Feb, 2009 and pursuant to

a) an Order of the _____ Court dated _____;

b) pending appeal of _____; or

c) the discharge of a Mechanic's Lien dated _____ and filed in the Erie County Clerk's Office under Q 200/8957.

Dated: 11/14/08

KATHLEEN C. HOCHUL,
Erie County Clerk

By: _____
Deputy County Clerk

Revised 12/03/08 PLPulwiler

COVER SHEET REV 02-14-08

ERIE COUNTY CLERKS OFFICE

County Clerk's Recording Page

Return To:

Book: 98 Page: 3979

Page Count: 7

Doc Type: MONEY PD COURT

Rec Date: 02/05/2009

Rec Time: 02:52:40 PM

Control #: 2009021013

User ID: dm

Trans Num: 659973

DEED SEQ:

MTG SEQ:

UCC:

SCAR:

INDEX:

Party 1:
MONEY PD COURT

Party 2:
CAPOZZI TAMMY

Recording Fees:	
RECORDING5	$5.00
Total:	$5.00

Consideration Amount:	$10,979.10
BASIC	$0.00
SONYMA	$0.00
ADDL	$0.00
NFTA MT	$0.00
TRANSFER	$0.00
NFTA TT	$0.00

STATE OF NEW YORK
ERIE COUNTY CLERK'S OFFICE

WARNING - THIS SHEET CONSTITUTES THE CLERK'S ENDORSEMENT, REQUIRED BY SECTIONS 319&316-a (5) OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH. THIS IS NOT A BILL.

Kathleen C. Hochul
County Clerk

Exhibit B

Please print
Sent via BlackBerry by AT&T

From: "Urban, Donald" <Donald.Urban@erie.gov>
Date: Fri, 1 Mar 2013 15:28:34 +0000
To: 'jmakowski@aol.com' <jmakowski@aol.com>
Cc: Buell, Charles<Charles.Buell@erie.gov>
Subject: RE: Confirmation of funds on deposit

Joseph,

It is confirmed that $10,979.10 is currently remains on deposit with our Office for the below referenced Mechanic's Lien under Action #3768. The balance including interest thru 1/31/13 was $11,079.96. The current balance is about $1.30 greater.

From: jmakowski@aol.com [mailto:jmakowski@aol.com]
Sent: Friday, March 01, 2013 9:58 AM
To: Urban, Donald
Subject: Fwd: Confirmation of funds on deposit

---Original Message---
From: jmakowski <jmakowski@aol.com>
To: donald.urban <donald.urban@erecounty.gov>
Sent: Fri, Mar 1, 2013 9:24 am
Subject: Confirmation of funds on deposit

Dear Mr. Urban: Please be advised that I represent Tammy Capozzi and Micheal Watt. On February 5 2009 my clients paid $10,979.10 into the court to address an mechanics lien. Attached is documentation of the money paid to Erie County. The mechanics lien issue is resolved. I have filed a motion with NYS Supreme Court with Justice Kevin Dillon to release the money to my clients. Due to the passage of time I need confirmation that the money paid into the court by my clients including any accrued interest is still on deposit with the Erie County Comptroller or the Commissioner of Finance. Assuming the money is still on deposit with Erie County if you could provide me with the current amount on deposit it would be helpful. Per our conversation your prompt attention in his matter would be deeply appreciated. If you have any further questions you may contact me at either 881-1890 or 440-4951. Thank you. Joseph G. Makowski,Esq.

---Original Message---
From: Lisa M Scime <lisascime@aol.com>
To: jmakowski <jmakowski@aol.com>
Sent: Fri, Mar 1, 2013 9:01 am

Exhibit C

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

FILED
ACTIONS & PROCEEDINGS
NOV 25 2009
ERIE COUNTY
CLERK'S OFFICE

PDK ENTERPRISES, LLC AND
PDK POOLS AND SPAS, LLC,

PLAINTIFFS,

VS.

INDEX NO. I 2009-12948

TAMMY CAPOZZI AND
MICHAEL WATT

DEFENDANTS.

JOINT STIPULATION CONSENTING
TO CANCEL ACTION AND NOTICE OF PENDENCY

WHEREAS, on November 13, 2009, Plaintiffs erroneously filed a Notice of Pendency in this Action as against real property located in the Town of Amherst, County of Erie, State of New York commonly known as 60 Troy Del Way, Williamsville, New York 14221 ("**Subject Property**"); and

WHEREAS, on November 24, 2009, Defendants have been served with the Verified Complaint by mail and there time to answer has not yet expired;

IT IS HEREBY JOINTLY STIPLUTED TO AND AGREED that:

Pursuant to Rule 6514(d) of the Civil Practice Law and Rules, the Notice of Pendency filed in this Action is hereby canceled because Defendants furnished an undertaking in the amount of nine thousand, nine hundred and eighty dollars ($9,981) and nine hundred and ninety-eight dollars and ten cents ($998.10) on February 5, 2009, prior to the commencement of the within referenced

action and prior to the filing of the Lis Pendens. Consequently, there is and was at the time of filing, no action commenced that maintains a lien on the Subject Property or an action that relates to any interest in the Subject Property and a Lis Pendens and foreclosure action is improper.

Plaintiffs also hereby cancel the action brought at Index Number 2009-12948, without prejudice understanding that no answer is currently necessary from Defendants.

Dated: Buffalo, New York
November 24, 2009

DAVID S. WIDENOR, PC

By: _____
David S. Widenor, Esq.
Attorneys for Plaintiffs
PDK Enterprises, LLC and
PDK Pools and Spas, LLC
390 Elmwood Ave.
Buffalo, NY 14222
Telephone: 716-898-8185

ZARCONE ASSOCIATES, PLLC

By: _____
Kelly V. Zarcone, Esq.
Attorneys for Defendants
Tammy Capozzi and
Michael Watt
2350 North Forest Road, Suite 8
Amherst, New York 14068

STATE OF NEW YORK)
)SS.:
COUNTY OF ERIE)

On the 24 day of November in the year 2009, before me, the undersigned, personally appeared Kelly V. Zarcone, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

DAWN A. KESSLER
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
NO. 01KE6012647
MY COMMISSION EXPIRES FEBRUARY 22, 20 13

Notary Public

STATE OF NEW YORK)
)SS.:
COUNTY OF ERIE)

On the 25th day of November in the year 2009, before me, the undersigned, personally appeared David S. Widenor, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

JENNIFER A HURLEY
Notary Public - State of New York
No. 02HU6091064
Qualified in Erie County
My Commission Expires 04/21/2011

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

FILED
ACTIONS & PROCEEDINGS
NOV 25 2009
ERIE COUNTY
CLERK'S OFFICE

PDK ENTERPRISES, LLC AND
PDK POOLS AND SPAS, LLC,

PLAINTIFFS,

VS.

INDEX NO. I 2009-12948

TAMMY CAPOZZI AND
MICHAEL WATT

DEFENDANTS.

ATTORNEY AFFIRMATION

DAVID S. WIDENOR, ESQ., an attorney admitted to practice law in the courts of the State of New York and attorneys for defendants, affirms, pursuant to rule 2106 of the Civil Practice Law and Rules the following:

1. I am familiar with all the facts and circumstances surrounding this case as set forth herein, my information having been gathered from a thorough reading of the file in my possession, and thorough research into the facts and law of the instant matter.

2. On November 23, 2009, Defendants were served with the Complaint through Defendants' attorney and Defendants' time to answer has not yet answered the Complaint.

WHEREFORE, Plaintiffs hereby demand that the Notice of Pendency be canceled, directing the County Clerk of Erie County to cancel the Notices of Pendency.

Dated: Buffalo, New York
November 23, 2009

DAVID S. WIDENOR, PC

By:
David S. Widenor, Esq.
Attorneys for Plaintiffs
PDK Enterprises, LLC and
PDK Pools and Spas, LLC
390 Elmwood Ave.
Buffalo, NY 14222
Telephone: 716-898-8185

TO: Zarcone Associates, PLLC
Kelly V. Zarcone, Esq.
Attorneys for Defendants
2350 North Forest Road, Suite 8
Amherst, New York 14068