

Adams County Legal Journal

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IN THIS ISSUE

CACO THREE, INC. VS. HUNTINGTON TWP.

NOTICE

NOTICE IS GIVEN that the Board of School Directors of the Gettysburg Area School District (the "School District") intends to adopt a resolution (the "Resolution") at its regularly scheduled meeting to be held on the 22nd day of April, 2003, at 7:30 a.m. in the multi-purpose room of the James Gettys Elementary School, located at 898 Biglerville Road, Gettysburg, Pennsylvania. The Resolution, if adopted, will repeal the occupation tax and amend a resolution imposing a tax on earned income and net profits of individual residents of the School District. This notice is given pursuant to the Local Tax Enabling Act of December 31, 1965, P.L. 1257, as amended (the "Enabling Act").

The Resolution provides for the repeal of a prior resolution, adopted by the School District on June 8, 1981, as amended, which imposed a tax on the assessed value of all occupations of persons residing in the School District.

The resolution provides for an increase in the earned income and net profits tax from 1.0% to 1.7% effective July 1, 2003.

The Resolution further provides: definitions for words and phrases used in the Resolution; for the continuation of the tax annually without the necessity of reenactment; that employers within the School District are required to deduct the tax from earned income of employees; that the Adams County Earned Income Tax Collection Agency (the "Agency") is reappointed to collect the tax for the School District pursuant to the provisions of the Enabling Act. The Resolution incorporates by reference all pertinent provisions of the Enabling Act and all Rules and Regulations of the Agency which are now in existence or which may be adopted by the Agency in the future.

The increase in earned income and net profits tax is estimated to be \$2,631,416 for the 2003-2004 fiscal year of the School District. This increase is necessary to replace the revenues lost from the elimination of the Occupation Assessment Tax. The earned income and net profits taxes collected shall be added to the general revenues of the School District.

A copy of the Resolution can be obtained from the School District

Business Office located at 900 Biglerville Road, Gettysburg, Pennsylvania. Anyone wishing to obtain a copy, or ask any questions, should contact the Business Office by telephone (717) 334-6254 Extension 1226, during normal business hours.

Brad N. Hunt, Secretary

4/4, 11 & 17

FICTITIOUS NAME NOTICE

An application for registration of a fictitious name, LTD INTERNATIONAL ASSOCIATES, was filed under the Fictitious Names Act, 54 Pa. C.S.A. §311 by William E. Hooker of 741 Beaver Creek Road, Hanover, Pennsylvania 17331. LTD International Associates principal office will be located at 741 Beaver Creek Road, Hanover, Pennsylvania 17331.

Wendy Weikal-Beauchat
Beauchat & Beauchat
63 W. High Street
Gettysburg, PA 17325

4/4

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1273 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 2nd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot or tract of land situate on the northerly right of way line of Sutton Road in the Borough of Abbottstown, County of Adams and State of Pennsylvania known and numbered as Lot No. 28 on a plan of lots for Abbotts Manor Phase I recorded in the Office of the Recorder of Deeds in and for Adams County, PA in Subdivision Plan Book 69 Page 95, more fully bounded and described as follows, to wit:

BEGINNING at a point on the northerly right of way line of Sutton Road at a corner of Lot No. 29 on said plan; thence extending along the said northerly right of way line of Sutton Road South 62 degrees 30 minutes 00 seconds West 85 feet to a point, at a corner of Lot No. 27 on said plan; thence extending along the said Lot No. 27 North 27 degrees 30 minutes 00 seconds West 120 feet to a point; thence North 62 degrees 30 minutes 00 seconds East 85 feet to a point, at a corner of Lot No. 29 on said plan; thence extending along the said Lot No. 29 South 27 degrees 30 minutes 00 seconds East 120 feet to the point and place of BEGINNING.

TITLE TO SAID PREMISES IS VESTED IN Steve A. Sweeney, Jr. and Rebecca L. Sweeney by Deed from Garland Construction, Inc. dated 6/21/2000, recorded 9/21/2000, in Record Book 2129 Page 247.

Premises being: 583 Sutton Road, Abbottstown, PA 17301

Tax Parcel No. (01) 5-25

SEIZED and taken into execution as the property of **Steve A. Sweeney, Jr. & Rebecca L. Sweeney** and to be sold by me.

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

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

schedule of distribution will be filed by the Sheriff in his office on May 23, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

3/21, 28 & 4/4

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1183 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 2nd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in the Borough of Carroll Valley, Adams County, Pennsylvania, being Lot No. 163 in Section R1, bounded and described as follows:

BEGINNING at a point in the center of McGlaughlin Trail at Lot No. 162; thence by said lot North 2 degrees 37 minutes 20 seconds East, 225 feet to Lot No. 150; thence by said lot and by Lot No. 149 South 87 degrees 22 minutes 40 seconds East, 100 feet to Lot No. 164; thence by said lot South 2 degrees 37 minutes 20 seconds West, 225 feet to a point in the center of said McGlaughlin Trail; thence in said McGlaughlin Trail North 87 degrees 22 minutes 40 seconds West, 100 feet to the place of BEGINNING, and being Lot No. 165, Section R1.

The above description was taken from a plan of lots labeled "Section R1 of Charnita, Inc." dated May 29, 1970, prepared by Gordon L. Brown, R.S., recorded in the Adams County Plat Book 1 at page 83.

BEING the same premises which Allen W. Beckett, by Deed dated November 2, 1998 and recorded in the Office of the

Recorder of Deeds of Adams County on November 3, 1998, in Deed Book 1694, Page 342, granted and conveyed unto Patrick D. Warthen.

Grenen & Birsic, P.C.
By: /s/Kristine M. Anthou, Esq.
Attorneys for Plaintiff
One Gateway Center, Nine West
Pittsburgh, PA 15222
(412) 281-7650

Parcel No.: (43) 40-35

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 23, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

3/21, 28 & 4/4

CACO THREE, INC. VS. HUNTINGTON TWP.

1. The Pennsylvania Municipality's Planning Code empowers the Court to consider additional evidence in a land use appeal if the evidence is necessary to the proper consideration of the appeal.

2. Our appellate courts have consistently held that in order to present additional evidence, a party must demonstrate either that the record before the Board is incomplete because the appellant was refused the opportunity to be fully heard or that relevant testimony was excluded.

3. Whether additional evidence is permitted rests within the discretion of the trial court.

In the Court of Common Pleas of Adams County, Pennsylvania,
Civil, No. 00-S-1025, CACO THREE, INC. VS. BOARD OF
SUPERVISORS OF HUNTINGTON TOWNSHIP.

Ronald M. Lucas, Esq. And Charles M. Suhr, Esq., for Plaintiff

Robert E. Campbell, Esq., for Defendant

George, J., June 4, 2002

OPINION

CACO Three, Inc. (hereinafter referred to as "CACO") is the owner and developer of a two hundred thirty-five acre tract of land located between State Route 94 and State Road 1020 in Huntington Township, Adams County, Pennsylvania, (hereinafter referred to as the "property"). On May 10, 1999, CACO submitted a land development plan with Huntington Township known as the "Peakview Land Development Plan" (hereinafter referred to as "Peakview").¹ The record indicates that upon receipt of the plan, township officials acted expediently in listing the plan for consideration by the supervisors within the ninety-day statutory period. *See, 53 P.S. §10508*. However, at the July 8, 1999, Huntington Township Board of Supervisors, (hereinafter referred to as "Board") meeting, CACO requested a ninety-day extension to supplement the plan. Thereafter, on August 13, 1999, CACO requested, and was granted, an additional extension until January 1, 2000. On December 9, 1999, the Board considered a letter from CACO requesting further extension on consideration of their plan until June 30, 2000. Once again, the Board approved that request. At the June 8, 2000, Board meeting, a fourth extension was requested by

¹The record reflects that the Peakview Plan was initially submitted on January 25, 1999. The Huntington Township Board of Supervisors rejected this original plan on April 8, 1999. The May 10, 1999, submission was actually the second submission concerning this property.

CACO until September 30, 2000. The extension was again granted, however, the Board's minutes reflect that CACO representatives were advised that, despite the extension, a decision would be made at the August, 2000 meeting of the Board. The minutes also reflect that there was some concern on the part of the supervisors as to the lengthy extensions given to the Peakview Plan.

On June 22, 2000, CACO submitted revisions to their original plan. At the August 10, 2000, supervisors' meeting, representatives from CACO, including Attorney Charles Zleski, appeared to discuss the Peakview subdivision with the Board. The minutes reflect a discussion by the parties as to a number of issues affecting Peakview, however, no decision was rendered.

The Peakview Plan was considered at the Huntington Township Planning Commission meeting on August 28, 2000. The minutes from that meeting reflect that the Planning Commission recommended a further extension to review comments from the Adams County Office of Planning and Development which were received by the Planning Commission that same date. At their next regularly scheduled meeting on September 14, 2000, the Board indicated that they would not consider further extensions and, thereafter, voted to deny the Peakview Subdivision Plan. By letter dated September 18, 2000, CACO was advised in writing of the Board's decision.

CACO filed a timely appeal from the Board's decision alleging an abuse of discretion by the Board in denying the plan. On November 8, 2000, Patricia Davis, Secretary for the Huntington Township Supervisors, filed the record with the Adams County Prothonotary. On February 27, 2002,² Appellants filed a Motion to Receive

²On May 8, 2001, CACO's counsel before the Board withdrew as counsel and new counsel entered their appearance. Thereafter, this matter sat dormant until CACO's Motion to Receive Additional Evidence was filed on February 27, 2002. During the approximate ten-month period between May, 2001, and February, 2002, neither of the parties requested this matter be submitted to the Court nor did the Prothonotary forward the file for the Court's attention. Although local rule does not address the procedure by which a notice of appeal is presented to the Court for decision, in most instances, an appellant will file a praecipe with the Court for hearing or argument. However, when such an action isn't taken, it is possible for a case to languish for years without any action. Accordingly, until a local rule is adopted, the Prothonotary's Office is directed to forward notices of appeal to the Court within ninety (90) days following the filing of the record by the municipal agency unless, of course, counsel has asked to have the matter listed earlier.

Additional Evidence seeking to supplement the record with the following information:

- a) a letter dated May 7, 1999, from Glaze Associates, Inc.,³ to Richard Schmoyer of the Adams County Office of Planning and Development;
- b) a letter dated September 8, 2000, from Glaze Associates, Inc., to the Huntington Township Planning Commission;
- c) a letter of transmittal dated September 11, 2000, from Glaze Associates, Inc., to F.P.E. Consulting Engineers;⁴
- d) a letter dated August 25, 2000, from Glaze Associates, Inc., to the Huntington Township Planning Commission;
- e) a second letter dated August 25, 2000, from Glaze Associates, Inc., to the Huntington Township Planning Commission; and
- f) the Peakview preliminary land development plans, dated May 10, 1999, as revised on September 13, 2000, (consisting of forty sheets).

The Township filed an Answer opposing the reception of additional evidence. On April 18, 2002, the Court held an evidentiary hearing for the purpose of determining disputed facts.⁵ *See, Claremont Properties, Inc. v. Board of Supervisors of Middlesex Township*, 546 A.2d 712 (Pa. Cmwlth. 1988). Both parties subsequently filed briefs and Appellant's Petition to Receive Additional Evidence is now ripe for decision.

The Pennsylvania Municipality's Planning Code, 53 P.S. §101, *et seq.*, empowers the Court to consider additional evidence in a land use appeal if the evidence is necessary to the proper consideration of the appeal. *See, 53 P.S. §10105-A*. Our appellate courts have consistently held that in order to present additional evidence, a "party

³The record indicates that Glaze Associates, Inc., is a consulting engineer firm employed by CACO Three, Inc., to assist in the preparation and submission of the Peakview Plan to the respective state and municipal agencies.

⁴F.P.E. is a consulting engineer firm. A member of that firm, Mr. John Stambaugh, is employed by Hamilton Township as the Township engineer.

⁵At hearing, the Appellant withdrew their request to supplement the record in regard to the letter dated May 7, 1999, from Glaze Associates, Inc., to Richard Schmoyer of the Adams County Office of Planning and Development and the letter of transmittal dated September 11, 2000, from Glaze Associates, Inc., to F.P.E. Consulting Engineers.

must demonstrate either that the record before the Board is incomplete because the appellant was refused the opportunity to be fully heard or that relevant testimony was excluded". *Lower Allen Citizens Action Group, Inc. v. Lower Allen Zoning Hearing Board*, 500 A.2 1253 (Pa. Cmwlth. 1985); *Kossmann v. Zoning Hearing Board*, 597 A.2d 1274 (Pa. Cmwlth. 1991). Whether additional evidence is permitted rests within the discretion of the trial court. *Eastern Consolidation and Distribution Services, Inc. v. Board of Commissioners of Hampden Township*, 701 A.2d 621 (Pa. Cmwlth. 1997), alloc. denied, 717 A.2d 535 (Pa. 1998).

In reviewing the procedural history of this case, I am not persuaded that CACO was refused the opportunity to be fully heard. As detailed above, CACO was provided numerous opportunities between May 10, 1999, and September 14, 2000, to supplement the record. At CACO's request, a final decision on Peakview was postponed on four different occasions for a period in excess of sixteen (16) months. CACO admittedly had ample opportunity to address the supervisors at the Board's monthly meetings during this time period. The record reflects more than an adequate opportunity for CACO to present their plan to the Board.

At this juncture, it is interesting to note that the Huntington Township Subdivision and Land Development Ordinance (hereinafter referred to as the "Ordinance") provides specific procedures for submission of a preliminary subdivision plan. In fact, the Ordinance even offers guidance as to pre-application procedures including an itemization of the information which would be necessary in support of a preliminary plan. See, *Ordinance Section 301*. The Ordinance further provides procedural steps including submission of the plan to the Township Planning Commission at least ten (10) business days prior to the regularly scheduled Planning Commission Meeting. Although testimony at the hearing indicated that the Township may be somewhat lax in enforcement of its procedural requirements, I do not, and cannot, find that the Township has consented either expressly or indirectly to a wholesale disregard of the procedure set forth in the Ordinance.

Thus, I find that CACO was provided an adequate opportunity to present the Peakview Plan. Additionally, I find that providing a modified plan on the day of the Board's decision not only violated the

Township's Ordinance but is unreasonable under the circumstances of this case.

Finally, it is noteworthy that the September 13, 2000, revised plan was never formally submitted to the Board. Rather, the plan was submitted to the Township Engineer on the afternoon of September 13, 2000. Although CACO alleges that they received permission from the Township to deal directly with the Township Engineer, their argument that they believed submission of documents to the Engineer was satisfactory compliance with the Ordinance is contradicted by the record. For instance, the record contains correspondence as late as July 24, 2000, from Glaze Associates, Inc., to the Huntington Township Board of Supervisors concerning matters involving Peakview.

Although the September 13, 2000, revised plans were provided to the Township Engineer and, in fact, there is correspondence indicating that the Township Engineer reviewed the revisions, the record is absent of any evidence that the Board considered either the revised plan or the September 14, 2000, letter from the Township Engineer. The failure of the Township Secretary to include the September 13, 2000, revised plans in the record filed with the Court only corroborates that the September 13, 2000, revised plans were not before the Board for consideration at the September 14, 2000, meeting. Accordingly, I cannot find that relevant testimony was excluded when the record indicates that the testimony was not properly submitted before the Board. Therefore, the Court denies the motion of Appellants to supplement the record with the revised September 13, 2000, plan.

Similarly, the letter dated September 8, 2000, from Glaze Associates, Inc., to the Huntington Township Planning Commission will not be accepted as additional evidence. It is clear that CACO was aware of the Planning Commission Meeting on August 28, 2000. It is equally clear that CACO was aware that the Township would be considering the Peakview Plan at their September 14, 2000, meeting. As mentioned above, CACO representatives had directly corresponded with the Board in the past on matters of interest in regard to the Plan. Under these circumstances, CACO cannot now argue that they were precluded from submitting relevant testimony when, in fact, it was not made available to the Board prior to their hearing or

prior to consideration of the Plan. *See, De-Am v. East Hanover Township Board of Supervisors*, 455 A.2d 236 (Pa. Cmwlth. 1983). CACO cannot reasonably expect the Planning Commission to forward to the Board a document which was not in possession of the Planning Commission at the time the Planning Commission considered the Plan on August 28, 2000. Thus, CACO was not precluded from presenting testimony but rather was deficient in making that document available for the Board for consideration. CACO will therefore not be allowed to supplement the record with the September 8, 2000, letter.

The remaining items with which CACO requests to supplement the record consists of two letters carrying the date of August 25, 2000.⁶ One of those letters was characterized as an overview of the feasibility study comparing an on-site water and sewage treatment system to a water and sewage system connected to the existing York Springs Municipal Authority systems. That letter concludes that Peakview Development connection to the York Springs Sewer and Water systems is not economically feasible.

The second letter also addresses the feasibility of connecting Peakview to the York Springs Municipal Authority systems. It confirms that the Development is proposing construction of their own waste water treatment plan and that a Part II NPDES permit has not been obtained from the Pennsylvania Department of Environment and Protection. The letter further confirms discussions between the developers and the Township in regard to fencing a quarry located adjacent to the property. Finally, the letter outlines a number of outstanding issues concerning the Peakview Development.

Reviewing the contents of these letters in light of the Board's decision and, more importantly, in light of the issues raised on this appeal, it becomes clear that the correspondence was not necessary to the proper consideration of the Plan before the Board. Additionally, the correspondence is not relevant nor necessary to a proper consideration of the appeal by this Court. The information contained in the correspondence has slight, if any, impact on the basis by which the Board denied the Plan. To the extent that the correspondence has any relevance to the basis of the Board's denial, that

⁶ According to Kevin Jacobs, Project Manager from Glaze Associates, the letters were not delivered to the Planning Commission until August 28, 2000.

information is adequately included in the record and thus, the correspondence are merely duplicate summaries of that information. Therefore, CACO will not be permitted to supplement the record with this correspondence.

For the foregoing reasons, the attached Order is entered.

ORDER OF COURT

AND NOW, this 4th day of June, 2002, the Appellant's Motion to Receive Additional Evidence is denied. The appeal in this matter is listed for argument on July 2, 2002, at 1:00 P.M. in Courtroom #2 of the Adams County Courthouse. Appellants shall file a brief in support of their appeal on or before June 21, 2002. The Appellees are directed to file a responsive brief on or before June 28, 2002. Failure to file a brief as set forth herein will result in preclusion of argument. Arguments shall be limited to fifteen (15) minutes each. Appellant's counsel may reserve a portion of that time for rebuttal if the same is requested prior to argument.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1307 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 2nd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a railroad spike in or near the center line of Township Road T-423 at corner of Lot No. 17 on the hereinafter referred to draft of survey, thence by said Lot No. 17, and passing through an iron pin set back 15.5 feet from the last mentioned point, North 67 degrees 25 minutes 52 seconds West, 549.89 feet to an iron pin on line of land now or formerly of William Fissel; thence by said land of William Fissel, North 29 degrees 11 minutes 06 seconds East, 186.24 feet to an iron pin at corner of Lot No. 15 on the hereinafter referred to draft of survey, thence by Lot No. 15, South 67 degrees 25 minutes 52 seconds East, 528.43 feet to a railroad spike in or near the center line of Township Road T-423, aforesaid; thence in said Township Road T-423 and passing through a railroad spike set on the line, South 22 degrees 34 minutes 08 seconds West 185.00 feet to a railroad spike, the place of BEGINNING. CONTAINING 2.29 Acres.

The above description was taken from a draft of survey prepared by Gettysburg Engineering Co. Inc., dated July 1, 1977, recorded in Plat Book 6 at page 9, revised January 8, 1979, and re-recorded in Plat Book 26 at page 30, designating the above as Lot No. 16.

BEING the same premises which Timothy L. Kress and Nicola Sue Kress, by Deed dated December 28, 2001 and recorded in the Office of the Recorder of Deeds of Adams County on January 3, 2002, in Deed Book 2517, Page 230, granted and conveyed unto Gregory A. Bovat and Margaret H. Bovat.

Grenen & Birsic, P.C.
By: /s/Kristine M. Anthon, Esq.
Attorneys for Plaintiff
One Gateway Center, Nine West
Pittsburgh, PA 15222
(412) 281-7650

Parcel No.: (15) H18-48

SEIZED and taken into execution as the property of **Gregory A. Bovat & Margaret H. Bovat** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the

Sheriff in his office on May 23, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

3/21, 28 & 4/4

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-338 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 2nd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate in the Village of Orrtanna, Hamiltonban Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a steel rod located in the right-of-way of Carrolls Tract Road (Township Route T-314) and at the Southwestern side of a 12 foot unused unimproved alley; thence along said Southwest side of said alley, South 52 degrees 15 minutes 00 seconds East, 135.00 feet to an existing steel rod located at corner of land of Paul Metz; thence by said land of Metz, South 37 degrees 45 minutes 00 seconds West 120.00 feet to an existing steel rod located along the Northeastern side of the right-of-way of Third Street (private); thence along said right-of-way of said Third Street, North 52 degrees 15 minutes 00 seconds West, 135.00 feet to a magnetic spike located 8 feet East of the center line of the aforementioned Carrolls Tract Road; thence in Carrolls Tract Road, North 37 degrees 45 minutes 00 seconds East, 120.00 feet to a steel rod located in the right-of-way of Carrolls Tract Road and at the Southwestern side of a 12 foot unused unimproved alley, the place of BEGINNING. CONTAINING 16,200 square feet (0.372).

The above description is taken from a boundary survey prepared for Orrtanna United Methodist Church by Adams County Surveyors dated March 27, 1997, Drawing B-928.

Being known and designated as Map C-12; Parcel 98.

BEING the same premises which Orrtanna United Methodist Church, a/k/a Orrtanna Methodist Church, by Deed dated April 7, 1997 and recorded in the

Office of the Recorder of Deeds of Adams County on April 10, 1997, in Deed Book 1353, Page 161, granted and conveyed unto Clifford E. Strausbaugh and Amanda L. Strausbaugh,

Grenen & Birsic, P.C.
By: /s/Kristine M. Anthon, Esq.
Attorneys for Plaintiff
One Gateway Center, Nine West
Pittsburgh, PA 15222
(412) 281-7650

Parcel No.: (18) C12-98

SEIZED and taken into execution as the property of **Clifford E. Strausbaugh & Amanda L. Strausbaugh** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 23, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

3/21, 28 & 4/4

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-966 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an existing railroad spike near the Western right-of-way line of Mt. Carmel Road (T-312) at the Northeast corner of land now or formerly of Connie Reamer North 68 degrees 07 minutes 00 seconds West, 176.62 feet to an existing steel rod; thence by the same and through an existing pipe set back 12 feet from the end of this course South 43 degrees 04 minutes 00 seconds West, 134.82 feet to a point in run on line of land now or formerly of Harry Jenkins, Sr.; thence in and along said run and along land now or formerly of Harry Jenkins, Sr. North 77 degrees 44 minutes 20 seconds West, 138.44 feet to an existing pipe in run; thence by same North 88 degrees 08 minutes 30 seconds West, 186.77 feet to an existing pipe in run; thence by same North 81 degrees 53 minutes 00 seconds West, 85.72 feet to a steel rod at corner of Lot No. 2 on the hereinafter described subdivision plan; thence by said Lot No. 2 North 20 degrees 59 minutes 40 seconds East, 147.67 feet to a steel rod; thence by same North 89 degrees 41 minutes 35 seconds East, 195 feet to a railroad spike; thence by same South 77 degrees 54 minutes 15 seconds East, 276.21 feet to a steel rod; thence by same South 62 degrees 13 minutes 10 seconds East, 165 feet to a steel rod on line of land now or formerly of El Vista Orchards, Inc. South 03 degrees 35 minutes 50 seconds West, 19.07 feet to a steel rod near the Western right-of-way line of Mt. Carmel Road (T-312), the point of BEGINNING.

CONTAINING 1.635 acres

The above description is taken from a Subdivision Plan for Dorcas G. Charney dated August 30, 1993, revised July 20, 1995 and September 25, 1995, prepared by Adams County Surveyors, which Plan is recorded in the Office of the Recorder of Deeds, Adams County, Pennsylvania in Plat Book 68, at Page 15. The tract herein conveyed is designated on said Plan as Lot No. 1.

BEING No. 619 Mt. Carmel Road.
TAX PARCEL NUMBER C12-17A

TITLE TO SAID PREMISES IS VESTED IN William R. Grim, Jr., unmarried and Christina L. Ginneman, unmarried, as joint tenants with the right of survivorship by Deed from Iris J. Albaugh, now Iris J. Rodgers, joined by her husband William Rodgers dated 9/29/2000 and recorded 10/12/2000 in Record Book 2143 Page 171.

Premises being: 619 Mt. Carmel Road, Orttanna, PA 17353

Tax Parcel No. C12-17A

SEIZED and taken into execution as the property of **William R. Grim, Jr. & Christina L. Ginneman** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 2, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/4, 11 & 17

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1301 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN parcel of ground situate, lying and being in the Borough of York Springs, known as Lot No. 17 on a plan of lots of Apple Hill prepared by Morrow Engineering Company, New Bloomfield, Pennsylvania, drawing No. S-12-10, and drawing No. S-12-12, recorded in Plat Book 35, Page 82A, more fully bounded, limited and described as follows, to wit:

BEGINNING at a point on the Northeast corner of Lot 16 and Cider Drive, thence continuing along Cider Drive, a fifty (50) foot wide proposed right of wide. North twenty (20) degrees forty-three (43) minutes twenty-six (26) seconds West twenty (20) feet to a point at the corner of Lot No. 18, thence continuing along Lot No. 18 South sixty-nine

(69) degrees sixteen (16) minutes thirty-four (34) seconds West one hundred twenty and no hundredths (120.00) feet to a point at Lot No. 38, thence continuing along the same South twenty (20) degrees forty-three (43) minutes twenty-six (26) seconds East twenty (20) feet to a point at the corner of Lot No. 16, thence continuing along the same North sixty-nine (69) degrees sixteen (16) minutes thirty-four (34) seconds East one hundred twenty and no hundredths (120.00) feet to a point and place of BEGINNING.

Tax Parcel No. 42-2-72

BEING the premises of 107 Cider Drive, York Springs, PA 17372

SEIZED and taken into execution as the property of **Travis Byers & Brandi Wilt** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 2, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/4, 11 & 17

ESTATE NOTICES

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

FIRST PUBLICATION

ESTATE OF MARY E. AYERS, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Michael K. Ayers, 53 Prince Street, Littlestown, PA 17340; Marcia A. Hewitt, 312 Prince Street, Littlestown, PA 17340

Attorney: David K. James, III, Esq., 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF THOMAS ALLEN BLOOMFIELD, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Administrator: Beth L. Bloomfield, 11 Sherman Drive, East Berlin, PA 17316

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

ESTATE OF MARY D. HANER, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: James B. Newman, 224 Ewell Avenue, Gettysburg, PA 17325

Attorney: Walton V. Davis, 63 West High Street, Gettysburg, PA 17325

ESTATE OF BERNICE K. IRVIN a/k/a BERNICE M. IRVIN, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executors: Susanne I. Koffsky, 4708 Windom Place, N.W., Washington, D.C. 20016; James J. Irvin, 2909 Wilmar Drive, Dover, PA 17315

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

ESTATE OF CATHERINE K. PRICE, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Patrick L. Price, 2419 Pondside Terrace, Silver Spring, MD 20906

Attorney: Walton V. Davis, 63 West High Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF BERNADINE M. DAMILOSKI, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Administrators: Tony A. Williams, 1461 Hickory Road, Littlestown, PA 17340; Timberly A. Myers, 143 Orchard Lane, Hanover, PA 17331

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

ESTATE OF MILDRED J. KOONS, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executors: John H. Koons, 35 Easy Street, Littlestown, PA 17340; George D. Koons, 96 James Road, Lewisburg, PA 17837

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

ESTATE OF JEROME MALTESE, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Roseann Creech, 1469 Hanover Rd., Gettysburg, PA 17325

Attorney: Matthew R. Battersby, Esq., Battersby & Sheffer, P.O. Box 215, Fairfield, PA 17320

ESTATE OF WENZEL C. O'DELL, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Margaret W. O'Dell, 7 College Avenue, Hanover, PA 17331

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

ESTATE OF ANDREW D. STARNER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executors: Cecil Sandoe, 2760 Old Harrisburg Rd., Gettysburg, PA 17325; Pat Sandoe, 2760 Old Harrisburg Rd., Gettysburg, PA 17325; Mark Sandoe, 2650 Old Harrisburg Rd., Gettysburg, PA 17325; David Sandoe, 256 Boyd's Schoolhouse Rd., Biglerville, PA 17307

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

THIRD PUBLICATION

ESTATE OF IANTHE S. BAKER a/k/a IANTHE GERALDINE BAKER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: William E. Baker, c/o William W. Hafer, Esq., 215 Baltimore Street, Hanover, PA 17331

Attorney: William W. Hafer, Esq., 215 Baltimore St., Hanover, PA 17331

ESTATE OF MARY H. GERRICK, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Executors: Francis I. Gerrick, 520 Glenwyn Drive, Littlestown, PA 17340; Harold O. Gerrick, 6107 Ponto Court, Alexandria, VA 22312

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

ESTATE OF C. EUGENE MILLER, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Dennis E. Miller, c/o Terry L. Fetterman, Jr., Esq., Fetterman & Yatron, LLC, 2606 Kutztown Road, Reading, PA 19605

Attorney: Terry L. Fetterman, Jr., Esq., Fetterman & Yatron, LLC, 2606 Kutztown Road, Reading, PA 19605

ESTATE OF RUTH KOPMAN MUMPER, a/k/a RUTH MARIE MUMPER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Ralph J. Kopman, Robert C. Berkheimer, c/o William W. Hafer, Esq., 215 Baltimore Street, Hanover, PA 17331

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

ESTATE OF HARVEY W. RITTER, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Executor: Helen Wuethrich, 16 Black Bass Trail, Fairfield, PA 17320

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

ESTATE OF JOSEPH E. TOPPER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Catherine E. Myers, 12 Walnut Ln., New Oxford, PA 17350

ESTATE OF JOHN LOUIS TURNBAUGH a/k/a JOHN L. TURNBAUGH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Personal Representatives: Jeanne L. Cox and Susan B. Turnbaugh, c/o Timothy J. Shultis, Esq., 249 York Street, Hanover, PA 17331

Attorney: Timothy J. Shultis, Esq., 249 York Street, Hanover, PA 17331

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1319 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point at a corner of Lot No. 451 on the subdivision plan hereinafter referred to; thence along Lot No. 451, North 60 degrees 03 minutes 07 seconds West, 95.00 feet to a point at a corner of Lot No. 461; thence along Lot Nos. 461 and 460, North 29 degrees 56 minutes 53 seconds East, 20.00 feet to a point at corner of Lot No. 453; thence along Lot No. 453, South 60 degrees 03 minutes 07 seconds East, 95.00 feet to a point along the curb line of a parking area as shown on the subdivision plan hereinafter referred to; thence along said parking area, South 29 degrees 56 minutes 53 seconds West, 20.00 feet to a point at a corner of Lot No. 451, the place of BEGINNING.

CONTAINING 1,900 square feet.

BEING Lot No. 452 on a plan of lots prepared by Group Hanover, Inc. which said plan is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 72, Page 23.

TITLE TO SAID PREMISES IS VESTED IN Travis Mann and Marlena Mann, their heirs and assigns by Deed from Appler Properties, LLLP dated 8/30/2000, recorded 10/16/2000, in Record Book 2145, Page 176.

Premises being: 83 South Gala, Littlestown, PA 17340

Tax Parcel No. 4-38

SEIZED and taken into execution as the property of **Travis & Marlena Mann** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 2, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost,

whichever may be the higher, shall be paid forthwith to the Sheriff.

4/4, 11 & 17

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1315 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN unit in the property known, named and identified in the declaration referred to below as South Branch Estates, located in the Township of Oxford, Adams County, Pennsylvania which has heretofore been submitted to the provisions of the Pennsylvania Uniform Condominium Act. 68 P.S.A. Section 3101, et seq., by the recording in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, of a Land Development Plan dated October 6, 1995, last revised December 14, 1995 and recorded in Book 69, page 23 (together with all amendments and supplements thereto recorded on or before the date hereto) being all designated in such plan as Unit No. 3 as more fully bounded and described in such plan, together with a proportionate undivided interest in the Common Elements as defined in a Declaration Plan recorded in the Office of the Recorder of Deeds, in and for York County, PA in Record Book 1271, page 34.

Tax Parcel #1-52

TITLE TO SAID PREMISES IS VESTED IN Steven E. Feldner by Deed from Philip R. Garland, T/D/B/A Garland Construction dated 3/9/1998, recorded 3/13/1998, in Record Book 1536, Page 325.

Premises being: 6 Fiddler Drive, New Oxford, PA 17350

Tax Parcel No. #1-52

SEIZED and taken into execution as the property of **Steven E. Feldner** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 2, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/4, 11 & 17

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Tuesday, April 8, 2003, at 9:00 o'clock a.m.

DUTTERER—Orphans' Court Action Number OC-20-03. The First and Final Administration Account of Karl H. Silex, Executor of the Estate of Gordon M. Dutterer, deceased, late of Oxford Township, Adams County, Pennsylvania.

HOLTRY—Orphans' Court Action Number OC-134-01. The First and Final Account of Druccinda S. Miller, Executrix and Adams County National Bank duly appointed Agent of the Estate of Thelma L. Holtry, deceased, late of Oxford Township, Adams County, Pennsylvania.

SARGEANT—Orphans' Court Action Number OC-21-03. The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Mary Ellen Sargeant, deceased, late of Cumberland Township, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

3/28 & 4/4

Adams County Legal Journal

Vol. 44

April 11, 2003

No. 46, pp. 250-253

IN THIS ISSUE

SNYDER VS. FISCHER

NOTICE

NOTICE IS GIVEN that the Board of School Directors of the Gettysburg Area School District (the "School District") intends to adopt a resolution (the "Resolution") at its regularly scheduled meeting to be held on the 22nd day of April, 2003, at 7:30 a.m. in the multi-purpose room of the James Gettys Elementary School, located at 898 Biglerville Road, Gettysburg, Pennsylvania. The Resolution, if adopted, will repeal the occupation tax and amend a resolution imposing a tax on earned income and net profits of individual residents of the School District. This notice is given pursuant to the Local Tax Enabling Act of December 31, 1965, P.L. 1257, as amended (the "Enabling Act").

The Resolution provides for the repeal of a prior resolution, adopted by the School District on June 8, 1981, as amended, which imposed a tax on the assessed value of all occupations of persons residing in the School District.

The resolution provides for an increase in the earned income and net profits tax from 1.0% to 1.7% effective July 1, 2003.

The Resolution further provides: definitions for words and phrases used in the Resolution; for the continuation of the tax annually without the necessity of reenactment; that employers within the School District are required to deduct the tax from earned income of employees; that the Adams County Earned Income Tax Collection Agency (the "Agency") is reappointed to collect the tax for the School District pursuant to the provisions of the Enabling Act. The Resolution incorporates by reference all pertinent provisions of the Enabling Act and all

Rules and Regulations of the Agency which are now in existence or which may be adopted by the Agency in the future.

The increase in earned income and net profits tax is estimated to be \$2,631,416 for the 2003-2004 fiscal year of the School District. This increase is necessary to replace the revenues lost from the elimination of the Occupation Assessment Tax. The earned income and net profits taxes collected shall be added to the general revenues of the School District.

A copy of the Resolution can be obtained from the School District Business Office located at 900 Biglerville Road, Gettysburg, Pennsylvania. Anyone wishing to obtain a copy, or ask any questions, should contact the Business Office by telephone (717) 334-6254 Extension 1226, during normal business hours.

Brad N. Hunt, Secretary

4/4, 11 & 17

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-12 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot of ground with improvements thereon, situate, lying and being in the Borough of New Oxford, County of Adams and State of Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a corner of Orange and High Streets, on the South West side of W.M.R.R. thence along said High Street North 71 degrees East, about 120 feet to center of said Railroad; thence along said railroad westward to Orange Street; thence along said Orange Street, South 19 degrees East, 150 feet to the place of BEGINNING.

BEING KNOWN AS 130 West High Street, New Oxford, PA 17350

Property ID No.: 4-95

TITLE TO SAID PREMISES IS VESTED IN Thomas Morgan, by Deed from Donald A. Bixler, dated 08/31/01, recorded 09/04/01, in Deed Book 2393, Page 304.

SEIZED and taken into execution as the property of **Thomas Morgan** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 16, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/11, 17 & 25

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1319 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point at a corner of Lot No. 451 on the subdivision plan hereinafter referred to; thence along Lot No. 451, North 60 degrees 03 minutes 07 seconds West, 95.00 feet to a point at a corner of Lot No. 461; thence along Lot Nos. 461 and 460, North 29 degrees 56 minutes 53 seconds East, 20.00 feet to a point at corner of Lot No. 453; thence along Lot No. 453, South 60 degrees 03 minutes 07 seconds East, 95.00 feet to a point along the curb line of a parking area as shown on the subdivision plan hereinafter referred to; thence along said parking area, South 29 degrees 56 minutes 53 seconds West, 20.00 feet to a point at a corner of Lot No. 451, the place of BEGINNING.

CONTAINING 1,900 square feet.

BEING Lot No. 452 on a plan of lots prepared by Group Hanover, Inc. which said plan is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 72, Page 23.

TITLE TO SAID PREMISES IS VESTED IN Travis Mann and Marlena Mann, their heirs and assigns by Deed from Appler Properties, LLLP dated 8/30/2000, recorded 10/16/2000, in Record Book 2145, Page 176.

Premises being: 83 South Gala, Littlestown, PA 17340

Tax Parcel No. 4-38

SEIZED and taken into execution as the property of **Travis & Marlena Mann** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 2, 2003, and

distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/4, 11 & 17

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1315 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN unit in the property known, named and identified in the declaration referred to below as South Branch Estates, located in the Township of Oxford, Adams County, Pennsylvania which has heretofore been submitted to the provisions of the Pennsylvania Uniform Condominium Act. 68 P.S.A. Section 3101, et seq., by the recording in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, of a Land Development Plan dated October 6, 1995, last revised December 14, 1995 and recorded in Book 69, page 23 (together with all amendments and supplements thereto recorded on or before the date hereto) being all designated in such plan as Unit No. 3 as more fully bounded and described in such plan, together with a proportionate undivided interest in the Common Elements as defined in a Declaration Plan recorded in the Office of the Recorder of Deeds, in and for York County, PA in Record Book 1271, page 34.

Tax Parcel #1-52

TITLE TO SAID PREMISES IS VESTED IN Steven E. Feldner by Deed from Philip R. Garland, T/D/B/A Garland Construction dated 3/9/1998, recorded 3/13/1998, in Record Book 1536, Page 325.

Premises being: 6 Fiddler Drive, New Oxford, PA 17350

Tax Parcel No. #1-52

SEIZED and taken into execution as the property of **Steven E. Feldner** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 2, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/4, 11 & 17

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on the 13th day of February, 2003, for the purpose of obtaining a Certificate of Incorporation for a business corporation organized under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania of 1988, as amended.

The name of the Corporation is **ALTICE CONSTRUCTION, INC.** The purpose for which said Corporation is organized is to engage in and do any lawful act concerning any or all business for which corporations may be incorporated under the Business Corporation Law of 1988, December 21, P.L. 1444, No. 177 Section 103, effective October 1, 1989 including but not limited to residential and commercial construction and related items.

Stonesifer and Kelley, P.C.

4/11

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-966 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an existing railroad spike near the Western right-of-way line of Mt. Carmel Road (T-312) at the Northeast corner of land now or formerly of Connie Reamer North 68 degrees 07 minutes 00 seconds West, 176.62 feet to an existing steel rod; thence by the same and through an existing pipe set back 12 feet from the end of this course South 43 degrees 04 minutes 00 seconds West, 134.82 feet to a point in run on line of land now or formerly of Harry Jenkins, Sr.; thence in and along said run and along land now or formerly of Harry Jenkins, Sr. North 77 degrees 44 minutes 20 seconds West, 138.44 feet to an existing pipe in run; thence by same North 88 degrees 08 minutes 30 seconds West, 186.77 feet to an existing pipe in run; thence by same North 81 degrees 53 minutes 00 seconds West, 85.72 feet to a steel rod at corner of Lot No. 2 on the hereinafter described subdivision plan; thence by said Lot No. 2 North 20 degrees 59 minutes 40 seconds East, 147.67 feet to a steel rod; thence by same North 89 degrees 41 minutes 35 seconds East, 195 feet to a railroad spike; thence by same South 77 degrees 54 minutes 15 seconds East, 276.21 feet to a steel rod; thence by same South 62 degrees 13 minutes 10 seconds East, 165 feet to a steel rod on line of land now or formerly of El Vista Orchards, Inc. South 03 degrees 35 minutes 50 seconds West, 19.07 feet to a steel rod near the Western right-of-way line of Mt. Carmel Road (T-312), the point of BEGINNING.

CONTAINING 1.635 acres

The above description is taken from a Subdivision Plan for Dorcas G. Charney dated August 30, 1993, revised July 20, 1995 and September 25, 1995, prepared by Adams County Surveyors, which Plan is recorded in the Office of the Recorder of Deeds, Adams County, Pennsylvania in Plat Book 68, at Page 15. The tract herein conveyed is designated on said Plan as Lot No. 1.

BEING No. 619 Mt. Carmel Road.
TAX PARCEL NUMBER C12-17A

TITLE TO SAID PREMISES IS VESTED IN William R. Grim, Jr., unmarried and Christina L. Ginneman, unmarried, as joint tenants with the right of survivorship by Deed from Iris J. Albaugh, now Iris J. Rodgers, joined by her husband William Rodgers dated 9/29/2000 and recorded 10/12/2000 in Record Book 2143 Page 171.

Premises being: 619 Mt. Carmel Road, Orttanna, PA 17353

Tax Parcel No. C12-17A

SEIZED and taken into execution as the property of **William R. Grim, Jr. & Christina L. Ginneman** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 2, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/4, 11 & 17

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1301 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN parcel of ground situate, lying and being in the Borough of York Springs, known as Lot No. 17 on a plan of lots of Apple Hill prepared by Morrow Engineering Company, New Bloomfield, Pennsylvania, drawing No. S-12-10, and drawing No. S-12-12, recorded in Plat Book 35, Page 82A, more fully bounded, limited and described as follows, to wit:

BEGINNING at a point on the Northeast corner of Lot 16 and Cider Drive, thence continuing along Cider Drive, a fifty (50) foot wide proposed right of wide. North twenty (20) degrees forty-three (43) minutes twenty-six (26) seconds West twenty (20) feet to a point at the corner of Lot No. 18, thence continuing along Lot No. 18 South sixty-nine

(69) degrees sixteen (16) minutes thirty-four (34) seconds West one hundred twenty and no hundredths (120.00) feet to a point at Lot No. 38, thence continuing along the same South twenty (20) degrees forty-three (43) minutes twenty-six (26) seconds East twenty (20) feet to a point at the corner of Lot No. 16, thence continuing along the same North sixty-nine (69) degrees sixteen (16) minutes thirty-four (34) seconds East one hundred twenty and no hundredths (120.00) feet to a point and place of BEGINNING.

Tax Parcel No. 42-2-72

BEING the premises of 107 Cider Drive, York Springs, PA 17372

SEIZED and taken into execution as the property of **Travis Byers & Brandi Wilt** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 2, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/4, 11 & 17

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation for PINEY CREEK MANAGEMENT AND MAINTENANCE SERVICES, INC. were filed with the Department of State of the Commonwealth of Pennsylvania on March 17, 2003, under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444.

Guthrie, Nonemaker, Yingst & Hart
Solicitor

4/11

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-52 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point in the centerline of an existing 12-foot wide gravel driveway (private) leading to Stoney Point Road (S.R. 1007) which point is North 80 degrees 19 minutes 00 seconds West 93.12 feet from an existing steel rod at the Northwestern corner of land now or formerly of Robert Sweaman; thence running by other land of the Grantees and through a reference steel rod setback 17 feet from the start of this course South 04 degrees 06 minutes 00 seconds East 219.69 feet to a pipe; thence by land of the Grantors South 85 degrees 54 minutes 00 seconds West 200.00 feet to a copperweld rod; thence by the same and through a reference steel rod setback 21 feet from the end of this course North 04 degrees 08 minutes 00 seconds West 283.25 feet to a point in the centerline of the existing 12-foot gravel driveway (private); thence running in the centerline of the existing 12-foot gravel driveway (private) South 76 degrees 28 minutes 10 seconds East 209.86 feet to a point in the centerline of said gravel driveway, the point and place of BEGINNING. CONTAINING 1.155 acres.

The description was taken from a draft of survey prepared by J. Riley Redding, R.S., dated March 29, 1990 and recorded in Adams County Plat Book 55 at Page 73. The tract is Tract 2 on said plan of lots.

SUBJECT, NEVERTHELESS, to the obligation of the owner of this lot to share in the maintenance of the 12-foot private gravel road leading to Stoney Point Road.

TOGETHER WITH and SUBJECT TO the right of ingress, egress and regress across the land herein conveyed as well as across other land of the Grantors for access of the respective parties to and from Stoney Point Road (S.R. #10007). The present access is a 12-foot wide gravel driveway but the right-of-way across the land of the respective parties is a 50-foot wide right-of-way as shown on the aforementioned plan of lots.

BEING the same premises which Hugh W. Rinker, unmarried, James L. Rinker, unmarried and Fred S. Rinker,

unmarried by their deed dated October 12, 1992 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Record Book 656, Page 221, sold and conveyed to Thomas R. Benton and Judy F. Benton, Husband and Wife, Grantors herein.

Being premises more commonly known as 564 Stoney Point Road, East Berlin, Pennsylvania 17316.

Tax ID No. K7-10B

SEIZED and taken into execution as the property of **Thomas R. Benton & Judy F. Benton** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 16, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/11, 17 & 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-3 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain unit in the property known, named and identified in the Declaration referred to below as South Branch Estates, located in the Township of Oxford, Adams County, Pennsylvania which has heretofore been submitted to the provisions of the Pennsylvania Uniform Condominium Act, 68 P.S.A. Section 3101, et seq., by the recording in the Office of the Recorder of Deeds in and for Adams County, PA, of a land development plan dated October 6, 1995, last revised December 14, 1995 and recorded in Book 69, Page 23, together with all amendments and supplements thereto recorded on or before the date hereof being all designated in such plan as Unit No. 17 as more fully bounded and described in such plan, together with a proportionate undivided interest in the common elements as defined in a Declaration Plan recorded in

the Office of the Recorder of Deeds, in and for York County, PA in Record Book 1271, Page 34.

UNDER AND SUBJECT TO any and all covenants, conditions, restrictions, rights of way, easements and agreements of record, including (but not limited to) those continued in the instruments recorded in the aforesaid Recorder's Office in Record Book 69, Page 23.

TOGETHER WITH the limited common elements appurtenant as more fully shown of Plan 1271, Page 34.

Being known as 48 Fiddler Drive, New Oxford, PA 17350

Property ID No.: 1-52.017

TITLE TO SAID PREMISES IS VESTED IN Brian M. Bynaker and Stephany A. Mallette, by Deed from Philip R. Garland, trading and doing business as Garland Construction, dated 02/26/99, Recorded 03/04/99, in Deed Book 1778, Page 174.

SEIZED and taken into execution as the property of **Brian M. Bynaker & Stephany A. Mallette a/k/a Stephany A. Mallette** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 16, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/11, 17 & 25

SNYDER VS. FISCHER

1. A Default Judgment may be opened when three (3) elements are established: The moving party must (1) promptly file a Petition to Open the Default Judgment; (2) show a meritorious defense; and (3) provide a reasonable excuse or explanation for the failure to file a responsive pleading. In regard to the first element, the Court should generally focus on two factors: (1) the length of the delay between discovery of the entry of the default judgment and filing the Petition to Open Judgment and (2) the reason for the delay.

2. Pennsylvania appellate courts have recognized that mere ignorance or inexperience in legal matters is not a justification for default.

3. Attorney fees are clearly improper in this (default judgment) matter since they are authorized neither by statute nor written agreement of the parties.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 00-TL-180, KEN SNYDER, t/d/b/a KEN SNYDER MASONRY, VS. F. PATRICK FISCHER AND KIMBERLY A. FISCHER.

Jeffrey T. Bitzer, Esq., for Plaintiff
Christopher T. Restak, Esq., for Defendants
George, J., September 25, 2002

OPINION

This matter comes before the Court on the Defendant's Motion to Open a Default Judgment.

Ken Snyder, a mason, entered into an agreement with the Defendants, F. Patrick Fischer and Kimberly A. Fischer, to provide certain construction services at the Defendant's home in New Oxford, Adams County, Pennsylvania. Work was completed on the job in December of 1998. However, a dispute arose over the amount of the outstanding balance. On April 28, 2000, the Plaintiff filed a Mechanic's Lien against the Defendants with the Adams County Prothonotary's Office. For approximately the next twenty-two (22) months no further action was taken on the lien as the parties attempted to negotiate a resolution of the dispute. Negotiations apparently faltered and on February 20, 2002, the Plaintiffs filed a Complaint on the Mechanic's Lien. The Complaint began with a Notice to Defend pursuant to Pa. R. Civ. P. 1018.1. A Sheriff's Return indicates that the Complaint was served on each of the Defendants on March 11, 2002. On April 3, 2002, the Defendants were served with a Notice of Praecepto to Enter Judgment by Default pursuant to Pa. R. Civ. P. 237.5. Absent any response by the Defendants, the Plaintiff, on April

22, 2002, sought the Entry of a Default Judgment in the amount of \$6,279.18 together with the costs of the suit in the Adams County Prothonotary's Office. The Defendants, by stipulation, have acknowledged receiving notice of the Entry of the Default Judgment on April 22, 2002. On May 24, 2002, Defendants, for the first time, filed a pleading in this matter consisting of a Motion to Open Judgment. The record is clear that until a week or two prior to May 24, 2002, the Defendants were acting *pro se*.¹ On May 24, 2002, current counsel entered an appearance on behalf of the Defendants through the filing of the above-referenced Motion to Open Judgment.

A Default Judgment may be opened when three (3) elements are established: The moving party must (1) promptly file a Petition to Open the Default Judgment; (2) show a meritorious defense; and (3) provide a reasonable excuse or explanation for the failure to file a responsive pleading. *Allegheny Hydro No. 1 v. American Line Builders, Inc.*, 722 A.2d 189, 191 (Pa. Super. Ct. 1998). In regard to the first element, the Court should generally focus on two factors: (1) the length of the delay between discovery of the entry of the default judgment and filing the Petition to Open Judgment and (2) the reason for the delay. *Id.* at 193.

Currently, a period of thirty-two (32) days passed from the time at which the Defendants acknowledge receiving the Notice of the Default Judgment until the current motion was filed. While thirty-two (32) days may not be excessive, it can hardly be considered prompt. *See McCoy v. Pub. Acceptance Corp.*, 305 A.2d 698, 700 (Pa. 1973) (period of two and one-half weeks of unexplained delay is not prompt); *B.C.Y., Inc., Equipment Leasing Assoc. v. Bukovich*, 390 A.2d 276, 278 (Pa. Super. Ct. 1978) (twenty-one day delay is not prompt).

The Defendants claim that they were not represented at the time that the default judgment was entered and, therefore, their delay in promptly moving to open the judgment is explainable. Their argument, however, is contrary to the status of the law in this regard. Pennsylvania appellate courts have recognized that mere ignorance or inexperience in legal matters is not a justification for default. *See Bukovich*, 390 A.2d at 279; *Dupree v. Lee*, 361 A.2d 331 (Pa. Super. Ct. 1976).

¹During hearing, defense counsel was unable to indicate the exact date that he first met with the Defendants.

Since the burden is on the Defendants to satisfy all three elements necessary to open a default judgment, *see Allegheny Hydro No. 1*, 722 A.2d at 191, the Defendants' inability to establish the first element makes it unnecessary to proceed any further.² However, because a Motion to Open Judgment is an appeal to the equitable powers of the Court, I feel compelled to address an additional issue appearing in the pleadings.

As previously mentioned, the Plaintiff is pursuing this action pursuant to an alleged agreement between the parties for construction services rendered by the Plaintiff to the Defendants. The Mechanics Lien filed on April 28, 2000, was for unpaid labor and materials in the amount of \$4,279.18. The Default Judgment entered in this matter, however, was entered in an amount of \$6,279.18. The discrepancy between these two figures is found in the Plaintiff's Complaint wherein the Plaintiff seeks legal fees from the Defendants in the amount of \$2,000.00. Attorney fees are clearly improper in this matter since they are authorized neither by statute nor written agreement of the parties. *See Merlino v. Delaware County*, 728 A.2d 949,951 (Pa. 1999). Although the default judgment was validly entered, I cannot condone the blatant miscarriage of justice that would result by allowing the attorney fees to stand as part of this Judgment. In light of the Court's inherent power to correct a Judgment of Default to conform to the facts, *see Bukovich*, 390 A.2d at 278; *Harr v. Fuhrman*, 29 A.2d 527 (Pa. 1943); *Brummer v. Linker*, 196 A. 834 (Pa. 1938); *Wilson Laundry Co. v. Joos*, 189 A.2d 917 (Pa. Super. Ct.

² The Defendants' excuse for failure to file a responsive pleading which would have precluded a default judgment is identical to their claimed justification for failing to promptly file a Motion to Open the Default Judgment. Essentially, the Defendants argue that they were not represented in this matter and, moreover, were unsophisticated in the law. The Pennsylvania Rules of Civil Procedure have enacted numerous safeguards to place parties who are not represented by counsel on notice that they risk the loss of legal rights in the event they do not promptly act in response to a civil complaint. *See* Pa. R. Civ. P. 1018.1 and 237.1. These Rules provide, in plain language, that counsel should be immediately consulted and, in the event that a party fails to act, that a judgment will be entered against them. A finding of justifiable excuse in failing to respond to the pleadings would essentially make the safeguards of the Pennsylvania Rules of Civil Procedure meaningless. It would also be contrary to Pennsylvania authority. *See Bukovich*, *supra*, and *Dupree*, *supra*. Thus, the Defendants are unable to set forth a valid justification which would satisfy the third element required by Pennsylvania precedent. *See Allegheny Hydro No. 1*, *supra*.

1963), I will modify the Judgment to conform with the factual background as alleged in the Plaintiff's Complaint.

For the foregoing reasons, the attached Order is entered.

ORDER OF COURT

AND NOW, this 25th day of September, 2002, the Defendants' Motion to Open Judgment is denied. However, the Judgment in this matter is modified to reflect judgment in favor of the Plaintiff and against the Defendants in the amount of \$4,279.18 plus the costs of suit. The Adams County Prothonotary is directed to adjust the Default Judgment entered on April 22, 2002, accordingly.

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 PHILIP D. DUNCAN, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Executrix: Janet M. George, 1636 Emig Road, Spring Grove, PA 17362

Attorney: Catherine J. Gault, Esq., 31 S. Washington Street, Gettysburg, PA 17325

ESTATE OF MILDRED MARGIE HOFFMAN, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Co-Executors: Joanne Hinkle, 445 Baltimore Rd., York Springs, PA 17372; Vickie Rex, 1341 Gablers Rd., Gardners, PA 17324

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

ESTATE OF STELLA B. SCHWARTZ, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Executrix: Ellen Mickey, 115 Knoxlyn Road, Gettysburg, PA 17325

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

ESTATE OF MARY H. STAUB a/k/a MARY A. STAUB, DEC'D

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

Executors: Clair W. Haar, 575 A. Cedar Road, New Oxford, PA 17350; Joan L. Huffman, 345 Cedar Ridge Road, New Oxford, PA 17350

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

SECOND PUBLICATION

ESTATE OF MARY E. AYERS, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Michael K. Ayers, 53 Prince Street, Littlestown, PA 17340; Marcia A. Hewitt, 312 Prince Street, Littlestown, PA 17340

Attorney: David K. James, III, Esq., 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF THOMAS ALLEN BLOOMFIELD, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Administrator: Beth L. Bloomfield, 11 Sherman Drive, East Berlin, PA 17316

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

ESTATE OF MARY D. HANER, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: James B. Newman, 224 Ewell Avenue, Gettysburg, PA 17325

Attorney: Walton V. Davis, 63 West High Street, Gettysburg, PA 17325

ESTATE OF BERNICE K. IRVIN a/k/a BERNICE M. IRVIN, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executors: Susanne I. Koffsky, 4708 Windom Place, N.W., Washington, D.C. 20016; James J. Irvin, 2909 Wilmar Drive, Dover, PA 17315

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

ESTATE OF CATHERINE K. PRICE, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Patrick L. Price, 2419 Pondsides Terrace, Silver Spring, MD 20906

Attorney: Walton V. Davis, 63 West High Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF BERNADINE M. DAMILOSKI, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Administrators: Tony A. Williams, 1461 Hickory Road, Littlestown, PA 17340; Timberly A. Myers, 143 Orchard Lane, Hanover, PA 17331

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

ESTATE OF MILDRED J. KOONS, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executors: John H. Koons, 35 Easy Street, Littlestown, PA 17340; George D. Koons, 96 James Road, Lewisburg, PA 17837

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

ESTATE OF JEROME MALTESE, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Roseann Creech, 1469 Hanover Rd., Gettysburg, PA 17325

Attorney: Matthew R. Battersby, Esq., Battersby & Sheffer, P.O. Box 215, Fairfield, PA 17320

ESTATE OF WENZEL C. O'DELL, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Margaret W. O'Dell, 7 College Avenue, Hanover, PA 17331

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

ESTATE OF ANDREW D. STARNER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executors: Cecil Sandoe, 2760 Old Harrisburg Rd., Gettysburg, PA 17325; Pat Sandoe, 2760 Old Harrisburg Rd., Gettysburg, PA 17325; Mark Sandoe, 2650 Old Harrisburg Rd., Gettysburg, PA 17325; David Sandoe, 256 Boyd's Schoolhouse Rd., Biglerville, PA 17307

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-293 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate, lying and being in the Borough of Bonneauville, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a point in the center line of Township Road T-440, at the Southermost corner of Lot No. 5, now or formerly of Charlotte Long; thence in the center line of Township Road T-440, South 45 degrees 40 minutes 45 seconds West, 46.30 feet to a point at corner of land now or formerly of Raymond E. Gebhart, Jr.; thence by said land now or formerly of Raymond E. Gebhart, Jr., North 44 degrees 19 minutes 15 seconds West 50.00 feet to a steel pin; thence by the same, on a curve to the left, having a radius of 886.70 feet an arc distance of 49.99 feet and a bearing and chord distance of North 45 degrees 56 minutes 09 seconds West, 49.98 feet to a steel pin; thence by same, North 47 degrees 33 minutes 03 seconds West, 22.02 feet to a steel pin; thence by same, North 45 degrees 40 minutes 45 seconds East, 48.95 feet to a steel pin at corner of Lot No. 5, aforesaid; thence by said Lot No. 5, and for a portion of this course running through the center of a party wall separating Lot Nos. 4 and 5, and passing through a steel pin set back 25.00 feet from the next mentioned point, South 44 degrees 19 minutes 15 seconds East, 121.94 feet to a point, the place of BEGINNING.

CONTAINING 5,714 square feet

Tax Parcel Map #6, Parcel #38

Being Known As: 7A Pin Oak Drive, Gettysburg, PA 17325

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 16, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/11, 17 & 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1017 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING for a corner at a point in the center line of Pennsylvania Legislative Route No. 01003 at other lands now or formerly of Robert J. Zoeller and Doris B. Zoeller, his wife, said point is fifty-eight (58) degrees thirty-one (31) minutes West one hundred seventy-two and forty hundredths (172.40) feet from the center line of Pennsylvania State Highway Route No. 54 as measured along the center line of Legislative Route No. 01003, aforesaid; thence along other land now or formerly of Robert J. Zoeller and Doris B. Zoeller, his wife, and through a steel pin set twenty-five (25) feet from the place of beginning, North twenty-five (25) degrees twenty-nine (29) minutes West, one hundred sixty and ninety-eight hundredths (160.98) feet to a steel pin at land now or formerly of Hamm; thence along said last mentioned land, North sixty-one (61) degrees thirty-six (36) minutes East, one hundred fifty (150) feet to a steel pin at land now or formerly of Norman Wolf; thence along said last mentioned land and through a planted stone sixteen and ten hundredths (16.10) feet from the terminus of this line, South twenty-five (25) degrees fifteen (15) minutes East one hundred fifty-two and ninety-five hundredths (152.95) feet to a point in the center line of Pennsylvania Legislative Route No. 01003, aforesaid; thence in, along and through the center line of said Pennsylvania Legislative Route No. 01003 South fifty-eight (58) degrees thirty-one minutes West, one hundred fifty (150) feet to the point and place of BEGINNING. The above description was taken from a survey prepared by Donald E. Worley, Registered Surveyor, dated August 2, 1971.

Map and Parcel ID: (17)K10, Parcel 19D

Being known as: 20 Pine Run Road, New Oxford, PA 17350

SEIZED and taken into execution as the property of **Daniel J. Fleischman** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 16, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/11, 17 & 25

Adams County Legal Journal

Vol. 44

April 17, 2003

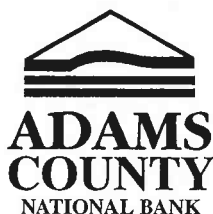
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This opinion continues to next issue (4/25/2003)

Strong.
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Dedicated to Quality.
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Branching Into The Future.
Our Commitment Is You.



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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-80 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 6th day of June, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT TRACT of land situate, lying and being in the Borough of Littlestown, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point at the corner of Prince Street and Windsor Street, thence along the Northwest side of aforesaid Windsor Street South sixty (60) degrees, eighteen (18) minutes, twenty (20) seconds West, ninety-five (95) feet to a point on an alley; thence along said alley, North twenty-nine (29) degrees, forty-one (41) minutes, forty (40) seconds West, fifty-three and six-tenths (53.6) feet to a point at corner of Lot No. 76; thence along said Lot No. 76, North sixty (60) degrees, eighteen (18) minutes, twenty (20) seconds East, ninety-five (95) feet to a point on the Southwest side of Prince Street; thence along said Prince Street, South twenty-nine (29) degrees, forty-one (41) minutes, forty (40) seconds East, fifty-three and six-tenths (53.6) feet to the place of BEGINNING.

Vested by Deed, dated 10/31/96, given by Jeanne W. Bowser, widow to Gerhard Noerr and Janet V. Noerr, husband and wife, as tenants by the entireties and recorded 11/4/96 in Book: 1285 Page: 316.

Premises being: 404 Prince Street, Littlestown, PA 17340

Tax Parcel No. 5-30

SEIZED and taken into execution as the property of **Gerhard Noerr & Janet V. Noerr** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 30, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/17, 25 & 5/2

NOTICE

NOTICE IS GIVEN that the Board of School Directors of the Gettysburg Area School District (the "School District") intends to adopt a resolution (the "Resolution") at its regularly scheduled meeting to be held on the 22nd day of April, 2003, at 7:30 p.m. in the multi-purpose room of the James Gettys Elementary School, located at 898 Biglerville Road, Gettysburg, Pennsylvania. The Resolution, if adopted, will repeal the occupation tax and amend a resolution imposing a tax on earned income and net profits of individual residents of the School District. This notice is given pursuant to the Local Tax Enabling Act of December 31, 1965, P.L. 1257, as amended (the "Enabling Act").

The Resolution provides for the repeal of a prior resolution, adopted by the School District on June 8, 1981, as amended, which imposed a tax on the assessed value of all occupations of persons residing in the School District.

The resolution provides for an increase in the earned income and net profits tax from 1.0% to 1.7% effective July 1, 2003.

The Resolution further provides: definitions for words and phrases used in the Resolution; for the continuation of the tax annually without the necessity of reenactment; that employers within the School District are required to deduct the tax from earned income of employees; that the Adams County Earned Income Tax Collection Agency (the "Agency") is reappointed to collect the tax for the School District pursuant to the provisions of the Enabling Act. The Resolution incorporates by reference all pertinent provisions of the Enabling Act and all Rules and Regulations of the Agency which are now in existence or which may be adopted by the Agency in the future.

The increase in earned income and net profits tax is estimated to be

\$2,631,416 for the 2003-2004 fiscal year of the School District. This increase is necessary to replace the revenues lost from the elimination of the Occupation Assessment Tax. The earned income and net profits taxes collected shall be added to the general revenues of the School District.

A copy of the Resolution can be obtained from the School District Business Office located at 900 Biglerville Road, Gettysburg, Pennsylvania. Anyone wishing to obtain a copy, or ask any questions, should contact the Business Office by telephone (717) 334-6254 Extension 1226, during normal business hours.

Brad N. Hunt, Secretary

4/4, 11 & 17

PAVEX VS. ANGELOZZI

1. A pleading should inform the opposing party, with reasonable accuracy, of the nature and extent of the claim and should set forth concisely the material and issuable facts upon which the claim relies. Pleadings, however, are misused when they are exalted greater than or equal to the substantive objectives of the litigation.

2. Pennsylvania law is clear that a demurrer cannot aver the existence of facts not apparent from the face of the challenged pleading.

3. Pennsylvania courts have determined that the limitations imposed by the Rules of Civil Procedure prohibit preliminary objections from raising the legality of a contract, issues of damages, misidentification of parties, the invalidity of a foreign judgment, and generally, any affirmative defenses such as sovereign immunity, fraud or statute of limitations.

4. The parol evidence rule is a question that may be raised by preliminary objections in advance of trial.

5. Although surplusage in a pleading may generally be treated as harmless and ignored, where immaterial and impertinent averments in a pleading create confusion, they may be stricken.

6. In alleging the defense of fraud, two conditions must be met: (1) the pleadings must adequately explain the nature of the claim to the opposing party so as to permit the preparation of a defense and (2) the pleadings must be sufficient to convince the Court that the averments are not merely subterfuge. A bald assertion of fraud is insufficient.

7. The law is well settled that in the absence of fraud, accident or mistake the alleged oral representations are merged in or superseded by the subsequent written contract, and parol evidence to vary, modify, or supersede the written contract is inadmissible in evidence.

8. Whether a party or parties intend a written document to cover the entire agreement of the parties, or in other words to be integrated, is determined by an examination of the content of the writing when the contract's language is clear and unambiguous.

9. When a claim is based upon an oral declaration or understanding of a subject that is addressed in a written contract, parol evidence is presumptively barred.

10. The determination on whether a writing is "integrated" or the final and complete expression of the parties' agreement is for the Court to determine as a matter of law.

11. Even though the contract includes an integration clause, parol evidence is admissible when a document reflects an unclear purpose or contains ambiguous terms. If a contract contains ambiguous terms, a Court may admit extrinsic evidence to explain but not vary those terms.

12. Parol evidence may be admissible to show fraud accident or mistake to vary the terms of a written contract.

13. It is of no consequence to say that [an agreement] was signed by [a party] 'in ... haste and excitement...' and 'does not contain an agreement as he made it.' Such allegations are totally insufficient to set aside written agreements. Likewise, if a party who can read a document chooses not to do so before signing it, they receive no protection at equity or law.

14. Parol evidence only bars prior or contemporaneous oral agreements, no subsequent ones. However, any subsequent modification must be founded upon a valid consideration.

15. Compliance with the previously valid agreement does not evidence consideration of a subsequent modification.

16. A contract made under a mutual mistake as to an essential fact, which formed the inducement for the contract, may be rescinded upon discovery of the mistake if the parties can be placed in their former position with reference to the subject matter. The cause of action only exists where the mistake (1) relates to the basis of the bargain, (2) materially affects the parties' performance, and (3) the mistake is not one to which the injured party bears risk.

17. Under Pennsylvania law, the quasi-contractual doctrine of unjust enrichment is inapplicable when the relationship is founded on a written agreement or express contract.

In the Court of Common Pleas of Adams County, Pennsylvania,
Civil, No. 02-S-34, PAVEX, INC. VS. THOMAS J. ANGELOZZI,
INC.

Thomas A. Beckley, Esq., and John G. Milakovic, Esq., for Plaintiff
Arthur J. Becker, Jr., Esq., for Defendant

George, J., September 27, 2002

OPINION

This litigation arises out of a contract to perform construction work on a project known as the "Adams Commerce Center" located at the intersection of State Route 30 and State Route 15 in Adams County, Pennsylvania. The action is brought by a general contractor, Pavex, Inc. (hereinafter referred to as "Plaintiff") against a subcontractor, Thomas J. Angelozzi, Inc. (hereinafter referred to as "Defendant") for breach of contract. Generally, Plaintiff alleges Defendant failed to perform as contracted thereby requiring Plaintiff to expend funds in correcting work which Defendant allegedly improperly performed or, in some instances, failed to perform.

Unfortunately, the procedural history of this matter is somewhat more complicated than the factual history.

On January 11, 2002, Plaintiff initiated suit by filing a ten (10) paragraph complaint alleging a cause of action for breach of contract. The Complaint was met by a pleading filed by Defendant on February 5, 2002, titled "Thomas J. Angelozzi, Inc.'s Answer, New Matter and Counterclaim" and consisting of twenty-nine (29) pages and two hundred two (202) paragraphs. Thereafter, on February 20, 2002, Defendant filed an Amended Answer, New Matter and Counterclaim consisting of thirty-three (33) pages and two hundred twenty-nine (229) paragraphs. On March 1, 2002, Plaintiff filed

Preliminary Objections to Defendant's Amended New Matter and Counterclaim. On March 8, 2002, Defendant filed a Second Amended Answer, New Matter and Counterclaim which added an additional thirty-six (36) paragraphs and nine (9) pages to the previous pleading. On March 27, 2002, Plaintiff filed Preliminary Objections to Defendant's Second Amended New Matter and Counterclaim. On April 8, 2002, Defendant filed Preliminary Objections to Plaintiff's Preliminary Objections.¹ The matter is now before the Court on Plaintiff's Preliminary Objections to Defendant's Answer, New Matter and Counterclaim and, also, on Defendant's Preliminary Objections to Plaintiff's Preliminary Objections.

In order to better understand this labyrinth, it is important to define the issues at hand. Plaintiff's Preliminary Objections to Defendant's Amended New Matter and Counterclaim are as follows:

- 1) A Demurrer to paragraphs 11 through 58 of Defendant's Second Amended New Matter. Essentially, the Plaintiff argues that the allegations in these paragraphs cannot form the basis of an affirmative defense because they are precluded by the parol evidence rule;
- 2) A Demurrer to paragraphs 59 through 64 of Defendant's Second Amended New Matter. Paragraphs 59 through 64 of Defendant's Second Amended New Matter attempt to explain the Defendant's performance in certain areas because the Plaintiff did not object to work performance that differed from the specifications in the original contract. The Plaintiffs, in their Preliminary Objections, request the Court to dismiss these paragraphs for failure to state an affirmative defense as a matter of law;
- 3) A Demurrer to paragraphs 70 through 87 and 96 through 104 of Defendant's Second Amended New Matter. In this Demurrer, the Plaintiff argues that Defendant's pleading alleging subsequent attempts to modify the terms of the

¹ During this time, Defendant also filed a petition for leave to add a third party defendant pursuant to PA. R. CIV. P. 2253. By Order dated May 20, 2002, Defendant was granted leave of Court to join a third party Defendant in this litigation. However, since that matter will have no direct effect on the current issues, it will not be further addressed in this Opinion.

- written contract are unenforceable for lack of consideration. As such, Plaintiff argues that the allegations are insufficient as a matter of law and should be stricken;
- 4) A motion to strike paragraphs 88 through 95 and 105 through 107 of Defendant's Second Amended New Matter as scandalous and impertinent. Essentially, the Plaintiff argues that these paragraphs are designed solely to make the Plaintiff look bad and do not relate to any claim, defense or set-off involved in this case;
 - 5) A Demurrer to paragraphs 108 through 143 of Defendant's Second Amended New Matter. Once again, the Plaintiff argues that these paragraphs are conclusory allegations contradicted by the written contract thereby failing to set forth an affirmative defense as a matter of law;
 - 6) A motion to strike paragraphs 134 through 143 of Defendant's Second Amended New Matter based upon a violation of Pennsylvania Rule of Civil Procedure 1019(a);
 - 7) A Demurrer to Count II of Defendant's Counterclaim. The Defendant, in Count II of the Counterclaim alleges an action for breach of oral contract. The Plaintiff alleges that claim is barred by the parol evidence rule and therefore fails to state a claim upon which relief may be granted;
 - 8) A Demurrer to Count III of Defendant's Counterclaim. Defendant's Count III Counterclaim alleges a breach of contract. The Plaintiff files a Demurrer to this Counterclaim once again arguing that this claim is based upon modifications to the original contract which are not supported by consideration. As such, the Plaintiff argues, this Counterclaim fails to state a claim upon which relief may be granted;
 - 9) A Demurrer to Count V of Defendant's Counterclaim. Defendant's Count V Counterclaim raises a cause of action for fraud. The Plaintiff alleges that the allegations in this claim are insufficient to establish a cause of action based upon fraud;
 - 10) A Demurrer to Count VI of Defendant's Counterclaim. Defendant's Count VI Counterclaim raises a cause of action of mutual mistake. Once again, the Plaintiff argues that the

allegations in this claim are insufficient to state a cause of action for mutual mistake;

- 11) A Demurrer to Count VII of Defendant's Counterclaim. The Plaintiff claims that the allegations in Defendant's Count VII Counterclaim for unjust enrichment are insufficient as a matter of law; and
- 12) A Demurrer to Counts VIII and IX of Defendant's Counterclaim. These counts allege fraud. The Plaintiff urges the Court to dismiss these counterclaims in that the factual allegations are insufficient as a matter of law.

Defendant's Preliminary Objections to Plaintiff's Preliminary Objections raise the following issues:

- 1) Whether the Plaintiff has erroneously asserted substantive defenses by preliminary objection;
- 2) Whether Plaintiff's Preliminary Objections 5, 7, 8, 10, 11 and 12 should be stricken for failure to accept as true all well-pled material and relevant facts;
- 3) Whether Plaintiff's Preliminary Objections 2 and 4 should be stricken as improper "speaking demurrers"; and
- 4) Whether Plaintiff's Preliminary Objections 6 and 9 fail to conform to law in that they fail to allege any basis justifying a preliminary objection.

Before specifically addressing the Preliminary Objections in this matter, I feel compelled to generally discuss the purpose of pleadings.

Pleadings serve the function of defining issues and giving notice to the opposing party of what the pleader intends to prove at trial so that the opposition may, in turn, prepare to meet such proof with its own evidence. *See generally* PA. R. CIV. P. 1019; *Kochinsky v. Indep. Pier Co., et al.*, 41 A.2d 409, 410-11 (Pa. Super. Ct. 1945). A pleading should inform the opposing party, with reasonable accuracy, of the nature and extent of the claim and should set forth concisely the material and issuable facts upon which the claim relies. *See Pike County Hotels Corp. v. Kiefer*, 396 A.2d 677 (Pa. Super. Ct. 1978). Pleadings, however, are misused when they are exalted greater than or equal to the substantive objectives of the litigation. *See McKay v. Beatty*, 35 A.2d 264 (Pa. 1944). The Pennsylvania Superior Court clearly stated this principle when they reasoned that

“[t]he niceties of procedure and pleading make fine intelligence games for lawyers but should never be used to deny ultimate justice”. *Godina v. Oswald*, 211 A.2d 91, 93 (Pa. Super. Ct. 1965). While it is true that the contractual issues underlying this litigation are complex, the gamesmanship taking place in the current pleadings only inhibits the Court’s ability to address the substantive rights of the respective parties. Accordingly, in order to insure that justice is accorded the parties to this law suit, the Rules of Civil Procedure, as they are applicable to the relevant preliminary objections, will be liberally construed to secure the just, speedy and inexpensive determination of this action. *See* PA. R. CIV. P. 126.

Initially, Defendant’s second, third and fourth Preliminary Objections to the Plaintiff’s Preliminary Objections are denied. Preliminary Objection number 2 does nothing more than argue against the validity of Plaintiff’s Preliminary Objections and is not a proper basis for a motion to strike. Similarly, Defendant’s Preliminary Objection number 4 to Plaintiff’s Preliminary Objections does nothing more than raise argument. It also will be denied.

Defendant’s Preliminary Objection number 3 to Plaintiff’s Preliminary Objections urges the Court to dismiss the Plaintiff’s Preliminary Objections in that they constitute an improper “speaking demurrer”. Pennsylvania law is clear that a demurrer cannot aver the existence of facts not apparent from the face of the challenged pleading. *Martin v. Commonwealth, Department of Transportation*, 556 A.2d 969, 971 (Pa. Commw. Ct. 1989). However, in reading the Plaintiff’s Preliminary Objections, I cannot find such an averment of facts. Regardless, in deciding Plaintiff’s Preliminary Objections, I will restrict myself to consideration of the Defendant’s New Matter and Counterclaim and will disregard any argument based upon factual allegations which are not properly set forth in either the Defendant’s Admissions to Plaintiff’s Complaint or Defendant’s New Matter and Counterclaim. With that clarification, Defendant’s Preliminary Objection number 3 to Plaintiff’s Preliminary Objections will be denied.

Defendant’s Preliminary Objection number 1 to Plaintiff’s Preliminary Objections deserves greater consideration. In this preliminary objection, the Defendant argues that Plaintiff’s Preliminary Objections improperly raise substantive defenses by preliminary

objection. Specifically, the Defendant argues that the Plaintiff's Demurrer based upon the parol evidence rule is an affirmative defense and not a proper consideration for a preliminary objection.

The grounds of a preliminary objection are expressly limited by the Rules of Civil Procedure. Rule 1028 of the Pennsylvania Rules of Civil Procedure identifies six (6) specific areas in which preliminary objections may be filed. Pennsylvania courts have determined that the limitations imposed by the Rules of Civil Procedure prohibit preliminary objections from raising the legality of a contract, *DeAngelis v. Laughlin*, 258 A.2d 615, 615 (1969); issues of damages, *Harker v. Farmers Trust Co.*, 73 Pa. D & C. 2d 217, 221 (1975); misidentification of parties, *Trevellini v. West Realty Co.*, 432 A.2d 1062, 1064 (Pa. Super. Ct. 1981); the invalidity of a foreign judgment, *Glens Falls Nat. Bank & Trust Co. v. Cunningham*, 41 Pa. D & C. 2d 491, 495 (1967 or 1965); and, generally, any affirmative defenses such as sovereign immunity, fraud or statute of limitations, *Jacobs v. Merymead Farm, Inc.*, 799 A.2d 980 (Pa. Commw. Court, 2002); *Kyle v. McNamara and Criste*, 487 A.2d 814, 816 (Pa. 1985); *Logan v. Lillie*, 728 A.2d 995 (Pa. Cmwlth. Ct. 1999).

The parol evidence rule bars admission of oral testimony that purports to explain or vary the terms of an integrated written agreement. *Brinich v. Jencka*, 757 A.2d 388, 400 (Pa. Super. Ct. 2000). The Pennsylvania Supreme Court has previously opined that despite its name, the parol evidence rule is not a rule of evidence but rather a rule of substantive law. *See Sokoloff v. Strict*, 172 A.2d 302, 303 (Pa. 1961). The Plaintiff, relying on the *Sokoloff* Opinion, argues that it is proper to raise the parol evidence rule as a preliminary objection. Indeed, the *Sokoloff* Court found that the parol evidence rule is a question that may be raised by preliminary objection in advance of trial. *See Id.*

Since the *Sokoloff* Opinion, the Pennsylvania Rules of Civil Procedure have been significantly amended. A 1991 Amendment to PA. R. CIV. P. 1028 specifically enumerated the objections to pleadings which may be raised by the means of a preliminary objection. Included in the enumerated grounds is authority for a party to file a preliminary objection raising the legal insufficiency of a pleading (demurrer). PA. R. CIV. P. 1028(a)(4). Moreover, the Explanatory Comment to the 1991 Amendment to Rule 1028 explains that "[t]he

substance of most of the existing grounds available for preliminary objections is continued without change.” Explanatory Comment—1991, PA. R. CIV. P. 1017.² Accordingly, I fail to find any reason why the Sokoloff Opinion should not be followed.³ Defendant’s Preliminary Objection number 1 is, therefore, dismissed.

Continued to next issue (4/25/2003)

²The 1991 Amendment to the Pennsylvania Rules of Civil Procedure transferred a portion of former Rule 1017 to be included in current Rule 1028 so that the procedural law governing preliminary objections could be found in one rule rather than two. The current Explanatory Comment to Rule 1028, therefore, references the Explanatory Comment to current Rule 1017.

³*See also H.C.B. Contractors v. Liberty Place Hotel Assoc.*, 652 A.2d 1278 (Pa. 1995), which is a post-amendment case in which the Pennsylvania Supreme Court affirmed the Trial Court’s grant of a demurrer based upon the parol evidence rule.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1319 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point at a corner of Lot No. 451 on the subdivision plan hereinafter referred to; thence along Lot No. 451, North 60 degrees 03 minutes 07 seconds West, 95.00 feet to a point at a corner of Lot No. 461; thence along Lot Nos. 461 and 460, North 29 degrees 56 minutes 53 seconds East, 20.00 feet to a point at corner of Lot No. 453; thence along Lot No. 453, South 60 degrees 03 minutes 07 seconds East, 95.00 feet to a point along the curb line of a parking area as shown on the subdivision plan hereinafter referred to; thence along said parking area, South 29 degrees 56 minutes 53 seconds West, 20.00 feet to a point at a corner of Lot No. 451, the place of BEGINNING.

CONTAINING 1,900 square feet.

BEING Lot No. 452 on a plan of lots prepared by Group Hanover, Inc. which said plan is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 72, Page 23.

TITLE TO SAID PREMISES IS VESTED IN Travis Mann and Marlena Mann, their heirs and assigns by Deed from Appler Properties, LLLP dated 8/30/2000, recorded 10/16/2000, in Record Book 2145, Page 176.

Premises being: 83 South Gala, Littlestown, PA 17340

Tax Parcel No. 4-38

SEIZED and taken into execution as the property of **Travis & Marlena Mann** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 2, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost,

whichever may be the higher, shall be paid forthwith to the Sheriff.

4/4, 11 & 17

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1315 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN unit in the property known, named and identified in the declaration referred to below as South Branch Estates, located in the Township of Oxford, Adams County, Pennsylvania which has heretofore been submitted to the provisions of the Pennsylvania Uniform Condominium Act. 68 P.S.A. Section 3101, et seq., by the recording in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, of a Land Development Plan dated October 6, 1995, last revised December 14, 1995 and recorded in Book 69, page 23 (together with all amendments and supplements thereto recorded on or before the date hereto) being all designated in such plan as Unit No. 3 as more fully bounded and described in such plan, together with a proportionate undivided interest in the Common Elements as defined in a Declaration Plan recorded in the Office of the Recorder of Deeds, in and for York County, PA in Record Book 1271, page 34.

Tax Parcel #1-52

TITLE TO SAID PREMISES IS VESTED IN Steven E. Feldner by Deed from Philip R. Garland, T/D/B/A Garland Construction dated 3/9/1998, recorded 3/13/1998, in Record Book 1536, Page 325.

Premises being: 6 Fiddler Drive, New Oxford, PA 17350

Tax Parcel No. #1-52

SEIZED and taken into execution as the property of **Steven E. Feldner** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 2, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/4, 11 & 17

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-12 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot of ground with improvements thereon, situate, lying and being in the Borough of New Oxford, County of Adams and State of Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a corner of Orange and High Streets, on the South West side of W.M.R.R. thence along said High Street North 71 degrees East, about 120 feet to center of said Railroad; thence along said railroad westward to Orange Street, thence along said Orange Street, South 19 degrees East, 150 feet to the place of BEGINNING.

BEING KNOWN AS 130 West High Street, New Oxford, PA 17350

Property ID No.: 4-95

TITLE TO SAID PREMISES IS VESTED IN Thomas Morgan, by Deed from Donald A. Bixler, dated 08/31/01, recorded 09/04/01, in Deed Book 2393, Page 304.

SEIZED and taken into execution as the property of **Thomas Morgan** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 16, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/11, 17 & 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-966 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an existing railroad spike near the Western right-of-way line of Mt. Carmel Road (T-312) at the Northeast corner of land now or formerly of Connie Reamer North 68 degrees 07 minutes 00 seconds West, 176.62 feet to an existing steel rod; thence by the same and through an existing pipe set back 12 feet from the end of this course South 43 degrees 04 minutes 00 seconds West, 134.82 feet to a point in run on line of land now or formerly of Harry Jenkins, Sr.; thence in and along said run and along land now or formerly of Harry Jenkins, Sr. North 77 degrees 44 minutes 20 seconds West, 138.44 feet to an existing pipe in run; thence by same North 88 degrees 08 minutes 30 seconds West, 186.77 feet to an existing pipe in run; thence by same North 81 degrees 53 minutes 00 seconds West, 85.72 feet to a steel rod at corner of Lot No. 2 on the hereinafter described subdivision plan; thence by said Lot No. 2 North 20 degrees 59 minutes 40 seconds East, 147.67 feet to a steel rod; thence by same North 89 degrees 41 minutes 35 seconds East, 195 feet to a railroad spike; thence by same South 77 degrees 54 minutes 15 seconds East, 276.21 feet to a steel rod; thence by same South 62 degrees 13 minutes 10 seconds East, 165 feet to a steel rod on line of land now or formerly of El Vista Orchards, Inc. South 03 degrees 35 minutes 50 seconds West, 19.07 feet to a steel rod near the Western right-of-way line of Mt. Carmel Road (T-312), the point of BEGINNING.

CONTAINING 1.635 acres

The above description is taken from a Subdivision Plan for Dorcas G. Charney dated August 30, 1993, revised July 20, 1995 and September 25, 1995, prepared by Adams County Surveyors, which Plan is recorded in the Office of the Recorder of Deeds, Adams County, Pennsylvania in Plat Book 68, at Page 15. The tract herein conveyed is designated on said Plan as Lot No. 1.

BEING No. 619 Mt. Carmel Road.
TAX PARCEL NUMBER C12-17A

TITLE TO SAID PREMISES IS VESTED IN William R. Grim, Jr., unmarried and Christina L. Ginneman, unmarried, as joint tenants with the right of survivorship by Deed from Iris J. Albaugh, now Iris J. Rodgers, joined by her husband William Rodgers dated 9/29/2000 and recorded 10/12/2000 in Record Book 2143 Page 171.

Premises being: 619 Mt. Carmel Road, Orrtanna, PA 17353

Tax Parcel No. C12-17A

SEIZED and taken into execution as the property of William R. Grim, Jr. & Christina L. Ginneman and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 2, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/4, 11 & 17

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1301 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN parcel of ground situate, lying and being in the Borough of York Springs, known as Lot No. 17 on a plan of lots of Apple Hill prepared by Morrow Engineering Company, New Bloomfield, Pennsylvania, drawing No. S-12-10, and drawing No. S-12-12, recorded in Plat Book 35, Page 82A, more fully bounded, limited and described as follows, to wit:

BEGINNING at a point on the Northeast corner of Lot 16 and Cider Drive, thence continuing along Cider Drive, a fifty (50) foot wide proposed right of wide. North twenty (20) degrees forty-three (43) minutes twenty-six (26) seconds West twenty (20) feet to a point at the corner of Lot No. 18, thence continuing along Lot No. 18 South sixty-nine (69) degrees sixteen (16) minutes thirty-

four (34) seconds West one hundred twenty and no hundredths (120.00) feet to a point at Lot No. 38, thence continuing along the same South twenty (20) degrees forty-three (43) minutes twenty-six (26) seconds East twenty (20) feet to a point at the corner of Lot No. 16, thence continuing along the same North sixty-nine (69) degrees sixteen (16) minutes thirty-four (34) seconds East one hundred twenty and no hundredths (120.00) feet to a point and place of BEGINNING.

Tax Parcel No. 42-2-72

BEING the premises of 107 Cider Drive, York Springs, PA 17372

SEIZED and taken into execution as the property of Travis Byers & Brandi Wilt and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 2, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/4, 11 & 17

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-52 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point in the centerline of an existing 12-foot wide gravel driveway (private) leading to Stoney Point Road (S.R. 1007) which point is North 80 degrees 19 minutes 00 seconds West 93.12 feet from an existing steel rod at the Northwestern corner of land now or formerly of Robert Swearman; thence running by other land of the Grantees and through a reference steel rod setback 17 feet from the start of this course South 04 degrees 06 minutes 00 seconds East 219.69 feet to a pipe; thence by land of the Grantors South 85 degrees 54 minutes 00 seconds West 200.00 feet to a copperweld rod; thence by the same and through a reference steel rod setback 21 feet from the end of this course North 04 degrees 08 minutes 00 seconds West 283.25 feet to a point in the centerline of the existing 12-foot gravel driveway (private); thence running in the centerline of the existing 12-foot gravel driveway (private) South 76 degrees 28 minutes 10 seconds East 209.86 feet to a point in the centerline of said gravel driveway, the point and place of BEGINNING. CONTAINING 1.155 acres.

The description was taken from a draft of survey prepared by J. Riley Redding, R.S., dated March 29, 1990 and recorded in Adams County Plat Book 55 at Page 73. The tract is Tract 2 on said plan of lots.

SUBJECT, NEVERTHELESS, to the obligation of the owner of this lot to share in the maintenance of the 12-foot private gravel road leading to Stoney Point Road.

TOGETHER WITH and SUBJECT TO the right of ingress, egress and regress across the land herein conveyed as well as across other land of the Grantors for access of the respective parties to and from Stoney Point Road (S.R. #10007). The present access is a 12-foot wide gravel driveway but the right-of-way across the land of the respective parties is a 50-foot wide right-of-way as shown on the aforementioned plan of lots.

BEING the same premises which Hugh W. Rinker, unmarried, James L. Rinker, unmarried and Fred S. Rinker,

unmarried by their deed dated October 12, 1992 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Record Book 656, Page 221, sold and conveyed to Thomas R. Benton and Judy F. Benton, Husband and Wife, Grantors herein.

Being premises more commonly known as 564 Stoney Point Road, East Berlin, Pennsylvania 17316.

Tax ID No. K7-10B

SEIZED and taken into execution as the property of **Thomas R. Benton & Judy F. Benton** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 16, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/11, 17 & 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-3 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain unit in the property known, named and identified in the Declaration referred to below as South Branch Estates, located in the Township of Oxford, Adams County, Pennsylvania which has heretofore been submitted to the provisions of the Pennsylvania Uniform Condominium Act, 68 P.S.A. Section 3101, et seq., by the recording in the Office of the Recorder of Deeds in and for Adams County, PA, of a land development plan dated October 6, 1995, last revised December 14, 1995 and recorded in Book 69, Page 23, together with all amendments and supplements thereto recorded on or before the date hereof being all designated in such plan as Unit No. 17 as more fully bounded and described in such plan, together with a proportionate undivided interest in the common elements as defined in a Declaration Plan recorded in

the Office of the Recorder of Deeds, in and for York County, PA in Record Book 1271, Page 34.

UNDER AND SUBJECT TO any and all covenants, conditions, restrictions, rights of way, easements and agreements of record, including (but not limited to) those continued in the instruments recorded in the aforesaid Recorder's Office in Record Book 69, Page 23.

TOGETHER WITH the limited common elements appurtenant as more fully shown of Plan 1271, Page 34.

Being known as 48 Fiddler Drive, New Oxford, PA 17350

Property ID No.: 1-52.017

TITLE TO SAID PREMISES IS VESTED IN Brian M. Bynaker and Stephany A. Mallette, by Deed from Philip R. Garland, trading and doing business as Garland Construction, dated 02/26/99, Recorded 03/04/99, in Deed Book 1778, Page 174.

SEIZED and taken into execution as the property of **Brian M. Bynaker & Stephanie A. Mallette a/k/a Stephany A. Mallette** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 16, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/11, 17 & 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-293 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate, lying and being in the Borough of Boonerville, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a point in the center line of Township Road T-440, at the Southernmost corner of Lot No. 5, now or formerly of Charlotte Long; thence in the center line of Township Road T-440, South 45 degrees 40 minutes 45 seconds West, 46.30 feet to a point at corner of land now or formerly of Raymond E. Gebhart, Jr.; thence by said land now or formerly of Raymond E. Gebhart, Jr., North 44 degrees 19 minutes 15 seconds West, 50.00 feet to a steel pin; thence by the same, on a curve to the left, having a radius of 886.70 feet an arc distance of 49.99 feet and a bearing and chord distance of North 45 degrees 56 minutes 09 seconds West, 49.98 feet to a steel pin; thence by same, North 47 degrees 33 minutes 03 seconds West, 22.02 feet to a steel pin; thence by same, North 45 degrees 40 minutes 45 seconds East, 48.95 feet to a steel pin at corner of Lot No. 5, aforesaid; thence by said Lot No. 5, and for a portion of this course running through the center of a party wall separating Lot Nos. 4 and 5, and passing through a steel pin set back 25.00 feet from the next mentioned point, South 44 degrees 19 minutes 15 seconds East, 121.94 feet to a point, the place of BEGINNING.

CONTAINING 5,714 square feet

Tax Parcel Map #6, Parcel #38

Being Known As: 7A Pin Oak Drive, Gettysburg, PA 17325

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 16, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/11, 17 & 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1017 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING for a corner at a point in the center line of Pennsylvania Legislative Route No. 01003 at other lands now or formerly of Robert J. Zoeller and Doris B. Zoeller, his wife, said point is fifty-eight (58) degrees thirty-one (31) minutes West one hundred seventy-two and forty hundredths (172.40) feet from the center line of Pennsylvania State Highway Route No. 54 as measured along the center line of Legislative Route No. 01003, aforesaid; thence along other land now or formerly of Robert J. Zoeller and Doris B. Zoeller, his wife, and through a steel pin set twenty-five (25) feet from the place of beginning, North twenty-five (25) degrees twenty-nine (29) minutes West, one hundred sixty and ninety-eight hundredths (160.98) feet to a steel pin at land now or formerly of Hamm; thence along said last mentioned land, North sixty-one (61) degrees thirty-six (36) minutes East, one hundred fifty (150) feet to a steel pin at land now or formerly of Norman Wolf; thence along said last mentioned land and through a planted stone sixteen and ten hundredths (16.10) feet from the terminus of this line, South twenty-five (25) degrees fifteen (15) minutes East one hundred fifty-two and ninety-five hundredths (152.95) feet to a point in the center line of Pennsylvania Legislative Route No. 01003, aforesaid; thence in, along and through the center line of said Pennsylvania Legislative Route No. 01003 South fifty-eight (58) degrees thirty-one minutes West, one hundred fifty (150) feet to the point and place of BEGINNING. The above description was taken from a survey prepared by Donald E. Worley, Registered Surveyor, dated August 2, 1971.

Map and Parcel ID: (17)K10, Parcel 19D

Being known as: 20 Pine Run Road, New Oxford, PA 17350

SEIZED and taken into execution as the property of **Daniel J. Fleischman** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 16, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/11, 17 & 25

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 ROSA K. ALTLAND, DEC'D
Late of Berwick Township, Adams County, Pennsylvania

Co-Executors: Frederick H. Altland, 2360 Fairway Drive, York, PA 17404; Charles R. Altland, 549 Maple Grove Road, Abbottstown, PA 17301

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

ESTATE OF MARIE GERTRUDE AULHOUSE, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Paul Gary Aulhouse, 702 West Poplar Street, York, PA 17404; Samuel Jan Aulhouse, 4320 Walnut Grove Road, Taneytown, MD 21787

Attorney: David K. James, III, Esq., 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF EDNA L. BAIR, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Adams County National Bank, Attn: Gary R. Bennett, Sr., Vice President/Sr. Trust Officer, 2 Chambersburg St., Gettysburg, PA 17325

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

ESTATE OF MARY R. BARNHART, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Executrices: Elizabeth C. Zinn, 129A Race Track Road, Hanover, PA 17331; Janet L. Wayne, 114 Greystone Road, York, PA 17402

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

ESTATE OF LEANNA I. FORD, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executor: Donald R. Caskey, 4520 Chester Ave., Philadelphia, PA 19143

Attorney: Matthew R. Battersby, Esq., P.O. Box 215, 20 West Main Street, Fairfield, PA 17320

ESTATE OF ETHLYN C. HAINES, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Faith T. Sylvester, 619 Plum Run Drive, West Chester, PA 19382

Attorney: Catherine J. Gault, Esq., 31 S. Washington Street, Gettysburg, PA 17325-2112

ESTATE OF DORIS M. LITTLE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Gail A. Bittle, 5522 Hayloft Court, Frederick, MD 21703

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle St., Hanover, PA 17331

ESTATE OF RAYMOND F. LOSMAN a/k/a RAY F. LOSMAN, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Susan M. Snyder, 2253 Dover Court, Mechanicsburg, PA 17055; Lester Bucher, Jr., 595 Berlin Road, New Oxford, PA 17350

Attorney: Walton V. Davis, Esq., 63 West High St., Gettysburg, PA 17325

ESTATE OF ROY E. NELSON, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executor: Frederick R. Nelson, Box 191, 105 Rice Ave., Biglerville, PA 17307

Attorney: John R. White, Campbell & White, 112 Baltimore St., Gettysburg, PA 17325

ESTATE OF MARGARET M. STOUGH, DEC'D

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

Executrix: Mary Ann Shriver, 757 Lingg Road, New Oxford, PA 17350

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

SECOND PUBLICATION

ESTATE OF PHILIP D. DUNCAN, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Executrix: Janet M. George, 1636 Emig Road, Spring Grove, PA 17362

Attorney: Catherine J. Gault, Esq., 31 S. Washington Street, Gettysburg, PA 17325

ESTATE OF MILDRED MARGIE HOFFMAN, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Co-Executors: Joanne Hinkle, 445 Baltimore Rd., York Springs, PA 17372; Vickie Rex, 1341 Gablers Rd., Gardners, PA 17324

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

ESTATE OF STELLA B. SCHWARTZ, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Executrix: Ellen Mickey, 115 Knoxlyn Road, Gettysburg, PA 17325

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

ESTATE OF MARY H. STAUB a/k/a MARY A. STAUB, DEC'D

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

Executors: Clair W. Haar, 575 A. Cedar Road, New Oxford, PA 17350; Joan L. Huffman, 345 Cedar Ridge Road, New Oxford, PA 17350

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

THIRD PUBLICATION

ESTATE OF MARY E. AYERS, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Michael K. Ayers, 53 Prince Street, Littlestown, PA 17340; Marcia A. Hewitt, 312 Prince Street, Littlestown, PA 17340

Attorney: David K. James, III, Esq., 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF THOMAS ALLEN BLOOMFIELD, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Administrator: Beth L. Bloomfield, 11 Sherman Drive, East Berlin, PA 17316

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

ESTATE OF MARY D. HANER, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: James B. Newman, 224 Ewell Avenue, Gettysburg, PA 17325

Attorney: Walton V. Davis, 63 West High Street, Gettysburg, PA 17325

(continued on page 8)

THIRD PUBLICATION (continued)

ESTATE OF BERNICE K. IRVIN a/k/a
BERNICE M. IRVIN, DEC'D

Late of Cumberland Township, Adams
County, Pennsylvania

Executors: Susanne I. Koffsky, 4708
Windom Place, N.W., Washington,
D.C. 20016; James J. Irvin, 2909
Wilmar Drive, Dover, PA 17315

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

ESTATE OF CATHERINE K. PRICE,
DEC'D

Late of the Borough of McSherrystown,
Adams County, Pennsylvania

Executor: Patrick L. Price, 2419
Pondside Terrace, Silver Spring, MD
20906

Attorney: Walton V. Davis, 63 West
High Street, Gettysburg, PA 17325

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution,
Judgment No. 03-S-46 issuing out of the
Court of Common Pleas of Adams
County, and to me directed, will be ex-
posed to Public Sale on Friday, the 6th
day of June, 2003, at 10:00 o'clock in the
forenoon at the Courthouse in the
Borough of Gettysburg, Adams County,
PA, the following Real Estate, viz.:

ALL that lot or ground situate, lying
and being in Mt. Pleasant Township,
Adams County, Pennsylvania, more par-
ticularly bounded and described as fol-
lows, to wit:

BEGINNING at a point in the center of
Township Road No. T-478, designated
the Hill Road, at the Northwestern corner
of Lot No. 124 now or formerly owned by
Rickey Lee Martin; thence by said Martin
lot, South fifty-nine (59) degrees fifty-
eight (58) minutes twenty-six (26) sec-
onds East, two hundred thirty (230) feet;
thence by other lands now or formerly of
George A. Smith and Margaret H. Smith,
South thirty (30) degrees one (01)
minute thirty-four (34) seconds West,
one hundred seventy-three and seventy-
four hundredths (173.74) feet to a point
at line of lands now or formerly of W. H.
Meyers; thence by said Meyers land,
North fifty (50) degrees thirty-six (36)
minutes twelve (12) seconds West, one
hundred twenty-six and seventeen hun-
dredths (126.17) feet; thence by same,
North sixty-eight (68) degrees fifty-eight
(58) minutes five (05) seconds West, one
hundred six and eighty-three hundredths
(106.83) feet to a point in the center of
said Township Road No. T-478; thence
along the center of said Township Road
No. T-478, North thirty (30) degrees one
(01) minute thirty-four (34) seconds East,

one hundred sixty-nine and ninety hun-
dredths (169.90) feet to the point in the
center of said Township Road No. T-478,
the place of BEGINNING, CONTAINING
37,396 square feet.

The above description is taken from a
draft of survey made May 25, 1973, by
J. H. Rife, R.E., designated File No.
C-580 (Section 2), revised July 3, 1973,
on which said lot is designated as Lot
No. 123, which draft was recorded as a
Final Plan of Subdivision of George A.
Smith in the Office of the Recorder of
Deeds of Adams County, Pennsylvania,
in Plat Book 3 at page 12.

IT BEING the same tract of land which
George A. Smith and Margaret H. Smith,
husband and wife, by their deed dated
October 11, 1977 and recorded in the
Recorder of Deeds Office of Adams
County, Pennsylvania in Deed Book 333,
page 1108, granted and conveyed unto
Julie A. Clabaugh, Julie A. Ripple, who
joined by her husband Chester G. Ripple
are Grantors herein.

Premises being: 105 Hill Road, Hanover,
PA 17331

Tax Parcel No. J13-57J

SEIZED and taken into execution as
the property of **David W. Hahn, Sr. a/k/a
David W. Hahn & Sandra D. Hahn** and
to be sold by me.

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

TO ALL PARTIES IN INTEREST AND

CLAIMANTS: You are notified that a
schedule of distribution will be filed by the
Sheriff in his office on June 30, 2003, and
distribution will be made in accordance
with said schedule, unless exceptions are
filed thereto within 10 days after the filing
thereof. Purchaser must settle for prop-
erty 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.

4/17, 25 & 5/2

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution,
Judgment No. 03-S-24 issuing out of the
Court of Common Pleas of Adams
County, and to me directed, will be ex-
posed to Public Sale on Friday, the 23rd
day of May, 2003, at 10:00 o'clock in the
forenoon at the Courthouse in the
Borough of Gettysburg, Adams County,
PA, the following Real Estate, viz.:

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

BEGINNING at an existing iron pin at
the Western Edge of Legislative Route
01006, at corner of land now or formerly
of Jack D. Showers; thence in said
Legislative Route 01006, South 22
degrees 37 minutes 00 seconds East,
210.00 feet to a railroad spike in the
Western half of Legislative Route 01006,
at corner of land now or formerly of
Bruce W. Smith and Clara S. Smith;
thence by said land of Bruce W. Smith, et
al, South 81 degrees 15 minutes West,
251.64 feet to a point on line of land now
or formerly of Roy S. Hohenschildt;
thence by land of Hohenschildt and land
of Baumgardner, North 14 degrees 21
minutes 22 seconds West, 204.86 feet to
an existing iron pin at corner of land now
or formerly of Jack D. Showers, afore-
said; thence by said land of Jack D.
Showers, North 81 degrees 15 minutes
00 seconds East, 221.32 feet to an exist-
ing iron pin at the Western edge of
Legislative Route 01006, to the place of
BEGINNING. CONTAINING 1.107 Acres.

The above description was taken from
a draft of survey prepared by Boyer
Surveys, dated April 23, 1979, which is
recorded in the Office of the Recorder of
Deeds of Adams County, Pennsylvania,
in Plat Book 28 at Page 3.

SEIZED and taken into execution as
the property of **Freeman G. Kuhn, Jr. &
Sharon A. Kuhn** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND

CLAIMANTS: You are notified that a
schedule of distribution will be filed by the
Sheriff in his office on June 16, 2003, and
distribution will be made in accordance
with said schedule, unless exceptions are
filed thereto within 10 days after the filing
thereof. Purchaser must settle for prop-
erty 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.

4/17, 25 & 5/2

Adams County Legal Journal

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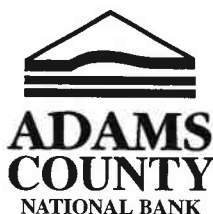
No. 48, pp. 262-272

IN THIS ISSUE

PAVEX VS. ANGELOZZI

This opinion continued from last issue (4/17/2003)

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-80 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 6th day of June, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT TRACT of land situate, lying and being in the Borough of Littlestown, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point at the corner of Prince Street and Windsor Street, thence along the Northwest side of aforesaid Windsor Street South sixty (60) degrees, eighteen (18) minutes, twenty (20) seconds West, ninety-five (95) feet to a point on an alley; thence along said alley, North twenty-nine (29) degrees, forty-one (41) minutes, forty (40) seconds West, fifty-three and six-tenths (53.6) feet to a point at corner of Lot No. 76; thence along said Lot No. 76, North sixty (60) degrees, eighteen (18) minutes, twenty (20) seconds East, ninety-five (95) feet to a point on the Southwest side of Prince Street; thence along said Prince Street, South twenty-nine (29) degrees, forty-one (41) minutes, forty (40) seconds East, fifty-three and six-tenths (53.6) feet to the place of BEGINNING.

Vested by Deed, dated 10/31/96, given by Jeanne W. Bowser, widow to Gerhard Noerr and Janet V. Noerr, husband and wife, as tenants by the entireties and recorded 11/4/96 in Book: 1285 Page: 316.

Premises being: 404 Prince Street, Littlestown, PA 17340

Tax Parcel No. 5-30

SEIZED and taken into execution as the property of **Gerhard Noerr & Janet V. Noerr** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 30, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/17, 25 & 5/2

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-12 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot of ground with improvements thereon, situate, lying and being in the Borough of New Oxford, County of Adams and State of Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a corner of Orange and High Streets, on the South West side of W.M.R.R. thence along said High Street North 71 degrees East, about 120 feet to center of said Railroad; thence along said railroad westward to Orange Street; thence along said Orange Street, South 19 degrees East, 150 feet to the place of BEGINNING.

BEING KNOWN AS 130 West High Street, New Oxford, PA 17350

Property ID No.: 4-95

TITLE TO SAID PREMISES IS VESTED IN Thomas Morgan, by Deed from Donald A. Bixler, dated 08/31/01, recorded 09/04/01, in Deed Book 2393, Page 304.

SEIZED and taken into execution as the property of **Thomas Morgan** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 16, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/11, 17 & 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-52 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point in the centerline of an existing 12-foot wide gravel driveway (private) leading to Stoney Point Road (S.R. 1007) which point is North 80 degrees 19 minutes 00 seconds West 93.12 feet from an existing steel rod at the Northwestern corner of land now or formerly of Robert Swearman; thence running by other land of the Grantees and through a reference steel rod setback 17 feet from the start of this course South 04 degrees 06 minutes 00 seconds East 219.69 feet to a pipe; thence by land of the Grantors South 85 degrees 54 minutes 00 seconds West 200.00 feet to a copperweld rod; thence by the same and through a reference steel rod setback 21 feet from the end of this course North 04 degrees 08 minutes 00 seconds West 283.25 feet to a point in the centerline of the existing 12-foot gravel driveway (private); thence running in the centerline of the existing 12-foot gravel driveway (private) South 76 degrees 28 minutes 10 seconds East 209.86 feet to a point in the centerline of said gravel driveway, the point and place of BEGINNING. CONTAINING 1.155 acres.

continued after opinion

PAVEX VS. ANGELOZZI

Continued from last issue (4/17/2003)

I will now turn to Plaintiff's Preliminary Objections. Preliminary Objections numbers 1 through 6 are attacks on the Defendant's New Matter. It appears that a number of these preliminary objections may have been prompted by the Defendant's use of captions interspersed among the Defendant's New Matter paragraphs. The Court finds these captions to be repetitive, inconsequential and unnecessary to the pleading. Although surplusage in a pleading may generally be treated as harmless and ignored, *Trustees of First Presbyterian Church v. Oliver Tyrone Corp.*, 72 Pa. D & C. 2d 410, 434 (1974), where immaterial and impertinent averments in a pleading create confusion, they may be stricken. *Bovard v. Ohio Farmers Ins. Co.*, 64 Pa. D & C. 316, 317 (1948). In this instance, the Court will strike the captions in Defendant's pleading.

Moving beyond Defendant's captioning in their New Matter, we find that the Second Amended New Matter contains approximately one hundred thirty-two (132) paragraphs concluding with ten (10) paragraphs which raise affirmative defenses in a conclusive manner. These final paragraphs appear to be a laundry list of every available affirmative defense in a breach of contract action. The Court is not impressed with the shotgun style of advocacy and wonders whether pleading in such a manner is an indication of the lack of any real issues. Nevertheless, the Court will rule upon each of the affirmative defenses raised by the Defendant.

The doctrines of laches and estoppel are equitable doctrines. *See Zitelli v. Dermatology Educ. and Research Found.*, 633 A.2d 134, 137 (Pa. 1993); *Beech v. Ragnar Benson, Inc.*, 587 A.2d 335, 337 (Pa. Super. Ct. 1991). They have no place in the current action and, therefore, will be stricken.

This Court's review of the Defendant's pleading fails to disclose any factual averments supporting the allegation of the doctrine of illegality and, therefore, that allegation will be stricken. *See generally American Ass'n. of Meat Processors v. Cas. Reciprocal Exch.*, 588 A.2d 491 (Pa. 1991).

Defendant's claim that the doctrine of payment is applicable is wholly frivolous. Plaintiff's cause of action is based upon a failure of performance rather than a lack of the Defendant to make any required payment. This allegation will be stricken.

The Defendant has failed to specifically aver any factual allegations supporting a defense by the doctrine of release. Since the material facts upon which a defense is based must be stated in a concise and summary form, PA. R. CIV. P. 1019(a), this allegation will be stricken.

The Defendant also raises the affirmative defense of fraud. Fraud is required to be pled with particularity. Sufficient facts must be set forth which will permit an inference that the claim is not without foundation or offered to harass the opposing party and to delay the pleader's own obligation. *In Re Estate of Schofield*, 477 A.2d 473, 477 (Pa. 1984); PA. R. CIV. P. 1019(b). In alleging the defense of fraud, two conditions must be met: (1) the pleadings must adequately explain the nature of the claim to the opposing party so as to permit the preparation of a defense and (2) the pleadings must be sufficient to convince the Court that the averments are not merely subterfuge. *New York State Elec. and Gas Corp. v. Westinghouse Elec. Corp.* 564 A.2d 919, 927 (Pa. Super. Ct. 1989). A bald assertion of fraud is insufficient. *See In Re Estate of Schofield*, 477 A.2d at 480. Defendant's allegations are insufficient in this regard and will be stricken.

Similarly, I find that the affirmative defense of impossibility of performance and consent are alleged in a conclusive fashion and not supported by the allegations in the Defendant's New Matter. Therefore, they will be stricken.

Finally, although the Defendant's affirmative defenses of failure of consideration and justification may be applicable, the factual allegations supporting these defenses are lost in the quagmire of Defendant's total pleading. Since the factual basis for these particular defenses is not clearly and concisely stated in Defendant's Complaint, they too will be stricken.

Accordingly, the Defendant's entire New Matter, in its current state, will be stricken. The Defendant will be given the opportunity to file a new matter which is concisely stated pursuant to the Pennsylvania Rules of Civil Procedure. Counsel, however, is

cautioned concerning the requirements of PA. R. CIV. P. 1023.1, which were made effective by the Pennsylvania Supreme Court on July 1, 2002.⁴

Although the ruling above strikes Defendant's New Matter thereby making it unnecessary to discuss all the issues raised by Plaintiff's Preliminary Objections, I feel compelled to further address two (2) of those issues so as to avoid duplicity of preliminary objections in future pleadings.

The Plaintiff argues that a number of the Defendant's averments are barred by application of the parol evidence rule. The Pennsylvania Supreme Court has succinctly enunciated that:

[w]here the alleged prior or contemporaneous oral representations or agreements concern a subject which is specifically dealt with in the written contract, and the written contract covers or purports to cover the entire agreement of the parties, (footnote omitted) the law is ...well settled that in the absence of fraud, accident or mistake the alleged oral representations are merged in or superseded by the subsequent written contract, and parol evidence to vary, modify, or supersede the written contract is inadmissible in evidence [citation omitted].

Nicolella v. Palmer, 248 A.2d 20, 22-23 (Pa. 1968). Whether a party or parties intend a written document to cover the entire agreement of the parties, or in other words to be integrated, is determined by an examination of the content of the writing when the contract's language is clear and unambiguous. *Chamberlin v. Chamberlin*, 693 A.2d 970, 972 (Pa. Super. Ct. 1997). When a claim is based upon an oral declaration or understanding of a subject that is addressed in a written contract, parol evidence is presumptively barred. *See generally Kehr Packages, Inc. v. Fidelity Bank, Nat'l. Ass'n.*, 710 A.2d 1169 (Pa. Super. Ct. 1998). The determination on whether a writing

⁴PA. R. CIV. P. 1023.1 requires every pleading to be signed by the Attorney of Record "in the attorney's individual name". By signing the document, the attorney is indicating, *inter alia*, that the "claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification or reversal of existing law or the establishment of new law...". PA. R. CIV. P. 1023.1(c)(2). The Rule later provides that the Court may impose appropriate sanctions upon any attorneys found to be in violation of the Rule.

is “integrated” or the final and complete expression of the parties’ agreement is for the Court to determine as a matter of law. *Walker v. Saricks*, 63 A.2d 9, 11 (Pa. 1949); *Haagen v. Patton*, 164 A.2d 33, 35 (Pa. Super. Ct. 1960).

Instantly, a copy of the contract which is the subject of this litigation is attached to Plaintiff’s Complaint. The Defendant admits in Paragraph 4 of his Second Amended Answer, New Matter and Counterclaim that he “mechanically signed and returned by fax the signature page” of the contract which is attached to Plaintiff’s Complaint. See Def.’s Second Amended Answer, New Matter and Counterclaims at ¶ 4. That contract provides in relevant part that:

The Sub-contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

Pl.’s Compl. at Exhibit B at Article 1.1. Thus, it is clear that the language of this particular contract unequivocally sets forth the intent of the parties to include all terms of the contract in the written agreement.

Even though the contract includes an integration clause, parol evidence is admissible when a document reflects an unclear purpose or contains ambiguous terms. If a contract contains ambiguous terms, a Court may admit extrinsic evidence to explain but not vary those terms. *West Conshohocken Restaurant Assoc., Inc. v. Flanigan*, 737 A.2d 1245, 1248 (Pa. Super. Ct. 1999). On the other hand, if a contract contains unambiguous terms, a Court may not consider extrinsic evidence when reviewing its terms. *Kelaco v. Davis & McKean Gen. Partnership*, 743 A.2d 525, 528 (Pa. Super. Ct. 1999). It becomes important, therefore, to understand the nature of the extrinsic evidence that the Defendant relies upon in his new matter.

In Paragraph 30 of Defendant’s Second Amended Answer, New Matter and Counterclaim, it is alleged that the parties orally agreed that the Defendant would break up mass rock for \$4.00 per cubic yard, trench rock for \$15.00 per cubic yard and break both into pieces of two or three-foot size. Def.’s Second Amended Answer, New Matter and Counterclaim at ¶ 30. The written contract, however, unambiguously states:

All trench rock will be shot to a size of 12" minus; all boulders will be shot to a size of 48" minus in any dimension; the basis of payment is \$4.50 per cubic yard for ledge rock, \$15.00 per cubic yard for trench rock and no charge for boulder rock.

Pl.'s Compl. at Exhibit B. This language is clear and concise as to the type of rock blasted, the size to which it will be shot and the payment terms. The Defendant, therefore, cannot raise a defense, or cause of action, based upon oral terms contrary to this clear and concise language. Thus, as a matter of substantive law, the Defendant may not raise issues, as currently set forth in his pleading, arising from the alleged October 6, 2000, oral discussions.

The entire flavor of Defendant's pleading attempts to evade, circumvent and nullify the parol evidence rule through allegations raising implications of mistake, accident and fraud. Defendant once again takes a shotgun approach in his effort to avoid the restrictions of the parol evidence rule.

It is true that parol evidence may be admissible to show fraud, accident or mistake to vary the terms of a written contract. *Nimick v. Shuty*, 655 A.2d 132, 137 (Pa. Super. Ct. 1995). Defendant's claims of accidents and mistakes arise from Defendant's allegations that the Plaintiff did not allow Defendant adequate time to exercise the type of caution normally used when finalizing the contract. Def.'s Second Amended Answer, New Matter and Counterclaim, at ¶ 40. Defendant essentially argues that he signed a written contract that contained terms contrary to an alleged oral contract because he did not take the time to read the allegedly contradictory terms. These arguments, however, do not provide the Defendant any relief. "[I]t is of no consequence to say that [an agreement] was signed by [a party] 'in...haste and excitement...' and 'does not contain an agreement as he made it'. Such allegations are totally insufficient to set aside written agreements." *Reilly v. Daly*, 28 A. 493, 494 (Pa. 1894). Likewise, if a party who can read a document chooses not to do so before signing it, they receive no protection at equity or law. *Greenfield's Estate*, 14 Pa. 489, 496 (1850). Although these cases are somewhat dated, the Defendant has not cited any authority to the contrary. I find the reasoning of these opinions to be sound and, therefore, they are adopted.

Similarly, the Defendant's claim of fraud is insufficient to escape the provisions of the parol evidence rule. The controlling precedent of the Supreme Court in *Bardwell v. Willis Co.*, 100 A.2d 102 (Pa. 1953) as reasserted in *Nicolella, supra*, and *H.C.B. Contractors v. Liberty Place Hotel Assoc.*, 652 A.2d 1278 (Pa. 1995), precludes the Defendant from relying upon fraud as a means to circumvent the parol evidence rule. Each of those cases, like the present case, involved contractors who claimed they had been fraudulently induced to enter into construction contracts. In all three cases the Court held that where a pleading simply alleges that fraudulent representations were made during the formation of the contract, it is insufficient to defeat the limitations of the parol evidence rule when the representations are specifically dealt with in the written contract. Rather, in order to avoid the prohibitions of the parol evidence rule it is necessary to both allege and prove that there was fraud in the omission of particular terms of an agreement.

There is not the slightest doubt that if plaintiffs had merely averred the falsity of the alleged oral representations, parol evidence thereof would have been inadmissible. Does the fact that plaintiffs further averred that these oral representations were *fraudulently* made without averring that they were *fraudulently* or by accident or mistake *omitted* from the subsequent complete written contract suffice to make the testimony admissible? The answer to this question is 'No'; if it were otherwise the parol evidence rule would become a mockery, because all a party to the written contract would have to do to avoid, modify or nullify it would be to aver (and prove) that the false representations were *fraudulently* made.

H.C.B. Contractors, 652 A.2d at 1279, quoting *Nicolella*, 248 A.2d at 22-23. Similarly, Defendant's attempt to argue fraud is insufficient.

For the foregoing reasons, the parol evidence rule prohibits any reference to the October 6, 2000, oral discussions.

Plaintiff's Preliminary Objections also address Defendant's allegations of a subsequent modification of the contract in question. Clearly, parol evidence only bars prior or contemporaneous oral agreements, not subsequent ones. *Nicolella*, 248 A.2d at 23. However, any subsequent modification must be founded upon a valid

consideration. *Nat'l Bank of Fayette County v. Valentich*, 22 A.2d 724, 726 (Pa. 1941). Consideration may be implied from the parties' mutual assent to the modification. *See Empire Properties, Inc. v. Equireal, Inc.*, 674 A.2d 297, 302 (Pa. Super. Ct. 1996).

Instantly, Defendant claims that modifications to the written contract were supported by the following consideration:

- 1) The Plaintiff agreed to provide the Defendant with additional work pursuant to the revised terms;
- 2) The Defendant agreed to, and performed, additional work pursuant to the revised terms; and
- 3) The Plaintiff paid invoices pursuant to the revised terms.

See Def.'s New Matter at ¶ 104.

The Plaintiff argues that these items cannot legally constitute consideration since the obligations which the Defendant claims are consideration for the revised contract are all previously required under the original written contract. Plaintiff correctly recites the law in this area. Failure of consideration occurs when the consideration bargained for does not pass, in whole or in part, to the promisor. *McGuire v. Schneider, Inc.*, 534 A.2d 115, 118 (Pa. Super. Ct. 1987). In short, compliance with the previously valid agreement does not evidence consideration of a subsequent modification. *Nicolella*, 248 A.2d at 24.

It is not entirely clear whether the Plaintiff and the Defendant performed pursuant to revised obligations in addition to those which were previously required by the written contract. If such additional consideration is alleged by the Defendant in the current pleading, it is lost on the Court by its failure to be clearly and concisely stated. In any event, if the Defendant clearly and concisely alleges consideration additional to the obligations required by the original contract, a claim based upon those modifications may proceed. As mentioned above, due to the current state of the Defendant's pleadings, the Demurrer will be granted subject to the Defendant having the right to file an amended pleading.

I will now turn to the Plaintiff's Demurrers to the Defendant's Counterclaims.

Defendant's first Counterclaim alleges breach of an oral contract. This cause of action is based upon an oral contract allegedly entered

into on October 6, 2000. As mentioned above, a written contract, containing an integration clause, was entered between the parties on October 9, 2000. Plaintiff's Demurrer to this count will be granted because, as discussed above, this cause of action is precluded by application of the substantive law of the parol evidence rule.

Defendant's second Counterclaim essentially alleges breach of the contract allegedly entered into between the parties which the Defendant claims modified the October 9, 2000, written contract. For the reasons set forth above, the Plaintiff's Demurrer to this Counterclaim count will be sustained since the pleadings are insufficient to establish that there was consideration between the parties. In fact, the Defendant's pleadings are absent of any indications of the fundamental elements of an enforceable contract. Specifically, the Defendant's pleadings lack any indication by the Plaintiff of acceptance of the Defendant's revisions to the original October 9, 2000, contract. Basic contract law requires an "offer" and "acceptance" involving the exchange of "consideration" before a valid contract may be found. *See Schreiber v. Olan Mills*, 627 A.2d 806, 808 (Pa. Super. Ct. 1993). Defendant essentially argues that because the Plaintiff did not object to his unilateral revisions of a contract, he must be, as a matter of law, deemed to have accepted those terms. Defendant, however, fails to calculate into his argument the admitted fact that he executed a contract which compelled him to perform the obligations which he now claims are evidence of Plaintiff's acceptance and consideration. Although an offer may be deemed to be accepted by the offeree if the offeree's conduct is consistent with that offer, *Accu-Weather, Inc. v. Thomas Broadcasting Co.*, 625 A.2d 75, 78 (Pa. Super. Ct. 1993), the Defendant has currently failed to argue performance under the allegedly revised terms greater than the performance which was already required under the October 9, 2000, written contract. Accordingly, Plaintiff's Demurrer to count three is sustained. As mentioned above, however, the Defendant will be given the opportunity to file an amended pleading to address the deficiencies in this cause of action if, in fact, such deficiencies are capable of being addressed.

Plaintiff's Demurrer to three of Defendant's Counterclaims raise a similar issue and, therefore, will be dealt with collectively.

Specifically, Defendant raises the following causes of action in those counterclaims:

- 1) Constructive fraud;
- 2) Fraudulent misrepresentation; and
- 3) Fraud

Plaintiff once again raises the shield of the parol evidence rule as a bar to these causes of action. Once again, I agree with the Plaintiff. A close reading of the Defendant's pleading indicates that the claims of fraud center around alleged misrepresentations made by the Plaintiff prior to entry of the written contract. Unfortunately for the Defendant, the case before me is governed by the precedent of *Bardwell*, supra, *Nicolella*, supra, and *H.C.B. Contractors*, supra. Simply put, the integration clause in the October 9, 2000, agreement prevents the Defendant from successfully arguing fraud in the inducement of the contract because the claims relate to subjects that were specifically addressed in the written contract. *H.C.B. Contractors*, 652 A.2d at 1279. More succinctly stated:

“If [a party] relied on any understanding, promises, representations or agreements made prior to the execution of the written contract..., they should have protected themselves by incorporating in the written agreement the promises or representations upon which they now rely, and they should have omitted the provisions which they now desire to repudiate and nullify.”

1726 Cherry St. Partnership, et. al. v. Bell Atl. Properties, Inc., 653 A.2d 663, 669 (Pa. Super. Ct. 1995), quoting *Bardwell*, 100 A.2d at 105. Plaintiff's Preliminary Objections to these counts will be sustained.

The Plaintiff has also filed a Demurrer to Defendant's Counterclaim which raises the cause of action of mutual mistake.

A contract made under a mutual mistake as to an essential fact, which formed the inducement for the contract, may be rescinded upon discovery of the mistake if the parties can be placed in their former position with reference to the subject-matter. *Gocek v. Gocek*, 612 A.2d 1004, 1006 (Pa. Super. Ct. 1992). The misconception which avoids a contract is necessarily a mutual one which must be a fact which entered into the contemplation of both parties as a condition of their agreement. *Ehrenzeller v. Chubb*, 90 A.2d 286, 287 (Pa.

Super. Ct. 1952). The cause of action only exists where the mistake (1) relates to the basis of the bargain, (2) materially affects the parties' performance and (3) the mistake is not one to which the injured party bears risk. *Consol. Rail Corp. v. Portlight, Inc.*, 188 F.3d 93, 96 (3d Cir. 1999).

Instantly, each of the allegations set forth by the Defendant as a basis of mutual mistake relate to alleged representations which are precluded by application of the parol evidence rule.

Moreover, a mistake must go to the basis of the bargain. *Id.* The Defendant bases his claim of mutual mistake upon the allegations that the rock content in the soil was higher than anticipated and the trenches were required to be wider than originally contemplated. If we assume, *arguendo*, that the Defendant's allegations are true, the claims still lack any indicia that they go to the heart of the agreement. The written agreement entered between the parties specifies a basis of payment based upon a set rate for each cubic yard of particular types of rock removed. Clearly then, the Defendant would be adequately compensated if the dimensions of the trench were increased as alleged. Moreover, since the payment scale is based upon the amount of cubic yards of rock removed, I find it difficult to understand how the rock/soil percentage goes to the basis of the agreement. Accordingly, Plaintiff's Demurrer to this count will be sustained.

Plaintiff's final Demurrer attacks Defendant's Counterclaim for unjust enrichment on the basis that it fails to state a viable cause of action. Under Pennsylvania law, the quasi-contractual doctrine of unjust enrichment is inapplicable when the relationship is founded on a written agreement or express contract. *Constar, Inc. v. Nat'l Distrib. Ctrs., Inc.*, 101 F. Supp. 2d 319, 324 (E.D. Pa. 2000). *See also Hershey Foods Corp. v. Ralph Chapek, Inc.*, 828 F.2d 989, 999 (3d Cir. 1987); *Armstrong v. Robert Levin Carpet Co.*, 1999 U.S. Dist. LEXIS 7743, 1999 WL 387329, at *6 (E.D. Pa. May 20, 1999); *Schott v. Westinghouse Elec. Corp.*, 259 A.2d 443, 448 (Pa. 1969) (unjust enrichment is inapplicable where the parties' relationship is founded on a written agreement or express contract). The Plaintiff's cause of action is based upon a written contract which the Defendant has acknowledged. As discussed above, evidence of oral representations contrary to the contract are barred by the parol evidence rule.

Accordingly, the written integrated contract between the parties is binding upon them. Therefore, the Defendant's claim for unjust enrichment cannot survive the Plaintiff's Demurrer to this cause of action.

For the foregoing reasons, the attached Order is entered.

ORDER OF COURT

AND NOW, this 27th day of September, 2002, Defendant's Preliminary Objections to Plaintiff's Preliminary Objections are denied. All of the Plaintiff's Preliminary Objections are granted and the Defendant's New Matter and Counterclaims are stricken. The Defendant shall have twenty (20) days to file an amended pleading consistent with the attached Opinion. Counsel is advised that the filing of frivolous pleadings will result in sanctions pursuant to PA. R. CIV. P. 1023.1.

The description was taken from a draft of survey prepared by J. Riley Redding, R.S., dated March 29, 1990 and recorded in Adams County Plat Book 55 at Page 73. The tract is Tract 2 on said plan of lots.

SUBJECT, NEVERTHELESS, to the obligation of the owner of this lot to share in the maintenance of the 12-foot private gravel road leading to Stoney Point Road.

TOGETHER WITH and SUBJECT TO the right of ingress, egress and regress across the land herein conveyed as well as across other land of the Grantors for access of the respective parties to and from Stoney Point Road (S.R. #10007). The present access is a 12-foot wide gravel driveway but the right-of-way across the land of the respective parties is a 50-foot wide right-of-way as shown on the aforementioned plan of lots.

BEING the same premises which Hugh W. Rinker, unmarried, James L. Rinker, unmarried and Fred S. Rinker, unmarried by their deed dated October 12, 1992 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Record Book 656, Page 221, sold and conveyed to Thomas R. Benton and Judy F. Benton, Husband and Wife, Grantors herein.

Being premises more commonly known as 564 Stoney Point Road, East Berlin, Pennsylvania 17316.

Tax ID No. K7-10B

SEIZED and taken into execution as the property of **Thomas R. Benton & Judy F. Benton** and to be sold by me,

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 16, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/11, 17 & 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-3 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of May, 2003, at 10:00 o'clock in the

forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain unit in the property known, named and identified in the Declaration referred to below as South Branch Estates, located in the Township of Oxford, Adams County, Pennsylvania which has heretofore been submitted to the provisions of the Pennsylvania Uniform Condominium Act, 68 P.S.A. Section 3101, et seq., by the recording in the Office of the Recorder of Deeds in and for Adams County, PA, of a land development plan dated October 6, 1995, last revised December 14, 1995 and recorded in Book 69, Page 23, together with all amendments and supplements thereto recorded on or before the date hereof being all designated in such plan as Unit No. 17 as more fully bounded and described in such plan, together with a proportionate undivided interest in the common elements as defined in a Declaration Plan recorded in the Office of the Recorder of Deeds, in and for York County, PA in Record Book 1271, Page 34.

UNDER AND SUBJECT TO any and all covenants, conditions, restrictions, rights of way, easements and agreements of record, including (but not limited to) those continued in the instruments recorded in the aforesaid Recorder's Office in Record Book 69, Page 23.

TOGETHER WITH the limited common elements appurtenant as more fully shown of Plan 1271, Page 34.

Being known as 48 Fiddler Drive, New Oxford, PA 17350

Property ID No.: 1-52.017

TITLE TO SAID PREMISES IS VESTED IN Brian M. Bynaker and Stephany A. Mallette, by Deed from Philip R. Garland, trading and doing business as Garland Construction, dated 02/26/99, Recorded 03/04/99, in Deed Book 1778, Page 174.

SEIZED and taken into execution as the property of **Brian M. Bynaker & Stephanie A. Mallette a/k/a Stephany A. Mallette** and to be sold by me,

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 16, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost,

whichever may be the higher, shall be paid forthwith to the Sheriff.

4/11, 17 & 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-293 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate, lying and being in the Borough of Bonneauville, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a point in the center line of Township Road T-440, at the Southermost corner of Lot No. 5, now or formerly of Charlotte Long; thence in the center line of Township Road T-440, South 45 degrees 40 minutes 45 seconds West, 46.30 feet to a point at corner of land now or formerly of Raymond E. Gebhart, Jr.; thence by said land now or formerly of Raymond E. Gebhart, Jr., North 44 degrees 19 minutes 15 seconds West 50.00 feet to a steel pin; thence by the same, on a curve to the left, having a radius of 886.70 feet an arc distance of 49.99 feet and a bearing and chord distance of North 45 degrees 56 minutes 09 seconds West, 49.98 feet to a steel pin; thence by same, North 47 degrees 33 minutes 03 seconds West, 22.02 feet to a steel pin; thence by same, North 45 degrees 40 minutes 45 seconds East, 48.95 feet to a steel pin at corner of Lot No. 5, aforesaid; thence by said Lot No. 5, and for a portion of this course running through the center of a party wall separating Lot Nos. 4 and 5, and passing through a steel pin set back 25.00 feet from the next mentioned point, South 44 degrees 19 minutes 15 seconds East, 121.94 feet to a point, the place of BEGINNING.

CONTAINING 5,714 square feet

Tax Parcel Map #6, Parcel #38

Being Known As: 7A Pin Oak Drive, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **Cheryl A. Monty** and to be sold by me,

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 16, 2003, and distribution will be made in accordance with said schedule, unless exceptions are

(continued on page 4)

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.

4/11, 17 & 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1017 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING for a corner at a point in the center line of Pennsylvania Legislative Route No. 01003 at other lands now or formerly of Robert J. Zoeller and Doris B. Zoeller, his wife, said point is fifty-eight (58) degrees thirty-one (31) minutes West one hundred seventy-two and forty hundredths (172.40) feet from the center line of Pennsylvania State Highway Route No. 54 as measured along the center line of Legislative Route No. 01003, aforesaid; thence along other land now or formerly of Robert J. Zoeller and Doris B. Zoeller, his wife, and through a steel pin set twenty-five (25) feet from the place of beginning, North twenty-five (25) degrees twenty-nine (29) minutes West, one hundred sixty and ninety-eight hundredths (160.98) feet to a steel pin at land now or formerly of Hamm; thence along said last mentioned land, North sixty-one (61) degrees thirty-six (36) minutes East, one hundred fifty (150) feet to a steel pin at land now or formerly of Norman Wolf; thence along said last mentioned land and through a planted stone sixteen and ten hundredths (16.10) feet from the terminus of this line, South twenty-five (25) degrees fifteen (15) minutes East one hundred fifty-two and ninety-five hundredths (152.95) feet to a point in the center line of Pennsylvania Legislative Route No. 01003, aforesaid; thence in, along and through the center line of said Pennsylvania Legislative Route No. 01003 South fifty-eight (58) degrees thirty-one minutes West, one hundred fifty (150) feet to the point and place of BEGINNING. The above description was

taken from a survey prepared by Donald E. Worley, Registered Surveyor, dated August 2, 1971.

Map and Parcel ID: (17)K10, Parcel 19D
Being known as: 20 Pine Run Road,
New Oxford, PA 17350

SEIZED and taken into execution as the property of **Daniel J. Fleischman** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 16, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/11, 17 & 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-960 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 6th day of June, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of ground, with improvements thereon erected, lying and being situate on the South side of High Street, in the Borough of New Oxford, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin at the intersection on the South side of High Street with the West side of a public road; thence by said road, South 30 degrees, 35 minutes East, 170.33 feet to an iron pin on the North side of a 16 foot right-of-way; thence by said right-of-way, South 73 degrees, 5 minutes West, 148.79 feet to a stake; thence along other lands now or formerly of Elizabeth M. Eicholtz, et al, North 14 degrees, 15 minutes West, 170.9 feet to an iron pin on the South side of High Street; thence by the same, North 75 degrees, 45 minutes East, 100 feet to an iron pin, the place of BEGINNING.

TITLE TO SAID PREMISES IS VESTED IN Troy A. Roomsburg and Lisa A. Roomsburg, husband and wife by Deed from William W. Simpson and Joan E.

Simpson, husband and wife, dated 6/27/1997 and recorded 7/9/1997 in Record Book 1403, Page 161.

Tax Parcel: 5-0178

Premises Being: 101 S. College Avenue, New Oxford, PA 17350

SEIZED and taken into execution as the property of **Troy A. Roomsburg & Lisa A. Roomsburg** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 30, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/25, 5/2 & 9

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-93 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of June, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot or piece of ground situate in Straban Township, County of Adams, Commonwealth of Pennsylvania, bounded and described as follows:

BEGINNING at a point in the center of State Highway leading from Hunterstown to the Lincoln Highway, with an iron pin set back along the line; thence running by land now or formerly of George E. Little, North 71 3/4 degrees East, 179 feet to an iron pin; thence running by land of the same South 14 3/4 degrees East, 125.5 feet to an iron pin; thence running by land now or formerly of Vernie Criswell South 72 1/4 degrees West, 195 feet to a point in the center line of said highway, with an iron pin set back along the line; thence running in the center of said highway North 10 degrees West, 126.5 feet to a point in the center of said highway, with an iron pin set back along the line; the place of BEGINNING.

TITLE TO SAID PREMISES IS VESTED IN Cindy L. Edwards, single by Deed

(continued on page 5)

from James F. Brooks, Jr., and Priscilla A. Brooks, his wife dated 4/12/2002 and recorded 4/18/2002 in Record Book 2628, Page 89.

Premises being: 645 Coleman Road, Gettysburg, PA 17325

Tax Parcel No. H-11-12

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on July 7, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/25, 5/2 & 9

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-134 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of June, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN unit in the property known, named and identified in the Declaration referred to below as Oxford Commons Condominiums, located in the Borough of New Oxford, Adams County, Pennsylvania, which has heretofore been submitted to the provisions of the Pennsylvania Uniform Condominium Act, 68 P.S.A. Section 3101, et seq., by the recording in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, of a Declaration dated September 13, 1996 and recorded October 18, 1996 in Record Book 50 Page 41. (Together with all amendments and supplements thereto recorded on or before the date hereof) being all designated in such Declaration as Unit No. 41 as more fully bounded and described in such Declaration together with a proportionate undivided interest in the common elements as defined in such Declaration.

UNDER AND SUBJECT to any and all covenants, conditions, restrictions, rights of way, easements and agreements of record, including (but not limited to) those contained in the instruments

recorded in the aforesaid Recorder's Office in said Declaration.

Parcel # 34-005-0184A

Being Premises: 9 Oxford Court, New Oxford, PA 17350

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on July 7, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/25, 5/2 & 9

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-119 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 6th day of June, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot or tract of land situate in Latimore Township, Adams County, Pennsylvania, according to a Final Plan of Major Subdivision for Stone Head Estates as prepared by Rodney Lee Decker and Associates, dated April 15, 1991 and recorded in Plat Book 60, Page 34 on April 4, 1992, in the Adams County Recorder's of Deeds Office. Said Lots being more fully bounded, limited and described as follows, to wit:

BEGINNING at a point on the center line right-of-way line for Mountain Road (SR4040) and on the division line between lands N/F of Galen G. Hall and the herein described Lot 25; thence along said lands N/F of Hall by a curve to the left having a radius of 30.00 feet, an arc length of 47.12 feet; thence continuing along said lands N/F of Hall, South 55 degrees 51 minutes 36 seconds East a distance of two hundred sixty feet (260.00) to a point; thence North 34 degrees 8 minutes 24 seconds East a distance of one hundred twenty-five and sixty-five hundredths feet (125.65) to a point on the division line between Lots 25 and 28; thence along Lot 28 South 71 degrees 53 minutes 44 seconds East a

distance of three hundred and seventy hundredths feet (300.70) to a point on the division line between Lots 25 and 26; thence along Lot 26 South 31 degrees 3 minutes 33 seconds West a distance of seven hundred thirty-two and fifty-six hundredths feet (732.56) to a point at lands N/F of Melvin S. Worley; thence along said land N/F of Worley, North 59 degrees 41 minutes 21 seconds West a distance of six hundred seventy-four and forty-nine hundredths feet (674.49) to a point on the Eastern dedicated right-of-way line for Mountain Road; thence along the said dedicated right-of-way line for Mountain Road North 41 degrees 49 minutes 54 seconds East a distance of two hundred sixty-nine and seventy-nine hundredths feet (269.79) feet to a point on a curve to the left having a radius of one thousand seven hundred thirty-five and seventy-one hundredths feet (1,735.71), and arc length of two hundred thirty-three and one hundredth feet (233.01) to a point; thence continuing along the Eastern side of Mountain Road North 34 degrees 8 minutes 24 seconds East a distance of ninety-seven and thirty-two hundredths feet (97.32) to a point and place of BEGINNING.

CONTAINING 8.957 acres to the dedicated right-of-way line and being designated as Lot No. 25 on the aforementioned plan of subdivision.

TITLE TO SAID PREMISES IS VESTED IN Mark G. Harder and Connie M. Harder, his wife by Deed from Vernon E. Anderson and Faye R. Anderson, his wife dated 12/13/96 and recorded 12/26/96 in Record Book 1307, Page 306.

Premises being: 1735 Mountain Road, York Springs, PA 17372

Tax Parcel No. I-1-33

SEIZED and taken into execution as the property of **Mark G. Harder & Connie M. Harder** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 30, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/25, 5/2 & 9

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, in compliance with the requirements of Section 311, of Act 1982 - 295 (54 Pa. C.S. 311), the undersigned entity (ies) announce their intention to file in the Office of the Secretary of the Commonwealth of Pennsylvania, on approximately April 15, 2003, a certificate for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of STARLIGHT HOME INSPECTION CO. with its principal place of business at 655 Knoxlyn Road, Gettysburg, PA 17325. The names and addresses of the persons owning or interested in said business are James W. Shadle, 655 Knoxlyn Road, Gettysburg, PA 17325.

The character or nature of the business is home inspections.

4/25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-46 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 6th day of June, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot or ground situate, lying and being in Mt. Pleasant Township, Adams County, Pennsylvania, more particularly bounded and described as follows, to wit:

BEGINNING at a point in the center of Township Road No. T-478, designated the Hill Road, at the Northwestern corner of Lot No. 124 now or formerly owned by Rickey Lee Martin; thence by said Martin lot, South fifty-nine (59) degrees fifty-eight (58) minutes twenty-six (26) seconds East, two hundred thirty (230) feet; thence by other lands now or formerly of George A. Smith and Margaret H. Smith, South thirty (30) degrees one (01) minute thirty-four (34) seconds West, one hundred seventy-three and seventy-four hundredths (173.74) feet to a point at line of lands now or formerly of W. H. Meyers; thence by said Meyers land, North fifty (50) degrees thirty-six (36) minutes twelve (12) seconds West, one hundred twenty-six and seventeen hundredths (126.17) feet; thence by same, North sixty-eight (68) degrees fifty-eight (58) minutes five (05) seconds West, one hundred six and eighty-three hundredths (106.83) feet to a point in the center of said Township Road No. T-478; thence along the center of said Township Road No. T-478, North thirty (30) degrees one (01) minute thirty-four (34) seconds East, one hundred sixty-nine and ninety hun-

dreths (169.90) feet to the point in the center of said Township Road No. T-478, the place of BEGINNING. CONTAINING 37,396 square feet.

The above description is taken from a draft of survey made May 25, 1973, by J. H. Rife, R.E., designated File No. C-580 (Section 2), revised July 3, 1973, on which said lot is designated as Lot No. 123, which draft was recorded as a Final Plan of Subdivision of George A. Smith in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 3 at page 12.

IT BEING the same tract of land which George A. Smith and Margaret H. Smith, husband and wife, by their deed dated October 11, 1977 and recorded in the Recorder of Deeds Office of Adams County, Pennsylvania in Deed Book 333, page 1108, granted and conveyed unto Julie A. Clabaugh, Julie A. Ripple, who joined by her husband Chester G. Ripple are Grantors herein.

Premises being: 105 Hill Road, Hanover, PA 17331

Tax Parcel No. J13-57J

SEIZED and taken into execution as the property of **David W. Hahn, Sr. aka David W. Hahn & Sandra D. Hahn** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 30, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/17, 25 & 5/2

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-24 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an existing iron pin at the Western Edge of Legislative Route 01006, at corner of land now or formerly of Jack D. Showers; thence in said Legislative Route 01006, South 22 degrees 37 minutes 00 seconds East, 210.00 feet to a railroad spike in the Western half of Legislative Route 01006, at corner of land now or formerly of Bruce W. Smith and Clara S. Smith; thence by said land of Bruce W. Smith, et al, South 81 degrees 15 minutes West, 251.64 feet to a point on line of land now or formerly of Roy S. Hohenschildt; thence by land of Hohenschildt and land of Baumgardner, North 14 degrees 21 minutes 22 seconds West, 204.86 feet to an existing iron pin at corner of land now or formerly of Jack D. Showers, aforesaid; thence by said land of Jack D. Showers, North 81 degrees 15 minutes 00 seconds East, 221.32 feet to an existing iron pin at the Western edge of Legislative Route 01006, to the place of BEGINNING. CONTAINING 1.107 Acres.

The above description was taken from a draft of survey prepared by Boyer Surveys, dated April 23, 1979, which is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 28 at Page 3.

SEIZED and taken into execution as the property of **Freeman G. Kuhn, Jr. & Sharon A. Kuhn** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 16, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/17, 25 & 5/2

ESTATE NOTICES

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

FIRST PUBLICATION**ESTATE OF LORETTA S. BAKER, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Fredric L. Baker, 707 N. Warfield Drive, Mt. Airy, MD 21771

Attorney: Henry O. Heiser, III, Esq., 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF SEBASTIANO F. CARRABBA, DEC'D

Late of Gettysburg Borough, Adams County, Pennsylvania

Testamentary: John Xavier Bevilacqua, 80 Confederate Drive, Gettysburg, PA 17325

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

ESTATE OF KENNETH F. DOUGHERTY, DEC'D

Late of Borough of Biglerville, Adams County, Pennsylvania

Co-Executors: Richard H. Dougherty, 1460 N. W. Orion Drive, Pullman, WA 99163; Paul F. Dougherty, P.O. Box 199, Biglerville, PA 17307

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

ESTATE OF BERNICE S. HOFFMAN, DEC'D

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

Executor: Charles R. Hoffman, 29 N. Duke St, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 29 N. Duke St., York, PA 17401

ESTATE OF MOZINA L. JOHNSTONE, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executrix: Judy L. Jones, 405 Hedgerow Court, Hanover, PA 17331

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

ESTATE OF MERLE E. PLANK, JR., DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executrix: Cathy M. Plank, P.O. Box 683, Hanover, PA 17331

Attorney: Catherine J. Gault, Esq., 31 S. Washington Street, Gettysburg, PA 17325-2112

ESTATE OF DOROTHY E. REDDING, DEC'D

Late of Gettysburg Borough, Adams County, Pennsylvania

Co-Executors: Martin J. Redding, 15 Club Lane, Littleton, CO 80123; Margaret M. Kenworthy, 204 Ewell Avenue, Gettysburg, PA 17325

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

SECOND PUBLICATION**ESTATE OF ROSA K. ALTLAND, DEC'D**

Late of Berwick Township, Adams County, Pennsylvania

Co-Executors: Frederick H. Altland, 2360 Fairway Drive, York, PA 17404; Charles R. Altland, 549 Maple Grove Road, Abbottstown, PA 17301

Attorney: W.W. Hafer, Esq., 215 Baltimore St., Hanover, PA 17331

ESTATE OF MARIE GERTRUDE AULHOUSE, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Paul Gary Aulhouse, 702 West Poplar Street, York, PA 17404; Samuel Jan Aulhouse, 4320 Walnut Grove Road, Taneytown, MD 21787

Attorney: David K. James, III, Esq., 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF EDNA L. BAIR, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Adams County National Bank, Attn: Gary R. Bennett, Sr., Vice President/Sr. Trust Officer, 2 Chambersburg St., Gettysburg, PA 17325

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

ESTATE OF MARY R. BARNHART, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Executrices: Elizabeth C. Zinn, 129A Race Track Road, Hanover, PA 17331; Janet L. Wayne, 114 Greystone Road, York, PA 17402

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

ESTATE OF LEANNA I. FORD, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executor: Donald R. Caskey, 4520 Chester Ave., Philadelphia, PA 19143

Attorney: Matthew R. Battersby, Esq., P.O. Box 215, 20 West Main Street, Fairfield, PA 17320

ESTATE OF ETHLYN C. HAINES, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Faith T. Sylvester, 619 Plum Run Drive, West Chester, PA 19382

Attorney: Catherine J. Gault, Esq., 31 S. Washington Street, Gettysburg, PA 17325-2112

ESTATE OF DORIS M. LITTLE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Gail A. Bittle, 5522 Hayloft Court, Frederick, MD 21703

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle St., Hanover, PA 17331

ESTATE OF RAYMOND F. LOSMAN a/k/a RAY F. LOSMAN, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Susan M. Snyder, 2253 Dover Court, Mechanicsburg, PA 17055; Lester Bucher, Jr., 595 Berlin Road, New Oxford, PA 17350

Attorney: Walton V. Davis, Esq., 63 West High St., Gettysburg, PA 17325

ESTATE OF ROY E. NELSON, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executor: Frederick R. Nelson, Box 191, 105 Rice Ave., Biglerville, PA 17307

Attorney: John R. White, Campbell & White, 112 Baltimore St., Gettysburg, PA 17325

ESTATE OF MARGARET M. STOUGH, DEC'D

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

Executrix: Mary Ann Shriver, 757 Lingg Road, New Oxford, PA 17350

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

THIRD PUBLICATION**ESTATE OF PHILIP D. DUNCAN, DEC'D**

Late of Berwick Township, Adams County, Pennsylvania

Executrix: Janet M. George, 1636 Emig Road, Spring Grove, PA 17362

Attorney: Catherine J. Gault, Esq., 31 S. Washington Street, Gettysburg, PA 17325

(continued on page 8)

THIRD PUBLICATION (continued)

ESTATE OF MILDRED MARGIE
HOFFMAN, DEC'D

Late of Latimore Township, Adams
County, Pennsylvania

Co-Executors: Joanne Hinkle, 445
Baltimore Rd., York Springs, PA
17372; Vickie Rex, 1341 Gablers
Rd., Gardners, PA 17324

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

ESTATE OF STELLA B. SCHWARTZ,
DEC'D

Late of Mt. Joy Township, Adams
County, Pennsylvania

Executrix: Ellen Mickey, 115 Knoxlyn
Road, Gettysburg, PA 17325

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

ESTATE OF MARY H. STAUB a/k/a
MARY A. STAUB, DEC'D

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

Executors: Clair W. Haar, 575 A.
Cedar Road, New Oxford, PA
17350; Joan L. Huffman, 345 Cedar
Ridge Road, New Oxford, PA 17350

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

LEGAL NOTICE

NOTICE BY THE TOWNSHIP OF
MOUNT JOY, ADAMS COUNTY, PENN-
SYLVANIA, BY THE MOUNT JOY
TOWNSHIP BOARD OF SUPERVISORS,
OF THE ENACTMENT, ADOPTION AND
ORDINATION OF AN ORDINANCE
AUTHORIZING AND DIRECTING THE
INCORPORATION OF A MUNICIPAL
AUTHORITY TO BE KNOWN AS "RED
ROCK MUNICIPAL AUTHORITY", AND
NOTICE OF THE FILING OF THE SAID
AUTHORITY'S ARTICLES OF INCOR-
PORATION WITH THE SECRETARY OF
THE COMMONWEALTH

NOTICE IS HEREBY GIVEN that the Township of Mount Joy, Adams County, Pennsylvania (the "Township"), by the Mount Joy Township Board of Supervisors (the "Township Supervisors"), after proper advertisement and public hearing in accordance with law, enacted, duly adopted and ordained Ordinance No. 2003 - 02, authorizing and directing the incorporation of a municipal authority, known as the "Red Rock Municipal Authority", at a special meeting of the Mount Joy Township Board of Supervisors on **Tuesday, April 15, 2003**. On Friday, May 2, 2003 [not less than three (3) days after the publication of the present Legal Notice], Articles of Incorporation of the said proposed

Authority shall be filed with the Secretary of the Commonwealth. The title of the subject Ordinance is as follows:

ORDINANCE NO. 2003 - 02

AN ORDINANCE SIGNIFYING THE INTENT AND DESIRE OF THE TOWNSHIP OF MOUNT JOY, ADAMS COUNTY, PENNSYLVANIA, BY THE MOUNT JOY TOWNSHIP BOARD OF SUPERVISORS, TO ORGANIZE A MUNICIPAL AUTHORITY UNDER THE PROVISIONS OF THE MUNICIPALITY AUTHORITIES ACT, ACT OF JUNE 19, 2001, P.L. 287, NO. 22, 53 PA. C.S.A. §5601. ET SEQ., AS AMENDED AND SUPPLEMENTED, TO BE KNOWN AS THE "RED ROCK MUNICIPAL AUTHORITY"; SETTING FORTH THE FORM OF THE ARTICLES OF INCORPORATION; DESIGNATING THE PURPOSES AND POWERS OF THE AUTHORITY; AUTHORIZING THE EXECUTION AND FILING OF THE ARTICLES OF INCORPORATION; AND AUTHORIZING THE TAKING OF ALL SUCH ACTION AS MAY BE NECESSARY OR APPROPRIATE TO ORGANIZE THE AUTHORITY.

A summary of the above-entitled Ordinance is as follows:

Section 1 of the Ordinance states the intention of the Township Supervisors of the Township of Mount Joy to organize the Authority under the provisions of the "Municipality Authorities Act", Act of June 19, 2001, P.L. 287, No. 22, 53 Pa. C.S.A. §5601, et seq., as amended and supplemented (the "Act").

Section 2 of the Ordinance provides that the name of the Authority is "Red Rock Municipal Authority", and sets forth and approves the form of the Articles of Incorporation of the Authority.

Section 3 of the Ordinance appoints the first members of the Board of the Authority, as set forth in the form of Articles of Incorporation, and specifies the initial terms of the members of the Board of the Authority.

Section 4 of the Ordinance authorizes and directs the Chairman of the Township Supervisors of the Township to execute said Articles of Incorporation on the Township's behalf, and authorizes and directs the Secretary of the Township to affix thereto and attest the seal of said Township. Section 4 further authorizes and directs such officers to cause a notice of intention to file said Articles of Incorporation to be published as required by law, and to file said Articles of Incorporation, together with a certified copy of the Ordinance and required proofs of publication, with the Secretary of the Commonwealth of Pennsylvania, and to take all such action as they may deem necessary or appropriate to organize said Authority.

Section 5 of the Ordinance states the purpose for which said Authority is creat-

ed, namely: overseeing the management of The Links At Gettysburg Neighborhood Improvement District (the "NID"), pursuant to the "Neighborhood Improvement District Act", Act of December 20, 2000, P.L. 949, No. 130, 73 P.S. §8831, et seq., as amended and supplemented (the "Neighborhood Improvement District Act"), and states that the Township Supervisors shall designate the Red Rock Municipal Authority as the Neighborhood Improvement District Management Association (the "NIDMA") to administer programs, improvements and services within the NID.

Section 6 of the Ordinance sets forth the powers of the Authority, which are limited to those powers specifically named in Section 7 of the Neighborhood Improvement District Act. Section 6 further provides that the Township retains its right under the Act to approve any plan of the Red Rock Municipal Authority.

Section 7 of the Ordinance repeals all ordinances or parts thereof inconsistent with the Ordinance.

Section 8 states that the Ordinance shall be effective five (5) days subsequent to enactment in accordance with the provisions of Pennsylvania's "Second Class Township Code", as amended.

This public notice is being given pursuant to Section 5603.(b) of the Act.

Mount Joy Township Board
of Supervisors

4/25

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed on November 4, 2002, with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of obtaining a Certificate of Incorporation of a proposed business corporation to be organized under the 1988 Pennsylvania Business Corporation Law of the Commonwealth of Pennsylvania. The name of the corporation is 6726 CARLISLE PIKE, INC. The registered office is 6726 Carlisle Pike, East Berlin, Adams County, Pennsylvania 17316-9588. The purpose of the corporation is: To conduct a licensed restaurant business and all other lawful business in the Commonwealth of Pennsylvania and elsewhere for which corporations may be incorporated under the Pennsylvania Business Corporation Law.

Steve C. Nicholas, Esq.
Nicholas Law Offices, P.C.
2215 Forest Hills Drive, Suite 37
Harrisburg, PA 17112-1099
(717) 540-7746

4/25