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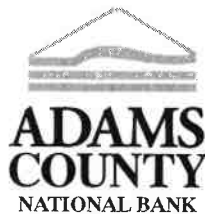
June 2, 1995

No. 1, pp. 1-4

IN THIS ISSUE

GALLOWAY, ET UX., VS. MILLER, ET UX.

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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. 93-S-990 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 16th day of June, 1995, 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 known and numbered as 110 Pine Court, Abbottstown, Berwick Township, Adams County, PA; also known as Tax Map L-10, Parcel 54; Deed Book: 559, Page 90.

Seized and taken into execution as the property of **Philip A. Sheely and Norma J. Sheely**, and to be sold by me.

Bernard V. Miller
 Sheriff

Sheriff's Office, Gettysburg, PA
 March 28, 1995.

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 July 10, 1995, 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.

5/19, 26 & 6/2

NOTICE

NOTICE IS HEREBY GIVEN that Farmers Trust Company, Guardian of the Estate of Gina M. Gobrecht, a minor, appointed as such on September 20, 1993 has filed its First and Final Account and Schedule of Proposed Distribution as Guardian with the Clerk of Courts of Common Pleas of Adams County, Orphans' Court Division, Commonwealth of Pennsylvania, and that the same will be presented to said Court for confirmation and approval on June 19, 1995 at 9:00 a.m.

Gates & Mooney
 245 York Street
 Hanover, PA 17331

Farmers Trust Company, Guardian
 P.O. Box 220
 Carlisle, PA 17013

5/19, 26 & 6/2

NOTICE OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Commonwealth of Pennsylvania, under the Domestic Business Corporation Law, on May 12, 1995 for GARBBER BROKERAGE, INC., and the registered office is located at 706 Milton Grove Road, Mount Joy, Adams County, Pennsylvania 17552.

6/2

ARTICLES OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation for JOSEPH A. MYERS LIMOUSINE SERVICE, INC., were filed under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444, No. 177.

Crabbs & Frey
 Solicitors

6/2

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that pursuant to the provisions of Section 311 of the Act of December 16, 1982, P. L. 1309, No. 295, the Fictitious Names Act, (54 Pa. C.S.A. Section 311), there was filed in the office of the Secretary of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on May 8, 1995, an Application for Registration of the fictitious name SNACK-A-DOODLE, the address of the principal office or place of business of the business to be carried on under or through said name being 777 Baltimore Street, Gettysburg, PA 17325. The names and addresses of all persons who are parties to said registration are: Peggy Anne Wilkinson, 90 Mountain View Avenue, Biglerville, PA 17307.

Bigham & Raffensperger
 Attorneys

6/2

GALLOWAY, ET UX., VS. MILLER, ET UX.

1. Summary judgment should be granted only in cases that are free and clear of doubt.

2. Fraud must be averred with particularity by the following elements: (1) a misrepresentation; (2) a fraudulent utterance of it; (3) the maker's intent that the recipient be induced thereby to act; (4) the recipient's justifiable reliance on the misrepresentation; and (5) damage to the recipient proximately caused.

3. Fraud may arise from the making of a knowingly false representation of fact, from an intentional concealment of true facts which is calculated to deceive the other party, or from a nonprivileged failure to disclose facts to the other party.

4. Mere silence in the absence of a duty to speak, however, cannot suffice to prove fraudulent concealment.

5. Sellers are under a duty to reveal problems about septic systems.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-6, WAYNEE. GALLOWAY AND DEBRA K. GALLOWAY VS. R. SCOTT MILLER AND LEE ANN MILLER.

Edward G. Puhl, Esq., for Plaintiffs

Thomas E. Miller, Esq., for Defendants

OPINION ON MOTION FOR SUMMARY JUDGMENT

Spicer, P.J., December 9, 1994.

Plaintiffs sue for damages they say were occasioned by misrepresentations about a specific system which serviced property purchased from defendants. Defendants move for summary judgment, contending they made no representations, citing the agreement of sale.

On June 6, 1992, the parties executed a written contract for the sale and purchase of 996 Irishtown Road, New Oxford (Oxford Township), Adams County, Pennsylvania. The agreement consisted of several pages, one of which concerned such things as water and sewer. Printed language clearly stated that defendants could not warrant or guarantee the septic system but had no knowledge of any particular problems or malfunctioning of the system.

Apparently, the house had been vacant for some twelve months. Plaintiffs hired someone to inspect the septic system and that person provided a report on September 3, 1992. The report described the system as "OK" but raised a few red flags. First, the inspector reported the presence of "solid" on baffles, which indicated a high water level some time or times in the part. Second, the inspector took considerable pains to explain he was not guaranteeing the

system and, because of the long period of non-use, recommended another test six months after normal use.

The agreement specifically recited that plaintiffs relied on their own inspections and not on any representations by defendants or their agents.

Settlement occurred September 11, 1992. Thereafter, to paraphrase a vulgarism, "solid" hit the "fan." The complaint described numerous problems and malfunctionings, then alleged that defendants were aware of problems prior to executing the agreement of sale. Plaintiffs alleged that plaintiffs had the tank pumped at least six times and also engaged the services of a contractor to relocate a drain line. Steven Smith, who worked on the system, is said to have pointed out to Mrs. Miller that water was flowing from the drain lines back into the tank.

On the other hand, defendants say they are entitled to summary judgment because they expressly made no representation about the system and the agreement stated that plaintiffs relied on their own inspections. With this background in mind, we will consider appropriate principles and authority.

Summary judgment may be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Pa.R.C.P. 1035(b), 42 Pa.C.S.A. When considering a motion for summary judgment, the trial court must examine the record in the light most favorable to the non-moving party, accept as true all well-pleaded facts in the non-moving party's pleadings, and give him the benefit of all reasonable inferences drawn therefrom. *Dibble v. Security of America Life Ins.*, 404 Pa.Super. 205, 590 A.2d 352 (1991); *Lower Lake Dock Co. v. Messinger Bearing Corp.*, 395 Pa.Super. 456, 577 A.2d 631 (1990). Summary judgment should be granted only in cases that are free and clear of doubt. *Marks v. Tasman*, 527 Pa. 132, 589 A.2d 205 (1991).

DeWeese v. Anchor Hocking, 427 Pa.Super. 47, 628 A.2d 421 at 422-423 (1993).

Superior Court has said the following about fraud:

Fraud must be averred with particularity by the following elements: 1) a misrepresentation; 2) a fraudulent utterance of it; 3) the maker's intent that the recipient be induced thereby to act; 4) the recipient's justifiable reliance on the misrepresentation; and 5) damage to the recipient proximately caused. (citation omitted) We have also held that a vendor or his agent may be liable for failure to disclose material information, pursuant to the Restatement (Second) of Torts, § 550 (1977) (citation omitted) Section 550 states:

One party to a transaction who by concealment or other action intentionally prevents the other from acquiring material information is subject to the same liability to the other, for pecuniary loss as though he had stated the nonexistence of the matter that the other was thus prevented from discovering.

Restatement (Second) of Torts § 550 (1977)

Liability under section 550 is encompassed by the rule that fraud may arise from the making of a knowingly false representation of fact, from an intentional concealment of true facts which is calculated to deceive the other party, or from a nonprivileged failure to disclose facts to the other party. (citation omitted) The concealment must be intentional and it must relate to material information. (citation omitted) Mere silence in the absence of a duty to speak, however, cannot suffice to prove fraudulent concealment. (citation omitted)

Sevin v. Kelshaw 417 Pa.Super. 1, 611 A.2d 1232, 1236 (1992).

The applicability of the parol evidence rule to fraud is determined by balancing a party's knowledge of objectionable conditions derived from a reasonable inspection against the extent that any integration clause covers the situation. This is done to determine if a party could have justifiably relied on oral representations without insisting on further contractual protection or the deletion of the

integration clause. *Bowman v. Meadow Ridge, Inc.*, 419 Pa.Super. 511, 615 A.2d 755 (1992).

Although the contract clearly stated that plaintiffs relied on their own inspections, it also stated that defendants were unaware of any problems or malfunctions.

It is true that inspections indicated high water levels at some time or times in the past. One might conclude that plaintiffs should have been more diligent about their inquiries. One might also conclude, however, that plaintiffs were dissuaded from doing so by defendants' express disavowal of any information. A septic system is a static condition and it is questionable how much can be learned about the functioning of a system from one, or a few, inspections. Superior Court has made it clear that sellers are under a duty to reveal problems about septic systems. *Anderson v. Harper*, 421 Pa.Super. 161, 622 A.2d 319 (1993). The factual situation in that case is similar enough to the one at bar to justify denial of summary judgment.

In *Anderson*, defendant made repairs without benefit of a permit, and neglected to divulge either this fact or problems which occasioned the repairs. In holding that a septic system is both a dangerous and a latent condition, Superior Court required a seller who has made repairs to reveal them to buyers and also reveal the history of past problems. In that case, sale was consummated during a dry summer. Just as in our case, problems surfaced thereafter.

For reasons discussed, we deny defendant's motion.

The attached order is entered.

ORDER OF COURT

AND NOW, this 9th day of December, 1994, the motion for summary judgment is denied.

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 ADA BECKER GINGRICH
a/k/a ADA M. BECKER, DEC'D

Late of 171 Goodyear Road, Gardners, Adams County, Pennsylvania

Executor: Harold E. Becker, c/o Young & Young, 44 South Main Street, Manheim, PA 17545

Attorney: Young & Young

ESTATE OF MIRIAM A. CRUSE, DEC'D
Late of Tyrone Township, Adams County, Pennsylvania

Executor: Frederick W. Cruse, 370 Rupp Road, Gettysburg, PA 17325

Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ETHEL B. MARTIN, DEC'D
Late of Fairfield, Adams County, Pennsylvania

Executor: Lester C. Martin, 228 Landis Avenue, Waynesboro, PA 17268

Attorney: William S. Dick, 10 East Main Street, Waynesboro, PA 17268

ESTATE OF MILDRED M. OSBORN, DEC'D

Late of Biglerville Borough, Adams County, Pennsylvania

Executor: Thomas G. Lush, 28 Ditzler Avenue, Biglerville, PA 17307

Attorney: Chester G. Schultz, Esquire, Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF ELLEN M. E. SCHOFFSTALL, DEC'D

Late of York Springs Borough, Adams County, Pennsylvania

Executors: Ellen Mae Wilson, 38 Frost Road, Gardners, PA 17324; Charles Leroy Schoffstall, 32 Carlisle Road, Newville, PA 17241

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

ESTATE OF JOSEPH C. WAGNER, DEC'D

Late of 25 Herr's Ridge Road, Gettysburg, Adams County, Pennsylvania

Executor: Curvin J. Wagner, c/o The Law Offices of Joseph D. Buckley, 1237 Holly Pike, Carlisle, PA 17013, (717) 249-2448

SECOND PUBLICATION

ESTATE OF RICHARD O. CARY, SR., DEC'D

Late of 11 East King St., Abbottstown, Adams County, Pennsylvania

Executor: Richard O. Cary, II, 2649 Sheridan Road, York, PA 17402

Attorney: Robert J. Wire, Jr., 149 East Market St., York, PA 17401

ESTATE OF GLADYS M. KELLY, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Administratrix: Misty D. Stitely, 1157 Eichelberger Street, Hanover, PA 17331

Attorney: Douglas H. Gent, Esquire

ESTATE OF HAROLD T. WORTZ, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executrix: Kathleen D. Fitz, 2345 Cold Spring Road, Orrtanna, PA 17353

Attorney: Wolf and Oyler, 112 Baltimore Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF GLADYS O. CLINE, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executor: Wayne L. Cline, 1245 Old Waynesboro Road, Fairfield, PA 17320

Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF BRIAN J. KELLISON, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Administrator: Howard W. Kellison, 9 1st Street, McSherrystown, PA 17344

Attorney: Keith A. Hassler, Esquire, 2600 Eastern Boulevard, Suite 102, York, PA 17402

ESTATE OF LUTHER M. LADY, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Executors: Herbert P. Lady, 35 Beecherstown Rd., Biglerville, PA 17307; Charles L. Lady, R.D. #1, Box 378, Somersett, PA 15501

Attorney: Bigham & Raffensperger, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF ALLEN L. MALLOW, DEC'D

Late of Highland Township, Adams County, Pennsylvania

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

Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 94-S-847 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of July, 1995, 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 situate in Latimore Township, Adams County, Pennsylvania being more particularly described as Lot No. 1218 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Misc. Book 1, Page 21, and subject to all legal highways, easements, rights of way and restrictions of record.

ALL THAT CERTAIN lot of land situate in Latimore Township, Adams County, Pennsylvania, being more particularly described as Lot No. 1219 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Misc. Book 1, Page 21, and subject to all legal highways, easements, rights of way and restrictions of record.

ALL THAT CERTAIN lot of land situate in Latimore Township, Adams County, Pennsylvania, being more particularly described as Lot No. 1220 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Misc. Book 1, Page 21, and subject to all legal highways, easements, rights of way and restrictions of record.

BEING 733 McCandless Drive, East Berlin, PA 17316.

PARCEL: 68

Seized and taken into execution as the property of **William S. Nelson and Kathryn W. Nelson**, and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
May 19, 1995.

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 August 14, 1995, 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.

6/2, 9, 16

Adams County Legal Journal

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June 9, 1995

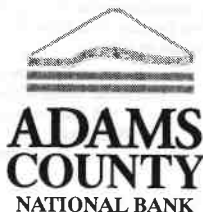
No. 2, pp. 5-12

IN THIS ISSUE

SOLT VS. SANDOZ PHARMACEUTICALS
CORPORATION, ET AL.

Commitment:

The philosophy upon which
Adams County National Bank is
founded and upon which we are planning
for your future financial needs today.



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed in the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on the 18th day of May, 1995, for the purpose of incorporating a nonprofit corporation under the Pennsylvania Nonprofit Corporation Law of 1988.

The name of the corporation is: **FREE-DOM VALLEY HARVEST HOUSE.**

The purposes for which it has been organized are: (a) To own, operate and maintain a halfway house and rehab center for substance abuse persons; (b) To own, operate and lease real and personal property in furtherance of the foregoing; and (c) This Corporation is organized exclusively for charitable purposes as such purposes are defined by Section 501(c)(3) of the Internal Revenue Code, as amended or supplemented.

Ronald J. Hagarman
Attorney for Incorporator
110 Baltimore Street
Gettysburg, PA 17325

6/9

DISSOLUTION NOTICE

NOTICE IS HEREBY GIVEN that the voluntary dissolution of **GETTY-CORP, INC.**, a Pennsylvania business corporation with its registered office located at 224 Baltimore Street, Gettysburg, PA 17325, has been approved by the Board of Directors and shareholders of the corporation. Said corporation is now engaged in winding up its affairs so that the existence of the corporation shall cease upon the filing of Articles of Dissolution in the Department of State of the Commonwealth of Pennsylvania.

Bigham & Raffensperger
Attorneys at Law
16 Lincoln Square
Gettysburg, PA 17325
Attorneys for the Corporation

6/9

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed in the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on the 18th day of May, 1995, for the purpose of incorporating a nonprofit corporation under the Pennsylvania Nonprofit Corporation Law of 1988.

The name of the corporation is: **FREE-DOM VALLEY WORSHIP CENTER, ASSEMBLY OF GOD.**

The purposes for which it has been organized are: (a) The promotion of religion, charity and education according to the doctrines of Holy Scriptures as found in the Canonical Books of the Old and New Testaments; (b) To establish and maintain a place for the worship of Almighty God, to provide for Christian fellowship for those of like faith, to assume the responsibility and the privilege of propagating the gospel of Jesus Christ by all available means, both at home and in foreign lands; (c) To own, operate and lease real and personal property in furtherance of the foregoing; and (d) This Corporation is organized exclusively for charitable purposes as such purposes are defined by Section 501(c)(3) of the Internal Revenue Code, as amended or supplemented.

Ronald J. Hagarman
Attorney for Incorporator
110 Baltimore Street
Gettysburg, PA 17325

6/9

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 April 11, 1995.

The name of the corporation is **WOODRUFF TECHNICAL PRODUCTIONS, INC.**

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

Robert E. Campbell
Campbell, White & George
122 Baltimore Street
Gettysburg, PA 17325
Attorneys

6/9

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purposes of obtaining a Certificate of Incorporation of a proposed business 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 **GLOTFELTY, LTD.**

Diane B. Glotfelty
60 Park Ave.
Gettysburg, PA 17325

6/9

SOLT VS. SANDOZ PHARMACEUTICALS
CORPORATION, ET AL.

1. Preliminary objections in the form of demurrers may be sustained only in clear cases, when it appears that plaintiffs are not entitled to recover as a matter of law.

2. Drug manufacturers are required to give warnings to physicians who are obligated to be fully aware of: (1) characteristics of the drug; (2) the amount that can be safely administered; (3) different medications the patient is taking and the physician, then, must advise the patient of side effects and how and when to take the medicine.

3. Drug manufacturers warnings are for doctors, not patients.

4. It is the sense of the Court that Pennsylvania Law does not permit recovery under a theory of strict liability in any case involving a prescription drug.

5. Punitive damages are reserved for exceptional cases; ordinary negligence is insufficient and conduct must be especially egregious.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-844, GEORGIA SOLT VS. SANDOZ PHARMACEUTICALS CORPORATION; MICHAEL H. POSNER, M.D.; BETTINA OHL, M.D.; and GETTYSBURG HOSPITAL.

William P. Douglas, Esq., for Plaintiff

Howard M. Cyr, III, Esq., for Defendant Sandoz Pharmaceuticals Corporation

Evan Black, Esq., for Defendant Gettysburg Hospital

Joseph P. Hafer, Esq., for Defendants Posner and Ohl

OPINION ON PRELIMINARY OBJECTIONS

Spicer, P.J., December 15, 1994.

Plaintiff's complaint, filed September 20, 1994, alleges that she suffered injuries as a result of taking a prescribed medication manufactured by Sandoz Pharmaceuticals Corporation (Sandoz). She states that her doctors prescribed the medication, Parlodel, to suppress lactation following the birth of her third child on December 9, 1993. Problems began with headaches, and progressed to blurred vision, shivering and twitching in her arm. Following her admission into a hospital, she was found to suffer from injuries, including hemorrhaging and seizures.

She has sued Sandoz on theories of negligence and strict liability, Restatement Torts 2d, § 402A. Sandoz has demurred, raising issues which we must address. One objection, however, which relates to correct identification will be remedied simply by directing that captions and pleadings reflect Sandoz as "Sandoz Pharmaceuticals Corporation."

Count I, which alleges strict liability, generally states:

21. The said medication was defective in either its design or manufacture.

22. The defendant Sandoz gave no warnings of the defective design and/or manufacture to the user of the product.

23. The medication in question may have not functioned properly in the recommended dosage.

Count II, sounding in negligence, alleges eleven instances of negligence which range from failure to give adequate warnings to providing false or misleading information to the U.S. Food and Drug Administration, withholding information from that agency and failing to conduct proper testing. Plaintiff alleges that defendant acted “negligently, recklessly, wantonly and willfully”.

Plaintiff seeks punitive damages.¹

Sandoz’s demurrers are based upon its contention that it cannot be held liable on a products liability claim and that allegations as to negligence are legally insufficient. Further, it argues that allegations of willful, wanton and/or reckless conduct have no factual support and cannot support an award of punitive damages.

Preliminary objections in the form of demurrers may be sustained only in clear cases, when it appears that plaintiffs are not entitled to recover as a matter of law. Factual allegations must be read in a light most favorable to plaintiff and they must be given the benefit of all favorable inferences deducible therefrom. *Cafazzo v. Central Medical*, 430 Pa.Super. 480, 635 A.2d 151 (1993).

Since we deal with a prescription drug, we must consider Restatement of Torts (Second) § 402A and 388. It is in the context of those two sections that appellate cases have discussed causes of action involving pharmaceutical companies. *Hahn v. Richter*, 427 Pa.Super. 130, 628 A.2d 860 (1993). Appeal granted __Pa.__, 644 A.2d 763 (1994). As our later discussion will indicate, and the granting of allocatur in that case may confirm, there is far from a unanimity of opinion as to the meaning and scope of those two sections.

Section 402A reads as follows:

(1) One who sells any product in a defective condition

¹Other defendants in this action include plaintiff’s doctor and the hospital. Preliminary objections filed by these defendants were withdrawn when plaintiff withdrew her request for punitive damages as to those other defendants.

unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if

(a) the seller is engaged in the business of selling such a product, and

(b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(2) The rule stated in Subsection (1) applies although

(a) the seller has exercised all possible care in the preparation and sale of his product, and

(b) the user or consumer has not bought the product from or entered into any contractual relation with the seller.

The source of controversy in this area is comment k., which reads:

k. Unavoidably unsafe products. There are some products which, in the present state of human knowledge, are quite incapable of being made safe for their intended and ordinary use. These are especially common in the field of drugs. An outstanding example is the vaccine for the Pasteur treatment of rabies, which not uncommonly leads to very serious and damaging consequences when it is injected. Since the disease itself invariably leads to a dreadful death, both the marketing and the use of the vaccine are fully justified, notwithstanding the unavoidable high degree of risk which they involve. Such a product, properly prepared, and accompanied by proper directions and warning, is not defective, nor is it *unreasonably* dangerous. The same is true of many other drugs, vaccines, and the like, many of which for this very reason cannot legally be sold except to physicians, or under the prescription of a physician. It is also true in particular of many new or experimental drugs as to which, because of lack of time and opportunity for sufficient medical experience, there can be no assurance of safety, or perhaps even of purity of ingredients, but such experience as there is justifies the marketing and use of the drug notwithstanding a medically recognizable risk. The seller of such products, again with the

qualification that they are properly prepared and marketed, and proper warning is given, where the situation calls for it, is not to be held to strict liability for unfortunate consequences attending their use, merely because he has undertaken to supply the public with an apparently useful and desirable product, attended with a known but apparently reasonable risk.

An en banc Superior Court held, in *Hahn v. Richter*, supra., that comment k. should be read to exclude all prescription drugs. The dissent, authored by Judge DeSole, pointed out that only certain medications, such as experimental drugs, were meant to be excluded. A concurring opinion, authored by Judge Cavanaugh, advanced the view that comment k. could be read to support both the majority and dissent. This synthesis suggested that Restatement language is not written in stone, lacks statutory effect and must be read in light of appellate authority in Pennsylvania. In this view, Judge Cavanaugh found support in Supreme Court's decision in *Coyle v. Richardson-Merrell, Inc.*, 526 Pa. 208, 584 A.2d 1383 (1991).

The trial court, in *Hahn*, refused to submit a strict liability cause of action to a jury. However, negligence was submitted and resulted in a verdict for Upjohn Company, manufacturer of a prescription drug, Depo-Medrol. There was little discussion about jury instructions regarding negligence, but it can be assumed, we think, that the negligence count involved Upjohn's failure to notify physicians that the drug was not approved for intrathecal administration or that such administration could cause arachnoiditis.²

Other arguments between the majority and the dissent make this area even more interesting. The majority observed:

In *Incollingo v. Ewing*, our Supreme Court categorized chloromycetin, a prescription drug which had been on the market for more than thirty years at time of its decision as a product which was unavoidably unsafe but justifiably marketed and used notwithstanding a medically recognizable risk. The court further stated that the strict liability rule

² An intrathecal injection is one made directly into the spine. The drug was approved for intra-articular or soft tissue administration. Arachnoiditis is a scarring of the arachnoid nerves in the lower back. Plaintiff in our case has alleged that Parlodel caused extensive bihemispheric subarachnoid hemorrhage.

of Restatement 402(A) is not applicable in a case involving a prescription drug and that the standard of care required for a manufacturer of prescription drugs is set forth in § 388 of the Restatement (Second) which concerns the liability of a supplier of a chattel known to be dangerous for its intended use.

Hahn v. Richter, 628 A.2d at 865. (Footnotes omitted)

The Majority wrongly concludes that a manufacturer of a prescription drug cannot be strictly liable under 402A, and in support of its ruling relies upon language found in past cases. It begins with reference to our Supreme Court's decision in *Incollingo v. Ewing*, 444 Pa., 263, 282 A.2d 206 (1971). The Majority interprets footnote nine in *Incollingo v. Ewing*, *supra*. as the basis for its statement "that the strict liability rule of Restatement 402(A) is not applicable in a case involving a prescription drug and that the standard of care required for a manufacturer of prescription drugs is set forth in § 388 of the Restatement (Second) which concerns the liability of a supplier of a chattel known to be dangerous for its intended use." Majority Opinion at 865. The Majority, however, neglects to add that strict liability was not pled in *Incollingo*, rather the Supreme Court stated repeatedly throughout the opinion that that complaint against the drug manufacturer claimed that it "negligently and carelessly manufacture[d] the said drug" *Id.* at 285, 282 A.2d at 218, and that the manufacturer of the drug "negligently failed to warn...of the dangerous effects of the drug, failed to perform tests on the drug, and failed to take necessary precautions to avert the injuries complained of." *Id.* at 269, 282 A.2d at 211. The *Incollingo* court's notation in footnote nine advising that the strict liability rule of § 402A was not applicable to its decision, was necessary because the case was pled as a negligence case and recovery based upon strict liability was not sought.

Id. 628 A.2d at 873. (Footnotes omitted)

We cannot predict what Supreme Court will do when it considers the case. The decision in *Coyle*, *supra*., would indicate that the en banc decision will be affirmed.³ Supreme Court certainly expressed no

doubts that it had established an exception, in *Incollingo v. Ewing*, supra., to all prescription drugs.

Although Judge DelSole chided the majority in *Hahn* about reintroducing negligence principles into the field of products liability, until Supreme Court reverses that decision, it seems clear that *Sandoz's* liability, if any, must rest on negligence. Drug manufacturers are required to give warnings to physicians who are obligated to be fully aware of: 1) characteristics of the drug; 2) the amount that can be safely administered; 3) different medications the patient is taking. The physician, then, must advise the patient of side effects and how and when to take the medicine. See also *Taurino v. Ellen*, 397 Pa.Super. 50, 579 A.2d 925 (1990).

Whether dealing with § 402A or § 388 of the Restatement, cases already discussed make it clear that warnings are for doctors, not patients. The difference between strict liability and failure to give an adequate warning under § 388 is that the latter involves at least imputable knowledge. To be liable for negligence, a drug manufacturer must know, or be charged with the duty of knowing, of the particular risk involved in the case. Under § 402, the reasons for failure to warn are irrelevant and a manufacturer may be liable even though ignorant of the risk.

It is the sense of this court that Pennsylvania law does not permit recovery under a theory of strict liability in any case involving a prescription drug. The demurrer to Count I is sustained.

The negligence count (II) contains several allegations that are irrelevant because of the state of the law. For example, ¶ 31 (b) asserts that *Sandoz* was negligent by failing to adequately warn the patient; c) by failing to design the product to be adequate and safe for its intended use; f) in prescribing, encouraging to be prescribed the medication for the suppression of lactation: i) by failing to provide adequate warning or informed consent to potential users. These allegations assume: 1) strict liability; 2) warranty for a particular purpose; 3) a duty to inform the patient, as opposed to the physician; 4) liability based upon assault and battery; and 5) liability based upon fraudulent misrepresentation.

There may be problems which should await a more extensive record. For example, ¶ 31 (h) alleges inadequate testing. Although

³The rule of strict supplier liability was not extended to pharmacist. The court said that warnings are intended for doctors, not patients, in drug cases.

federal regulation of drugs does not necessarily preempt state action, *White v. Weiner*, 386 Pa.Super. 111, 562 A.2d 378 (1989), cases already discussed have made it clear that the FDA is charged with the responsibility of regulating prescription drugs. Frankly, we cannot imagine an appellate court upholding an award of damages based upon a standard of testing stricter than that required by the federal agency.

Paragraph 31 (j) alleges that Sandoz “willfully failed to recall its product from the general public...when defendant knew or should have known of hazards and side effects of its normal use and recommended dosage”.

Statements like this confuse an action based on negligence with products liability and, in fact, take strict liability even further than the Restatement authorizes.

Paragraph 31 (i) alleges that Sandoz “failed to provide warnings and other information to the U.S. Food and Drug Administration”, among other things. The allegation is pertinent in determining whether Sandoz knew or should have known about risks. It is not, however, a basis for negligence standing alone. As noted supra., the paragraph goes on to introduce concepts of misrepresentations and assault and battery.

In short, although the count may adequately plead an action under the Restatement § 388, allegations are almost impossible to sort out. To simplify matters, we prefer to sustain the demurrer and direct plaintiff to replead.⁴

While this temporarily takes care of the claim for punitive damages, we also think it wise to point out that such damages are reserved for exceptional cases, *Shriver v. Marvelous Marv & Co., Inc.*, 35 Adams Co.L.J. 211 (1993). Ordinary negligence is insufficient and conduct must be especially egregious. *Martin v. Johns-Manville Corp.*, 508 Pa. 154, 494 A.2d 1088 (1985); *Feld v. Merriam*, 506 Pa. 383, 485 A.2d 742 (1984).

Although plaintiff has characterized Sandoz’s actions as negligent, reckless, wanton, and willful, we will ignore such legal conclusions

⁴Paragraph 31 a) through j) are definitely objectionable in the manner presented. For example j) alleges a number of things which, taken by themselves, may indicate negligence. However, the subparagraph concludes with “thereby failing to provide adequate warning or informed consent to potential users”. Although subparagraph h) may state a cause of action, it lacks specificity without other allegations. As we have pointed out, negligence required knowledge or reason to know of the particular risk involved.

unless factual allegations justify them. See *Maguire v. Ohio Casualty Insurance Co.*, 412 Pa.Super. 59, 602 A.2d 893 (1992).

The only allegation that comes close to justifying such damages is that Sandoz withheld information from the Federal Drug Administration. We are not told what information was withheld and Sandoz has not sought a more specific complaint. We hope we are not called upon to review FDA proceedings at trial but note that the former head of that agency appeared as a witness for *Hahn v. Richter*, *supra*.

For reasons expressed in this opinion, the attached order is entered.

ORDER OF COURT

AND NOW, this 15th day of December, 1994, preliminary objections are sustained to Count I, Count II, and Count VII. Plaintiff may file an amendment to the complaint as to Counts II and VII only within the next twenty (20) days. All pleadings are amended to correctly identify defendant as Sandoz Pharmaceuticals Corporation.

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 GERALD C. HARTLAUB, SR., DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania
 Executors: Burnell W. Hartlaub, 222 S. Third St., McSherrystown, PA; Kathleen M. Palmer, 55 Main St., McSherrystown, PA
 Attorney: Rudisill, Guthrie, Nonemaker, Guthrie and Yingst, 40 York Street, Hanover, PA 17331-3192

SECOND PUBLICATION

ESTATE OF ADA BECKER GINGRICH a/k/a ADA M. BECKER, DEC'D

Late of 171 Goodyear Road, Gardners, Adams County, Pennsylvania
 Executor: Harold E. Becker, c/o Young & Young, 44 South Main Street, Manheim, PA 17545
 Attorney: Young & Young

ESTATE OF MIRIAM A. CRUSE, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania
 Executor: Frederick W. Cruse, 370 Rupp Road, Gettysburg, PA 17325
 Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ETHEL B. MARTIN, DEC'D

Late of Fairfield, Adams County, Pennsylvania
 Executor: Lester C. Martin, 228 Landis Avenue, Waynesboro, PA 17268
 Attorney: William S. Dick, 10 East Main Street, Waynesboro, PA 17268

ESTATE OF MILDRED M. OSBORN, DEC'D

Late of Biglerville Borough, Adams County, Pennsylvania
 Executor: Thomas G. Lush, 28 Ditzler Avenue, Biglerville, PA 17307
 Attorney: Chester G. Schultz, Esquire, Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF ELLEN M. E. SCHOFF-STALL, DEC'D

Late of York Springs Borough, Adams County, Pennsylvania
 Executors: Ellen Mae Wilson, 38 Frost Road, Gardners, PA 17324; Charles Leroy Schoffstall, 32 Carlisle Road, Newville, PA 17241
 Attorney: John W. Phillips, Esq., 101 West Middle Street, Gettysburg, PA 17325

ESTATE OF JOSEPH C. WAGNER, DEC'D

Late of 25 Herr's Ridge Road, Gettysburg, Adams County, Pennsylvania
 Executor: Curvin J. Wagner, c/o The Law Offices of Joseph D. Buckley, 1237 Holly Pike, Carlisle, PA 17013, (717) 249-2448

THIRD PUBLICATION

ESTATE OF RICHARD O. CARY, SR., DEC'D

Late of 11 East King St., Abbottstown, Adams County, Pennsylvania
 Executor: Richard O. Cary, II, 2649 Sheridan Road, York, PA 17402
 Attorney: Robert J. Wire, Jr., 149 East Market St., York, PA 17401

ESTATE OF GLADYS M. KELLY, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
 Administratrix: Misty D. Stitely, 1157 Eichelberger Street, Hanover, PA 17331
 Attorney: Douglas H. Gent, Esquire

ESTATE OF HAROLD T. WORTZ, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania
 Executrix: Kathleen D. Fitz, 2345 Cold Spring Road, Orrtanna, PA 17353
 Attorney: Wolf and Oyler, 112 Baltimore Street, Gettysburg, PA 17325

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 94-S-847 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of July, 1995, 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 situate in Latimore Township, Adams County, Pennsylvania being more particularly described as Lot No. 1218 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Misc. Book 1, Page 21, and subject to all legal highways, easements, rights of way and restrictions of record.

ALL THAT CERTAIN lot of land situate in Latimore Township, Adams County, Pennsylvania, being more particularly described as Lot No. 1219 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Misc. Book 1, Page 21, and subject to all legal highways, easements, rights of way and restrictions of record.

ALL THAT CERTAIN lot of land situate in Latimore Township, Adams County, Pennsylvania, being more particularly described as Lot No. 1220 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Misc. Book 1, Page 21, and subject to all legal highways, easements, rights of way and restrictions of record.

BEING 733 McCandless Drive, East Berlin, PA 17316.

PARCEL: 68

Seized and taken into execution as the property of **William S. Nelson and Kathryn W. Nelson**, and to be sold by me.

Bernard V. Miller
 Sheriff

Sheriff's Office, Gettysburg, PA
 May 19, 1995.

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 August 14, 1995, 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.

**NOTICE BY THE ADAMS COUNTY
CLERK OF COURTS**

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County - Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, June 19, 1995, at 9:00 o'clock a.m.

HOFFMAN—Orphans' Court Action Number OC-40-95. The First and Final Account of Charles W. Wolf, Executor under the Will of Margaret L. Hoffman, deceased, late of Borough of Gettysburg, Adams County, Pennsylvania.

WHISTLER—Orphans' Court Action Number OC-41-95. The First and Final Account of Charles W. Whistler, Executor of the Estate of Goldie M. Whistler a/k/a Shelley M. Whistler, deceased, late of Straban Township, Adams County, Pennsylvania.

PITZER—Orphans' Court Action Number OC-43-95. The First and Final Account of Janet A. Lady and Ruth Jean Unger, Executrices of the Last Will and Testament of Aletha M. Pitzer, deceased, late of Menallen Township, Adams County, Pennsylvania.

KENNEDY—Orphans' Court Action Number OC-50-95. The First and Final Account of Robert Kennedy, Executor of the Last Will and Testament of Agnes B. Kennedy, deceased, late of Borough of Bendersville, Adams County, Pennsylvania.

SMITH—Orphans' Court Action Number OC-51-95. The First and Final Account of Eugene E. Smith, Executor of the Last Will and Testament of Anna M. Smith, deceased, late of Oxford Township, Adams County, Pennsylvania.

DIEHL—Orphans' Court Action Number OC-52-95. The First and Final Account of Chuck Geesaman, Executor of the Estate of Carl E. Diehl, deceased, late of Cumberland Township, Adams County, Pennsylvania.

WINTRODE—Orphans' Court Action Number OC-53-95. The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Martha M. Wintrade, deceased, late of Germany Township, Adams County, Pennsylvania.

ALLISON—Orphans' Court Action Number OC-56-95. The First and Final Account of Catherine Wilson, Executrix of the Will of Ethel Grace Allison, deceased, late of Borough of Fairfield, Adams County, Pennsylvania.

RICHTINE—Orphans' Court Action Number OC-57-95. The First and Final Account of Yvonne Strausbaugh and Robert Myers, Co-Executors of the Estate of Naomi Richtine, deceased, late of Mt. Pleasant Township, Adams County, Pennsylvania.

KIME—Orphans' Court Action Number OC-60-95. The First and Final Account of Robert A. Lentz, Paul C. Lentz, Pauline Lentz Singley and Mary L. Rife, Executors of the Estate of Lillie S. Kime a/k/a Lillie V. Kime, deceased, late of Cumberland Township, Adams County, Pennsylvania.

PEGGY J. BREIGHNER
CLERK OF COURTS

6/9, 16

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ol. 37

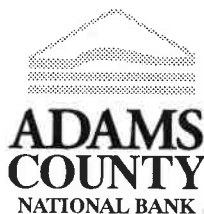
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IN THIS ISSUE

LOGAN, ET UX.
VS.
COUNTRY SIDE HOMES, INC., ET AL.

Strong.
Rooted Upon Traditional Values.
Dedicated to Quality.
Customer Service.
Dependable.
Branching Into The Future.
Our Commitment Is You.



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. 95-S-311 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of July, 1995, 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 Germany Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a steel pin in the center of a 48-inch White Oak on the Eastern side of a private lane on the John Esh property, said point being the beginning of the South 73-1/4 degrees East, 83.4 perch line of Deed Book 131, page 93 (original tract of which this is a part), to which the bearings of this survey are oriented; thence along the Eastern side of said private lane and running through a steel pin set back along the line 43.0 feet from the end of this course, North 22 degrees 29 minutes 37 seconds East, 240.71 feet to a point in Pennsylvania Legislative Route No. 01014 (Harney Road); thence in said road South 85 degrees 40 minutes 20 seconds East, 60.74 feet to a point; thence continuing in said road South 87 degrees 41 minutes 21 seconds East, 75.52 feet to a point in said road; thence through the original tract of land of which this was a part, and running through a steel pin set back along the line 50.0 feet from the beginning of this course, South 12 degrees 46 minutes 21 seconds East, 311.89 feet to a steel pin on line of land of Isaac Esh; thence by said land of Isaac Esh North 73 degrees 15 minutes 00 seconds West, 310.23 feet to a steel pin on the Eastern side of a private lane on the John Esh property, the place of BEGINNING. CONTAINING 1.3198 acres, neat measure.

This description was taken from a draft of survey of William B. Fissel land in Germany Township, Adams County, Pa., dated May 4, 1973, by J. H. Rife, Reg. Engr.

BEING all and the same land conveyed unto Richard G. Feeser and Patricia A. Feeser, husband and wife, by virtue of a Deed from Thomas E. Dehoff, Jr. and Reta C. Dehoff, his wife, dated April 24, 1974, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 313 at page 254.

Seized and taken into execution as the property of **Richard G. Feeser and Patricia A. Feeser**, and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
May 26, 1995.

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 August 14, 1995, 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.

6/16, 23, 30

NOTICE

NOTICE IS HEREBY GIVEN that on June 1, 1995, the Petition of Carol R. Swisher was filed in the Adams County Court of Common Pleas, praying for a Decree to change her name to Carol R. Williams.

The Court has fixed July 10, 1995, at 9:00 a.m. in Courtroom No. 1 of the Adams County Courthouse as the time and place for the hearing of said Petition, when and where all persons interested may appear and show cause, if any they have, why the prayer of the said Petition should not be granted.

Debra P. Fourlas, I.D. #62047
Attorney for Petitioner
101 West Middle Street
Gettysburg, PA 17325
(717) 337-3353

6/12

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

In re: Barbara Standish Davidowitz;
No. 95-S-480

NOTICE OF HEARING ON PETITION
FOR CHANGE OF NAME

NOTICE IS HEREBY GIVEN that on May 25, 1995, a Petition For Change of Name was filed by Barbara S. Davidowitz in the above named Court praying for a Decree to change her name from Barbara Standish Davidowitz to Barbara Standish Davison.

The Court has fixed July 18, 1995 at 8:30 a.m. in Courtroom No. 1, Adams County Courthouse, 111 Baltimore Street, Gettysburg, PA 17325 as the time and place for the hearing of said Petition, when and where all persons interested may appear and show cause, if any they have, why the prayer of said Petitioner should not be granted.

Bulleit, Schultz & Thrasher
By: Richard E. Thrasher
Attorney for Petitioner
16 Lincoln Square
Gettysburg, PA 17325

6/16

NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Act of Assembly No. 295 of 1982, of the filing in the Office of the Secretary of Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on the 10TH day of May, 1995, a certificate for the conduct of business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of "EDGEWOOD BOWL" with its principal place of business at 1880 Emmitsburg Road, Gettysburg, Pennsylvania. The names and addresses of the persons owning or interested in said business are Larry E. Miller and Amy L. Miller, 734 Blackhorse Tavern Road, Gettysburg, Pennsylvania, 17325.

6/16

LOGAN, ET UX., VS.
COUNTRY SIDE HOMES, INC., ET AL.

1. On a motion for summary judgment, the record must be examined in a light most favorable to the non-moving party, accepting as true all well-pleaded facts in the pleadings and giving that party the benefit of all reasonable inferences drawn therefrom.
2. Determining the intention of the parties is a paramount consideration in the interpretation of any contract and must be ascertained from the document itself when the terms are clear and unambiguous.
3. The parol evidence rule forbids the introduction of parol evidence of antecedent or contemporaneous agreements, negotiations and understandings of the contracting parties for the purpose of varying or contradicting the terms of a contract which both parties intended to represent the definite and complete statement of their agreement.
4. Whether an ambiguity exists in a contract is a question of law.
5. No duty exists on the part of a mortgagee to inspect the mortgaged premises for the benefit of the mortgagor unless the mortgagee has assumed such a duty.
6. Whenever one in control of a corporation used that control, or uses the corporate assets, to further his or her own personal interest, the fiction of the separate corporate identity may properly be disregarded.
7. In deciding whether to pierce the corporate veil, courts are concerned with ascertaining if the corporate form is a sham, constituting a facade for the operations of the dominant shareholder.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil NO. 88-S-1034, MICHAEL McINTYRE LOGAN and KELLY ANN LOGAN VS. COUNTRY SIDE HOMES, INC., YORK FEDERAL SAVINGS and LOAN ASSOCIATION and WILLIAM CARTER.

Thomas E. Miller, Esq., for Plaintiffs
L. C. Heim, Esq., for Defendant Carter
Rebecca S. McClure, Esq., for Defendant York Federal

OPINION ON MOTION FOR SUMMARY JUDGMENT

Kuhn, J., December 19, 1994.

The following relevant background is produced from the pleadings, depositions and answers to interrogatories.

On September 28, 1987, Plaintiffs entered into an Agreement of Sale with Country Side Homes, Inc., hereafter "CSH", for the purchase of a manufactured home. The unit was to cost \$49,000. Site preparation charges (\$18,925) and real estate purchase (\$27,700) raised the total cost to \$95,625. Plaintiffs were to receive a credit of \$19,125 for the trade-in of their existing mobile home leaving them responsible for the balance of \$76,500. Fred Widdowson, General

Manager for CSH, handled the transaction. On that same date Plaintiffs also executed a Plain Language Purchase Agreement which, among other things, described Plaintiffs' mobile home and indicated that they would be responsible for any debt owed on the unit at trade-in time.

Thereafter, Plaintiffs applied to Defendant, York Federal Savings and Loan Association, hereafter "York Federal", for a construction loan in the amount of \$76,500. On November 12, 1987, York Federal issued a commitment letter for the requested amount.

Settlement was scheduled for December 11, 1987. Certainly by that time Plaintiffs were intending to sell their mobile home rather than use it as a trade-in. The unit had not been sold and nearly \$20,000 was owed on it before net proceeds would be realized. It appears that insufficient funds were therefore available to cover the contract price of \$95,625. Plaintiffs requested that the mortgage be increased to \$90,800. A revised commitment letter for \$90,800 was issued on December 14, 1987, subject to the mortgage principal being reduced to \$76,500 at the end of the construction period.

Mortgage settlement finally occurred on December 18, 1987, at which time York Federal placed \$67,925 in a construction account. This sum equaled the cash price of the residential unit plus the site preparation charges. It also equals the balance owed CSH and the trade-in credit under the Agreement of Sale. The balance of the mortgage (\$22,875) along with other funds was used to finance the purchase of the real estate.

Attached to the Construction Loan Agreement was a disbursement schedule which provided that it "is to be used as a GUIDELINE only." Disbursement was divided into five draws each purportedly to cover 20% of the construction price. Calculations reveal that the first draw (\$3,785) represents 20% of the site preparation cost. Draws 2, 3 and 4 each represent 20% of site preparation (\$3,785) and 33 1/3 of the housing unit's cost (\$16,333.33). Draw 5 is the final 20% of the site preparation cost. Beside each reference in Draw 2-4 to the share of the unit cost is typed the work "KIT." At the bottom of the disbursement sheet the following note appears:

NOTE: For modular, the second, third and fourth draws will be disbursed when the unit is set on foundation. "KIT" homes are required to follow the above

schedule. No payment will be disbursed upon delivery of package.

All parties agree that Plaintiffs ordered and received a modular home.

On or about February 23, 1988, the home was set on its foundation. Mr. Widdowson then forwarded an authorization for payment to York Federal requesting \$64,139. This form had been executed in blank in advance by Plaintiffs. In time, York Federal requested that an inspection of the property be done by Larry Rohrbaugh. On February 25, 1988, Mr. Rohrbaugh completed the inspection and reported that the project was sufficiently completed to issue Draw Nos. 1-4.

On February 26, 1988, after receipt of the inspection report York Federal issued a check to CSH in the amount of \$64,139 representing Draws 1-4, inclusive¹. The sum of \$3,785 remained in the construction account.

Plaintiffs claim that CSH was only entitled to \$48,800 and that CSH improperly retained \$15,339. Within several weeks Plaintiffs demanded that CSH return these extra funds to York Federal. With the exception of slightly over \$2,000 no moneys have been returned. It appears that the funds from York Federal were commingled with other CSH funds and used to pay bills. CSH admits that by late 1987 the company was beginning to experience some financial problems.

Plaintiffs claim that CSH never finished the work necessary to complete the project. Nevertheless, on June 10, 1988, Plaintiffs requested that York Federal cancel its last draw and apply it to the mortgage principal. Another inspection was ordered by York Federal which revealed that several items were not yet completed. Final disbursement was denied and the funds were placed in an interest bearing account for Plaintiffs' benefit. Eventually on June 2, 1989, Plaintiffs requested yet another inspection. On June 23, 1989, York Federal paid Plaintiffs the sum of \$3976.61.

On December 30, 1988, Plaintiffs filed a Complaint with a count in assumpsit against all defendants, in trespass for negligence against York Federal, for fraudulent conveyance against CSH and its principal stockholder, William Carter, for unfair trade practices

¹ This sum is inexplicitly off by \$1.00.

against all defendants, for breach of express warranty against CSH and Carter, for punitive damages against all defendants, and for restitution against CSH and Carter. Per Opinion dated June 29, 1989, a demurrer to Count IV (Unfair Trade Practices) and Count V (Exemplary Damages) was granted as to York Federal. Plaintiffs filed an amended Complaint as to Count IV. By Order dated May 10, 1990, Count IV was dismissed as to York Federal based upon federal pre-emption.

On May 25, 1990, York Federal filed an Answer which contained a counterclaim against Plaintiffs.

Discovery continued for the next three years. Beginning in September, 1993, the parties began filing motions for summary judgment which included York Federal's motion against Plaintiffs, Plaintiffs' motion as to York Federal's counterclaim, Carter's motion against Plaintiffs, and Carter's Motion for sanctions against Plaintiffs.

Those motions are now before the Court for disposition.

It has often been stated that,

Summary judgment may be granted if the pleadings, depositions, answers to interrogatories and admissions on file show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law . . . Summary judgment may be entered only in cases that are clear and free from doubt . . . The moving party . . . has the burden of proving that no material issue of fact exists . . . *Allstate Insurance Co. v. McFadden*, 407 Pa. Super. 537, 540, 595 A.2d 1277, 1278 (1991); *Alloc. den.* 602 A.2d 885 (1991) (citations omitted).

In addition, the record must be examined in a light most favorable to the non-moving party, accepting as true all well-pleaded facts in the pleadings and giving that party the benefit of all reasonable inferences drawn therefrom. *Godlewski v. Pars Manufacturing Company*, 408 Pa. Super. 425, 430, 597 A.2d 106, 109 (1991). Finally, pursuant to the Nanty-Glo rule, summary judgment is not available where the moving party relies exclusively upon oral affidavits or depositions to establish the absence of a genuine issue of material fact, except where that oral testimony consists of admissions of the opposing party or his witnesses. *Johnson v.*

Johnson, 410 Pa. Super. 631, 637, 600 A.2d 965, 968 (1991).

We shall first address York Federal's motion for summary judgment. The only counts remaining as to York Federal are breach of contract (I) and negligence (II). In Count I Plaintiffs contend that it was York Federal who insisted on raising the construction loan from \$76,500 to \$90,800, that disbursements would only be made in accordance with the "KIT" schedule, that CSH would only be paid \$48,800 and that the excess funds would be held by York Federal.

York Federal argues that the contract documents require the payment of \$67,925 of which \$64,139 would be payable when the unit was set on its foundation. They contend that introduction of any evidence to the contrary violates the parol evidence rule.

Plaintiffs averred that the disbursement schedule is part of the Construction Loan Agreement (Para. 16, 20), the contract in question. This writing did not contain an integration clause. It is well known that,

Determining the intention of the parties is a paramount consideration in the interpretation of any contract . . . The intent of the parties is to be ascertained from the document itself when the terms are clear and unambiguous . . . *Hutchinson v. Sunbeam Coal Corp.*, 513 Pa. 192, 200-1, 519 A.2d 385, 389-90 (1986) (citations omitted).

This is done in order to maintain the integrity of the written contract. Ordinarily therefore, in the absence of ambiguity the parol evidence rule,

forbids the introduction of parol evidence of antecedent or contemporaneous agreements, negotiations and understandings of the contracting parties for the purpose of varying or contradicting the terms of a contract which both parties intended to represent the definite and complete statement of their agreement.

Davis v. Davis, 422 Pa. Super. 410, 415-6, 619 A.2d 743, 746 (1993) citing *Amer. Bank & Trust Co. of Pa. v. Lied*, 487 Pa. 333, 409 A.2d 377 (1979).

Plaintiffs claim that the disbursement schedule of the construction loan agreement is ambiguous and would attempt to introduce

evidence that York Federal typed the “KIT” schedule on the disbursement schedule to memorialize the parties’ oral understanding that funds would be distributed in the same manner as a “KIT” home. York Federal, however, contends that the disbursement schedule is unambiguous and clearly states that disbursements for a modular home would include up to Draw #4 when the unit was set on its foundation.

Whether an ambiguity exists is a question of law. Ambiguity exists in a contract if it is reasonably susceptible of different constructions and capable of being understood in more than one sense. *Hutchinson v. Sunbeam Coal Corp.*, 513 Pa. at 201, 519 A.2d at 390. We find no ambiguity to exist in this disbursement schedule or the other contract documents. The schedule clearly states what the disbursement schedule will be for a modular unit. Without that written notation Plaintiffs’ position would be well taken.² However, in the instant case parol evidence will not be admissible as to the meaning of the disbursement schedule.

Plaintiffs also argue that York Federal breached the contract and was negligent in sending CSH more than \$48,800.00. They contend that this limited consideration was clearly spelled out in their contract with CSH, a copy of which York Federal had in its possession. The Court views the documents differently. While Plaintiffs’ contract with CSH did indicate that CSH was entitled to \$48,800.00, that figure was arrived at only after crediting the trade-in allowance of \$19,125.00. As noted above, Plaintiffs did not trade in their mobile home and have not shown in the record how that deficiency was to be satisfied except through construction fund disbursements. Plaintiffs apparently would have the Court ignore the \$67,925.00 total for the disbursement schedule as irrelevant. They have presented no evidence or argument that CSH was not to receive the site preparation charges which when added to the cost of the home totaled \$67,925.00. Stated differently they have not identified any entity other than CSH who was to receive the difference between the total of the construction account and \$48,800.00. More importantly, they point to no evidence that York Federal would have known not to disburse those funds to CSH in

² We note that Plaintiffs have only argued that it was their intention or understanding that the “Kit” schedule would be followed. They have not identified any agent or employee of York Federal who made that statement to them.

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 CHARLES W. CORNBOWER, DEC'D

Late of McSherrystown Borough, Adams County, Pennsylvania

Executrix: Louise M. Cornbower, 314 Fairview Avenue, McSherrystown, PA 17344

Attorney: Donald W. Dorr, 126 Carlisle Street, Hanover, PA 17331

ESTATE OF LLOYD E. CROUSE, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrices: Alma Weikert Crouse, 24 Lumber Street, Littlestown, PA 17340; Elizabeth Crouse Ross, 540 Cabot Drive, Hockessin, DE 1907

Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF KENNETH E. EISENHOUR, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Co-Executors: Bonita J. Knaub, 2095 Carlisle Road, York, PA 17404; Donald E. Eisenhour, 302 York St., Gettysburg, PA 17325; Harold G. Winter, 318 Hoke Street, York, PA 17404

Attorney: Paul C. McCleary, Jr., 1998-A Carlisle Road, York, PA 17404, (717) 764-5926

ESTATE OF GARNET O. NEWTON, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executors: William D. Newton, 949 Herr's Ridge Rd., Gettysburg, PA 17325; Gary D. Newton, 770 Long Lane, Gettysburg, PA 17325

Attorney: Bigham & Raffensperger, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF ROBERT K. SWARTLEY, SR., DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Joan L. Deimler, 152 Meadowbrook Court, New Cumberland, PA 17070

Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF GERALD C. HARTLAUB, SR., DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executors: Burnell W. Hartlaub, 222 S. Third St., McSherrystown, PA; Kathleen M. Palmer, 55 Main St., McSherrystown, PA

Attorney: Rudisill, Guthrie, Nonemaker, Guthrie and Yingst, 40 York Street, Hanover, PA 17331-3192

THIRD PUBLICATION

ESTATE OF ADA BECKER GINGRICH a/k/a ADA M. BECKER, DEC'D

Late of 171 Goodyear Road, Gardners, Adams County, Pennsylvania

Executor: Harold E. Becker, c/o Young & Young, 44 South Main Street, Manheim, PA 17545

Attorney: Young & Young

ESTATE OF MIRIAM A. CRUSE, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Executor: Frederick W. Cruse, 370 Rupp Road, Gettysburg, PA 17325

Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ETHEL B. MARTIN, DEC'D

Late of Fairfield, Adams County, Pennsylvania

Executor: Lester C. Martin, 228 Landis Avenue, Waynesboro, PA 17268

Attorney: William S. Dick, 10 East Main Street, Waynesboro, PA 17268

ESTATE OF MILDRED M. OSBORN, DEC'D

Late of Biglerville Borough, Adams County, Pennsylvania

Executor: Thomas G. Lush, 28 Ditzler Avenue, Biglerville, PA 17307

Attorney: Chester G. Schultz, Esquire, Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF ELLEN M. E. SCHOFF-STALL, DEC'D

Late of York Springs Borough, Adams County, Pennsylvania

Executors: Ellen Mae Wilson, 38 Frost Road, Gardners, PA 17324; Charles Leroy Schoffstall, 32 Carlisle Road, Newville, PA 17241

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

ESTATE OF JOSEPH C. WAGNER, DEC'D

Late of 25 Herr's Ridge Road, Gettysburg, Adams County, Pennsylvania

Executor: Curvin J. Wagner, c/o The Law Offices of Joseph D. Buckley, 1237 Holly Pike, Carlisle, PA 17013, (717) 249-2448

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 94-S-847 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of July, 1995, 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 situate in Latimore Township, Adams County, Pennsylvania being more particularly described as Lot No. 1218 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Misc. Book 1, Page 21, and subject to all legal highways, easements, rights of way and restrictions of record.

ALL THAT CERTAIN lot of land situate in Latimore Township, Adams County, Pennsylvania, being more particularly described as Lot No. 1219 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Misc. Book 1, Page 21, and subject to all legal highways, easements, rights of way and restrictions of record.

ALL THAT CERTAIN lot of land situate in Latimore Township, Adams County, Pennsylvania, being more particularly described as Lot No. 1220 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Misc. Book 1, Page 21, and subject to all legal highways, easements, rights of way and restrictions of record.

BEING 733 McCandless Drive, East Berlin, PA 17316.

PARCEL: 68

Seized and taken into execution as the property of **William S. Nelson and Kathryn W. Nelson**, and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
May 19, 1995.

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 August 14, 1995, 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.

6/2, 9, 16

NOTICE BY THE ADAMS COUNTY
CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County - Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, June 19, 1995, at 9:00 o'clock a.m.

HOFFMAN—Orphans' Court Action Number OC-40-95. The First and Final Account of Charles W. Wolf, Executor under the Will of Margaret L. Hoffman, deceased, late of Borough of Gettysburg, Adams County, Pennsylvania.

WHISTLER—Orphans' Court Action Number OC-41-95. The First and Final Account of Charles W. Whistler, Executor of the Estate of Goldie M. Whistler a/k/a Shelley M. Whistler, deceased, late of Straban Township, Adams County, Pennsylvania.

PITZER—Orphans' Court Action Number OC-43-95. The First and Final Account of Janet A. Lady and Ruth Jean Unger, Executrices of the Last Will and Testament of Aletha M. Pitzer, deceased, late of Menallen Township, Adams County, Pennsylvania.

KENNEDY—Orphans' Court Action Number OC-50-95. The First and Final Account of Robert Kennedy, Executor of the Last Will and Testament of Agnes B. Kennedy, deceased, late of Borough of Bendersville, Adams County, Pennsylvania.

SMITH—Orphans' Court Action Number OC-51-95. The First and Final Account of Eugene E. Smith, Executor of the Last Will and Testament of Anna M. Smith, deceased, late of Oxford Township, Adams County, Pennsylvania.

DIEHL—Orphans' Court Action Number OC-52-95. The First and Final Account of Chuck Geesaman, Executor of the Estate of Carl E. Diehl, deceased, late of Cumberland Township, Adams County, Pennsylvania.

WINTRODE—Orphans' Court Action Number OC-53-95. The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Martha M. Wintrode, deceased, late of Germany Township, Adams County, Pennsylvania.

ALLISON—Orphans' Court Action Number OC-56-95. The First and Final Account of Catherine Wilson, Executrix of the Will of Ethel Grace Allison, deceased, late of Borough of Fairfield, Adams County, Pennsylvania.

RICHSTINE—Orphans' Court Action Number OC-57-95. The First and Final Account of Yvonne Strausbaugh and Robert Myers, Co-Executors of the Estate of Naomi Richstine, deceased, late of Mt. Pleasant Township, Adams County, Pennsylvania.

KIME—Orphans' Court Action Number OC-60-95. The First and Final Account of Robert A. Lentz, Paul C. Lentz, Pauline Lentz Singley and Mary L. Rife, Executors of the Estate of Lillie S. Kime a/k/a Lillie V. Kime, deceased, late of Cumberland Township, Adams County, Pennsylvania.

PEGGY J. BREIGHNER
CLERK OF COURTS

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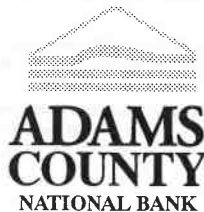
IN THIS ISSUE

LOGAN, ET UX.

VS.

COUNTRY SIDE HOMES, INC., ET AL.

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. 95-S-311 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of July, 1995, 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 Germany Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a steel pin in the center of a 48-inch White Oak on the Eastern side of a private lane on the John Esh property, said point being the beginning of the South 73-1/4 degrees East, 83.4 perch line of Deed Book 131, page 93 (original tract of which this is a part), to which the bearings of this survey are oriented; thence along the Eastern side of said private lane and running through a steel pin set back along the line 43.0 feet from the end of this course, North 22 degrees 29 minutes 37 seconds East, 240.71 feet to a point in Pennsylvania Legislative Route No. 01014 (Harvey Road); thence in said road South 85 degrees 40 minutes 20 seconds East, 60.74 feet to a point; thence continuing in said road South 87 degrees 41 minutes 21 seconds East, 75.52 feet to a point in said road; thence through the original tract of land of which this was a part, and running through a steel pin set back along the line 50.0 feet from the beginning of this course, South 12 degrees 46 minutes 21 seconds East, 311.89 feet to a steel pin on line of land of Isaac Esh; thence by said land of Isaac Esh North 73 degrees 15 minutes 00 seconds West, 310.23 feet to a steel pin on the Eastern side of a private lane on the John Esh property, the place of BEGINNING. CONTAINING 1.3198 acres, neat measure.

This description was taken from a draft of survey of William B. Fissel land in Germany Township, Adams County, Pa., dated May 4, 1973, by J. H. Rife, Reg. Engr.

BEING all and the same land conveyed unto Richard G. Feeser and Patricia A. Feeser, husband and wife, by virtue of a Deed from Thomas E. Dehoff, Jr. and Reta C. Dehoff, his wife, dated April 24, 1974, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 313 at page 254.

Seized and taken into execution as the property of **Richard G. Feeser and Patricia A. Feeser**, and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
May 26, 1995.

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 August 14, 1995, 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.

6/16, 23, 30

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation will be filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pa., for the purpose of obtaining a Certificate of Incorporation of a domestic non-profit corporation which is being organized for charitable purposes under the Business Corporation Law of the Commonwealth of Pennsylvania approved December 21, 1988, Act 177. The name of the corporation is UPON THIS ROCK COMMUNITY CHURCH.

6/23

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN of the filing of Articles of Incorporation stating the following:

1. The name of the corporation is A & A RECREATIONAL ENTERPRISES, INC.
2. The corporation has been incorporated under the provisions of the Business Corporation Law of 1988.

Rudisill, Guthrie, Nonemaker,
Guthrie & Yingst
Solicitor

6/23

CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on the 13th day of June, 1995, the petition of James Andrew Gouker was filed in the Court of Common Pleas of Adams County, Pennsylvania, praying for a decree to change his name from James Andrew Gouker to James Andrew Racine.

The Court has fixed the 21st day of August, 1995, at 9:00 A.M., in Courtroom No. 1 of the Adams County Courthouse, at Gettysburg, Pennsylvania, as the time and place for hearing of said petition when and where all persons interested may appear and show cause, if any they have, why the prayer of said petitioner should not be granted.

Bigham & Raffensperger
By Edward G. Puhl, Esquire
Attorney for Petitioner
16 Lincoln Square
Gettysburg, PA 17325

6/23

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that on May 31, 1995 a certificate will be filed under the Fictitious Name Act approved December 21, 1988, P.L. 1444, in the Office of the Secretary of the Commonwealth of Pennsylvania, setting forth that Kevin Bourdeau, 209 Main Street, P.O. Box 103, McSherrystown, PA 17344 is/are the only person(s) owning or interested in a business, the character of which is chimney cleaning and repair and that the name, style and designation under which said business is and will be conducted is CLEAN SWEEP CHIMNEY SERVICE and the location where said business is and will be located is 209 Main Street, P.O. Box 103, McSherrystown, PA 17344.

6/23

light of the contract documents and Plaintiffs' signature on the payment voucher.

Furthermore, the Court agrees with York Federal that it had no duty to inspect the premises on behalf of Plaintiffs. Any negligence action requires the existence of a duty the breach of which gives rise to damages allegedly suffered. The general rule in this area is that no duty exists on the part of a mortgagee to inspect the mortgaged premises for the benefit of the mortgagor unless the mortgagee has assumed such a duty. Otherwise, the mortgagee's inspection is made only to ascertain whether the property has sufficient value to secure the loan and is made for the sole benefit of the mortgagee. *Henry v. First Federal Savings & Loan Association*, 313 Pa. Super. 128, 133, 459 A.2d 772, 774 (1983).

The Court finds nothing in this case that suggests York Federal assumed any duty for the benefit of Plaintiffs. Its inspection was done solely to determine whether a specific quantity of work had been done and Plaintiffs have not shown that the progress needed to make the disbursements for Draws 1-4 was not completed. Paragraph 7 of the Construction Loan Agreement states that the inspection done by York Federal is not directed to quality of materials or workmanship. Paragraph 8 states that payment would be made after inspection in accordance with the attached disbursement schedule. There is no evidence that the quantity of work called for in the schedule had not been completed.

Here, unlike in *Garbish v. Malvern Federal Savings & Loan Association*, 358 Pa. Super. 282, 517 A.2d 547 (1986), *Alloc. den.* 533 A.2d 712 (1987), where a duty was imposed, York Federal did not have exclusive control over all the construction funds including that portion which Plaintiffs were to provide, it required Plaintiffs' signatures on the payment vouchers, and it did not hold itself out as an expert in the disbursement of construction funds. Since no duty can be imposed upon York Federal there can be no breach which gives rise to a negligence action.

Therefore, York Federal's Motion For Summary Judgment will be granted.

Next, the Court would have discussed Plaintiffs' Motion For Summary Judgment as to York Federal's Counterclaim. However, at Argument York Federal conceded the Motion, therefore, the motion will be granted.

Third, the Court will address Carter's Motion For Summary Judgment filed against Plaintiffs. As noted above, remaining counts against Carter include breach of contract, fraudulent conveyance, unfair trade practices and breach express warranty. Preliminarily, it should be made clear that Carter's name appears on no contract document involved in this case. Instead, the contract and payment vouchers were signed by Widdowson on behalf of CSH. It is likewise clear that Plaintiffs cannot show any personal involvement by Carter in Plaintiffs' transaction until at least one week after York Federal issued the \$64,139 check to CSH on February 26, 1988.

Based upon information presented Plaintiffs can produce evidence which, if believed, would show the following information. CSH was incorporated in February, 1984, at which time Carter owned 60% of the corporate stock. By February, 1987, Carter acquired all the stock and became president and secretary of the company. CSH began experiencing financial difficulties in late 1987. Although Carter was not involved in the day-to-day operations or deal with customers, he did drop by the business at least monthly. Until the Spring of 1988, Mr. Widdowson was in charge of the daily corporate activities and contracts. CSH paid rent to Carter of approximately \$1500 per month up to February 12, 1988.

Carter was not involved in authorizing the payment voucher which resulted in York Federal's payment to CSH and was not aware of it until at least one week after its receipt and after inquiry and complaint by Plaintiffs. At the time deposit of the York Federal check was made the corporate ledger book showed a balance of \$28,344.82. Three days later CSH paid a Sunoco bill for Carter in the amount of \$707.25.

After Carter was told that CSH received too much money from Plaintiffs' construction account, Carter made overtures that CSH would attempt to reimburse Plaintiffs for their alleged loss. In fact, in May, 1988, CSH paid Plaintiffs \$2,000.00.

In Count I (contract) Plaintiffs allege that Carter breached the Agreement of Sale by not finishing construction and for performing work in an unworkmanlike manner. Carter signed no documents so Plaintiffs must pierce the corporate veil in order to hold him personally liable. As stated in *First Realvest, Inc. v. Avery Builders, Inc.*, 410 Pa. Super. 572, 600 A.2d 601 (1991) absent an establishment of a participation theory or the successful assertion of the

equitable doctrine of piercing the corporate veil “The law in Pennsylvania is clear that where a party enters into a contract with a corporation, no action will lie against the shareholders of that corporation individually for breach of that contract,” 410 Pa. Super. at 576, 600 A.2d at 603. Here, Plaintiffs have not declared which theory they are advancing.

The participation theory is one which imposes personal liability on the shareholder because he has personally taken part in the actions of the corporation. *Id.* Thus, the liability is not imposed because the corporation is a sham and the mere alter ego of the shareholder, but because he participated in tortious conduct as an individual rather than as an owner. *Village at Camelback Property Owners Association, Inc. v. Carr*, 371 Pa. Super. 452, 462, 538 A.2d 528, 533 (1988), *Alloc. gr.* 548 A.2d 257 (1988). The Court finds nothing in the record to support this theory under Count 1.

Piercing the corporate veil is a theory used to assess liability for the acts of a corporation against a shareholder. It is an extraordinary remedy preserved for cases involving exceptional circumstances. *Id.* In *Village* the Court said that

... whenever one in control of a corporation used that control, or uses the corporate assets, to further his or her own personal interests, the fiction of the separate corporate identity may properly be disregarded.

... In deciding whether to pierce the corporate veil, courts are basically concerned with determining if equity requires that the shareholders’ traditional insulation from personal liability be disregarded and with ascertaining if the corporate form is a sham, constituting a facade for the operations of the dominant shareholder... Thus, we inquire, *inter alia*, whether corporate formalities have been observed and corporate records kept, whether officers and directors other than the dominant shareholder himself actually function, and whether the dominant shareholder has used the assets of the corporation as if they were his own. *Id.* (citations omitted). 371 Pa. Super. at 461, 538 A.2d at 532.

More generally the theory is applied when the corporate entity is used to defeat public convenience, justify wrong, protect fraud or

defend crime. There is no definitive test for piercing the corporate veil, however,

In applying the test (for piercing the corporate veil)...any court must start from the general rule that the corporate entity should be recognized and upheld, unless specific, unusual circumstances call for an exception . . . Care should be taken on all occasions to avoid making the entire theory of the corporate entity . . . useless . . .

First Realvest, supra., 410 Pa. Super. at 577-8, 600 A.2d at 604.

When Plaintiffs were asked in discovery to identify what evidence supports Carter's personal liability, Plaintiffs claim that Carter should have known that CSH was insolvent in December, 1987. However, as noted above that general statement is contradicted by specific evidence in the corporate ledger that the corporate account held in excess of \$28,000 after the York Federal check was deposited. This balance was present five days after CSH paid off Plaintiffs' unit with the Bank of Hanover with a check for \$32,865.63. Plaintiffs also suggest that the corporate ledger shows a negative balance of \$2928.55 but fails to offer any record to support when that deficiency existed.

Plaintiffs claim that Carter's personal Sunoco credit card was paid with corporate funds and that he received rent and salary from the proceeds of Plaintiffs' construction funds. Simply drawing out funds from a corporation by a shareholder is not sufficient, standing alone, to abandon the corporate entity for personal liability. *Id.* Furthermore, Plaintiffs have offered no record to show that Carter received rent or salary after February 26, 1988. The only possible personal use of corporate assets was the payment of the Sunoco card on February 29, 1988. At that time the ledger balance exceeded \$20,000.00. Plaintiffs have identified no other irregularity which suggests that the corporate entity was a sham. These facts differ significantly from those in *Hanrahan v. Audobon Builders, Inc.*, 418 Pa. Super. 497, 614 A.2d 748 (1992) where the corporate veil was pierced. After nearly six years of litigation this record is inadequate to support a theory of piercing the corporate veil as to Count I.

In Count III Plaintiffs allege an action under the Pennsylvania Uniform Fraudulent Transfer Act, 12 Pa. C.S.A. §5101 et seq. Plaintiffs allege therein that Carter knew CSH was insolvent prior to February, 1988, and that he directed his employees to perpetrate a fraud by obtaining \$64,139 from Plaintiffs' construction account when work was not performed. They allege that CSH was not entitled to \$ 15,339 of that amount which Carter then confiscated for his personal use and benefit. His liability is again presented on a theory of piercing the corporate veil. As noted above, Plaintiffs can produce no evidence that Carter was personally involved in their transaction before receipt of the York Federal check or that construction was not completed to the point that Draws 1-4 were not authorized.

39 P.S. §354 provides that,

Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent, is fraudulent as to creditors, without regard to his actual intent, if the conveyance is made or the obligation is incurred without a fair consideration.

Plaintiffs have offered no evidence that CSH was insolvent when any funds were paid to Carter after February 26, 1988. On the contrary the corporate ledger attached to Interrogatories shows a significant bank balance when the credit card transfer was made. Furthermore, Plaintiffs have not shown that any other sum paid after February 26 was without fair consideration.

The Court finds no basis to hold Carter individually liable under Count III.

In Count IV Plaintiffs allege a cause of action under the Unfair Trade Practices and Consumer Protection Act, 73 P.S. §201-1, et seq. Therein they allege that CSH misrepresented the quality of the foundation and structure of the home, advertised goods without the intent to sell them and failed to comply with a written warranty. However, they have failed to identify in any manner that Carter individually participated in this alleged fraudulent conduct nor, as discussed above, have they set forth a basis to pierce the corporate veil.

In Count V Plaintiffs allege that there is a manufacturer's written warranty for workmanship and materials for one year and that CSH

and Carter were the manufacturers or that they assumed the duties of the manufacturer. There is absolutely no basis in the record to find that CSH or Carter were the manufacturer or that they assumed that role. Therefore, Carter cannot be individually liable under Count V.

Resolution of the above issues renders moot Carter's Motion For Sanctions.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 19th of December, 1994, York Federal's Motion For Summary Judgment filed September 17, 1993, Plaintiffs' Motion For Summary Judgment as to York Federal's Counterclaim filed October 6, 1993, and William Carter's Motion for Summary Judgment filed October 7, 1993, are granted. William Carter's Motion For Sanctions filed October 7, 1993, is rendered moot.

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 GLENNY. KINDIG, DEC'D
Late of Germany Township, Adams County, Pennsylvania

Executors: John R. Kindig, 508 York Street, Hanover, PA 17331; James D. Kindig, 439 South Queen Street, Littlestown, PA 17340

Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF ROBERT J. MARTIN, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania
Administratrix: Candy J. Spahr, 1885 Fish & Game Road, East Berlin, PA 17316

Attorney: Sharon E. Myers, Esq., Countess Gilbert Andrews, 29 North Duke Street, York, PA 17401

ESTATE OF HARRIET I. REED, DEC'D
Late of Oxford Township, Adams County, Pennsylvania

Executrix: Tina A. Sigafoose, R.D.#1, Box 188, Thomasville, PA 17364

Attorney: W.W. Hafer, Esquire, 215 Baltimore Street, Hanover, PA 17331

ESTATE OF WAYNE KENNETH SNADER, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executrix: Tracy L. Snader, 294 Labor Camp Road, Gardners, PA 17324

Attorney: John R. White, Campbell, White & George, 122 Baltimore Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF CHARLES W. CORNBOWER, DEC'D

Late of McSherrystown Borough, Adams County, Pennsylvania

Executrix: Louise M. Cornbower, 314 Fairview Avenue, McSherrystown, PA 17344

Attorney: Donald W. Dorr, 126 Carlisle Street, Hanover, PA 17331

ESTATE OF LLOYD E. CROUSE, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrices: Alma Weikert Crouse, 24 Lumber Street, Littlestown, PA 17340; Elizabeth Crouse Ross, 540 Cabot Drive, Hockessin, DE 19707

Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF KENNETH E. EISENHOUR, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Co-Executors: Bonita J. Knaub, 2095 Carlisle Road, York, PA 17404; Donald E. Eisenhour, 302 York St., Gettysburg, PA 17325; Harold G. Winter, 318 Hoke Street, York, PA 17404

Attorney: Paul C. McCleary, Jr., 1998-A Carlisle Road, York, PA 17404, (717) 764-5926

ESTATE OF GARNET O. NEWTON, DEC'D
Late of Cumberland Township, Adams County, Pennsylvania

Executors: William D. Newton, 949 Herr's Ridge Rd., Gettysburg, PA 17325; Gary D. Newton, 770 Long Lane, Gettysburg, PA 17325

Attorney: Bigham & Raffensperger, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF ROBERT K. SWARTLEY, SR., DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Joan L. Deimler, 152 Meadowbrook Court, New Cumberland, PA 17070

Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF GERALD C. HARTLAUB, SR., DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executors: Burnell W. Hartlaub, 222 S. Third St., McSherrystown, PA; Kathleen M. Palmer, 55 Main St., McSherrystown, PA

Attorney: Rudisill, Guthrie, Nonemaker, Guthrie and Yingst, 40 York Street, Hanover, PA 17331-3192

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY, PENNSYLVANIA

In Re: First and Final Account of PNC BANK, N.A., Guardian of the Estate of JOSEPH C. WAGNER, An Incapacitated Person, Pursuant to 20 Pa. C.S.A. §5531

TO ALL BENEFICIARIES, HEIRS AND OTHER PERSONS CONCERNED:

NOTICE IS HEREBY GIVEN that the First and Final Account and Statement of Proposed Distribution of PNC Bank, N.A., Guardian of the Estate of Joseph C. Wagner, An Incapacitated Person, have been filed in the Office of the Clerk of the Orphans' Court and will be presented to the Court of Common Pleas of Adams County, Pennsylvania, for confirmation and approval on July 10, 1995, at 9:00 A.M.

Peggy J. Breighner, Clerk

Swope, Heiser & McQuaide
Attorneys for the Estate
104 Baltimore Street
Gettysburg, PA 17325

6/23, 30

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-307 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of July, 1995, 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 Carroll Valley, formerly Hamiltonban Township, Adams County, Pennsylvania, being Lot No. 296 in Section K, Charnita Development, bounded and described as follows:

BEGINNING at a point in the cul-de-sac of Snow Trail at Lot No. 287; thence in the cul-de-sac and by said Lot, South 43 degrees 11 minutes 50 seconds East, 177.51 feet to Lot No. 270; thence by said lot and by Lot No. 271, South 27 degrees 27 minutes 2 seconds West, 142.15 feet to Lot No. 274; thence by said lot and by Lot No. 275, North 64 degrees 44 minutes 25 seconds West, 143.56 feet to Lot No. 285; thence by said lot and in the cul-de-sac of Snow Trail, North 20 degrees 48 minutes 50 seconds East 207.85 feet to the place of BEGINNING.

Being the same premises which Billie J. Lloyd, et al., by their deed dated June 13, 1991 and recorded on June 14, 1991 in Deed Book Volume 590, page 1113, et. seq., in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, granted and conveyed unto Charles W. Lloyd and Billie J. Lloyd as tenants by the entireties, in fee.

BEING SOLD AS PROPERTY OF CHARLES W. LLOYD AND BILLIE J. LLOYD, TENANTS BY THE ENTIRETIES.

Seized and taken into execution as the property of **Charles W. Lloyd and Billie J. Lloyd**, and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
June 8, 1995.

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 August 14, 1995, 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.

6/23, 30 & 7/7

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 93-S-968 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of July, 1995, 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 in Butler Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a railroad spike in the center of the public road running North-erly from the Arendtsville-Biglerville State Highway to Yellow Hill, where the same is intersected by the center line of University Drive, being another public road running Easterly from said Yellow Hill Public Road to Biglerville; thence running in the center of said public road to Yellow Hill, North 6 degrees 15 minutes East, 719 feet to a railroad spike in the center of said public road to Yellow Hill; thence by land formerly a part hereof, now or formerly of Dennis W. and Lois E. Little, South 86 degrees 28 minutes East 234.25 feet to an iron pin; thence running through the original tract of Fred C. Raffensperger, et al., South 6 degrees 15 minutes West, 730.1 feet to a railroad spike driven in the center of said University Drive, thence continuing through the original tract of said Fred C. Raffensperger, et al., and thence by land now or formerly of Fred C. Raffensperger, North 83 degrees 45 minutes West, 234 feet to the above described place of BEGINNING. CONTAINING 3 Acres and 142 Perches, more or less.

The above description was principally taken from a draft of survey dated August 30, 1971, made by LeRoy H. Winebrenner, Adams County Surveyor.

BEING the same tract of land which Fred C. Raffensperger and Edith D. Raffensperger, his wife, and Emory E. Raffensperger, Jr., and Vivian J. Raffensperger, his wife, by their deed dated October 5, 1971, and recorded in the Office Of the Recorder Of Deeds Of Adams County, Pennsylvania, in Deed Book 296 at page 102, sold and conveyed unto Norman K. Lady and Willetta D. Lady, husband and wife.

LESS, HOWEVER, the following two (2) tracts of land:

1. A tract of land containing approximately 0.858 Acres or 37,400 Square Feet as more fully set forth in deed dated December 20, 1972, which Norman K. Lady and Willetta D. Lady, husband and wife, conveyed to Frederick J. Tilberg and Anna F. Tilberg, husband and wife, recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 304 at page 352 and designated as Lot #1 and Parcel A of Adams County, Pennsylvania, Plat Book 2 at page 11.

2. A tract of land containing 1.287 Acres, more or less, as more fully set forth in deed dated October 2, 1978, which Norman K. Lady and Willetta D. Lady, husband and wife conveyed to Robert L. McCleaf, Jr. and Betty E. McCleaf, husband and wife, recorded in the aforesaid Recorder's Office in Deed Book 340 at page 938 and designated as Lots Nos. 4 and 5 of Adams County, Pennsylvania, Plat Book 2 at page 50.

Seized and taken into execution as the property of **Norman K. Lady and Willetta D. Lady**, and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
June 12, 1995.

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 August 14, 1995, 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.

6/23, 30 & 7/7

Adams County Legal Journal

Vol. 37

June 30, 1995

No. 5, pp. 25-30

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-N-362 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 28th day of July, 1995, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land situate, lying and being in Tyrone Township, Adams County, Pennsylvania, improved with a two-story frame house, three outbuildings and a spring house, more particularly bounded and described as follows:

BEGINNING at a point in the public road known locally as the Pine Grove Road; thence North 63 degrees 15 minutes West in said road, 56 feet to a stake; thence North 77 degrees 35 minutes West in said road, 470.25 feet to a stake; thence North 77 degrees 5 minutes West in said road, 132 feet to a stake in the junction of aforesaid road and Raccoon Road; thence North 71 degrees 40 minutes East in said Raccoon Road, 627 feet to a

stake; thence diagonally across said Raccoon Road, North 53 degrees 40 minutes East, 90.75 feet to a stake; thence South 36 degrees 35 minutes East, 18.15 feet to a spike in Raccoon Road; thence North 61 degrees 55 minutes East in Raccoon Road, 336.60 feet to stake on line of land of Norman Stamer; thence South 37 degrees 35 minutes East along line of land of Norman Stamer, 198.45 feet to a point; thence South 54 degrees 20 minutes West along land of Leroy E. Stamer et ux, 629 feet to a spike in the Pine Grove Road, to the place of BEGINNING.

This description was taken from a survey by T. A. Neff, Registered Surveyor.

BEING all and the same tract of land which John W. Stamer and Vernon A. Stamer, husband and wife, by their Deed dated June 12, 1975 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Deed Book 318 at page 1148, sold and conveyed unto A. Linwood Stamer and Judith E. Stamer, husband and wife; Judith E. Stamer being deceased, title thereto is vested in A. Linwood Stamer.

Seized and taken into execution as the property of **Linwood Stamer**, and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
June 12, 1995.

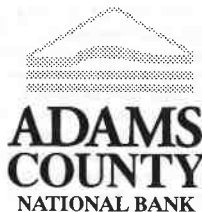
TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 18, 1995, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser 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.

6/30/717, 14

Strong.
Rooted Upon Traditional Values.
Dedicated to Quality.
Customer Service.
Dependable.
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. 95-S-311 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of July, 1995, 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 Germany Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a steel pin in the center of a 48-inch White Oak on the Eastern side of a private lane on the John Esh property, said point being the beginning of the South 73-1/4 degrees East, 83.4 perch line of Deed Book 131, page 93 (original tract of which this is a part), to which the bearings of this survey are oriented; thence along the Eastern side of said private lane and running through a steel pin set back along the line 43.0 feet from the end of this course, North 22 degrees 29 minutes 37 seconds East, 240.71 feet to a point in Pennsylvania Legislative Route No. 01014 (Harney Road); thence in said road South 85 degrees 40 minutes 20 seconds East, 60.74 feet to a point; thence continuing in said road South 87 degrees 41 minutes 21 seconds East, 75.52 feet to a point in said road; thence through the original tract of land of which this was a part, and running through a steel pin set back along the line 50.0 feet from the beginning of this course, South 12 degrees 46 minutes 21 seconds East, 311.89 feet to a steel pin on line of land of Isaac Esh; thence by said land of Isaac Esh North 73 degrees 15 minutes 00 seconds West, 310.23 feet to a steel pin on the Eastern side of a private lane on the John Esh property, the place of BEGINNING. CONTAINING 1.3198 acres, neat measure.

This description was taken from a draft of survey of William B. Fissel land in Germany Township, Adams County, Pa., dated May 4, 1973, by J. H. Rife, Reg. Engr.

BEING all and the same land conveyed unto Richard G. Feeser and Patricia A. Feeser, husband and wife, by virtue of a Deed from Thomas E. Dehoff, Jr. and Reta C. Dehoff, his wife, dated April 24, 1974, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 313 at page 254.

Seized and taken into execution as the property of **Richard G. Feeser and Patricia A. Feeser**, and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
May 26, 1995.

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 August 14, 1995, 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.

6/16, 23, 30

IN THE COURT
OF COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
No. 92-S-919
Action to Quiet Title

M. RICHARD GILBERT AND VICTORIA
K. GILBERT, Plaintiffs

vs.

UNION CHURCH, SAINT JOHN'S
LUTHERAN CHURCH and ANY UN-
KNOWN PERSON OR ENTITY HAVING
ANY INTEREST IN 5434-A CARLISLE
PIKE, READING TOWNSHIP, ADAMS
COUNTY, PENNSYLVANIA, Defendants

NOTICE

TO THE DEFENDANTS IN THE
ABOVE-RECITED ACTION:

YOU ARE HEREBY NOTIFIED that the following Order has been entered in the above-action by the Honorable Oscar F. Spicer, President Judge.

The property in question is described in the deed to M. Richard Gilbert and Victoria K. Gilbert, as recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 976 at page 36.

ORDER

AND NOW, TO WIT, this 31st day of May, 1995, upon consideration of the attached Motion, it is hereby ORDERED that the Defendants, Union Church and any person or entity having an interest in 5434-A Carlisle Pike, Reading Township, Adams County, Pennsylvania, their personal representatives, heirs, devisees, successors, assigns or other interested parties, be forever barred from asserting any right, lien,

title or interest in the land, which is the subject matter of this action, inconsistent with the interest or claim of the Plaintiffs as set forth in their Complaint, unless Defendants (or any of them) make an appearance or file an Answer to the Complaint within thirty (30) days of the date of service of this Order which shall be served by publication. Upon failure of a Defendant to take any action before expiration of said time period, judgment shall be final and Plaintiffs may issue to the Prothonotary the praecipe authorized by Adams County, Pennsylvania, Rule of Court No. 1066(b)(1) and the Prothonotary shall take the actions authorized under the provisions of said rule.

END OF ORDER

Clayton R. Wilcox, Esquire
Counsel for Plaintiffs
234 Baltimore Street
Gettysburg, PA 17325
(717) 334-6471

6/30

GLADFELTER, ET AL. VS. STRABAN TOWNSHIP
ZONING HEARING BOARD

1. A landowner bears a heavy burden of proving entitlement to a variance by proving that unnecessary hardship will result if the variance is denied and that the proposed use will not be contrary to the public interest.

2. An undersized non-conforming lot constitutes the physical circumstances which may entitle one to a variance provided the other variance criteria are met.

3. Zoning law clearly provides that where the limitations of the zoning provisions render a lot practically valueless, that fact, in and of itself, constitutes unnecessary hardship.

4. When one purchases an existing non-conforming property, the right to develop such a lot is not personal to the owner of the property at the time the zoning ordinance is enacted but is a right which runs with the land and vests in subsequent purchasers so that a purchaser of such a lot with knowledge that a lot is undersized does not create his own hardship.

5. One cannot pay a high price for a lot with knowledge of the zoning restrictions and then use that price or high subsequent development costs to argue he will suffer unnecessary hardship if a variance is not granted but that principle does not apply if the hardship arises out of lot size unrelated to purchase price.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-584, MICHAEL J. GLADFELTER and STEPHANIE GLADFELTER VS. STRABAN TOWNSHIP ZONING HEARING BOARD.

Clayton R. Wilcox, Esq., for Appellants

Catherine J. Gault, Esq., for Appellee

OPINION ON ZONING APPEAL

Kuhn, J., December 21, 1994.

On January 4, 1994, Michael and Stephanie Gladfelter filed an application with the Straban Township Zoning Hearing Board for a special exception to operate a drive-thru ice cream restaurant at 1126 York Road, Gettysburg. That property is situated in a Commercial-Highway Zoning District and is presently occupied by a single family residence. On January 12, 1994, the Gladfelters filed for a variance as well. A hearing was held before the Board on April 19, 1994. A written decision, including findings of fact, was submitted on May 31, 1994, wherein the Board approved the application for special exception with conditions but rejected the request for variance. Appeal from denial of the variance was filed June 28, 1994, and is before the Court for disposition.

Inter alia, the Board found that the subject lot measures 110 feet on the north and south ends and 225 feet on the east and west sides for a total of 24,750 square feet (FOF 3). Gladfelters plan to remove the existing single family residence and to construct a single story drive-thru restaurant (FOF 5). The proposed building and macadamized area would cover

73.8% of the lot (FOF 6). The proposed setbacks are 8 feet on the north, 3 1/2 feet on the east side facing Hoss's Restaurant, 32 feet from the center of York Road (U.S. 30) which fronts the south side, the driveway entrance, and 5 feet on the west side facing the Amoco Station (FOF 7). There are 16 proposed parking spaces measuring 10 x 20 feet each (FOF 8). The minimum lot size in this district is 40,000 square feet with a minimum width of 200 feet (FOF 15). In addition, the township zoning ordinance provides for minimum parking lot setbacks of 20 feet from any structure, side lot line and street right-of-way and 25 feet from the rear lot line (FOF 16).

The Board then concluded that the proposed plan violates the minimum lot size requirement (Con. 1), the minimum front width requirement (Con. 2) and the minimum setback requirements (Con. 3). In general terms the Board also concluded that Gladfelters failed to prove unnecessary hardship (Con. 4), no possibility that the property could be developed in strict conformity with the zoning ordinance (Con. 5), and that the variance requested did not represent the minimum variance that could afford relief (Con. 6).

Section 910.2 of the Pennsylvania Municipalities Planning Code, 53 P.S. §10910.2 establishes the criteria for the granting of a variance. It provides,

(a) . . . The board may grant a variance, provided that all of the following findings are made where relevant in a given case:

(1) that there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.

(2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

(3) That such unnecessary hardship has not been created by the appellant.

(4) That the variance, if authorized, will not alter the

essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

(5) That the variance, if authorized will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

Section 140-105A of the Straban Township Zoning Ordinance mirrors the same criteria.

Initially it should be noted that a landowner bears a heavy burden of proving entitlement to a variance by “proving that unnecessary hardship will result if the variance is denied and that the proposed use will not be contrary to the public interest.” *Polonsky v. Zoning Hearing Board of Mt. Lebanon*, 139 Pa. Comlth. Ct. 579, 583, 590 A.2d 1388, 1390 (1991). Furthermore, the reasons for granting the variance must be substantial, serious and compelling. *Valley View Civic Association v. Zoning Board of Adjustment*, 501 Pa. 550, 555, 462 A.2d 637, 640 (1983).

The first issue raised by Gladfelters concerns whether the Board made any findings of fact to support Conclusions 4, 5, and 6. They argue that the Board made no factual findings to support those conclusions and therefore, the Court is required by 53 P.S. § 11005-A to make its own findings of fact based on the record produced before the Board. Otherwise, the Court would be required to accept the Board’s findings if they are supported by substantial evidence. The Board contends, however, that the lack of findings is not its fault but rather the landowners’ for failure to provide evidence necessary to meet its burden of proof.

In the resolution of the issues before the Court it seems to make little difference which view is followed. Whether the Court makes its own findings the ultimate answer depends upon whether Gladfelters have produced evidence sufficient to meet its burden.¹ If they have satisfied that burden the Board’s “findings” and conclusions cannot be supported and the Board’s decision will be reversed.

Originally, there were four variance issues addressed by the Board: (1) the limit on lot coverage, (2) minimum lot size, (3) minimum front footage and (4) setback requirements. The first issue was resolved by a recognition that the zoning ordinance limited lot coverage to 80% at the time of application (N.T. 5). This lot is covered to the extent of 73.8%. A subsequent ordinance amendment to reduce maximum coverage to 65% is not applicable.

¹The requirement that the record be supported by substantial evidence means “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Valley View Civic Association v. Zoning Board of Adjustment, Id.*

Discussion of each of the five elements necessary to grant a variance will be set forth below as well as a review of the evidence to determine whether each criteria is supported by the record. Before proceeding further, however, it should be noted that the proposed use of the property is a use permitted by special exception in the Township Zoning Ordinance. The Board recognized this fact and approved the request for the special exception. This is mentioned because it underscores Gladfelters' argument that the proposed use is compatible with other uses permitted in the area. That permission is not dispositive of the request for a variance because a variance, unlike a special exception, admits that the use of the land violates the ordinance, but acknowledges that some special, unique hardship is imposed on the property by operation of the zoning restrictions. *Township of Haverford v. Spica*, 16 Pa. Comlth. Ct. 326, 330, 328 A.2d 878, 880-1 (1974).

The evidence clearly establishes the requisite hardship on two bases.² First, this lot existed in its present size prior to enactment of the zoning ordinance. Gladfelters purchased it from Mr. & Mrs. Leonard Eberhart who acquired it as two parcels in 1955 and 1967 respectively (N.T. 6). Thus, the lot was dimensionally non-conforming. It has been held that an undersized non-conforming lot constitutes the physical circumstances which may entitle one to a variance provided the other variance criteria are met. *N. Pugliese, Inc. v. Palmer Township Zoning Hearing Board*, 140 Pa. Comlth. Ct. 160, 165, 592 A.2d 118, 121 (1991). See also *West Goshen Township v. Crater*, 114 Pa. Comlth. Ct. 245, 538 A.2d 952 (1988) wherein the court stated,

Where a lot is too small to conform with the minimum lot area requirements and cannot be made to conform by merging lots or by re-subdividing a larger tract, enforcement of the ordinance would sterilize the land creating hardship necessary to grant variance. 538 A.2d at 955.

Gladfelters have no opportunity to expand the lot size because the property is surrounded by existing commercial development and a major traffic way. The same argument regarding lot size is applicable to both minimum square footage and minimum width requirements.

Second, the evidence established that this property has been rendered valueless as a residence. While owned by the Eberharts the property was marketed for 8 months. During that time there was absolutely no interest in the property for residential purposes (N.T. 52). The inability to sell a property is probative evidence of hardship. *Valley View Civic Associa*

²The Board seemed to acknowledge the existence of hardship. At the hearing the Board Chairman stated, "I grant that the hardship was there when the zoning went into effect." (N.T. 75). However, in its written decision, the Board stated otherwise. See Conclusion 4.

tion v. Zoning Hearing Board of Adjustment, 501 Pa. at 559, 462 A.2d at 642 (1983). In the opinion of Realtor, Bruce VanDyke, there is no market for this property as a residence (N.T. 50, 55, 60, 62). The reasons for this are quite simple. Route 30 is a high volume highway with a daily traffic flow of 12,000-15,000 vehicles much of which is heavy truck traffic (N.T. 30, 54). The noise factor is significant (N.T. 65). Lights from the adjacent Amoco mini-market/gas station and Hoss's Restaurant illuminate the house through the night (N.T. 53, 64). Although Gladfelters paid \$135,000 for the property, that price was paid to obtain the lot as a commercial property (N.T. 28-9).

Zoning law clearly provides that where the limitations of the zoning provisions render a lot practically valueless, that fact, in and of itself, constitutes unnecessary hardship. *Detwiler v. Zoning Board of Lower Salford Township*, 141 Pa. Comlth Ct. 597, 602, 596 A.2d 1156, 1159 (1991). See also *Serban v. Zoning Hearing Board of City of Bethlehem*, 84 Pa. Comlth. Ct. 558, 563, 480 A.2d 362, 365 (1984). Evidence of adjacent and surrounding land is relevant to that evaluation. One can infer that restricting use to that different from the surrounding area will render it not marketable "causing it to suffer the fate of terminal sterility." *Detwiler, Id.* It should be noted that east of Hoss's Restaurant is a Wal-Mart department store and a Wendy's drive-thru restaurant. On the opposite side of Route 30 and slightly to the east is the Jamesway shopping center. West of the Amoco mini-market are several vacant commercial lots and a Century 21 real estate office (N.T. 11). There are no other single family dwellings in the area (N.T. 12). The situation is similar to that discussed in *Valley View Civic Association v. Zoning Board of Adjustment*, *supra.* where an owner of a residential dwelling surrounded by high commercial density wanted to convert the residence to a take-out sandwich shop. Our Supreme Court observed that it would not be unreasonable for a property so situated to be undesirable as a residence and hence not marketable for residential purposes. 501 Pa. at 559, 462 A.2d at 642.

The evidence also establishes that the hardship was not created by Gladfelters. Although not stated in its written decision it is clear from the hearing transcript that the Board felt that because Gladfelters knew or should have known of the zoning requirements and proceeded to purchase the property without assurances that the proposed use would be granted they created their own dilemma. That conclusion, however, is contrary to law when one purchases an existing non-conforming property. The right to develop such a lot is not personal to the owner of the property at the time the zoning ordinance is enacted but is a right which runs with the land and vests in subsequent purchasers. A purchaser of

such a lot buying with knowledge that a lot is undersized does not create his own hardship. *Detwiler v. Zoning Hearing Board of Lower Salford Township*, supra, 141 Pa. Comlth. Ct. at 603, 596 A.2d at 1159; *N. Pugliese, Inc. v. Palmer Zoning Hearing Board*, supra., 140 Pa. Comlth. Ct. at 165, 592 A.2d at 121.

The Board also contends that the hardship is self-created because Gladfelters paid a high price for the property in anticipation of receiving the variance approval. It is true that one cannot pay a high price for a lot with knowledge of the zoning restrictions and then use that price or high subsequent development costs to argue he will suffer unnecessary hardship if a variance is not granted. However, that principle does not apply if the hardship arises, as here, out of lot size unrelated to purchase price. See *Ryan on Zoning*, §6.2.13 and cases cited therein.

Here Gladfelters never suggested that hardship was based upon the purchase price or development costs. Rather, as noted, they argue non-conforming lot size and the property's value as a residence to support their variance request. In this case the Board's theory is inapplicable.

The evidence also establishes that the proposed use will not alter the essential character of the area. In fact, changing this single residential island situate in the midst of a heavy commercial area to the proposed use will not alter the neighborhood but, to the contrary, will make the property more consistent with the neighborhood.

Lastly, the evidence clearly establishes that the variance requested will represent the least modification possible. Gladfelter's design consultant (R. Sharrah) and their professional engineer (M. Lewis) made clear that every effort was made to minimize the variance. No matter what use is permitted on the property (other than the existing residence) the same variance requests would have to be addressed. In fact, the proposed use is one of the least intrusive uses permitted in this zoning district. The existing structure will be removed and replaced by a smaller structure to accommodate the proposed use.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 21st day of December, 1994, the zoning appeal of Michael J. Gladfelter and Stephanie Gladfelter is granted. The decision of the Straban Township Zoning Board dated May 31, 1994, as to the variance request is reversed. The request for variance as to imperious coverage, minimum lot size, minimum lot width and set back for off-street parking is granted in accordance with the proposed plan submitted to the Board.

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 MILDREDA A. CARBAUGH, DEC'D

Late of Franklin Township, Adams County, Pennsylvania
 Executor: Adams County National Bank, 675 Old Harrisburg Road, Gettysburg, PA 17325
 Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF LAWRENCE W. GUISE, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania
 Executrix: Melissa Ann Guise, 447 Poppinga Way, Santa Maria, CA 93455
 Attorney: Walton V. Davis, 31 S. Washington Street, Gettysburg, PA 17325

ESTATE OF GRACE A. SHANK, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executors: Anna R. Bange, 351 Smoketown Road, Hanover, PA 17331; Jacob Shank, 260 Hershey Heights Road, Hanover, PA 17331
 Attorney: Donald W. Dorr, 126 Carlisle Street, Hanover, PA 17331

ESTATE OF MADELEINE C. STEEL, DEC'D

Late of Franklin Township, Adams County, Pennsylvania
 Executrix: Diana M. Rarig, 274 Bottom Road, Orrtanna, PA 17353
 Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF GLENN Y. KINDIG, DEC'D

Late of Germany Township, Adams County, Pennsylvania
 Executors: John R. Kindig, 508 York Street, Hanover, PA 17331; James D. Kindig, 439 South Queen Street, Littlestown, PA 17340
 Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF ROBERT J. MARTIN, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania
 Administratrix: Candy J. Spahr, 1885 Fish & Game Road, East Berlin, PA 17316

Attorney: Sharon E. Myers, Esq., Countess Gilbert Andrews, 29 North Duke Street, York, PA 17401

ESTATE OF HARRIET I. REED, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executrix: Tina A. Sigafoose, R.D.#1, Box 188, Thomasville, PA 17364
 Attorney: W.W. Hafer, Esquire, 215 Baltimore Street, Hanover, PA 17331

ESTATE OF WAYNE KENNETH SNADER, DEC'D

Late of Huntington Township, Adams County, Pennsylvania
 Executrix: Tracy L. Snader, 294 Labor Camp Road, Gardners, PA 17324
 Attorney: John R. White, Campbell, White & George, 122 Baltimore Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF CHARLES W. CORNBOWER, DEC'D

Late of McSherrystown Borough, Adams County, Pennsylvania
 Executrix: Louise M. Cornbower, 314 Fairview Avenue, McSherrystown, PA 17344
 Attorney: Donald W. Dorr, 126 Carlisle Street, Hanover, PA 17331

ESTATE OF LLOYD E. CROUSE, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania
 Executrices: Alma Weikert Crouse, 24 Lumber Street, Littlestown, PA 17340; Elizabeth Crouse Ross, 540 Cabot Drive, Hockessin, DE 19707
 Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF KENNETH E. EISENHOUR, DEC'D

Late of Reading Township, Adams County, Pennsylvania
 Co-Executors: Bonita J. Knaub, 2095 Carlisle Road, York, PA 17404; Donald E. Eisenhour, 302 York St., Gettysburg, PA 17325; Harold G. Winter, 318 Hoke Street, York, PA 17404
 Attorney: Paul C. McCleary, Jr., 1998-A Carlisle Road, York, PA 17404, (717) 764-5926

ESTATE OF GARNET O. NEWTON, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
 Executors: William D. Newton, 949 Herr's Ridge Rd., Gettysburg, PA 17325; Gary D. Newton, 770 Long Lane, Gettysburg, PA 17325
 Attorney: Bigham & Raffensperger, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF ROBERT K. SWARTLEY, SR., DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Joan L. Deimler, 152 Meadowbrook Court, New Cumberland, PA 17070

Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County - Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, July 10, 1995, at 9:00 o'clock a.m.

FISSEL—Orphans' Court Action Number OC-124-91. The First and Final Account of Fred Fissel, Executor of the Last Will and Testament of Paul T. Fissel, deceased, late of Hamilton Township, Adams County, Pennsylvania.

SNYDER—Orphans' Court Action Number OC-128-87. The First and Final Account of Victor L. Reynolds, Executor of the Estate of Theresa Stavelly Snyder, deceased, late of Borough of Littlestown, Adams County, Pennsylvania, including the First and Final Account of the Adams County National Bank, Guardian of the Estate.

KIME—Orphans' Court Action Number OC-63-95. The First and Final Account of Sheila F. Bowmaster and Lynn F. Kime, Executors of the Estate of Glenn F. Kime, deceased, late of Tyrone Township, Adams County, Pennsylvania.

LITTLE—Orphans' Court Action Number OC-67-95. The First and Final Account of Dorothy J. O'Dell, Executrix of the Last Will and Testament of Mary E. Little, deceased, late of the Borough of Gettysburg, Adams County, Pennsylvania.

Peggy J. Breighner
 Clerk of Courts

6/30, 7/6

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-307 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of July, 1995, 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 Carroll Valley, formerly Hamiltonban Township, Adams County, Pennsylvania, being Lot No. 286 in Section K, Charnita Development, bounded and described as follows:

BEGINNING at a point in the cul-de-sac of Snow Trail at Lot No. 287; thence in the cul-de-sac and by said Lot, South 43 degrees 11 minutes 50 seconds East, 177.51 feet to Lot No. 270; thence by said lot and by Lot No. 271, South 27 degrees 27 minutes 2 seconds West, 142.15 feet to Lot No. 274; thence by said lot and by Lot No. 275, North 64 degrees 44 minutes 25 seconds West, 143.56 feet to Lot No. 285; thence by said lot and in the cul-de-sac of Snow Trail, North 20 degrees 48 minutes 50 seconds East 207.85 feet to the place of BEGINNING.

Being the same premises which Billie J. Lloyd, et al., by their deed dated June 13, 1991 and recorded on June 14, 1991 in Deed Book Volume 590, page 1113, et. seq., in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, granted and conveyed unto Charles W. Lloyd and Billie J. Lloyd as tenants by the entireties, in fee.

BEING SOLD AS PROPERTY OF CHARLES W. LLOYD AND BILLIE J. LLOYD, TENANTS BY THE ENTIRETIES.

Seized and taken into execution as the property of **Charles W. Lloyd and Billie J. Lloyd**, and to be sold by me.

Bernard V. Miller
Sheriff
Sheriff's Office, Gettysburg, PA
June 8, 1995.

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 August 14, 1995, 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.

6/23, 30 & 7/7

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 93-S-968 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of July, 1995, 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 in Butler Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a railroad spike in the center of the public road running North-erly from the Arendtsville-Bigler State Highway to Yellow Hill, where the same is intersected by the center line of University Drive, being another public road running Easterly from said Yellow Hill Public Road to Biglerville; thence running in the center of said public road to Yellow Hill, North 6 degrees 15 minutes East, 719 feet to a railroad spike in the center of said public road to Yellow Hill; thence by land formerly a part hereof, now or formerly of Dennis W. and Lois E. Little, South 86 degrees 28 minutes East 234.25 feet to an iron pin; thence running through the original tract of Fred C. Raffensperger, et al., South 6 degrees 15 minutes West, 730.1 feet to a railroad spike driven in the center of said University Drive, thence continuing through the original tract of said Fred C. Raffensperger, et al., and thence by land now or formerly of Fred C. Raffensperger, North 83 degrees 45 minutes West, 234 feet to the above described place of BEGINNING. CONTAINING 3 Acres and 142 Perches, more or less.

The above description was principally taken from a draft of survey dated August 30, 1971, made by LeRoy H. Winebrenner, Adams County Surveyor.

BEING the same tract of land which Fred C. Raffensperger and Edith D. Raffensperger, his wife, and Emory E. Raffensperger, Jr., and Vivian J. Raffensperger, his wife, by their deed dated October 5, 1971, and recorded in the Office Of the Recorder Of Deeds Of Adams County, Pennsylvania, in Deed Book 296 at page 102, sold and conveyed unto Norman K. Lady and Willetta D. Lady, husband and wife.

LESS, HOWEVER, the following two (2) tracts of land:

1. A tract of land containing approximately 0.858 Acres or 37,400 Square Feet as more fully set forth in deed dated December 20, 1972, which Norman K. Lady and Willetta D. Lady, husband and wife, conveyed to Frederick J. Tilberg and Anna F. Tilberg, husband and wife, recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 304 at page 352 and designated as Lot #1 and Parcel A of Adams County, Pennsylvania, Plat Book 2 at page 11.

2. A tract of land containing 1.287 Acres, more or less, as more fully set forth in deed dated October 2, 1978, which Norman K. Lady and Willetta D. Lady, husband and wife conveyed to Robert L. McCleaf, Jr. and Betty E. McCleaf, husband and wife, recorded in the aforesaid Recorder's Office in Deed Book 340 at page 938 and designated as Lots Nos. 4 and 5 of Adams County, Pennsylvania, Plat Book 2 at page 50.

Seized and taken into execution as the property of **Norman K. Lady and Willetta D. Lady**, and to be sold by me.

Bernard V. Miller
Sheriff
Sheriff's Office, Gettysburg, PA
June 12, 1995.

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 August 14, 1995, 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.

6/23, 30 & 7/7

IN THE COURT
OF COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

In Re: First and Final Account of PNC BANK, N.A., Guardian of the Estate of JOSEPH C. WAGNER, An Incapacitated Person, Pursuant to 20 Pa. C.S.A. §5531

TO ALL BENEFICIARIES,
HEIRS AND OTHER PERSONS
CONCERNED:

NOTICE IS HEREBY GIVEN that the First and Final Account and Statement of Proposed Distribution of PNC Bank, N.A., Guardian of the Estate of Joseph C. Wagner, An Incapacitated Person, have been filed in the Office of the Clerk of the Orphans' Court and will be presented to the Court of Common Pleas of Adams County, Pennsylvania, for confirmation and approval on July 10, 1995, at 9:00 A.M.

Peggy J. Breighner, Clerk

Swope, Heiser & McQuaide
Attorneys for the Estate
104 Baltimore Street
Gettysburg, PA 17325

6/23, 30