

Adams County Legal Journal

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IN THIS ISSUE

BEACH VS. WELLS

**Strong.
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Branching Into The Future.
Our Commitment Is You.**



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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. 02-S-821 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot of ground being the western half of a town lot situate in the Borough of Gettysburg, Adams County, Pennsylvania, more particularly bounded and described as follows, to-wit:

BEGINNING at a point in West Middle Street at corner of lot sometimes designated as Lot #15 being the eastern part of said town lot now or formerly owned by Jacob McDonnell, thence by said Lot #15, South one hundred eighty (180) feet to a twelve (12) foot alley; thence along said alley, West thirty (30) feet to a part of town originally laid out by James Gettys; thence by the same, North one hundred eighty (180) feet to West Middle Street; thence along West Middle Street thirty (30) feet to the point, the place of BEGINNING.

BEING known as 144 West Middle Street, Gettysburg, PA 17325

Property ID No.: 10-91

TITLE TO SAID PREMISES IS VESTED IN James G. Edge, a single man, by Deed from Dorothy J. O'Dell, Executrix of the Last Will and Testament of Mary E. Little, deceased, dated 05/26/95, recorded 05/30/95, in Deed Book 1035, Page 184.

SEIZED and taken into execution as the property of James G. Edge and to be sold by me.

Raymond W. Newman-Sheriff Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 15, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

As soon as the property is declared sold to the highest bidder 20% of the

purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

6/20, 27 & 7/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-1326 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract or parcel of land and premises situate, lying and being in the Township of Conewago, County of Adams and Commonwealth of Pennsylvania, more particularly described as follows:

BEGINNING at a point in the Legislative Route 01005 at lands now or formerly of Peter Sheppard; thence along said last mentioned lands, South seventy-eight (78) degrees twenty-one (21) minutes West, two hundred seven (207) feet to a stone; thence along said last mentioned lands, South forty-four (44) degrees fifty-eight (58) minutes East, sixty-two (62) feet to a point at lands now or formerly of Phyllis Snyder; thence along said last mentioned lands, South forty-four (44) degrees fifty-eight (58) minutes East, sixty-two (62) feet to a point at lands now or formerly of Phyllis Snyder; thence along said last mentioned lands, South seventy-three (73) degrees thirty (30) minutes East, one hundred twenty-six and seventy-five one-hundredths (126.75) feet to a point in the centerline of Legislative Route 01005; thence along and with the centerline of Legislative Route 01005, North twelve (12) degrees East, one hundred twenty-six and sixty-seven one-hundredths (126.67) feet to the point and place of BEGINNING. Known as 251 Narrow Drive, Hanover, PA 17331.

BEING the same premises which Donald W. Teal and Debra Ann Teal by Deed dated the 24th day of May, 1997, and recorded at Adams County in the Office of the Recorder of Deeds, in and for the County of Adams, on the 4th day of June, 1997, in Record Book 1383, Page 253, granted and conveyed unto Jo Zartman.

Tax Map: K16, Parcel: 11

Being known as: 251 Narrow Drive, Hanover, PA 17331

SEIZED and taken into execution as the property of Jo Zartman and to be sold by me.

Raymond W. Newman-Sheriff Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 15, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/20, 27 & 7/3

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on or about May 6, 2003 for the incorporation of LEARNX, INC. under the Pennsylvania Business Corporation Law of 1988. The corporation shall engage in the business of corporate education and training, together with any legal function of a corporation under PA law. The initial registered office of the corporation is 775 Sunset Avenue, Gettysburg, Pennsylvania 17325.

Kathleen M. Kotula, Esq. Hartman & Yannetti Solicitors

7/3

BEACH VS. WELLS

1. When any claim is based upon an agreement, the pleading is required to state specifically if the agreement is oral or written and, if written, the pleader is required to attach a copy of the agreement to the pleading.

2. Pennsylvania law is clear that a plaintiff must join all indispensable parties as parties in a civil action. This principle is based upon the need to protect the due process rights of absent parties, as well as upon the principle that a judgment should finally and completely determine the right which all persons have in the subject matter which is decided. In determining on whether a party is indispensable, the basic inquiry concerns whether justice can be done in the absence of such a party in light of the nature of the claim and the relief sought in the action.

In the Court of Common Pleas of Adams County, Pennsylvania,
Civil, No. 02-S-845, CARL L. BEACH VS. JOE WELLS.

John M. Crabbs, Esq., for Plaintiff

Judith K. Morris, Esq., for Defendant

George, J., October 31, 2002

OPINION

This matter was commenced on September 9, 2002, when the Plaintiff, Carl L. Beach, hereinafter referred to as "Beach", filed a Complaint alleging breach of contract against the Defendant, Joe Wells, hereinafter referred to as "Wells". Beach alleges that the parties entered into an agreement on March 6, 2002, wherein he would design, layout and line-stripe a parking lot for Wells. In support of the allegations in his Complaint, Beach presents an exhibit that appears to be a contract between a company known as B & E Parking Space Control and a second entity known as J & W Paving. Notably, neither party signed the contract. Beach goes on to allege that he completely and fully performed his obligations, however, Wells has defaulted in making payment under the contract. This matter is before the Court on Wells' Preliminary Objections which include a Motion to Strike for Failure of a Pleading to Conform to Law; a Motion to Strike for Non-Joinder of a Necessary Party; and a

Demurrer to Beach's Complaint.¹ Because I find that Beach has failed to comply with PA. R. CIV. P. 1019(i), consideration of the remaining Preliminary Objections is not necessary.

The Pennsylvania Rules of Civil Procedure require that, when any claim is based upon an agreement, the pleading is required to state specifically if the agreement is oral or written and, if written, the pleader is required to attach a copy of the agreement to the pleading. PA. R. CIV. P. 1019(h); PA. R. CIV. P. 1019(i). This is done to allow the defendant the opportunity to have full and specific information concerning the contract's details, as well as details of the alleged breach thereof and the damages claimed. *See generally Chodoff v. Michelin Tire Co.*, 155 A. 437 (Pa. 1931).

Beach's Complaint is clearly insufficient in this regard. Not only does he fail to indicate whether the contract is oral or written, he attaches a copy of a written agreement which is unsigned and contains party designations other than those found in this litigation. Under these circumstances, Beach cannot be found to have complied with the Pennsylvania Rules of Civil Procedure and, therefore, his Complaint will be stricken. He will, however, be granted twenty (20) days to file an Amended Complaint.

Although resolution of this issue makes it unnecessary for the Court to consider Wells' Preliminary Objection for failure to join an indispensable party, brief comment will provide guidance to the parties in future pleadings.

Pennsylvania law is clear that a plaintiff must join all indispensable parties as parties in a civil action. *Columbia Gas Transmission Corp. v. Diamond Fuel Co.*, 346 A.2d 788, 789 (Pa. 1975). This

¹ In response, Beach has filed Preliminary Objections to the Preliminary Objections of Wells. Beach argues that Wells' Preliminary Objections fail to conform to law or rule of Court. Specifically, Beach alleges that Wells' Preliminary Objections assert facts which do not appear of record nor are the Preliminary Objections verified as required by PA. R. CIV. P. 1024. After a review of the pleadings, it appears that Wells' Preliminary Objections do take some liberty with the record by alleging additional facts not contained in the Complaint. However, although PA. R. CIV. P. 1024 requires a pleading containing an averment of fact to be verified, resolution of Wells' Preliminary Objections is made solely on the basis of the allegations, or lack of allegations, contained in Beach's Complaint. Thus, lack of verification of the additional facts in Wells' Preliminary Objections is not critical to resolution of the issues and, therefore, Beach's Preliminary Objection to Wells' Preliminary Objections is dismissed.

principle is based upon the need to protect the due process rights of absent parties, *Mechanicsburg Area Sch. Dist. v. Kline*, 431 A.2d 953, 956 (Pa. 1981), as well as upon the principle that a judgment should finally and completely determine the right which all persons have in the subject matter which is decided. *See generally Fiore v. Oakwood Plaza Shopping Ctr., Inc.*, 585 A.2d 1012, 1020 (Pa. Super. Ct. 1991). In determining on whether a party is indispensable, the basic inquiry concerns whether justice can be done in the absence of such a party in light of the nature of the claim and the relief sought in the action. *CRY, Inc. v. Mill Serv., Inc.*, 640 A.2d 372, 375-76 (Pa. 1994).

Beach's current complaint, despite containing an exhibit to the contrary, alleges an agreement between Wells and himself. If this is factually correct, there is no need that other entities be joined as defendants since none would exist. On the other hand, if the factual background reveals an agreement with an entity other than Wells, Beach's failure to join that entity may result in his cause of action ultimately failing.

For the foregoing reasons, the attached Order is entered.

ORDER OF COURT

AND NOW, this 31st day of October, 2002, Plaintiff's Preliminary Objections to Defendant's Preliminary Objections are dismissed. Defendant's Preliminary Objection for Failure to Conform to Law or Rule of Court is granted and Plaintiff's Complaint is stricken. The Plaintiff shall have twenty (20) days to file an Amended Complaint pursuant to Pennsylvania Rules of Civil Procedure.

ORDER OF COURT

AND NOW, this 31st day of October, 2002, it appearing that a brief had been filed with the Prothonotary's Office which had not been forwarded to the Court nor contained in the file presented to the Court, it is, therefore, directed that the Order of October 22, 2002, is vacated.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-759 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of ground situate on the West side of the Bonneauville-Two Taverns State Highway in the village of Bonneauville (formerly Mt. Pleasant Township), Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin in the center of the State Highway aforesaid at land now or formerly of Harry Smith; thence through a stake on the West side of said State Highway by land now or formerly of Harry Smith, North 75-3/4 degrees West, 214.7 feet through a maple to a stake at land now or formerly of Carroll E. Storm; thence by the same, North 8 degrees West, 82 feet to an iron pin at land now or formerly of James Grotz; thence by the same South 87-1/4 degrees East, 200 feet through a post on the West side of the State Highway aforesaid to an iron pin in the center of said State Highway; thence by the center of said State Highway, South 9 degrees East, 126.3 feet to an iron pin, the place of BEGINNING. CONTAINING 74.9 perches.

IT BEING the same which was surveyed July 27, 1946 by Leroy H. Winebrenner, registered surveyor, as the property of Carroll E. Storm.

BEING the same premises which Mary E. Staub, by Deed dated 12/11/97 and recorded 12/15/97 in the Recorder's Office in and for Adams, Pennsylvania in Deed Book Volume 1489, Page 303, granted and conveyed unto Tanya Gillis a/k/a Tanya Shipley, the Mortgagor herein.

Tax Parcel ID 5-62

Being known as: 20 Maple Street, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **Tanya Gillis a/k/a Tanya Shipley** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 15, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof, Purchaser must settle for property on or before filing date.

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

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

6/20, 27 & 7/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-411 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in the Borough of Bonneauville, Adams County, Pennsylvania, being Lot No. 5 of Springfield Estates, bounded and described as follows:

BEGINNING at an iron pin on the southerly edge of Summer Drive at Lot No. 4; thence by said lot South 33 degrees 36 minutes 10 seconds West, 179.63 feet to an iron pin at lands now or formerly of Guy Francis Gebhart; thence by said lands North 56 degrees 20 minutes 46 seconds West, 115 feet to an iron pin at Lot No. 6; thence by said lot North 33 degrees 36 minutes 10 seconds East, 179.53 feet to iron pin on the southerly edge of Summer Drive; thence along the southerly edge of said Summer Drive South 56 degrees 23 minutes 50 seconds East, 115 feet to the place of BEGINNING. CONTAINING 20,652 square feet.

Parcel No. 6-8-76

BEING PREMISES: 16 Summer Drive, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **Kathy L. Eckard** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 22, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/27, 7/3 & 11

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-317 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate, lying and being in the Borough of Carroll Valley, formerly Liberty Township, Adams County, Pennsylvania, being Lot #128 in Section A, bounded and described as follows:

BEGINNING at a point in the center of High Trail, formerly known as High Ridge Trail, at Lot #127; thence by said lot, North 62 degrees, 13 minutes West, 200 feet to a point; thence North 27 degrees, 47 minutes East, 90 feet to other lands, now or formerly of Charnita, Inc.; thence by said lands, South 62 degrees, 13 minutes East, 200 feet to a point in the center of said High Trail, formerly known as High Ridge Trail; thence in said High Trail; formerly known as High Ridge Trail, South 27 degrees, 47 minutes West, 90 feet to the place of BEGINNING. The above description was taken from a plan of lots labeled "Section A., Charnita" and dated March 10, 1965, prepared by Gordon L. Brown, R.S., recorded in Adams County Miscellaneous docket 3, page 733.

Map #13, Parcel #16

SEIZED and taken into execution as the property of **Michael K. Burke & The United States of America** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 15, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/20, 27 & 7/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-442 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THE FOLLOWING described real estate lying and being situate in the Borough of Littlestown, Adams County, Pennsylvania, bounded and limited as follows:

BEGINNING at a point along a private street known as Apple Grove Lane at the corner of Lot No. 434 on the plan of lots hereinafter referred to; thence along Lot No. 434, South 61 degrees 18 minutes 33 seconds West, 95.00 feet to a point along Appler-Phase II-Section A; thence along Appler-Phase II-Section A, North 28 degrees 41 minutes 27 seconds West, 40.00 feet to a point; thence along the same, North 61 degrees 18 minutes 33 seconds East, 95.00 feet to a point at the edge of the private street at a corner of Lot No. 436; thence along said private street, South 28 degrees 41 minutes 27 seconds East, 40.00 feet to a point at a corner of Lot No. 434, the place of BEGINNING.

CONTAINING 3,800 square feet.

BEING Lot No. 435 on a plan of lots for Appler prepared by Group Hanover, Inc., dated January 21, 1999, which together with all necessary municipal approvals, is recorded in Adams County Plan Book 77, Page 94, through 94-C.

TITLE TO SAID PREMISES IS VESTED IN Anthony W. Myers and Linda Thompson by Deed from Appler Properties, LLC, a Maryland Limited Liability Company dated 5/31/2001 and recorded 7/16/2001 in Record Book 2343, Page 319.

Premises being: 141 Apple Grove Lane, Littlestown, PA 17340

Tax Parcel No. 004-0148-000

SEIZED and taken into execution as the property of **Anthony W. Myers & Linda Thompson** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 22, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/27, 7/3 & 11

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 2002-TL-568 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land with the improvements thereon erected situate in Reading Township, Adams County, Pennsylvania, being more particularly bounded and described as follows:

BEGINNING for a point at Antler Lane and Lot No. 48; thence along Lot No. 48, South 48 degrees 29 minutes 22 seconds West, 156.42 feet to a point at the dedicated right of way line of Pennsylvania Route 94; thence along the said right of way line, North 21 degrees 50 minutes 25 seconds West, 91.39 feet to a point at Lot No. 50; thence along Lot No. 50, North 68 degrees 09 minutes 35 seconds East, 140.04 feet to a point at Antler Lane; thence along Antler Lane, by a curve to the left, whose radius is 125.00 feet and whose chord bearing is South 32 degrees 26 minutes 24 seconds East, 39.41 feet for an arc distance of 39.58 feet to a point and place of BEGINNING. CONTAINING 9,402 square feet.

The above description was taken from a plan of lots entitled Phase III, Deer Park Estates, recorded in Plat Book 52 at page 55, designating the above as Lot No. 49.

SUBJECT TO restrictions contained in Miscellaneous Book 42 at page 708. UNDER AND SUBJECT TO such other conditions and restrictions as now appear on record.

IT BEING the same premises which Larry E. Bankert, Jr., an adult single man, by his Deed dated November 20, 2001, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 2469, Page 204, granted and conveyed unto Ginger M. Moore, an adult single woman.

SEIZED and taken into execution as the property of **Ginger M. Moore** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 22, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/27, 7/3 & 11

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 Tuesday, July 8, 2003, at 9:00 o'clock a.m.

BECKER—Orphans' Court Action Number OC-62-03. The First and Final Account of Shirley W. Staub and Linda Wallach Miller, Personal Representatives of the Estate of Nioma M. Becker, deceased, late of the Borough of McSherrystown, Adams County, Pennsylvania.

RIGEAL—Orphans' Court Action Number OC-65-03. The First and Final Account of Dorothy M. (Shindledecker) Barger a/k/a Dorothy M. Harris, Executrix of the Estate of Betty J. Riggall, deceased, late of Straban Township, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

6/27 & 7/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-286 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground situate, lying and being in the Borough of New Oxford, Adams County, Pennsylvania, more particularly bounded and described as follows, to wit:

BEGINNING for a point on the Eastern side of Kohler's Mill Road and other lands of which this was formerly a part; thence along Kohler's Mill Road, North six (06) degrees thirty-eight (38) minutes, two (02) seconds West, one hundred fifteen and forty-four hundredths (115.44) feet to a steel pin at other lands of which this was formerly a part; thence continuing along said lands, North eighty-four (84) degrees ten (10) minutes forty-four (44) seconds East, ninety-two and ninety-four hundredths (92.94) feet to a steel pin at other lands of which this was formerly a part; thence continuing along the same, South five (05) degrees fifty-one (51) minutes forty (40) seconds East, one hundred twenty and sixty-seven hundredths (120.67) feet to a steel pin at other lands of which this was formerly a part; thence continuing along the same, South eighty-seven (87) degrees twenty-nine (29) minutes zero (00) seconds West, ninety-one and fifty-three hundredths (91.53) feet to a point on the Eastern side of Kohler's Mill Road the point and place of the BEGINNING.

IT BEING the same tract of land which Ronald L. Harris, Jr. and Sandra M. McClymonds, husband and wife, by their deed dated January 29, 1999, and recorded in the Office of the Recorder of Deeds of Adams County, in Record Book 1759 at page 297, on February 5, 1999, and sold and conveyed unto Robert W. Feeser, Grantor herein.

SEIZED and taken into execution as the property of **Robert W. Feeser** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 22, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/3, 11 & 18

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-479 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 5th day of September, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THOSE TWO CERTAIN lots of land situated, lying and being in Franklin Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

LOT NO. 1:

BEGINNING at a point in the center of State Highway leading from Cashtown to Orttanna with an iron pin set back along the line; thence in the center of said Highway South 17-1/2 degrees West 60 feet to a point in the center of aforesaid Highway with an iron pin set back along the line; thence by lands now or formerly of Jacob D. McDannell North 72-1/2 degrees West 165 feet to an iron pin; thence by land of same North 17-1/2 degrees East 60 feet to an iron pin; thence by land now or formerly of John Fritz South 72-1/2 degrees East 165 feet to a point in the center of State Highway with an iron pin set back along the line the place of BEGINNING.

CONTAINING 36 perches and 99 square feet

LOT NO. 2:

BEGINNING at a point in the center of the State Highway leading from Cashtown to Orttanna; thence in the center of said State Highway and land now or formerly of John, Clarence and George Bucher South 17-1/2 degrees West 60 feet to a point in the center of said State Highway; thence by land now or formerly of Jacob D. McDannell North 72-1/2 degrees West 165 feet to an iron pin; thence by other land now or formerly of Jacob D. McDannell North 72-1/2 degrees East 60 feet to an iron pin; thence by other land now or formerly of Jacob D. McDannell South 72-1/2 degrees East 165 feet to a point in the center of the aforesaid State Highway the place of BEGINNING.

TITLE TO SAID PREMISES IS VESTED IN Kenneth R. Kauffman by Deed from Brian D. Beamer and Kelly J. Beamer, his wife, dated 4/5/2001 and recorded 4/6/2001 in Record Book 2251 Page 1.

Premises being: 165 Orttanna Road, Orttanna, PA 17353

Tax Parcel No. C10-205

SEIZED and taken into execution as the property of **Kenneth R. Kauffman a/k/a Kenneth Kauffman** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 29, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/3, 11 & 18

INCORPORATION NOTICE

NOTICE is hereby given that Articles of Incorporation for REAL ESTATE DIVERSIFIED, INC., were filed with the Department of State of the Commonwealth of Pennsylvania on May 19, 2003, 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

7/3

NOTICE

Upper Adams School District

Notice of Intended Referendum on Act 24 of 2001, Occupation Assessment Tax Elimination, and Earned Income and Net Profits Tax Rate Increase

NOTICE is given that the Board of School Directors of the Upper Adams School District ("the School District") intends to adopt a resolution to place a referendum on the November 4, 2003, general election ballot. The referendum will relate to elimination of the occupation assessment tax and increase of the rate of the earned income tax collected by the School District. This notice is given pursuant to the Optional Occupation Tax Elimination Act of June 22, 2001, Act 24 of 2001, as amended (the "Act") and the Local Tax Enabling Act of December 31, 1965, P.L. 1257, as amended (the "Enabling Act").

The Act permits the School District to eliminate the occupation assessment tax and replace the occupation assessment tax revenues by increasing the rate of the earned income tax collected by the School District. This action may be taken if the voters approve the action by referendum. The School District estimates that replacing the occupation assessment tax revenues will require increasing the rate of the earned income tax collected by the School District by 0.6%, from the current 0.5%, to the new School District tax rate of 1.1%. Adding the tax collected by the School District to the 0.5% collected by the municipality in which the taxpayer resides, the total earned income and net profits tax rate paid by the School District residents would increase from the current 1.0% to the new total tax rate of 1.6%.

Pursuant to the Act, the School District intends to adopt a resolution directing a referendum on the November 4, 2003, general election ballot. The proposed resolution to be considered by the Board of School Directors provides that the referendum question to be placed on the ballot shall be in substantially the following form, with such additions or changes as may be determined by the Board of School Directors or election officials prior to the election:

Do you favor eliminating the Upper Adams School District occupation assessment tax by increasing the maximum allowable rate of the earned income tax from 1.0% to 1.6%?

The proposed resolution will be acted upon at a meeting of the Board of School Directors of the School District to be held on July 22, 2003, at 7:00 p.m., at the School District's Administration Building Boardroom, located at 161 North Main Street, Biglerville, Pennsylvania. The

Board of School Directors held a public hearing regarding the elimination of the occupation assessment tax and increasing the rate of the earned income tax on April 22, 2003.

If a majority of the electors voting on the referendum question on November 4, 2003 vote "yes", the Board of School Directors thereafter will adopt a new Earned Income Tax Resolution eliminating the occupation assessment tax and increasing the earned income and net profits tax rate collected by the School District to 1.1% effective July 1, 2004.

The increase in earned income and net profits tax is needed to produce revenue for general School District purposes and replace the revenues lost from the elimination of the Occupation Assessment Tax. The estimated revenue to be lost by the School District from the elimination of the Occupation Assessment Tax for 2004-2005 is \$962,020.00. The estimated revenue to be gained from the increase in the earned income and net profits tax for the 2004-2005 fiscal year is \$787,863.00.

If you have any questions regarding Act 24 of 2001 or the resolution referred to in this legal advertisement please contact the Upper Adams School District Business Office at 161 North Main Street, Biglerville, PA 17307, (717) 677-7191, Ext. 2704, during normal business hours.

Michael Lawrence
Board Secretary

7/3, 11 & 18

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-910 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain property situated in the Township of Franklin, County of Adams, Commonwealth of Pennsylvania.

BEGINNING at an iron pin on the West side of the mountain road; thence along the West side of said mountain road, due South 81 feet to an iron pin in the West side of said road; thence along lands of the South Mountain Development Corporation, due West 120 feet to an iron pin; thence along same, North 2 degrees 30 minutes West, 110 feet to an iron pin; thence along same, North 86 degrees East, 60 feet to an iron pin; thence along same, South 64 degrees East, 78 feet to an iron pin in the West side of the mountain road, the place of BEGINNING.

CONTAINING 45-1/2 perches as shown by draft of John H. Atherton, C.S., dated June 25, 1958, and recorded in Adams County Deed Book Volume 229, Page 292.

BEING the same real estate which Charles J. Edwards of 858 Hillcrest Avenue, Chambersburg, Franklin County, Pennsylvania, Grantor, by deed dated the 1st day of November, 1984, and recorded in the Deed Records of Adams County, Pennsylvania, Deed Book Volume 389, Page 1029, granted and conveyed to Edward E. Rotz and Carole J. Rotz, of 7471 Browns Mill Road, Chambersburg, Franklin County, Pennsylvania, Grantees.

TOGETHER with the right in the Grantees, their heirs and assigns, to use the aforesaid mountain road for ingress, egress and regress to and from the above described real estate, in common with John Rea Boggs and wife and Hammett B. Rea and wife, and all other having a similar right to use said road as specified in the hereinbefore recited deed.

Premises known as: 44 Boggs Road, Fayetteville, PA 17222

SEIZED and taken into execution as the property of **Edward E. Rotz & Carole J. Rotz** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 22, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/3, 11 & 18

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 LEROY E. FLICKINGER, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Personal Representative: Verna B. Reedy, 6737 Congressional Terrace, Fayetteville, PA 17222

Attorney: Wendy Weikal-Beauchat, 63 West High Street, Gettysburg, PA 17325

ESTATE OF MARTHA G. ORNER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: PNC Bank, N.A., P.O. Box 8874, Camp Hill, PA 17001-9952

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

SECOND PUBLICATION**ESTATE OF MARGARET A. CHAPMAN, DEC'D**

Late of Freedom Township, Adams County, Pennsylvania

Executrix: Betty A. Leatherman, 61 Chapman Road, Fairfield, PA 17320; Dorothy Mae Wagerman, 260 Middle Creek Road, Fairfield, PA 17320

Attorney: Alan K. Patrono, Esq., 30 West Middle Street, Gettysburg, PA 17325

ESTATE OF HELEN MARGARET NICHOLSON, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325

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

ESTATE OF MARY S. REBERT, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Charlotte A. Shultz, c/o 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 VIRGINIA WHIPPLE RUPP, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Richard James Whipple, 1719 Middle Road, Glenshaw, PA 15116

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

ESTATE OF CARL C. SIMPSON, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Wilda Simpson Keefer, 2000 Cherokee Road, Waynesboro, VA 22980; Edward C. Simpson, 14 East Hanover Street, Biglerville, PA 17307

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF FRANCIS WORLEY, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Co-Executors: Francis Worley, Jr. & Daniel T. Worley, c/o Worley & Worley LLP, 225 Latimore Valley Road, York Springs, PA 17372

Attorney: Daniel D. Worley, Esq., 225 Latimore Valley Road, York Springs, PA 17372

THIRD PUBLICATION**ESTATE OF CAROLYN M. GURRY, DEC'D**

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Administrator c.t.a.: James M. Thomas, 2345 Fairchild Lane, West Chicago, IL 60185

Attorney: Ronald J. Hagarman, Esq., 110 Baltimore St., Gettysburg, PA 17325

ESTATE OF DORIS G. KRETSCHMER a/k/a DORIS GAYNELL KRETSCHMER, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Administrator c.t.a.: Adam R. Schellhase
Attorney: Adam R. Schellhase, Esq., Law Offices of Adam R. Schellhase, LLC, 785 Fifth Avenue, Suite 8, Chambersburg, PA 17201

ESTATE OF LOVIE P. MARKLE, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Administrator: Connie E. Keiter, 30 Carlisle Road, Newville, PA 17241

Attorney: Crabbs & Crabbs, 202 Broadway, Hanover, PA 17331

ESTATE OF AMY LORRAINE WILLEY, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Beverly A. Stanley Bradsher (Beverly A. Bradsher), 625-C Augusta Ave., Westminster, MD 21158

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 00-S-128 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point at North Queen Street aforesaid at lands now or formerly of L. Irene Crouso; thence by said lands in a Northeasterly direction for a distance of 200 feet, more or less, to a point at an alley; thence by said alley in a Northwesterly direction for a distance of 47 feet, more or less, to a point at lands now or formerly of Wallace R. Gullickson; thence by said lands in a Southwesterly direction for a distance of 200 feet, more or less, to a at North Queen Street aforesaid; thence by said street in a Southeasterly direction for a distance of 47 feet, more or less, to a point, the place of BEGINNING.

BEING known as 57 North Queen Street, Littlestown, PA 17340

PROPERTY ID NO.: (27) 8-93

TITLE TO SAID PREMISES IS VESTED IN Timothy S. Kelley and Debra L. Kelley, husband and wife, as tenants of an estate by the entireties, by deed from Douglas R. Murren and Jacqueline E. Murren, husband and wife, dated 8/19/94, recorded 8/24/94, in Deed Book 929, Page 305.

SEIZED and taken into execution as the property of **Timothy S. Kelley & Debra L. Kelley** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 22, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/3, 11 & 18

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WILLIAMS ET AL VS. WORLEY ET AL

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-983 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 5th day of September, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land, together with the improvements thereon erected, situate in Mt. Pleasant Township, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a point in Pennsylvania Legislative Route No. 01005 at corner of land now or formerly of Michael Livelsberger; thence by said land now or formerly of Michael Livelsberger and running through a steel pin located thirty (30) feet from the place of Beginning, North twenty-five (25) degrees fifteen (15) minutes East, two hundred thirty (230) feet to a steel pin; thence by the same South sixty-two (62) degrees twelve (12) minutes East, One hundred and ten hundredths (100.10) feet to a steel pin; thence by land now or formerly of Bender, North twenty-five (25) degrees twenty-two (22) minutes seven (07) seconds East four hundred forty-four and thirty-one hundredths (444.31) feet to a steel pin located at an

original corner of the larger tract of land conveyed by the deed hereinafter recited; thence by the same and by other land of Lucinda B. Small, North fifty-five (55) degrees fifty-four (54) minutes six (06) seconds West three hundred sixty-eight and seventy-nine hundredths (368.79) feet to a steel pin; thence by other land of Lucinda B. Small and running through a steel pin located thirty (30) feet from the end of this line South twenty-seven (27) degrees forty-eight (48) minutes West, seven hundred fourteen and fourteen hundredths (714.14) feet to a point in the aforementioned Legislative Route; thence in said Legislative Route South sixty-two (62) degrees twelve (12) minutes East, two hundred ninety-five and fifty-five hundredths (295.55) feet to a point, the place of BEGINNING. CONTAINING 5.5338 acres, neat measure.

THE FOREGOING description was obtained from a draft of a survey made by J.H. Rife, Registered Engineer, on November 25, 1970 and a deed of conveyance recorded in the Adams County Recorder of Deeds, Book 290 at page 319.

IT BEING THE SAME TRACT OF LAND which Gerald E. Gebhart and Pearl Gebhart, husband and wife, by their Deed dated June 25, 1999 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania,

in Record Book 1866 at Page 0259, sold and conveyed unto Donald A. Bixler, a single adult individual.

BEING premises more commonly known as 2986 Centennial Road, Hanover, Pennsylvania 17331

Map J14, Parcel 54C

SEIZED and taken into execution as the property of **Donald A. Bixler a/k/a Don Bixler** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 29, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/11, 18 & 25

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-286 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground situate, lying and being in the Borough of New Oxford, Adams County, Pennsylvania, more particularly bounded and described as follows, to wit:

BEGINNING for a point on the Eastern side of Kohler's Mill Road and other lands of which this was formerly a part; thence along Kohler's Mill Road, North six (06) degrees thirty-eight (38) minutes, two (02) seconds West, one hundred fifteen and forty-four hundredths (115.44) feet to a steel pin at other lands of which this was formerly a part; thence continuing along said lands, North eighty-four (84) degrees ten (10) minutes forty-four (44) seconds East, ninety-two and ninety-four hundredths (92.94) feet to a steel pin at other lands of which this was formerly a part; thence continuing along the same, South five (05) degrees fifty-one (51) minutes forty (40) seconds East, one hundred twenty and sixty-seven hundredths (120.67) feet to a steel pin at other lands of which this was formerly a part; thence continuing along the same, South eighty-seven (87) degrees twenty-nine (29) minutes zero (00) seconds West, ninety-one and fifty-three hundredths (91.53) feet to a point on the Eastern side of Kohler's Mill Road the point and place of the BEGINNING.

IT BEING the same tract of land which Ronald L. Harris, Jr. and Sandra M. McClymonds, husband and wife, by their deed dated January 29, 1999, and recorded in the Office of the Recorder of Deeds of Adams County, in Record Book 1759 at page 297, on February 5, 1999, and sold and conveyed unto Robert W. Feeser, Grantor herein.

SEIZED and taken into execution as the property of **Robert W. Feeser** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 22, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/3, 11 & 18

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-479 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 5th day of September, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THOSE TWO CERTAIN lots of land situated, lying and being in Franklin Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

LOT NO. 1:

BEGINNING at a point in the center of State Highway leading from Cashtown to Orrtanna with an iron pin set back along the line; thence in the center of said Highway South 17-1/2 degrees West 60 feet to a point in the center of aforesaid Highway with an iron pin set back along the line; thence by lands now or formerly of Jacob D. McDannell North 72-1/2 degrees West 165 feet to an iron pin; thence by land of same North 17-1/2 degrees East 60 feet to an iron pin; thence by land now or formerly of John Fritz South 72-1/2 degrees East 165 feet to a point in the center of State Highway with an iron pin set back along the line the place of BEGINNING.

CONTAINING 36 perches and 99 square feet

LOT NO. 2:

BEGINNING at a point in the center of the State Highway leading from Cashtown to Orrtanna; thence in the center of said State Highway and land now or formerly of John, Clarence and George Bucher South 17-1/2 degrees West 60 feet to a point in the center of said State Highway; thence by land now or formerly of Jacob D. McDannell North 72-1/2 degrees West 165 feet to an iron pin; thence by other land now or formerly of Jacob D. McDannell North 72-1/2 degrees East 60 feet to an iron pin; thence by other land now or formerly of Jacob D. McDannell South 72-1/2 degrees East 165 feet to a point in the center of the aforesaid State Highway the place of BEGINNING.

TITLE TO SAID PREMISES IS VESTED IN Kenneth R. Kauffman by Deed from Brian D. Beamer and Kelly J. Beamer, his wife, dated 4/5/2001 and recorded 4/6/2001 in Record Book 2251 Page 1.

Premises being: 165 Orrtanna Road, Orrtanna, PA 17353

Tax Parcel No. C10-205

SEIZED and taken into execution as the property of **Kenneth R. Kauffman a/k/a Kenneth Kauffman** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 29, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/3, 11 & 18

WILLIAMS ET AL VS. WORLEY ET AL

1. A demurrer cannot aver the existence of facts not apparent from the face of the challenged pleading.

2. Mandamus is an extraordinary common-law writ which law is used to compel the official performance of a ministerial act or mandatory duty where there is a clear legal right in the plaintiff, a corresponding duty in the defendant, and a lack of any other appropriate and adequate remedy. The writ cannot be used to control the exercise of discretion or judgment by a public official nor to review or compel the undoing of an action taken by a public official in good faith and in the exercise of legitimate jurisdiction. While a court may not specify how discretion is to be exercised, the Court may compel that discretion be exercised.

3. In ruling upon a demurrer, the Court may not consider facts not of record. Nor may a Court accept as true conclusions of law contained in the complaint.

4. The determination of whether a road is a public road is not a discretionary decision reserved for the Supervisors but rather is a legal determination based upon statutory authority.

5. Mandamus cannot be used to review or compel the undoing of an action taken by a public official in good faith and in the exercise of legitimate jurisdiction.

6. Under the Second Class Township Code, the permanent closure, or vacating, of a public road requires specific statutory procedures.

7. The Second Class Township Code sets forth a procedure by which citizens may petition the Board of Supervisors to vacate a road. Since this procedure allows an adequate remedy at law, a mandamus action is inappropriate.

8. When a mandamus action is commenced to compel performance of a public act or duty by a political subdivision of the Commonwealth, it shall be sufficient to name as Defendants such officers in their official capacities as are concerned in the act or duty. At least one appellate court has interpreted this rule to require that the Township officers be made party defendants.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 02-S-406, JASON J. WILLIAMS AND GRETCHEN M. WILLIAMS, HUSBAND AND WIFE, STANLEY L. DEIBLER AND MARY L. DEIBLER, HUSBAND AND WIFE, G. LYNN GOLDEN AND SANDRA L. GOLDEN, HUSBAND AND WIFE, EMORY C. GOLDEN AND JACQUELINE GOLDEN, HUSBAND AND WIFE, AND GLENN F. GUISE VS. DANIEL WORLEY, LAWRENCE DOST AND RANDALL FISHEL, SUPERVISORS OF THE TOWNSHIP OF LATIMORE, ADAMS COUNTY, PENNSYLVANIA.

Walton V. Davis, Esq., for Plaintiffs

Carol L. Cingranelli, Esq., for Defendants

George, J., July 3, 2002

OPINION

This matter comes before the Court on an action in mandamus initiated by nine property owners, hereinafter referred to as “Plaintiffs”,¹ residing upon Plank Road located in Latimore Township, Adams County, Pennsylvania, The Plaintiffs have filed a complaint against Daniel Worley, Lawrence Dost and Randall Fishel as Supervisors of Latimore Township, hereinafter referred to as “Supervisors”, seeking to re-open Plank Road or, in the alternative, to initiate appropriate procedures to vacate the road in accordance with law. According to the complaint, Plank Road is a public road which has been used for public travel and has been maintained and repaired by Latimore Township for a period in excess of twenty-one (21) years. The Plaintiffs allege that the road is classified by the Pennsylvania Department of Transportation as Township Route 616 and has been recognized by Latimore Township as a public road in considering subdivision matters on properties abutting Plank Road. On January 7, 2002, it is alleged that Defendant Latimore Township Supervisors passed a motion closing a portion of Plank Road, however, allowing adjacent landowners to have access to their property.²

Thereafter on January 8, 2002, the Supervisors plowed a snow barricade at each end of Plank Road. Additionally, signs were erected indicating that the road was closed. On January 17, 2002, Township agents excavated the road materials and roadbed and removed those materials from the area. The previous road area was then covered with a loose muddy soil and seeded and covered with hay.³ The

¹The Plaintiffs are identified in the complaint as Jason J. Williams and Gretchen M. Williams, husband and wife, Stanley L. Deibler and Mary L. Deibler, husband and wife, G. Lynn Golden and Sandra L. Golden, husband and wife, Emory C. Golden and Jacqueline Golden, husband and wife, and Glenn F. Guise.

²Minutes from the Board of Supervisors’ Meeting for January 7, 2002, which are attached to the complaint, indicate that the motion was tendered by Supervisor Daniel Worley and seconded by Supervisor Lawrence Dost. Thereafter, Worley and Dost voted in favor of the motion with the third Supervisor, Randall Fishel, voting against the motion. Although the current complaint does not allege misconduct on the part of the Supervisors, the Court notes with interest that a tax map attached to the complaint indicates that a Daniel Worley owns approximately seventeen (17) acres of real property fronting a portion of Plank Road.

³The factual background is taken from allegations in the Plaintiffs’ complaint. In ruling upon preliminary objections in the nature of a demurrer, the Court must accept all well-pled material facts, as well as all reasonable inferences therefrom, as being admitted. *Peerless Publications, Inc. v. County of Montgomery*, 656 A.2d 547 (Pa. Cmwlth. 1995).

Plaintiffs complain that the supervisors have vacated the road without complying with the statutory requirements set forth in the Second Class Township Code. They further allege that since February 11, 2002, the Supervisors have not taken any action in a public session in an effort to repair, restore, maintain or reopen the closed portion of Plank Road.

The Plaintiffs' action in mandamus resulted in preliminary objections by the Supervisors. Essentially their preliminary objections are in the form of a demurrer alleging four separate bases by which the complaint should be dismissed. The Supervisors' Preliminary Objections were met by Preliminary Objections from the Plaintiffs alleging that the Supervisors' Preliminary Objections are improper in that they are "speaking demurrers". All preliminary objections are now before the Court for disposition.⁴

Before addressing the merits of Defendants' Preliminary Objections, I will briefly comment on the Plaintiffs' Preliminary Objections to Defendants' Preliminary Objections. The Plaintiffs' Preliminary Objections to Defendants' Preliminary Objections argue that Defendants' pleading constitutes an improper "speaking demurrer". Pennsylvania law is clear that a demurrer cannot aver the existence of facts not apparent from the face of the challenged pleading. *Martin v. Com., Dept. of Transp.*, 556 A.2d 969 (Pa. Cmwlth. 1989). It is equally obvious that the Defendants, in their preliminary objections, raise a number of factual allegations which are not apparent from a reading of Plaintiffs' complaint. Thus, portions of the Defendants' pleading are improper. However, rather than dismiss the Defendants' Preliminary Objections on this basis, I will restrict myself to a consideration of the Plaintiffs' pleading and will disregard any argument by the Defendants based upon factual allegations which are not set forth in the Plaintiffs' complaint. With that clarification, the Plaintiffs' Preliminary Objections to Defendants' Preliminary Objections will be denied.

Turning to Supervisors' Preliminary Objections, it is important to understand the nature of Plaintiffs' cause of action. Mandamus is an

⁴Adams County Local Rule 211 requires a party filing preliminary objections to file a brief within ten (10) days of the filing of the objections. The record indicates that the Defendants' Preliminary Objections were filed on May 9, 2002, however, a brief was not filed by the Defendants until May 28, 2002. Counsel is admonished that future untimely filings in this matter will result in sanctions.

extraordinary common-law writ which law is used to compel the official performance of a ministerial act or mandatory duty where there is a clear legal right in the plaintiff, a corresponding duty in the defendant, and a lack of any other appropriate and adequate remedy. *Pennsylvania Dental Assoc. v. Cmwlth. of Pennsylvania Insurance Department*, 516 A.2d 647 (Pa. 1986), app. den. 516 A.2d 656 (1986). The writ cannot be used to control the exercise of discretion or judgment by a public official nor to review or compel the undoing of an action taken by a public official in good faith and in the exercise of legitimate jurisdiction. *Pennsylvania Dental Assoc. v. Cmwlth. of Pennsylvania Insurance Department*, supra; *Natesic v. Maleski*, 624 A.2d 776 (Pa. Cmwlth. 1993). However, while a court may not specify how discretion is to be exercised, the Court may compel that discretion be exercised. *Delaware River Port Authority v. Thornburg*, 493 A.2d 1351 (Pa. 1985).

The Supervisors demur on several grounds. For purposes of clarity, each will be dealt with separately.

Initially, the Supervisors argue that Plank Road is a private road and, therefore, they do not have a mandatory duty to open, repair or maintain it. Since the establishment of a duty is critical to Plaintiffs' case, a finding of a lack thereof would require that the writ of mandamus must fail. See, *Pennsylvania Dental Assoc. v. Cmwlth. of Pennsylvania Insurance Department*, supra. Although the Supervisors are correct that an action in mandamus requires a duty on the part of the Defendants, they mis-apply the factual background in light of the applicable legal standard in ruling upon demurrers.

When ruling upon preliminary objections in the nature of a demurrer to a complaint in mandamus, the Court must accept as true all factual averments in the petition and all reasonable inferences which may be deduced from any well-pleaded facts. *Marinari v. Cmwlth., Department of Environmental Resources*, 566 A.2d 385 (Pa. Cmwlth. 1989). In order for a Court to sustain the preliminary objections, it must appear, with certainty, that the law will not permit recovery. Where any doubt exists, that doubt should be resolved by refusal to sustain the preliminary objections. *J.B. Steven, Inc., v. Board of Comm'rs.*, 643 A.2d 142 (Pa. Cmwlth. 1994), app. den. 652 A.2d 841 (Pa). However, in ruling upon a demurrer, the Court may not consider facts not of record, *Bahian v. Cmwlth. Dep't. of Public Welfare*, 493 A.2d 803 (1985). Nor may a Court accept as true

conclusions of law contained in the complaint. *Bahian v. Cmwlth.*, supra.

Although Plaintiffs' complaint arguably contains a conclusion of law in claiming that Plank Road is a public road,⁵ it also contains averments which are legally sufficient to factually establish Plank Road as a public road. For instance, the complaint alleges that Plank Road has been used for public travel and has been maintained and repaired by the Township for a period in excess of twenty-one (21) years.⁶ Since §3207 of the Second Class Township Code provides that a "road which has been used for public travel and maintained and kept in repair by the township for a period of at least twenty-one years" is a public road, 53 P.S. §67307, the factual allegations of the Plaintiffs are sufficient to support the characterization of Plank Road as a public township road. See, *Irwin v. Ogden*, 45 Pa. D&C 3d 35 (1986). Since 53 P.S. §67308 unequivocally places a duty on Township officials to keep public roads open, in repair and "free from all impediments", the Supervisors' first demurrer will be denied.

The Supervisors' second demurrer is similar to the first except in this demurrer they argue that the determination of whether Plank Road is a public road or a private road is a discretionary determination by the Supervisors. The argument reasons that since mandamus may not be used to compel the performance of a particular discretionary act, their actions instantly are not an appropriate subject for a writ of mandamus.

Clearly, the decision to dedicate a public road is initially a decision left to the discretion of public officials. See, 53 P. S. §67304. The parties agree that the Township has never formally acted to publicly dedicate Plank Road. However, the Plaintiffs are proceeding

⁵ Plaintiffs' complaint does not factually allege that Plank Road was dedicated by the Township as a public road but rather concludes that Plank Road is a public road due to several factors.

⁶ Plaintiffs further allege in their complaint that Latimore Township has treated Plank Road as a public road when dealing with subdivision issues concerning land abutting Plank Road. This appears to be consistent with the Township's treatment of the road at its January 7, 2002, public meeting. The minutes of that meeting, which are attached to the complaint, reflect Township action to close a portion of Plank Road pursuant to §2308 of the Second Class Township Code (53 P.S. §67308). This section is clearly applicable only to "public roads". If Plaintiffs' allegations are factually supportable, one can only wonder why Township action, including the removal of materials, was taken on a road which the Township now claims is not a public road.

under a theory that Plank Road became a public road through statutory prescription by the Township's actions in maintaining a road that has been used for public travel for a period of at least twenty-one (21) years. Under this theory, the determination of whether Plank Road is a public road is not a discretionary decision reserved for the Supervisors but rather is a legal determination based upon statutory authority. *See, Hunter v. Bowman*, 633 A.2d 655 (Pa. Cmwlth. 1993), app. den. 644 A.2d 165 (Pa); *Lagler v. Upper Milford Tp. Zoning Hearing Board*, 446 A.2d 712 (Pa. Cmwlth. 1982); *Irwin v. Ogden*, 45 Pa. D&C 3d 35 (1986). The Plaintiffs are not attacking the discretionary decision as to whether a road should be publicly dedicated. Rather, they are seeking to compel the Supervisors to perform the mandatory duty of maintaining roads which the law determines to be "public". Accordingly, the Defendants' second demurrer will be dismissed.

The Supervisors next argue that mandamus cannot be used to review or compel the undoing of an action taken by a public official in good faith and in the exercise of legitimate jurisdiction. Once again, the Supervisors accurately recite the law in this area. Pennsylvania Courts have uniformly held that a writ cannot be used to review or compel the undoing of an action taken by an official in the good faith exercise of legitimate jurisdiction. *Pennsylvania Dental Assoc. v. Cmwlth. of Pennsylvania Insurance Department*, supra. The Supervisors, however, misread Plaintiffs' complaint.

The Supervisors argue that §2308 of the Second Class Township Code (53 P.S. §67308) allows the Supervisors to temporarily close a township road when conditions upon the road are unfit or unsafe for travel and immediate repair or maintenance, because of the time of year or other conditions, is impracticable. They further argue that, in the exercise of their discretion, they have acted to temporarily close Plank Road pursuant to that authority. They conclude that mandamus cannot currently be used to compel the Township to reverse that discretionary decision. In essence, they argue that they cannot be compelled to undo their discretionary act of temporarily closing Plank Road.

On the other hand, the Plaintiffs argue that the Supervisors have an obligation to keep Plank Road open, in repair and reasonably clear of all impediments for the easy and convenient travelling of the

public. See, 53 P.S. §67308(a). Although Plaintiffs' complaint inartfully requests the Court to "re-open Plank Road and restore it to its original condition on January 6, 2002", a common-sense reading of the complaint in its entirety indicates that the Plaintiffs are asking the Court to compel the Township to perform its affirmative statutory duty of maintaining Plank Road for public use.

In support of their argument, the Supervisors cite *Frish v. Penn Township*, 652 A.2d 1166 (Pa. Cmwlth. 1995). In *Frish*, the Plaintiff filed a mandamus action seeking to compel Penn Township to repair and re-open a public road. As in this case, Penn Township argued that it has discretion under the Second Class Township Code to close a road that is either unsafe for travel or is in immediate need of repair. Indeed, the Commonwealth Court agreed with this argument and sustained the trial court's dismissal of the mandamus action.

Instantly, if the Plaintiffs' complaint was limited to the Township's discretionary act of temporarily closing the road on January 7, 2002, the Defendants' preliminary objection would be well taken. However, the Plaintiffs, in paragraph 16 of their complaint, allege that at no time "since February 11, 2002, have the Defendants taken any action in the public session towards repairing, restoring, maintaining or re-opening the closed portion...of Plank Road". Plaintiffs additionally allege that not only have the Supervisors failed to take any action to maintain the road but that they have also taken affirmative steps to permanently close Plank Road by removing the roadbed and placing seed in the area where the roadbed had previously been located. It is these allegations in the Plaintiffs' complaint which removes the current case from the umbrella of *Frish v. Penn Township*, supra. Rather than support the granting of the Supervisors' demurrer, the *Frish* opinion tacitly acknowledges a municipality's duty to take steps to re-open and maintain a public road. It is specifically this duty that the Plaintiffs seek to compel.

Moreover, the Plaintiffs have alleged that the Supervisors' actions are intended to permanently close Plank Road. Such an allegation, if proved, may very well preclude the Supervisors from arguing that they may not be compelled to undo an action taken in good faith and in the exercise of legitimate jurisdiction. Under the Second Class Township Code, the permanent closure, or vacating, of a public road requires specific statutory procedures. See, 53 P.S. §67304. The

Plaintiffs allege that those procedures have not been followed. If, as Plaintiffs allege, the Supervisors have acted to permanently close Plank Road without complying with statutory procedures, their actions may not be a good faith exercise of legitimate jurisdiction.

Under these circumstances, I cannot find that the Defendants' demurrer is free from doubt and, therefore, will dismiss this demurrer.

The Supervisors next take exception to Plaintiffs' request that the Court compel the Supervisors to initiate road vacation procedures in accordance with the Second Class Township Code. As mentioned, the Second Class Township Code (*53 P.S. §67304(c)*) sets forth a procedure by which citizens may petition the Board of Supervisors to vacate a road. Since this procedure allows an adequate remedy at law, a mandamus action is inappropriate. *Bronson v. Investigations Division, Bureau of Special Services, Department of Corrections*, 650 A.2d 1160 (Pa. Cmwlth. 1994). Accordingly, this demurrer will be sustained and Plaintiffs' complaint will be limited to an action in mandamus seeking to compel the Supervisors to comply with their statutory duty to maintain Plank Road in good repair for the traveling public. The portion of their complaint requesting a writ of mandamus compelling the Supervisors to initiate vacation procedures will be dismissed without prejudice to the Plaintiffs to proceed as statutorily authorized.

The Supervisors' final demurrer requests that the cause of action be dismissed since the caption of the complaint personally names the Defendants in their capacity as Supervisors of Latimore Township. This demurrer will be denied. Pennsylvania Rule of Civil Procedure 1094(a) indicates that when a mandamus action is commenced to compel performance of a public act or duty by a political subdivision of the Commonwealth, it shall be sufficient to name as Defendants such officers in their official capacities as are concerned in the act or duty. At least one appellate court has interpreted this rule to require that the Township officers be made party defendants. *See, Township of Bensalem v. Moore*, 620 A.2d 76 (Pa. Cmwlth. 1993). Plaintiffs' pleadings, therefore, are proper in this respect.

For the foregoing reasons, the attached Order is entered.

ORDER OF COURT

AND NOW, this 3rd day of July, 2002, the Plaintiffs' Preliminary Objections to the Defendants' Preliminary Objections are denied. It is further Ordered that the Defendants' Preliminary Objections are denied with the exception that the relief requested by the Plaintiffs shall be limited to a writ of mandamus action requesting the Court to compel the Latimore Township Supervisors to repair and reasonably clear all impediments to the easy and convenient travelling on Plank Road. This Order shall not prejudice the Plaintiffs against pursuing a petition to the Supervisors to vacate Plank Road pursuant to statutory procedure. The Defendants shall file an Answer to Plaintiffs' Complaint within twenty (20) days of the date of this Order.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-442 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THE FOLLOWING described real estate lying and being situate in the Borough of Littlestown, Adams County, Pennsylvania, bounded and limited as follows:

BEGINNING at a point along a private street known as Apple Grove Lane at the corner of Lot No. 434 on the plan of lots hereinafter referred to; thence along Lot No. 434, South 61 degrees 18 minutes 33 seconds West, 95.00 feet to a point along Appler-Phase II-Section A; thence along Appler-Phase II-Section A, North 28 degrees 41 minutes 27 seconds West, 40.00 feet to a point; thence along the same, North 61 degrees 18 minutes 33 seconds East, 95.00 feet to a point at the edge of the private street at a corner of Lot No. 436; thence along said private street, South 28 degrees 41 minutes 27 seconds East, 40.00 feet to a point at a corner of Lot No. 434, the place of BEGINNING.

CONTAINING 3,800 square feet.

BEING Lot No. 435 on a plan of lots for Appler prepared by Group Hanover, Inc., dated January 21, 1999, which together with all necessary municipal approvals, is recorded in Adams County Plan Book 77, Page 94, through 94-C.

TITLE TO SAID PREMISES IS VESTED IN Anthony W. Myers and Linda Thompson by Deed from Appler Properties, LLC, a Maryland Limited Liability Company dated 5/31/2001 and recorded 7/16/2001 in Record Book 2343, Page 319.

Premises being: 141 Apple Grove Lane, Littlestown, PA 17340

Tax Parcel No. 004-0148-000

SEIZED and taken into execution as the property of **Anthony W. Myers & Linda Thompson** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 22, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/27, 7/3 & 11

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 2002-TL-568 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land with the improvements thereon erected situate in Reading Township, Adams County, Pennsylvania, being more particularly bounded and described as follows:

BEGINNING for a point at Antler Lane and Lot No. 48; thence along Lot No. 48, South 48 degrees 29 minutes 22 seconds West, 156.42 feet to a point at the dedicated right of way line of Pennsylvania Route 94; thence along the said right of way line, North 21 degrees 50 minutes 25 seconds West, 91.39 feet to a point at Lot No. 50; thence along Lot No. 50, North 68 degrees 09 minutes 35 seconds East, 140.04 feet to a point at Antler Lane; thence along Antler Lane, by a curve to the left, whose radius is 125.00 feet and whose chord bearing is South 32 degrees 26 minutes 24 seconds East, 39.41 feet for an arc distance of 39.58 feet to a point and place of BEGINNING. CONTAINING 9,402 square feet.

The above description was taken from a plan of lots entitled Phase III, Deer Park Estates, recorded in Plat Book 52 at page 55, designating the above as Lot No. 49.

SUBJECT TO restrictions contained in Miscellaneous Book 42 at page 708. UNDER AND SUBJECT TO such other conditions and restrictions as now appear on record.

IT BEING the same premises which Larry E. Bankert, Jr., an adult single man, by his Deed dated November 20, 2001, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 2469, Page 204, granted and conveyed unto Ginger M. Moore, an adult single woman.

SEIZED and taken into execution as the property of **Ginger M. Moore** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 22, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/27, 7/3 & 11

NOTICE

Upper Adams School District

Notice of Intended Referendum on Act 24 of 2001, Occupation Assessment Tax Elimination, and Earned Income and Net Profits Tax Rate Increase

NOTICE is given that the Board of School Directors of the Upper Adams School District ("the School District") intends to adopt a resolution to place a referendum on the November 4, 2003, general election ballot. The referendum will relate to elimination of the occupation assessment tax and increase of the rate of the earned income tax collected by the School District. This notice is given pursuant to the Optional Occupation Tax Elimination Act of June 22, 2001, Act 24 of 2001, as amended (the "Act") and the Local Tax Enabling Act of December 31, 1965, P.L. 1257, as amended (the "Enabling Act").

The Act permits the School District to eliminate the occupation assessment tax and replace the occupation assessment tax revenues by increasing the rate of the earned income tax collected by the School District. This action may be taken if the voters approve the action by referendum. The School District estimates that replacing the occupation assessment tax revenues will require increasing the rate of the earned income tax collected by the School District by 0.6%, from the current 0.5%, to the new School District tax rate of 1.1%. Adding the tax collected by the School District to the 0.5% collected by the municipality in which the taxpayer resides, the total earned income and net profits tax rate paid by the School District residents would increase from the current 1.0% to the new total tax rate of 1.6%.

Pursuant to the Act, the School District intends to adopt a resolution directing a referendum on the November 4, 2003, general election ballot. The proposed resolution to be considered by the Board of School Directors provides that the referendum question to be placed on the ballot shall be in substantially the following form, with such additions or changes as may be determined by the Board of School Directors or election officials prior to the election:

Do you favor eliminating the Upper Adams School District occupation assessment tax by increasing the maximum allowable rate of the earned income tax from 1.0% to 1.6%?

The proposed resolution will be acted upon at a meeting of the Board of School Directors of the School District to be held on July 22, 2003, at 7:00 p.m., at the School District's Administration Building Boardroom, located at 161 North Main Street, Biglerville, Pennsylvania. The

Board of School Directors held a public hearing regarding the elimination of the occupation assessment tax and increasing the rate of the earned income tax on April 22, 2003.

If a majority of the electors voting on the referendum question on November 4, 2003 vote "yes", the Board of School Directors thereafter will adopt a new Earned Income Tax Resolution eliminating the occupation assessment tax and increasing the earned income and net profits tax rate collected by the School District to 1.1% effective July 1, 2004.

The increase in earned income and net profits tax is needed to produce revenue for general School District purposes and replace the revenues lost from the elimination of the Occupation Assessment Tax. The estimated revenue to be lost by the School District from the elimination of the Occupation Assessment Tax for 2004-2005 is \$962,020.00. The estimated revenue to be gained from the increase in the earned income and net profits tax for the 2004-2005 fiscal year is \$787,863.00.

If you have any questions regarding Act 24 of 2001 or the resolution referred to in this legal advertisement please contact the Upper Adams School District Business Office at 161 North Main Street, Biglerville, PA 17307, (717) 677-7191, Ext. 2704, during normal business hours.

Michael Lawrence
Board Secretary

7/3, 11 & 18

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-910 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain property situated in the Township of Franklin, County of Adams, Commonwealth of Pennsylvania.

BEGINNING at an iron pin on the West side of the mountain road; thence along the West side of said mountain road, due South 81 feet to an iron pin in the West side of said road; thence along lands of the South Mountain Development Corporation, due West 120 feet to an iron pin; thence along same, North 2 degrees 30 minutes West, 110 feet to an iron pin; thence along same, North 86 degrees East, 60 feet to an iron pin; thence along same, South 64 degrees East, 78 feet to an iron pin in the West side of the mountain road, the place of BEGINNING.

CONTAINING 45-1/2 perches as shown by draft of John H. Atherton, C.S., dated June 25, 1958, and recorded in Adams County Deed Book Volume 229, Page 292.

BEING the same real estate which Charles J. Edwards of 858 Hillcrest Avenue, Chambersburg, Franklin County, Pennsylvania, Grantor, by deed dated the 1st day of November, 1984, and recorded in the Deed Records of Adams County, Pennsylvania, Deed Book Volume 389, Page 1029, granted and conveyed to Edward E. Rotz and Carole J. Rotz, of 7471 Browns Mill Road, Chambersburg, Franklin County, Pennsylvania, Grantees.

TOGETHER with the right in the Grantees, their heirs and assigns, to use the aforesaid mountain road for ingress, egress and regress to and from the above described real estate, in common with John Rea Boggs and wife and Hammett B. Rea and wife, and all other having a similar right to use said road as specified in the hereinbefore recited deed.

Premises known as: 44 Boggs Road, Fayetteville, PA 17222

SEIZED and taken into execution as the property of **Edward E. Rotz & Carole J. Rotz** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 22, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/3, 11 & 18

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 DOROTHY M. KEMPER, DEC'D

Late of the Borough of East Berlin, Adams County, Pennsylvania

Executrix: Tina M. Eisenhart, 7 Norfolk Ct., Mechanicsburg, PA 17055

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

ESTATE OF HELEN TUROUS a/k/a HELEN C. TUROUS, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Virginia Dodd, 24396 Santa Clara, Dana Point, CA 92629

Attorney: Marlin R. McCaleb, Esq., 219 East Main Street, P.O. Box 230, Mechanicsburg, PA 17055

SECOND PUBLICATION

ESTATE OF LEROY E. FLICKINGER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Personal Representative: Verna B. Reedy, 6737 Congressional Terrace, Fayetteville, PA 17222

Attorney: Wendy Weikal-Beauchat, 63 West High Street, Gettysburg, PA 17325

ESTATE OF MARTHA G. ORNER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: PNC Bank, N.A., P.O. Box 8874, Camp Hill, PA 17001-9952

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

THIRD PUBLICATION

ESTATE OF MARGARET A. CHAPMAN, DEC'D

Late of Freedom Township, Adams County, Pennsylvania

Executrix: Betty A. Leatherman, 61 Chapman Road, Fairfield, PA 17320; Dorothy Mae Wagerman, 260 Middle Creek Road, Fairfield, PA 17320

Attorney: Alan K. Patrono, Esq., 30 West Middle Street, Gettysburg, PA 17325

ESTATE OF HELEN MARGARET NICHOLSON, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325

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

ESTATE OF MARY S. REBERT, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Charlotte A. Shultz, c/o 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 VIRGINIA WHIPPLE RUPP, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Richard James Whipple, 1719 Middle Road, Glenshaw, PA 15116

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

ESTATE OF CARL C. SIMPSON, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Wilda Simpson Keefer, 2000 Cherokee Road, Waynesboro, VA 22980; Edward C. Simpson, 14 East Hanover Street, Biglerville, PA 17307

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF FRANCIS WORLEY, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Co-Executors: Francis Worley, Jr. & Daniel T. Worley, c/o Worley & Worley LLP, 225 Latimore Valley Road, York Springs, PA 17372

Attorney: Daniel D. Worley, Esq., 225 Latimore Valley Road, York Springs, PA 17372

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-411 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in the Borough of Bonneauville, Adams County, Pennsylvania, being Lot No. 5 of Springfield Estates, bounded and described as follows:

BEGINNING at an iron pin on the southerly edge of Summer Drive at Lot No. 4; thence by said lot South 33 degrees 36 minutes 10 seconds West, 179.63 feet to an iron pin at lands now or formerly of Guy Francis Gebhart; thence by said lands North 56 degrees 20 minutes 46 seconds West, 115 feet to an iron pin at Lot No. 6; thence by said lot North 33 degrees 36 minutes 10 seconds East, 179.53 feet to iron pin on the southerly edge of Summer Drive; thence along the southerly edge of said Summer Drive South 56 degrees 23 minutes 50 seconds East, 115 feet to the place of BEGINNING. CONTAINING 20,652 square feet.

Parcel No. 6-8-76

BEING PREMISES: 16 Summer Drive, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **Kathy L. Eckard** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a

schedule of distribution will be filed by the Sheriff in his office on September 22, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/27, 7/3 & 11

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-231 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 5th day of September, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of land situated in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 890 on a Plan of Lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds in and for Adams County in Plan Book 1, page 6 (erroneously stated as Misc. Deed Book 1, page 6 in prior deed) and subject to all legal highways, easements, rights-of-way and restrictions of record.

TOGETHER with the right in common with other owners of lots in said subdivision to use for all usual purposes the streets, ways, beaches, recreation

areas, and other public areas, as shown on the said plot, and the right in common with the other owners of lots in the said subdivision to use the lake and beaches for swimming, fishing and boating in accordance with the rules and regulations of Lake Meade Property Owners Association, its successors or assigns.

TITLE TO SAID PREMISES IS VESTED IN John L. Livelsberger and Rhonda L. Livelsberger, his wife by Deed from Jeremy D. Forbes and Peggy L. Morningstar Forbes, his wife dated 3/29/2001 and recorded 4/3/2001 in Record Book 2248, Page 101.

Premises being: 30 Pleasanton Drive, East Berlin, PA 17316

Tax Parcel No. 2 Map #13

SEIZED and taken into execution as the property of **John L. Livelsberger & Rhonda L. Livelsberger a/k/a Rhonda L. Stoner** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

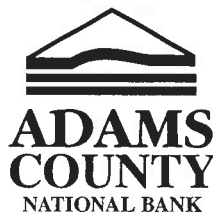
TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 29, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/11, 18 & 25

Our Trust Department
makes a business of caring
for other people's property.



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Adams County Legal Journal

Vol. 45

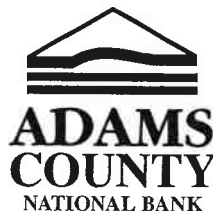
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Adams County National Bank's commitment to its communities is more than a fleeting promise. It is a tradition founded upon our more than 130 years of service to the individuals, businesses and organizations in these communities.



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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. 03-S-286 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground situate, lying and being in the Borough of New Oxford, Adams County, Pennsylvania, more particularly bounded and described as follows, to wit:

BEGINNING for a point on the Eastern side of Kohler's Mill Road and other lands of which this was formerly a part; thence along Kohler's Mill Road, North six (06) degrees thirty-eight (38) minutes, two (02) seconds West, one hundred fifteen and forty-four hundredths (115.44) feet to a steel pin at other lands of which this was formerly a part; thence continuing along said lands, North eighty-four (84) degrees ten (10) minutes forty-four (44) seconds East, ninety-two and ninety-four hundredths (92.94) feet to a steel pin at other lands of which this was formerly a part; thence continuing along the same, South five (05) degrees fifty-one (51) minutes forty (40) seconds East, one hundred twenty and sixty-seven hundredths (120.67) feet to a steel pin at other lands of which this was formerly a part; thence continuing along the same, South eighty-seven (87) degrees twenty-nine (29) minutes zero (00) seconds West, ninety-one and fifty-three hundredths (91.53) feet to a point on the Eastern side of Kohler's Mill Road the point and place of the BEGINNING.

IT BEING the same tract of land which Ronald L. Harris, Jr. and Sandra M. McClymonds, husband and wife, by their deed dated January 29, 1999, and recorded in the Office of the Recorder of Deeds of Adams County, in Record Book 1759 at page 297, on February 5, 1999, and sold and conveyed unto Robert W. Feeser, Grantor herein.

SEIZED and taken into execution as the property of **Robert W. Feeser** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 22, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/3, 11 & 18

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-479 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 5th day of September, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THOSE TWO CERTAIN lots of land situated, lying and being in Franklin Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

LOT NO. 1:

BEGINNING at a point in the center of State Highway leading from Cashtown to Orrtanna with an iron pin set back along the line; thence in the center of said Highway South 17-1/2 degrees West 60 feet to a point in the center of aforesaid Highway with an iron pin set back along the line; thence by lands now or formerly of Jacob D. McDannell North 72-1/2 degrees West 165 feet to an iron pin; thence by land of same North 17-1/2 degrees East 60 feet to an iron pin; thence by land now or formerly of John Fritz South 72-1/2 degrees East 165 feet to a point in the center of State Highway with an iron pin set back along the line the place of BEGINNING.

CONTAINING 36 perches and 99 square feet

LOT NO. 2:

BEGINNING at a point in the center of the State Highway leading from Cashtown to Orrtanna; thence in the center of said State Highway and land now or formerly of John, Clarence and George Bucher South 17-1/2 degrees West 60 feet to a point in the center of said State Highway; thence by land now or formerly of Jacob D. McDannell North 72-1/2 degrees West 165 feet to an iron pin; thence by other land now or formerly of Jacob D. McDannell North 72-1/2 degrees East 60 feet to an iron pin; thence by other land now or formerly of Jacob D. McDannell South 72-1/2 degrees East 165 feet to a point in the center of the aforesaid State Highway the place of BEGINNING.

TITLE TO SAID PREMISES IS VESTED IN Kenneth R. Kauffman by Deed from Brian D. Beamer and Kelly J. Beamer, his wife, dated 4/5/2001 and recorded 4/6/2001 in Record Book 2251 Page 1.

Premises being: 165 Orrtanna Road, Orrtanna, PA 17353

Tax Parcel No. C10-205

SEIZED and taken into execution as the property of **Kenneth R. Kauffman a/k/a Kenneth Kauffman** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 29, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/3, 11 & 18

FREY VS. SARNOFF

1. A party may, at any time amend his or her pleading either by obtaining the consent of the adverse party or by leave of Court.

2. An amendment may not be permitted after the running of the statute of limitations if it introduces a new cause of action. On the other hand, if the amendment would only amplify or enlarge the existing cause of action, it should be permitted.

3. The phrase "cause of action" is "not susceptible of any single definition to be applied in all types of cases. Accordingly, in determining whether a new cause of action is presented by a proposed amendment, "technical considerations or ancient formulae are not controlling; nothing more is meant than that the defendant shall not be required to answer a wholly different legal theory or obligation from that originally stated...."

4. Since the duty of an owner of a dog is no different than that of a custodian of a dog, an amendment limited to amplifying the correct relationship between the defendants and the dog would be appropriate since the underlying "cause of action" has not changed.

In the Court of Common Pleas of Adams County, Pennsylvania,
Civil, No. 01-S-502, DWAYNE E. FREY AND ANNETTE K. FREY
VS. BURTON SARNOFF AND EDYTHE SARNOFF

Dale E. Anstine, Esq., for Plaintiffs

Jeffery Wright, Esq., for Defendants

George, J., July 19, 2002

OPINION

This matter comes before the Court on Plaintiffs' Motion for Leave to Amend their Complaint. The Defendants have opposed that motion alleging that amendment is improper in that it sets forth a new theory of liability after the applicable statute of limitations has expired. The Defendants further allege that the proposed amendment lacks any factual support and, therefore, should be denied.

Apparently, on September 30, 1999, Dwayne E. Frey (hereinafter referred to as "Plaintiff") was performing remodeling work at the property of Burton and Edythe Sarnoff (hereinafter referred to as "Defendants") located at 45 Fairmont Road, Aspers, Adams County, Pennsylvania. While working in a second floor bathroom, the Plaintiff backed up and tripped over a dog which had entered the room without his knowledge.¹ The complaint alleges that as a result,

¹Defendants, in their brief, identified the dog as "Apple". The pleadings, however, are absent of any description of the type or size of dog.

the Plaintiff fell striking his shoulder on a joist and thereby causing a right-shoulder injury, carpal tunnel syndrome and “a severe shock to his nerves and nervous system”. *Plaintiff’s Complaint, paragraph 12.*

On May 11, 2001, the Plaintiff filed a complaint alleging that the Defendants owed a duty to the Plaintiff to exercise reasonable care in “keeping the dog”. He further alleges that this duty was violated by the Defendants’ failure to keep the dog under reasonable control.²

On June 8, 2001, the Defendants filed an Answer with New Matter claiming, among other things, that the Defendants did not own the dog nor were they aware that the dog was in the house. Although the owner of the dog is not identified in Defendants’ pleading, they essentially claim that the dog had surreptitiously entered the home through a door left open by the workers while the workers were completing the remodeling job. Thus, they argue that they have no duty to restrain a dog which is neither theirs nor on their property with their permission.

Although the Defendants’ brief references that the parties were involved in discovery proceedings, there is no indication in the record of further pleadings until the Plaintiffs’ Motion for Leave of Court to Amend Complaint was filed on May 28, 2002.³

²Plaintiff’s complaint specifically lists six theories of Defendants’ negligence as follows:

- (1) failing to keep the dog under reasonable control, a violation of 3 Pa. C.S. §459-305;
- (2) failing to supervise the dog;
- (3) failing to warn the Plaintiff of the presence of the dog;
- (4) permitting the dog to run loose while construction activities were ongoing;
- (5) failing to have the dog restrained by the means of a leash or chain or otherwise confined in an enclosed area and
- (6) exposing the Plaintiff to unreasonable risk of harm by permitting the dog to run loose while the Plaintiff was present. *See, Plaintiff’s Complaint, paragraph 11.*

³On August 30, 2001, the Plaintiff filed a complaint against Charles Walmer and Carol Walmer alleging that the Walmers were the owners of “Apple” and seeking recovery for the injuries which are the subject of this litigation. *See, Frey v. Walmer, 2001-S-950 (Adams County).* Plaintiff’s brief does not address why a motion to amend the complaint in this action was not filed until approximately nine months later.

The Pennsylvania Rules of Civil Procedure provide that a party may, at any time, amend his or her pleading either by obtaining the consent of the adverse party or by leave of Court. *Pa. R.C.P. 1033*. In those instances in which Court approval is required for the amendment of a complaint, the allowance of an amendment is within the sound discretion of the trial court. *Werner v. Zazyczny*, 681 A.2d 1331 (Pa. 1996). Generally, the right to amend should be liberally granted at any stage of the proceedings. *Werner v. Zazyczny*, *supra*. Despite this Pennsylvania rule of liberality, the right to amend is not absolute. *Carringer v. Taylor*, 586 A.2d 928 (Pa. Super. 1990). An amendment may not be permitted after the running of the statute of limitations if it introduces a new cause of action. *Schaffer v. Larzelere*, 189 A.2d 267 (Pa. 1963); *Hodgen v. Summers*, 555 A.2d 214 (Pa. Super. 1989). On the other hand, if the amendment would only amplify or enlarge the existing cause of action, it should be permitted. *Laursen v. General Hospital of Monroe County*, 431 A.2d 237 (Pa. 1981).

Pennsylvania Courts have not been successful in identifying a test to identify or define the term “cause of action”. The term may have different meanings in different contexts and must be examined on a case by case basis. *See, Frey v. Pennsylvania Electric Company*, 607 A.2d 796 (Pa. Super. 1992). In reflecting upon their inability to adopt a comprehensive definition, the Pennsylvania Supreme Court opined that the phrase “cause of action” is “not susceptible of any single definition to be applied in all types of cases... . At times and in certain contexts, it is identified with the infringement of a right or the violation of a duty. At other times and in other contexts, it is a concept of the law of remedies... . Another aspect reveals it is as something separate from writs and remedies, the group of operative facts out of which a grievance has developed”. *Emert v. Larami Corp.*, 200 A.2d 901, 903 Fn 4 (1964). Accordingly, in determining whether a new cause of action is presented by a proposed amendment, “technical considerations or ancient formulae are not controlling; nothing more is meant than that the defendant shall not be required to answer a wholly different legal theory or obligation from that originally stated...”. *Hodgen v. Summers*, 555 A.2d 214 (Pa.

Super. 1989).⁴ Generally, an amendment has been deemed to have stated a new cause of action when the amendment rests on a different theory, basis for recovery, or relationship between the parties than did the original pleading. *Schaffer v. Pennsylvania Assigned Claims Plan*, 518 A.2d 1213 (Pa. Super. 1986).

Since the Plaintiff's request to amend follows expiration of the applicable statute of limitations,⁵ the issue before the Court is whether Plaintiff's proposed amendment merely amplifies the claim already averred in the original complaint or, on the other hand, sets forth a new theory thereby improperly adding a new "cause of action".

A careful reading of Plaintiff's original complaint reveals a theory of negligence based upon Plaintiff's duty to exercise reasonable care in keeping the dog. Although the original complaint incorrectly places ownership of the dog with the Defendants, the gist of the complaint references Defendants' duty to properly supervise and restrain the animal. Since the duty of an owner of a dog is no different than that of a custodian of a dog, *see, generally, Miller v. Hurst*, 448 A.2d 614 (Pa. Super. 1982), an amendment limited to amplifying the correct relationship between the defendants and the dog would be appropriate since the underlying "cause of action" has not changed. However, Plaintiff's proposed amended complaint goes much further.

⁴In *Caracina v. Cotoia*, 208 A.2d 764. The Pennsylvania Supreme Court identified a broad parameter in determining whether an amended complaint presents a new or different cause of action. They instructed that inquiry should be made as to whether a judgment would foreclose any further action on either; whether the same measure of damages support both; whether the same defenses are available to both; and whether the same measure of proof is required. If the answer to all those questions is in the affirmative, then the amendment should be allowed. On the other hand, if any of the answers to those questions are negative, then the amendment should be refused. At least one appellate court has questioned the wisdom of the first prong of this test. *See, Sanchez v. City of Philadelphia, supra, footnote 2.*

⁵Both Plaintiff's original complaint and Plaintiff's proposed amendment sound in negligence which is subject to a two-year statute of limitations pursuant to 42 Pa. C.S.A. §5524. Plaintiff's complaint alleges the cause of action arises from an incident occurring on September 30, 1999. Accordingly, the statute of limitations expired on September 30, 2001.

The Plaintiffs seek to amend their complaint to add a theory of premises liability. In essence, the focus of the amended complaint is no longer a duty based upon the care and control of an animal but rather a duty to exercise reasonable care in keeping their home in a reasonably safe condition. This shift in legal theories is evidenced by the Plaintiffs' claims in their amended complaint that the Defendants were negligent in "failing to ensure that the dog could not gain access to their house..." and "failing to insure that all doors to the house were closed or otherwise barred or barricaded so as to prevent the dog from entering". *Plaintiffs' Proposed Amended Complaint, paragraph 17*. Accordingly, the Plaintiffs' Motion for Leave to Amend the Complaint is denied.

For the foregoing reasons, the attached Order is entered.

ORDER OF COURT

AND NOW, this 19th day of July, 2002, the Plaintiffs' Motion for Leave to Amend the Complaint is denied. The Plaintiffs may file an amended complaint within twenty (20) days of today's date limited to correctly identifying the Defendants' relationship, if any, with the dog.

NOTICE

Upper Adams School District

Notice of Intended Referendum on Act 24 of 2001, Occupation Assessment Tax Elimination, and Earned Income and Net Profits Tax Rate Increase

NOTICE is given that the Board of School Directors of the Upper Adams School District ("the School District") intends to adopt a resolution to place a referendum on the November 4, 2003, general election ballot. The referendum will relate to elimination of the occupation assessment tax and increase of the rate of the earned income tax collected by the School District. This notice is given pursuant to the Optional Occupation Tax Elimination Act of June 22, 2001, Act 24 of 2001, as amended (the "Act") and the Local Tax Enabling Act of December 31, 1965, P.L. 1257, as amended (the "Enabling Act").

The Act permits the School District to eliminate the occupation assessment tax and replace the occupation assessment tax revenues by increasing the rate of the earned income tax collected by the School District. This action may be taken if the voters approve the action by referendum. The School District estimates that replacing the occupation assessment tax revenues will require increasing the rate of the earned income tax collected by the School District by 0.6%, from the current 0.5%, to the new School District tax rate of 1.1%. Adding the tax collected by the School District to the 0.5% collected by the municipality in which the taxpayer resides, the total earned income and net profits tax rate paid by the School District residents would increase from the current 1.0% to the new total tax rate of 1.6%.

Pursuant to the Act, the School District intends to adopt a resolution directing a referendum on the November 4, 2003, general election ballot. The proposed resolution to be considered by the Board of School Directors provides that the referendum question to be placed on the ballot shall be in substantially the following form, with such additions or changes as may be determined by the Board of School Directors or election officials prior to the election:

Do you favor eliminating the Upper Adams School District occupation assessment tax by increasing the maximum allowable rate of the earned income tax from 1.0% to 1.6%?

The proposed resolution will be acted upon at a meeting of the Board of School Directors of the School District to be held on July 22, 2003, at 7:00 p.m., at the School District's Administration Building Boardroom, located at 161 North Main Street, Biglerville, Pennsylvania. The

Board of School Directors held a public hearing regarding the elimination of the occupation assessment tax and increasing the rate of the earned income tax on April 22, 2003.

If a majority of the electors voting on the referendum question on November 4, 2003 vote "yes", the Board of School Directors thereafter will adopt a new Earned Income Tax Resolution eliminating the occupation assessment tax and increasing the earned income and net profits tax rate collected by the School District to 1.1% effective July 1, 2004.

The increase in earned income and net profits tax is needed to produce revenue for general School District purposes and replace the revenues lost from the elimination of the Occupation Assessment Tax. The estimated revenue to be lost by the School District from the elimination of the Occupation Assessment Tax for 2004-2005 is \$962,020.00. The estimated revenue to be gained from the increase in the earned income and net profits tax for the 2004-2005 fiscal year is \$787,863.00.

If you have any questions regarding Act 24 of 2001 or the resolution referred to in this legal advertisement please contact the Upper Adams School District Business Office at 161 North Main Street, Biglerville, PA 17307, (717) 677-7191, Ext. 2704, during normal business hours.

Michael Lawrence
Board Secretary

7/3, 11 & 18

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-910 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain property situated in the Township of Franklin, County of Adams, Commonwealth of Pennsylvania.

BEGINNING at an iron pin on the West side of the mountain road; thence along the West side of said mountain road, due South 81 feet to an iron pin in the West side of said road; thence along lands of the South Mountain Development Corporation, due West 120 feet to an iron pin; thence along same, North 2 degrees 30 minutes West, 110 feet to an iron pin; thence along same, North 86 degrees East, 60 feet to an iron pin; thence along same, South 64 degrees East, 78 feet to an iron pin in the West side of the mountain road, the place of BEGINNING.

CONTAINING 45-1/2 perches as shown by draft of John H. Atherton, C.S., dated June 25, 1958, and recorded in Adams County Deed Book Volume 229, Page 292.

BEING the same real estate which Charles J. Edwards of 858 Hillcrest Avenue, Chambersburg, Franklin County, Pennsylvania, Grantor, by deed dated the 1st day of November, 1984, and recorded in the Deed Records of Adams County, Pennsylvania, Deed Book Volume 389, Page 1029, granted and conveyed to Edward E. Rotz and Carole J. Rotz, of 7471 Browns Mill Road, Chambersburg, Franklin County, Pennsylvania, Grantees.

TOGETHER with the right in the Grantees, their heirs and assigns, to use the aforesaid mountain road for ingress, egress and regress to and from the above described real estate, in common with John Rea Boggs and wife and Hammett B. Rea and wife, and all other having a similar right to use said road as specified in the hereinbefore recited deed.

Premises known as: 44 Boggs Road, Fayetteville, PA 17222

SEIZED and taken into execution as the property of **Edward E. Rotz & Carole J. Rotz** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 22, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/3, 11 & 18

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-983 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 5th day of September, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land, together with the improvements thereon erected, situate in Mt. Pleasant Township, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a point in Pennsylvania Legislative Route No. 01005 at corner of land now or formerly of Michael Livelsberger; thence by said land now or formerly of Michael Livelsberger and running through a steel pin located thirty (30) feet from the place of Beginning, North twenty-five (25) degrees fifteen (15) minutes East, two hundred thirty (230) feet to a steel pin; thence by the same South sixty-two (62) degrees twelve (12) minutes East, One hundred and ten hundredths (100.10) feet to a steel pin; thence by land now or formerly of Bender, North twenty-five (25) degrees twenty-two (22) minutes seven (07) seconds East four hundred forty-four and thirty-one hundredths (444.31) feet to a steel pin located at an original corner of the larger tract of land conveyed by the deed hereinafter recited; thence by the same and by other land of Lucinda B. Small, North fifty-five (55) degrees fifty-four (54) minutes six (06) seconds West three hundred sixty-eight and seventy-nine hundredths (368.79) feet to a steel pin; thence by other land of Lucinda B. Small and running through a steel pin located thirty (30) feet from the end of this line South twenty-seven (27) degrees forty-eight (48) minutes West, seven hundred fourteen and fourteen hundredths (714.14) feet to a point in the aforementioned Legislative Route; thence in said Legislative Route South sixty-two (62) degrees twelve (12) minutes East, two hundred ninety-five and fifty-five hundredths (295.55) feet to a point, the place of BEGINNING. CONTAINING 5.5338 acres, neat measure.

THE FOREGOING description was obtained from a draft of a survey made by J.H. Rife, Registered Engineer, on November 25, 1970 and a deed of conveyance recorded in the Adams County Recorder of Deeds, Book 290 at page 319.

IT BEING THE SAME TRACT OF LAND which Gerald E. Gebhart and Pearl Gebhart, husband and wife, by their Deed dated June 25, 1999 and recorded in the Office of the Recorder of

Deeds of Adams County, Pennsylvania, in Record Book 1866 at Page 0259, sold and conveyed unto Donald A. Bixler, a single adult individual.

BEING premises more commonly known as 2986 Centennial Road, Hanover, Pennsylvania 17331

Map J14, Parcel 54C

SEIZED and taken into execution as the property of **Donald A. Bixler a/k/a Don Bixler** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 29, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/11, 18 & 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-231 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 5th day of September, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of land situated in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 890 on a Plan of Lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds in and for Adams County in Plan Book 1, page 6 (erroneously stated as Misc. Deed Book 1, page 6 in prior deed) and subject to all legal highways, easements, rights-of-way and restrictions of record.

TOGETHER with the right in common with other owners of lots in said subdivision to use for all usual purposes the streets, ways, beaches, recreation areas, and other public areas, as shown on the said plot, and the right in common with the other owners of lots in the said subdivision to use the lake and beaches for swimming, fishing and boating in accordance with the rules and regulations of Lake Meade Property Owners Association, its successors or assigns.

TITLE TO SAID PREMISES IS VESTED IN John L. Livelsberger and Rhonda L. Livelsberger, his wife by Deed from Jeremy D. Forbes and Peggy L. Morningstar Forbes, his wife dated 3/29/2001 and recorded 4/3/2001 in Record Book 2248, Page 101.

Premises being: 30 Pleasanton Drive, East Berlin, PA 17316

Tax Parcel No. 2 Map #13

SEIZED and taken into execution as the property of **John L. Livelsberger & Rhonda L. Livelsberger a/k/a Rhonda L. Stoner** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 29, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/11, 18 & 25

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Pennsylvania Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, for the purposes of obtaining a Certificate of Incorporation of a proposed corporation to be organized under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, as amended. The name of the corporation is C M MANAGEMENT CORPORATION.

7/18

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-448 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

Legal Description

PREMISES "A"

ALL THAT TRACT of land situate, lying and being in Menallen Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at an Existing Rebar at the common corner of land now or formerly of Brian Showers and land now or formerly of Leroy Routsong, et al. and land now or formerly of Harry L. Pritchard; thence by said land now or formerly of Brian Showers, South 37 degrees 56 minutes 09 seconds East, 317.60 feet to an Existing Axle at corner of said land now or formerly of Brian Showers; thence by said land now or formerly of Brian Showers, South 85 degrees 07 minutes 39 seconds West, 199.82 feet to an Existing Axle at corner of said land now or formerly of Brian Showers, and on line of land now or formerly of Ruth E. Bretzman; thence by said land now or formerly of Ruth E. Bretzman, North 37 degrees 56 minutes 09 seconds West, 423.73 feet to a Rebar Set at Existing Planted Stone at the common corner of said land now or formerly of Ruth E. Bretzman and other land now or formerly of William O. Routsong and land now or formerly of Leroy Routsong, et al.; thence by said land now or formerly of Leroy Routsong, et al., North 84 degrees 27 minutes 24 seconds East, 198.32 feet to a point at corner of said land now or formerly of Leroy Routsong, et al.; thence by said land now or formerly of Leroy Routsong, et al., South 37 degrees 56 minutes 09 seconds East, 108.90 feet to an Existing Rebar at the common corner of said land now or formerly of Leroy Routsong, et al. and land now or formerly of Brian Showers and land now or formerly of Harry L. Pritchard, the point and place of BEGINNING.

CONTAINING 1.634 acres.

THE above description was taken from a draft of survey, by Mark A. Kuntz, Surveyor, dated November 12, 1993 as later revised, which draft of survey is lodged and part of the record in No. 97-S-231 in the Adams County Prothonotary's Office.

PREMISES "B"

ALL THOSE TWO (2) tracts of land situate, lying and being in Menallen Township, Adams County, Pennsylvania,

more particularly bounded and described as follows:

TRACT NO. 1:

BEGINNING at a Pipe Set in the centerline of the right-of-way of Maryland Avenue, 18' back from the centerline of existing 18' gravel cartway, at the common corner of land now or formerly of Rob Conner and land now or formerly of Hugh Gauch; thence crossing and leaving said Maryland Avenue, and by land now or formerly of Hugh Gauch, North 57 degrees 34 minutes 08 seconds East, 199.24 feet to a Rebar Set at corner of said land now or formerly of Hugh Gauch; thence by said land now or formerly of Hugh Gauch, South 48 degrees 38 minutes 54 seconds East, 1,098.16 feet to a Rebar Set at Existing Planted Stone at corner of said land now or formerly of Hugh Gauch; thence by said land now or formerly of Hugh Gauch, North 33 degrees 05 minutes 16 seconds East, 178.65 feet to an Existing Rebar and Stones at the common corner of said land now or formerly of Hugh Gauch, land now or formerly of Paul Kuhn, and land now or formerly of Robert Ayers, Jr.; thence by said land now or formerly of Robert Ayers, Jr., South 46 degrees 57 minutes 39 seconds East, 328.32 feet to an Existing Pipe and Stones at corner of said land now or formerly of Robert Ayers, Jr.; thence by said land now or formerly of Robert Ayers, Jr., North 52 degrees 40 minutes 28 seconds East, 297.66 feet to an Existing Pipe at intersection of Stone Rows on line of said land now or formerly of Robert Ayers, Jr., and at corner of land now or formerly of John W. Morrow; thence by said land now or formerly of John W. Morrow, South 37 degrees 14 minutes 19 seconds East, 548.01 feet to an Existing Pipe at corner of said land now or formerly of John W. Morrow; thence by said land now or formerly of John W. Morrow, North 49 degrees 29 minutes 30 seconds East, 819.62 feet to an Existing Pipe at 8" Spruce Tree at corner of said land now or formerly of John W. Morrow, and said on line of land now or formerly of E.C. Anderson, Jr.; thence by said land now or formerly of E.C. Anderson, Jr. and by land now or formerly of Kevin B. King, South 40 degrees 36 minutes 47 seconds East, 265.20 feet to an Existing Pipe at corner of said land now or formerly of Kevin B. King and on line of land now or formerly of Harry L. Pritchard; thence by said land now or formerly of Harry L. Pritchard, South 52 degrees 37 minutes 44 seconds West, 635.58 feet to a Rebar and Stones Set at corner of said land now or formerly of Harry L. Pritchard; thence by said land now or formerly of Harry L. Pritchard, and across an Unimproved Road (right-of-way to S.R. #4008) near the end of this course, South 33 degrees 26 min-

utes 12 seconds West, 623.70 feet to an Existing Rebar at common corner of said land now or formerly of Harry L. Pritchard and Brian Showers, and on line now or formerly of William O. Routsong; thence by said land now or formerly of William O. Routsong, North 37 degrees 56 minutes 09 seconds West, 108.90 feet to a point at corner of said land now or formerly of William O. Routsong; thence by said land now or formerly of William O. Routsong, South 84 degrees 27 minutes 24 seconds West, 198.32 feet to a Rebar Set at Existing Planted Stone at the common corner of said land now or formerly of William O. Routsong and other land now or formerly of the said William O. Routsong.

(TRACT 2 more particularly described hereinbelow); thence by said other lands now or formerly of William O. Routsong, North 37 degrees 56 minutes 09 seconds West, 273.87 feet to a point at corner of said other land now or formerly of William O. Routsong; thence by said other land now or formerly of William O. Routsong, South 54 degrees 22 minutes 15 seconds West, 209.78 feet to a Rebar Set in Existing Stones at corner of said other land now or formerly of William O. Routsong and at corner of land now or formerly of Ruth E. Bretzman; thence by said land now or formerly of Ruth E. Bretzman, and by land now or formerly of John C. Bretzman, South 54 degrees 22 minutes 15 seconds West, 544.63 feet to an Existing Pipe and Planted Stone on line of said land now or formerly of John C. Bretzman, and at corner of land now or formerly of Robert Luckenbaugh; thence by said land now or formerly of Robert Luckenbaugh, and across a private road or drive near the end of this course, North 61 degrees 56 minutes 42 seconds West, 610.43 feet to an Existing Pipe at corner of said land now or formerly of Robert Luckenbaugh; thence by said land now or formerly of Robert Luckenbaugh, South 60 degrees 49 minutes 41 seconds West, 97.23 feet to an Existing Pipe and Stones at corner of said land now or formerly of Robert Luckenbaugh, and on line of land now or formerly of Ralph Sheaffer; thence by said land now or formerly of Ralph Sheaffer, and by land now or formerly of Albert Hudimae, and by land now or formerly of Henry Krahn, Jr., and by land now or formerly of Jerome Hanson, and by land now or formerly of Susan Coles, North 07 degrees 38 minutes 11 seconds East, 1,200.66 feet to an Existing Pipe and Stones at the common corner of said land now or formerly of Susan Coles and land now or formerly of Rob Conner; thence by said land now or formerly of Rob Conner, North 53 degrees 10 minutes 42 seconds West, 419.04 feet to a Pipe Set in the centerline of the right-of-way of Maryland Avenue at the common

(continued on page 6)

corner of said land now or formerly of Rob Conner and land now or formerly of Hugh Gauch, the point and place of BEGINNING.

CONTAINING 43.921 Acres.

LESS, HOWEVER ALL those two parcels of land, situate in Menallen Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

PARCEL NO. 1:

BEGINNING at an existing pipe on line of land now or formerly of the Grantees, E.C. Anderson, Jr. and Dolores M. Anderson, and at corner of land now or formerly of John W. Morrow, thence by said land now or formerly of the Grantees, E.C. Anderson, Jr. and Dolores M. Anderson, and by land now or formerly of Kevin G. King, a/k/a Kevin B. King, South 40 degrees 36 minutes 47 seconds East, 105.00 feet to a rebar set on line of said land now or formerly of Kevin G. King, a/k/a Kevin B. King, and at corner of Lot 3 depicted in and upon the below-mentioned draft of survey and final subdivision plan; thence by said Lot 3, South 32 degrees 35 minutes 56 seconds West, 175.48 feet to a rebar set at corner of said Lot 3, and on line of land now or formerly of the Grantors, Leroy Routsong and Alice Routsong, his wife, and William O. Routsong, Jr.; thence by said land now or formerly of the Grantors, Leroy Routsong and Alice Routsong, his wife and William O. Routsong, Jr., North 40 degrees 36 minutes 47 seconds West, 155.99 feet to a rebar set at corner of said land now or formerly of the Grantors, Leroy Routsong and Alice Routsong, his wife and William O. Routsong, Jr., and on line of land now or formerly of John W. Morrow; thence by said land now or formerly of John W. Morrow, North 49 degrees 29 minutes 30 seconds East, 168.00 feet to an existing pipe at corner of said land now or formerly of John W. Morrow, and on line of land now or formerly of the Grantees, E.C. Anderson, Jr. and Dolores M. Anderson, the point and place of BEGINNING.

CONTAINING 0.503 acre.

The above description was taken from a draft of survey and final subdivision plan, dated March 30, 1998, by Mark A. Kuntz, Surveyor, which draft of survey and final subdivision plan is recorded in the Office of Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 74 at Page 5; the above described tract of land is labeled as Lot 2 in and upon said draft of survey and final subdivision plan.

PARCEL NO. 2:

BEGINNING at a rebar set on line of land now or formerly of Grantees, Kevin G. King, a/k/a Kevin B. King and Wanda S. King, and at corner of Lot 2 depicted in and upon the below-mentioned draft of

survey and final subdivision plan; thence by said land now or formerly of the Grantees, Kevin G. King, a/k/a Kevin B. King and Wanda S. King, South 40 degrees 36 minutes 47 seconds East, 160.20 feet to an existing pipe at corner of said land now or formerly of the Grantees, Kevin G. King, a/k/a Kevin B. King and Wanda S. King, and on line of land now or formerly of Harry Pritchard; thence by said land now or formerly of Harry Pritchard, South 52 degrees 37 minutes 44 seconds West, 168.27 feet to a rebar set on line of said land now or formerly of Harry Pritchard, and at corner of land now or formerly of the Grantors, Leroy Routsong and Alice Routsong, his wife and William O. Routsong, Jr.; thence by said land now or formerly of the Grantors, Leroy Routsong and Alice Routsong, his wife, and William O. Routsong, Jr., North 40 degrees 36 minutes 47 seconds West, 100.00 feet to a rebar set on line of said land now or formerly of the Grantors, Leroy Routsong and Alice Routsong, his wife, and William O. Routsong, Jr., and at corner of said Lot 2; thence by said Lot 2, North 32 degrees 35 minutes 56 seconds East, 175.48 feet to a rebar set at corner of said Lot 2, and on line of said land now or formerly of the Grantees, Kevin G. King, a/k/a Kevin B. King and Wanda S. King, the point and place of BEGINNING.

CONTAINING 0.502 acre.

The above description was taken from a draft of survey and final subdivision plan, dated March 30, 1998, by Mark A. Kuntz, Surveyor, which draft of survey and final subdivision plan is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 74 at Page 5; the above described tract of land is labeled as Lot 3 in and upon said draft of survey and final subdivision plan.

TRACT NO. 2:

BEGINNING at a point at corner of land now or formerly of Leroy Routsong, et al. (Tract 1 more particularly described hereinabove); thence by said land now or formerly of Leroy Routsong, et al., South 37 degrees 56 minutes 09 seconds East, 273.87 feet to a Rebar Set at Existing Planted Stone at the common corner of said land now or formerly of Leroy Routsong, et al. and other land now or formerly of William O. Routsong and land now or formerly of Ruth E. Bretzman; thence by said land now or formerly of Ruth E. Bretzman, North 74 degrees 31 minutes 43 seconds West, 351.63 feet to a Rebar Set in Existing Stones at corner of said land now or formerly of Ruth E. Bretzman, and on line of said land now or formerly of Leroy Routsong, et al.; thence by said land now or formerly of Leroy Routsong, et al., North 54 degrees 22 minutes 15

seconds East, 209.78 feet to a point at corner of said land now or formerly of Leroy Routsong, et al., the point and place of BEGINNING.

CONTAINING 0.659 acre.

The above descriptions for Tracts Nos. 1 and 2 were taken from a draft of survey, by Mark A. Kuntz, Surveyor, dated November 12, 1993, as later revised, which draft of survey is lodged as part of the record in No. 97-S-231 in the Adams County Prothonotary's Office.

TITLE TO SAID PREMISES IS VESTED IN Joseph S. Buchheister and Juanita M. Buchheister, his wife by reason of the following:

PREMISES "A"

BEING THE SAME PREMISES which William Oscar Routsong, Jr., single man (widower) by Deed dated 9/10/1999 and recorded 9/13/1999 in the County of Adams in Record Book 1913, Page 293 conveyed unto Joseph S. Buchheister and Juanita M. Buchheister, his wife.

PREMISES "B"

BEING THE SAME PREMISES which Leroy Routsong and Alice Y. Routsong, his wife by Deed dated 9/10/1999 and recorded on 9/13/1999 in the County of Adams in Record Book 1913, Page 297 conveyed unto Joseph S. Buchheister and Juanita M. Buchheister, his wife.

Premises being: 360-362 Bendersville-Wenksville Road, Aspers, PA 17304

Tax Parcel No. E05-0070 (PREMISES A)
Tax Parcel No. EC5-0037-000 (PREMISES B)

SEIZED and taken into execution as the property of **Joseph S. Buchheister & Juanita Buchheister** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 22, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/18, 25 & 8/1

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 FRANCES M. CRUMBLING, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Personal Representative: Tamara J. Eisenhart, 345 High Rock Rd. - West, Hanover, PA 17331

Attorney: G. Steven McKonly, Esq., 119 Baltimore Street, Hanover, PA 17331

ESTATE OF ELIZABETH V. HARNER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executors: Nancy Elizabeth Six, 4810 Baltimore Pike, Littlestown, PA 17340; Linda A. O'Brien, 365 Bair Road, Abbottstown, PA 17301; Janice L. Seymore, 1305 Hunterstown-Hampton Rd., New Oxford, PA 17350

Attorney: Larry W. Wolf, Esq., 215 Broadway, Hanover, PA 17331

ESTATE OF SOPHIA HOLTZ, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Co-Executrices: Jean L. Holtz, 944 W. Market Street, York, PA 17404; Carol E. Holtz, P.O. Box 3223, Gettysburg, PA 17325

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

ESTATE OF DAVID L. HOWARD a/k/a DAVID LAMAR HOWARD, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Scott L. Kelley, Esq., 209 Broadway, Hanover, PA 17331

Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

ESTATE OF JODY A. LAUGHMAN, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executors: Francis N. and Mary Ann Kuhn, 226 Princess Street, Hanover, PA 17331

Attorney: James T. Yingst, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

ESTATE OF EVELYN MILDRED LEONARD, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executors: Richard B. Leonard, 319 Fairview Avenue, McSherrystown, PA 17344; Patricia Ann Hawn, 173 Sherry Drive, McSherrystown, PA 17344

Attorney: Matthew L. Guthrie, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

ESTATE OF WILLIAM J. NEELY, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: George & Genevieve Phillips, c/o Michael Gilfedder, Esq., 144 Morton Road, Springfield, PA 19064

Attorney: Michael Gilfedder, Esq., 144 Morton Road, Springfield, PA 19064

ESTATE OF JOHN I. STRASBAUGH, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executor: Stephen A. Kane, 2385 Old Route 30, Orttanna, PA 17353

Attorney: John R. White, Esq., Campbell & White, P.C., 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF JAMES A. THOMAS, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executors: Marlette E. & Kathryn A. Thomas, 15021 Bonair Road, Glen Rock, PA 17327

Attorney: James T. Yingst, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

SECOND PUBLICATION

ESTATE OF DOROTHY M. KEMPER, DEC'D

Late of the Borough of East Berlin, Adams County, Pennsylvania

Executrix: Tina M. Eisenhart, 7 Norfolk Ct., Mechanicsburg, PA 17055

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

ESTATE OF HELEN TUROUS a/k/a HELEN C. TUROUS, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Virginia Dodd, 24396 Santa Clara, Dana Point, CA 92629

Attorney: Marlin R. McCaleb, Esq., 219 East Main Street, P.O. Box 230, Mechanicsburg, PA 17055

THIRD PUBLICATION

ESTATE OF LEROY E. FLICKINGER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Personal Representative: Verna B. Reedy, 6737 Congressional Terrace, Fayetteville, PA 17222

Attorney: Wendy Weikal-Beauchat, 63 West High Street, Gettysburg, PA 17325

ESTATE OF MARTHA G. ORNER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: PNC Bank, N.A., P.O. Box 8874, Camp Hill, PA 17001-9952

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

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
NO. 03-SU-124
Action to Quiet Title

PAUL M. METCALF, Plaintiff
vs.

KENNETH E. DOBSON and BARBARA A. DOBSON, husband and wife, their heirs, administrators, successors and assigns, Defendants

TO: Kenneth E. Dobson and Barbara A. Dobson, husband and wife, their heirs, administrators, successors and assigns,

YOU ARE NOTIFIED that an Order has been entered on July 9, 2003, directing that within thirty (30) days after this publication, you shall commence an Action in Ejectment or other appropriate action against the Plaintiffs above to assert any claim you may have in and to the lands herein described or be forever barred from asserting any right, lien, title or interest inconsistent with the interest or claim set forth in Plaintiffs' Complaint with respect to the land herein described:

ALL THAT TRACT of land situate, lying and being in Carroll Valley Borough, formerly Liberty Township, Adams County, Pennsylvania, being Lot No. W-339, bounded and described as follows:

BEGINNING at a point in the center of Sky Lark Trail at Lot No. 340; thence by said lot South 28 degrees 4 minutes 40 seconds West 225 feet to Lot No. 306; thence by said lot North 61 degrees 55 minutes 20 seconds West 100 feet to Lot No. 338; thence by said lot North 28 degrees 4 minutes 40 seconds East 225 feet to a point in the center of said Sky Lark Trail; thence by said Sky Lark Trail South 61 degrees 55 minutes 20 seconds East, 100 feet to the place of BEGINNING.

The above description was taken from a plan of lots labeled "Section W, Charmita" dated January 3, 1970, prepared by Gordon L. Brown, R.S., and recorded in Adams County Plat Book 1 at Page 66.

ALL that tract of land situate, lying and being in Carroll Valley Borough, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point in the center of Pigeon Trail at Lot No. 26; thence by said lot, South 24 degrees 14 minutes 43 seconds West, 225 feet to Lot No. 38; thence by said lot and by Lot No. 37, North 65 degrees 45 minutes 17 seconds West 120 feet to Lot No. 28; thence by said lot, North 24 degrees 14 minutes 23 seconds East, 225 feet to a point in the center of said Pigeon Trail; thence in

said Pigeon Trail, South 65 degrees 45 minutes 17 seconds East, 120 feet to the place of BEGINNING.

The above description was taken from a plan of lots labeled "Section P of Charmita, Inc.", dated August 11, 1969, prepared by Evans, Hagan & Holdefer, and recorded in Adams County Plat Book 1 at Page 52, being designated as Lot No. 27 thereon.

BEING THE SAME WHICH Charmita, Inc., by deed dated October 30, 1970 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Deed Book 320 at page 574, sold and conveyed unto Kenneth E. Dobson and Barbara A. Dobson, husband and wife, the Defendants herein.

Hartman & Yannetti
Bernard A. Yannetti, Esq.
Attorney for Plaintiffs
126 Baltimore Street
Gettysburg, PA 17325
717-334-3105

7/18

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of an Act of the General Assembly, approved December 16, 1982, P.L. 1309, there has been filed in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on the 2nd day of June, 2003, a certificate for the conduct of a business in Adams County, Pennsylvania, under the fictitious name, style or designation of "SLEEPY HOLLOW OF GETTYSBURG CANDLELIGHT GHOST TOURS", with its principal place of business at 433 Baltimore Street, Gettysburg, Pennsylvania, 17325. The name and address of the person owning or interested in said business is Cynthia Shultz of 433 Baltimore Street, Gettysburg, Pennsylvania, 17325.

John James Mooney, III, Esq.
Mooney & Associates
Attorneys at Law
230 York Street
Hanover, PA 17331

7/18

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Pennsylvania Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on or about July 1, 2003, for the purpose of obtaining a Certificate of Incorporation of a corporation organized under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, as amended. The name of the corporation is GETTYSBURG BICYCLE & FITNESS, INC.

Chester G. Schultz, Esq.
145 Baltimore Street
Gettysburg, PA 17325

7/18

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Commonwealth of Pennsylvania.

The name of the corporation is P & M TOOLS, INC.

The corporation has been incorporated under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania Act of December 22, 1988.

P & M Tools, Inc.
Box 60, 247 Old Route 30
McKnightstown, PA 17343

7/18

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Pennsylvania Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, for the purposes of obtaining a Certificate of Incorporation of a proposed corporation to be organized under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, as amended. The name of the corporation is DOWD HORSESHOEING, INC.

7/18

Adams County Legal Journal

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July 25, 2003

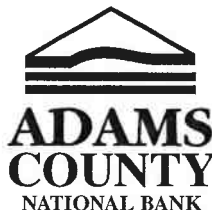
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This opinion continues to next issue (8/1/2003)

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-983 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 5th day of September, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land, together with the improvements thereon erected, situate in Mt. Pleasant Township, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a point in Pennsylvania Legislative Route No. 01005 at corner of land now or formerly of Michael Livelsberger; thence by said land now or formerly of Michael Livelsberger and running through a steel pin located thirty (30) feet from the place of Beginning, North twenty-five (25) degrees fifteen (15) minutes East, two hundred thirty (230) feet to a steel pin; thence by the same South sixty-two (62) degrees twelve (12) minutes East, One hundred and ten hundredths (100.10) feet to a steel pin; thence by land now or formerly of Bender, North twenty-five (25) degrees twenty-two (22) minutes seven (07) seconds East four hundred forty-four and thirty-one hundredths (444.31) feet to a steel pin located at an original corner of the larger tract of land conveyed by the deed hereinafter recited; thence by the same and by other land of Lucinda B. Small, North fifty-five (55) degrees fifty-four (54) minutes six (06) seconds West three hundred sixty-eight and seventy-nine hundredths (368.79) feet to a steel pin; thence by other land of Lucinda B. Small and running through a steel pin located thirty (30) feet from the end of this line South twenty-seven (27) degrees forty-eight (48) minutes West, seven hundred fourteen and fourteen hundredths (714.14) feet to a point in the aforementioned Legislative Route; thence in said Legislative Route South sixty-two (62) degrees twelve (12) minutes East, two hundred ninety-five and fifty-five hundredths (295.55) feet to a point, the place of BEGINNING. CONTAINING 5.5338 acres, neat measure.

THE FOREGOING description was obtained from a draft of a survey made by J.H. Rife, Registered Engineer, on

November 25, 1970 and a deed of conveyance recorded in the Adams County Recorder of Deeds, Book 290 at page 319.

IT BEING THE SAME TRACT OF LAND which Gerald E. Gebhart and Pearl Gebhart, husband and wife, by their Deed dated June 25, 1999 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 1866 at Page 0259, sold and conveyed unto Donald A. Bixler, a single adult individual.

BEING MORE commonly known as 2986 Centennial Road, Hanover, Pennsylvania 17331

Map J14, Parcel 54C

SEIZED and taken into execution as the property of **Donald A. Bixler a/k/a Don Bixler** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 29, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/11, 18 & 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-231 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 5th day of September, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of land situated in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 890 on a Plan of

Lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds in and for Adams County in Plan Book 1, page 6 (erroneously stated as Misc. Deed Book 1, page 6 in prior deed) and subject to all legal highways, easements, rights-of-way and restrictions of record.

TOGETHER with the right in common with other owners of lots in said subdivision to use for all usual purposes the streets, ways, beaches, recreation areas, and other public areas, as shown on the said plot, and the right in common with the other owners of lots in the said subdivision to use the lake and beaches for swimming, fishing and boating in accordance with the rules and regulations of Lake Meade Property Owners Association, its successors or assigns.

TITLE TO SAID PREMISES IS VESTED IN John L. Livelsberger and Rhonda L. Livelsberger, his wife by Deed from Jeremy D. Forbes and Peggy L. Morningstar Forbes, his wife dated 3/29/2001 and recorded 4/3/2001 in Record Book 2248, Page 101.

Premises being: 30 Pleasanton Drive, East Berlin, PA 17316

Tax Parcel No. 2 Map #13

SEIZED and taken into execution as the property of **John L. Livelsberger & Rhonda L. Livelsberger a/k/a Rhonda L. Stoner** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 29, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/11, 18 & 25

BECKER VS. CZAPP & GRIFFITH ET AL

1. Preliminary objections are poor means of attacking punitive damages, unless the right to same is clearly inappropriate.

2. Preliminary objections in the nature of a demurrer are an inappropriate means by which to challenge the legality of the damages sought in a complaint.

3. Punitive damages are awarded only for outrageous conduct, that is, for acts done with a bad motive or with a reckless indifference to the interests of others damages are not justified where the defendant's mental state rises to no more than gross negligence.

4. Indemnity is a right which enures to a person who is without fault on his own part, has been compelled, by reason of some legal obligation, to pay damages occasioned by the initial negligence of another and for which he himself is only secondarily liable.

5. A mere showing by a party seeking indemnity that there was a reasonable possibility that it might have been held liable if it had not settled is not sufficient to recover indemnity; actual legal liability must be shown.

6. One is subject to liability for private nuisance if, but only if, his conduct is a legal cause of an invasion of another's interest in the private use and enjoyment of land, and the invasion is either: (a) intentional and unreasonable, or (b) unintentional and otherwise actionable under the rules controlling liability for negligent or reckless conduct, or for abnormally dangerous conditions or activities.

7. Before a nuisance may be found, there must appear an "unreasonable, unwarrantable, or unlawful use by a person of his own property which causes injury, damage, hurt, inconvenience, annoyance or discomfort to one in the legitimate enjoyment of his reasonable rights of person or property."

8. Where a contractor agreed in writing to perform a contract with workmanship of good quality but is shown to have performed with substandard and inferior work, a violation of Section 201-2(4)(xvi) of the Unfair Trade Practices and Consumer Protection Law is established.

In the Court of Common Pleas of Adams County, Pennsylvania,
Civil, No. 00-S-1234, DAVID BECKER AND LISA BECKER VS.
CZAPP & GRIFFITH AND J. F. WAYBRANT & SONS, INC. AND
DONEGAL INSURANCE CO.

Paul J. Bruder, Jr., Esq., for Plaintiffs

Douglas B. Macello, Esq., for Defendant Czapp and Griffith

Jeffrey Wothers, Esq., for Defendant Donegal Insurance Co.

Gary A. Hurwitz, Esq., for Defendant J. F. Waybrant & Sons, Inc.

Kuhn, P.J., July 22, 2002

OPINION ON PRELIMINARY OBJECTIONS OF
DEFENDANT, CZAPP & GRIFFITH, TO
PLAINTIFFS' COMPLAINT

Before this Court are Preliminary Objections of Defendant, Czapp & Griffith, to Plaintiffs' Complaint.

On March 21, 2001, Plaintiffs, David Becker and Lisa Becker, filed a Complaint containing seven counts.¹ Therein they allege that Defendant, Czapp & Griffith, performed the installation of a home heating oil storage tank in a careless, reckless and negligent manner. (Compl. ¶ 22). Defendant, Czapp & Griffith, filed Preliminary Objections to Plaintiffs' Complaint and Plaintiffs filed an Answer thereto. Plaintiffs and Defendant, Czapp & Griffith, have filed briefs with regard to the preliminary objections and the matter is before the court for disposition in accordance with Adams C. Civ. R. 211.

STATEMENT OF FACTS

Plaintiffs claim that on or about October 16, 1996, they contracted with and purchased from Defendant, Waybrant & Sons, Inc. (hereinafter "Waybrant"), a new 175-gallon vertical home heating oil storage tank (hereinafter "the tank"). (Compl. ¶ 5). On or about December 4, 1999, Czapp & Griffith installed the tank in the basement of the Plaintiffs' home. (Compl. ¶ 6). Plaintiffs maintain that a Waybrant employee informed Lisa Becker that Waybrant would inspect the newly installed tank. (Compl. ¶ 7). Plaintiffs further maintain that no such inspection was ever performed, or that, to the extent it was performed, such inspection was conducted in a careless, reckless and negligent manner. (Compl. ¶¶ 10, 15). Plaintiffs allege that on December 9, 1999, an employee of Waybrant overfilled the tank with heating oil by approximately 75 gallons more than the tank's capacity. (Compl. ¶ 10). Plaintiffs further state that the Waybrant employee then left Plaintiffs' home without investigating the condition of the property or the tank. (Compl. ¶ 11). Finally,

¹ The counts are for: (I), Negligence on the part of Czapp & Griffith (II), Negligence on the part of Waybrant & Sons, Inc. (III), Indemnification (IV), Private Nuisance (V), Public Nuisance (VI), Violation of Unfair Trade Practices and Consumer Protection Law, 73 P.S. §201-1 et seq. on the part of Czapp & Griffith (VII), Violation of Unfair Trade Practices and Consumer Protection Law, 73 P.S. §201-1 et seq. on the part of J.F. Waybrant & Sons, Inc.

Plaintiffs state that a Waybrant employee marked on the bill that the tank did not have an overflow protection device. (Compl. ¶ 11).

Plaintiffs allege that, during tank installation, Czapp & Griffith did not install an overflow protection device to protect or warn of overfilling, thus permitting the 75 gallons of fuel oil to be released from the tank onto Plaintiffs' basement floor and into the subsurface soils and bedrock. (Compl. ¶ 13). Plaintiffs further allege that Czapp & Griffith failed to conform the tank to industry standards and failed to take any other reasonable steps to prevent the release of the fuel oil and failed to protect the rights and safety of individuals in and around Plaintiffs' home, including Plaintiffs and their children. (Compl. ¶ 14). Plaintiffs argue that, as a direct result of negligence, carelessness and recklessness on the part of both defendants, the petroleum odor in the house was so pervasive that Plaintiffs were forced to move themselves and their two children, ages 1 and 3, out of their home two weeks prior to Christmas 1999. (Compl. ¶ 17). Plaintiffs also argue that they and their children have suffered stress, physical illness, mental anguish and humiliation which may continue indefinitely. (Compl. ¶ 18). Furthermore, Plaintiffs allege that they have suffered a loss of quality of life, inconvenience, aggravation and unnecessary expenditures of time and effort. (Compl. ¶ 19). Finally, Plaintiffs maintain that the Defendants' conduct was outrageous and wanton and constitutes a reckless disregard for Plaintiffs' property rights, and therefore subjects Defendants to the imposition of punitive damages. (Compl. ¶ 20).

Czapp & Griffith filed preliminary objections in the form of a demurrer and a motion for more specific pleadings. Czapp & Griffith moves for its dismissal, alleging that, based on the facts averred in the Complaint and the applicable law, Plaintiffs failed to set forth claims for punitive damages, indemnification, private nuisance and public nuisance. Czapp & Griffith also alleges that Plaintiffs failed to set forth a claim under the Unfair Trade Practices and Consumer Protection Law. Czapp & Griffith has subsequently withdrawn the objection to Plaintiffs' claim regarding public nuisance.

LEGAL DISCUSSION

Czapp & Griffith argues that Plaintiffs have failed to state a claim for punitive damages because such damages can not be based upon mere negligence. We have held, on previous occasions, that preliminary objections are poor means of attacking punitive damages, unless the right to same is clearly inappropriate. See *Michael v. Gettysburg Foundry Specialties Co.*, 38 ACLJ 83 (1995). The Supreme Court of Pennsylvania has also stated that preliminary objections in the nature of a demurrer are an inappropriate means by which to challenge the legality of the damages sought in a complaint. *Hudock v. Donegal Mutual Insurance Company*, 438 Pa. 272, 275, 264 A.2d 668, 671 (1970), citing *Suraci v. Ball*, 51 A.2d 404 (Pa.Super. 1947). That Court further stated that a plaintiff should not be put out of court completely merely because he alleges the wrong measure of damages. *Id.*

The rule of punitive damages set forth in the Restatement (Second) of Torts § 908 has been adopted in Pennsylvania. See *Moran v. Corson*, 586 A.2d 422 (Pa.Super. 1991); and *Feld v. Merriam*, 506 Pa. 383, 485 A.2d 742 (1984). Section 908(1) of the Restatement (Second) of Torts defines punitive damages as those other than compensatory or nominal, “awarded against a person to punish him for outrageous conduct and to deter him and others like him from similar conduct in the future.” Section 908(1) further states that punitive damages may be awarded for “conduct that is outrageous, because of the defendant’s evil motive or his reckless indifference to the rights of others.” This Court has addressed the issue of reckless indifference in *Wyatt v. Le Beau Monde Enterprises, Inc.*, 35 ACLJ 1 (1992), in which we stated:

Comment a to Section 500 of the Restatement (Second) of Torts describes two distinct types of reckless conduct which represent very different mental states: (1) where the “actor knows, or has reason to know, ... of facts which create a high degree of risk of physical harm to another, and deliberately proceeds to act, or to fail to act, in conscious disregard of, or indifference to, that risk;” and (2) where the “actor has such knowledge, or reason to know, of the facts, but does not realize or appreciate the high degree of risk involved, although a reasonable

man in his position would do so.” The first type of reckless conduct described in Section 500 demonstrates a higher degree of culpability than the second on the continuum of mental states which range from specific intent to ordinary negligence. An “indifference” to a known risk under Section 500 is closer to an intentional act than the failure to appreciate the degree of risk from a known danger... Under Pennsylvania law, only the first type of reckless conduct described in comment a to Section 500, is sufficient to create a jury question on the issue of punitive damages. Thus, “punitive damages are awarded only for outrageous conduct, that is, for acts done with a bad motive or with a reckless indifference to the interests of others... Section 908 damages are not justified where the defendant’s mental state rises to no more than gross negligence.

Wyatt v. Le Beau Monde, 35 ACLJ at 4.

This Court further stated that, although comment a to Section 500 refers to the risk of physical harm, it can be modified to include property damage. *Id.*; see also *Kirkbride v. Lisbon Contractors, Inc.*, 560 A.2d 809 (Pa.Super. 1989). With regard to punitive damages in that context, we held:

Several types of attitudes are suggested. First, defendant knows he infringes on a property right or is aware of a high risk he so infringes. The *Kirkbride* case is an example of this. Second, perhaps defendant should have known there was a risk, it was unreasonable that he did not perceive the risk, but was unaware of it. Punitive damages are not recoverable.

Wyatt v. Le Beau Monde, 35 ACLJ at 4-5.

In *Kirkbride v. Lisbon Contractors, Inc.*, the plaintiffs sought punitive damages as a result of property damage which occurred when Lisbon employees were constructing a sewer line and bike path adjacent to the plaintiffs’ property. *Kirkbride*, 560 A.2d 809. Lisbon contended that its actions were neither intentional nor malicious, and therefore could not result in punitive damages. *Id.*, at 811. The Court held that Lisbon’s actions need not be intentional or malicious, but rather, reckless indifference to the rights and interests of others,

as occurred in this case, was sufficient to award punitive damages. *Id.*

In *Wyatt v. Le Beau Monde*, the defendant contracted to install a pool for the plaintiffs. The plaintiffs alleged that while installing the pool, Le Beau Monde drove its vehicles over a drain field on the plaintiffs' property, and deposited dirt removed from the pool site onto the drain field. The plaintiffs also alleged that part of the field was dug up. The plaintiffs averred that Le Beau Monde's actions caused the total destruction of their septic system. *Wyatt v. Le Beau Monde*, 35 ACLJ 1. This Court held that Le Beau Monde did not know it was infringing on a property right, nor was it aware of a high risk that it was infringing on a property right. Furthermore, this Court held that it was not the case that Le Beau Monde was unaware of a risk of which it should have had knowledge. Rather, this Court found that only negligence could be inferred from the plaintiffs' allegation that Le Beau Monde destroyed their drain field while performing authorized work. Therefore, punitive damages were not recoverable. *Id.* at 5.

We cannot sustain Czapp and Griffith's preliminary objection in the nature of a demurrer to Plaintiffs' claim for punitive damages because it is not clear that such damages are inappropriate in this case.

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

Eckert v. Nevells, et al., 42 A.C.L.J. 275, 275-6 (2000)
(citations omitted).

If it is proven that Czapp & Griffith was responsible for installing an overflow protection device on the tank, and that its failure to do so was a proximate cause of the damages Plaintiff alleges, it is

possible that a jury might find such conduct to constitute reckless indifference to the Plaintiffs' property rights. Furthermore, a jury could find that Czapp and Griffith's conduct constituted indifference to a known risk that failure to properly install a fuel oil tank could result in a fuel oil spill. Based on the Superior Court's holding in *Kirkbride* and the Restatement (Second) of Torts § 908, it is possible that a jury could award punitive damages based on such findings.

Continued to next issue (8/1/2003)

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-448 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

Legal Description

PREMISES "A"

ALL THAT TRACT of land situate, lying and being in Menallen Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at an Existing Rebar at the common corner of land now or formerly of Brian Showers and land now or formerly of Leroy Routsong, et al. and land now or formerly of Harry L. Pritchard; thence by said land now or formerly of Brian Showers, South 37 degrees 56 minutes 09 seconds East, 317.60 feet to an Existing Axle at corner of said land now or formerly of Brian Showers; thence by said land now or formerly of Brian Showers, South 85 degrees 07 minutes 39 seconds West, 199.82 feet to an Existing Axle at corner of said land now or formerly of Brian Showers, and on line of land now or formerly of Ruth E. Bretzman; thence by said land now or formerly of Ruth E. Bretzman, North 37 degrees 56 minutes 09 seconds West, 423.73 feet to a Rebar Set at Existing Planted Stone at the common corner of said land now or formerly of Ruth E. Bretzman and other land now or formerly of William O. Routsong and land now or formerly of Leroy Routsong, et al.; thence by said land now or formerly of Leroy Routsong, et al., North 84 degrees 27 minutes 24 seconds East, 198.32 feet to a point at corner of said land now or formerly of Leroy Routsong, et al.; thence by said land now or formerly of Leroy Routsong, et al., South 37 degrees 56 minutes 09 seconds East, 108.90 feet to an Existing Rebar at the common corner of said land now or formerly of Leroy Routsong, et al. and land now or formerly of Brian Showers and land now or formerly of Harry L. Pritchard, the point and place of BEGINNING.

CONTAINING 1.634 acres.

THE above description was taken from a draft of survey, by Mark A. Kuntz, Surveyor, dated November 12, 1993 as later revised, which draft of survey is lodged and part of the record in No. 97-S-231 in the Adams County Prothonotary's Office.

PREMISES "B"

ALL THOSE TWO (2) tracts of land situate, lying and being in Menallen Township, Adams County, Pennsylvania,

more particularly bounded and described as follows:

TRACT NO. 1:

BEGINNING at a Pipe Set in the centerline of the right-of-way of Maryland Avenue, 18' back from the centerline of existing 18' gravel cartway, at the common corner of land now or formerly of Rob Conner and land now or formerly of Hugh Gauch; thence crossing and leaving said Maryland Avenue, and by land now or formerly of Hugh Gauch, North 57 degrees 34 minutes 08 seconds East, 199.24 feet to a Rebar Set at corner of said land now or formerly of Hugh Gauch; thence by said land now or formerly of Hugh Gauch, South 48 degrees 38 minutes 54 seconds East, 1,098.16 feet to a Rebar Set at Existing Planted Stone at corner of said land now or formerly of Hugh Gauch; thence by said land now or formerly of Hugh Gauch, North 33 degrees 05 minutes 16 seconds East, 178.65 feet to an Existing Rebar and Stones at the common corner of said land now or formerly of Hugh Gauch, land now or formerly of Paul Kuhn, and land now or formerly of Robert Ayers, Jr.; thence by said land now or formerly of Robert Ayers, Jr., South 46 degrees 57 minutes 39 seconds East, 328.32 feet to an Existing Pipe and Stones at corner of said land now or formerly of Robert Ayers, Jr.; thence by said land now or formerly of Robert Ayers, Jr., North 52 degrees 40 minutes 28 seconds East, 297.66 feet to an Existing Pipe at intersection of Stone Rows on line of said land now or formerly of Robert Ayers, Jr., and at corner of land now or formerly of John W. Morrow; thence by said land now or formerly of John W. Morrow, South 37 degrees 14 minutes 19 seconds East, 548.01 feet to an Existing Pipe at corner of said land now or formerly of John W. Morrow; thence by said land now or formerly of John W. Morrow, North 49 degrees 29 minutes 30 seconds East, 819.62 feet to an Existing Pipe at 8" Spruce Tree at corner of said land now or formerly of John W. Morrow, and said on line of land now or formerly of E.C. Anderson, Jr.; thence by said land now or formerly of E.C. Anderson, Jr. and by land now or formerly of Kevin B. King, South 40 degrees 36 minutes 47 seconds East, 265.20 feet to an Existing Pipe at corner of said land now or formerly of Kevin B. King and on line of land now or formerly of Harry L. Pritchard; thence by said land now or formerly of Harry L. Pritchard, South 52 degrees 37 minutes 44 seconds West, 635.58 feet to a Rebar and Stones Set at corner of said land now or formerly of Harry L. Pritchard; thence by said land now or formerly of Harry L. Pritchard, and across an Unimproved Road (right-of-way to S.R. #4008) near the end of this course, South 33 degrees 26

minutes 12 seconds West, 623.70 feet to an Existing Rebar at common corner of said land now or formerly of Harry L. Pritchard and Brian Showers, and on line now or formerly of William O. Routsong; thence by said land now or formerly of William O. Routsong, North 37 degrees 56 minutes 09 seconds West, 108.90 feet to a point at corner of said land now or formerly of William O. Routsong; thence by said land now or formerly of William O. Routsong, South 84 degrees 27 minutes 24 seconds West, 198.32 feet to a Rebar Set at Existing Planted Stone at the common corner of said land now or formerly of William O. Routsong and other land now or formerly of the said William O. Routsong.

(TRACT 2 more particularly described hereinbelow); thence by said other lands now or formerly of William O. Routsong, North 37 degrees 56 minutes 09 seconds West, 273.87 feet to a point at corner of said other land now or formerly of William O. Routsong; thence by said other land now or formerly of William O. Routsong, South 54 degrees 22 minutes 15 seconds West, 209.78 feet to a Rebar Set in Existing Stones at corner of said other land now or formerly of William O. Routsong and at corner of land now or formerly of Ruth E. Bretzman; thence by said land now or formerly of Ruth E. Bretzman, and by land now or formerly of John C. Bretzman, South 54 degrees 22 minutes 15 seconds West, 544.63 feet to an Existing Pipe and Planted Stone on line of said land now or formerly of John C. Bretzman, and at corner of land now or formerly of Robert Luckenbaugh; thence by said land now or formerly of Robert Luckenbaugh, and across a private road or drive near the end of this course, North 61 degrees 56 minutes 42 seconds West, 610.43 feet to an Existing Pipe at corner of said land now or formerly of Robert Luckenbaugh; thence by said land now or formerly of Robert Luckenbaugh, South 60 degrees 49 minutes 41 seconds West, 97.23 feet to an Existing Pipe and Stones at corner of said land now or formerly of Robert Luckenbaugh, and on line of land now or formerly of Ralph Sheaffer; thence by said land now or formerly of Ralph Sheaffer, and by land now or formerly of Albert Hudimae, and by land now or formerly of Henry Krahn, Jr., and by land now or formerly of Jerome Hanson, and by land now or formerly of Susan Coles, North 07 degrees 38 minutes 11 seconds East, 1,200.66 feet to an Existing Pipe and Stones at the common corner of said land now or formerly of Susan Coles and land now or formerly of Rob Conner; thence by said land now or formerly of Rob Conner, North 53 degrees 10 minutes 42 seconds West, 419.04 feet to a Pipe Set in the centerline of the right-of-way of Maryland Avenue at the common

(continued on page 4)

corner of said land now or formerly of Rob Conner and land now or formerly of Hugh Gauch, the point and place of BEGINNING.

CONTAINING 43.921 Acres.

LESS, HOWEVER ALL those two parcels of land, situate in Menallen Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

PARCEL NO. 1:

BEGINNING at an existing pipe on line of land now or formerly of the Grantees, E.C. Anderson, Jr. and Dolores M. Anderson, and at corner of land now or formerly of John W. Morrow, thence by said land now or formerly of the Grantees, E.C. Anderson, Jr. and Dolores M. Anderson, and by land now or formerly of Kevin G. King, a/k/a Kevin B. King, South 40 degrees 36 minutes 47 seconds East, 105.00 feet to a rebar set on line of said land now or formerly of Kevin G. King, a/k/a Kevin B. King, and at corner of Lot 3 depicted in and upon the below-mentioned draft of survey and final subdivision plan; thence by said Lot 3, South 32 degrees 35 minutes 56 seconds West, 175.48 feet to a rebar set at corner of said Lot 3, and on line of land now or formerly of the Grantors, Leroy Routsong and Alice Routsong, his wife, and William O. Routsong, Jr.; thence by said land now or formerly of the Grantors, Leroy Routsong and Alice Routsong, his wife and William O. Routsong, Jr., North 40 degrees 36 minutes 47 seconds West, 155.99 feet to a rebar set at corner of said land now or formerly of the Grantors, Leroy Routsong and Alice Routsong, his wife and William O. Routsong, Jr., and on line of land now or formerly of John W. Morrow; thence by said land now or formerly of John W. Morrow, North 49 degrees 29 minutes 30 seconds East, 168.00 feet to an existing pipe at corner of said land now or formerly of John W. Morrow, and on line of land now or formerly of the Grantees, E.C. Anderson, Jr. and Dolores M. Anderson, the point and place of BEGINNING.

CONTAINING 0.503 acre.

THE above description was taken from a draft of survey and final subdivision plan, dated March 30, 1998, by Mark A. Kuntz, Surveyor, which draft of survey and final subdivision plan is recorded in the Office of Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 74 at Page 5; the above described tract of land is labeled as Lot 2 in and upon said draft of survey and final subdivision plan.

PARCEL NO. 2:

BEGINNING at a rebar set on line of land now or formerly of Grantees, Kevin G. King, a/k/a Kevin B. King and Wanda S. King, and at corner of Lot 2 depicted in and upon the below-mentioned draft of

survey and final subdivision plan; thence by said land now or formerly of the Grantees, Kevin G. King, a/k/a Kevin B. King and Wanda S. King, South 40 degrees 36 minutes 47 seconds East, 160.20 feet to an existing pipe at corner of said land now or formerly of the Grantees, Kevin G. King, a/k/a Kevin B. King and Wanda S. King, and on line of land now or formerly of Harry Pritchard; thence by said land now or formerly of Harry Pritchard, South 52 degrees 37 minutes 44 seconds West, 168.27 feet to a rebar set on line of said land now or formerly of Harry Pritchard, and at corner of land now or formerly of the Grantors, Leroy Routsong and Alice Routsong, his wife and William O. Routsong, Jr.; thence by said land now or formerly of the Grantors, Leroy Routsong and Alice Routsong, his wife, and William O. Routsong, Jr., North 40 degrees 36 minutes 47 seconds West, 100.00 feet to a rebar set on line of said land now or formerly of the Grantors, Leroy Routsong and Alice Routsong, his wife, and William O. Routsong, Jr., and at corner of said Lot 2; thence by said Lot 2, North 32 degrees 35 minutes 56 seconds East, 175.48 feet to a rebar set at corner of said Lot 2, and on line of said land now or formerly of the Grantees, Kevin G. King, a/k/a Kevin B. King and Wanda S. King, the point and place of BEGINNING.

CONTAINING 0.502 acre.

THE above description was taken from a draft of survey and final subdivision plan, dated March 30, 1998, by Mark A. Kuntz, Surveyor, which draft of survey and final subdivision plan is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 74 at Page 5; the above described tract of land is labeled as Lot 3 in and upon said draft of survey and final subdivision plan.

TRACT NO. 2:

BEGINNING at a point at corner of land now or formerly of Leroy Routsong, et al. (Tract 1 more particularly described hereinabove); thence by said land now or formerly of Leroy Routsong, et al., South 37 degrees 56 minutes 09 seconds East, 273.87 feet to a Rebar Set at Existing Planted Stone at the common corner of said land now or formerly of Leroy Routsong, et al. and other land now or formerly of William O. Routsong and land now or formerly of Ruth E. Bretzman; thence by said land now or formerly of Ruth E. Bretzman, North 74 degrees 31 minutes 43 seconds West, 351.63 feet to a Rebar Set in Existing Stones at corner of said land now or formerly of Ruth E. Bretzman, and on line of said land now or formerly of Leroy Routsong, et al.; thence by said land now or formerly of Leroy Routsong, et al., North 54 degrees 22 minutes 15

seconds East, 209.78 feet to a point at corner of said land now or formerly of Leroy Routsong, et al., the point and place of BEGINNING.

CONTAINING 0.659 acre.

THE above descriptions for Tracts Nos. 1 and 2 were taken from a draft of survey, by Mark A. Kuntz, Surveyor, dated November 12, 1993, as later revised, which draft of survey is lodged as part of the record in No. 97-S-231 in the Adams County Prothonotary's Office.

TITLE TO SAID PREMISES IS VESTED IN Joseph S. Buchheister and Juanita M. Buchheister, his wife by reason of the following:

PREMISES "A"

BEING THE SAME PREMISES which William Oscar Routsong, Jr., single man (widower) by Deed dated 9/10/1999 and recorded 9/13/1999 in the County of Adams in Record Book 1913, Page 293 conveyed unto Joseph S. Buchheister and Juanita M. Buchheister, his wife.

PREMISES "B"

BEING THE SAME PREMISES which Leroy Routsong and Alice Y. Routsong, his wife by Deed dated 9/10/1999 and recorded on 9/13/1999 in the County of Adams in Record Book 1913, Page 297 conveyed unto Joseph S. Buchheister and Juanita M. Buchheister, his wife.

Premises being: 360-362 Bendersville-Wenksville Road, Aspers, PA 17304

Tax Parcel No. E05-0070 (PREMISES A)

Tax Parcel No. EC5-0037-000 (PREMISES B)

SEIZED and taken into execution as the property of **Joseph S. Buchheister & Juanita Buchheister** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS:

You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 22, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/18, 25 & 8/1

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 REGINA C. BORTNER, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Personal Representatives: Cynthia A. Bushey, 660 Mehring Rd., Littlestown, PA 17340; Jeanne Baugher, 227 Irishtown Rd., Hanover, PA 17331; Barbara Shriver, 550 Mt. Misery Rd., New Oxford, PA 17350; Robert E. Asper, 362 Rupp Rd., Gettysburg, PA 17325

Attorney: G. Steven McKonly, Esq., 119 Baltimore Street, Hanover, PA 17331

ESTATE OF ZITA S. HOBBS a/k/a MARTHA ZITA HOBBS, DEC'D

Late of Liberty Township, Adams County, Pennsylvania

Executors: Joseph Hobbs, P.O. Box 1172, Emmitsburg, MD 21727; Karl Hobbs, 65 Pecher Rd., Fairfield, PA 17320; Lillian Harner, 275 Pecher Rd., Fairfield, PA 17320; Rose Z. Bream, 20 Locust Drive, Littlestown, PA 17340; Linda Steinle, P.O. Box 240, Emmitsburg, MD 21727

Attorney: Robert L. McQuaide, Esq., Suite 204, 18 Carlisle St., Gettysburg, PA 17325

ESTATE OF ARVILLA M. LABAR, DEC'D

Late of Freedom Township, Adams County, Pennsylvania

Executor: Arvilla McKinley, 895 Middle Creek Road, Fairfield, PA 17320

Attorney: Clayton R. Wilcox, Esq., 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF EDMUND H. LONGSTAFF, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325

Attorney: John W. Phillips, Esq., 101 W. Middle St., Gettysburg, PA 17325

ESTATE OF EDNA M. ROHRBAUGH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Mae Louise Wentz, 5364 US 6 W, Ulysses, PA 16948; George W. Rohrbaugh, Jr., R.D. #1, Box 454, Alexandria, PA 16611; Mary Katie Strausbaugh, 535 Locust St., Hanover, PA 17331

Attorney: Donald W. Dorr, Esq., Buchen, Wise & Dorr, 126 Carlisle Street, Hanover, PA 17331

ESTATE OF JOHN E. SLAYBAUGH a/k/a JOHN ELLSWORTH SLAYBAUGH, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executrix: Gertrude C. Scholl, 578 Oxford Avenue, Hanover, PA 17331

Attorney: David C. Smith, Esq., 754 Edgegrove Road, Hanover, PA 17331

SECOND PUBLICATION**ESTATE OF FRANCES M. CRUMBLING, DEC'D**

Late of Berwick Township, Adams County, Pennsylvania

Personal Representative: Tamara J. Eisenhart, 345 High Rock Rd. - West, Hanover, PA 17331

Attorney: G. Steven McKonly, Esq., 119 Baltimore Street, Hanover, PA 17331

ESTATE OF ELIZABETH V. HARNER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executors: Nancy Elizabeth Six, 4810 Baltimore Pike, Littlestown, PA 17340; Linda A. O'Brien, 365 Bair Road, Abbottstown, PA 17301; Janice L. Seymore, 1305 Hunterstown-Hampton Rd., New Oxford, PA 17350

Attorney: Larry W. Wolf, Esq., 215 Broadway, Hanover, PA 17331

ESTATE OF SOPHIA HOLTZ, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Co-Executrices: Jean L. Holtz, 944 W. Market Street, York, PA 17404; Carol E. Holtz, P.O. Box 3223, Gettysburg, PA 17325

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

ESTATE OF DAVID L. HOWARD a/k/a DAVID LAMAR HOWARD, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Scott L. Kelley, Esq., 209 Broadway, Hanover, PA 17331

Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

ESTATE OF JODY A. LAUGHMAN, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executors: Francis N. and Mary Ann Kuhn, 226 Princess Street, Hanover, PA 17331

Attorney: James T. Yingst, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

ESTATE OF EVELYN MILDRED LEONARD, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executors: Richard B. Leonard, 319 Fairview Avenue, McSherrystown, PA 17344; Patricia Ann Hawn, 173 Sherry Drive, McSherrystown, PA 17344

Attorney: Matthew L. Guthrie, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

ESTATE OF WILLIAM J. NEELY, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: George & Genevieve Phillips, c/o Michael Giffedder, Esq., 144 Morton Road, Springfield, PA 19064

Attorney: Michael Giffedder, Esq., 144 Morton Road, Springfield, PA 19064

ESTATE OF JOHN I. STRASBAUGH, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executor: Stephen A. Kane, 2385 Old Route 30, Orrtanna, PA 17353

Attorney: John R. White, Esq., Campbell & White, P.C., 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF JAMES A. THOMAS, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executors: Marlette E. & Kathryn A. Thomas, 15021 Bonair Road, Glen Rock, PA 17327

Attorney: James T. Yingst, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

(continued on page 6)

THIRD PUBLICATION

ESTATE OF DOROTHY M. KEMPER,
DEC'D

Late of the Borough of East Berlin,
Adams County, Pennsylvania

Executrix: Tina M. Eisenhart, 7 Norfolk
Ct., Mechanicsburg, PA 17055

Attorney: John C. Zepp, III, Esq., P.O.
Box 204, 8438 Carlisle Pike, York
Springs, PA 17372

ESTATE OF HELEN TUROUS a/k/a
HELEN C. TUROUS, DEC'D

Late of Straban Township, Adams
County, Pennsylvania

Executrix: Virginia Dodd, 24396 Santa
Clara, Dana Point, CA 92629

Attorney: Marlin R. McCaleb, Esq.,
219 East Main Street, P.O. Box 230,
Mechanicsburg, PA 17055

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execu-
tion, Judgment No. 03-S-454 issuing out
of the Court of Common Pleas of Adams
County, and to me directed, will be ex-
posed to Public Sale on Friday, the 12th
day of September, 2003, at 10:00 o'clock
in the forenoon at the Courthouse in the
Borough of Gettysburg, Adams County,
PA, the following Real Estate, viz.:

ALL the following described lot of
ground situate, lying and being in
Germany Township, Adams County,
Pennsylvania, bounded and limited as
follows, to wit

BEGINNING for a corner at a point in
the center line of U.S. Route 140 at Lot
No. 1 on the hereinafter referred to
Subdivision Plan; thence along said Lot
No. 1 South twenty-six (26) degrees
twenty-two (22) minutes twelve (12) sec-
onds West two hundred (200) feet to an
iron pin set on the Northern boundary
line of Lot No. 4 on the hereinafter
referred to Subdivision Plan; thence
along the Northern boundary line of said
Lot No. 4 North seventy-seven (77)
degrees twenty-six (26) minutes fifty-
seven (57) seconds West fifty-six and
eighty-five hundredths (56.85) feet to a
point at the Northwest corner of said Lot
No. 4; thence along other lands now or
formerly of Laverne P. Louey and Jean
S. Louey, husband and wife, North sev-
enty-seven (77) degrees twenty-six (26)
minutes fifty-seven (57) seconds West
seventy-one and sixty-nine hundredths
(71.69) feet to a point at the Southeast
corner of Lot No. 3 on the hereinafter
referred to Subdivision Plan; thence
along the Eastern boundary line of said
Lot No. 3 North twenty-six (26) degrees
twenty-two (22) minutes twelve (12) sec-
onds East, through an iron pin set forty

(40) feet from the terminus of this call,
two hundred (200) feet to a point in the
center line of the aforesaid U.S. Route
140; thence along the centerline of said
U.S. Route 140 South seventy-seven
(77) degrees twenty-six (26) minutes
fifty-seven (57) seconds East one hun-
dred twenty-eight and fifty-four hun-
dredths (128.54) feet to a point in the
center of said U.S. Route 140, being the
point and place of BEGINNING.

CONTAINING 24,963.867 Square
Feet or 0.574 Acres.

The above description was taken from
a Subdivision Plan prepared by Thomas
Michael Englerth, Registered Surveyor,
bearing date June 1, 1977, and recorded
in the Office of the Recorder of Deeds of
Adams County, Pennsylvania, in Plat
Book 15, Page 43, and designated there-
on as Lot No. 2.

TITLE TO SAID PREMISES IS VEST-
ED IN Richard M. Myers and Christina
Myers, His Wife by Deed from Larry E.
Worley and Judy C. Worley, His Wife
dated 6/20/1986 and recorded 6/30/1986
in Record Book 429, Page 683.

Premises being: 5085 Baltimore Pike,
Littlestown, PA 17340

Tax Parcel No. 12B Map #1-17

SEIZED and taken into execution as
the property of **Richard M. Myers &
Christina Myers** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND
CLAIMANTS: You are notified that a
schedule of distribution will be filed by the
Sheriff in his office on October 6, 2003,
and distribution will be made in accord-
ance with said schedule, unless excep-
tions are filed thereto within 10 days after
the filing thereof. Purchaser must settle
for property on or before filing date.

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

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

7/25, 8/1 & 8

INCORPORATION NOTICE

DYNAMIC INVESTMENT STRATE-
GIES, INC. has been incorporated under
the provisions of the Business
Corporation Law of 1988.

7/25