

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**BERNIE O'HARE**

**:**

**V.**

**: DOCKET NO: 15-1625**

**JOANN MEZZACAPPA**

**:**

**DEFENDANT JOANN MEZZACAPPA'S ANSWER AND AFFIRMATIVE DEFENSES**

Defendant Joann Mezzacappa, by and through her counsel, Lawrence M. Otter, Esquire, hereby answers Plaintiff's Complaint and says:

1. Admitted
2. Admitted
3. Denied. This complaint does not meet the jurisdictional requirement of Diversity under 28 U.S. C. § 1332 for failure to meet the jurisdictional amount and failure to include an indispensable party, specifically Tricia Mezzacappa.
4. Admitted
5. Denied. Defendant lacks knowledge or information sufficient to form a belief about the truth of an allegation. Strict proof is demanded at time of trial.
6. Denied. Defendant lacks knowledge or information sufficient to form a belief about the truth of an allegation. Strict proof is demanded at time of trial.
7. Denied. Defendant lacks knowledge or information sufficient to form a belief about the truth of an allegation. Strict proof is demanded at time of trial.
8. Admitted. Tricia Mezzacappa did convey her West Easton property to Defendant in consideration of prior debts to defendant.

9. Denied. Defendant lacks knowledge or information sufficient to form a belief about the truth of an allegation. Strict proof is demanded at time of trial. It is admitted that the deed transfer was done in consideration of prior debts owed by Tricia Mezzacappa to Defendant.
10. Denied. It is specifically denied that the transfer was without consideration and made with intent to hinder, delay, or defraud Plaintiff. Defendant lacks further knowledge or information sufficient to form a belief about the truth of an allegation. Strict proof is demanded at time of trial.
11. Denied. Defendant lacks knowledge or information sufficient to form a belief about the truth of an allegation. Strict proof is demanded at time of trial.
12. Denied. Defendant lacks knowledge or information sufficient to form a belief about the truth of an allegation. Strict proof is demanded at time of trial.
13. Denied. To the contrary, Plaintiff disingenuously sent a letter to Defendant in August, 2014 demanding a variety of relief, with the express knowledge that Defendant did not participate in any fraudulent conveyance regarding the home of her daughter, and with the express intent to bully Defendant into paying an alleged judgment, on appeal, rendered against her daughter. Plaintiff and his counsel attempted to extort a payment from Defendant.
14. Denied. Defendant at no time retained legal counsel, and at no time refused to transfer the deed. To the contrary, Defendant consulted a Bethlehem, PA attorney who offered his service without fee, to attempt to settle a long standing, litigious dispute between O'Hare and Tricia Mezzacappa. This attorney notified Defendant that Attorney Orloski never

returned his call. Furthermore, Defendant lacks knowledge or information sufficient to form a belief about the truth of an allegation. Strict proof is demanded at time of trial.

15. (A-M) Denied. These allegations are solely directed at Tricia Mezzacappa, an indispensable party which Plaintiff failed to join in this matter since it would destroy total diversity and thereby deprive this court of jurisdiction in the matter. Defendant lacks knowledge or information sufficient to form a belief about the truth of an allegation. Strict proof is demanded at time of trial.
16. Denied. It is specifically denied that Defendant acted to defraud the Plaintiff. Plaintiff and his counsel are attempting to extort payment of an alleged debt to which Defendant is not a party.
17. Denied. It is specifically denied that the transfer was without consideration. Defendant lacks knowledge or information sufficient to form a belief about the truth of an allegation. Strict proof is demanded at time of trial.
18. Denied. Defendant lacks knowledge or information sufficient to form a belief about the truth of an allegation. Strict proof is demanded at time of trial.
19. Denied. It is specifically denied that the transfer of the real estate located in West Easton, Pennsylvania was done without consideration. Defendant lacks knowledge or information sufficient to form a belief about the truth of an allegation regarding the motor vehicle. Strict proof is demanded at time of trial. The Defendant lacks knowledge or information sufficient to form a belief about the truth of the remainder of the allegations (a-i). Strict proof is demanded at time of trial.
20. Denied. Defendant lacks knowledge or information sufficient to form a belief about the truth of an allegation. Strict proof is demanded at time of trial.

21. Denied. Defendant lacks knowledge or information sufficient to form a belief about the truth of an allegation. Strict proof is demanded at time of trial. This allegation suggests that some type of personal injury occurred. Defendant has never met or interacted with this Plaintiff to cause him any personal harm.

22. Denied. Defendant lacks knowledge or information sufficient to form a belief about the truth of an allegation. Strict proof is demanded at time of trial.

WHEREFORE, Defendant demands judgment in her favor and an award of attorney fees and costs pursuant to FRCP 11.

### **AFFIRMATIVE DEFENSES**

1. Plaintiff fails to state a claim upon which relief can be granted.
2. Upon information and belief, the alleged judgment was illegally procured by an active fraud upon the state court by both, Plaintiff, a disbarred lawyer, and his counsel.
3. Plaintiff is estopped from recovery by his unlawful activities in regard to the alleged underlying judgment.
4. Upon information and belief, the alleged judgment is on appeal to the Pennsylvania Superior Court and is therefore not a final judgment making this action premature.
5. This Court lacks diversity jurisdiction to entertain this matter. pursuant to **28 U.S.C. § 1332 (a) (1)** [“The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of **\$75,000**, exclusive of interest and costs, and is between— (1) citizens of different States” (**Emphasis added**)], since the purported judgment is below \$75,000.

6. This action was brought in bad faith by Plaintiff and his counsel in furtherance of an effort to pursue another action in Pennsylvania state court, specifically, O'Hare v. Timmer, Northampton County Court of Common Pleas, Docket No: 2013-9297.
7. Plaintiff and his counsel have manufactured this claim for the sole purpose of obtaining leverage in a civil matter that is on appeal in the Superior Court of PA, Docket 2325 EDA 2014, and a Northampton County Court of Common Pleas civil matter, Docket 2013-9297, to which Tricia Mezzacappa is a named Defendant.
8. Defendant, in August of 2014, learned that Plaintiff is a disbarred lawyer, who has abused, libeled and stalked her daughter, Tricia Mezzacappa, for years, causing her to file for 3 separate Protection orders from the Northampton County Court of Common Pleas. Upon information and belief, Plaintiff is a danger to Tricia Mezzacappa.
9. Defendant is aware that Plaintiff would rather harass and stalk her daughter, and badger Defendant, than negotiate a fair settlement, based upon the derogatory blogs he has posted in the recent past about Defendant, and Tricia Mezzacappa.
10. Defendant accepted the deed in consideration of debts that Tricia Mezzacappa incurred while a student which were paid by this Defendant.
11. This matter is premature given the appeal of the underlying case against her daughter.
12. Plaintiff failed to name an indispensable party in this action to falsely maintain jurisdiction in Federal Court.
13. The underlying judgment is on appeal to the Pennsylvania Superior Court. The case was argued on June 24, 2015. A reversal would destroy the basis of this frivolous action.

WHEREFORE, Defendant demands judgment in her favor and an award of attorney fees and costs pursuant to FRCP 11.

Respectfully submitted,

/s/ Lawrence M. Otter, Esquire

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<b>V.</b>	<b>: DOCKET NO: 15-1625</b>
<b>JOANN MEZZACAPPA</b>	<b>:</b>

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the attached Answer and Affirmative Defenses has been served on all counsel of record by email and through the ECF system or as otherwise noted:

BY EMAIL:

Rick Orloski, Esq.

[Orloski.law@gmail.com](mailto:Orloski.law@gmail.com)

**/s/ Lawrence M. Otter, Esq.**

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**Lawrence M. Otter, Esquire**