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

April 25, 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:	*Manufacturers and Traders Trust Company v. David J. Shenk, solely in his capacity as the Comptroller of Erie County, New York, et al.*
Document Received:	Notice of Motion with Motion
Name of Claimant:	Manufacturers and Traders Trust Company
Claimant's attorney:	Anthony R. Hanley, Esq. Costello Cooney Fearon PLLC 5701 West Genesee Street Camillus, New York 13031

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle Parker
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enclosure

STATE OF NEW YORK
SUPREME COURT COUNTY OF ERIE

MANUFACTURERS AND TRADERS TRUST COMPANY,

Plaintiff,

-vs-

ACEA M. MOSEY, Erie County Public Administrator, as Administrator of the Estate of Fred S. Fischer;
ERIE COUNTY MEDICAL CENTER;
MARK J. COUGHLIN a/k/a MARK COUGHLIN, as Devisee in the Estate of Fred S. Fischer;
DIANE COUGHLIN, as Devisee in the Estate of Fred S. Fischer;
MARY C. JACKSON, as Devisee in the Estate of Fred S. Fischer;
UNIFUND CCR PARTNERS ASSIGNEE OF CITIBANK UNIVERSAL CARD;
MIDLAND CREDIT MANAGEMENT, INC.;
CSGA, LLC;
DAVID J. SHENK, solely in his capacity as the Comptroller of Erie County, State of New York;

Defendants.

Index No. I 2012-608374
RJI No.

ORDER AND JUDGMENT

Plaintiff, Manufacturers and Traders Trust Company ("Plaintiff"), having moved this Court for a declaratory judgment in its favor against the Defendant Claimants entitling it to an order 1) directing payment by the Defendant David J. Shenk, solely in his capacity as the Comptroller of Erie County and Custodian of Funds in the amount of $29,610.56, from the funds held on deposit (the "Funds") from a tax sale of property formerly owned by Fred S. Fischer, now deceased ("Decedent Fischer"), in order to satisfy an outstanding debt to Plaintiff by Decedent Fischer, and 2) discontinuing the action against defendant CSGA, LLC; and the motion having regularly come on to be heard,

NOW, upon reading and filing the Notice of Motion and supporting affidavit of Anthony R. Hanley, sworn to the 26th day of March, 2013, and the exhibits annexed thereto, together with proof of service

thereof, and after hearing Costello, Cooney & Fearon, PLLC, Anthony R. Hanley, Esq., of counsel, attorneys for the Plaintiff, in support of said motion, and there being no opposition thereto and due deliberation having been had thereon, it is

ORDERED, ADJUDGED AND DECREED, that this action is hereby discontinued against defendant CSGA, LLC; and it is further

ORDERED, ADJUDGED AND DECREED, that Plaintiff's motion seeking a declaratory judgment in its favor against the remaining Defendants as possible competing creditors with respect to the payment hereby sought from the Funds, is hereby and in all respects granted; and it is further

ORDERED, ADJUDGED AND DECREED, that Plaintiff is entitled to payment by Defendant Custodian of Funds from the Funds in the amount of $29,610.56 on deposit from the tax sale of 608 Crescent Avenue in the City of Buffalo, State of New York, in order to satisfy the outstanding debt owed to Plaintiff by Decedent Fischer and Custodian of Funds is directed to so pay Plaintiff from said Funds.

DATED: _____

Buffalo, New York

ENTER: _____

Justice of the Supreme Court

JOSEPH R. GLOWNIA, J.S.C.

STATE OF NEW YORK
SUPREME COURT COUNTY OF ERIE

MANUFACTURERS AND TRADERS TRUST COMPANY,

Index No. I 2012-608374
RJI No.

NOTICE OF MOTION

Plaintiff,

-vs-

ACEA M. MOSEY, Erie County Public Administrator, as Administrator of the Estate of Fred S. Fischer;
ERIE COUNTY MEDICAL CENTER;
MARK J. COUGHLIN a/k/a MARK COUGHLIN, as Devisee in the Estate of Fred S. Fischer;
DIANE COUGHLIN, as Devisee in the Estate of Fred S. Fischer;
MARY C. JACKSON, as Devisee in the Estate of Fred S. Fischer;
UNIFUND CCR PARTNERS ASSIGNEE OF CITIBANK UNIVERSAL CARD;
MIDLAND CREDIT MANAGEMENT, INC.;
CSGA, LLC;
DAVID J. SHENK, solely in his capacity as the Comptroller of Erie County, State of New York;

Defendants.

MOTION MADE BY: Costello, Cooney & Fearon, PLLC, attorneys for the Plaintiff, Manufacturers and Traders Trust Company.

DATE, TIME AND PLACE OF HEARING: The 17th day of May, 2013, at 9:30 a.m. at a motion term of the Supreme Court held in the Erie County Courthouse, City of Buffalo, New York.

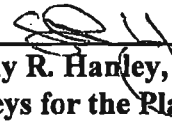
SUPPORTING PAPERS: Affidavit of Anthony R. Hanley, Esq., dated the 26th day of March, 2013, and exhibits annexed thereto.

RELIEF REQUESTED: A declaration of said Plaintiff's priority rights to payment of monies from the Funds; and directing payment by Defendant Custodian of Funds to said Plaintiff from the Funds in the amount of $29,610.56 in order to satisfy the outstanding debt owed to it by Decedent Fischer; and discontinuing the action as against defendant, CSGA, LLC; and such other and further relief as the Court deems just and proper.

ANSWERING PAPERS: Demand is made that Answering papers, if any, must be served in accordance with CPLR 2214(b), at least seven (7) days prior to the return date of this motion.

DATED: **March 26, 2013**

COSTELLO, COONEY & FEARON, PLLC



Anthony R. Hanley, Esq.
Attorneys for the Plaintiff,
Manufacturers and Traders Trust Company
Office and Post Office Address
5701 West Genesee Street
Camillus, New York 13031
Telephone: (315) 422-1152

TO:

Howard B. Frank
Attorney for Defendant,
Erie County Department of Social Services
95 Franklin Street
Buffalo, New York 14202

Acea M. Mosey, Erie County Public Administrator,
as Administrator of the Estate of Fred S. Fischer
625 Delaware Avenue, #304
Buffalo, New York 14202

Erie County Medical Center
462 Grider Street
Buffalo, New York 14215

Mark J. Coughlin a/k/a Mark Coughlin,
as Devisee in the Estate of Fred S. Fischer
5497 Mapleton Road
Lockport, New York 14094

Diane Coughlin, as Devisee in the
Estate of Fred S. Fischer
5497 Mapleton Road
Lockport, New York 14094

Mary C. Jackson, as Devisee in the
Estate of Fred S. Fischer
80 Knox Avenue
Buffalo, New York 14216

Unifund CCR Partners Assignee of Citibank Universal Card
Unifund CCR
10625 Techwoods Circle
Cincinnati, Ohio 45249

Midland Credit Management, Inc.
3111 Camino Del Rio North, #1300
San Diego, CA 92108

David J. Shenk, solely in his capacity as the Comptroller
of Erie County, State of New York
95 Franklin Street, 7th Floor
Buffalo, New York 14202

Comptroller of Erie County, State of New York
c/o Erie County Attorney
95 Franklin Street, Room 1634
Buffalo, New York 14202

STATE OF NEW YORK
SUPREME COURT COUNTY OF ERIE

MANUFACTURERS AND TRADERS TRUST COMPANY,	**Index No. I 2012-608374** **RJI No.**
Plaintiff,	**AFFIDAVIT IN SUPPORT OF MOTION FOR DECLARATORY JUDGMENT AND FOR DISTRIBUTION OF SURPLUS MONIES**
-vs-	
ACEA M. MOSEY, Erie County Public Administrator, as Administrator of the Estate of Fred S. Fischer; **ERIE COUNTY MEDICAL CENTER;** **MARK J. COUGHLIN a/k/a MARK COUGHLIN, as Devisee in the Estate of Fred S. Fischer;** **DIANE COUGHLIN, as Devisee in the Estate of Fred S. Fischer;** **MARY C. JACKSON, as Devisee in the Estate of Fred S. Fischer;** **UNIFUND CCR PARTNERS ASSIGNEE OF CITIBANK UNIVERSAL CARD;** **MIDLAND CREDIT MANAGEMENT, INC.;** **CSGA, LLC;** **DAVID J. SHENK, solely in his capacity as the Comptroller of Erie County, State of New York;**	
Defendants.	

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

Anthony R. Hanley, being first duly sworn, deposes and says:

1. Your deponent is an attorney licensed to practice law in the State of New York and duly admitted before this Court. I am a member of the law firm of Costello, Cooney & Fearon, PLLC, counsel for the Plaintiff Manufacturers and Traders Trust Company ("Plaintiff"). As such, I am fully familiar with the facts and circumstances set forth in this Affidavit.

INTRODUCTION

2. This is an action by Plaintiff M&T Bank for declaratory relief to adjudicate possible competing creditor claims to surplus monies resulting from a tax sale of real property by the County of Erie. The property is located at 608 Crescent Avenue in the City of Buffalo, State of New York (the "Premises"). The Premises was formerly owned by the now deceased mortgagor Fred S. Fischer (hereinafter "Decedent Fischer"). There is presently $65,113.00 in said surplus funds on deposit and unclaimed with the Custodian of Funds (the "Funds"). The Defendant Claimants all assert or may assert a lien on the real property subject and subsequent to Plaintiff M&T Bank's mortgage. Plaintiff M&T Bank hereby seeks a declaratory judgment in its favor entitling it to a "payout" order from this Court with respect to the Funds based on a mortgage it held at the time of the tax sale. A copy of the Certificate of Amount of Money on Deposit with the Custodian Stakeholder, dated October 22, 2012, is attached hereto as Exhibit "A".

3. The Summons and Complaint were served upon all defendants, except the defendant CSGA, LLC. Plaintiff intends to discontinue its action against that defunct corporate defendant in this instant proceeding. Attached as Exhibit "B" are copies of the Affidavits of Service.

4. The Summons and Complaint served on Defendants seeks an Order in favor of Plaintiff granting Plaintiff a declaratory judgment in its favor against the Defendant Claimants entitling it to an Order directing payment by the Defendant Custodian of Funds in the amount of $29,610.56, from the Funds in order to satisfy the outstanding debt owed to it by Decedent Fischer. A copy of the Summons and Complaint served is attached hereto as Exhibit "C".

5. The time to answer the Complaint has expired, and no answer has been interposed by the Defendants. Defendant Erie County Department of Social Services appeared through its attorney, Howard B. Frank. A copy of the Notice of Appearance is attached hereto as Exhibit "D".

6. That Manufacturers and Traders Trust Company is entitled to a portion of said surplus monies herein, and that the nature and extent of its claim thereto are set forth in the Summons and Complaint filed in its behalf with the Clerk of the County of Erie on the 14th day of December, 2012, a copy of which is hereto annexed as Exhibit "C".

7. That true copies of the Home Equity Account Agreement and Disclosure Statement and recorded Home Equity Line of Credit Account Individual Mortgage executed and delivered by deceased borrower Fred S. Fischer to Manufacturers and Traders Trust Company are annexed hereto as Exhibits in the filed Summons and Complaint. Said Mortgage was recorded in the Erie County Clerk's Office on April 12, 2006 in Book 13284 of Mortgages at Page 9843&c.

8. That no payments have been made to Plaintiff to reduce its original surplus money claim of $29,610.56.

9. That the superiority of the claim of Plaintiff arises from its lien upon the mortgaged premises was acquired on April 12, 2006, by the recording of the mortgage and that all of the other liens upon the mortgaged premises were acquired subsequent thereto. M&T Bank's claim has not been contested.

10. That this action be discontinued against defendant CSGA, LLC, as said defendant is no longer in business and is by all informal accounts "defunct". Plaintiff was unable to effect service of the Summons and Complaint upon said defendant CSGA, LLC and seeks to simply remove it as a party defendant in this proceeding.

11. That this affidavit is made for the purpose of obtaining an Order directing distribution to Manufacturers and Traders Trust Company of the surplus monies herein in the amount of $29,610.56 under the direction of the Court, discontinuing the action against defendant CSGA, LLC, and for such other and further relief as may be just, proper and equitable.

WHEREFORE, Plaintiff Manufacturers and Traders Trust Company, hereby respectfully requests that the Court grant in judgment as follows:

A) as against the Defendant Claimants, a declaration of said Plaintiff's priority rights to payment of monies from the Funds; and

B) directing payment by Defendant Custodian of Funds to said Plaintiff from the Funds in the amount of $29,610.56 in order to satisfy the outstanding debt owed to it by Decedent Fischer; and

C) discontinuing the action as against defendant, CSGA, LLC; and

D) such other and further relief as the Court deems just and proper.

Anthony R. Hanley, Esq.

Subscribed and sworn to before me

this 26th day of March, 2013.

Notary Public

BARBARA A. WISNESKI
Notary Public, State of New York
Qual. in Onondaga County No. 4828834
Commission Expires March 30, 2015