Adams County Legal Journal

Vol. 41 December 3, 1999 No. 27, pp. 151-154

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-638 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, January 21, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Menallen Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin in the center line of a 50 foot right of way for a private road and at Western corner of Lot No. 1; thence by said Lot No. 1, South 34 degrees 47 minutes 50 seconds East 330.86 feet to an iron pin at the Southernmost corner of said Lot No. 1, and at corner of other land now or formerly of Horace W. Anderson, and at lands now or formerly of Robert V. Davies; thence by said lands now or formerly of Horace W. Anderson, South 48 degrees 09 minutes 20 seconds West 279.05 feet to an iron pin at corner of Lot No. 3 and lands now or formerly of James T. Vowell thence by said Lot No. 3, North 30 degrees 06 minutes 10 seconds West, 335.91 feet (passing through a reference iron pin set back from the center line of said right of way 20.25 feet) to an iron pin in the centerline of said 50 foot right of way; thence in and along said right of way, North 48 degrees 16 minutes 30 seconds East, 251.30 feet to an iron pin in said center line of right of way, the place of BEGINNING. CONTAINING 2.001 Acres.

The above description was taken from a draft of survey by Boyer-Price Surveys, Inc., dated August 3, 1993, designating the above as Lot No. 2.

Parcel No. E5-100R

Being known as 3 Timber Lane, Box 412, Bendersville, Pa.

SEIZED and taken into execution as the property of **Bette J. Martens a/k/a Bette J. Tanner** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/3,10 & 17

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-17 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, December 17, 1999, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground situate in Butler Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a railroad spike in Benders Church Road (T-373), which railroad spike is on a heading of north 48 degrees 15 minutes 24 seconds east 437.15 feet from the intersection of Table Rock Road (PA. Rt. 394), Rake Factory Road (T-373) and Benders Church Road (T-373); thence across said Benders Church Road and through a steel pin set back 28.38 feet on the line south 42 degrees 18 minutes 30 seconds east, 248.38 feet to a steel pin set at lands now or formerly of Calvin E. and Mae E. Heintzelman; thence along said Heintzelman lands north 47 degrees 43 minutes 30 seconds east, 182.00 feet to a steel pin set at corner of lot no. 3 as designated on the hereinbelow mentioned plat; thence continuing along said lot no. 3 north 42 degrees 16 minutes 30 seconds west and through a steel pin set back 26.69 feet from the end of this course, 216.89 feet to a railroad spike in Benders Church Road (T-373); thence in and through said Benders Church Road south 48 degrees 15 minutes 24 seconds west, 182.01 feet to a railroad spike in said Benders Church Road, the place of beginning.

Being known as 33 Benders Church Road

Property tax parcel no. F 8-105 C

Title to said premises is vested in Lowell A. Baker and Hope L. Baker, his wife, by deed from Lowell A. Baker dated 3/19/1996 and recorded 3/20/1996 in deed book 1166 page 433

SEIZED and taken into execution as the property of **Lowell A. Baker and Hope L. Baker** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
October 18, 1999.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on January 10, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

11/19, 24 &12/3

IN THE COURT OF COMMON PLEAS
OF ADAMS COUNTY,
PENNSYLVANIA

NO 99-S-809
ACTION TO QUIET TITLE

BRUCE E. RUHLMAN and, JENNIFER L. RUHLMAN, husband and wife,

Plaintiffs,

VS.

ASH-MEL, INC., NATIONAL LOAN INVESTORS, LP, RTC MORTGAGE TRUST and READING TOWNSHIP MUNICIPAL AUTHORITY,

Defendants.

NOTICE

TO: RTC Mortgage Trust

TAKE NOTICE that on August 31, 1999, Plaintiffs, Bruce R. Ruhlman and Jennifer L. Ruhlman, filed a Complaint endorsed with a Notice to Defend against you in the Court of Common Pleas of Adams County, Pennsylvania, docketed to No. 99-S-809. The Complaint seeks to establish Plaintiffs' fee simple title to certain real estate known as Lots 70, 71, 72 and 73, Hampton Drive, Hampton Plains Development, Reading Township, Adams County, Pennsylvania and requests the Court to extinguish any possible interest you may have in said real estate.

YOU ARE HEREBY notified to plead to the above referenced Complaint on or before twenty (20) days from the date of this publication or a judgment will be entered against you for the relief requested in the Complaint.

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

NAME: Adams County Referral Officer

ADDRESS: Adams County Courthouse
111 Baltimore Street Gettysburg,
Pennsylvania 17325

TELEPHONE: 334-6781

Guthrie, Nonemaker,
Guthrie & Yingst
James T. Yingst

12/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-772 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, January 21, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the right, title, interest and claim of James R. Crouse of, in and to the following described property:

ALL the following described real estate situated in the Township of Union, County of Adams and State of Pennsylvania. Having erected thereon a dwelling being known and numbered as 1740 Hanover Pike, Littlestown, Pennsylvania 17340. Deed book volume 547, page 327. Parcel number K16-39.

SEIZED and taken into execution as the property of **James R. Crouse** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/3,10 & 17

1. The type of inherent suggestiveness present in all one-to-one confrontations is present, and to some extent magnified, where the identification is made in open court...Nevertheless, the key in determining the admissibility of such evidence is not simply the suggestiveness of the circumstances surrounding the identification but rather the likelihood of misidentification...

2. The suggestiveness of the confrontation is only a factor to be considered in determining the reliability of the identification evidence.

3. Under the present state of the law it has not been determined that an accused has a constitutional right to a lineup...it does not follow...that a judge can arbitrarily and capriciously deny such a request.

4. First, we have declined to accept a per se rule that all in-court confrontations are inadmissible. Second, we have also declined to accept a per se rule that a pre-trial, pre-hearing lineup is mandatory in all cases. We are merely saying that where as here the issue of identification is legitimately at issue, a timely request for a pre-trial or pre-hearing identification procedure *should be granted.*

In the Court of Common Pleas of Adams County, Pennsylvania, Criminal. No. CR-233-98. COMMONWEALTH VS. WILLIAM DWAYNE SHELTON.

Paul Dean, Esq., Assistant District Attorney, for Commonwealth
Barbara Entwistle, Esq., for Defendant

MEMORANDUM OPINION

Kuhn, J., September 17, 1998.

Before the Court is Defendant's Motion for Lineup. Defendant alleges that on May 28, 1998 he was charged with Simple Assault, 18 Pa.C.S.A. § 2701(a)(1), and Harassment, 18 Pa.C.S.A. § 2709(a)(1). Defendant is requesting that the Commonwealth be compelled to conduct a lineup prior to his preliminary hearing on October 5, 1998. He claims that the alleged victim does not personally know him, observed the perpetrator only briefly during the incident, and has not seen Defendant since the latter's arrest.

Counsel have represented to the Court that the incident in question occurred at night in the parking lot of Big Bopper's, a local nightclub. Commonwealth alleges that Defendant, while walking toward the alleged victim, passed a witness to whom Defendant was well known, then struck the alleged victim. Commonwealth also claims that the alleged victim has represented that he can identify the perpetrator. Defendant, who is a black male, is concerned that, absent a pre-hearing lineup, his appearance at counsel table during the preliminary hear-

ing will be unduly prejudicial and seriously increase the likelihood of a misidentification under the circumstances.

Defendant relies on *Commonwealth* v. *Sexton,* 485 Pa. 17, 400 A.2d 1289 (1979). In *Sexton* the defendant entered a store, was observed for approximately one minute by the victim, and then committed a robbery at gun point before fleeing with the victim in pursuit. The defendant's request for a lineup was denied. At a certification hearing the defendant, who was the only young, black male in the courtroom, attempted to suppress the in-court identification on the basis that the certification hearing identification was unnecessarily suggestive and tainted the in-court identification.

Our Supreme Court noted that,

> The suggestive quality arising from a courtroom confrontation is created by the fact that the accused is clearly designated by his role in the proceeding as the suspected perpetrator prior to the identification. The type of inherent suggestiveness present in all one-to-one confrontations is present, and to some extent magnified, where the identification is made in open court...Nevertheless, the key in determining the admissibility of such evidence is not simply the suggestiveness of the circumstances surrounding the identification but rather the likelihood of misidentification...

Commonwealth v. *Sexton,* 485 Pa. at 21, 400 A.2d at 1291 (citations omitted). The Court then ruled that because "the suggestiveness of the confrontation is only a factor to be considered in determining the reliability of the identification evidence" it would not suppress the in-court identification. *Commonwealth* v. *Sexton,* 485 Pa. at 22, 400 A.2d at 1292 (citation omitted). The Court specifically declined to find that the certification hearing was "unduly suggestive" although it did find the identification to be "highly suggestive." *Id.* at 1292 n. 4.

However, in considering the defendant's request for a pre-hearing lineup the Court stated,

> We can perceive of no situation where such a request

> would be more warranted. The sole evidence connecting appellee to this crime was the identification of Mr. Weinstein,[5] who had no knowledge of appellee before the incident, observed the culprit briefly before and during the crime, had no contact with the appellee between the arrest and the certification hearing, and had not been presented with an opportunity of a photographic identification prior to the hearing confrontation.

Commonwealth v. *Sexton,* 485 Pa. at 23, 400 A.2d at 1292.

Nevertheless, the Court conceded that,

> under the present state of the law it has not been determined that an accused has a constitutional right to a lineup...it does not follow...that a judge can arbitrarily and capriciously deny such a request.

Commonwealth v. *Sexton,* 485 Pa. at 23, 400 A.2d at 1292. Additionally, the Court noted that the lineup can become a tool in minimizing "the suggestiveness of a courtroom confrontation and in insuring the reliability of identification evidence." *Id.*

In *Sexton,* the ultimate issue became what remedy to provide for the failure to direct a pre-hearing lineup. Because the results of a pre-hearing lineup are impossible to determine, it would be appropriate for the fact finder to be advised that the defendant "had been denied the opportunity for a more objective identification and for that reason the subsequent less reliable identification could be viewed with caution." *Commonwealth* v. *Sexton,* 485 Pa. at 25, 400 A.2d at 1293.

Finally, the Court noted the limited holding in *Sexton.* "First, we have declined to accept a per se rule that all in-court confrontations are inadmissible. Second, we have also declined to accept a per se rule that a pre-trial, pre-hearing lineup is mandatory in all cases. We are merely saying that where as here the issue of identification is

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[5] The dissenting opinion by Judge Price of the Superior Court includes a reference that: "An eyewitness to the robbery knew appellant by name, and on this basis appellant was arrested two days later." *Commonwealth* v. *Sexton, supra,* 246 Pa. Super. at 37, 369 A.2d at 798 (dissenting opinion). At trial, however, the Commonwealth produced only one witness, Weinstein, the storeowner, who could identify the appellant.

legitimately at issue, a timely request for a pre-trial or pre-hearing identification procedure *should be granted*." *Id.* (emphasis added).[1]

The case *sub judice* is factually similar to *Sexton*. Commonwealth has indicated that it intends to call a witness who knew Defendant previously and who will testify that Defendant was the perpetrator. However, such a witness was also present in *Sexton* but for unknown reasons did not testify. It is impossible to determine whether the Commonwealth's eyewitness will actually be called to testify at trial or whether circumstances will arise limiting his ability to testify. Additionally, in light of the *Sexton*'s Courts acknowledgement in a footnote that there was a second eyewitness who knew the defendant, it would be reasonable to infer that the Court's conclusion that a pre-hearing line-up would have been warranted took the presence of this second witness into account. Furthermore, the Court held that where "the issue of identification is legitimately at issue, a timely request for a pre-trial or pre-hearing identification procedure should be granted." Thus, in light of *Sexton*, a pre-hearing lineup is warranted.

Accordingly, the attached Order is issued.

AND NOW, this 17th day of September 1998, Defendant's Motion for Lineup is hereby granted.

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[1]*Sexton* has been cited in subsequent cases. In *Commonwealth* v. *Walker*, 275 Pa. Super. 311, 418 A.2d 737 (1980) (*affirmed* 421 A.2d 172), the Superior Court determined that the trial court did not abuse its discretion in denying an untimely request for a lineup where the witness had identified the defendant shortly after the crime from among three black males in police custody and without police prompting and where the defendant was granted the opportunity at trial to sit in the spectator section of the courtroom among five other young black males when the witness testified and identified the defendant. In *Commonwealth* v. *Beverly*, 377 Pa. Super. 438, 547 A.2d 766 (1988), alloc. den. 564 A.2d 1259, the court noted that *Sexton* "has decreed that *only* in those cases where an identification lacking a strong indicia of reliability is the *sole evidence* against the defendant should a defendant's timely request for a lineup be granted." 377 Pa. Super. at 441, 547 A.2d at 767 (emphasis added). In *Beverly*, the court granted a pre-trial lineup request but denied defendant's request that all participants wear stocking masks. In dicta the court stated that even if the lineup had been denied no error would have occurred because the witness had ample opportunity to observe defendant when he was not wearing a mask.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

ESTATE OF MARY G. LEPPO, DEC'D
Late of Conewago Township, Adams County, Pennsylvania
Executors: H. Edward Leppo, 5071 Baltimore Pike, Littlestown, PA 17340; Eunice E. Leppo, 509 Poplar St., P.O. Box 775, Hanover, PA 17331
Attorney: G. Steven McKonly, Esquire, 119 Baltimore Street, Hanover, PA 17331

ESTATE OF WILLIAM O. ROUTSONG a/k/a WILLIAM O. ROUTSONG JR., DEC'D
Late of the Borough of Bendersville, Adams County, Pennsylvania
Co-Executors: Leroy S. Routsong, 140 South Main Street, Bendersville, PA 17306; Alice Y. Routsong, 140 South Main Street, Bendersville, PA 17306
Attorney: John R. White, Esq., Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF FLORENCE B. SELTZER, DEC'D
Late of the Borough of Gettysburg, Adams County, Pennsylvania
Executrixes: Heather E. Kling, 2636 Emmitsburg Road, Apt. 3-11, Gettysburg, PA 17325; Carol A. Yingling, 414 High Street, 2nd Floor, Hanover, PA 17331
Attorney: Catherine J. Gault, Esq. 31 S. Washington Street, Gettysburg, PA 17325

ESTATE OF ROBERT C. SHULTZ, DEC'D
Late of the Borough of Gettysburg, Adams County, Pennsylvania
Executrix: Bonnie K. Bucher, 1465 Walker Road, Chambersburg, PA 17201
Attorney: Richard K. Hoskinson, Esq., Hoskinson & Wenger, 232 Lincoln Way East, Chambersburg, PA 17201

SECOND PUBLICATION

ESTATE OF RAYMOND F. SHEELY, DEC'D
Late of the Borough of Gettysburg, Adams County, Pennsylvania
Executrix: Margaret Anne Sheely a/k/a/ Margaret Anne Sanni, 127 West Lincoln Ave., Gettysburg, PA 17325
Attorney: John R. White, Esq., Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF GLADYS C. STERNER, DEC'D
Late of Franklin Township, Adams County, Pennsylvania
Executrices: Evelyn G. Betts, 3067 Chimayo Lane, Las Vegas, NV 89122; Margaret Y. McCleaf, 180 McCleaf Lane, Fairfield, PA 17320
Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF VICTORIA BITTNER, DEC'D
Late of Straban Township, Adams County, Pennsylvania
Executrix: Claire P. Stegmann, 105 Colonel's Way, Williamsburg, VA 23185
Attorney: Chester G. Shultz, Esquire, 145 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ANNA C. J. BOWMAN, DEC'D
Late of Conewago Township, Adams County, Pennsylvania
Executors: Gloria J. Markle, 940 Fairview Drive, Hanover, PA 17331; Lester E. Bowman, 2212 E. Berrie Circle, Virginia Beach, VA 23455
Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Guthrie, & Yingst, 40 York Street, Hanover, PA 17331

ESTATE OF HELEN C. RANG, DEC'D
Late of Union Township, Adams County, Pennsylvania
Executor: Jack M. Ketterman, 551 St. Johns Rd., Littlestown, PA 17340
Attorney: G. Steven McKonly, Esq., 119 Baltimore Street, Hanover, PA 17331

ESTATE OF PAULINE E. TOCCO, DEC'D
Late of Reading Township, Adams County, Pennsylvania
Executrix: Paula K. Alameda, 3754-A Baltimore Pike, Littlestown, PA 17340
Attorney: David K. James, III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARY EVA WARNER A/K/A/ EVA THOMAS WARNER, DEC'D
Late of the Borough of Bendersville, Adams County, Pennsylvania
Executors: Earl L. Warner, 1309 Shippensburg Road, Biglerville, PA 17307; Pauline E. Weidner, 397 Peach Glen-Idaville Road, Gardners, PA 17324; Kathryn L. Bear, 423 Pine Road, Mt. Holly Springs, PA 17065; Clifford C. Warner, 49040 Carmel Achor Road, Rogers, OH 44455
Attorney: Henry O. Heiser, III, Esq., 104 Baltimore Street, Gettysburg, PA 17325

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-255 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, December 17, 1999, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

All that certain tract of land situate in Mt. Joy Township, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a white oak at corner of land now or formerly of Charles M. Altemose and Mrs. Richard Gordon Davis; thence by said Davis' land, South 37 degrees West, 142.2 perches to a post at corner of land now or formerly of St. Mark's Church; Thence North 70 degrees West, 10.4 perches to a point in the Gettysburg-Littlestown Highway; thence by said Highway, North 55 degrees West, 40.3 perches to a point in aforesaid Highway at corner of land now or formerly of J. C. Campbell; thence North 38-3/4 degrees West, 84.5 perches to a point; thence North 50 degrees East, 40 perches to a dead walnut at corner of land now or formerly of Ernest Schwartz; thence South 76 degrees East, 98.5 perches to a stone at corner of land now or formerly of Charles M. Altemose, aforesaid; thence North 70-1/2 degrees East, 47.8 perches to a stone; thence North 79 degrees East, 9.8 perches to a white oak at corner of land now or formerly of Mrs. Richard Gordon Davis, aforesaid, the place of BEGINNING. CONTAINING 67 Acres and 82 Perches, more or less.

LESS, HOWEVER, the following tract of land:

A. A tract of land containing 108 perches which Robert L. Sanders and Mildred F. Sanders, by deed dated March 11, 1947, recorded in Adams County Deed Book 177 at page 261, sold and conveyed unto Willis J. Wherley and Mildred M. Wherley.

B. A tract of land containing 20 perches which Mildred F. Sanders, widow, by her deed dated June 14, 1955, and recorded in Adams County Deed Book 210 at page 382, sold and conveyed unto Paul H. McCleaf and Mary E. McCleaf.

C. A tract of land containing 99 perches and 22 square feet which John R. Sanders, unmarried, M. Jane Gantz and George H. Gantz, her husband, by their deed dated November 12, 1968, and recorded in Adams County Deed Book 270 at page 1074, sold and conveyed unto Robert F. Angell and Viola L. Angell.

D. A tract of land containing 24,976.25 square feet which George H. Gantz and M. Jane Gantz, husband and wife, by their deed dated January 16, 1969, and recorded in Adams County Deed Book 272 at page 430, sold and conveyed unto Donald F. Nunemaker and Grace C. Nunemaker.

LESS, HOWEVER, ALSO, the following two tracts of land as reserved in the deed recorded in Deed Book 285 at page 936: A tract of land containing 73 perches and 7 square feet, and a tract of land containing 15,089.03 square feet excepted and reserved unto George H. Gantz and M. Jane Gantz, husband and wife, as more fully described in the deed from George H. Gantz and M. Jane Gantz, husband and wife, by their deed dated July 9, 1970 to Paul C. Stull and Catherine M. Stull, husband and wife.

EXCEPTING AND RESERVING unto Paul C. Stull and Catherine M. Stull, husband and wife, a tract of land containing 1.806 acres as more fully set forth in the deed from Paul C. Stull and Catherine M. Stull, husband and wife, to Frederick K. Burns and Linda G. Burns, husband and wife, dated June 22, 1978, and recorded in Deed Book 338 at page 423.

Being the same which Paul C. Stull and Catherine M. Stull, husband and wife, by deed dated June 22, 1978, and recorded in the office of the Recorder of Deeds of Adams County Pennsylvania, in Deed Book 338 at page 423, conveyed unto Frederick K. Burns and Linda G. Burns, husband and wife; and the same Linda G. Burns having died on December 31, 1983, the entire title to said tract of land became vested by right of survivorship in her husband, Frederick K. Burns. The said Frederick K. Burns, joined by Kathy M. Burns, his wife, by deed dated October 31, 1985, and recorded in the office of the aforesaid Recorder of Deeds in Record Book 412 at page 688, conveyed unto Frederick K. Burns and Kathy M. Burns, husband and wife, the Defendants herein.

IMPROVED WITH a two-story frame dwelling on a 63-acre farm with a large 45' x 72' shed, small barn, and an unfinished building.

SEIZED and taken into execution as the property of **Frederick K. & Kathy M. Burns** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
September 16, 1999.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on January 10, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

11/19, 24 & 12/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-27 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, December 17, 1999, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot or tract of land situate on the southerly side of Oxwood Circle in the Borough of New Oxford, County of Adams and Commonwealth of Pennsylvania known and numbered as Lot No. 22 on a final Plan of Oxford Commons recorded in the Office of the Recorder of Deeds in and for Adams County, PA in Plan Book 58, page 41A, more fully bounded and described as follows to wit:

BEGINNING at a point on the southerly right of way line of Oxford Circle at a corner of Lot No 21 on said plan; thence extending along the right of way line South 76 degrees 11 minutes 54 seconds East 4.36 feet to a point; thence continuing along the right of way line on a line curving to the right with a radius of 25 feet and arc distance of 16.89 feet to a point, at a corner of Lot No. 23 on said plan; thence extending along the said Lot No. 23 South 13 degrees 48 minutes 06 seconds West 119.51 feet to a point, at a corner of Lot No. 23; thence extending along lands now or formerly of Garland Construction North 76 degrees 11 minutes 54 seconds West 20 feet to a point, at a corner of Lot No. 21 on said plan; thence extending along Lot No. 21 North 13 degrees 48 minutes 06 seconds East 125 feet to the point and place of BEGINNING.

CONTAINING 2,473 Square feet.

HAVING ERECTED THEREON a dwelling known as 25 Oxwood Circle, New Oxford, Pennsylvania.

BEING THE SAME PREMISES WHICH Philip R. Garland, trading doing business as Garland Construction, by his Deed dated November 25, 1996 and recorded in Adams County Deed Book 1302, Page 328, granted and conveyed unto Tammy D. Blevins.

SEIZED IN EXECUTION AS THE PROPERTY OF TAMMY D. BLEVINS UNDER ADAMS COUNTY JUDGMENT NO. 99-S-27.

SEIZED and taken into execution as the property of **Tammy D. Blevins** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
October 15, 1999.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on January 10, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

11/19, 24 & 12/3

LEGAL NOTICE - ANNUAL MEETING

The Annual meeting of the policyholders of the Protection Mutual Insurance Company of Littlestown will be held at the office at 101 South Queen Street, in Littlestown, Pennsylvania between the hours of 1:00 and 2:00 P.M., on January 08, 2000 to elect directors and to transact any other business properly presented.

ATTEST, Marilyn Q. Butt
Secretary-Treasurer

12/3,10,17 & 23

Adams County Legal Journal

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ANNOUNCEMENT OF CONTINUING LEGAL EDUCATION PROGRAMS

1. *Practical Estate Planning Opportunities Using FLPs & Family LLCs*
   Thursday, December 16, 1999–9:00 a.m.
   Room 307, Adams County Courthouse
   Credits: Substantive Law–3, Ethics–0
2. *Post Mortem Estate Planning for Family Business Interests*
   Thursday, January 13, 2000–9:00 a.m.
   Room 307, Adams County Courthouse
   Credits: Substantive Law–1, Ethics–0
3. *Social Security Disability: The Basics*
   Thursday, January 25, 2000–9:00 a.m.
   Room 307, Adams County Courthouse
   Credits: Substantive Law–4, Ethics–0
4. *Confessions of Judgment & Deficiency Judgments in Pennsylvania*
   Wednesday, February 9, 2000–9:00 a.m.
   Room 307, Adams County Courthouse
   Credits: Substantive Law–4, Ethics–0
5. *Fundamentals of Estate & Trust Administration*
   Wednesday, February 16, 2000–9:00 a.m.
   Room 307, Adams County Courthouse
   Credits: Substantive Law–5, Ethics–1

Registration through P.B.I. 800-247-4724

NOTICE OF CHANGE OF NAME

NOTICE IS HEREBY GIVEN that DEVIN MICHAEL BAREFOOT, a minor, by his guardians, Charles O. Waggoner and Lisa Barefoot-Waggoner, has filed with the Court of Common Pleas of Adams County, Pennsylvania, a Petition to change his name from DEVIN MICHAEL BAREFOOT to DEVIN MICHAEL BAREFOOT WAGGONER.

Said Court has fixed a Hearing on said Petition for December 20, 1999, at 9:00 a.m., in Courtroom No. 1 or 2 of the Adams County Courthouse in Gettysburg, Pennsylvania, at which time and place all persons interested may appear and show cause, if any, they have as to why the prayer of said Petition should not be granted.

Thomas E. Miller, Esquire
Miller & Shultis, P.C.
Attorney for Petitioner

12/10

LEGAL NOTICE - ANNUAL MEETING

The Annual meeting of the policyholders of the Protection Mutual Insurance Company of Littlestown will be held at the office at 101 South Queen Street, in Littlestown, Pennsylvania between the hours of 1:00 and 2:00 P.M., on January 08, 2000 to elect directors and to transact any other business properly presented.

ATTEST, Marilyn Q. Butt
Secretary-Treasurer

12/3,10,17 & 23

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published every Friday by Adams County Bar Association, John W. Phillips, Esq., Editor and Business Manager.

Subscribers within Adams County should send subscriptions direct to the business office. Subscribers outside of Adams County should send subscriptions to Wm. W. Gaunt & Sons, Inc., 3011 Gulf Drive, Holmes Beach, FL 34217-2199. Postmaster: Send address changes to Adams County Legal Journal, 111 Baltimore Street, Room 305, Gettysburg, PA 17325.

Business Office – 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 334-6781 ext 336

Periodicals postage paid at Gettysburg, PA 17325.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-772 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, January 21, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the right, title, interest and claim of James R. Crouse of, in and to the following described property:

ALL the following described real estate situated in the Township of Union, County of Adams and State of Pennsylvania. Having erected thereon a dwelling being known and numbered as 1740 Hanover Pike, Littlestown, Pennsylvania 17340. Deed book volume 547, page 327. Parcel number K16-39.

SEIZED and taken into execution as the property of **James R. Crouse** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/3,10 & 17

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-638 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, January 21, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Menallen Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin in the center line of a 50 foot right of way for a private road and at Western corner of Lot No. 1; thence by said Lot No. 1, South 34 degrees 47 minutes 50 seconds East 330.86 feet to an iron pin at the Southernmost corner of said Lot No. 1, and at corner of other land now or formerly of Horace W. Anderson, and at lands now or formerly of Robert V. Davies; thence by said lands now or formerly of Horace W. Anderson, South 48 degrees 09 minutes 20 seconds West 279.05 feet to an iron pin at corner of Lot No. 3 and lands now or formerly of James T. Vowell thence by said Lot No. 3, North 30 degrees 06 minutes 10 seconds West, 335.91 feet (passing through a reference iron pin set back from the center line of said right of way 20.25 feet) to an iron pin in the centerline of said 50 foot right of way; thence in and along said right of way, North 48 degrees 16 minutes 30 seconds East, 251.30 feet to an iron pin in said center line of right of way, the place of BEGINNING. CONTAINING 2.001 Acres.

The above description was taken from a draft of survey by Boyer-Price Surveys, Inc., dated August 3, 1993, designating the above as Lot No. 2.

Parcel No. E5-100R

Being known as 3 Timber Lane, Box 412, Bendersville, Pa.

SEIZED and taken into execution as the property of **Bette J. Martens a/k/a Bette J. Tanner** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/3,10 & 17

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY, PENNSYLVANIA

No. 99-S-958
ACTION TO QUIET TITLE

ATLEE L. KEEFER and CHARLENE E. KEEFER, Plaintiff,

v.

PAUL R. KING, JR. and DONNA M. KING, husband and wife,

TRUSTEES OF THE METHODIST EPISCOPAL CHURCH OF PETERSBURG,

AND ANY PERSON OR ENTITY CLAIMING ANY INTEREST IN SAID LAND AS THE SUCCESSORS ASSIGNS OR THE DESCENDANTS OF WILLIAM PENN,Defendants.

TO: ANY PERSON CLAIMING ANY INTEREST IN SAID LAND

NOTICE

You are notified that Plaintiffs have commenced an action to quiet title against you which you are required to defend. You are required to plead to the Complaint within twenty (20) days after the service has been completed by publication. This action concerns a .269 acre parcel of land located in Huntington Township, Adams County, Pennsylvania, lying between the properties of the plaintiffs and the defendants.

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing to the Court. You are warned that if you fail to do so this case may proceed without you and a judgement may be entered against you without further notice for the relief requested by the Plaintiffs. You way lose money or property or other rights important to you.

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

Court Administrator
Adams County Court House
Gettysburg, PA 17325
Phone: (717) 334-6781 Ext. 213

By: John C. Zepp, III, Esq.
P.O. Box 204
York Springs, PA 17372
Phone: (717) 528-8900

12/10

COMMONWEALTH VS. CREBBS

1. In proving a charge of resisting arrest, the Commonwealth must show, among other things, that the person charged intended to prevent "a public servant from effectuating a lawful arrest or discharging any other duty." In proving a lawful arrest, probable cause for that arrest must be established. Probable cause to arrest depends on whether, at the moment the arrest is made, the totality of the circumstances within the arresting officer's knowledge regarding a particular situation would warrant a person of reasonable caution to believe that the accused had committed or was committing an offense.

2. When ruling on a defendant's demurrer, the test is whether the Commonwealth's evidence and all reasonable inferences arising therefrom are insufficient to support a finding that the defendant was guilty beyond a reasonable doubt.

3. An arrest is "any act that indicates an intention to take the person into custody and subjects him to the actual control and will of the person making the arrest." An arrest may occur without the use of force or a formal statement of arrest and is viewed in light of the reasonable impressions conveyed to the subject rather than in terms of the subjective view of the officer.

4. A determination of the lawfulness of the underlying arrest necessitates a legal conclusion that the arresting officer acted with authority and probable cause.

5. The ultimate finding of guilt or innocence or the dismissal of the charges arising out of an arrest has no bearing on whether or not the arrest was valid.

6. A mistrial should be granted "only when the incident is of such a nature that its unavoidable effect is to deprive appellant of a fair trial." Not every unwise or unwarranted remark made during the course of a trial warrants a new trial.

In the Court of Common Pleas of Adams County, Pennsylvania, Criminal. No. CC-213-98. COMMONWEALTH VS. JAMES W. CREBBS.

Paul Dean, Esq., Assistant District Attorney, for Commonwealth
Anthony Miley, Esq., for Defendant

OPINION PURSUANT TO PA. R.APP.P. 1925(A)

Kuhn, J., September 22, 1998.

Appellant, James W. Crebbs, appeals a jury verdict of guilt entered August 11, 1998, on the charge of resisting arrest, 18 Pa.C.S.A. § 5104. The factual background, presented in a light most favorable to the Commonwealth, reveals the following situation. On January 26, 1998, at approximately 1:14 a.m., Officer Alspaugh observed Appellant drive through a stop sign located on Riden Alley in Littlestown, Pennsylvania. Officer Alspaugh was in a marked police vehicle and followed Appellant into the parking lot at a nearby Sheetz convenience store. The Officer was speaking with Appellant regarding the traffic violation when he noticed a sway in Appellant's walk, bloodshot eyes, the smell of alcohol on Appellant's breath, and slurred speech. The

Officer also observed a plastic baggie protruding from Appellant's jacket pocket and asked him what it was. At that point, the Officer testified that Appellant began to walk away from him towards the Sheetz establishment. (T. at 11). Officer Alspaugh then told Appellant to stop. Appellant continued walking and Officer Alspaugh again told him to stop. Appellant began walking faster and the Officer announced that he was under arrest. (T. at 11). At this time, Constable Sterling was also on the scene. Appellant then began running. The Officer followed in what became a two and a half block chase on icy and slippery conditions. Officer Alspaugh testified that at that point he intended to talk to Appellant about a possible violation for driving under the influence and about a possible Act 64 violation for suspected drug possession. (T. at 12). The chase ended when Appellant and Officer Alspaugh were on top of a woodpile struggling at which time both parties fell. (T. at 17). Officer Alspaugh testified he fell as a result of being pushed by Appellant. (T. at 18). After Appellant was subdued, the Officer noticed that the plastic baggie was no longer in Appellant's possession. (T. at 20). After searching the area it was determined that Appellant had ripped the baggie apart and parts of it were found in various locations. (T. at 20).

LEGAL DISCUSSION

In Appellant's statement of the matters complained of on appeal he has raised the following issues:

1. That the trial court erred when it permitted the introduction of uncharged criminal activity.
2. That the trial court erred when it overruled Appellant's demurrer.
3. That the trial court abused its discretion when in instructing the jury, in response to a question, the court used the factual circumstances of another case to serve as an example.

(Appellant's Statement of Matters Complained of on Appeal Pursuant to Pa. Rules of Appellant Procedures 1925(a)).

The uncharged criminal activity referred to by Appellant relates to his admission that the plastic baggie in his possession contained marijuana. (T. at 31). Appellant was not charged with possession of marijuana and counsel for Appellant argued that testimony regarding the marijuana should have been excluded due to its prejudicial impact. After a lengthy discussion at side bar, the Court concluded that the testimony was admissible. (T. at 21-29).

In proving a charge of resisting arrest, the Commonwealth must show, among other things, that the person charged intended to prevent "a public servant from effectuating a lawful arrest or discharging any other duty." 18 Pa.C.S.A. § 5104. In proving a lawful arrest, probable cause for that arrest must be established. Probable cause to arrest depends on whether, at the moment the arrest is made, the totality of the circumstances within the arresting officer's knowledge regarding a particular situation would warrant a person of reasonable caution to believe that the accused had committed or was committing an offense. *Commonwealth* v. *Cox,* 546 Pa. 515, 532, 686 A.2d 1279, 1287 (1996) (citations omitted); *cert. denied,* 118 S.Ct. 567.

Officer Alspaugh's suspicion that Appellant was in possession of a controlled substance is one of the factors that may be considered in looking at the totality of the circumstances. The Officer was aware of a traffic violation, a sway in Appellant's gait, the odor of alcoholic beverages, and bloodshot eyes when he noticed the plastic bag. Inquiry as to the baggie was followed by Appellant fleeing the scene. The suspected possession of a controlled substance, in conjunction with factors indicating that Appellant may have been driving while under the influence, all aid in determining whether or not the Officer had probable cause under the circumstances. Appellant's statement to the Officer after his arrest that he was in possession of marijuana is relevant in offering credibility to the Officer's observations and concerns about Appellant's conduct.

Appellant also argues that the trial court erred when it overruled his demurrer.

> When ruling on a defendant's demurrer, the test is whether the Commonwealth's evidence and all reasonable inferences arising therefrom are insufficient to support a finding that the defendant was guilty beyond a reasonable doubt.

Commonwealth v. *Soto,* 437 Pa. Super. 442, 445, 650 A.2d 108, 110 (1994).

Counsel for Appellant argues that the Commonwealth did not sufficiently establish the elements of resisting arrest. Resisting arrest is defined in Section 5104 of the Crimes Code as follows:

> A person commits a misdemeanor of the second degree

> if, with the intent of preventing a public servant from effecting a lawful arrest or discharging any other duty, the person creates a substantial risk of bodily injury to the public servant or anyone else, or employs means justifying or requiring substantial force to overcome the resistance.

18 Pa.C.S.A. § 5104.

At trial, counsel for Appellant argued that the Commonwealth failed to prove an arrest or, in the alternative, that the arrest was lawful. Thus, Appellant may raise only these grounds on appeal.[1]

An arrest is "any act that indicates an intention to take the person into custody and subjects him to the actual control and will of the person making the arrest." *Commonwealth* v. *White,* 543 Pa. 45, 54, 669 A.2d 896, 901 (1995) (citations omitted). An arrest may occur without the use of force or a formal statement of arrest and is viewed in light of the reasonable impressions conveyed to the subject rather than in terms of the subjective view of the officer. *Commonwealth* v. *Mitchell,* 381 Pa. Super. 592, 597, 554 A.2d 542, 545 (1989). In the present case, Officer Alspaugh testified that he told Appellant on numerous occasions that he was under arrest. (T. at 11-12). Thus, there was an attempt to effectuate an arrest and the question becomes whether that arrest was lawful.

"A determination of the lawfulness of the underlying arrest necessitates a legal conclusion that the arresting officer acted with authority and probable cause." *Commonwealth* v. *Biagini,* 540 Pa. 22, 32, 655 A.2d 492, 497 (1995). In the case *sub judice*, the evidence showed that Appellant may have been under the influence while driving a vehicle, there were indications of possible drug possession, and there

---

[1] There was some discussion at trial regarding the portion of the statute which reads "or discharging any other duty." 18 Pa.C.S.A. § 5104. However, the Court will focus only on the Commonwealth's proof of a lawful arrest due to the fact that it has been determined that the discharge of "any other duty" does not apply to the present case. *See, In the Interest of Barry W.*, 423 Pa. Super. 549, 621 A.2d 669 (1993); *alloc. granted* 639 A.2d 32 (where the Court held that "discharge of any other duty" does not include an officer's act in investigating the circumstances surrounding the underlying incident." Rather, this portion of the statute relates to actions such as "a policeman executing a search warrant, a fireman putting out a blaze, a forest or agricultural officer making required inspections, an election official charged with monitoring balloting, and the like.")

was evidence of a guilty conscious demonstrated by Appellant's flight. Thus, the Court concluded that there was adequate probable cause to effectuate the arrest and a demurrer would not have been proper.

Appellant argues that because it was later determined that he was not beyond the legal limit for alcohol while driving that the arrest was void *ab initio*. However, the fact that Appellant was later shown not to be under the influence does not mean the arrest was unlawful. *See*, *Valenti* v. *Sheller*, 765 F. Supp. 227 (E.D. Pa. 1991) (where the Court held that the ultimate finding of guilt or innocence or the dismissal of the charges arising out of an arrest has no bearing on whether or not the arrest was valid). Thus, the Commonwealth met its burden of proof and the demurrer was rightfully denied.

Appellant lastly argues that the Court abused its discretion when it related the facts of another case to the jury in response to a question. At that time of the trial, counsel for Appellant asked for a mistrial.

> A mistrial should be granted "only when the incident is of such a nature that its unavoidable effect is to deprive appellant of a fair trial." *Commonwealth* v. *Lewis*, 523 Pa. 466, 479, 567 A.2d 1376, 1383 (1989) (citations omitted). Not every unwise or unwarranted remark made during the course of a trial warrants a new trial. *Commonwealth* v. *Beasley*, 504 Pa. 485, 475 A.2d 730 (1984).

Commonwealth v. *Brown,* 544 Pa. 406, 420, 676 A.2d 1178, 1184 (1996); *cert. denied* 136 L. Ed. 2d 538.

After an hour of deliberation the jury asked for clarification on the charge. Specifically, the question the jury posed to the Court was whether fleeing to avoid prosecution is considered resisting arrest as opposed to fleeing for fear itself. (T. at 132). In answering this question the Court stated as follows:

> Fleeing as a general rule is not a crime. In other words, running from a police officer who is about to arrest you by itself is not resisting arrest. If the circumstances of the fleeing exposes the officer who is chasing the individual to a substantial risk that he will suffer bodily injury, meaning substantial pain, then that is evidence to support a charge or a conviction for resisting arrest. So in order to

consider fleeing in the context of the resisting arrest here, you would have to find that the fleeing, specifically the running from the Sheetz store down to I think Crouse's moving place exposed the officers to a substantial risk that they'll receive bodily injury during the chase. Again, it's the risk that you consider, not whether there was actual bodily injury received.

One of the examples that I could give you, it's not the same scenario here but maybe it will give you an idea by way of analogy. There was a chase where police were chasing an individual who they wanted to arrest and he took them through a creekbed that was icy and the Court felt, the Appellate Court felt there was a situation where the flight exposed the officers to a substantial risk of bodily injury because they could slip and fall on the rocks, the icy area in the creekbed and injure themselves. *We're not dealing with a creekbed here,* but the Commonwealth's theory is there were icy conditions and the chase exposed the officers to that type of harm. *It's up to you to determine whether that was present or wasn't present or whether that risk was minimal as opposed to substantial. Your recollection is what governs, but I don't believe they said that the ice was covering everything, for example, but there were spots of ice. How spotty the ice was, that's for you to determine.*

T. at 132-133 (emphasis added).

The Court made it clear to the jury that it was relating facts of another case and that it was doing so only in an effort to answer their question and to provide an example. That example reflects the factual scenario in *Commonwealth* v. *Lyons*, 382 Pa. Super. 438, 555 A.2d 920 (1989). The Court does not believe this effort was an abuse of discretion or in any way prejudicial to Appellant.

ERRATA SHEET

And now, this 1st day of October 1998, the Opinion pursuant to Pa.R.App.P.P. 1925(a) dated September 22, 1998, is corrected as follows:

1. Page 3, line 1-of a traffic violation, a sway in Appellant's **gait**...

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

ESTATE OF MARGARET R. GARRETSON, DEC'D
Late of Straban Township, Adams County, Pennsylvania
Co-Executors: Harold R. Garretson, 55 Longview Drive, Gettysburg, PA 17325; PNC Bank, N.A., P.O. Box 308, Camp Hill, PA 17001-0308
Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF KEVIN A. GOBRECHT, DEC'D
Late of Mount Pleasant Township, Adams County, Pennsylvania
Administrators: Robert L. Gobrecht, 25 Dogwood Court, New Oxford, PA 17350; Donna M. Long, 31 Brandy Court, Hanover, PA 17331
Attorney: Daniel M. Frey, Attorney, Daniel M. Frey & Associates, a division of Barley, Snyder, Senft & Cohen, LLC., 14 Center Square, Hanover, PA 17331

ESTATE OF MARGUERITE MICHEL HEITMANN, DEC'D
Late of the Borough of Carroll Valley, Adams County, Pennsylvania
Executor: Adams County National Bank, Lincoln Square, Gettysburg, PA 17325
Attorney: Robert E. Campbell, Esq., Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF DAISY H. ORNER, DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Executrix: Jeanne M. Orner, c/o James D. Hughes, Esquire, 60 West Pomfret Street, Carlisle, PA, 17013
Attorney: Irwin, McKnight & Hughes, 60 West Pomfret Street, Carlisle, PA, 17013

ESTATE OF DARLENE M. SNYDER, DEC'D
Late of Huntington Township, Adams County, Pennsylvania
Executor: Carl L. Tanger, c/o Daniel Pollock, Esquire, 3105 Old Gettysburg Road, Camp Hill, PA, 17011

ESTATE OF DELIA V. UPDYKE, DEC'D
Late of Mount Joy Township, Adams County, Pennsylvania
Executor: Jerry Updyke, 150 Brickyard Road, New Oxford, PA 17350
Attorney: Wendy Weikal-Beauchat, Esq., 116 Baltimore Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF MARY G. LEPPO, DEC'D
Late of Conewago Township, Adams County, Pennsylvania
Executors: H. Edward Leppo, 5071 Baltimore Pike, Littlestown, PA 17340; Eunice E. Leppo, 509 Poplar St., P.O. Box 775, Hanover, PA 17331
Attorney: G. Steven McKonly, Esquire, 119 Baltimore Street, Hanover, PA 17331

ESTATE OF WILLIAM O. ROUTSONG a/k/a WILLIAM O. ROUTSONG JR., DEC'D
Late of the Borough of Bendersville, Adams County, Pennsylvania
Co-Executors: Leroy S. Routsong, 140 South Main Street, Bendersville, PA 17306; Alice Y. Routsong, 140 South Main Street, Bendersville, PA 17306
Attorney: John R. White, Esq., Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF FLORENCE B. SELTZER, DEC'D
Late of the Borough of Gettysburg, Adams County, Pennsylvania
Executrixes: Heather E. Kling, 2636 Emmitsburg Road, Apt. 3-11, Gettysburg, PA 17325; Carol A. Yingling, 414 High Street, 2nd Floor, Hanover, PA 17331
Attorney: Catherine J. Gault, Esq. 31 S. Washington Street, Gettysburg, PA 17325

ESTATE OF ROBERT C. SHULTZ, DEC'D
Late of the Borough of Gettysburg, Adams County, Pennsylvania
Executrix: Bonnie K. Bucher, 1465 Walker Road, Chambersburg, PA 17201
Attorney: Richard K. Hoskinson, Esq., Hoskinson & Wenger, 232 Lincoln Way East, Chambersburg, PA 17201

THIRD PUBLICATION

ESTATE OF RAYMOND F. SHEELY, DEC'D
Late of the Borough of Gettysburg, Adams County, Pennsylvania
Executrix: Margaret Anne Sheely a/k/a/ Margaret Anne Sanni, 127 West Lincoln Ave., Gettysburg, PA 17325
Attorney: John R. White, Esq., Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF GLADYS C. STERNER, DEC'D
Late of Franklin Township, Adams County, Pennsylvania
Executrices: Evelyn G. Betts, 3067 Chimayo Lane, Las Vegas, NV 89122; Margaret Y. McCleaf, 180 McCleaf Lane, Fairfield, PA 17320
Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

LEGAL ADVERTISEMENT

"NOTICE IS HEREBY GIVEN that Articles of Incorporation establishing the "WATERSHED ALLIANCE OF ADAMS COUNTY,INC." were approved by the Pennsylvania Department of State on November 9, 1999. The nonprofit corporation was incorporated under the provisions of Pennsylvania Business Corporation Law of 1988."

12/10

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that on November 10, 1999, an application for registration of the fictitious name THE BRETHREN HOME COMMUNITY ADULT DAY SERVICES, was filed under the Fictitious Names Act, 54 Pa. C.S.A. § 301, et seq., in the Department of State of the Commonwealth of Pennsylvania, in Harrisburg, Pennsylvania, for the conduct of business at its principal office or place of business situated at 2990 Carlisle Pike, Adams County, New Oxford, Pennsylvania 17350. The Brethren Home Community of 2990 Carlisle Pike, Adams County, New Oxford, Pennsylvania 17350 is the sole party to the registration.

Latsha Davis & Yohe, P.C.
P.O. Box 825
Harrisburg, PA 17108-0825

12/10

ARTICLES OF INCORPORATION

NOTICE is hereby given that Articles of Incorporation for R & G PRODUCTS, INC., were filed with the Department of State of the Commonwealth of Pennsylvania on November 12, 1999, under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444.

Guthrie, Nonemaker,
Guthrie & Yingst
Solicitor

12/10

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County - Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, December 20, 1999, at 9:00 o'clock a.m.

HOFFMAN-Orphans' Court Action Number OC-63-97. The First and Final Account of PNC Bank, National Association, Executor of the Estate of Robert C. Hoffman, deceased, late of Straban Township, Adams County, Pennsylvania.

NOEL-Orphans' Court Action Number OC-124-99. The First and Final Account of Monica Pittenturf and Monica N. McGoldrick and Roger T. Noel, Executors of the Estate of Jessie G. Noel a/k/a Jessie H. Noel, deceased, late of Bonneauville Borough, Adams County, Pennsylvania.

DAVIES-Orphans' Court Action Number OC-128-99. The First and Final Account of Janice L. Althoff and Virginia M. Schriver, Executrices of the Estate of Joseph L. Davies, deceased, late of 1350 Highland Avenue Road, Mt. Joy Township, Gettysburg, Adams County, Pennsylvania.

FOX-Orphans' Court Action Number OC-129-99. The First and Final Account of Paul B. Fox, Executor of the Last Will and Testament of Helen R. Fox, deceased, late of the Borough of Gettysburg, Adams County, Pennsylvania.

FLYNN-Orphans' Court Action Number OC-130-99. The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Mildred R. Flynn, deceased, late of Cumberland Township, Adams County, Pennsylvania, including accounting of said bank as Attorney-in-Fact for Mildred R. Flynn, deceased, under P.E.F. Code Sec. 3501.2.

MEARNS-Orphans' Court Action Number OC-17-97. The First and Final Account of Carolyn T. Dorsett, Executrix of the Estate of William C. Mearns, Sr., deceased, late of Mt. Joy Township, Adams County, Pennsylvania.

SPANGLER-Orphans' Court Action Number OC-87-97. The Second and Final Account of Adams County National Bank, Executor of the Will of Amos L. Spangler, deceased, late of Union Township, Adams County, Pennsylvania.

HARBAUGH-Orphans' Court Action Number OC-132-99. The First and Final Account of Robert E. E. Harbaugh, Executor of the Estate of Earl W. Harbaugh, deceased, late of Liberty Township, Adams County, Pennsylvania.

SULLIVAN-Orphans' Court Action Number OC-104-93. The Revised First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Elizabeth M. Sullivan, deceased, late of Franklin Township, Adams County, Pennsylvania, including accounting of said bank as Attorney-in-Fact for Elizabeth M. Sullivan, deceased, under P.E.F. Code Sec. 3501.2.

Peggy J. Breighner
Clerk of Courts

12/10 & 17

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-669 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, January 21, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in Latimore Township, Adams County, Pennsylvania, being more particularly bounded and described as follows, to-wit:

BEGINNING at a point In the center of Harrisburg Street, which point is approximately two hundred fifty-seven (257) feet northeasterly along said Harrisburg Street from corner of land N/F of Elmer Humper; thence by other land N/F of Alice K. Koons, North twenty-four (24) degrees thirty-two (32) minutes West two hundred seventy-three and two tenths (273.2) feet to a stake; thence by land N/F Charles Kennedy North fifty-five (55) degrees thirty-four (34) minutes East, sixty and seven tenths (60.7) feet; thence by other lands N/F of Alice K. Koons, South twenty-four (24) degrees thirty-two (32) minutes East two hundred ninety-two and four tenths (292.4) feet to a point in the center of said Harrisburg Street, South seventy-three (73) degrees nineteen (19) minutes West, sixty (60) feet to a point in the center of said Harrisburg Street, the Place of BEGINNING.

CONTAINING 61 perches.

Parcel # 23 I04-0028

BEING KNOWN AS 155 HARRISBURG STREET, YORK SPRINGS, PA

SEIZED and taken into execution as the property of **Kenneth & Carolyn Jovanelly** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
November 4, 1999

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/10, 17& 23

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-1156 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, January 21, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in Latimore Township, Adams County, Pennsylvania, being more particularly bounded and described as follows, to wit:

BEGINNING at a point in the center of Harrisburg Street, which point is approximately two hundred fifty-seven (257) feet Northeasterly along said Harrisburg Street from corner of lands N/F of Elmer Mumper; thence by other lands N/F of Alice H. Koons, North twenty-four (24) degrees thirty-two (32) minutes West two hundred seventy-three and two tenths (273.2) feet to a stake; thence by lands N/F of Charles Kennedy, North fifty-five (55) degrees thirty-four (34) minutes East, sixty and seven tenths (60.7) feet; thence by other lands N/F of Alice H. Koons, South twenty-four (24) degrees thirty-two (32) minutes East two hundred ninety-two and four tenths (292.4) feet to a point in the center of said Harrisburg Street, thence in and along the center of said Harrisburg Street, South seventy-three (73) degrees nineteen (19) minutes West, sixty (60) feet to a point in the center of said Harrisburg Street, the place of Beginning.

CONTAINING 61 perches.

Tax # MAP 1-4, Parcel 28

TITLE TO SAID PREMISES IS VESTED IN Kenneth Jovanelly and Carolyn Jovanelly, his wife by Deed from Patrick P. Carswell and R. Tuli Carswell dated 6/20/91, recorded 6/27/91, in Record Book 592 page 572.

SEIZED and taken into execution as the property of **Kenneth & Carolyn Jovanelly** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
November 4, 1999

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/10,17 & 23

Adams County
Legal Journal

Vol. 41 December 17, 1999 No. 29, pp. 161-168

ANNOUNCEMENT OF CONTINUING LEGAL EDUCATION PROGRAMS

1. *Practical Estate Planning Opportunities Using FLPs & Family LLCs*
   Thursday, December 16, 1999–9:00 a.m.
   Room 307, Adams County Courthouse
   Credits: Substantive Law–3, Ethics–0
2. *Post Mortem Estate Planning for Family Business Interests*
   Thursday, January 13, 2000–9:00 a.m.
   Room 307, Adams County Courthouse
   Credits: Substantive Law–1, Ethics–0
3. *Social Security Disability: The Basics*
   Thursday, January 25, 2000–9:00 a.m.
   Room 307, Adams County Courthouse
   Credits: Substantive Law–4, Ethics–0
4. *Confessions of Judgment & Deficiency Judgments in Pennsylvania*
   Wednesday, February 9, 2000–9:00 a.m.
   Room 307, Adams County Courthouse
   Credits: Substantive Law–4, Ethics–0
5. *Fundamentals of Estate & Trust Administration*
   Wednesday, February 16, 2000–9:00 a.m.
   Room 307, Adams County Courthouse
   Credits: Substantive Law–5, Ethics–1

Registration through P.B.I. 800-247-4724

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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Business Office – 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 334-6781 ext 336

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-772 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, January 21, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the right, title, interest and claim of James R. Crouse of, in and to the following described property:

ALL the following described real estate situated in the Township of Union, County of Adams and State of Pennsylvania. Having erected thereon a dwelling being known and numbered as 1740 Hanover Pike, Littlestown, Pennsylvania 17340. Deed book volume 547, page 327. Parcel number K16-39.

SEIZED and taken into execution as the property of **James R. Crouse** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/3,10 & 17

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-638 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, January 21, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Menallen Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin in the center line of a 50 foot right of way for a private road and at Western corner of Lot No. 1; thence by said Lot No. 1, South 34 degrees 47 minutes 50 seconds East 330.86 feet to an iron pin at the Southernmost corner of said Lot No. 1, and at corner of other land now or formerly of Horace W. Anderson, and at lands now or formerly of Robert V. Davies; thence by said lands now or formerly of Horace W. Anderson, South 48 degrees 09 minutes 20 seconds West 279.05 feet to an iron pin at corner of Lot No. 3 and lands now or formerly of James T. Voweli thence by said Lot No. 3, North 30 degrees 06 minutes 10 seconds West, 335.91 feet (passing through a reference iron pin set back from the center line of said right of way 20.25 feet) to an iron pin in the centerline of said 50 foot right of way; thence in and along said right of way, North 48 degrees 16 minutes 30 seconds East, 251.30 feet to an iron pin in said center line of right of way, the place of BEGINNING. CONTAINING 2.001 Acres.

The above description was taken from a draft of survey by Boyer-Price Surveys, Inc., dated August 3, 1993, designating the above as Lot No. 2.

Parcel No. E5-100R

Being known as 3 Timber Lane, Box 412, Bendersville, Pa.

SEIZED and taken into execution as the property of **Bette J. Martens a/k/a Bette J. Tanner** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/3,10 & 17

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-397 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, January 28, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THE RIGHT, TITLE, INTEREST AND CLAIM OF JAMES A. MELLOTT AND TO:

ALL THE FOLLOWING DESCRIBED REAL ESTATE SITUATED IN THE TOWNSHIP OF FRANKLIN, ADAMS COUNTY, PENNSYLVANIA. HAVING ERECTED THEREON A DWELLING KNOWN AND NUMBERED AS 379 CHURCH ROAD, ORRTANNA, PENNSYLVANIA 17353. DEED BOOK VOLUME 1457, PAGE 163, PARCEL 123F.

SEIZED and taken into execution as the property of **James A. Mellott** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 21, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/17,23 & 31

NOTICE

NOTICE IS HEREBY GIVEN that Ross Herbert Pifer intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 18th day of January, 2000, and that he intends to establish legal practice at the law offices of Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, Pennsylvania 17325.

Puhl, Eastman & Thrasher
220 Baltimore Street
Gettysburg, PA 17325

12/17

KELLEY ET AL VS MT. JOY TOWNSHIP ZONING HEARING BOARD ET AL

1. In zoning cases where, as here, the trial court did not receive any additional evidence, its scope of review is limited to determining whether the zoning hearing board committed an error of law or a manifest abuse of discretion. An abuse of discretion occurs only if the board's findings are not supported by substantial evidence. Evidence is substantial when a reasonable mind could accept it as adequate to support a conclusion.

2. 'The burden of proving the extent or existence of a nonconforming use rests on the property owner who would claim the benefit of the rights accorded property with that status. The benefit of legal nonconforming use status is available only to that lawful use which existed on the land at the time when the prohibitory zoning took effect.

3. It has long been the law in this Commonwealth that "[a]bandonment is a question of fact which depends upon all the factors present in a case, and the burden of proving an abandonment of a non-conforming use is on those who assert the abandonment."

4. One must still show "concurrent overt acts or failure to act which indicate abandonment." Even minimal utilization of a use is sufficient to perpetuate a nonconforming status. An interval between departure of one lessee and occupancy by another does not constitute an abandonment. Furthermore, operating without a permit in violation of law is a collateral matter which does not evidence an intent to abandon.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 97-S-281. STEVE R. KELLEY, ROBERT L. MCGGLAUGHLIN AND DEAN A. SHULTZ, APPELLANTS, VS. MT JOY TOWNSHIP ZONING HEARING BOARD, APPELLEE, VS. EXPLORE, INC., INTERVENOR.

Samuel E. Teeter, Esq., for Appellants
Cathrine J. Gault, Esq., for Appellee
Anthony J. Nestico, Esq., and G. Bryan Salzmann, Esq., for Intervenor

OPINION PURSUANT TO APPEAL FROM ZONING HEARING BOARD DECISION

Kuhn, J., October 20, 1998.

Intervenor, Explore, Inc. ("Explore"), applied to Mt. Joy Township for a certificate of nonconforming use. The Mt. Joy Township Zoning Officer denied the application. Explore appealed the decision to the Mt. Joy Township Zoning Hearing Board. A hearing was held on January 8, 1997, at which time the appeal was granted. On March 24,

1997, Appellants, Steve R. Kelley, Robert L. McGlaughlin, and Dean A. Shultz filed a Notice of Land Use Appeal with this Court. [1]

STATEMENT OF FACTS

On August 13, 1996, Explore leased property owned by Wilson C. Clapsaddle with the intention of using the property as a granite mining quarry. The property had been leased previously to Richard Walters who obtained a permit to mine 18 hundred tons of granite. (T. at 22). Walters and Clapsaddle had some legal problems in relation to the property, which restricted the parties for a few years. (T. at 56). The property is not currently permitted for surface mining of granite by any governmental agency. (T. at 23, 60). However, Walters did conduct some mining of granite on the property in the 1970s. (T. at 24, 27, 45).

Clapsaddle testified that at no time did he intend to abandon the mining operations on the subject property. (T. at 52). Although he did not have the necessary equipment to remove large slabs of granite, he did have a front end loader with which he extracted granite from one to two feet below the surface. (T. at 54). The granite Clapsaddle was able to remove with his equipment could weigh as much as 500 pounds. (T. at 54). Although technically a permit would be required to remove even the surface granite an expert in the field, G. Robert Ganis, testified at the hearing that the Department of Environmental Resources is not normally concerned with such minor operations. (T. at 79). Clapsaddle also testified that he has continuously sold the granite previously mined by Walters. (T. at 46, 82). Three letters were presented at the hearing in which buyers indicated that they had been purchasing granite from Clapsaddle for some time. (T. at 47).

As an expert in the field of mining, Ganis testified that granite is a dimension stone. (T. at 68). He further testified that dimension stone is an industrial mineral that requires a specific project, either for a building, monument or the like before it is sold. Ganis stated that it is common practice in the dimension stone business to operate quarries intermittently when sales have been established for the material. (T. at 68). Additionally, he testified that the mining of granite includes

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[1] Explore filed a Motion to Quash on September 3, 1998. However, this motion was not discussed at Argument Court, was not addressed in Explore's brief, and is therefore waived.

activities such as exploration, extraction, processing, cutting, stockpiling, and sales. (T. at 70). The actual extraction of granite may require only minor digging through the ground's surface. (T. at 76).

LEGAL DISCUSSION

In zoning cases where, as here, the trial court did not receive any additional evidence, its scope of review is limited to determining whether the zoning hearing board committed an error of law or a manifest abuse of discretion. *Hogan Lepore & Hogan* v. *Pequea Township Zoning Board,* 162 Pa. Commw. 282, 288, 638 A.2d 464, 467 (1994), *alloc. den.* 647 A.2d 905; *Manor Healthcare Corp.* v. *Lower Moreland Township Zoning Hearing Board,* 139 Pa. Commw. 206, 217, 590 A.2d 65, 70 (1991). An abuse of discretion occurs only if the board's findings are not supported by substantial evidence. *Moros* v. *Pittsburgh Zoning Board of Adjustment,* 107 Pa. Commw. 203, 205, 527 A.2d 1117, 1118 (1987). Evidence is substantial when a reasonable mind could accept it as adequate to support a conclusion. *Valley View Civic Association* v. *Zoning Board of Adjustment,* 501 Pa. 550, 554-55, 462 A.2d 637, 639-40 (1983) (citations omitted).

Appellants raise the following issues in their notice of appeal:

1. Findings of Fact 5 and 6 are contrary to evidence presented to the Board at the hearing, including evidence that the mining operation theretofore permitted on the subject property was deemed abandoned by the Department of Environmental Resources on or before August 1978, as a consequence of which there was no pre-existing use status in regard to the quarry on the subject property when Mount Joy Township enacted its Zoning Ordinance in 1991.
2. The business of mining or "*mineral extraction,*" as defined in Section 202 of the Mount Joy Township Zoning Ordinance, does not include the stockpiling or sale of granite or other minerals.
3. Findings of Fact 8 and 9 are contrary to the weight of the evidence presented to the Board at the hearing, since the testimony that was presented concerning the sales of granite since 1991 was sketchy and unreliable and not sufficient to support a finding that the owner of the subject property had been engaged in the actual conduct of the business of stockpiling and selling granite on the subject property.

4. The Board failed to consider other testimony and exhibits submitted at the hearing bearing on the use of the subject property in excess of one year prior to the date of the application by Explore, Inc. for non-conforming use status, as will become evidence upon filing of the record before the Zoning Hearing Board.[2]
5. Both Conclusions of Law are contrary to law.

(Appellants' Notice of Land Use Appeal at ¶ 6).

Appellants first argue that Findings of Fact No. 5 and 6 are contrary to the evidence. These findings read as follows:

5. The subject property had been permitted under the Department of Environmental Resources, for the mining of granite at one time in the late 1970's. At some point in time, granite was extracted from a quarry located on the subject property.
6. Adoption of its zoning ordinance by Mount Joy Township in 1991, zoning the subject property Rural Residential, created a pre-existing nonconforming use status in regard to the quarry on said property.

(Decision of the Mount Joy Township Zoning Hearing Board, Findings of Fact No. 5 and 6).

Finding of Fact No. 5 is supported by substantial evidence. Testimony indicated that the Department of Environmental Resources had issued a permit for the subject property in the 1970s and that Walters did in fact mine some of the granite. (T. at 22, 24, 27, 45). Additionally, various mining activities took place on the subject property in connection with the extraction of the granite. (T. at 46, 54, 82). Thus, the record supports the Board's Finding of Fact No. 5 and this Court does not believe there was a manifest abuse of discretion in that regard.

In Finding of Fact No. 6, the Board held that adoption of the zoning ordinance in 1991 created a pre-existing nonconforming use status with regard to the quarry. Appellants argue that there was insufficient proof that granite mining was con-

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[2]Appellants have failed to specifically identify which exhibits they are referring to and have further failed to brief the issue. Thus, this Court will not address this issue.

ducted on the property at the time the ordinance was enacted and that Explore therefore failed to prove a prior nonconforming use.[3]

The Commonwealth Court has held as follows with respect to nonconforming use status.

> 'The burden of proving the extent or existence of a nonconforming use rests on the property owner who would claim the benefit of the rights accorded property with that status.'... 'The benefit of legal nonconforming use status is available only to that lawful use which existed on the land at the time when the prohibitory zoning (to which the use does not conform) took effect.' ... Thus applicant's burden in this case was to demonstrate that his ... use was *in existence* and was *lawful* before the enactment of the ... ordinance.

Penn Hills v. *Zoning Hearing Board of Penn Hills*, 60 Pa. Commw. 286, 288, 431 A.2d 383, 384 (1981) (citations omitted).

Thus, it was Explore's burden to show that a nonconforming use was in existence at the time the ordinance was enacted. The Board determined that this burden was met when it held that a pre-existing nonconforming use was present at the time the ordinance was enacted.[4] (Finding of Fact No. 6). This Court does not believe the Board abused its discretion in making this determination.

The testimony indicated that mining activities had previously occurred on the property. Testimony further indicated that Walters obtained a permit to mine and that mining activities had in fact occurred.

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[3] Explore argues that this issue was not raised in the Notice of Appeal and therefore cannot be raised presently. This Court does not agree. Appellants clearly raise the issue in paragraph 6(a) of their appeal in which they claim there was "no pre-existing use status in regard to the quarry on the subject property when Mount Joy Township enacted its Zoning Ordinance on 1991." (Appellants' Notice of Land Use Appeal at ¶ 6(a)).

[4] In addition, the Court notes that this issue was not raised by either party at the hearing. The Board was only asked to decide if there was an abandonment of the pre-existing nonconforming use and thus Appellant's have waived the issue of whether or not a prior nonconforming use was sufficiently established, as they did not raise the issue at the hearing. *See, e.g., Wagner* v. *Erie Zoning Hearing Board,* ___ Pa. Commw. ___, 675 A.2d 791 (1996); *alloc. den.*, 685 A.2d 549 (where the Court held that issues not preserved before the board are waived). However, because a finding of fact on the issue was made this Court will still address its validity.

(T at 53-56, 61). Clapsaddle also testified that although he did not extract large pieces of granite from the land he did dig a few feet into the ground to extract some of the granite. (T. at 54). Additionally, Clapsaddle and his son testified that granite was stockpiled and sold annually. (T. at 46, 82). Letters from various buyers were presented at the hearing claiming that granite had been purchased. (T. at 47). Furthermore, expert testimony suggested that once granite is mined it may be years before more extraction is necessary. (T. at 68). The stockpiling and sale of granite is commonly considered part of the mining process. (T. at 70). Thus, the evidence presented to the Board was sufficient to warrant Finding of Fact No. 6.

Appellants also argue that Findings of Fact No. 8 and 9 are contrary to the weight of the evidence presented to the Board, since the testimony that was presented concerning the sales of granite since 1991 was questionable and not sufficient to support the finding that the owner of the subject property had been engaged in the actual conduct of the business of stockpiling and selling granite on the subject property.

The Board's Findings of Fact No. 8 and 9 read as follows:

8. Subsection 806.E.2.(b) of the Mount Joy Township Zoning Ordinance provides that evidence that a business is not abandoned shall be limited to "actual conduct of business on the premises."
9. The subject property is presently being used for pasture, the removal of some timber and the stockpiling and sale of granite from time to time. Said sales of granite have occurred annually since 1991.

(Decision of the Mount Joy Township zoning Hearing Board at ¶¶ 8 and 9).

Finding of Fact No. 8 relates what the ordinance provides and is clearly supported by the ordinance language. In addition, Finding of Fact No. 9 is supported by substantial evidence. Testimony and evidence presented at the hearing showed that the stockpiling and sale of granite occurred annually on the subject property. (T. at 46-50, 82). A reasonable mind could accept this evidence as adequate to support Finding of Fact No. 9 and the Board therefore did not abuse its discretion.

Lastly, Appellants argue that both conclusions of law are contrary to law.[5] The Board concluded as follows:

1. The stockpiling and sale of granite on the subject property constitutes actual conduct of business on the premises.
2. The nonconforming use on the subject premises was not abandoned as actual conduct of business occurred during every year following the adoption of the Mount Joy Township Zoning Ordinance.

It has long been the law in this Commonwealth that "[a]bandonment is a question of fact which depends upon all the factors present in a case, and the burden of proving an abandonment of a non-conforming use is on those who assert the abandonment." *Kuhl* v. *Zoning Hearing Board of Greene Township,* 52 Pa. Commw. 249, 251, 415 A.2d 954, 955 (1980) (citations omitted). The ordinance in question has a limitation on a nonconforming use which has been discontinued for one year. Such provisions presume the intent to abandon from the expiration of the period, however, one must still show "concurrent overt acts or failure to act which indicate abandonment." *Id.* at 956. Even minimal utilization of a use is sufficient to perpetuate a nonconforming status. An interval between departure of one lessee and occupancy by another does not constitute an abandonment. Furthermore, operating without a permit in violation of law is a collateral matter which does not evidence an intent to abandon. *Id.*

The Board's first conclusion is supported by the Findings of Fact and by the testimony presented at the hearing. Again, an expert in the field testified that the sale and stockpiling of granite is part of the mining business of dimension stone. (T. at 70). It was within the Board's discretion to believe the expert's testimony and conclude that Clapsaddle's activities constituted continued granite mining on the property.

The Board's second conclusion concerns abandonment. Appellants have not based their argument on this issue. Nevertheless, the

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[5] Appellants also argue that the Board failed to consider other testimony and exhibits submitted at the hearing bearing on the use of the subject property in excess of one year prior to the date of the application by Explore, Inc. for nonconforming use status. Appellants did not brief this issue and it is not clear to the Court to what exhibits and testimony Appellants are referring. Therefore, the Court cannot adequately address this issue.

Court does not believe this conclusion is an error of law in light of the Board's Findings of Fact.

Accordingly, the attached Order is issued.

ORDER OF COURT

AND NOW, this 20th day of October 1998, Intervenor's Land Use Appeal is hereby denied.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-330 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, January 28, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land situate in Reading Township, Adams County, Pennsylvania, being more particularly described as follows, to wit:

BEING Lake Mead Lot No. 550, County Map 5, parcel 60, as shown on the records in Adams County Mapping Department.

UNDER AND SUBJECT to the restrictions recorded in the Office of the Recorder of Deeds, Adams County, Pennsylvania.

BEING the same premises which Harry P. McKean by deed dated June 20, 1991, and recorded in the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 592, at page 253, granted and conveyed unto John H. Gehling and Sally J. Gehling, his wife, which has an address of 5 Lake Meade Drive, East Berlin, PA 17316.

SEIZED and taken into execution as the property of **John H. Gehling & Sally J. Gehling** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 21, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

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12/17,23 & 31

ARTICLES OF INCORPORATION
NON-PROFIT CORPORATION

NOTICE is hereby given that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on the 18th day of November, 1999, for the purpose of obtaining a Certificate of Incorporation for a proposed corporation organized under the Pennsylvania Nonprofit Corporation Law of 1988. The name of the corporation is: LAKE VIEW CHRISTIAN FELLOWSHIP CHURCH OF THE BRETHREN. Christian worship, affiliation and assembly and all other lawful business which corporations may be incorporated under the provisions of this Act.

Miller, Poole & Lord, LLP
John D. Miller, Jr., Esq.
Solicitor
139 E. Philadelphia Street
York, PA 17403

12/17

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on or about November 4, 1999 for the incorporation of B. A. WILLIAMS, INC., under the Pennsylvania Business Corporation Law of 1988. The corporation shall engage in the creation of computer screensavers and general business and marketing consultation, together with any legal function of a corporation under PA law. The initial registered office of the corporation is 134 Chambersburg Street, P.O. Box 4326, Gettysburg, PA 17325.

Gary E. Hartman, Esq.
Hartman & Yannetti
Solicitor

12/17

LEGAL NOTICE - ANNUAL MEETING

The Annual meeting of the policyholders of the Protection Mutual Insurance Company of Littlestown will be held at the office at 101 South Queen Street, in Littlestown, Pennsylvania between the hours of 1:00 and 2:00 P.M., on January 08, 2000 to elect directors and to transact any other business properly presented.

ATTEST, Marilyn Q. Butt
Secretary-Treasurer

12/3,10,17 & 23

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on or about November 5, 1999 for the incorporation of CHASE TRANSPORT, INC., under the Pennsylvania Business Corporation Law of 1988. The corporation shall engage in the transport of cars, together with any legal function of a corporation under PA law. The initial registered office of the corporation is 4 Filly Trail, Fairfield, PA 17320.

Bernard A. Yannetti, Jr., Esq.
Hartman & Yannetti
Solicitor

12/17

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed in the Pennsylvania Department of State for JD GIFT & CRAFT GALLERY, INC., which corporation has been incorporated under the Pennsylvania Business Corporation Law of 1988.

Rupp & Meikle, P.C.
Attorneys at Law
355 North 21st Street, Suite 205
Camp Hill, PA 17011

12/17

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

ESTATE OF MIRIAM E. MAY, DEC'D
Late of Huntington Township, Adams County, Pennsylvania
Executrix: Virginia L. Smiley, 6609 Carlisle Pike, East Berlin, PA 17310
Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

SECOND PUBLICATION

ESTATE OF MARGARET R. GARRETSON, DEC'D
Late of Straban Township, Adams County, Pennsylvania
Co-Executors: Harold R. Garretson, 55 Longview Drive, Gettysburg, PA 17325; PNC Bank, N.A., P.O. Box 308, Camp Hill, PA 17001-0308
Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF KEVIN A. GOBRECHT, DEC'D
Late of Mount Pleasant Township, Adams County, Pennsylvania
Administrators: Robert L. Gobrecht, 25 Dogwood Court, New Oxford, PA 17350; Donna M. Long, 31 Brandy Court, Hanover, PA 17331
Attorney: Daniel M. Frey, Attorney, Daniel M. Frey & Associates, a division of Barley, Snyder, Senft & Cohen, LLC., 14 Center Square, Hanover, PA 17331

ESTATE OF MARGUERITE MICHEL HEITMANN, DEC'D
Late of the Borough of Carroll Valley, Adams County, Pennsylvania
Executor: Adams County National Bank, Lincoln Square, Gettysburg, PA 17325
Attorney: Robert E. Campbell, Esq., Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF DAISY H. ORNER, DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Executrix: Jeanne M. Orner, c/o James D. Hughes, Esquire, 60 West Pomfret Street, Carlisle, PA, 17013
Attorney: Irwin, McKnight & Hughes, 60 West Pomfret Street, Carlisle, PA, 17013

ESTATE OF DARLENE M. SNYDER, DEC'D
Late of Huntington Township, Adams County, Pennsylvania
Executor: Carl L. Tanger, c/o Daniel Pollock, Esquire, 3105 Old Gettysburg Road, Camp Hill, PA, 17011

ESTATE OF DELIA V. UPDYKE, DEC'D
Late of Mount Joy Township, Adams County, Pennsylvania
Executor: Jerry Updyke, 150 Brickyard Road, New Oxford, PA 17350
Attorney: Wendy Weikal-Beauchat, Esq., 116 Baltimore Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF MARY G. LEPPO, DEC'D
Late of Conewago Township, Adams County, Pennsylvania
Executors: H. Edward Leppo, 5071 Baltimore Pike, Littlestown, PA 17340; Eunice E. Leppo, 509 Poplar St., P.O. Box 775, Hanover, PA 17331
Attorney: G. Steven McKonly, Esquire, 119 Baltimore Street, Hanover, PA 17331

ESTATE OF WILLIAM O. ROUTSONG a/k/a WILLIAM O. ROUTSONG JR., DEC'D
Late of the Borough of Bendersville, Adams County, Pennsylvania
Co-Executors: Leroy S. Routsong, 140 South Main Street, Bendersville, PA 17306; Alice Y. Routsong, 140 South Main Street, Bendersville, PA 17306
Attorney: John R. White, Esq., Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF FLORENCE B. SELTZER, DEC'D
Late of the Borough of Gettysburg, Adams County, Pennsylvania
Executrixes: Heather E. Kling, 2636 Emmitsburg Road, Apt. 3-11, Gettysburg, PA 17325; Carol A. Yingling, 414 High Street, 2nd Floor, Hanover, PA 17331
Attorney: Catherine J. Gault, Esq. 31 S. Washington Street, Gettysburg, PA 17325

ESTATE OF ROBERT C. SHULTZ, DEC'D
Late of the Borough of Gettysburg, Adams County, Pennsylvania
Executrix: Bonnie K. Bucher, 1465 Walker Road, Chambersburg, PA 17201
Attorney: Richard K. Hoskinson, Esq., Hoskinson & Wenger, 232 Lincoln Way East, Chambersburg, PA 17201

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County - Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, December 20, 1999, at 9:00 o'clock a.m.

HOFFMAN-Orphans' Court Action Number OC-63-97. The First and Final Account of PNC Bank, National Association, Executor of the Estate of Robert C. Hoffman, deceased, late of Straban Township, Adams County, Pennsylvania.

NOEL-Orphans' Court Action Number OC-124-99. The First and Final Account of Monica Pittenturf and Monica N. McGoldrick and Roger T. Noel, Executors of the Estate of Jessie G. Noel a/k/a Jessie H. Noel, deceased, late of Bonneauville Borough, Adams County, Pennsylvania.

DAVIES-Orphans' Court Action Number OC-128-99. The First and Final Account of Janice L. Althoff and Virginia M. Schriver, Executrices of the Estate of Joseph L. Davies, deceased, late of 1350 Highland Avenue Road, Mt. Joy Township, Gettysburg, Adams County, Pennsylvania.

FOX-Orphans' Court Action Number OC-129-99. The First and Final Account of Paul B. Fox, Executor of the Last Will and Testament of Helen R. Fox, deceased, late of the Borough of Gettysburg, Adams County, Pennsylvania.

FLYNN-Orphans' Court Action Number OC-130-99. The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Mildred R. Flynn, deceased, late of Cumberland Township, Adams County, Pennsylvania, including accounting of said bank as Attorney-in-Fact for Mildred R. Flynn, deceased, under P.E.F. Code Sec. 3501.2.

MEARNS-Orphans' Court Action Number OC-17-97. The First and Final Account of Carolyn T. Dorsett, Executrix of the Estate of William C. Mearns, Sr., deceased, late of Mt. Joy Township, Adams County, Pennsylvania.

SPANGLER-Orphans' Court Action Number OC-87-97. The Second and Final Account of Adams County National Bank, Executor of the Will of Amos L. Spangler, deceased, late of Union Township, Adams County, Pennsylvania.

HARBAUGH-Orphans' Court Action Number OC-132-99. The First and Final Account of Robert E. E. Harbaugh, Executor of the Estate of Earl W. Harbaugh, deceased, late of Liberty Township, Adams County, Pennsylvania.

SULLIVAN-Orphans' Court Action Number OC-104-93. The Revised First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Elizabeth M. Sullivan, deceased, late of Franklin Township, Adams County, Pennsylvania, including accounting of said bank as Attorney-in-Fact for Elizabeth M. Sullivan, deceased, under P.E.F. Code Sec. 3501.2.

Peggy J. Breighner
Clerk of Courts

12/10 & 17

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-669 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, January 21, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in Latimore Township, Adams County, Pennsylvania, being more particularly bounded and described as follows, to-wit:

BEGINNING at a point In the center of Harrisburg Street, which point is approximately two hundred fifty-seven (257) feet northeasterly along said Harrisburg Street from corner of land N/F of Elmer Humper; thence by other land N/F of Alice K. Koons, North twenty-four (24) degrees thirty-two (32) minutes West two hundred seventy-three and two tenths (273.2) feet to a stake; thence by land N/F Charles Kennedy North fifty-five (55) degrees thirty-four (34) minutes East, sixty and seven tenths (60.7) feet; thence by other lands N/F of Alice K. Koons, South twenty-four (24) degrees thirty-two (32) minutes East two hundred ninety-two and four tenths (292.4) feet to a point in the center of said Harrisburg Street, South seventy-three (73) degrees nineteen (19) minutes West, sixty (60) feet to a point in the center of said Harrisburg Street, the Place of BEGINNING.

CONTAINING 61 perches.

Parcel # 23 I04-0028

BEING KNOWN AS 155 HARRISBURG STREET, YORK SPRINGS, PA

SEIZED and taken into execution as the property of **Kenneth & Carolyn Jovanelly** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
November 4, 1999

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/10, 17& 23

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-1156 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, January 21, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in Latimore Township, Adams County, Pennsylvania, being more particularly bounded and described as follows, to wit:

BEGINNING at a point in the center of Harrisburg Street, which point is approximately two hundred fifty-seven (257) feet Northeasterly along said Harrisburg Street from corner of lands N/F of Elmer Mumper; thence by other lands N/F of Alice H. Koons, North twenty-four (24) degrees thirty-two (32) minutes West two hundred seventy-three and two tenths (273.2) feet to a stake; thence by lands N/F of Charles Kennedy, North fifty-five (55) degrees thirty-four (34) minutes East, sixty and seven tenths (60.7) feet; thence by other lands N/F of Alice H. Koons, South twenty-four (24) degrees thirty-two (32) minutes East two hundred ninety-two and four tenths (292.4) feet to a point in the center of said Harrisburg Street, thence in and along the center of said Harrisburg Street, South seventy-three (73) degrees nineteen (19) minutes West, sixty (60) feet to a point in the center of said Harrisburg Street, the place of Beginning.

CONTAINING 61 perches.

Tax # MAP I-4, Parcel 28

TITLE TO SAID PREMISES IS VESTED IN Kenneth Jovanelly and Carolyn Jovanelly, his wife by Deed from Patrick P. Carswell and R. Tuli Carswell dated 6/20/91, recorded 6/27/91, in Record Book 592 page 572.

SEIZED and taken into execution as the property of **Kenneth & Carolyn Jovanelly** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
November 4, 1999

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/10,17 & 23

Adams County
Legal Journal

Vol. 41 December 23, 1999 No. 30, pp. 169-172

ANNOUNCEMENT OF CONTINUING LEGAL EDUCATION PROGRAMS

2. *Post Mortem Estate Planning for Family Business Interests*
   Thursday, January 13, 2000–9:00 a.m.
   Room 307, Adams County Courthouse
   Credits: Substantive Law–1, Ethics–0
3. *Social Security Disability: The Basics*
   Thursday, January 25, 2000–9:00 a.m.
   Room 307, Adams County Courthouse
   Credits: Substantive Law–4, Ethics–0
4. *Confessions of Judgment & Deficiency Judgments in Pennsylvania*
   Wednesday, February 9, 2000–9:00 a.m.
   Room 307, Adams County Courthouse
   Credits: Substantive Law–4, Ethics–0
5. *Fundamentals of Estate & Trust Administration*
   Wednesday, February 16, 2000–9:00 a.m.
   Room 307, Adams County Courthouse
   Credits: Substantive Law–5, Ethics–1

Registration through P.B.I. 800-247-4724

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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Business Office – 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 334-6781 ext 336

Periodicals postage paid at Gettysburg, PA 17325.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-102 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, February 11, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

All the following lots of land located in Liberty Township, Adams County, Pennsylvania.

A. The following lots of land located in the Charnita Subdivision as shown on a plan of lots identified as section AD, Charnita, dated January 12, 1970 recorded in Adams County, Pennsylvania, Plat Book 1, page 93, which is incorporated herein by reference: AD 1, AD 2, AD 3, AD 4, AD 14, AD 60, and AD 117. Lots AD 1-4 are part of the larger tract conveyed to Charnita, Inc. by Robert Morgan and Wilma Jane Morgan by deed dated October 15, 1969, and recorded in Adams County, Pennsylvania, Deed Book 278, page 676. Lots AD 60 and AD 117 were conveyed by the same grantors to Charnita, Inc. by deed dated December 17, 1969, in Adams County, Pennsylvania, Deed Book 280, page 941.

B. The following lots of land located in Charnita Subdivision as shown on the plan of lots identified as section AE, Charnita, dated March 3, 1970, and recorded in Adams County, Pennsylvania, Plat Book 1 page 95 which plan is incorporated herein by reference: Lot AE 5 and AE 31. The lots are part of a tract conveyed to Charnita, Inc. by Charles M. Weishaar and Annie M. Weishaar by deed dated December 17, 1969, in Adams County, Pennsylvania, Deed Book 280, page 992.

SEIZED and taken into execution as the property of **Charnita, INC.** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 6, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/23, 31 & 1/7

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-397 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, January 28, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THE RIGHT, TITLE, INTEREST AND CLAIM OF JAMES A. MELLOTT AND TO:

ALL THE FOLLOWING DESCRIBED REAL ESTATE SITUATED IN THE TOWNSHIP OF FRANKLIN, ADAMS COUNTY, PENNSYLVANIA. HAVING ERECTED THEREON A DWELLING KNOWN AND NUMBERED AS 379 CHURCH ROAD, ORRTANNA, PENNSYLVANIA 17353. DEED BOOK VOLUME 1457, PAGE 163, PARCEL 123F.

SEIZED and taken into execution as the property of **James A. Mellott** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 21, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/17, 23 & 31

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-330 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, January 28, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land situate in Reading Township, Adams County, Pennsylvania, being more particularly described as follows, to wit:

BEING Lake Mead Lot No. 550, County Map 5, parcel 60, as shown on the records in Adams County Mapping Department.

UNDER AND SUBJECT to the restrictions recorded in the Office of the Recorder of Deeds, Adams County, Pennsylvania.

BEING the same premises which Harry P. McKean by deed dated June 20, 1991, and recorded in the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 592, at page 253, granted and conveyed unto John H. Gehling and Sally J. Gehling, his wife, which has an address of 5 Lake Meade Drive, East Berlin, PA 17316.

SEIZED and taken into execution as the property of **John H. Gehling & Sally J. Gehling** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 21, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/17, 23 & 31

KRUG VS. SULLIVAN

1. In deciding on an objection in the nature of a demurrer, the Pennsylvania Supreme Court has stated that "[a] demurrer admits every well-pleaded material fact set forth in the pleadings to which it is addressed as well as all inferences reasonably deducible therefrom, but not conclusions of law." A demurer is properly sustained where the complaint indicates on its face that the plaintiff's claim cannot be sustained, and the law will not permit recovery. If there is any doubt as to whether a demurrer should be sustained, the doubt should be resolved in favor of overruling it.

2. A contract is executory if the performance to which it relates is a future performance.

3. Preliminary objections may be filed claiming matter is impertinent or scandalous. Scandalous material is defined as follows:

> ...any unnecessary allegation which bears cruelly upon the moral character of an individual or states anything which is unbecoming to the dignity of the court to hear or which charges some person with the commission of a crime not necessary to be shown.

4. Impertinence is defined as follows:

> ...averment of facts which are irrelevant to material issues and whether proven or not can have no influence in leading to the result.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil. No. 98-S-667. MAURICE KRUG VS. RITA SULLIVAN.

Mark David Frankel, Esq., for Plaintiff
Anthony Miley, Esq., for Defendant

OPINION ON DEFENDANT'S PRELIMINARY OBJECTIONS

Kuhn, J., October 21, 1998.

On June 30, 1998, Plaintiff, Maurice Krug, filed a Complaint against Defendant, Rita Sullivan. On August 3, 1998, Plaintiff filed an Amended Complaint in response to preliminary objections being filed by Defendant. On August 19, 1998, Defendant filed preliminary objections to Plaintiff's Amended Complaint. For the following reasons, the objections are denied.

STATEMENT OF FACTS

On November 19, 1997, the parties allegedly entered into an agreement entitled "Author/Ghostwriter Agreement." (Plaintiff's Complaint, Exhibit A). Plaintiff is an author and entered into the agreement with Defendant to write his book and act as an agent in marketing the manuscript. Defendant was to write the book as a "ghostwriter," meaning her name would not appear on the finished product. The material payment terms were set forth as follows:

4...

Work on the manuscript will begin when the flat fee is 1) agreed upon between herself [Defendant] and Maurice Krug [Plaintiff] and 2) either a portion of the fee or entire fee is received. Rita J. Sullivan shall continue the process of writing and or marketing said book with the estimated time of completion not exceeding twenty-four months.

...

9.PAYMENTS: Maurice Harmon Krug (and his estate/family) agrees to pay Rita J. Sullivan a one time flat fee for professional writing services which shall remain in effect for a period of twenty-four months from the date both parties sign this agreement.

Payment(s) are non-refundable and include the following:

Writing, editing, proof-reading, research, labor, revisions (requested by Author or Publisher), postage, paper, marketing, agent fee, mileage and any additional photos

Total Non-Refundable payment: $ 20,000.00; earnings to be recognized over the period of this agreement.

PAYMENT OPTIONS BELOW:

1. One up front payment, payable by cash or cashier's check, to Rita J. Sullivan. (Or if agreed upon between the Author (to include, but not limited to the Author's estate, family, & attorneys) and the Ghostwriter, the payment schedule below is acceptable; payable by cash or cashier's check).
2. Upon signing of this agreement: $ 10,000.00 with the balance of Non-Refundable payment made in equal consecutive monthly installments of $ 1,000.00, due the first of each month for 10 months.
3. Upon signing of this agreement: $ 8,000.00 with the balance of Non-Refundable payment made in equal consecutive monthly installments of $ 500.00, due the first of each month for 24 months.

(Plaintiff's Complaint, Exhibit A).

Plaintiff alleges that since entering into the agreement, Defendant has failed to 1) provide her writing services, 2) obtain a publisher, 3) act as Plaintiff's agent, 4) perform the following services or cover the

following expenses: writing, editing, proof-reading, research, labor, revisions, postage, paper, marketing, agent fee, mileage, and additional photos, and 5) provide Plaintiff with the name of another person to assist in completing the book since Defendant was unable to do so. (Plaintiff's Amended Complaint at ¶ 7).

LEGAL DISCUSSION

Defendant argues that Plaintiff has failed to state a claim upon which relief may be granted. In deciding on an objection in the nature of a demurrer, the Pennsylvania Supreme Court has stated that "[a] demurrer admits every well-pleaded material fact set forth in the pleadings to which it is addressed as well as all inferences reasonably deducible therefrom, but not conclusions of law." *Gekas* v. *Shap,* 469 Pa. 1, 5, 364 A.2d 691, 693 (1976). A demurer is properly sustained where the complaint indicates on its face that the plaintiff's claim cannot be sustained, and the law will not permit recovery. *Lobdell* v. *Leichtenberger,* 442 Pa. Super. 21, 24, 658 A.2d 399, 401 (1995) (citations omitted). If there is any doubt as to whether a demurrer should be sustained, the doubt should be resolved in favor of overruling it. *Hennessy* v. *Santiago,* ___ Pa. Super. ___, 708 A.2d 1269, 1273 (1998) (citations omitted); *Milliner* v. *Enck,* ___ Pa. Super. ___, 709 A.2d 417 (1998).

Specifically, Defendant argues that the agreement is executory until November 19, 1999 because that is the time in which the agreement requires Defendant have the manuscript completed. A contract is executory if the performance to which it relates is a future performance. (*Black's Law Dictionary*, 395-96 (6th ed. 1990). Although the finished manuscript is not required until November 19, 1999, the terms of the contract require that some work on the manuscript begin when a flat fee is agreed upon and either a portion of the fee or the entire fee is paid to Defendant. (Plaintiff's Complaint, Exhibit A at ¶ 4). Plaintiff has alleged that he paid the entire $ 20,000.00 fee. (Plaintiff's Amended Complaint at ¶ 6). Thus, Defendant was obligated at that time to begin work on the manuscript. Thus, although it is true that the manuscript need not have been completed until November 19, 1999, that does not lead to the conclusion that the contract could not have been breached at this point.

Additionally, Defendant claims that Plaintiff has included scandal-

ous or impertinent material in paragraph 9 of the Amended Complaint. Paragraph 9 reads as follows:

> Plaintiff has attempted to resolve the disputed amount without success as Defendant refuses to refund the $20,000.00 fee or any portion thereof.

(Plaintiff's Amended Complaint at ¶ 9).

Preliminary objections may be filed claiming matter is impertinent or scandalous. Pa.R.C.P. 1028, 42 Pa.C.S.A. Scandalous material is defined as follows:

> ...any unnecessary allegation which bears cruelly upon the moral character of an individual or states anything which is unbecoming to the dignity of the court to hear or which charges some person with the commission of a crime not necessary to be shown.

Jordan Mutual Insurance Co., et al. v. *Lincoln Plan Corporation, et al.*, 10 Ad. Co. L. J. 204, 206 (1969). Clearly, the allegation in question is not scandalous as it does not regard Defendant's moral character. Impertinence is defined as follows:

> ...averment of facts which are irrelevant to material issues and whether proven or not can have no influence in leading to the result.

Jordan Mutual Insurance Co., et al. v. *Lincoln Plan Corporation, et al.*, 10 Ad. Co. L. J. at 206. This Court does not believe that the matter discussed in paragraph nine of Plaintiff's Amended Complaint is irrelevant. Not only does it provide insight into Plaintiff's understanding of what action was required under the agreement but it also shows Plaintiff's attempt to enforce the agreement and mitigate damages. Thus, paragraph nine will not be stricken.

Accordingly, the attached Order is issued.

ORDER OF COURT

AND NOW, this 21st day of October, 1998, Defendant's Preliminary Objections are hereby denied. Defendant is directed to file an answer to the Amended Complaint within twenty (20) days after date of mailing of this Order.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

ESTATE OF LORETTA BIRGENSMITH a/k/a MARY L. BIRGENSMITH, DEC'D
Late of the Borough of McSherrystown, Adams County, Pennsylvania
Executors: William H. Snyder, Jr., 344 Fairview Avenue, McSherrystown, PA 17344; Gertrude E. Snyder, 344 Fairview Avenue, McSherrystown, PA 17344
Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ROY JAMES CARBAUGH, DEC'D
Late of Tyrone Township, Adams County, Pennsylvania
Executors: David M. Carbaugh, P.O. Box 28, Aspers, PA 17304; George M. Carbaugh, P.O. Box 58, Aspers, PA 17304
Attorney: Clayton R. Wilcox, Esquire, 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARY V. SNEERINGER, DEC'D
Late of Mt. Pleasant Township, Adams County, Pennsylvania
Executor: John H. Sneeringer, 2405 Bon Ox Road, New Oxford, PA 17350
Attorney: Keith A. Hassler, Esq., 9 North Beaver Street, York, PA 17410

SECOND PUBLICATION

ESTATE OF MIRIAM E. MAY, DEC'D
Late of Huntington Township, Adams County, Pennsylvania
Executrix: Virginia L. Smiley, 6609 Carlisle Pike, East Berlin, PA 17310
Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

THIRD PUBLICATION

ESTATE OF MARGARET R. GARRETSON, DEC'D
Late of Straban Township, Adams County, Pennsylvania
Co-Executors: Harold R. Garretson, 55 Longview Drive, Gettysburg, PA 17325; PNC Bank, N.A., P.O. Box 308, Camp Hill, PA 17001-0308
Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF KEVIN A. GOBRECHT, DEC'D
Late of Mount Pleasant Township, Adams County, Pennsylvania
Administrators: Robert L. Gobrecht, 25 Dogwood Court, New Oxford, PA 17350; Donna M. Long, 31 Brandy Court, Hanover, PA 17331
Attorney: Daniel M. Frey, Attorney, Daniel M. Frey & Associates, a division of Barley, Snyder, Senft & Cohen, LLC., 14 Center Square, Hanover, PA 17331

ESTATE OF MARGUERITE MICHEL HEITMANN, DEC'D
Late of the Borough of Carroll Valley, Adams County, Pennsylvania
Executor: Adams County National Bank, Lincoln Square, Gettysburg, PA 17325
Attorney: Robert E. Campbell, Esq., Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF DAISY H. ORNER, DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Executrix: Jeanne M. Orner, c/o James D. Hughes, Esquire, 60 West Pomfret Street, Carlisle, PA, 17013
Attorney: Irwin, McKnight & Hughes, 60 West Pomfret Street, Carlisle, PA, 17013

ESTATE OF DARLENE M. SNYDER, DEC'D
Late of Huntington Township, Adams County, Pennsylvania
Executor: Carl L. Tanger, c/o Daniel Pollock, Esquire, 3105 Old Gettysburg Road, Camp Hill, PA, 17011

ESTATE OF DELIA V. UPDYKE, DEC'D
Late of Mount Joy Township, Adams County, Pennsylvania
Executor: Jerry Updyke, 150 Brickyard Road, New Oxford, PA 17350
Attorney: Wendy Weikal-Beauchat, Esq., 116 Baltimore Street, Gettysburg, PA 17325

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-1156 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, January 21, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in Latimore Township, Adams County, Pennsylvania, being more particularly bounded and described as follows, to wit:

BEGINNING at a point in the center of Harrisburg Street, which point is approximately two hundred fifty-seven (257) feet Northeasterly along said Harrisburg Street from corner of lands N/F of Elmer Mumper; thence by other lands N/F of Alice H. Koons, North twenty-four (24) degrees thirty-two (32) minutes West two hundred seventy-three and two tenths (273.2) feet to a stake; thence by lands N/F of Charles Kennedy, North fifty-five (55) degrees thirty-four (34) minutes East, sixty and seven tenths (60.7) feet; thence by other lands N/F of Alice H. Koons, South twenty-four (24) degrees thirty-two (32) minutes East two hundred ninety-two and four tenths (292.4) feet to a point in the center of said Harrisburg Street, thence in and along the center of said Harrisburg Street, South seventy-three (73) degrees nineteen (19) minutes West, sixty (60) feet to a point in the center of said Harrisburg Street, the place of Beginning.

CONTAINING 61 perches.

Tax # MAP I-4, Parcel 28

TITLE TO SAID PREMISES IS VESTED IN Kenneth Jovanelly and Carolyn Jovanelly, his wife by Deed from Patrick P. Carswell and R. Tuli Carswell dated 6/20/91, recorded 6/27/91, in Record Book 592 page 572.

SEIZED and taken into execution as the property of **Kenneth & Carolyn Jovanelly** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
November 4, 1999

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/10,17 & 23

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-669 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, January 21, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in Latimore Township, Adams County, Pennsylvania, being more particularly bounded and described as follows, to-wit:

BEGINNING at a point In the center of Harrisburg Street, which point is approximately two hundred fifty-seven (257) feet northeasterly along said Harrisburg Street from corner of land N/F of Elmer Humper; thence by other land N/F of Alice K. Koons, North twenty-four (24) degrees thirty-two (32) minutes West two hundred seventy-three and two tenths (273.2) feet to a stake; thence by land N/F Charles Kennedy North fifty-five (55) degrees thirty-four (34) minutes East, sixty and seven tenths (60.7) feet; thence by other lands N/F of Alice K. Koons, South twenty-four (24) degrees thirty-two (32) minutes East two hundred ninety-two and four tenths (292.4) feet to a point in the center of said Harrisburg Street, South seventy-three (73) degrees nineteen (19) minutes West, sixty (60) feet to a point in the center of said Harrisburg Street, the Place of BEGINNING.

CONTAINING 61 perches.

Parcel # 23 I04-0028

BEING KNOWN AS 155 HARRISBURG STREET, YORK SPRINGS, PA

SEIZED and taken into execution as the property of **Kenneth & Carolyn Jovanelly** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
November 4, 1999

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/10, 17 & 23

FICTITIOUS NAME NOTICE

NOTICE is hereby given that an Application for Registration of a Fictitious Name was filed with the Department of State of the Commonwealth of Pennsylvania in Harrisburg, Pennsylvania, on or about December 8, 1999, pursuant to the Pennsylvania Fictitious Name Act, Act No. 1982-295, setting forth that Robert J. Belinko is the only individual engaged or interested in a business, the character of which is for the purpose of manufacturing parts for machinery which is used in industry and aerospace, and that the name, style and designation under which said business is and will be conducted is MOUNTAINVIEW PRECISION MACHINE. The principal office or place of business is 698 Teeter Road, Littlestown, Pennsylvania 17340.

Thomas E. Miller, Esquire
Miller & Shultis, P.C.
Solicitor

12/23

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Pennsylvania Department of State on behalf of PETSINIS, INC. which has been organized under the provisions of the Business Corporation Law of 1988.

Thomas L. Bright, Esq.
Attorney for Incorporator
126 East King Street
Shippensburg, PA 17257

12/23

LEGAL NOTICE - ANNUAL MEETING

The Annual meeting of the policyholders of the Protection Mutual Insurance Company of Littlestown will be held at the office at 101 South Queen Street, in Littlestown, Pennsylvania between the hours of 1:00 and 2:00 P.M., on January 08, 2000 to elect directors and to transact any other business properly presented.

ATTEST, Marilyn Q. Butt
Secretary-Treasurer

12/3,10,17 & 23

Adams County
Legal Journal

Vol. 41 December 31, 1999 No. 31, pp. 173-178

ANNOUNCEMENT OF CONTINUING LEGAL EDUCATION PROGRAMS

1. *Social Security Disability: The Basics*
   Thursday, January 25, 2000–9:00 a.m.
   Room 307, Adams County Courthouse
   Credits: Substantive Law–4, Ethics–0
2. *Confessions of Judgment & Deficiency Judgments in Pennsylvania*
   Wednesday, February 9, 2000–9:00 a.m.
   Room 307, Adams County Courthouse
   Credits: Substantive Law–4, Ethics–0
5. *Fundamentals of Estate & Trust Administration*
   Wednesday, February 16, 2000–9:00 a.m.
   Room 307, Adams County Courthouse
   Credits: Substantive Law–5, Ethics–1

Registration through P.B.I. 800-247-4724

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published every Friday by Adams County Bar Association, John W. Phillips, Esq., Editor and Business Manager.

Subscribers within Adams County should send subscriptions direct to the business office. Subscribers outside of Adams County should send subscriptions to Wm. W. Gaunt & Sons, Inc., 3011 Gulf Drive, Holmes Beach, FL 34217-2199. Postmaster: Send address changes to Adams County Legal Journal, 111 Baltimore Street, Room 305, Gettysburg, PA 17325.

Business Office – 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 334-6781 ext 336

Periodicals postage paid at Gettysburg, PA 17325.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-102 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, February 11, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

All the following lots of land located in Liberty Township, Adams County, Pennsylvania.

A. The following lots of land located in the Charnita Subdivision as shown on a plan of lots identified as section AD, Charnita, dated January 12, 1970 recorded in Adams County, Pennsylvania, Plat Book 1, page 93, which is incorporated herein by reference: AD 1, AD 2, AD 3, AD 4, AD 14, AD 60, and AD 117. Lots AD 1-4 are part of the larger tract conveyed to Charnita, Inc. by Robert Morgan and Wilma Jane Morgan by deed dated October 15, 1969, and recorded in Adams County, Pennsylvania, Deed Book 278, page 676. Lots AD 60 and AD 117 were conveyed by the same grantors to Charnita, Inc. by deed dated December 17, 1969, in Adams County, Pennsylvania, Deed Book 280, page 941.

B. The following lots of land located in Charnita Subdivision as shown on the plan of lots identified as section AE, Charnita, dated March 3, 1970, and recorded in Adams County, Pennsylvania, Plat Book 1 page 95 which plan is incorporated herein by reference: Lot AE 5 and AE 31. The lots are part of a tract conveyed to Charnita, Inc. by Charles M. Weishaar and Annie M. Weishaar by deed dated December 17, 1969, in Adams County, Pennsylvania, Deed Book 280, page 992.

SEIZED and taken into execution as the property of **Charnita, INC.** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 6, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/23, 31 & 1/7

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-397 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, January 28, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THE RIGHT, TITLE, INTEREST AND CLAIM OF JAMES A. MELLOTT AND TO:

ALL THE FOLLOWING DESCRIBED REAL ESTATE SITUATED IN THE TOWNSHIP OF FRANKLIN, ADAMS COUNTY, PENNSYLVANIA. HAVING ERECTED THEREON A DWELLING KNOWN AND NUMBERED AS 379 CHURCH ROAD, ORRTANNA, PENNSYLVANIA 17353. DEED BOOK VOLUME 1457, PAGE 163, PARCEL 123F.

SEIZED and taken into execution as the property of **James A. Mellott** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 21, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/17, 23 & 31

ARTICLES OF INCORPORATION

NOTICE is hereby given that Articles of Incorporation were filed by V-BALL, INC. with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of incorporating under the Pennsylvania Business Corporation Law of 1988, Act of December 21, 1988, P.L. 1444, No. 177, as amended and supplemented.

Countess Gilbert Andrews

Jeffrey L. Rehmeyer II, Esquire
Solicitors

12/31

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-546 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, January 28, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the right, title, interest and claim of Scott D. Mantz of, in and to:

ALL the following described real estate situated in the township of Germany, Adams County, Pennsylvania. Having erected thereon a dwelling known and numbered as 50 Bittle Road, Littlestown, Pennsylvania 17340. Deed Book volume 1616, page 288, tax map J -17; parcel 122.

SEIZED and taken into execution as the property of **Scott D. Mantz** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 21, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/31, 1/7 & 14

ARTICLES OF INCORPORATION

NOTICE is hereby given that Articles of Incorporation were filed by STEP ONE DESIGN, INC. with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of incorporating under the Pennsylvania Business Corporation Law of 1988, Act of December 21, 1988, P.L. 1444, No. 177, as amended and supplemented.

Countess Gilbert Andrews

Jeffrey L. Rehmeyer II, Esquire
Solicitors

12/31

MARTIN ET AL VS. THE HERR'S RIDGE DEVELOPMENT COMPANY ET AL

1. Contracts are interpreted by effectuating the intent of the parties; this is done by examining the language of the writing.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil Action-Law. NO. 98-S-613. FRANZ C. MARTIN, JOYCE C. SPEELMAN, SHIRLEY M. KLINEFELTER, WILBUR F. MARTIN, LEROY C. MARTIN, FRED J. MARTIN, DONALD W. MARTIN, BARBARA A. WOERNER DEARDORFF, KENNETH C. MARTIN, LEONARD J. MARTIN, SR., CHARLES D. MARTIN, AND PATRICIA M. REDDING VS. THE HERR'S RIDGE DEVELOPMENT COMPANY, R. SCOTT HARTMAN AND BARBARA M. HARTMAN.

Henry O. Heiser, III, Esq., for Plaintiffs
Walton V. Davis, Esq., for Defendants

OPINION ON DEFENDANTS' PRELIMINARY OBJECTIONS

Bigham, J., October 20, 1998.

Plaintiff brings this action on a Note signed by Defendants and presently in default. Defendant has raised preliminary objections in the nature of demurrers and motions to strike on the basis that Plaintiff's suit and/or claim for attorney fees is premature by the terms of the Note. These preliminary objections, together with Plaintiff's response, and briefs and oral argument, are now before this Court for disposition.

STATEMENT OF FACTS

On December 31, 1996, Plaintiff Franz C. Martin, et al. ("Martin") made a Mortgage loan ("Loan") to Defendants; Martin received from Defendants a Note ("Note") to evidence the Loan. The Note was signed on December 31, 1996 by the Hartmans both individually ("Hartmans") and as officers of Herr's Ridge Development Company ("Herr's Ridge"). Clause 6(E) of the Note states:

> 6. (E) Payment of Note Holder's Costs and Expense.
> If the Note Holder has required me to pay immediately in full as described above the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by appli-

cable law. Those expenses include, for example, reasonable attorneys' fees. The "as described above" language refers to late charges in 6(A) and "pay immediately the full amount of principal which has not been paid" in 6(C).

Clause 8 of the Note states:

> 8. OBLIGATIONS OF PERSONS UNDER THIS NOTE. If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note Is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. *The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means than any one of us may be required to pay all of the amounts owed under this Note. The above notwithstanding R. Scott Hartman's and Barbara M. Hartman's liability pursuant to the terms and conditions of the within note and corresponding mortgage shall not be enforced until such time as the Lender has foreclosed on the secured premises and received the proceeds of the resulting sheriff's sale.* By first pursuing a mortgage foreclosure to conclusion, the Lender shall not be deemed to have waived any rights or remedies Lender has against any of the obligors (Sgners) [sic] under this Note. *(emphasis added).*

As security for the Loan, Martin received a Mortgage ("Mortgage"), signed on December 31, 1996 by the Hartmans only as officers of Herr's Ridge. Martin conveyed the land to Herr's Ridge by deed on December 31, 1996 in Record Book 1311 at Page 187. The Mortgage states that it "secures (i) repayment of the Note, and (ii) repayment of any other obligations now or later due to Lender by Owner." The Mortgage also states that "Lender may use the proceeds of any foreclosure sale to recover the balance due on the Note and any other obligations secured by this Mortgage, plus Lender's attorneys fees, costs of suit and costs of sale, to the extent provided in the Note and

permitted by law."

Herr's Ridge defaulted on the mortgage by failing to make payments scheduled for September 30, December 31,1997, and March 31, 1998. Notice of Default was sent on April 30, 1998, stating that if the overdue amount was not paid in full by May 20, 1998, then the debt would be accelerated. The Notice of Default also stated that if the overdue amounts were not paid, foreclosure proceedings on the Mortgage and enforcement proceedings on the Note would commence.

The amounts due were not paid, and two Complaints were filed by Martin on June 16, 1998. First, Martin filed on the Mortgage in foreclosure, as docket number 98-S-612; second, Martin filed the instant suit on the Note. In this suit on the Note, Martin seeks amounts due "on the Note and Mortgage" [1] as follows: acceleration of debt ($1, 043, 661.00) with interest ($70, 447.11 on March 31, 1998), late charges ($3,522.36 on March 31, 1998), and attorneys' fees ($52,183.00 on March 31, 1998). [2]

Herr's Ridge has since filed for bankruptcy, awaiting debt reorganization, and as such, an automatic stay of proceedings has been entered, delaying the foreclosure proceedings.

The Hartmans have filed preliminary objections, seeking dismissal and striking of the suit as it relates to them. First, the Hartmans raise a demurrer, arguing that this suit is premature because Clause 8 requires foreclosure and application of the profits from the sheriff's sale before Martin can enforce the note. The Hartmans ask that the complaint be dismissed with costs and stricken. In the alternative, the Hartmans raise a demurrer to the attorney fees claimed, arguing that attorney fees are not reasonable, as required by Clause 6(E), and that the Hartmans are liable only for attorney fees on the Note, but the Complaint lumps attorney fees on the Mortgage and the Note. The Hartmans also argue that Clause 6E states that attorney fees be paid first by Martin, and then "paid back" by the Hartmans, and that these fees have not yet been paid by Martin. The Hartmans ask that the claim for attorneys' fees be dismissed and stricken.

Martin responded, and argues that this action seeks a judgment of

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[1] Martin Complaint at paragraph 24.

[2] Martin also seeks costs accruing after March 31, 1998 including interest at 9% per annum (or $23,482.37 per quarter), and late charges at $1,174.12 per quarter.

liability, and does not amount to "enforcement" per Clause 8; Martin simply seeks to secure his rights as a creditor. Martin also argues that the attorney fees are reasonable, as they are 5% of the principle on the Note, and that Pennsylvania courts have approved a range of fees between 5% and 10% of the principle. Martin also argues that the attorney fees do not have to be paid by Martin at this time, and that Clause 6E simply requires that the fees be paid by Martin at the time of enforcement or collection. Both parties filed briefs supporting their positions, and appeared in Argument Court on August 28, 1998.

LEGAL DISCUSSION

DEFENDANTS' DEMURRER (A) AND MOTION TO STRIKE THE ACTION (B)

Contracts are interpreted by effectuating the intent of the parties; this is done by examining the language of the writing. *Volunteer Firemen's Ins. Services, Inc.* v. *CIGNA Property and Cas. Ins. Agency,* — Pa.Super. —, 693 A.2d 1200 (1997). Here, the term 'enforce' is questioned. This Court is persuaded that the intent of the parties to the Note suggests that enforcement is more like collection than it is like filing a lawsuit. The word "enforce" is used twice in Paragraph 8. First, it is used in as follows: "The Note Holder may *enforce* its rights under this Note against each person individually or against all of us together. This means that any one of us may be *required to pay* all of the amounts owed under this Note." *Emphasis added.* Reading these consecutive sentences together, it is clear that enforce means 'to require to pay,' and not 'to require to defend a lawsuit.' Next, the word "enforce" is used as follows: "The above notwithstanding R. Scott Hartman's and Barbara M. Hartman's liability pursuant to the terms and conditions of the within note and corresponding mortgage shall not be enforced until such time as the Lender has foreclosed on the secured premises and received the proceeds of the resulting sheriff's sale." If the word "enforce" is to be given a meaning consistent within its two uses in the same paragraph, then the second use of "enforce" must also mean "to require to pay," such that the Hartmans cannot be required to pay until the Martins have foreclosed and

received the proceeds from the sale, but can be required to defend a lawsuit.

Additionally, dictionary definitions support this conclusion. The American Heritage Dictionary, Second College Edition 454 (1982), defines 'enforce' as "1. To compel observance of or obedience to; 2. To compel; 3. To give force to; reinforce." Black's Law Dictionary, 528 (6th Ed. 1990), states that 'enforce' means "To put into execution; to cause to take effect' to make effective; as, to enforce a particular law, a writ, a judgment, or the collection of a debt or fine; to compel obedience to." Black's Law Dictionary also defines 'enforcement' as "The act of putting something such as a law into effect; the execution of a law; the carrying out of a mandate or command." These definitions of the word "enforce" suggest that enforcement is more like collection than it is like filing a lawsuit. Interpreting the language of the Note, both by its plain meaning and through the intent of the parties, this Court is persuaded that Martin may continue with this lawsuit.

It should be noted that both sides have cited *In Re SeSide Co., Ltd.,* 152 B.R. 878 (E.D. Pa.1993) as supporting their respective positions. The opinion in *In Re SeSide* is consistent with the position taken by this Court, because "enforcement" may mean all stages of a lawsuit, from commencement to collection, individually or collectively. The opinion in *In Re SeSide,* however, did not involve additional language such as that contained in the instant promissory note. The language of this promissory note is not just "boiler plate." The parties collaborated on the selection of additional language that indicates their intent.

DEFENDANTS' DEMURRER (C) AND MOTION TO STRIKE (D) THE CLAIM FOR ATTORNEYS' FEES

The Court agrees that fees must first be paid by Martin but the reasonableness of attorneys fees, and the apportionment of those fees between the mortgage foreclosure proceedings and the within proceedings are issues which cannot be determined until the respective proceedings have been concluded. Therefore, the Court will preserve the issues relating to attorneys' fees.

Accordingly, the attached issue is ordered.

By the Court,

ORDER

AND NOW THIS 20th day of October, 1998, Defendants' Preliminary Objections in the form of Demurrer (A), and Motion to Strike (B) are denied. Defendant's Preliminary Objection in the form of Demurrer (C) and Motion to Strike (D) are denied, but the issues of reasonableness and apportionment of attorneys' fees are preserved for a later stage of these proceedings. Leave is granted to Defendants to raise such issues again in appropriate subsequent pleadings.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

ESTATE OF DORIS E. MILLER, DEC'D
Late of Cumberland Township, Adams County, Pennsylvania
Executors: Charles H. Kemper, Sr., 99 Clapsaddle Road, Gettysburg, PA 17325; Diane M. Kemper, 99 Clapsaddle Road, Gettysburg, PA 17325
Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ROBERT E. SHEADS, JR. DEC'D
Late of the Borough of Gettysburg, Adams County, Pennsylvania
Executrix: Cynthia S. McCain, 805 North Prospect Street, Ypsilanti, MI 48198
Attorney: Harold A. Eastman, Jr., Esq., Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF LORETTA BIRGENSMITH a/k/a MARY L. BIRGENSMITH, DEC'D
Late of the Borough of McSherrystown, Adams County, Pennsylvania
Executors: William H. Snyder, Jr., 344 Fairview Avenue, McSherrystown, PA 17344; Gertrude E. Snyder, 344 Fairview Avenue, McSherrystown, PA 17344
Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ROY JAMES CARBAUGH, DEC'D
Late of Tyrone Township, Adams County, Pennsylvania
Executors: David M. Carbaugh, P.O. Box 28, Aspers, PA 17304; George M. Carbaugh, P.O. Box 58, Aspers, PA 17304
Attorney: Clayton R. Wilcox, Esquire, 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARY V. SNEERINGER, DEC'D
Late of Mt. Pleasant Township, Adams County, Pennsylvania
Executor: John H. Sneeringer, 2405 Bon Ox Road, New Oxford, PA 17350
Attorney: Keith A. Hassler, Esq., 9 North Beaver Street, York, PA 17410

THIRD PUBLICATION

ESTATE OF MIRIAM E. MAY, DEC'D
Late of Huntington Township, Adams County, Pennsylvania
Executrix: Virginia L. Smiley, 6609 Carlisle Pike, East Berlin, PA 17310
Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

NOTICE

NOTICE is given to Charnita, Inc., that in pursuance of a Writ of Execution, Judgment No. 93-S-102 issuing out of the Court of Common Pleas of Adams County, and to the Sheriff of Adams County, Pennsylvania directed, will be exposed to Public Sale on Friday, the 11th day of February, 2000, at 10:00 in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, Pennsylvania, the following Real Estate, viz:

ALL the following lots of land located in Liberty Township, Adams County, Pennsylvania.

A. The following lots of land located in The Charnita Subdivision as shown on a plan of lots identified as Section AD, Charnita, dated January 12, 1970, recorded in Adams County, Pennsylvania, Plat Book 1, page 93, which is incorporated herein by referenced: AD 1, AD 2, AD 3, AD 4, AD 14, AD 60, and AD 117. Lots AD 1-4 are part of the larger tract conveyed to Charnita, Inc. by Robert Morgan and Wilma Jane Morgan by deed dated October 15, 1969, and recorded in Adams County, Pennsylvania, Deed Book 278, page 676. Lots AD 60 and AD 117 were conveyed by the same grantors to Charnita, Inc. by deed dated December 17, 1969, in Adams County, Pennsylvania, Deed Book 280, page 941.

B. The following lots of land located in Charnita Subdivision as shown on the plan of lots identified as Section AE, Charnita, dated March 3, 1970, and recorded in Adams County, Pennsylvania, Plat Book 1, page 95 which plan is incorporated herein by referenced: Lot AE 5 and AE 31. The lots are part of a tract conveyed to Charnita, Inc. by Charles M. Weishaar and Annie M. Weishaar by deed dated December 17, 1969, in Adams County, Pennsylvania, Deed Book 280, page 992.

The property was seized and taken into execution as the property of Charnita, Inc. and is to be sold by Raymond W. Newman, Sheriff of Adams County, Pennsylvania.

You are further notified that a schedule of distribution will be filed by the Sheriff in his office on March 6, 2000 and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may the higher, shall be paid forthwith to the Sheriff.

Clayton R. Wilcox, Esq.
Wilcox and James
Counsel for Plaintiff

12/31

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-836 issuing out of the Court of Common Pleas of Adams County, and to me directed. will be exposed to Public Sale on Friday, January 21, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the right, title, interest and claim of Karyl M. Speelman a/k/a/ Karyl M. Jacoby of, in and to the following described property:

ALL the following described real estate situated in the Township of Straban, County of Adams and State of Pennsylvania. Having erected thereon a dwelling being known and numbered as 309 Forrest Drive, Gettysburg, Pennsylvania 17325. Deed Book volume 575, page 664. Parcel number 4-96.

SEIZED and taken into execution as the property of **Karyl M. Speelman a/k/a Karyl M. Jacoby** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/31, 1/7 & 14

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY, PENNSYLVANIA

ATLEE L. KEEFER and CHARLENE E. KEEFER, Plaintiff;

v.

PAUL R. KING, JR. and DONNA M. KING, husband and wife, TRUSTEES OF THE METHODIST EPISCOPAL CHURCH OF PETERSBURG, AND ANY PERSON OR ENTITY CLAIMING ANY INTEREST IN SAID LAND AS THE SUCCESSORS ASSIGNS OR THE DESCENDANTS OF WILLIAM PENN, Defendants.

NO. 99-S-958
ACTION TO QUIET TITLE

TO: Any person claiming any interest in said land.

IMPORTANT NOTICE

You are in default because you have failed to take action required of you in this case. Unless you act within ten days from the date of this notice, a judgment may be entered against you without a hearing and you may lose your property or other important rights. You should take this notice to a lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the following office to find out where you can get legal help.

Court Administrator
Adams County Court House
Gettysburg, PA 17325
Phone: (717) 334-6781 Ext. 213

By: John C. Zepp, III, Esq.
P.O. Box 204
York Springs, PA 17372
Phone: (717) 528-8900

12/31

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-330 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, January 28, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land situate in Reading Township, Adams County, Pennsylvania, being more particularly described as follows, to wit:

BEING Lake Mead Lot No. 550, County Map 5, parcel 60, as shown on the records in Adams County Mapping Department.

UNDER AND SUBJECT to the restrictions recorded in the Office of the Recorder of Deeds, Adams County, Pennsylvania.

BEING the same premises which Harry P. McKean by deed dated June 20, 1991, and recorded in the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 592, at page 253, granted and conveyed unto John H. Gehling and Sally J. Gehling, his wife, which has an address of 5 Lake Meade Drive, East Berlin, PA 17316.

SEIZED and taken into execution as the property of **John H. Gehling & Sally J. Gehling** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 21, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

12/17, 23 & 31