

# *Adams County* Legal Journal

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Vol. 48

January 5, 2007

No. 33, pp. 205-212

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## **IN THIS ISSUE**

MORTGAGE ELECTRONIC VS. COBLENTZ

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In times like these,  
you and your clients need  
the experience and expertise  
provided by a trust professional.



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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION  
NO. RT-18-06(A-1)

**NOTICE**

TO: Aubrey C. Williams, Jr.

YOU ARE HEREBY NOTIFIED that a Petition for Involuntary Termination of Parental Rights to Child has been filed in the Orphans' Court Division of the Court of Common Pleas of Adams County, Pennsylvania. A hearing has been set for January 8, 2007, at 9:00 a.m., prevailing time, in the Conference Room on the 4th Floor of the Adams County Courthouse, at Gettysburg, Adams County, Pennsylvania, for the purpose of determining whether or not statutory grounds exist for the involuntary termination of your parental rights with respect to your child.

You should contact 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.

Court Administrator  
Adams County Courthouse  
111-117 Baltimore Street  
Gettysburg, PA 17325

Telephone number: (717) 337-9846

Chester G. Schultz, Attorney at Law  
145 Baltimore Street  
Gettysburg, PA 17325

12/22, 29 & 1/5

IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION  
NO. RT-18-06(A-2)

**NOTICE**

TO: Daniel Gary Romberger

YOU ARE HEREBY NOTIFIED that a Petition for Involuntary Termination of Parental Rights to Child has been filed in the Orphans' Court Division of the Court of Common Pleas of Adams County, Pennsylvania. A hearing has been set for January 8, 2007, at 9:00 a.m., prevailing time, in the Conference Room on the 4th Floor of the Adams County Courthouse, at Gettysburg, Adams County, Pennsylvania, for the purpose of determining whether or not statutory grounds exist for the involuntary termination of your parental rights with respect to your child.

You should contact 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.

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Telephone number: (717) 337-9846

Chester G. Schultz, Attorney at Law  
145 Baltimore Street  
Gettysburg, PA 17325

12/22, 29 & 1/5

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, January 8, 2007, at 9:00 a.m.

**WINTERS**—Orphans' Court Action Number OC-29-05. The First and Final Account of April D. Reed and David R. Winters Jr., Co-Executors of the Estate of Cheryl Winters, a.k.a. Cheryl A. Winters, deceased, late of Latimore Township, Adams County, Pennsylvania.

**ROHRBAUGH**—Orphans' Court Action Number OC-168-06. The First and Final Account of Charles M. Rohrbaugh, Administrator C.T.A. of the Estate of Elwood A. Rohrbaugh, deceased, late of Gettysburg Borough, Adams County, Pennsylvania.

Kelly A. Lawver  
Clerk of Courts

12/29 & 1/5

**LEGAL NOTICE—ANNUAL MEETING**

The annual meeting of the policyholders of the Protection Mutual Insurance Company of Littlestown will be held at the office located at 101 South Queen Street in Littlestown, PA, between the hours of 1:00 and 2:00 p.m., on January 13th, 2007 to elect directors and to transact any other business properly presented.

Attest: Marilyn Q. Butt  
President & Treasurer; Director

12/15, 22, 29 & 1/5

## MORTGAGE ELECTRONIC VS. COBLENTZ

1. The party moving for summary judgment has the burden of proving that there is no genuine issue of material fact.
2. A party's entire pleading must be examined to determine whether factual assertions have been specifically denied at any time.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,  
PENNSYLVANIA. CIVIL ACTION NO. 05-S-711. MORTGAGE  
ELECTRONIC REGISTRATION SYSTEMS, INC. VS. PAUL  
COBLENTZ.

Mark J. Udren, Esq., for Plaintiff  
John J. Murphy, III, Esq., for Defendant  
Kuhn, P.J., March 23, 2006

### OPINION ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Before the Court for disposition is Plaintiff's Motion for Summary Judgment. For the reasons set forth herein, said Motion is denied.

This case involves a dispute regarding the alleged default of Defendant, Paul Coblentz ("Defendant"), on mortgage payments to Mortgage Electronic Registration Systems, Inc. ("Plaintiff"). The factual record has been gathered from the pleadings, affidavits, and exhibits.

### FACTUAL AND PROCEDURAL BACKGROUND

On November 14, 2003, Defendant executed and delivered a mortgage to Plaintiff for the principal sum of \$67,920.00 on real estate located at 1275 Jacks Mountain Road, Fairfield, Adams County, Pennsylvania.<sup>1</sup> The mortgage was recorded on November 21, 2003 in the Recorder of Deeds Office in Adams County in Book 3390, at page 141.

Plaintiff filed a "Complaint in Mortgage Foreclosure" on July 7, 2005, in which it alleges that Defendant is in default on the mortgage as a result of failing to pay the monthly installment due on February 1,

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<sup>1</sup>Plaintiff is the mortgagee and WMC Mortgage Corporation ("Lender") is the original lender. Plaintiff is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns.

2005<sup>2</sup> and all subsequent installments thereafter. Consequently, pursuant to the acceleration clause in the mortgage, Plaintiff avers that the entire outstanding balance of the mortgage debt is due along with the following amounts as of 9/30/05:

Principal of debt due and unpaid	\$67,070.68
Interest at 6.75% <sup>3</sup> from 2/1/05 to 9/30/05 (the per diem interest accruing on this debt is \$12.49)	\$3,008.11
Title Report	\$325.00
Court Costs (anticipated, excluding Sheriff's Sale costs)	\$280.00
Escrow Overdraft/Balance	\$1,461.13
Late Charges	\$0.00
Suspense Balance	(\$578.08)
BPO Fees	\$100.00
Property Inspection Fees	\$16.00
Attorney's Fees (anticipated and actual to 5% of principal)	\$3,353.53
<b>TOTAL</b>	<u>\$75,036.37</u>

Plaintiff also avers that it sent Defendant the combined notice specified by the Pennsylvania Homeowner's Emergency Mortgage Assistance Program. Specifically, Plaintiff avers that it sent Defendant Act 91 of 1983 and a Notice of Intention to Foreclose under Act 6 of 1974 in accordance with the requirements of those acts and that Defendant has failed to proceed within the time limits, has been determined ineligible, or Plaintiff has not been notified in a timely manner of Defendant's eligibility.

Defendant filed his Answer and New Matter on August 1, 2005 in which he admits that he executed and delivered the subject mortgage to Plaintiff, but denies that the mortgage is in default.<sup>4</sup> In his New

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<sup>2</sup> This date has been extrapolated from the pleadings and exhibits. Although Plaintiff's brief in support of Motion for Summary Judgment states that Defendant's mortgage account is due contractually for the period March 2005 to date, Plaintiff's exhibits indicate that Defendant failed to make his mortgage payments beginning on February 1, 2005.

<sup>3</sup> This interest rate is subject to adjustment as more fully set forth in the note and mortgage.

<sup>4</sup> Specifically, Defendant contends that any outstanding balances or fees are a result of Plaintiff's own negligence and violation of the original mortgage documents regarding the unilateral establishment of an unnecessary escrow account for payment of property taxes and hazard insurance. Additionally, Defendant maintains that he has made a payment to bring the mortgage current, which Plaintiff has unlawfully refused to accept.

Matter, Defendant avers that he withheld payment of the monthly principal and interest for the months of May, June, and July of 2005 in protest of the increase in the monthly mortgage payment for escrowed funds which the Defendant had paid, or was in the process of paying. Furthermore, Defendant argues that Plaintiff has been inaccessible, unavailable, and uncooperative in aiding to discover the identity of the true lender of his mortgage.

Plaintiff filed its Reply to New Matter on October 19, 2005 in which it maintains that it acted appropriately in its dealings with Defendant and complied with all relevant laws, rules, and regulations, as well as the terms of the subject mortgage. Furthermore, Plaintiff avers that Defendant's failure to make the payments is a direct and admitted default of the terms and conditions of the mortgage. Finally, Plaintiff contends that it acted appropriately in its dealings with Defendant and would not reject any legitimate attempt by Defendant to cure his default on the mortgage.<sup>5</sup>

On October 19, 2005, Plaintiff filed its Motion for Summary Judgment and brief in support thereof. On November 14, 2005, Plaintiff filed the affidavit of Jeff Szymendera, Vice President of Plaintiff, attesting that all notices required to be sent to Defendant pursuant to Act 6 of 1974 and Act 91 of 1983, were sent, Plaintiff acted appropriately in its dealings with Defendant and accurately accounted for all payments properly made by Plaintiff, and the amounts due on the mortgage as stated in the Complaint are correct. On November 18, 2005, Defendant filed its brief in opposition to Plaintiff's Motion for Summary Judgment and the affidavit of Defendant.<sup>6</sup> On November 23, 2005, Defendant filed its Reply to Plaintiff's Motion for Summary Judgment.

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<sup>5</sup>Plaintiff contends that even though Defendant tendered payments on the mortgage, it had the right to return such payments to him because they were insufficient to bring the delinquent mortgage current. Plaintiff also notes that no payment arrangement existed between the parties allowing for payments less than the full amount required to bring the mortgage current.

<sup>6</sup>Defendant attests that (1) he has maintained homeowners insurance on the subject property at all times with a coverage amount of \$84,000.00; (2) said insurance is maintained by Davies Insurance Agency, Inc.; (3) at all times, original lender, WMC Mortgage Corporation, and subsequently Option One Mortgage Corporation ISAOA, ATIMA was listed as an additionally insured as a mortgagee on that policy; (4) at no time did Plaintiff or HomeEq Servicing contact him or his insurance carrier by phone

*(Footnote 6 continued to next page)*

## DISCUSSION

A party may move for summary judgment, in whole or in part, as a matter of law after the relevant pleadings are closed but within such time as not to unreasonably delay trial whenever there is no genuine issue of any material fact as to a necessary element of the cause of action which could be established by additional discovery. Pa.R.C.P. 1035.2. The purpose of Rule 1035.2 is to eliminate cases prior to trial where a party cannot make out a claim or defense after discovery has been completed. *Wolloch v. Aiken*, 815 A.2d 594, 596 (Pa. 2002). The party moving for summary judgment has the burden of proving that there is no genuine issue of material fact. *Citicorp Mortgage, Inc. v. Morrisville Hampton Vill. Realty Ltd. P'ship*, 662 A.2d 1120, 1122 (Pa. Super. 1995). Courts must resolve all doubts against the moving party and examine the record in a light most favorable to the non-moving party. *Id.*

Pa.R.C.P. 1029 provides:

- (a) A responsive pleading shall admit or deny each averment of fact in the preceding pleading or any part thereof to which it is responsive. A party denying only a part of an averment shall specify so much of it as is admitted and shall deny the remainder. Admissions and denials in a responsive pleading shall refer specifically to the paragraph in which the averment admitted or denied is set forth.

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*(Footnote 6 continued from previous page)*

regarding the homeowners insurance; (5) the only contact he had with HomEq Servicing was confusing letters asking him for proof of insurance, which he promptly provided; (6) at no time was it made clear to him that HomEq Servicing was his new lender; (7) to his knowledge no new lender or HomEq Servicing ever contacted his insurance carrier requesting a change in the mortgagee clause; (8) at no time did he authorize an escrow account to be set up for the payment of homeowners insurance or property taxes; (9) on June 23, 2005, he transmitted \$1,321.59 to cover three (3) months worth of principal and interest in a check written out of PNC Bank; (10) he was told that his lender received said check but refused to accept it because additional escrow funds were not included; (11) said check was never returned to him and was never cashed; (12) he has diligently tried to resolve this matter, but has not been able to reach anyone satisfactorily as the mortgage lender has changed several times and no one has notified him; and (13) he had enlisted the help of the Adams County Housing Authority, who was unable to successfully ascertain or contact his true lender.

- (b) Averments in a pleading to which a responsive pleading is required are admitted when not denied specifically or by necessary implication. A general denial or a demand for proof, except as provided by subdivisions (c) and (e) of this rule, shall have the effect of an admission.
- (c) A statement by a party that after reasonable investigation the party is without knowledge or information sufficient to form a belief as to the truth of an averment shall have the effect of a denial.

In determining whether a denial has been made with sufficient specificity, a court must review the responsive pleading as a whole. *Commonwealth by Preate v. Rainbow Associates, Inc.*, 587 A.2d 357, 360 (1991). Moreover, Pa.R.C.P. 126 provides:

The rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. The court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties.

Thus, to comply with the flexible spirit of Pa.R.C.P. 126, a party's entire pleading must be examined to determine whether factual assertions have been specifically denied at any time. *See Cercone v. Cercone*, 386 A.2d 1, 6 (Pa. Super. 1978).

Moreover, if Pa.R.C.P. 1029(c) is not properly invoked and if the responder fails to make a specific denial of a factual averment, the responder will be deemed to have admitted that factual averment. *Id.* at 4. In determining whether Rule 1029(c) has been properly invoked, reliance on it does not excuse a failure to admit or deny a factual allegation when it is clear that the pleader must know whether a particular allegation is true or false. *See Id.*

In Plaintiff's Motion for Summary Judgment and brief in support thereof, Plaintiff contends that Defendant effectively admitted all of the allegations in the Complaint. Specifically, Plaintiff argues that Defendant admits outright, and/or in part, paragraphs 1, 2, and 3 of the Complaint, thereby admitting that Defendant is the real owner and mortgagor of the subject mortgaged property. Furthermore,

Plaintiff maintains that although Defendant purports to deny and/or fails to deny, in whole or in part, specifically or by necessary implication, the averments contained in paragraphs 1, 4, 5, 6, 7, and 8 of the Complaint, these denials are improper and should be deemed admissions because these averments are not denied specifically or by necessary implication.<sup>7</sup>

Because Defendant does not deny specifically or by necessary implication paragraphs 1, 4, 5, 6, 7, and 8 of the Complaint, Plaintiff contends that Defendant effectively admitted that (1) he is in default of the mortgage; (2) he continues to fail or refuses to comply with the terms of the mortgage, including payment thereof for an excessive period of time; (3) reasonable attorney's fees will be collected and charged in conformity with the mortgage documents and Pennsylvania law; and (4) the combined notice specified by the Pennsylvania Homeowner's Emergency Mortgage Assistance Program, Act 91 of 1983 and the Notice of Intention to Foreclose under Act 6 of 1974 has been sent to him in accordance with the requirements of those acts and he has failed to proceed within the time limits, or has been determined ineligible, or Plaintiff has not been notified in a timely manner of his eligibility.

Defendant counters that the averments made in his Answer and New Matter contained specific denials sufficient to refute the facts, claims, and allegations made by Plaintiff.<sup>8</sup> Based on a plain reading

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<sup>7</sup> With respect to Defendant's denial of paragraph 7 of the Complaint, Plaintiff contends that Defendant's claim of a "lack of knowledge" as a response to Plaintiff's averment is unacceptable and qualifies as an admission because Defendant has adequate knowledge or the means of obtaining the information is within Defendant's control. Specifically, Plaintiff contends that it has an express contractual right pursuant to the terms of the mortgage to charge Defendant attorney's fees as a consequence of the initiation of the within action in mortgage foreclosure. Moreover, Plaintiff argues that the attorney's fee resulting as a consequence of initiating the mortgage foreclosure action is reasonable.

<sup>8</sup> Defendant denies part of paragraph 1 of the Complaint by alleging that an unrecorded assignment has occurred from the original Lender to Option One Mortgage Corporation and again to Wachovia/HomEq Servicing Corporation. Defendant denies paragraph 4 of the Complaint by averring that he is not in default and any outstanding balances or fees are a result of Plaintiff's own negligence and violation of the original mortgage documents regarding the unilateral establishment of an unnecessary escrow account. Defendant denies paragraph 5 of the Complaint for the same reasons in its answer to paragraph 4 and because he contends that he made a payment to bring the mortgage current, which Plaintiff unlawfully refused to

*(Footnote 8 continued to next page)*



of the Answer and New Matter, Defendant contends that nothing within them can be viewed as a general denial or admission.<sup>9</sup>

Here, when reviewing the Answer and New Matter as a whole and considering the flexible spirit of Pa.R.C.P. 126, Defendant's responses to Plaintiff's averments in the Complaint do not constitute general denials. Rather, Defendant's responses would constitute specific denials because even though Defendant does not state that he "specifically denies" Plaintiff's averments, Defendant's responses, when viewed in their entirety, sufficiently deny Plaintiff's factual averments contained in paragraphs 1, 4, 5, 6, and 8 of the Complaint.<sup>10</sup> Furthermore, Defendant's response to paragraph 7 of the Complaint would constitute a denial because it properly invokes

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*(Footnote 8 continued from previous page)*

accept. Defendant denies paragraph 6 of the Complaint for the same reasons in its answer to paragraph 4 and argues that the figures calculated for the amount due on the mortgage are in direct contradiction to the amounts listed in the notices attached to Plaintiff's Complaint and do not rationally conform to the monthly payment of \$440.53 per month. Defendant denies paragraph 7 of the Complaint because after reasonable investigation, he was without knowledge or information sufficient to form a belief to the truth or falsity of the averment and, therefore, denies the allegation. Defendant denies paragraph 8 of the Complaint by contending that he is not in default and that he has taken reasonable steps to rectify this situation, including, but not limited to, submitting payments to bring the mortgage current.

<sup>9</sup> Defendant argues that his response to paragraph 1 of the Complaint specifically admits the identity of Plaintiff, but disputes that Plaintiff is the true lender who would have standing to declare default and pursue an action for mortgage foreclosure. Defendant also maintains that his responses to paragraphs 4, 5, 6, and 8 of the Complaint that he is not in default and that any outstanding balances or fees are a result of Plaintiff's own negligence and violation of the original mortgage documents regarding the unilateral establishment of an unnecessary escrow account are specific denials. Moreover, Defendant contends that his response to paragraph 7 of the Complaint is not a general denial because a plain reading of the Answer reveals that he had no knowledge of whether the attorney's fees were reasonable.

<sup>10</sup> Throughout Defendant's responses, Defendant consistently states that he is not in default on the mortgage and that any outstanding balances or fees are a result of Plaintiff's own negligence and violation of the original mortgage documents regarding the unilateral establishment of an unnecessary escrow account. Additionally, Defendant states that he has made a payment to bring the mortgage current, but Plaintiff unlawfully refused to accept it. Together, these statements, among others, demonstrate that the intent of Defendant's responses was to specifically deny Plaintiff's factual averments in the Complaint. Therefore, Defendant's responses do not constitute general denials and, in turn, admissions when they are reviewed as a whole.

Pa.R.C.P. 1029(c).<sup>11</sup> Consequently, Plaintiff's reliance on *Cercone* to demonstrate that Defendant misused Pa.R.C.P. 1029(c) in responding to paragraph 7 is invalid.

Thus, because Defendant has properly denied Plaintiff's factual averments in the Complaint, there are issues of material fact that exist and judgment cannot be awarded as a matter of law.

ORDER

AND NOW, this 23rd day of March, 2006, in accordance with the discussion set forth in the attached Opinion, Plaintiff's Motion for Summary Judgment is denied.

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<sup>11</sup> Since Defendant maintains that he was without knowledge or information sufficient to form a belief to the truth or falsity of paragraph 7 and all doubts must be resolved against the moving party and this Court must examine the record in a light most favorable to the non-moving party, an issue of fact exists whether Defendant had knowledge or information if the attorney's fees were reasonable or in conformity with the mortgage documents and Pennsylvania law.

**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 C. WILDASIN, DEC'D**  
Late of Conewago Township, Adams County, Pennsylvania  
Executrix: Donna Heck, P.O. Box 173, Spring Grove, PA 17362  
Attorney: John J. Mooney, III, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

**SECOND PUBLICATION**

**ESTATE OF MARY E. ADAMS, DEC'D**  
Late of Highland Township, Adams County, Pennsylvania  
Executor: Gary E. Adams, 1815 Knoxlyn Rd., Gettysburg, PA 17325  
Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

**THIRD PUBLICATION**

**ESTATE OF WILLIAM L. ANGELL, DEC'D**  
Late of Butler Township, Adams County, Pennsylvania  
Executrix: Sandra G. Angell, 1665 Knoxlyn Rd., Gettysburg, PA 17325  
Attorney: Judith K. Morris, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

**ESTATE OF MARLYN W. BEAM, DEC'D**  
Late of Cumberland Township, Adams County, Pennsylvania  
Keith E. Beam, 506 Reservoir Road, Gardners, PA 17324  
Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

**ESTATE OF DONALD A. GANTZ, DEC'D**  
Late of Cumberland Township, Adams County, Pennsylvania  
Administrators: Jessica Wilkinson, 1330 Herman Myers Road, Hagerstown, MD 21742; Jeremy Gantz, 98 Loomis Street, Burlington, VT 05401; Stacie Gantz, 2816 W. Woodford Ave., Ft. Collins, CO 80521  
Attorney: Clayton R. Wilcox, Esq., 234 Baltimore St., Gettysburg, PA 17325

**ESTATE OF LAURIE HERTZOG HESS, DEC'D**

Late of Menallen Township, Adams County, Pennsylvania  
Administrator: Dean K. Hess, 1310 Quaker Valley Road, Biglerville, PA 17307  
Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

**ESTATE OF BERNADETTE E. LUCKENBAUGH, DEC'D**

Late of the Borough of Gettysburg, Adams County, Pennsylvania  
Executors: Edward F. Luckenbaugh, Jr., 45 Cashtown Rd., P.O. Box 29, Cashtown, PA 17310; Robert M. Luckenbaugh, 60 Maple Ave., Gettysburg, PA 17325  
Attorney: John W. Phillips, Esq., 101 W. Middle St., Gettysburg, PA 17325

**ESTATE OF MELVIN C. REYNOLDS, DEC'D**

Late of Huntington Township, Adams County, Pennsylvania  
Executors: James R. Reynolds, 60 Skyline Drive, Mechanicsburg, PA 17050; Connie R. Taylor, 131 South Main Street, Box 323, Bendersville, PA 17306  
Attorney: Robert L. McQuaide, Esq., Suite 204, 18 Carlisle St., Gettysburg, PA 17325



# Adams County Legal Journal

Vol. 48

January 12, 2007

No. 34, pp. 213-219

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1067 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 16th day of February, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in the Borough of New Oxford, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a stake marking the intersection of the Southern side of a 12-foot wide alley with the Eastern side of Commerce Street; thence along the Eastern side of Commerce Street, South 14 degrees 30 minutes East, 84 feet to a point at other lands now or formerly of Robes Development and Construction Co., known as Lot No. 2; thence along said Lot No. 2, North 75 degrees 30 minutes East, 231 feet, more or less, to a point at lands now or formerly of the John Mauss Estate; thence along said last mentioned lands, North 14 degrees 30 minutes West, 84 feet to a stake on

the South side of the aforesaid 12-foot wide alley; thence along the South side of said alley, South 75 degrees 30 minutes West, 231 feet, more or less, to a point, the place of BEGINNING.

Being Lot No. 1 on a plan of lots prepared for Forbes Development and Construction Co. and duly recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 3 at page 36.

TITLE TO SAID PREMISES IS VESTED IN Deed: David L. Gonzalez & Celiflora Garcia, husband and wife, as tenants by the entireties David L. Gonzalez & Celiflora Garcia, husband and wife Date: 02/21/2002 Recorded: 03/01/2002 Book: 2576 Page: 297

Premises being: 6 Commerce Street, New Oxford, PA 17350

Tax Parcel No. 34-005-0192-000

SEIZED and taken into execution as the property of **David L. Gonzalez & Celiflora Garcia** and to be sold by me.

James W. Muller-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 9, 2007, and

distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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 be the higher, shall be paid forthwith to the Sheriff.

1/12, 19 & 26

## INCORPORATION NOTICE

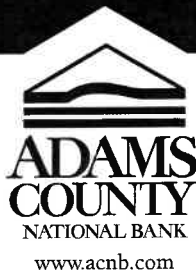
NOTICE IS HEREBY GIVEN, that Articles of Incorporation were filed with the Pennsylvania Department of State on December 26, 2006 to incorporate BARLOW AG SERVICE & SALES, INC., a business corporation incorporated under the provisions of the Pennsylvania Business Corporation Law of 1988.


Matthew E. Teeter  
Teeter, Teeter & Teeter  
108 W. Middle St.  
Gettysburg, PA 17325

1/12

Helping families achieve  
their long-range financial goals  
is our business.

*Celebrating 150 years!*  
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## ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-633 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of February, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point two (2) feet West of the centerline of Bittle Road, at corner of land now or formerly of Glenn E. Hilbert; thence by said land now or formerly of Glenn E. Hilbert, North seventy-nine (79) degrees twenty-six (26) minutes ten (10) seconds West, two hundred ninety-three and forty-seven hundredths (293.47) feet through an existing pipe set back twenty-nine and six hundredths (29.06) feet from the place of beginning to an existing pipe; thence by the same South eighty-nine (89) degrees thirty-nine (39) minutes fifty (50) seconds West one hundred thirty and ninety hundredths (130.90) feet to an existing pipe; thence by the same North sixty-six (66) degrees sixteen (16) minutes thirty-five (35) seconds West two hundred thirty-six and four hundredths (236.04) feet to an existing pipe; thence by the same North forty-four (44) degrees zero (00) minutes fifteen (15) seconds East four hundred twenty-nine and fifteen hundredths (429.15) feet to a steel rod on bank on line of land now or formerly of John Hart; thence by said land now or formerly of John Hart and land now or formerly of Dan Edwards, South sixty-seven (67) degrees forty-four (44) minutes five (05) seconds East, three hundred seventy-six and seventeen hundredths (376.17) feet to an existing pipe; thence by land now or formerly of Dan Edwards, South sixty-eight (68) degrees two (02) minutes thirty (30) seconds East one hundred twenty-four and fifty-one hundredths (124.51) feet through an existing pipe set back ten and five tenths (10.5) feet from the magnetic spike in the centerline of Bittle Road, the end of this course; thence in said Bittle Road, South twenty-four (24) degrees fifty-eight (58) minutes fifteen

(15) seconds West two hundred twenty-five and twenty-nine hundredths (225.29) feet to a point two (2) feet West of the centerline of Bittle Road; thence continuing in said Bittle Road, South twenty-six (26) degrees ten (10) minutes twenty (20) seconds West seventy and sixty hundredths (70.60) feet to a point, the place of BEGINNING. CONTAINING 4.70 acres.

The above description was taken from a boundary survey prepared by Adams County Surveyors dated April 26, 2004.

Tax Parcel No: 15-j-18-4B

Being Known As: 55 Bittle Road (Germany Township) Littlestown, PA 17340

SEIZED and taken into execution as the property of **Jeremy D. Favorite & Danielle Renee Kirk** and to be sold by me.

James W. Muller-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 2, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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 be the higher, shall be paid forthwith to the Sheriff.

1/12, 19 & 26

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1131 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 16th day of February, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground situate in Conewago Township, Adams County, Pennsylvania, known on the plat of

general plan of a series of lots, streets, or avenues, of lands of the Hanover Improvement Company, as Lot No. 8 on the South side of Maple Avenue in Block No. 13, adjoining Lot No. 7 on the West, a public alley on the South, Lot No. 9 on the East, and Maple Avenue on the North. Said plan or general plan being recorded in the Adams County Deed Book WW, Page 600.

SUBJECT, however, to the following restrictions: that no buildings of any kind whatsoever shall ever be erected on said lot or piece of ground within fifteen (15) feet of the inside line of said Maple Avenue.

Being Known As: 378 Maple Avenue (Conewago Township) Hanover, PA 17331

Property ID No.: 8-8-87

TITLE TO SAID PREMISES IS VESTED IN Mathew D. Ebaugh by deed from Ronald L. Zartman and Dorothy L. Zartman, husband and wife dated 9/10/04 recorded 9/16/04 in Deed Book 3707 Page 22.

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

James W. Muller-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 9, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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 be the higher, shall be paid forthwith to the Sheriff.

1/12, 19 & 26

HANOVER ARCHITECTURAL PRODUCTS VS.  
U. S. FILTER ET AL

1. Implied warranties may be disclaimed by the seller provided that the disclaimer is in writing and conspicuous. Additionally, if the disclaimer excludes the implied warranty of merchantability, or any part of it, the language of the disclaimer must mention merchantability.

2. A cause of action based upon a breach of an express warranty cannot exist when there was never any representation warranting specific expectations.

3. The paramount goal of contractual interpretation is to ascertain and give effect to the intent of the parties. In determining this intent, the Court looks to what the parties have clearly expressed, for the law does not assume that the language of the contract was chosen carelessly.

4. The purpose of 13 Pa.C.S.A. §2316(a) is to protect a buyer from unexpected and unbargained language of disclaimer by denying effect to such language when inconsistent with language of express warranty.

5. Under Pennsylvania law, contractual provisions limiting liability for special, indirect and consequential damages in a commercial setting are generally valid and enforceable. Parties may limit consequential damages unless the limitation is unconscionable or the limited remedy fails of its essential purpose.

6. The doctrine of unconscionability is both a statutory and a common law defense to the enforcement of an allegedly unfair provision in a contract.

7. An exclusion in a contract is unconscionable where 1) one of the parties to the contract lacked a meaningful choice about whether to accept the provision at issue and 2) the challenged provision unreasonably favors the other party to the contract.

8. Appellate courts in Pennsylvania have refused to hold contracts unconscionable simply because of a disparity in bargaining power between the parties.

9. Normally, the determination of whether a clause in a contract is unconscionable is a question of law for the Court. Therefore, a court may conclude, as a matter of law, that a contract is enforceable regardless of an allegation of unconscionability, as long as there is no genuine issue of material fact.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,  
PENNSYLVANIA. CIVIL ACTION NO. 05-S-436. HANOVER  
ARCHITECTURAL PRODUCTS, INC. VS. U. S. FILTER/JWI, INC.

Paul W. Minnich, Esq., for Plaintiff

George J. Mongell, Esq., for Defendant

George, J., March 28, 2006

OPINION

U.S. Filter's Preliminary Objections to Hanover Architectural Products, Inc.'s ("Hanover Architectural") Complaint are currently before the Court. The procedural history of this matter is more specifically set forth in a previous Order of Court and will not be repeated herein.

U.S. Filter's initial Preliminary Objection contends that Hanover Architectural's claim for breach of an implied warranty (Count 3 of the Complaint) cannot be sustained because Hanover Architectural has expressly disclaimed such warranty. Hanover Architectural's cause of action in this regard is based upon the implied warranties of merchantability and fitness for a particular purpose, which arise in commercial transactions by operation of law. See *Strickler v. Peterbilt Motors Co.*, \_\_ F.Supp.\_\_ 2005 U.S. Dist. LEXIS 10231, 12-13, Civil Action No. 04-3628 (E.D. Pa. May 27, 2005). Implied warranties may be disclaimed by the seller provided that the disclaimer is in writing and conspicuous. 13 Pa.C.S.A. § 2316(b), *Strickler*, 2005 U.S. Dist. LEXIS 10231 at 13. Additionally, if the disclaimer excludes the implied warranty of merchantability, or any part of it, the language of the disclaimer must mention merchantability. *Id.*<sup>1</sup>

In its brief, Hanover Architectural conceded that the disclaimer contained in the purchase documents was in writing and sufficiently conspicuous. The Court, therefore, will not address this issue as Hanover Architectural has represented to the Court that the cause of action based upon breach of implied warranties has voluntarily been withdrawn. Accordingly, U.S. Filter's preliminary objection concerning this issue is granted and Count 3 of the Complaint is dismissed.

The second preliminary objection raised by U.S. Filter demurs to Hanover Architectural's cause of action based upon a breach of express warranty. U.S. Filter argues that Hanover Architectural seeks relief based upon an alleged express warranty not enunciated in the sale documents. Specifically, U.S. Filter notes that the Complaint alleges a breach of the express warranty to "filter the water from the sludge produced during [Hanover Architectural's] manufacturing process and compress the sludge into cakes for easy disposal." See,

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<sup>1</sup>The implied warranties of merchantability and fitness for a particular purpose are distinct warranties. The implied warranty of merchantability is "a warranty that the goods will pass without objection in the trade and are fit for the ordinary purposes for which such goods are used." *Moscatiello v. Pittsburgh Contractors Equip. Co.*, 595 A.2d 1190, 1193 (Pa.Super. 1991), citing 13 Pa.C.S.A. § 2314, app. denied 602 A.2d 860 (Pa. 1992). "An implied warranty warrants that goods [are] fit for a particular purpose [and] exists where the seller at the time of contracting has reason to know of such purpose and of the buyer's reliance upon the seller's skill or judgment to select or furnish goods that are suitable for such purpose." *Borden, Inc. v. Advent Ink Co.*, 701 A.2d 255, 258 (Pa.Super. 1997) (citing 13 Pa.C.S.A. § 2315).



Complaint at paragraph 22. U.S. Filter claims, however, that the contract attached to the Complaint contains no such warranty.

Undoubtedly, a cause of action based upon a breach of an express warranty cannot exist when there was never any representation warranting specific expectations. *Beckermeyer v. AT&T Wireless & Panasonic Telecomm. Sys. Co.*, 2005 Phila. Ct. Com. Pl. LEXIS 30, 9-10, Civil Action No. 00469 (October 22, 2004). In reviewing the documents that form the subject of this litigation, I note that the first page of those documents indicates that U.S. Filter intended to provide an “automatic filtration process/automatic discharge operation” system including a “filter press” and had operating specifications of producing cakes at a thickness of 1.25 inches. Hanover Architectural currently claims that the system purchased does not serve this purpose. I find that the allegations in the Complaint are sufficient to survive a demurrer.

The paramount goal of contractual interpretation is to ascertain and give effect to the intent of the parties. *PBS Coals, Inc. v. Burnham Coal Co.*, 558 A.2d 562, 564 (Pa.Super. 1989). In determining this intent, the Court looks to what the parties have clearly expressed, for the law does not assume that the language of the contract was chosen carelessly. *Id.* Section 2313 of the Uniform Commercial Code provides that “any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.” 13 Pa.C.S.A. § 2313. The language referenced above creates the warranty that Hanover Architectural currently seeks to enforce.

Nevertheless, U.S. Filter suggests that language in the contract limiting liability to defects in “material or workmanship” serves to defeat Hanover Architectural’s claim. I disagree. The Uniform Commercial Code specifically addresses this argument by indicating that: “[w]ords or conduct relevant to the creation of express warranty and words or conduct tending to negate or limit warranty shall be construed whenever reasonable as consistent with each other . . .” 13 Pa.C.S.A. § 2316(a). Our appellate courts have determined that the purpose of this Section is “to protect a buyer from unexpected and unbargained language of disclaimer by denying effect to such language when inconsistent with language of express warranty.” *Morningstar v. Hallett*, 858 A.2d 125, 131 (Pa.Super. 2003).

Initially, I find nothing in the language cited by U.S. Filter that is inconsistent with Hanover Architectural's claim of express warranty. The language cited by U.S. Filter's warranty specifically reinforces that the seller warranted that the equipment would conform to the description provided by the seller. A fair reading of the Complaint indicates that the equipment purchased from U.S. Filter does not perform as expressly represented due to a defect in the equipment. Thus, to the extent that the language cited by U.S. Filter seeks to shield U.S. Filter from this claim, I conclude that it is insufficient to disclaim the express warranty. Therefore, U.S. Filter's preliminary objection on this basis will be denied.

Next, U.S. Filter objects to Count 1 of the Complaint alleging that the Complaint fails to state a cause of action for breach of contract. "Preliminary objections, the end result of which would be dismissal of a cause of action, should be sustained only in cases that are clear and free from doubt." *League of Women Voters of Pa. v. Commonwealth*, 692 A.2d 263, 267 (Pa.Cmwlth. 1997). Because of the nature of a demurrer, all well-pled material facts, as well as all reasonable inferences deductible therefrom, are admitted. *Peerless Publications, Inc. v. County of Montgomery*, 656 A.2d 547, 550 (Pa.Cmwlth. 1995). In reviewing Hanover Architectural's Complaint, it is not clear and free from doubt that Hanover Architectural failed to state a viable cause of action. A commonsense reading of the Complaint indicates that Hanover Architectural contracted with U.S. Filter to purchase a water filtration system compatible with the needs of Hanover Architectural. The Complaint further alleges that U.S. Filter failed to provide a filtration system that could be utilized by Hanover Architectural. These basic elements, if true, are sufficient to sustain a cause of action. Accordingly, U.S. Filter's preliminary objection on this basis will be denied.

The final preliminary objection filed by U.S. Filter seeks to strike damages claimed in the Complaint and to limit damages to the contract price that Hanover Architectural paid for the equipment. In support of the objection, U.S. Filter points to the following contractual language:

Seller shall not be liable for any consequential, incidental, special, punitive, or other indirect damages, and seller's total liability arising at any time from the sale or use

of the equipment shall not exceed the purchase price paid for the equipment. These limitations apply whether the liability is based on contract, tort, strict liability or any other theory.

Under Pennsylvania law, contractual provisions limiting liability “for special, indirect and consequential damages in a commercial setting are generally valid and enforceable.” *New York State Electric and Gas Corp. v. Westinghouse Electric Corp.*, 564 A.2d 919, 924 (Pa.Super. 1989). Pursuant to 13 Pa.C.S.A. § 2719(c), parties may limit consequential damages unless the limitation is unconscionable or the limited remedy fails of its essential purpose.<sup>2</sup>

The doctrine of unconscionability is both a statutory and a common law defense to the enforcement of an allegedly unfair provision in a contract. *Wagner v. Estate of Rommell*, 571 A.2d 1055, 1058 (Pa.Super. 1990), allocatur denied, *Wagner v. Estate of Rommell*, 588 A.2d 510 (Pa. 1991). An exclusion in a contract is unconscionable where 1) one of the parties to the contract lacked a meaningful choice about whether to accept the provision at issue and 2) the challenged provision unreasonably favors the other party to the contract. *Koval v. Liberty Mut. Ins. Co.*, 531 A.2d 487, 491 (Pa.Super. 1987). Critically, appellate courts in Pennsylvania “have refused to hold contracts unconscionable simply because of a disparity in bargaining power between the parties.” See *Witmer v. Exxon Corp.*, 434 A.2d 1222, 1228 (Pa. 1981). In determining whether a clause is unconscionable, it is important to consider “the general commercial background and the commercial needs of a particular trade” and whether “the clause is so one-sided that it is unconscionable under the circumstances.” *Borden, Inc. v. Advent Inc.*, 701 A.2d 255, 265 (Pa.Super. 1997). Normally, the determination of whether a clause in a contract is unconscionable is a question of law for the Court. *Koval*, 531 A.2d at 491; *Denlinger, Inc. v. Dendler*, 608 A.2d 1061, 1067 (Pa.Super. 1992). Therefore, “a court may conclude, as a matter of law, that a contract... is enforceable regardless of an allegation of unconscionability, as long as there is no genuine issue of material fact.” *Bishop v. Washington*, 480 A.2d 1088, 1094 (Pa.Super. 1984).

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<sup>2</sup>Hanover Architectural does not challenge the contractual limitation of damages on the basis that the language is inconspicuous. The Court will, therefore, not consider that issue.

In light of this instruction from our appellate courts, it is premature at this stage of the litigation to limit Hanover Architectural's claim for damages. Although the validity of any claim by Hanover Architectural as to the lack of a meaningful choice in accepting the contract provision is doubtful, the fact remains that the record is void of any meaningful information in this regard. The contract also raises the issue of whether the provision in dispute unreasonably favors U.S. Filter. For instance, Hanover Architectural points out that the items for which it seeks consequential damages in excess of the purchase price were items that were actually required by the contract with U.S. Filter in order to avoid waiver of the warranties. As the facts in this matter are more fully developed, Hanover Architectural may be able to establish that the provision is unreasonable because it requires a purchaser to install specific equipment to preserve certain warranty clauses, yet limit its remedies for breach to an amount less than the funds expended by a purchaser to keep the warranties active. Once the facts are flushed out, the Court will be able to make a decision as to whether the contract is unconscionable.

Since this issue is not "clear and free from doubt", the preliminary objection will be denied. Once the record is further developed, U.S. Filter may properly seek reconsideration through dispositive pre-trial motions.<sup>3</sup>

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<sup>3</sup>Hanover Architectural has not challenged that the limited remedy set forth in the contract has "failed of its essential purpose." Even had such an argument been advanced, it would be meritless. The validity of a consequential damage limitation depends on the effectiveness of the limited remedy. If the limited remedy fails, the consequential damage exclusion is unenforceable. *Caudill Seed and Warehouse Co. v. Prophet 21, Inc.*, 123 F.Supp.2d 826, 831-32 (E.D. Pa. 2000) (predicting how Pennsylvania Supreme Court would rule on this issue). Precedent in this area finding limitation clauses unenforceable as failing in the essential purpose arose where the warranty was limited to the repair or replacement of parts and such repair or replacement could not be accomplished. The instant warranty provides the additional remedy of refund of the purchase price. Under this scenario, a buyer is still receiving an obtainable "silver bullet" in exchange "for parting with an arsenal of legal remedies." *Id.* at 832.

For the foregoing reasons, the attached Order is entered.<sup>4</sup>

ORDER

AND NOW, this 28th day of March, 2006, it is hereby Ordered that Count 3 of the Complaint alleging a cause of action based upon breach of implied warranty is stricken and that cause of action is dismissed. All remaining preliminary objections raised by the Defendant are denied.

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<sup>4</sup>In light of the disposition herein, it is not necessary to reach Hanover Architectural's argument that the warranty language is susceptible to two interpretations and must be strictly construed against U.S. Filter as the drafting party. I note that paragraph 6 of the Standard Terms of Sale excludes from warranty "any equipment that is specified or otherwise demanded by buyer and is not manufactured **or selected** by seller . . ." (emphasis added). At first glance, it would appear that this language implies that the equipment not manufactured by U.S. Filter would be included by implication in the warranty coverage. Consistent interpretation may very well bring these same items within the coverage of the limited damages provisions. That issue, however, need not currently be resolved.

**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 ALAN E. CRAWFORD, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Patricia M. Brown, 17 Hillview Court, Fairfield, PA 17320

Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

**ESTATE OF ESTELLA ESHLEMAN KIMBLE a/k/a ESTELLA E. KIMBLE, DEC'D**

Late of the Borough of New Oxford, Adams County, Pennsylvania

Executor: Barry Kimble, 21323 Golf Estates Drive, Laytonsville, MD 20882

Attorney: Puhl, Eastman & Thrasher, Attorneys at Law, 220 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF DR. FRED H. LEWIS, DEC'D**

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Betty Lewis St. Cyr, 15993 Cove Lane, Montclair, VA 22025-1411

Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

**ESTATE OF EUGENE R. SNEERINGER a/k/a E. RICHARD SNEERINGER, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Marilyn S. Smith, 8110 Valdemorillo Drive, Corpus Christi, TX 78414

Attorney: Thomas E. Miller, Esq., Miller & Shultis, P.C., 249 York Street, Hanover, PA 17331

**SECOND PUBLICATION**

**ESTATE OF MARY C. WILDASIN, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Donna Heck, P.O. Box 173, Spring Grove, PA 17362

Attorney: John J. Mooney, III, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

**THIRD PUBLICATION**

**ESTATE OF MARY E. ADAMS, DEC'D**

Late of Highland Township, Adams County, Pennsylvania

Executor: Gary E. Adams, 1815 Knoxlyn Rd., Gettysburg, PA 17325

Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-840 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 16th day of February, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain piece, parcel or tract of land situate, lying and being in the Borough of Littlestown, Adams County, Pennsylvania, and more particularly bounded, limited and described as follows, to wit:

BEGINNING at a point on the right-of-way line at Stayman Way at corner of Lot No. 73 of the hereinafter referred to Subdivision Plan; thence along the right-of-way line of Stayman Way, the following three courses and distances: 1) South thirty-five (35) degrees eight (08) minutes three (03) seconds East, seventy (70.00) feet to a point; thence 2) South seven (07) degrees fifty-eight (58) minutes thirty-six (36) seconds East, nine and thirteen hundredths (9.13) feet to a point; thence 3) by a curve to the left, having a radius of fifty (50.00) feet, an arc length of twenty-four and eighteen hundredths (24.18) feet, and a long chord bearing and distance of South five (05) degrees nineteen (19) minutes forty-three (43) seconds West, twenty-three and ninety-four hundredths (23.94) feet to a point at corner of Lot No. 77 of the hereinafter referred to subdivision plan; thence continuing along Lot No. 77, South fifty-four (54) degrees fifty-one (51) minutes fifty-seven (57) seconds West, one hundred fifty-four and eighty-one hundredths (154.81) feet to a point along other lands of Weinberg and D & D Partnership; designated as future Phase, II of the Appler Development; thence along said last mentioned lands, North seventy-eight (78) degrees twenty-two (22) minutes thirty-two (32) seconds West, one hundred thirty-two and twenty-five hundredths (132.25) feet to a point at corner of Lot No. 73 aforesaid; thence continuing along Lot No. 73, North fifty-four (54) degrees fifty-one (51) minutes fifty-seven (57) seconds East, two hundred sixty-five and twelve hundredths (265.12) feet to a point on the right-of-way line of Stayman Way, the point and place of BEGINNING.

The improvements thereon being known as No. 49 Stayman Way, Tax Id No. 27-07-200.

BEING the same parcel of ground which by deed dated June 10, 2005 and recorded among the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Book No. 4039, Page 143 was granted and conveyed by

Zacharias John James, joined by Camille N. Clarke-James unto Zacharias John James and Camille N. Clarke-James, the Grantors herein.

Parcel Identification No: 27-07-200

Premises: 49 Stayman Way, Littlestown, PA 17340-1100, Adams County, Pennsylvania

RECORD OWNER

TITLE TO SAID PREMISES IS VESTED IN Jerry W. Goad, Sr. and Jolene M. Goad, as tenants by entireties, by Deed from Zacharias John James and Camille N. Clarke-James, husband and wife, dated 11/23/2005, recorded 03/06/2006, in Deed Book 4333, page 241.

SEIZED and taken into execution as the property of **Jolene M. Goad a/k/a Jolene M. Breen & Jerry W. Goad, Sr.** and to be sold by me.

James W. Muller-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 9, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

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1/12, 19 & 26

# Adams County Legal Journal

Vol. 48

January 19, 2007

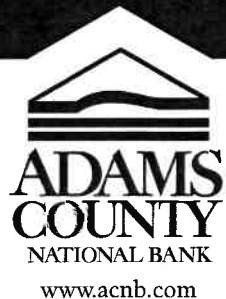
No. 35, pp. 220-228


## IN THIS ISSUE

COMMONWEALTH VS. MOSER

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## ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-633 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of February, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point two (2) feet West of the centerline of Bittle Road, at corner of land now or formerly of Glenn E. Hilbert; thence by said land now or formerly of Glenn E. Hilbert, North seventy-nine (79) degrees twenty-six (26) minutes ten (10) seconds West, two hundred ninety-three and forty-seven hundredths (293.47) feet through an existing pipe set back twenty-nine and six hundredths (29.06) feet from the place of beginning to an existing pipe; thence by the same South eighty-nine (89) degrees thirty-nine (39) minutes fifty (50) seconds West one hundred thirty and ninety hundredths (130.90) feet to an existing pipe; thence by the same North sixty-six (66) degrees sixteen (16) minutes thirty-five (35) seconds West two hundred thirty-six and four hundredths (236.04) feet to an existing pipe; thence by the same North forty-four (44) degrees zero (00) minutes fifteen (15) seconds East four hundred twenty-nine and fifteen hundredths (429.15) feet to a steel rod on bank on line of land now or formerly of John Hart; thence by said land now or formerly of John Hart and land now or formerly of Dan Edwards, South sixty-seven (67) degrees forty-four (44) minutes five (05) seconds East, three hundred seventy-six and seventeen hundredths (376.17) feet to an existing pipe; thence by land now or formerly of Dan Edwards, South sixty-eight (68) degrees two (02) minutes thirty (30) seconds East one hundred twenty-four and fifty-one hundredths (124.51) feet through an existing pipe set back ten and five tenths (10.5) feet from the magnetic spike in the centerline of Bittle Road, the end of this course; thence in said Bittle Road, South twenty-four (24) degrees fifty-eight (58) minutes fifteen

(15) seconds West two hundred twenty-five and twenty-nine hundredths (225.29) feet to a point two (2) feet West of the centerline of Bittle Road; thence continuing in said Bittle Road, South twenty-six (26) degrees ten (10) minutes twenty (20) seconds West seventy and sixty hundredths (70.60) feet to a point, the place of BEGINNING. CONTAINING 4.70 acres.

The above description was taken from a boundary survey prepared by Adams County Surveyors dated April 26, 2004.

Tax Parcel No: 15-j-18-4B

Being Known As: 55 Bittle Road (Germany Township) Littlestown, PA 17340

SEIZED and taken into execution as the property of **Jeremy D. Favorite & Danielle Renee Kirk** and to be sold by me.

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

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1/12, 19 & 26

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1131 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 16th day of February, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground situate in Conewago Township, Adams County, Pennsylvania, known on the plat of

general plan of a series of lots, streets, or avenues, of lands of the Hanover Improvement Company, as Lot No. 8 on the South side of Maple Avenue in Block No. 13, adjoining Lot No. 7 on the West, a public alley on the South, Lot No. 9 on the East, and Maple Avenue on the North. Said plan or general plan being recorded in the Adams County Deed Book WWW, Page 600.

SUBJECT, however, to the following restrictions: that no buildings of any kind whatsoever shall ever be erected on said lot or piece of ground within fifteen (15) feet of the inside line of said Maple Avenue.

Being Known As: 378 Maple Avenue (Conewago Township) Hanover, PA 17331

Property ID No.: 8-8-87

TITLE TO SAID PREMISES IS VESTED IN Mathew D. Ebaugh by deed from Ronald L. Zartman and Dorothy L. Zartman, husband and wife dated 9/10/04 recorded 9/16/04 in Deed Book 3707 Page 22.

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

James W. Muller-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 9, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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 be the higher, shall be paid forthwith to the Sheriff.

1/12, 19 & 26

## COMMONWEALTH VS. MOSER

1. Claims of ineffectiveness in connection with a guilty plea will provide a basis for relief only if the ineffectiveness caused an involuntary and unknowing plea.
2. The voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases.
3. Having made representations to the Court, the defendant is not now permitted to contradict those statements.
4. The law does not require that a defendant be pleased with the outcome of his decision to enter a plea of guilty; all that is required is that his decision to plead guilty be knowingly, voluntarily and intelligently made.
5. As an officer of the Court, plea counsel had a reasonable basis for not pursuing evidence that he knew to be false or manufactured.
6. Although Pennsylvania appellate courts have found trial counsel to be ineffective for failing to interview and call certain witnesses at trial, those cases arise in the context of examining the effectiveness of counsel following an evidentiary resolution. This authority does not extend to circumstances where trial preparation has been eliminated due to an acknowledgement of guilt.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,  
PENNSYLVANIA. CRIMINAL ACTION NO. CP-01-CR-980-  
2004. COMMONWEALTH OF PENNSYLVANIA VS. DUSTIN A.  
MOSER.

Shawn C. Wagner, District Attorney, for Commonwealth  
Thomas R. Nell, Esq., for Defendant  
George, J., April 27, 2006

### OPINION PURSUANT TO PA.R.A.P. 1925

The Defendant, Dustin A. Moser ("Moser"), appeals from a sentence of life in prison following his entry of a guilty plea to murder in the second degree on August 2, 2005. Following sentencing, which occurred on September 15, 2005, Moser filed a number of post-sentence motions. Included among those motions were challenges to the voluntariness of his guilty plea based upon claims of ineffectiveness of counsel. In light of his claims against plea counsel, new counsel was appointed to represent Moser. Additionally, new counsel was granted a sufficient amount of time to review the litigation in order to raise all potential issues in a single proceeding. By Order dated February 13, 2006, Moser's post-sentence motions were denied.<sup>1</sup> Moser currently appeals from this Court's denial of his post-sentence motions.

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<sup>1</sup>In light of the fact that new counsel was appointed, Moser was given the opportunity to file an amended post-sentence motion. Based upon this procedural history, the Court found good cause to extend the time period for ruling on post-sentence motions pursuant to Pennsylvania Rule of Criminal Procedure 720(b)(3).

In his 1925(b) Concise Statement of Issues Raised on Appeal, Moser raises the following issues:

1. Whether the trial court erred in denying his post-sentence motion to withdraw his guilty plea based upon a claim that counsel improperly advised him as to the ramifications of pleading to a charge which carried a life sentence; and
2. Whether the trial court erred in denying his post-sentence motion to withdraw his plea based upon allegations that plea counsel failed to investigate potential witnesses prior to the entry of his plea.

For the reasons set forth below, I respectfully request that the sentence in this matter be affirmed.<sup>2</sup>

In Moser's first claim on appeal, he suggests that his plea was unknowingly and involuntarily entered because he was misadvised by plea counsel. In this regard, Moser suggests that plea counsel "guaranteed" him that the Pennsylvania legislature was going to pass a bill that would permit those serving life sentences for second degree murder to be released after twenty-five years. He contends that this false promise prompted him to enter his plea.<sup>3</sup>

A criminal defendant has a right to effective counsel during a plea process as well as during a trial. *Commonwealth v. Brooks*, 833 A.2d 800, 802 (Pa.Super. 2003). In order to prevail on a claim of ineffectiveness of counsel, a defendant must demonstrate by a preponderance of the evidence that his underlying contention possesses arguable merit, the course chosen by counsel had no reasonable basis designed to serve the defendant's interest and counsel's conduct prejudiced the defendant. *Commonwealth v. Heggins*, 809 A.2d 908, 913

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<sup>2</sup>Moser raises his claims of ineffective assistance of counsel despite the Supreme Court instruction in *Commonwealth v. Grant* stating that such issues should await collateral review. *Commonwealth v. Grant*, 813 A.2d 726, 737 (Pa. 2002). However, in *Commonwealth v. Bomar*, the Pennsylvania Supreme Court held that the rule announced in *Grant* did not apply where the trial court conducted an evidentiary hearing and addressed ineffectiveness claims in its Opinion. *Commonwealth v. Bomar*, 826 A.2d 831, 853-54 (Pa. 2003). Since this Court has conducted an evidentiary hearing "devoted solely to the ineffectiveness claims", consideration of the claims are proper. *Commonwealth v. Davido*, 868 A.2d 431, 441 n.16 (Pa. 2005).

<sup>3</sup>Although the issue is raised in the context of an involuntarily entered plea, Moser clearly challenges counsel's stewardship. Allegations that counsel misadvised a criminal defendant in a plea process are properly determined under the ineffectiveness of counsel subsection of the P.C.R.A., 42 Pa.C.S.A. § 9543(a)(2)(ii), rather than the section of the P.C.R.A. specifically governing guilty pleas, 42 Pa.C.S.A. § 9543(a)(2)(iii). See *Commonwealth v. Hickman*, 799 A.2d 136 (Pa.Super. 2002).

(Pa.Super. 2002). “Claims of ineffectiveness in connection with a guilty plea will provide a basis for relief only if the ineffectiveness caused an involuntary and unknowing plea.” *Commonwealth v. Mendoza*, 730 A.2d 503, 505 (Pa.Super. 1999) (quoting *Commonwealth v. Yager*, 685 A.2d 1000, 1003 (Pa.Super. 1996). “[T]he voluntariness of the plea depends on whether counsel’s advice was within the range of competence demanded of attorneys in criminal cases.” *Commonwealth v. Hickman*, 799 A.2d 136, 141 (Pa.Super. 2002).

The fatal flaw in Moser’s argument is that it is not factually supported. At the conclusion of the hearing, I found that plea counsel’s testimony regarding pre-plea discussions between Moser and counsel was credible. I currently re-affirm that finding. As such, I have determined that the following testimony of trial counsel is factually correct:

When Dustin and I went through all the trial strategies that were available and the likely results, it seemed like any way you picked it, the best defense was going to land him in a second degree murder conviction, if everything went right. Otherwise, he would get a first degree, he could also get consecutive or concurrent sentences for other matters.

Our discussion was that if the legislature or the governor ever decides to start letting lifers out, people who commit intentional premeditated murder will not be the first people to be let out, but probably people who committed a life sentence but went because of a legal technicality such as I was in a robbery; I didn’t mean for anybody to get hurt, but it is felony murder, so I’m in jail for life, so I’m not the same kind of evil-minded individual that a true first degree murderer is. So we had that conversation.

The second conversation we had involved the idea that if again the legislature ever changed the law. Where the twenty-five years or the specifics come from, I do not know because I was careful, as was Mr. Wagner who also participated in part of the conversation, to make it clear that we weren’t aware that there was an imminent passage of any such thing.

I believe there was a reference that the legislature has talked about where there had been proposals made, nothing concrete, but the strategy was since inevitably it seemed, except for the rarest of circumstances, Dustin was going to get a conviction of first degree or second degree and something else, it seemed like the only back door option was go second degree **on the rare hope**, that if lifers are ever let out, he would be first in line because he wouldn't be a first degree murderer and he wouldn't have a consecutive sentence to serve. So that was the conversation.

Post-sentence Hearing Transcript, February 13, 2006, pages 85-86. In finding this testimony credible, I concluded that the representations that Moser claimed were made to him by plea counsel did not occur.

Plea counsel's testimony is corroborated by the record. During the plea colloquy, the Court advised Moser of the following:

You will remember then that the penalties for both first degree murder and second degree murder are life in prison. If you plead guilty to second degree murder, I will have no alternative but to sentence you to life in prison. **In Pennsylvania life in prison means exactly that. There is no opportunity for parole. If you are sentenced to life, it means that your sentence is life.** Do you understand that?

The Defendant: Yes, I do.

Plea Colloquy Transcript, August 2, 2005, pages 5-6. Later in the colloquy, the Court reiterated that Moser's plea would result in him being sentenced to life in prison without parole. Plea Colloquy Transcript, August 2, 2005, page 15. On two separate occasions during colloquy, Moser acknowledged that there had been no other promises made to him, other than the representations given to him by the Court. Plea Colloquy Transcript, August 2, 2005, pages 15-16. Having made those representations to the Court, he is not now permitted to contradict those statements. *Commonwealth v. Barnes*, 687 A.2d 1163, 1167 (Pa.Super. 1996).

Moser's understanding of his predicament was evidenced during sentencing when he indicated to the Court that he understood that "life is life in Pa." Sentencing Proceedings Transcript, September 15, 2005, page 6. The sentencing proceedings are also significant

because plea counsel, in the presence of Moser, acknowledged that clemency or changes in the law concerning life sentences “may never happen.” Sentencing Proceedings Transcript, September 15, 2005, page 5.<sup>4</sup>

In determining the voluntariness of a guilty plea and whether a defendant acted knowingly and intelligently, the trial court is required to inquire into six particular areas. Pennsylvania Rule of Criminal Procedure 590; *Commonwealth v. Willis*, 369 A.2d 1189, 1190 (Pa. 1977). Not only did Moser’s plea colloquy cover the required areas of inquiry, but the Court took great caution in making sure Moser’s plea was voluntarily and knowingly entered. The oral colloquy was supplemented by a comprehensive written colloquy signed by Moser. “The law does not require that [a defendant] be pleased with the outcome of his decision to enter a plea of guilty: [a]ll that is required is that [his] decision to plead guilty be knowingly, voluntarily and intelligently made.” See *Commonwealth v. Yager*, 685 A.2d 1000, 1004 (Pa.Super. 1996).<sup>5</sup> I am satisfied that Moser’s plea was voluntarily entered.

Since Moser has not factually established a factual basis for his claim, it is impossible to find any arguable merit to his claim. Therefore, relief on his first argument is unwarranted.

Moser next argues that his guilty plea was unknowingly and unintelligently entered because he had insufficient information upon which to decide whether to enter a plea. He challenges trial counsel’s stewardship claiming counsel failed to properly investigate potential witnesses who allegedly possessed exculpatory evidence, thereby denying him information critical to his decision. He identifies Christopher Brady and Jessica Miller as the critical witnesses. At the hearing, Brady provided testimony; however, Jessica Miller did not.

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<sup>4</sup>This statement is in stark contrast to Moser’s claim that he was “guaranteed” that certain laws would be enacted that would grant him relief from his sentence after serving twenty-five years.

<sup>5</sup>At the time Moser entered his plea, he made the following representation to the Court: “I would just like to say before you accept or deny my plea, I have made choices like a man and I’m prepared to step up like a man and take my responsibility for what I have done.” Plea Colloquy Transcript, page 8. This statement is indicative of the open dialogue conducted between the Court and Moser at the times of his plea and sentencing. In fact, the Court was impressed with Moser’s candid discussion and insight into his circumstances.

Brady claimed to have received a letter from Jessica Miller in which Miller claimed that she was with Moser and his two co-defendants when they assaulted the decedent. According to Brady, the letter further indicated that Miller and the two co-defendants returned to the area where the decedent was left and the two co-defendants once again beat the decedent while Miller attempted to perform sexual acts upon Moser. Brady claimed that Miller indicated in the letter that Moser was not with them when they returned to the decedent on the second occasion. Brady added that this letter was destroyed before it could be provided to Moser.

Although Moser did not call Jessica Miller as a witness, the Commonwealth introduced as an exhibit a copy of the Pennsylvania State Police interview with her. The State Police interview with Miller revealed a background completely contradictory to what Brady alleged was contained in the letter.

During his testimony, plea counsel testified that he had, in fact, been provided the names of Chris Brady and Jessica Miller as potential witnesses. However, Moser advised him that the letter received by Brady indicated that Miller had gone back to look at the crime scene at some later date, which had no import to the evidence against Moser. Additionally, plea counsel indicated that information relating to the letter given to him by Moser contradicted the account of the incident given to him by Moser. Plea counsel confirmed that at the time he first became aware of the letter, it had already been destroyed. Based on all the information before him at the time, counsel concluded that Brady could “only be testifying to hearsay about the contents of the letter and if the gal herself were to say certain things that were in the letter, we might be supporting perjury or otherwise allowing someone to say things that were inconsistent with things that Mr. Moser himself had told me.” Post-sentence Hearing Transcript, February 13, 2006, page 79.<sup>6</sup>

As previously mentioned, I found the testimony of plea counsel to be credible. Once again, the evidence produced by Moser at the

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<sup>6</sup> Interestingly, during the post-sentence hearing, the co-defendant, Michael Glacken, was called by Moser as a witness. During his testimony, he described the incident which resulted in the criminal charges. The factual background provided by Glacken also contradicts the information that Brady claimed was forwarded to him by Jessica Miller in the letter. See generally Post-sentence Hearing Transcript, February 13, 2006, pages 19 and 21.

hearing failed to establish that his contention has arguable merit. The only information that Brady could provide was that he received a letter that is no longer in existence. His rendition of the contents of that letter amounts to nothing more than hearsay testimony that would be inadmissible at trial. See Pennsylvania Rule of Evidence 802, et al.<sup>7</sup> The record belies any indication of trustworthiness or corroborating circumstances.<sup>8</sup>

Similarly, Moser has failed to demonstrate any arguable merit to his argument regarding plea counsel's failure to interview Jessica Miller. The only evidence in the record that might lead one to presume the nature of Miller's testimony is Brady's testimony concerning the letter which I have found to be incredible. Additionally, there are indications in the record, both from Moser and from Miller's interview with the police, which indicate that Miller could not provide exculpatory evidence. Since Miller was not called as a witness during the post-sentence hearing, there is no credible reason to suspect that plea counsel's interview of Miller would have yielded any favorable evidence to Moser.

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<sup>7</sup>Arguably, the hearsay testimony may be admissible as a statement against interest pursuant to Pennsylvania Rule of Evidence 804(b)(3). However, Moser failed to establish at the hearing any foundation for the application of this exception.

<sup>8</sup>Brady testified that he intentionally destroyed the letter even after believing it had importance. Post-sentence Hearing Transcript, February 13, 2006, page 30. Brady's testimony further indicates that Moser indicated to him that his rendition of the contents of the letter were factually incorrect. Compare Post-sentence Hearing Transcript, February 13, 2006, page 28 (Moser tells Brady that a girl did not go with him to the crime scene) with page 32 (Brady claims that Miller's letter represents that she was with Moser when he went to the crime scene). Moreover, Brady's testimony reflects that he is Moser's cousin; that he was Moser's cellmate while Moser was incarcerated at the Adams County Prison; that Brady forwarded the letter to his friend in Maryland when Brady received the letter at the Prison, despite the fact that he was Moser's cellmate; and that Brady couldn't read or write, which was the reason he was Moser's cellmate. Post-sentence Hearing Transcript, February 13, 2006, pages 34 and 35. Moreover, a review of Brady's testimony reveals that he claims to have received the letter while incarcerated at the Adams County Prison, but forwarded it to his friend in Maryland prior to sharing the contents of the letter with Moser. After having this discussion with Moser, Moser and Brady got into a fight, which resulted in both of them being locked down. Curiously, Brady described how he destroyed the letter after being thrown in the hole, but offered no explanation as to how he was able to destroy the letter when he was housed at the Adams County Prison and the letter was allegedly with his friend in the State of Maryland. Based upon discrepancies in Brady's testimony, as well as his demeanor while on the witness stand, I found Brady's testimony to be entirely incredible.



Even if we presume that both Brady and Miller could provide favorable testimony to Moser, plea counsel clearly had a reasonable basis for refusing to pursue this area of investigation. Specifically, plea counsel credibly testified that Moser's admissions to counsel, regarding his involvement in the criminal incident, contradicted Brady's interpretation of Miller's alleged letter. Clearly, as an officer of the Court, plea counsel had a reasonable basis for not pursuing evidence that he knew to be false or manufactured. *Commonwealth v. Jermyn*, 620 A.2d 1128, 1131 (Pa. 1993).

Finally, I note that although Pennsylvania appellate courts have found trial counsel to be ineffective for failing to interview and call certain witnesses at trial, those cases arise in the context of examining the effectiveness of counsel following an evidentiary resolution. See, e.g., *Commonwealth v. Mabie*, 359 A.2d 369 (Pa. 1976). Moser seeks to extend this authority to circumstances where trial preparation has been eliminated due to an acknowledgement of guilt. Clearly, Moser was aware of the alleged substance of this information, since he claimed that he provided it to his attorney. Despite this knowledge, Moser appeared before the Court and admitted his guilt. Furthermore, despite being aware of this information, Moser repeatedly indicated to the Court that his trial counsel had interviewed all witnesses which he had requested.<sup>9</sup> It is difficult to imagine,

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<sup>9</sup>At a pre-trial conference on July 29, 2005, Moser represented to the Court that his attorney had done everything that he had asked him to do. Plea Colloquy Transcript, page 16. Prior to the oral plea colloquy, Moser submitted a written colloquy signed and initialed by him which contained, in relevant part, the following representation, "I am fully satisfied that my lawyer has not failed to do anything which I have asked him to do nor has done anything of which I didn't approve. I agree that my lawyer has contacted, or attempted to contact, every witness or source of information of which I have advised him and that if contact was unsuccessful, I am satisfied that my lawyer has exhausted all possible leads to locate the witness or evidence." Written Plea Colloquy, August 2, 2005, page 3. During oral colloquy at the time of Moser's plea, the following occurred:

The Court: You indicated earlier that you spoke to your attorney. Have you had enough time to talk to your attorney?

The Defendant: Yes, Your Honor.

The Court: When I was with you at the trial conference last week, you indicated that your attorney had done everything that you have asked him to do. Does that remain true today?

The Defendant: Yes, sir, Your Honor.

(Footnote 9 continued to next page)

therefore, how counsel's conduct prejudiced Moser. Moser has failed to state what information would have been revealed by Miller's interview, other than that of which he was already aware at the time he entered his plea.

For the foregoing reasons, I recommend that the sentence be affirmed.

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*(Footnote 9 continued from previous page)*

The Court: Any witnesses that you thought he should talk to. He has exercised to the best of his ability to speak to the witnesses, is that correct?

The Defendant: He has done everything that I asked him to and talked to everybody I asked him to talk to, Your Honor.

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-840 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 16th day of February, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain piece, parcel or tract of land situate, lying and being in the Borough of Littlestown, Adams County, Pennsylvania, and more particularly bounded, limited and described as follows, to wit:

BEGINNING at a point on the right-of-way line at Stayman Way at corner of Lot No. 73 of the hereinafter referred to Subdivision Plan; thence along the right-of-way line of Stayman Way, the following three courses and distances: 1) South thirty-five (35) degrees eight (08) minutes three (03) seconds East, seventy (70.00) feet to a point; thence 2) South seven (07) degrees fifty-eight (58) minutes thirty-six (36) seconds East, nine and thirteen hundredths (9.13) feet to a point; thence 3) by a curve to the left, having a radius of fifty (50.00) feet, an arc length of twenty-four and eighteen hundredths (24.18) feet, and a long chord bearing and distance of South five (05) degrees nineteen (19) minutes forty-three (43) seconds West, twenty-three and ninety-four hundredths (23.94) feet to a point at corner of Lot No. 77 of the hereinafter referred to subdivision plan; thence continuing along Lot No. 77, South fifty-four (54) degrees fifty-one (51) minutes fifty-seven (57) seconds West, one hundred fifty-four and eighty-one hundredths (154.81) feet to a point along other lands of Weinberg and D & D Partnership; designated as future Phase, II of the Appler Development; thence along said last mentioned lands, North seventy-eight (78) degrees twenty-two (22) minutes thirty-two (32) seconds West, one hundred thirty-two and twenty-five hundredths (132.25) feet to a point at corner of Lot No. 73 aforesaid; thence continuing along Lot No. 73, North fifty-four (54) degrees fifty-one (51) minutes fifty-seven (57) seconds East, two hundred sixty-five and twelve hundredths (265.12) feet to a point on the right-of-way line of Stayman Way, the point and place of BEGINNING.

The improvements thereon being known as No. 49 Stayman Way. Tax Id No. 27-07-200.

BEING the same parcel of ground which by deed dated June 10, 2005 and recorded among the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Book No. 4039, Page 143 was granted and conveyed by

Zacharias John James, joined by Camille N. Clarke-James unto Zacharias John James and Camille N. Clarke-James, the Grantors herein.

Parcel Identification No: 27-07-200

Premises: 49 Stayman Way, Littlestown, PA 17340-1100, Adams County, Pennsylvania

RECORD OWNER

TITLE TO SAID PREMISES IS VESTED IN Jerry W. Goad, Sr. and Jolene M. Goad, as tenants by entireties, by Deed from Zacharias John James and Camille N. Clarke-James, husband and wife, dated 11/23/2005, recorded 03/06/2006, in Deed Book 4333, page 241.

SEIZED and taken into execution as the property of **Jolene M. Goad a/k/a Jolene M. Breen & Jerry W. Goad, Sr.** and to be sold by me.

James W. Muller-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 9, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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 be the higher, shall be paid forthwith to the Sheriff.

1/12, 19 & 26

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1067 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 16th day of February, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in the Borough of New Oxford, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a stake marking the intersection of the Southern side of a 12-foot wide alley with the Eastern side of Commerce Street; thence along the Eastern side of Commerce Street, South 14 degrees 30 minutes East, 84 feet to a point at other lands now or formerly of Robes Development and Construction Co., known as Lot No. 2; thence along said Lot No. 2, North 75 degrees 30 minutes East, 231 feet, more or less, to a

point at lands now or formerly of the John Mauss Estate; thence along said last mentioned lands, North 14 degrees 30 minutes West, 84 feet to a stake on the South side of the aforesaid 12-foot wide alley; thence along the South side of said alley, South 75 degrees 30 minutes West, 231 feet, more or less, to a point, the place of BEGINNING.

Being Lot No. 1 on a plan of lots prepared for Forbes Development and Construction Co. and duly recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 3 at page 36.

TITLE TO SAID PREMISES IS VESTED IN Deed: David L. Gonzalez & Celi flora Garcia, husband and wife, as tenants by the entireties David L. Gonzalez & Celi flora Garcia, husband and wife Date: 02/21/2002 Recorded: 03/01/2002 Book: 2576 Page: 297

Premises being: 6 Commerce Street, New Oxford, PA 17350

Tax Parcel No. 34-005-0192-000

SEIZED and taken into execution as the property of **David L. Gonzalez & Celi flora Garcia** and to be sold by me.

James W. Muller-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 9, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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 be the higher, shall be paid forthwith to the Sheriff.

1/12, 19 & 26

## INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that COLORFAUX INTERIORS, INC., 4 Harrison Drive, East Berlin, PA, 17316, has been incorporated under the provisions of the Pennsylvania Business Corporation Law of 1988, for all legal purposes for which such corporations are formed.

Law Offices of Robert S. Mirin  
2515 N. Front Street  
Harrisburg, PA 17110

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IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA

NO. 2006-S-1195

REAL PLACES, L.P.

vs.

IDA S. KOONTZ, HAZEL S. AMBREMSKI,  
EVELYN S. HERSH, GLENN E. SMITH,  
HUBER SMITH, JR., RACHEL BOYER,  
RUTH ANNA FOGELSANGER, HELEN  
TRAIL and ELSIE S. RIGGS, deceased

**NOTICE**

TO: ALL HEIRS, DEVISEES, ADMINIS-  
TRATORS, EXECUTORS, SUCCES-  
SORS AND ASSIGNS OF IDA S.  
KOONTZ, EVELYN S. HERSH, HUBER  
SMITH, JR. AND ELSIE S. RIGGS, AND  
ALL OTHER PERSONS UNKNOWN  
CLAIMING ANY RIGHT, TITLE, ESTATE,  
LIEN OR INTEREST IN THE HEREIN  
DESCRIBED REAL PROPERTY.

TAKE NOTICE that on the 19th day of  
October, 2006, Real Places, L.P. filed its  
Complaint against the above-named  
Defendants in an action to quiet title,  
captioned as above, to a tract of land in  
Mount Joy Township, Adams County, PA,  
containing approximately 0.145 acres,  
being part of the property conveyed by  
Deed dated June 19, 1947, and recorded  
in the Office of the Recorder of Deeds  
in and for Adams County, PA, in Deed  
Book 178, at Page 428, and more fully  
described in Plot Plan dated June 12,  
2006, prepared by First Capital  
Engineering attached to the Complaint.

Said Complaint requests the Court to  
declare and adjudge that Plaintiff Real  
Places, L.P. has indefeasible title in fee  
simple absolute to said premises and all  
persons claiming under them, and that  
the Defendants and all persons claiming  
under them have no estate, right, title,  
lien or interest in the property or any part  
thereof, and that title be quieted in  
Plaintiff against all claims of Defendants  
and persons claiming under them and for  
a decree enjoining Defendants and all  
persons claiming under them from  
asserting any estate, right, title, lien, or  
interest in the property or any part there-  
of adverse to Plaintiff.

You are notified to plead to the  
Complaint in this case, of which the  
above is a brief summary, within 20 days  
after publication.

If you wish to defend you must enter a  
written appearance personally or by  
attorney and file your defenses or objec-  
tions in writing with the Court. You are  
warned that if you fail to do so the case  
may proceed without you and a judg-  
ment may be entered against you with-  
out 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 PAPER TO  
YOUR LAWYER AT ONCE. IF YOU DO  
NOT HAVE A LAWYER, GO TO OR  
TELEPHONE THE OFFICE SET  
FORTH BELOW. THIS OFFICE CAN  
PROVIDE YOU WITH INFORMATION  
ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE  
A LAWYER, THIS OFFICE MAY BE  
ABLE TO PROVIDE YOU WITH INFOR-  
MATION ABOUT AGENCIES THAT MAY  
OFFER LEGAL SERVICES TO ELIGI-  
BLE PERSONS AT A REDUCED FEE OR  
NO FEE.

Court Administrator  
Adams County Courthouse  
Gettysburg, Pennsylvania 17325  
Telephone (717) 337-8846

Blakey, Yost, Bupp & Rausch, LLP  
Nicole M. Ehrhart, Esq.  
Attorneys for Plaintiff

1/19

**SHERIFF'S SALE**

IN PURSUANCE of a Writ of Execu-  
tion, Judgment No. 06-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, the  
23rd day of February, 2007, at 10:00  
o'clock in the forenoon at the Sheriff's  
Office located in the Courthouse,  
Borough of Gettysburg, Adams County,  
PA, the following Real Estate, viz.:

ALL that the following described tract  
of land situate, lying, and being in  
Berwick Township, Adams County,  
Pennsylvania, bounded and limited as  
follows, to wit:

BEGINNING for a point in a public  
driveway at other lands of the within  
Grantors; thence along said last men-  
tioned lands South fifty-four (54) degrees  
West, eight hundred seventy (870) feet  
to a point at lands now or formerly of  
Verna B. Lillich; thence along said last  
mentioned lands South forty-eight (48)  
degrees fifteen (15) minutes East, one  
hundred ninety-one (191) feet to a poplar  
tree and lands formerly of Roy  
Laughman; thence along said last men-  
tioned lands North fifty-four (54) degrees,  
fifteen (15) minutes East, eight hundred  
forty-eight (848) feet to an iron pin on the  
Southern side of the public driveway first  
above mentioned; thence North fifty-two  
(52) degrees, fifteen (15) minutes West,  
one hundred ninety-one (191) feet to an  
iron pin on the Northern part of said pub-  
lic driveway at the point and place of  
BEGINNING. CONTAINING three (3)  
acres 116.47 square perches as per sur-  
vey of Curvin A. Wentz, Registered  
Surveyor, bearing date of March 8, 1966.

IT BEING the same tract of land which  
Steven E. Hardy, Sr. and Ruth R. Hardy,  
his wife, by their deed dated the October  
11, 2001, and recorded in the Office of

the Recorder of Deeds in and for Adams  
County, Pennsylvania, in Record Book  
2440 at Page 220, granted and con-  
veyed unto Steven E. Hardy, Sr., grantor  
herein.

**RECORD OWNER**

TITLE TO SAID PREMISES IS VEST-  
ED IN Catherine H. Lefevre, a single per-  
son, by Deed from Steven E. Hardy, Sr.,  
a single person, dated 12/01/2004,  
recorded 12/09/2004, in Deed Book  
3799, page 141.

Premises being: 950-B Green Springs  
Road, Hanover, PA 17331

Tax Parcel No. 04-L11-0121A-000

SEIZED and taken into execution as  
the property of **Catherine H. Lefevre  
a/k/a Catherine Lefevre** and to be sold  
by me.

James W. Muller-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 16, 2007,  
and distribution will be made in accor-  
dance with said schedule, unless excep-  
tions are filed thereto within 20 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 be the higher, shall be  
paid forthwith to the Sheriff.

1/19, 26 & 2/2

**FICTITIOUS NAME NOTICE**

NOTICE IS HEREBY GIVEN that pur-  
suant to the provisions of Section 311 of  
the Act of December 16, 1982, P.L. 1309,  
No. 295, codified as amended (54 Pa.  
C.S.A. §311), there was filed in the Office  
of the Secretary of the Commonwealth of  
Pennsylvania at Harrisburg, Pennsylvania  
an Application for Registration of  
Fictitious Name of AMERICA'S BEST  
VALUE INN-GETTYSBURG, the address  
of the principal place of business being  
301 Steinwehr Avenue, Gettysburg, PA  
17325. The name and address of the  
entity that is a party to said registration  
is: S. & W. Development Corporation,  
380 Steinwehr Avenue, Gettysburg,  
Pennsylvania 17325.

Puhl, Eastman & Thrasher  
Attorneys

1/19

**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 MILDRED E. HAYBERGER, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Ronald H. Collins, 323 Commerce Street, Waynesboro, PA 17268

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF MILDRED W. LEADER a/k/a MILDRED WALTER LEADER, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Administrator: Robert C. Boehner, 369 E. York Street, Gettysburg, PA 17325

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

**SECOND PUBLICATION**

**ESTATE OF ALAN E. CRAWFORD, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Patricia M. Brown, 17 Hillview Court, Fairfield, PA 17320

Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

**ESTATE OF ESTELLA ESHLEMAN KIMBLE a/k/a ESTELLA E. KIMBLE, DEC'D**

Late of the Borough of New Oxford, Adams County, Pennsylvania

Executor: Barry Kimble, 21323 Golf Estates Drive, Laytonsville, MD 20882

Attorney: Puhl, Eastman & Thrasher, Attorneys at Law, 220 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF DR. FRED H. LEWIS, DEC'D**

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Betty Lewis St. Cyr, 15993 Cove Lane, Montclair, VA 22025-1411

Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

**ESTATE OF EUGENE R. SNEERINGER a/k/a E. RICHARD SNEERINGER, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Marilyn S. Smith, 8110 Valdemorillo Drive, Corpus Christi, TX 78414

Attorney: Thomas E. Miller, Esq., Miller & Shultis, P.C., 249 York Street, Hanover, PA 17331

**THIRD PUBLICATION**

**ESTATE OF MARY C. WILDASIN, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Donna Heck, P.O. Box 173, Spring Grove, PA 17362

Attorney: John J. Mooney, III, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1190 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of February, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot or piece of ground situate in Conewago Township, County of Adams, Commonwealth of Pennsylvania, more particularly bounded and described as follows:

BEGINNING for a corner at a post of lands now or formerly of Mrs. Amanda Sterner and Jefferson Avenue; thence with said Jefferson Avenue South 17 degrees, 15 minutes West 60 feet to stake at other lands now or formerly of Mary C. Diller, Et Vir; thence with said lands North 70 degrees 55 minutes West 130 feet to a stake at other lands now or formerly of said Mary C. Diller, Et Vir, thence with said lands North 17 degrees 15 minutes East 60 feet to a stake at lands now or formerly of Mrs. Amanda Sterner, aforesaid; thence with said lands South 70 degrees 55 minutes East 130 feet to a post at Jefferson Avenue, aforementioned, and the place of BEGINNING.

BEING the same premises which Franklin Credit Management Corporation, by its deed dated January 7, 2005, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 3842, Page 99, granted and conveyed unto Mark H. Miller and Anna C. Miller, husband and wife, the grantors herein.

Being Known As: 230 Jefferson Street, (Conewago Township), Hanover, PA 17331

Property ID No.: 9-38

TITLE TO SAID PREMISES IS VESTED IN Thomas C. Shorb, Jr., sole owner by deed from Mark H. Miller and Anna C. Miller, husband and wife dated 7/15/05 recorded 7/20/05 in Deed Book 4049 Page 229.

SEIZED and taken into execution as the property of **Thomas C. Shorb, Jr.** and to be sold by me.

James W. Muller-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 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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 be the higher, shall be paid forthwith to the Sheriff.

1/19, 26 & 2/2

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1294 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of February, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot of ground situate in Oxford Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point in the right-of-way Legislative Route A-6810 and Hanover Street (referred to on the draft of survey; thence along the right-of-way of such Legislative Route 01004 and Hanover Road) at corner of Lot No. 12 on such draft of survey; thence along the right-of-way of such Legislative Route North 36 degrees 00 minutes 00 seconds West 84.39 feet to a point at corner of Lot No. 10; thence along Lot No. 10 North 54 degrees 00 minutes 00 seconds East, 110.00 feet to appoint on the rear line of Lot No. 63; thence along portion of Lot Nos. 63 and 645, South 36 degrees 00 minutes 00 seconds East, 84.39 feet to a point at corner of Lot No. 12; thence along Lot No. 12 South 54 degrees 00 minutes 00 seconds West, 110.00 feet to a point, the place of BEGINNING. CONTAINING 9,282.900 square feet or 0.213 acres.

The above description was taken from a draft of survey of Oxford Estates prepared by George M. Wildasin, P.E. dated December 4, 1979, subdivided by William E. Sacra, Jr., on the same date, a plat of which is recorded in Adams County Plat Book 34 at page 58, the above lot being designated at Lot No. 11 thereon.

Tax parcel no: 8-86

Premises Being: 384 Hanover Street, New Oxford, PA 17350

SEIZED and taken into execution as the property of **Michael B. Sutherland & Cynthia A. Sutherland** and to be sold by me.

James W. Muller-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 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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 be the higher, shall be paid forthwith to the Sheriff.

1/19, 26 & 2/2

## INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, and a Certificate of Incorporation granted on December 29, 2006, to be organized under the Business Corporation Law of the Commonwealth of Pennsylvania, approved December 21, 1988, P.L. 1444, No. 177, as amended. The name of the corporation is CONFEDERATE WOODS VETERINARY HOSPITAL, INC.

David J. Williamson, Esq.  
Scanlon, Lewis & Williamson  
190 Washington Street  
P.O. Box 423  
East Stroudsburg, PA 18301

1/19

PUBLIC NOTICE  
NOTICE OF ORGANIZATION

NOTICE IS HEREBY GIVEN that a Certificate of Organization-Domestic Limited Liability Company has been filed and approved with the Department of State, Harrisburg, Pennsylvania, on December 29, 2006, under the Business Corporation Law of the Commonwealth of Pennsylvania, approved December 21, 1988, P.L. 1444, No. 177, as amended. The name of the corporation is M & L PROPERTIES, L.L.C.

David J. Williamson, Esq.  
Scanlon, Lewis & Williamson  
190 Washington Street  
P.O. Box 423  
East Stroudsburg, PA 18301

1/19

# Adams County Legal Journal

Vol. 48

January 26, 2007

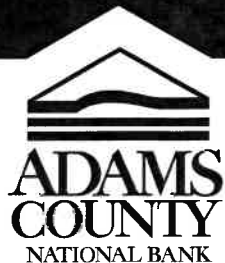
No. 36, pp. 229-237

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COMMONWEALTH VS. SMITH

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## ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-633 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of February, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point two (2) feet West of the centerline of Bittle Road, at corner of land now or formerly of Glenn E. Hilbert; thence by said land now or formerly of Glenn E. Hilbert, North seventy-nine (79) degrees twenty-six (26) minutes ten (10) seconds West, two hundred ninety-three and forty-seven hundredths (293.47) feet through an existing pipe set back twenty-nine and six hundredths (29.06) feet from the place of beginning to an existing pipe; thence by the same South eighty-nine (89) degrees thirty-nine (39) minutes fifty (50) seconds West one hundred thirty and ninety hundredths (130.90) feet to an existing pipe; thence by the same North sixty-six (66) degrees sixteen (16) minutes thirty-five (35) seconds West two hundred thirty-six and four hundredths (236.04) feet to an existing pipe; thence by the same North forty-four (44) degrees zero (00) minutes fifteen (15) seconds East four hundred twenty-nine and fifteen hundredths (429.15) feet to a steel rod on bank on line of land now or formerly of John Hart; thence by said land now or formerly of John Hart and land now or formerly of Dan Edwards, South sixty-seven (67) degrees forty-four (44) minutes five (05) seconds East, three hundred seventy-six and seventeen hundredths (376.17) feet to an existing pipe; thence by land now or formerly of Dan Edwards, South sixty-eight (68) degrees two (02) minutes thirty (30) seconds East one hundred twenty-four and fifty-one hundredths (124.51) feet through an existing pipe set back ten and five tenths (10.5) feet from the magnetic spike in the centerline of Bittle Road, the end of this course; thence in said Bittle Road, South twenty-four (24) degrees fifty-eight (58) minutes fifteen

(15) seconds West two hundred twenty-five and twenty-nine hundredths (225.29) feet to a point two (2) feet West of the centerline of Bittle Road; thence continuing in said Bittle Road, South twenty-six (26) degrees ten (10) minutes twenty (20) seconds West seventy and sixty hundredths (70.60) feet to a point, the place of BEGINNING. CONTAINING 4.70 acres.

The above description was taken from a boundary survey prepared by Adams County Surveyors dated April 26, 2004.

Tax Parcel No: 15-j-18-4B

Being Known As: 55 Bittle Road (Germany Township) Littlestown, PA 17340

SEIZED and taken into execution as the property of **Jeremy D. Favorite & Danielle Renee Kirk** and to be sold by me.

James W. Muller-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 2, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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 be the higher, shall be paid forthwith to the Sheriff.

1/12, 19 & 26

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1131 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 16th day of February, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground situate in Conewago Township, Adams County, Pennsylvania, known on the plat of

general plan of a series of lots, streets, or avenues, of lands of the Hanover Improvement Company, as Lot No. 8 on the South side of Maple Avenue in Block No. 13, adjoining Lot No. 7 on the West, a public alley on the South, Lot No. 9 on the East, and Maple Avenue on the North. Said plan or general plan being recorded in the Adams County Deed Book WW, Page 600.

SUBJECT, however, to the following restrictions: that no buildings of any kind whatsoever shall ever be erected on said lot or piece of ground within fifteen (15) feet of the inside line of said Maple Avenue.

Being Known As: 378 Maple Avenue (Conewago Township) Hanover, PA 17331

Property ID No.: 8-8-87

TITLE TO SAID PREMISES IS VESTED IN Mathew D. Ebaugh by deed from Ronald L. Zartman and Dorothy L. Zartman, husband and wife dated 9/10/04 recorded 9/16/04 in Deed Book 3707 Page 22.

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

James W. Muller-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 9, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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 be the higher, shall be paid forthwith to the Sheriff.

1/12, 19 & 26



## COMMONWEALTH VS. SMITH

1. The Rule requires mandatory disclosure of any results or reports of scientific tests or expert opinions.

2. When deciding whether a prima facie case has been established, the Commonwealth is only required to show sufficient probable cause that the defendant committed the offense, and the evidence should be such that if presented at trial, and accepted as true, the judge would be warranted in allowing the case to go to the jury.

3. Moreover, 75 Pa. C.S.A. § 3802 (relating to DUI) affords an exception to the two-hour rule concerning the admissibility of evidence of blood alcohol concentration. That exception provides that evidence of blood alcohol concentration produced more than two hours after an individual has operated a motor vehicle is sufficient to establish the elements of the driving under the influence statute if the Commonwealth shows good cause explaining why the chemical test could not be performed within two hours and that the individual did not imbibe any alcohol between the time of the arrest and the time the sample was obtained.

4. It is not a court's place to imbue the statute with a meaning other than that dictated by the plain and unambiguous language of the statute.

5. Where a statute is unambiguous and does not produce an absurd result, the letter of the statute may not be disregarded under the pretext of pursuing the spirit of the statute. It is only when a statute is unclear that a court may embark upon the task of ascertaining the intent of the legislature by undertaking statutory construction.

6. The loss of evidence need not preclude expert reports or testimony in every case. Where the opinions derived from the evidence are more subjective or more likely to be inconsistent or contradictory, the need to present the evidence is greater. On the other hand, highly reliable information decreases the need for the production of the actual evidence.

7. It is a fundamental rule of law that a warrant must name or describe with particularity the property to be seized and the person and place to be searched. In addition, the search may not go beyond the scope of the warrant.

8. If there is an unreasonable discrepancy between the items for which there is probable cause and the description in the warrant, the proper remedy is suppression.

9. Although the physician/patient privilege statute is intended to protect the privacy interests of patients, our courts and legislature have determined that this privacy interest must yield to the proper administration of justice.

10. In determining whether a warrant is supported by probable cause, the court may not consider any evidence outside the four corners of the affidavit.

11. Before one may prevail on a suppression issue related to an illegal search, one must be able to show a privacy interest in the area searched.

12. The constitutional legitimacy of an expectation of privacy is not dependent on the subjective intent of the individual asserting the right but on whether the expectation is reasonable in light of all the surrounding circumstances.

13. Pennsylvania law makes it clear that there is no legally cognizable expectation of privacy in the exterior of a vehicle in a public location.

14. The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,  
PENNSYLVANIA. CRIMINAL ACTION NO. CP-01-CR-869-  
2005. COMMONWEALTH OF PENNSYLVANIA VS. CHRISTO-  
PHER BECK SMITH.

Brian R. Sinnett, Esq., Assistant District Attorney, for Commonwealth  
Steve Rice, Esq., for Defendant

George, J., April 28, 2006

OPINION

The Defendant, Christopher Beck Smith (“Smith”), faces a variety of charges, including homicide by vehicle while under the influence of alcohol (75 Pa. C.S. § 3735(a)).<sup>1</sup> The charges result from a fatal vehicle accident that occurred on April 7, 2005, on U.S. Route 30 in Franklin Township, Adams County, Pennsylvania. The record before the Court indicates the following history:<sup>2</sup>

On April 7, 2005, at approximately 11:30 P.M., Andrea Roppolo was on her way home to Chambersburg from her place of employment in Gettysburg. She was traveling westbound on U.S. Route 30. Approximately one half mile east of the intersection of U.S. Route 30 with State Route 234 in Franklin Township, Ms. Roppolo came across a two-car accident wherein both cars were in the westbound lane blocking her passage. She approached one of the vehicles and found the decedent unresponsive and trapped in his vehicle. She approached the other vehicle where she observed Smith seated on the driver’s side behind the wheel. She indicated that she was able to smell alcohol on Smith. During the course of her observations, she notified Adams County Control of the accident. According to Ms. Roppolo, when she

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<sup>1</sup>The Criminal Information identifies the following charges against Smith: homicide by vehicle while under the influence of alcohol as a felony of the second degree (75 Pa.C.S. § 3735(a)); homicide by vehicle as a felony of the third degree (75 Pa.C.S. § 3732); involuntary manslaughter as a misdemeanor of the first degree (18 Pa.C.S. § 2504(a)); driving under the influence of alcohol as an ungraded misdemeanor (75 Pa.C.S. § 3802(a)(1)); driving under the influence of alcohol—highest rate of alcohol as an ungraded misdemeanor (75 Pa.C.S. § 3802(c)) and driving on roadways laned for traffic as a summary offense (75 Pa.C.S. § 3309(1)).

<sup>2</sup>The parties have stipulated that this Court may rely upon the transcript of the preliminary hearing as a factual background for the issues presented.

arrived at the accident scene, there were no vehicles present other than those involved in the accident.

Following Ms. Roppolo's call to County Control, medical personnel were dispatched. Among those responding to the scene was Trooper Snyder of the Pennsylvania State Police. Trooper Snyder arrived at the accident scene at approximately midnight. He observed two severely damaged vehicles, both of which were located in the westbound lane. His investigation of the scene revealed that the vehicle operated by Smith was traveling in the eastbound lane prior to the accident. He also determined that the decedent's vehicle was operating in the westbound lane prior to the accident. He concluded that the Smith vehicle crossed into the opposing lane of travel causing a head-on collision with the decedent's vehicle.

Upon arrival at the scene, Trooper Snyder spoke with Smith. While doing so, he detected a strong odor of alcohol coming from Smith's person and observed that his eyes were bloodshot. The Trooper further noted that Smith's speech was slurred. During their discussion, Smith insisted that at the time of the accident, he was attempting to turn his vehicle into the driveway of his home on old Route 30 in McKnightstown (a location on a different road which is several miles from the place of the accident). Their discussion ended when medical personnel indicated that they needed to transport Smith to the hospital.

Smith was transported to Washington County Hospital in Hagerstown, Maryland. While at the hospital, blood was drawn from Smith, which was subsequently tested for alcohol concentration and revealed a serum blood alcohol concentration of .268. Blood was drawn by Washington County Hospital at approximately 0048 hours on April 8, 2005. At 0340 hours on April 8, 2005, a second draw of Smith's blood was made by the Hospital at the request of the Pennsylvania State Police and subsequently taken to the Pennsylvania State Police Laboratories for forensic testing. This blood sample revealed a whole blood alcohol concentration of .18 percent.

On April 13, 2005, at the request of the Pennsylvania State Police, Maryland State Trooper First Class Michael Kretzer prepared a search warrant. Pursuant to the search warrant, he obtained Smith's medical records as well as a test tube of blood drawn from Smith by Washington County Hospital at 0048 hours on April 8, 2005.

Although the record is unclear as to why the vehicles involved in the accident were taken to a particular location, it is apparent that following the accident, the vehicles were transported by Dick's Towing to their business property located at 35 Belmont Road, Gettysburg, Pennsylvania. On April 12, 2005, Trooper Christopher Pushart of the Pennsylvania State Police obtained a search warrant to search Smith's vehicle as part of the accident investigation. Following effectuation of the search warrant, Pushart prepared an opinion concerning the cause and nature of the accident. Both vehicles were released to their respective owners on April 21, 2005.

Currently before the Court is Smith's comprehensive omnibus pre-trial motion. Initially, his motion seeks habeas corpus relief and dismissal of the driving under the influence of alcohol charges on the basis that the Commonwealth is unable to establish Smith's blood alcohol concentration within two hours of Smith's operation of a motor vehicle as required by the driving under the influence statute. Smith further seeks to suppress all evidence obtained by Trooper Pushart's from Smith's vehicle on the basis that the face of the search warrant is insufficient to support probable cause. Smith next claims that all evidence related to the examination of either Smith's or the decedent's vehicle should be precluded as evidence on due process grounds. In this regard, Smith argues that the Commonwealth failed to preserve the evidence thereby prejudicing Smith's rights. Smith also seeks to suppress the medical records obtained from Washington County Hospital on the basis that the records are privileged and the search warrant is not supported by probable cause sufficient to support a search of Smith's entire medical file. Finally, Smith's omnibus pre-trial motion seeks to limit Trooper Pushart's trial testimony to the opinions set forth in the report provided to Smith's counsel.

For purposes of clarity, I will address each of these issues separately, but not necessarily in the order raised by Smith.

### Motion to Limit Expert's Testimony

In his omnibus pre-trial motion, Smith seeks a pre-trial Order from the Court limiting the Commonwealth's expert testimony to the reports provided to Smith during discovery. Smith apparently seeks a directive from the Court ordering the Commonwealth to comply with its obligation pursuant to Pennsylvania Rule of Criminal Procedure 573 (relating to discovery). That Rule requires mandatory disclosure of any results or reports of scientific tests or expert opinions. Pa.R.Crim.P. 573(b)(1)(e). The Rule also includes a continuing duty to disclose. Pa.R.Crim.P. 573(d). Finally, the Rule provides specific remedies in the event of a violation including the exclusion of testimony and evidence. Pa.R.Crim.P. 573(e). Of course, the trial court is accorded some discretion in fashioning an appropriate remedy. *Commonwealth v. Burke*, 781 A.2d 1136, 1143 (Pa. 2001).

I see no reason to impose directions greater than those set forth in the Rules. The Commonwealth attorneys, as well as defense counsel, are well aware of their obligations as officers of the Court. Therefore, I am unwilling to issue a pre-trial admonition for a breach that has not yet occurred, nor has any definite probability of occurring. Accordingly, no further Order will be entered in response to Smith's request.

### Motion for Writ of Habeas Corpus

Smith's original motion seeking habeas corpus relief defines the issue as being the Commonwealth's inability to prove Smith's actual driving or operation of a motor vehicle in proximity to the time that Smith's blood was drawn. The cornerstone of this argument is based on the premise that the Commonwealth cannot establish the time of the accident and, therefore, cannot establish the time that Smith's vehicle was driven and/or operated. Subsequent to hearing and argument on this matter, Smith raised the argument that the statute governing driving under the influence requires a person's blood to be **tested** within two hours of driving, rather than merely being **drawn** within two hours of driving.<sup>3</sup> The Commonwealth has subsequently voiced objection to Smith making this argument alleging the lack of opportunity to properly address its merits. In light of the disposition below, it is not necessary to address the Commonwealth's objection.

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<sup>3</sup>Smith raised this specific theory for the first time in correspondence to the Court, with a copy to the Commonwealth, following the close of the evidentiary proceeding.

It is well settled that the method for testing a pre-trial finding of a prima facie case is by petition for writ of habeas corpus. *Commonwealth v. Karlson*, 674 A.2d 249, 251 (Pa.Super. 1996). When deciding whether a prima facie case has been established, a Court is required to view the evidence in a light most favorable to the Commonwealth and to consider all reasonable inferences based upon the evidence in support of a guilty verdict. *Commonwealth v. Packard*, 767 A.2d 1068, 1070-71 (Pa.Super. 2001). Proof of guilt beyond a reasonable doubt is not required at this stage. *Commonwealth v. Kowalek*, 647 A.2d 948, 949 (Pa.Super. 1994). Rather, the Commonwealth is only required to show “sufficient probable cause that the defendant committed the offense, and the evidence should be such that if presented at trial, and accepted as true, the judge would be warranted in allowing the case to go to the jury.” *Commonwealth v. Giusto*, 810 A.2d 123, 125 (Pa.Super. 2002), app. denied, 820 A.2d 703 (2003) (quoting *Commonwealth v. Saunders*, 691 A.2d 946, 948 (Pa.Super. 1997)).

The current record reveals that at approximately 11:30 P.M. on April 7, 2005, Ms. Roppolo was traveling westbound along Route 30, a major and well-traveled thoroughfare between Chambersburg and Gettysburg.<sup>4</sup> Upon arrival on the accident scene, Ms. Roppolo was unable to continue in her direction due to the substantial debris on the roadway. Also, both vehicles involved in the accident blocked her route. Significantly, she was the first vehicle to stop at the accident scene. When emergency and law enforcement officials arrived on the scene, Smith was visibly intoxicated as evidenced by his slurred speech, his blood shot eyes and the odor of alcohol emanating from his body. Evidence at the scene indicates that he lost control of his vehicle and crossed through a center turning lane into the opposite lane of travel. Blood was drawn at Washington County Hospital approximately one hour and eighteen minutes after Ms. Roppolo’s discovered the accident scene. Under these circumstances, it is reasonable to infer that, for purposes of establishing a prima facie case, Ms. Roppolo arrived at the accident scene immediately following the accident. Thus, there is prima facie evidence that Smith’s blood sample was drawn within two hours of Smith’s

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<sup>4</sup>A Court may take judicial notice at any stage of the proceeding of a fact not subject to reasonable dispute since it is generally known within the territorial jurisdiction of the Court. See Pennsylvania Rule of Evidence 201.

operation of a motor vehicle. See generally, *Commonwealth v. Mahaney*, 540 A.2d 556 (Pa.Super. 1988).

Moreover, 75 Pa. C.S.A. § 3802 (relating to DUI) affords an exception to the two-hour rule concerning the admissibility of evidence of blood alcohol concentration. That exception provides that evidence of blood alcohol concentration produced more than two hours after an individual has operated a motor vehicle is sufficient to establish the elements of the driving under the influence statute if the Commonwealth shows good cause explaining why the chemical test could not be performed within two hours and that the individual did not imbibe any alcohol between the time of the arrest and the time the sample was obtained. 75 Pa.C.S.A. § 3802(g). Preliminary hearing evidence established that Smith was trapped in his vehicle following the occurrence of the accident. He remained trapped in his vehicle until emergency workers arrived on the scene. The record lacks any information indicating the presence of alcohol containers or other physical evidence of recent consumption of alcohol by Smith while in the vehicle. Subsequent to being examined by emergency workers, Smith was taken to Washington General Hospital and treated for his injuries. He remained under the supervision of medical personnel until the blood sample was drawn. When granting all reasonable inferences to the Commonwealth, there is good cause explaining the delay, if any, in drawing the blood.

Smith's second challenge to the existence of a prima facie case is based on recent Common Pleas decisions in Somerset County and Bedford County. In *Commonwealth v. Fulton*, 549 Criminal 2004 (Somerset County, January 5, 2006) and *Commonwealth v. Stair*, CR-205-05 (Bedford County, August 19, 2005), the Common Pleas Courts held that the critical time, for purposes of the two-hour statutory rule, relates to the time the test was conducted rather than the time the sample was actually drawn. After thoroughly reviewing the applicable statute in light of the Opinions of my esteemed colleagues, I respectfully disagree with their conclusions.

The precise language of the statute at issue reads as follows:

HIGHEST RATE OF ALCOHOL.-- An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the

individual's blood or breath is 0.16% or higher within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.

75 Pa.C.S.A. § 3802 (c).

When interpreting a statute, it is axiomatic that courts give plain meaning to the words therein. See 1 Pa.C.S.A. § 1903; *Commonwealth v. Engle*, 847 A.2d 88, 91 (Pa.Super. 2004). "It is not a court's place to imbue the statute with a meaning other than that dictated by the plain and unambiguous language of the statute." *Engle*, 847 A.2d at 91.

The language in the section at issue does not make reference to either the time of the "sample" or the time of the "test." It is unnecessary to do so since the plain and unambiguous language of the section indicates that the criminal act is having a blood alcohol concentration of 0.16% or greater within two hours of driving. Issues concerning the time of the sample versus the time of the test relate to the quality of the evidence and not the nature of the crime. Thus, the critical inquiry, in order to establish whether criminal behavior has occurred, focuses on the Commonwealth's ability to prove, by whatever means available, that the defendant's blood alcohol concentration was 0.16% or greater within two hours of driving or operating a vehicle. Ultimately, it is an issue of fact whether a sample, taken within two hours, is reliable evidence of the blood alcohol concentration. This issue of fact, however, does not change the elements of the crime as defined nor does it change the plain and unambiguous language of the statute.

Both of the aforementioned Common Pleas Opinions reach a contrary decision based upon the language of 3802(g). That language reads in pertinent part as follows:

g. EXCEPTIONS TO TWO-HOUR RULE.-- Notwithstanding the provisions of subsection (a), (b), (c), (e) or (f), where alcohol or controlled substance concentration in an individual's blood or breath is an element of the offense, evidence of such alcohol or controlled substance concentration more than two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle is sufficient to establish that element of the offense under the following circumstances:



- (1) where the Commonwealth shows good cause explaining why the chemical test could not be performed within two hours; and
- (2) where the Commonwealth establishes that the individual did not imbibe any alcohol or utilize a controlled substance between the time the individual was arrested and the time the sample was obtained.

75 Pa.C.S.A. § 3802 (g). After careful review, I fail to discern how the language of this subsection leads to a different conclusion than the conclusion I reached above. The plain language of this section states that evidence of alcohol “concentration more than two hours after [an] individual has driven, operated or been in actual physical control of the movement of the vehicle is sufficient to establish that element of the offense....” 75 Pa.C.S.A. § 3902 (g). While this section refers to the admissibility of evidence, it does so in the context of broadening the evidence sufficient to establish the primary offense. It does not limit the admissibility of evidence which the Commonwealth might otherwise offer in support of the primary criminal act.

Undoubtedly, 75 Pa.C.S.A. § 3802(g)(1) and (2) were inartfully drafted. It is equally certain that the use of clearer and consistent language between this Subsection and Subsection 3802(c) may be an appropriate consideration for legislative amendment. Nevertheless, where a statute is unambiguous and does not produce an absurd result, the letter of the statute may not be disregarded under the pretext of pursuing the spirit of the statute. *Commonwealth v. Heberling*, 678 A.2d 794, 795 (Pa.Super. 1996). “It is only when a statute is unclear that a court may embark upon the task of ascertaining the intent of the legislature by [undertaking statutory construction].” *Id.* at 795, note 1.

As indicated above, the Commonwealth introduced preliminary hearing evidence that a sample of Smith’s blood was drawn within one hour and eighteen minutes of his operation of a motor vehicle. The Commonwealth further established that the sample produced a blood alcohol concentration of .268%. I find this to be sufficient to establish a prima facie case. At the time of trial, however, the weight of that evidence will be affected by the Commonwealth’s ability to establish that the subsequent test of the sample accurately reflects Smith’s blood alcohol concentration at the time of the draw.

*Continued to next issue (2/2/2007)*

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-840 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 16th day of February, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain piece, parcel or tract of land situate, lying and being in the Borough of Littlestown, Adams County, Pennsylvania, and more particularly bounded, limited and described as follows, to wit:

BEGINNING at a point on the right-of-way line at Stayman Way at corner of Lot No. 73 of the hereinafter referred to Subdivision Plan; thence along the right-of-way line of Stayman Way, the following three courses and distances: 1) South thirty-five (35) degrees eight (08) minutes three (03) seconds East, seventy (70.00) feet to a point; thence 2) South seven (07) degrees fifty-eight (58) minutes thirty-six (36) seconds East, nine and thirteen hundredths (9.13) feet to a point; thence 3) by a curve to the left, having a radius of fifty (50.00) feet, an arc length of twenty-four and eighteen hundredths (24.18) feet, and a long chord bearing and distance of South five (05) degrees nineteen (19) minutes forty-three (43) seconds West, twenty-three and ninety-four hundredths (23.94) feet to a point at corner of Lot No. 77 of the hereinafter referred to subdivision plan; thence continuing along Lot No. 77, South fifty-four (54) degrees fifty-one (51) minutes fifty-seven (57) seconds West, one hundred fifty-four and eighty-one hundredths (154.81) feet to a point along other lands of Weinberg and D & D Partnership; designated as future Phase, II of the Appler Development; thence along said last mentioned lands, North seventy-eight (78) degrees twenty-two (22) minutes thirty-two (32) seconds West, one hundred thirty-two and twenty-five hundredths (132.25) feet to a point at corner of Lot No. 73 aforesaid; thence continuing along Lot No. 73, North fifty-four (54) degrees fifty-one (51) minutes fifty-seven (57) seconds East, two hundred sixty-five and twelve hundredths (265.12) feet to a point on the right-of-way line of Stayman Way, the point and place of BEGINNING.

The improvements thereon being known as No. 49 Stayman Way. Tax Id No. 27-07-200.

BEING the same parcel of ground which by deed dated June 10, 2005 and recorded among the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Book No. 4039, Page 143 was granted and conveyed by

Zacharias John James, joined by Camille N. Clarke-James unto Zacharias John James and Camille N. Clarke-James, the Grantors herein.

Parcel Identification No: 27-07-200

Premises: 49 Stayman Way, Littlestown, PA 17340-1100, Adams County, Pennsylvania

RECORD OWNER

TITLE TO SAID PREMISES IS VESTED IN Jerry W. Goad, Sr. and Jolene M. Goad, as tenants by entireties, by Deed from Zacharias John James and Camille N. Clarke-James, husband and wife, dated 11/23/2005, recorded 03/06/2006, in Deed Book 4333, page 241.

SEIZED and taken into execution as the property of **Jolene M. Goad a/k/a Jolene M. Breen & Jerry W. Goad, Sr.** and to be sold by me.

James W. Muller-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 9, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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 be the higher, shall be paid forthwith to the Sheriff.

1/12, 19 & 26

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1067 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 16th day of February, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in the Borough of New Oxford, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a stake marking the intersection of the Southern side of a 12-foot wide alley with the Eastern side of Commerce Street; thence along the Eastern side of Commerce Street, South 14 degrees 30 minutes East, 84 feet to a point at other lands now or formerly of Robes Development and Construction Co., known as Lot No. 2; thence along said Lot No. 2, North 75 degrees 30 minutes East, 231 feet, more or less, to a

point at lands now or formerly of the John Mauss Estate; thence along said last mentioned lands, North 14 degrees 30 minutes West, 84 feet to a stake on the South side of the aforesaid 12-foot wide alley; thence along the South side of said alley, South 75 degrees 30 minutes West, 231 feet, more or less, to a point, the place of BEGINNING.

Being Lot No. 1 on a plan of lots prepared for Forbes Development and Construction Co. and duly recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 3 at page 36.

TITLE TO SAID PREMISES IS VESTED IN Deed: David L. Gonzalez & Celiflora Garcia, husband and wife, as tenants by the entireties David L. Gonzalez & Celiflora Garcia, husband and wife Date: 02/21/2002 Recorded: 03/01/2002 Book: 2576 Page: 297

Premises being: 6 Commerce Street, New Oxford, PA 17350

Tax Parcel No. 34-005-0192-000

SEIZED and taken into execution as the property of **David L. Gonzalez & Celiflora Garcia** and to be sold by me.

James W. Muller-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 9, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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 be the higher, shall be paid forthwith to the Sheriff.

1/12, 19 & 26

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-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, the 23rd day of February, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that the following described tract of land situate, lying, and being in Berwick Township, Adams County, Pennsylvania, bounded and limited as follows, to wit:

BEGINNING for a point in a public driveway at other lands of the within Grantors; thence along said last mentioned lands South fifty-four (54) degrees West, eight hundred seventy (870) feet to a point at lands now or formerly of Verna B. Lillich; thence along said last mentioned lands South forty-eight (48) degrees fifteen (15) minutes East, one hundred ninety-one (191) feet to a poplar tree and lands formerly of Roy Laughman; thence along said last mentioned lands North fifty-four (54) degrees, fifteen (15) minutes East, eight hundred forty-eight (848) feet to an iron pin on the Southern side of the public driveway first above mentioned; thence North fifty-two (52) degrees, fifteen (15) minutes West, one hundred ninety-one (191) feet to an iron pin on the Northern part of said public driveway at the point and place of BEGINNING. CONTAINING three (3) acres 116.47 square perches as per survey of Curvin A. Wentz, Registered Surveyor, bearing date of March 8, 1966.

IT BEING the same tract of land which Steven E. Hardy, Sr. and Ruth R. Hardy, his wife, by their deed dated the October 11, 2001, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 2440 at Page 220, granted and conveyed unto Steven E. Hardy, Sr., grantor herein.

## RECORD OWNER

TITLE TO SAID PREMISES IS VESTED IN Catherine H. Lefevre, a single person, by Deed from Steven E. Hardy, Sr., a single person, dated 12/01/2004, recorded 12/09/2004, in Deed Book 3799, page 141.

Premises being: 950-B Green Springs Road, Hanover, PA 17331

Tax Parcel No. 04-L11-0121A-000

SEIZED and taken into execution as the property of **Catherine H. Lefevre a/k/a Catherine Lefevre** and to be sold by me.

James W. Muller-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 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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 be the higher, shall be paid forthwith to the Sheriff.

1/19, 26 & 2/2

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1190 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of February, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot or piece of ground situate in Conewago Township, County of Adams, Commonwealth of Pennsylvania, more particularly bounded and described as follows:

BEGINNING for a corner at a post of lands now or formerly of Mrs. Amanda Sterner and Jefferson Avenue; thence with said Jefferson Avenue South 17 degrees, 15 minutes West 60 feet to stake at other lands now or formerly of Mary C. Diller, Et Vir; thence with said lands North 70 degrees 55 minutes West 130 feet to a stake at other lands now or formerly of said Mary C. Diller, Et Vir, thence with said lands North 17 degrees 15 minutes East 60 feet to a stake at lands now or formerly of Mrs. Amanda Sterner, aforesaid; thence with said lands South 70 degrees 55 minutes East 130 feet to a post at Jefferson Avenue, aforementioned, and the place of BEGINNING.

BEING the same premises which Franklin Credit Management Corporation, by its deed dated January 7, 2005, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 3842, Page 99, granted and conveyed unto Mark H. Miller and Anna C. Miller, husband and wife, the grantors herein.

Being Known As: 230 Jefferson Street, (Conewago Township), Hanover, PA 17331

Property ID No.: 9-38

TITLE TO SAID PREMISES IS VESTED IN Thomas C. Shorb, Jr., sole owner by deed from Mark H. Miller and Anna C. Miller, husband and wife dated 7/15/05

recorded 7/20/05 in Deed Book 4049 Page 229.

SEIZED and taken into execution as the property of **Thomas C. Shorb, Jr.** and to be sold by me.

James W. Muller-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 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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 be the higher, shall be paid forthwith to the Sheriff.

1/19, 26 & 2/2

## 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 December 18, 2006.

The name of the corporation is SHAF-FER DESIGN ASSOCIATES P.C.

The corporation has been incorporated under the Pennsylvania Business Corporation Law of 1988.

Robert E. Campbell  
Campbell & White, P.C.  
112 Baltimore Street  
Gettysburg, PA 17325  
Attorneys

1/26

## INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation for PA BASEMENT WATERPROOFING, INC., were filed with the Department of State of the Commonwealth of Pennsylvania on November 15, 2006, under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444.

Guthrie, Nonemaker, Yingst & Hart  
Solicitor

1/26

**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 A. LEREW a/k/a MARGARET ANNA LEREW, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executors: Debra A. King, Jacquelyn L. Messinger & John C. Lerew, c/o Thomas M. Shultz, Esq., Shultz Law Firm, LLC, 215 Baltimore Street, Hanover, PA 17331

Attorney: Thomas M. Shultz, Esq., Shultz Law Firm, LLC, 215 Baltimore Street, Hanover, PA 17331

**ESTATE OF BERNADETTE M. STULTZ, DEC'D**

Late of Liberty Township, Adams County, Pennsylvania

Administrators: Garry L. Stultz, 30 E. Hanover Street, Gettysburg, PA 17325; Gloria J. Rinehart, 5 Johns Avenue, Gettysburg, PA 17325

Attorney: Robert E. Campbell, Campbell & White, P.C., 112 Baltimore Street, Gettysburg, PA 17325

**SECOND PUBLICATION**

**ESTATE OF MILDRED E. HAYBERGER, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Ronald H. Collins, 323 Commerce Street, Waynesboro, PA 17268

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF MILDRED W. LEADER a/k/a MILDRED WALTER LEADER, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Administrator: Robert C. Boehner, 369 E. York Street, Gettysburg, PA 17325

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

**THIRD PUBLICATION**

**ESTATE OF ALAN E. CRAWFORD, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Patricia M. Brown, 17 Hillview Court, Fairfield, PA 17320

Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

**ESTATE OF ESTELLA ESHLEMAN KIMBLE a/k/a ESTELLA E. KIMBLE, DEC'D**

Late of the Borough of New Oxford, Adams County, Pennsylvania

Executor: Barry Kimble, 21323 Golf Estates Drive, Laytonsville, MD 20882

Attorney: Puhl, Eastman & Thrasher, Attorneys at Law, 220 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF DR. FRED H. LEWIS, DEC'D**

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Betty Lewis St. Cyr, 15993 Cove Lane, Montclair, VA 22025-1411

Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

**ESTATE OF EUGENE R. SNEERINGER a/k/a E. RICHARD SNEERINGER, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Marilyn S. Smith, 8110 Valdemorillo Drive, Corpus Christi, TX 78414

Attorney: Thomas E. Miller, Esq., Miller & Shultis, P.C., 249 York Street, Hanover, PA 17331

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1294 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of February, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot of ground situate in Oxford Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point in the right-of-way Legislative Route A-6810 and Hanover Street (referred to on the draft of survey; thence along the right-of-way of such Legislative Route 01004 and Hanover Road) at corner of Lot No. 12 on such draft of survey; thence along the right-of-way of such Legislative Route North 36 degrees 00 minutes 00 seconds West 84.39 feet to a point at corner of Lot No. 10; thence along Lot No. 10 North 54 degrees 00 minutes 00 seconds East, 110.00 feet to appoint on the rear line of Lot No. 63; thence along portion of Lot Nos. 63 and 645, South 36 degrees 00 minutes 00 seconds East, 84.39 feet to a point at corner of Lot No. 12; thence along Lot No. 12 South 54 degrees 00 minutes 00 seconds West, 110.00 feet to a point, the place of BEGINNING. CONTAINING 9,282.900 square feet or 0.213 acres.

The above description was taken from a draft of survey of Oxford Estates prepared by George M. Wildasin, P.E. dated December 4, 1979, subdivided by William E. Sacra, Jr., on the same date, a plat of which is recorded in Adams County Plat Book 34 at page 58, the above lot being designated at Lot No. 11 thereon.

Tax parcel no: 8-86

Premises Being: 384 Hanover Street, New Oxford, PA 17350

SEIZED and taken into execution as the property of **Michael B. Sutherland & Cynthia A. Sutherland** and to be sold by me.

James W. Muller-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 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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 be the higher, shall be paid forthwith to the Sheriff.

1/19, 26 & 2/2