

Adams County Legal Journal

Vol. 47

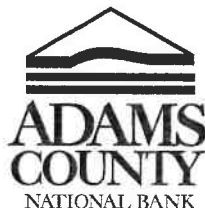
June 3, 2005

No. 2, pp. 6-10

IN THIS ISSUE

WIVELL VS. PIPER

Quality Customer Service.
Our promise to you every day.



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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

Business Office - 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 337-9812
Periodicals postage paid at Gettysburg, PA 17325.

Copyright© 1959 by Wm. W. Gaunt & Sons, Inc., for Adams County Bar Association, Gettysburg, PA 17325.
All rights reserved.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-863 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 1st day of July, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point in the center line of Legislative Route 01077 at corner of other lands now or formerly of John Whitney; thence in said center line of Legislative Route 01077 South 58 degrees 40 minutes East, 89.77 feet to a point in the center line of said Legislative Route 01077 at land now or formerly of James Sharrah; thence through an iron pin set back along the line by other land now or formerly of James Sharrah South 34 degrees 36 minutes West, 182.41 feet to an iron pipe; thence by land of James Sharrah and Mrs. Lottie Topper South 57 degrees 33 minutes East, 117.93 feet to an iron pipe; thence by other land formerly of Calvin Cluck and wife South 30 degrees 12 minutes West, 268.11 feet to an iron pin; thence by same South 25 degrees 38 minutes West, 808.79 feet to an iron pipe; thence by land now or formerly of Mark Bucher, North 55 degrees 9 minutes West, 386.35 feet to an iron pipe; thence by other land formerly of Cluck North 37 degrees 25 minutes East, formerly of John Whitney and through an iron pin set back along the line 29.90 feet North 34 degrees 37 minutes East, 322.80 feet to a point in the center of Legislative Route 01077 to the point and place of BEGINNING.

CONTAINING 6.7478 acres.

BEING known as: 126 Olde Rte. 30, McKnightstown, PA 17343

Property ID No.: D-11-95A

TITLE TO SAID PREMISES IS VESTED IN Stephan H. Reaver and Cindy L. Reaver, husband and wife, as tenants of an estate by the entireties by deed from Calvin A. Slegal a/k/a Calvin Andrew Slegal and Mary Jane Slegal, husband

and wife dated 01/02/97 recorded 01/03/97 in Deed Book 1312 Page 345.

SEIZED and taken into execution as the property of **Stephan H. Reaver & Cindy L. Reaver** 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 25, 2005, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/20, 27 & 6/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-67 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 1st day of July, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an iron pin driven at the point of intersection of the center line of Legislative Route 01016, running between Mt. Hope through Virginia Mills and to the Fairfield-Orrtanna State Highway, and the center line of the Western Maryland Railroad right of way near Virginia Mills, thence running in the center of said Legislative Route 01016, North 70-3/4 degrees West 574 feet to an iron pin in the center of said State Highway; thence by land now or formerly of Mike McGlaughlin, land now or formerly of Lloyd Benner and land now or formerly of Ronald Kump, North 52 degrees East 960 feet, running through

an elm tree 44 feet from the end of this course, to a point in the center of said Railroad right of way; thence running in the center of said Railroad right of way, South 12-1/4 degrees West 412.5 feet to a point in the center of said Railroad right of way, in a curve thereof; thence continuing in the center of said Railroad right of way, South 19-1/2 degrees West 415.8 feet to the above described place of BEGINNING. CONTAINING 5 acres and 122.04 square perches.

BEING KNOWN AS: 401 Mount Hope Road, Fairfield, (Hamiltonban Township), PA 17320

PROPERTY ID NO. C14-22

TITLE TO SAID PREMISES IS VESTED IN Randy A. Rippeon and Tracie L. Rippeon, husband and wife as tenants of an estate by the entireties by deed from Robert G. Coy and Janet M. Coy, husband and wife dated 06/30/99 recorded 07/08/99 in Deed Book 1869, Page 329.

SEIZED and taken into execution as the property of **Randy A. Rippeon & Tracie L. Rippeon** 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 25, 2005, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/20, 27 & 6/3

WIVELL VS. PIPER

1. In the absence of fraud, accident, or mistake, the nature and quantity of the real estate interest conveyed must be ascertained from the deed itself and cannot be shown by parol evidence. When the language of the deed is clear and free from ambiguity, the intent of the parties must be determined from the language of the deed. The unambiguous language of the deed will regulate and measure the rights of the respective parties.

2. A party may not use a corrective deed to grant to a third party interest in property in which the grantor no longer has an interest.

3. An express grant of an easement appurtenant passes by operation of law to the purchasers of a dominant tenement regardless of whether the deed by which the purchasers obtained title includes an express reference to their dominant rights.

4. The party claiming an easement has the burden of proving the existence of the easement.

In the Court of Common Pleas of Adams County, Pennsylvania.
Civil, No. 03-S-489, TERRY F. WIVELL AND RACHAEL WIV-
ELL VS. DALE E. PIPER AND ANNETTE F. PIPER.

Samuel E. Teeter, Esq., for Plaintiffs

Douglas H. Gent, Esq., for Defendants

George, J., September 14, 2004

OPINION

The parties in this matter are owners of adjacent tracts of land located along Waynesboro Pike in Liberty Township, Adams County, Pennsylvania. The chain of title for each party's parcel of real estate unites in common Grantors Philip Roth and Beverly Roth (hereinafter referred to as "Roth"). Roth conveyed approximately fifteen acres to Douglas Piper by deed dated September 8, 1989. Thereafter, Douglas Piper subdivided the fifteen-acre tract of land into four lots known as #2, #2A, #2B, and #2C. All four tracts of land front along Waynesboro Pike with Lot #2 fronting both Waynesboro Pike and Orchard Road.

On October 24, 1991, Douglas Piper conveyed Lot #2B to James Leaman. The deed contained certain restrictive covenants and also granted Leaman a twenty-foot wide right-of-way for the purpose of ingress, egress, and regress to Orchard Road. Although the location of the right-of-way is not specifically identified, the right-of-way crosses through Lots #2 and #2C by nature of the layout of the respective properties. The right-of-way granted by deed was

confirmed by an agreement executed between the parties dated October 24, 1991.¹

On January 16, 1993, Lots #2 and #2a were conveyed to Wayne Piper and Elaine Piper.² On August 13, 1993, the Estate of Douglas Piper conveyed Lot #2C to Dale Piper, one of the Defendants herein. The deed from Douglas Piper's Estate to Dale Piper did not include an express grant of right-of-way across Lot #2 to Orchard Road. However, the deed did include language that the conveyance was subject "to all restrictions, reservations, covenants, easements and conditions of record." On October 20, 1995, Douglas Piper's Estate presented a corrective deed to Dale Piper, which expressly included the grant of a right-of-way referenced in the October 24, 1991, right-of-way agreement executed between Douglas Piper and Leaman. At this time, however, Douglas Piper's Estate no longer owned the servient lot upon which the right-of-way traversed.³

¹1. Relevant portions of the right-of-way agreement which are critical to the resolution of the current issue read as follows:

TOGETHER With and SUBJECT TO free ingress, egress and regress to and for the said Grantee, his heirs and assigns, his and their tenants and undertenants, occupiers or possessors of the said Grantee's said premises contiguous to said right of way, in common with him the said Grantor, his heirs and assigns, his and their tenants and undertenants, occupiers or possessors of said Grantor's messuage and ground adjacent to said right of way.

²Wayne and Elaine Piper subsequently conveyed Lot #2A to Larry E. and Tammy S. Smith on January 16, 1993.

³Although the facts concerning what triggered the corrective deed have not yet been fully developed, the corrective deed was filed with the Adams County Recorder of Deeds Office twenty-five days prior to the commencement of a civil action concerning the properties in question by the Defendant, Dale E. Piper, against Wayne W. Piper and Elaine L. Piper. Dale Piper's Complaint alleges that Wayne Piper and Elaine Piper interfered with a right-of-way across their property, referred to hereinabove as Lot #2. In support of this claim, Dale Piper cites the corrective deed dated October 20, 1995. Although the litigation appears to involve a similar, if not identical, issue to the current litigation, the parties' counsel agree that the issue in question is not precluded by the principles of *res judicata*. The only entry in the 1995 litigation is an Order of Court dated November 16, 1995, which reflects a temporary agreement permitting Dale Piper to utilize the alleged right-of-way until the matter was resolved. The November 16, 1995, Order allowed either party to continue the litigation. Without any further explanation or indication of an agreement between the parties, Dale Piper discontinued the action on March 21, 1997. It appears that this current litigation resulted from the parties' inability to resolve the 1995 litigation. This civil action may be found at 95-S-1053 in the Adams County Prothonotary's Office.

On January 28, 1997, Wayne Piper and Elaine Piper recorded a subdivision plat with the Adams County Recorder of Deeds Office subdividing former Lot #2 into two smaller lots. One of the two lots was conveyed to Steven Rhodes and Joyce Rhodes on July 31, 1997. This lot does not appear to be directly involved in the current litigation. Wayne and Elaine Piper, however, retained possession of the second lot until 1999 when a mortgage foreclosure action was commenced against them. Residential Funding Corporation acquired title to the second lot of the 1997 subdivision by Sheriff's Deed dated May 19, 2000. On August 23, 2000, Residential Funding Corporation transferred this lot to the Plaintiffs, Terry Wivell and Rachael Wivell.

The chain of titles to the respective lots do not reference any right-of-way across the lot purchased by the Wivells other than that originally granted to Leaman. Dale Piper, however, currently claims that this chain of title reflects an express grant to him of a twenty-foot right-of-way across the Wivells' property.⁴

In the absence of fraud, accident, or mistake, the nature and quantity of the real estate interest conveyed must be ascertained from the deed itself and cannot be shown by parol evidence. *Covert Appeal*, 186 A.2d 20, 23 (Pa. 1962). When the language of the deed is clear and free from ambiguity, the intent of the parties must be determined from the language of the deed. *Teacher v. Kijurina*, 76 A.2d 197, 200 (Pa. 1950). The unambiguous language of the deed will regulate and measure the rights of the respective parties. *Gateway Motels, Inc., v. Duquesne Light Co.*, 500 A.2d 1230, 1232 (Pa.Super. 1985).

The record reveals that at the time that Lot #2C was conveyed to Dale Piper, Wayne Piper and Elaine Piper owned Lots #2 and #2A. Despite Dale Piper's claim that he was granted an express right-of-way across Lot #2, neither the January 16, 1993, deed from Douglas Piper to Wayne Piper nor the August 13, 1993, deed from Douglas Piper to Dale Piper granted Dale Piper an express right-of-way. Thus, there is no need to address the clarity of language which doesn't exist in the granting documents.

⁴Leaman and Smith currently reside in houses which they built on the Lots #2A and #2B respectively. Subsequent to the construction of their homes, both Leaman and Smith constructed driveways extending from their houses to Waynesboro Pike. As a result, neither currently uses the gravel lane which travels across Lot 2 and is claimed by Dale Piper to be the right-of-way at issue.

Although Dale Piper partially relies upon the October 20, 1995 corrective deed in supporting his claim of an express easement, that deed is of little import. Clearly, a party may not use a corrective deed to grant to a third party interest in property in which the grantor no longer has an interest. To find otherwise would wreak havoc on the stability and certainty of a title search. Dale Piper fails to cite any authority for such an argument and I am unwilling to create law in this area.

Dale Piper also urges the Court to impute the language from the right-of-way granted across Lot #2 to James Leaman on October 24, 1991, to his chain of title. He reasons that the documents granting a right-of-way from Douglas Piper to Leaman across Lot #2 (then currently owned by Douglas Piper) contained language that the ingress, egress, and regress across the property was in common with “the said grantor, his heirs and assigns”. Since Douglas Piper also owned Lot #2C (the current Dale Piper property) at the time of this grant, Dale Piper concludes that he, as an assign of Douglas Piper, acquired an express right-of-way across Lot #2. In support of his argument, he cites 21 P.S. § 3 which provides that documents conveying an interest in land shall be construed to include all rights related to that land unless an express exception or reservation is contained therein. Indeed, an express grant of an easement appurtenant passes by operation of law to the purchasers of a dominant tenement regardless of whether the deed by which the purchasers obtained title includes an express reference to their dominant rights. See *Brady v. Yodanza*, 425 A.2d 726, 729-30 (Pa. 1981).

While Dale Piper correctly cited the law in this area, he misapplied the law in light of the current facts.

Initially, the agreement between Douglas Piper and Leaman created a right-of-way from the dominant Lot #2B through the remaining servient lots. The language referenced by Dale Piper does not grant a right-of-way to the remaining lots owned by Douglas Piper; rather, this language refers to the non-exclusivity of the rights granted to Leaman in traversing the servient tenements. Despite Dale Piper’s herculean efforts, the document does not create a dominant/servient tenement relationship between Lots #2 and #2C respectively. The right-of-way agreement referenced by Dale Piper affects the relationship between Lot #2B and Wayne and Elaine Piper’s

remaining lot. It does not expressly address the nature of the relationship between Wayne and Elaine Piper's remaining lots.

Since the parties have stipulated to all documents comprising the chain of title to the lots in controversy, there is no factual issue in dispute. Bearing in mind that the party claiming an easement has the burden of proving the existence of the easement,⁵ partial summary judgment will be granted in favor of Terry F. Wivell and Rachael S. Wivell as evidenced by the foregoing Order.

ORDER OF COURT

AND NOW, this 14th day of September, 2004, partial summary judgment is granted in favor of the Plaintiffs, Terry F. Wivell and Rachael S. Wivell, and against the Defendants, Dale E. Piper and Annette F. Piper. The Defendants' claim that an express easement existed on the Plaintiffs' properties is dismissed. Pursuant to agreement, the Defendants' claim of an easement by prescription is also dismissed with prejudice. The sole remaining issue for trial scheduled for September 22, 2004, is whether an easement by implication exists. Defendants have the burden of establishing the existence of an easement by implication by clear and convincing evidence.

⁵ See *Brady v. Yodanza*, 409 A.2d 48 (Pa.Super. 1979) (reversed on other grounds, 425 A.2d 726).

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-311 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 1st day of July, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT TRACT of land situate in the Borough of Fairfield, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a lietz spike in the centerline of Legislative Route No. 01015 at corner of Lot No. 3 and at corner of lands now or formerly of James M. Landis; thence by Lot No. 3, South 25 degrees 02 minutes 35 seconds West, 160 feet, passing through a reference pipe set back 25 feet from the beginning of this course, to a steel rod at corner of Lot No. 3 and corner of other lands now or formerly of James M. Landis; thence by said other lands of James M. Landis, North 64 degrees 57 minutes 25 seconds West, 105 feet to a steel rod at corner of said other lands of James M. Landis and corner of Lot No. 5; thence by said Lot No. 5, North 25 degrees 02 minutes 35 seconds East, 160 feet, passing through a reference pipe set back 25 feet from the end of this course, to a lietz spike set in the centerline of Legislative Route No. 01015 at corner of Lot No. 5 and corner of lands now or formerly of James M. Landis; thence by said lands of James M. Landis and running in the centerline of Legislative Route No. 01015, South 64 degrees 57 minutes 25 seconds East, 105 feet to a lietz spike set in the centerline of said Legislative Route No. 01015 at a corner of Lot No. 3 and corner of said lands now or formerly of James M. Landis, the place of BEGINNING.

The above description was taken from a subdivision plan dated May 16, 1983 prepared by Adams County Surveys, which is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 38 at Page 55, being Lot No. 4 thereon.

TITLE TO SAID PREMISES IS VESTED IN Jason Lawrence Vinson by reason of the following:

BEING THE SAME PREMISES which David M. Fitz and Carrie A. Fitz, husband and wife by Deed dated 6/30/1998 and recorded on 7/1/1998 in the County of Adams in Record Book 1612, Page 338 conveyed unto Jason Lawrence Vinson and Charlotte Ann Vinson, husband and wife.

AND ALSO BEING THE SAME PREMISES which Jason Lawrence Vinson and Charlotte Ann Vinson, husband and wife by Deed dated 6/24/1999 and recorded on 8/17/1999 in the County of Adams in Record Book 1896, Page 327 conveyed unto Jason Lawrence Vinson.

AND THE SAID Jason Lawrence Vinson and Charlotte Ann Vinson were divorced from the bonds of matrimony in Docket #99-S-137 on 8/24/1999.

Premises being: 44 North Miller Street, Fairfield, PA 17320

Tax Parcel No. 11005-0062-000

SEIZED and taken into execution as the property of **Jason Lawrence Vinson a/k/a Jason L. Vinson** 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 25, 2005, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/20, 27 & 6/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-703 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 1st day of July, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING for a point at Jonathan Lane and Lot No. 53; thence along Lot No. 53, South forty-three (43) degrees forty-six (46) minutes twenty-nine (29) seconds West, one hundred (100.00) feet to a point at lands now or formerly of John E. and Reba F. Biemiller; thence along said lands, South forty-nine (49) degrees one (01) minute forty-five (45)

seconds East, seventy-five and nine hundredths (75.09) feet to a point at Lot No. 51; thence along Lot No. 51, North forty-three (43) degrees forty-six (46) minutes twenty-nine (29) seconds East, one hundred one and sixty-six hundredths (101.66) feet to a point at Jonathan Lane; thence along Jonathan Lane by a curve to the left whose radius is one thousand six hundred ninety-seven and eighty-eight hundredths (1,697.88) feet and whose chord bearing is North fifty (50) degrees seventeen (17) minutes forty-two (42) seconds West, seventy-five and nineteen hundredths (75.19) feet for an arc distance of seventy-five and twenty hundredths (75.20) feet to the point and place of BEGINNING.

CONTAINING 7,583.20 square feet and identified as Lot No. 52 on a plan of lots known as Bonnie Field prepared by Edward H. Richardson Associates, Consulting Engineers, on February 26, 1976. Said plan is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 9 Page 24.

BEING THE SAME premises which Donald B. Smith and Alice C. Smith, by deed dated 5/2/89 and recorded 5/2/89 in the Office of the Recorder of Deeds in and for Adams County in Deed Book 520 at Page 1115, granted and conveyed unto Holly A. Blake, deceased.

Tax Parcel #: 6-9-66

SEIZED and taken into execution as the property of **Bernard A. Blake, In His Capacity as the Representative of the Estate of Holly A. Blake, Deceased & Bernard A. Blake, Individually 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 25, 2005, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/20, 27 & 6/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-317 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 1st day of July, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

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

Map #13 Parcel #16

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on July 25, 2005, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/20, 27 & 6/3

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, June 13, 2005, at 9:00 a.m.

KIESSLING—Orphans' Court Action Number OC-124-03. The First and Partial Account of Judy M. Prillaman, Patricia K. Ziegler and Donald W. Kiessling, Administrators of the Estate of Walter Kiessling, deceased, late of Franklin Township, Adams County, Pennsylvania.

BELLEW—Orphans' Court Action Number OC-38-05. The First and Final Account of Robert M. Bellew, Personal Representative of John C. Bellew, deceased, late of Berwick Township, Adams County, Pennsylvania.

YEALY—Orphans' Court Action Number OC-40-05. The First and Final Account of Wilma M. Noel and Mark W. Yealy, Co-Administrators of the Estate of Dorothy M. Yealy, deceased, late of the Borough of McSherrystown, Adams County, Pennsylvania.

STRAYER—Orphans' Court Action Number OC-41-05. The First and Final Account of Robert C. Baker and Jane A. Baker, Executors of the Estate of Velma V. Strayer, deceased, late of Oxford Township, Adams County, Pennsylvania.

WOLFE—Orphans' Court Action Number OC-49-05. The First and Final Account of Karen D. Brodbeck and Keith L. Wolfe, Co-Executors of the Estate of Millard A. Wolfe, deceased, late of Huntington Township, Adams County, Pennsylvania.

Lisa K. Grubbs
Clerk of Courts

6/3 & 10

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN pursuant to the provisions of Sec. 311 of the Act of Assembly of December 16, 1982, 54 PA C.S.A. 311, that an application for registration of a fictitious name was filed on April 11, 2005, with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, for the conducting of a business under the fictitious name of SOUTH MOUNTAIN HOMES, LLC, with its principal office or place of business at 275 Pine Valley Road, P.O. Box 191, McKnightstown, PA 17343. The names and addresses of all persons owning or interested in said business are: Kenneth H. Pledger, 275 Pine Valley Road, P.O. Box 191, McKnightstown, PA 17343.

Patrono & Associates, LLC
John J. Murphy III, Esq.
30 West Middle Street
Gettysburg, PA 17325

6/3

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN pursuant to the provisions of Sec. 311 of the Act of Assembly of December 16, 1982, 54 PA C.S.A. 311, that an application for registration of a fictitious name was filed on May 9, 2005, with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, for the conducting of a business under the fictitious name of MOURNINGLORY PRODUCTIONS with its principal office or place of business at 6425 Fairfield Road, Fairfield, PA 17320. The names and addresses of all persons owning or interested in said business are: Thomas B. Kost and Mario Fabian Gomez of 6425 Fairfield Road, Fairfield, PA 17320.

Patrono & Associates, LLC
John J. Murphy III, Esq.
30 West Middle Street
Gettysburg, PA 17325

6/3

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 SAMUEL D. CHAPMAN, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Administratrix: Betty K. Chapman, 1005 Biglerville Road, Gettysburg, PA 17325

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

ESTATE OF BERNARD MICHAEL COCHRAN, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administrator: Steven M. Cochran, 45 Brown's Dam Road, #219, New Oxford, PA 17350

Attorney: Donald W. Dorr, Esq., 846 Broadway, Hanover, PA 17331

ESTATE OF NANCY JEAN COOL, DEC'D

Late of Abbottstown Borough, Adams County, Pennsylvania

Administrator: Lisa Jo Smith, 525 Meade Avenue, Hanover, PA 17331

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

ESTATE OF NORMA K. DEVENER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: M&T Trust Company, 13 Baltimore Street, Hanover, PA 17331

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

ESTATE OF ROMAINE E. EBERSOLE, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executors: Julia E. Highlands, 2445 Stoney Point Road, East Berlin, PA 17316; Steven E. Ebersole, P.O. Box 31, McSherrystown, PA 17344

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

ESTATE OF EVELYN R. FRANTZ, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: M&T Trust Company, formerly Allfirst Trust Company of PA, N.A., 13 Baltimore Street, Hanover, PA 17331

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

ESTATE OF HARVEY W. KLINE, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executrix: Marie C. Kline, c/o Richard W. Stevenson, Esq., McNeas Wallace & Nurick LLC, 100 Pine Street, P. O. Box 1166, Harrisburg, PA 17108

Attorney: Richard W. Stevenson, Esq., McNeas Wallace & Nurick LLC, 100 Pine Street, P. O. Box 1166, Harrisburg, PA 17108

SECOND PUBLICATION**ESTATE OF LLOYD A. DECKER, DEC'D**

Late of Latimore Township, Adams County, Pennsylvania

Executors: Theodore A. Decker, 1390 Gun Club Road, York Springs, PA 17372; Rodney L. Decker, 112 Old Cabin Hollow Road, Dillsburg, PA 17019

Attorney: Jan M. Wiley, Esq., Wiley, Lenox, Colgan & Marzocco, P.C., 130 W. Church St., Suite 100, Dillsburg, PA 17019

ESTATE OF RAYMOND M. HALE, JR., DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: William R. Hale, 21 Pearl Street, P.O. Box 358, Arendtsville, PA 17303

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

ESTATE OF MARY L. KRIVAK, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Mack Chilcote, 20 Sunset Drive, Gettysburg, PA 17325

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

ESTATE OF REBA P. MCGOWAN a/k/a REBA MCGOWAN, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Donald W. McGowan, c/o Amy E. W. Ehrhart, Esq., 141 Broadway, Suite 230, Hanover, PA 17331

Attorney: Amy E. W. Ehrhart, Esq., 141 Broadway, Suite 230, Hanover, PA 17331

ESTATE OF ROBERT BRUCE SMITH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: E. Elizabeth Smith, 309C Lovely Lane, New Oxford, PA 17350

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

THIRD PUBLICATION**ESTATE OF RICHARD C. CODORI, DEC'D**

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Joanne Schwartz, 158 E. Water Street, Gettysburg, PA 17325

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

ESTATE OF ORBIE E. JACOBS, a/k/a ORBIE W. JACOBS, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Linda Lundberg, Ass't VP, PNC Bank, NA, 4242 Carlisle Pike, Camp Hill, PA 17011

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

ESTATE OF RUTH A. LEE, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executrix: Miriam T. Collins, 44 Pebble Lane, Biglerville, PA 17307

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

ESTATE OF NORA E. STARRY, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Co-Executors: Betty F. Warner, 490 Heidersburg Road, Biglerville, PA 17307; Stanley L. Starry, 6599 Old Harrisburg Road, York Springs, PA 17372

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

Adams County Legal Journal

Vol. 47

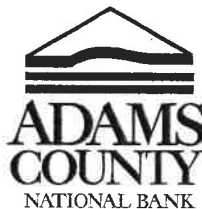
June 10, 2005

No. 3, pp. 11-17

IN THIS ISSUE

LIBERTY DEVELOPMENT VS. LIBERTY TWP. ET AL

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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

Business Office - 111 Baltimore Street, Room 305, Gettysburg, PA 17325, Telephone; (717) 337-9812

Periodicals postage paid at Gettysburg, PA 17325.

Copyright© 1959 by Wm. W. Gaunt & Sons, Inc., for Adams County Bar Association, Gettysburg, PA 17325.

All rights reserved.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-350 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of July, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground situate, lying and being in Hamilton Township, Adams County, Pennsylvania, more particularly bounded and described as follows, to wit:

BEGINNING at a steel pin set along a fifty (50) feet wide right of way known as Foxtown Drive and Lot No. 44 of the hereinafter referenced subdivision plan; thence along said Lot No. 44 North two (02) degrees four (04) minutes forty-seven (47) seconds West, two hundred sixty-six and eighty-two hundredths (266.82) feet to a steel pin set at Lot No. 42 of said plan; thence along Lot No. 42 South sixty-nine (69) degrees fifty-three (53) minutes thirty-five (35) seconds East, three hundred twelve and ninety-five hundredths (312.95) feet to a steel pin set along the above mentioned Foxtown Drive; thence along and with said Foxtown Drive South seven (07) degrees nine (09) minutes zero (00) seconds West, twenty-three and zero hundredths (23.00) feet to a point; thence continuing by a curve to the right with a radius of one hundred fifty and zero hundredths (150.00) feet, an arc distance of two hundred eleven and forty-six hundredths (211.46) feet, and a long chord bearing and distance of South forty-seven (47) degrees thirty-two (32) minutes six (06) seconds West, one hundred ninety-four and thirty-eight hundredths (194.38) feet to a point; thence continuing South eighty-seven (87) degrees fifty-five (55) minutes thirteen (13) seconds West, one hundred thirty-eight and three hundredths (138.03) feet to a steel pin set at Lot No. 44 of said plan, the point and place of BEGINNING. CONTAINING 1.265 Acres and being identified as Lot No. 43 on the hereinafter referenced subdivision plan.

TITLE TO SAID PREMISES IS VESTED IN Terry M. Jordan, Sr. and Josephine K. Jordan by Deed from L.L.

Lawrence Builders, Inc., dated 5-6-02 and recorded 5-7-02 in Deed Book 2652, page 31.

Premises being: 60 Foxtown Drive, Abbotstown, PA 17301

Tax Parcel No. 17-L09-0212

SEIZED and taken into execution as the property of Terry M. Jordan, Sr. a/k/a Terry Michael Jordan, Sr. & Josephine K. Jordan 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 August 15, 2005, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/10, 17 & 24

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-360 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of July, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground situate, lying and being in Abbotstown Borough, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin at corner of the Lincoln Highway and a 32 foot wide street; thence North 68-1/4 degrees East along Lincoln Highway 50 feet to an iron pin at corner of Lot #4 now or formerly of Mellie E. Atland et al; thence along lands of Mellie E. Atland et al South 21-3/4 degrees East 181.5 feet to an iron pin at a 16 foot wide public alley; thence along said public alley South 68-1/4 degrees West 50 feet to an iron pin at corner of 16

foot wide public alley and a 32 foot wide street; thence along said street North 21-3/4 degrees West 181.5 feet to an iron pin, the place of BEGINNING. CONTAINING 33 perches and 91 square feet. Said lot of ground being known as Lot #5 on a plan of lots laid out by P.S. Orner on December 3, 1946.

BEING THE SAME PREMISES which Ralph E. Nieman, by Jamice J. Manula and Barbara A. Trish, his agents, by Deed dated 1/13/04 and recorded 1/23/04 in the Office for the Recorder of Deeds in and for Adams County in Deed Book 3451 at Page 61, granted and conveyed unto Benedict A. Kuhn.

Tax Parcel #: 1-3-53

Premises being: 496 W. King Street, Abbotstown, PA.

SEIZED and taken into execution as the property of Benedict 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 August 15, 2005, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/10, 17 & 24

LIBERTY DEVELOPMENT VS. LIBERTY TWP. ET AL

1. Whether a party is granted permission to intervene is a matter within the sound discretion of the trial court.
2. Property owners located near a proposed development have the requisite interest and status to become intervenors in a land use appeal.
3. In the absence of any evidence that an association independently owns property or any other legally enforceable interest in the vicinity of a proposed development, intervention status is improper. The right to intervene is not absolute. Even if the determination of an action may affect a legally enforceable interest on behalf of a party seeking intervention, a petition for intervention may be denied if the interest of the petitioner is already adequately represented.
4. The burden of proving the existence of an agency relationship rests with the party asserting the relationship. The three basic elements necessary to establish an agency relationship are as follows: the manifestation by the principal that the agent shall act for him, the agent's acceptance of the undertaking, and the understanding of the parties that the principal is to be in control of the undertaking.
5. If the issues raised in an appeal require the presentation of additional evidence, following a motion, the Court of Common Pleas may hold a hearing to receive additional evidence.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil. No. 04-S-399, LIBERTY DEVELOPMENT COMPANY, LLC, Plaintiff, vs. BOARD OF SUPERVISORS OF LIBERTY TOWNSHIP, Defendant, vs. JOHN AND CHARLENE TOMKO, JOSEPH AND KELLIE MACHARSKY, CLYDE AND NANCY WENSCHHOF, JR., RUPER FARM, LTD., PARTNERSHIP, GEORGE P. KRAMER, RICHARD AND SUSAN SWIAT, GEORGE F. AND KAREN KRAMER, LINDA KNOX, GEOFFREY AND BARBARA RUPPERT AND MID-ATLANTIC SOARING ASSOCIATION, INC., Intervenors.

James M. Strong, Esq., for Plaintiff
Walton V. Davis, Esq., for Defendant
Susan J. Smith, Esq., for Intervenors
George, J., September 27, 2004

OPINION

The matter before the Court involves an appeal filed by Liberty Development Company, LLC (hereinafter referred to as "Liberty Development") from a decision rendered by the Board of Supervisors of Liberty Township (hereinafter referred to as "Township") which denied approval of a residential development plan. Following the filing of the appeal, fourteen individuals, two businesses, and an unincorporated association, Save Our Liberty,

petitioned the Court to intervene in the appeal. All of the petitioning intervenors are represented by Attorney Susan Smith.

By Order dated June 20, 2004, permission was granted for all petitioners, except Save Our Liberty, to intervene. In regard to Save Our Liberty's petition, argument was scheduled before the Court. After argument, however, Save Our Liberty withdrew its petition on June 22, 2004. The following day Save Our Liberty once again filed a Petition to Intervene; however, the petition requested that Save Our Liberty be granted permission to intervene in its capacity as agent for and on behalf of approximately forty-two landowners. Save Our Liberty's petition included affidavits from the landowners appointing Save Our Liberty as their agent. The most current petition has been opposed by Liberty Development. After argument, the matter is now ripe for disposition.

In the interim, both parties have filed various pleadings in this matter including a Motion to Strike a Portion of the Land Use Appeal filed by the Intervenors, a request by Save Our Liberty recognizing its change in status from an unincorporated association to an incorporated association, a Statement of Material Facts in Support of Substitution filed by Save Our Liberty, a Petition to Strike Save Our Liberty's Statement of Material Facts filed by Liberty Development, and a Motion to Present Additional Evidence filed by Liberty Development. Each of these matters will be addressed in this Opinion. Since a number of the pleadings referenced above are dependent on Save Our Liberty's status as a party, I will begin by addressing Save Our Liberty's Petition to Intervene.

Pennsylvania Rule of Civil Procedure 2327 sets forth the criteria for parties entitled to intervene in a pending action. The Rule permits intervention where the party seeking to intervene is: 1) a party upon whom a liability may be imposed due to the principles of indemnification; 2) a person who is so situated as to be adversely affected by distribution or other disposition of property in the custody of the court; 3) a person who could have joined as an original party; and 4) a person who has a legally enforceable interest which may be affected by the determination of such action. See Pa.R.C.P. 2327. However, whether a party is granted permission to intervene is a matter within the sound discretion of the trial court. *Allegheny Anesthesiology Assoc., Inc. v. Allegheny General Hosp.*, 826 A.2d 886, 894-95 (Pa.Super. 2003).

A number of germane principles that have evolved from appellate authority will assist in resolving the current dispute. For instance, it is clear that property owners located near a proposed development have the requisite interest and status to become intervenors in a land use appeal. *Larock v. Sugarloaf Twp. Hearing Bd.*, 740 A.2d 308, 313 (citing *Esso Standard Oil Co. v. Taylor*, 159 A.2d 692, 696 (Pa.Super.1960)). This status, however, is not necessarily imputed to a landowners association consisting of members who own property neighboring the potential development. See *Vartan v. Zoning Hearing Bd.*, 636 A.2d 310, 312 (Pa.Cmwlth. 1994). In the absence of any evidence that an association independently owns property or any other legally enforceable interest in the vicinity of a proposed development, intervention status is improper.¹ *Id.* Finally, the right to intervene is not absolute. Even if the determination of an action may affect a legally enforceable interest on behalf of a party seeking intervention, a petition for intervention may be denied if “the interest of the petitioner is already adequately represented”. Pa.R.C.P. 2329(2); *Larock*, 740 A.2d at 314.

Perhaps Save Our Liberty withdrew its initial petition in light of the instruction given by our appellate courts. Currently, they do not seek to be recognized as a party having independent status to intervene but rather they seek status as an agent for parties which have an interest in the outcome of the litigation. The legal theory behind this approach is sound. Pennsylvania law recognizes that a party may properly appoint an agent to represent that party’s interest in litigation. Pa.R.C.P. 2352; *Clinton v. Giles*, 719 A.2d 314, 318 (Pa.Super.1998). Unfortunately for Save Our Liberty, the underlying facts do not bolster its legal theory.

¹Save Our Liberty cites *Sunny Farms, Ltd. v. North Codorus Twp.*, 474 A.2d 56 (Pa.Cmwlth. 1984) for the proposition that a neighborhood group may properly be granted intervener status. Indeed, in that case, the Commonwealth Court affirmed the trial court’s grant of intervener status to a neighborhood group, O.U.C.H., Inc. The Court’s Opinion, however, fails to specify whether or not O.U.C.H., Inc. independently held property or another legal interest in the litigation or, conversely, whether O.U.C.H., Inc.’s, intervener status was derivative of the rights of its membership. Equally unclear is whether the issue which is currently before this Court was specifically addressed. Subsequent to *Sunny Farms*, two separate panels of the Commonwealth Court have specifically addressed the current issue and have held that an interest separate from the derivative interest of the neighboring property owners is critical to a neighborhood group’s intervention status. See *Vartan*, 636 A.2d 314; *Acorn Dev. Corp. v. Zoning Hearing Bd.*, 523 A.2d 436, 437 (Pa.Cmwlth. 1987). The court’s reasoning in *Vartan* and *Acorn* is more applicable and will be followed.

Pennsylvania law has clearly established that the burden of proving the existence of an agency relationship rests with the party asserting the relationship. *Scott v. Purcell*, 415 A.2d 56, 61 (Pa. 1980). The three basic elements necessary to establish an agency relationship are as follows: “the manifestation by the principal that the agent shall act for him, the agent’s acceptance of the undertaking and the understanding of the parties that the principal is to be in control of the undertaking”. *Basile v. H&R Block Eastern Tax Serv., Inc.*, 761 A.2d 1115, 1120 (Pa. 2000) (citing *Scott*, 415 A.2d at 60).

Save Our Liberty has entered into a written agency agreement with approximately forty-two owners of property near the proposed development. However, a critical provision in this agreement provides that the agent (Save Our Liberty) rather than the principal (the individual property owners) “is authorized to make all final decisions regarding the scope of legal services retained and strategic decision-making regarding legal activities, including litigation”. See Save Our Liberty’s Petition, Exhibit A. This provision of the agency agreement was addressed in the testimony of William Packard, co-chair of Save Our Liberty. At the hearing, Mr. Packard indicated that the agreement required Save Our Liberty to consult with each of the individual property owners in the decision-making process. However, he conceded that the course of this litigation would ultimately be decided by Save Our Liberty, after taking into account the wishes of the majority of its membership. While I am convinced of Mr. Packard’s sincerity, I am also compelled to conclude that the individual principals have ceded control of the litigation to their agent, Save Our Liberty. As such, one of the three basic elements of agency has not been met. Accordingly, I deny Save Our Liberty’s Petition to Intervene as Agent for the respective property owners entering into the agency agreement with Save Our Liberty.

In reaching this decision, I am mindful of the criticism that land use litigation has the potential to be conducted on a less than even playing field. Certainly, a deep-pocketed developer may gain leverage in litigation due to financial and support resources that are not available to the average Adams County property owner. On the other hand, all parties to litigation before the Courts, including developers, are entitled to know the nature of the opposing party’s interest in the litigation. Testimony at the hearing on this matter indicated that Save Our Liberty is made up of approximately two hundred ninety

members. Of those two hundred ninety members, approximately two hundred own property within the Township. The status of the ninety remaining members is unknown. Testimony further revealed that there is no requirement in Save Our Liberty's by-laws that a member of the Board of Directors own property within the Township. While I do not question the sincerity of the members on the Save Our Liberty Board of Directors in representing property owners of Liberty Township, under certain circumstances, recognizing a non-property owning association as a party may allow an entity which lacks a real interest in the litigation to interject itself into the litigation. Until the legislature or appellate courts determine otherwise, I cannot, by judicial fiat, grant intervener status based upon an argument that the grant of such status is necessary to level the playing field. Neither the law, nor anything in this Opinion, prohibits individual property owners who have obtained party status from attempting to level a perceived imbalance in the playing field by pooling their resources in furtherance of this litigation. In reaching this decision, I note only that Pennsylvania law requires that a party to an action have a real interest in the outcome of the litigation.²

²Save Our Liberty argues that neither the Township, which is a party, nor the other intervenors to this litigation, adequately represent the interests of the property owners who have designated Save Our Liberty as their agent. It argues that its interests in having input into the litigation and its ability to preserve standing on appeal are distinct and individual interests. Certainly, the property owners' interest in resolving this matter through settlement and their ability to appeal are distinct interests separate from those of the Township and the other intervenors. See *Keener v. Zoning Hearing Bd.*, 714 A.2d 1120 (Pa.Cmwlth. 1998); *Nahas v. Zoning Hearing Bd. of Schuylkill County*, 823 A.2d 237 (Pa.Cmwlth. 2003). The argument that granting Save Our Liberty party status preserves these rights, however, is unconvincing. Pursuant to the terms of its agency agreement, Save Our Liberty maintains control over the decision-making process in the litigation. Testimony at the hearing in this matter indicated that the will of the majority would be taken into account in reaching material decisions which steer the litigation. Testimony further revealed that Save Our Liberty recognizes that it is required to terminate the agency relationship if a conflict were to occur among the several property owners who appointed Save Our Liberty as their agent. Depending on the timing of a conflict, the property owners may very well lose the status which they currently attempt to obtain. For instance, if a conflict would occur during the appellate process necessitating termination of the agency agreement, Save Our Liberty would have standing on appeal while the individual property owners would not. Clearly, the safest way for property owners to protect their respective interests is for those property owners to separately seek intervener status.

In light of the ruling herein, Save Our Liberty's request to change its status from an unincorporated association to an incorporated association, the Statement of Material Facts in Support of Substitution, and Liberty Development's Petition to Strike Save Our Liberty's Statement of Material Facts are all moot. Thus, the sole remaining issue involves the intervenors' Motion to Strike Portion of Land Use Appeal and Liberty Development's Motion to Present Additional Evidence.

The intervenors, in their Motion to Strike Portions of the Notice of Appeal, attack allegations contained in the Notice of Appeal which allege a denial of due process. The paragraphs at issue allege that the Chairman of the Board of Supervisors exhibited an obvious bias and a personal and political agenda, which resulted in a denial of due process for Liberty Development. Liberty Development's Motion to Present Additional Evidence seeks to support the introduction of additional evidence regarding the allegations of bias in its Notice of Appeal. Furthermore, Liberty Development seeks to present additional evidence concerning the Township's denial of the application on grounds that the planned residential developments were not permitted in Liberty Township at the time of the application.

The legislative scheme addressing appeals to the Court of Common Pleas in land use matters contemplates a procedure wherein the specific grounds for appeal are raised in the notice of appeal. See *Gall v. Zoning Hearing Bd. of Upper Milford Twp.*, 723 A.2d 758, 759 (Pa.Cmwlth. 1999) (failure to include grounds for appeal in land use appeal notice warrants dismissal of appeal) *Id.*; see also 53 P.S. § 11003-A. Thereafter, if the issues raised in an appeal require the presentation of additional evidence, following a motion, the Court of Common Pleas may hold a hearing to receive additional evidence. 53 P.S. § 11005-A. The scheme, therefore, provides that the notice of appeal is a precursor to any motion to supplement the record. To find otherwise would lead to the absurd result of requiring the court to consider motions to supplement the record on issues that are deemed waived as a matter of law. I find that the intervenors' Motion to Strike Portion of Land Use Appeal is premature and, therefore, denied.

As mentioned, the Pennsylvania Municipality's Planning Code, 53 P.S. § 10101, et. seq., empowers the court to consider additional evidence in a land use appeal if the evidence is necessary to the prop-

er consideration of the appeal. See 53 P.S. § 10105-A. Accordingly, argument on Liberty Development's Motion to Supplement the Record will be scheduled.

ORDER OF COURT

AND NOW, this 27th day of September, 2004, the Petition to Intervene filed by Save Our Liberty is denied. Save Our Liberty's petition to change their status from an unincorporated association to an incorporated association, the Statement of Material Facts in Support of Substitution, and the Petition to Strike Save Our Liberty's Statement of Material Facts filed by Liberty Development Company are moot. The remaining intervenors' Motion to Strike a Portion of the Land Use Appeal is denied. Arguments on the Motion to Present Additional Evidence filed by Liberty Development Company is scheduled for November 10, 2004, at 2:00 P.M. in Courtroom #2 of the Adams County Courthouse. An evidentiary hearing on the motion, if necessary, will be held at the same time. Any party opposing the Motion to Present Additional Evidence shall file an Answer in Opposition to the Motion on or before October 8, 2004. If a party fails to file an Answer in Opposition within the aforementioned time period, I will consider such inaction as a lack of opposition to the Motion to Present Additional Evidence. In such an event, the Motion to Present Additional Evidence will be granted and the argument and hearing scheduled for November 10, 2004, will be cancelled. However, in the event that an Answer in Opposition to the Motion is filed by any party, Liberty Development Company shall file a brief in support of its Motion to Present Additional Evidence on or before October 22, 2004. Responsive briefs shall be filed on or before October 29, 2004.

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 WILLIAM S. BLESSLEY, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Executor: H. Webb Blessley, 910 Baja, Laguna Beach, CA 92651

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

ESTATE OF HENRY J. CONRAD, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executors: Henry Wayne Conrad, 11003 Grey's Corner Road, House #71, Berlin, MD 21811; Victoria A. Bunty, 687 Poplar Street, Hanover, PA 17331

Attorney: Crabbs & Crabbs, Attorneys for the Estate, 202 Broadway, Hanover, PA 17331

ESTATE OF MARY REBECCA FLYNN, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

John E. Flynn, 660 Red Patch Ave., Gettysburg, PA 17325

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

ESTATE OF ELVA M. KLINE, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Marie Kline, 635 Hanover Pike, Littlestown, PA 17340

Attorney: Judith Koper Morris, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF HELEN G. LEREW a/k/a HELEN R. LEREW, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Executrix: Joan Trcka, 6470 Old Harrisburg Road, York Springs, PA 17372

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

ESTATE OF DANIEL A. MONTREUIL, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Administrator: Donald P. Montreuil, 410 Bottom Road, Orrtanna, PA 17353

ESTATE OF RUTH V. WISNIEWSKI, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Jean D. Hopwood, 388 Lexington Way, Littlestown, PA 17340

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

SECOND PUBLICATION**ESTATE OF SAMUEL D. CHAPMAN, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Administratrix: Betty K. Chapman, 1005 Biglerville Road, Gettysburg, PA 17325

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

ESTATE OF BERNARD MICHAEL COCHRAN, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administrator: Steven M. Cochran, 45 Brown's Dam Road, #219, New Oxford, PA 17350

Attorney: Donald W. Dorr, Esq., 846 Broadway, Hanover, PA 17331

ESTATE OF NANCY JEAN COOL, DEC'D

Late of Abbottstown Borough, Adams County, Pennsylvania

Administrator: Lisa Jo Smith, 525 Meade Avenue, Hanover, PA 17331

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

ESTATE OF NORMA K. DEVENER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: M&T Trust Company, 13 Baltimore Street, Hanover, PA 17331

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

ESTATE OF ROMAINE E. EBERSOLE, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executors: Julia E. Highlands, 2445 Stoney Point Road, East Berlin, PA 17316; Steven E. Ebersole, P.O. Box 31, McSherrytown, PA 17344

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

ESTATE OF EVELYN R. FRANTZ, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: M&T Trust Company, formerly Allfirst Trust Company of PA, N.A., 13 Baltimore Street, Hanover, PA 17331

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

ESTATE OF HARVEY W. KLINE, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executrix: Marie C. Kline, c/o Richard W. Stevenson, Esq., McNees Wallace & Nurick LLC, 100 Pine Street, P. O. Box 1166, Harrisburg, PA 17108

Attorney: Richard W. Stevenson, Esq., McNees Wallace & Nurick LLC, 100 Pine Street, P. O. Box 1166, Harrisburg, PA 17108

THIRD PUBLICATION**ESTATE OF LLOYDA A. DECKER, DEC'D**

Late of Latimore Township, Adams County, Pennsylvania

Executors: Theodore A. Decker, 1390 Gun Club Road, York Springs, PA 17372; Rodney L. Decker, 112 Old Cabin Hollow Road, Dillsburg, PA 17019

Attorney: Jan M. Wiley, Esq., Wiley, Lenox, Colgan & Marzzacco, P.C., 130 W. Church St., Suite 100, Dillsburg, PA 17019

ESTATE OF RAYMOND M. HALE, JR., DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: William R. Hale, 21 Pearl Street, P.O. Box 358, Arendtsville, PA 17303

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

(continued on page 4)

THIRD PUBLICATION (continued)

ESTATE OF MARY L. KRIVAK, DEC'D
Late of the Borough of Bonneauville,
Adams County, Pennsylvania

Mack Chilcote, 20 Sunset Drive,
Gettysburg, PA 17325

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

ESTATE OF REBA P. MCGOWAN a/k/a
REBA MCGOWAN, DEC'D

Late of Conewago Township, Adams
County, Pennsylvania

Executor: Donald W. McGowan, c/o
Amy E. W. Ehrhart, Esq., 141
Broadway, Suite 230, Hanover, PA
17331

Attorney: Amy E. W. Ehrhart, Esq., 141
Broadway, Suite 230, Hanover, PA
17331

ESTATE OF ROBERT BRUCE SMITH,
DEC'D

Late of Oxford Township, Adams
County, Pennsylvania

Executrix: E. Elizabeth Smith, 309C
Lovely Lane, New Oxford, PA 17350

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execu-
tion, Judgment No. 03-S-844 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 22nd
day of July, 2005, at 10:00 o'clock in the
forenoon at the Sheriff's Office located in
the Courthouse, Borough of Gettysburg,
Adams County, PA, the following Real
Estate, viz.:

95 Barlow-Greenmount Road,
Gettysburg, Pennsylvania, Cumberland
Township, Adams County

ALL THAT improved tract of land, situ-
ate, lying and being in Cumberland
Township, Adams County, Pennsylvania,
more particularly bounded and described
as follows:

BEGINNING at a concrete nail in the
center line of Legislative Route 01002,
Barlow-Greenmount Road, at the
Southwest corner of land formerly of
Leroy Bowers, now lands of Paul P.
Frazer and Juanita C. Frazer; thence in
the center of said Legislative Route
01002, Barlow-Greenmount Road, North
80 degrees 58 minutes West, 100 feet to
a concrete nail, thence by lands formerly
of Hylida Eyler and Betty J. Dickson, now
lands of Roger M. Houser and Katherine
E. Houser, and running through an iron
pipe set back along the line 18.58 feet
from the beginning of this course, North
20 degrees 52 minutes East, 515.75 feet

to an iron pipe, thence by lands of Viebo
Viersma and Ann Viersma, South 77
degrees 34 minutes East, 100 feet to an
iron pin on a line of land formerly of
Leroy Bowers, now lands of Paul P.
Frazer and Juanita C. Frazer, South 20
degrees 59 minutes West, 510.13 feet to
a concrete nail at the center of
Legislative Route 01002, Barlow-
Greenmount Road, the point and place
of BEGINNING.

CONTAINING 1.1519 Acres.

BEING Tax Map N. F-16 Parcel 40A.

TITLE IS VESTED in Victor D. Burkett,
Jr. by Deed from Ven Ralf Patterson,
Executor, by Deed dated 4/25/1966 and
recorded 6/3/1996 in Record Book 1204
page 129.

SEIZED and taken into execution as
the property of **Victor D. Burkett, Jr.** 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 August 15, 2005,
and distribution will be made in accor-
dance with said schedule, unless excep-
tions are filed thereto within 10 days after
the filing thereof. Purchaser must settle
for property on or before filing date.

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

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

6/10, 17 & 24

NOTICE TO APPOINTED COUNSEL

The Supreme Court is receiving peti-
tions from criminal defendants alleging
that appointed counsel failed to pursue
available avenues of appellate review.
Effective immediately, in reviewing such
petitions the Court will advise the attor-
ney of the allegation and request a
response. **If the Court concludes that
counsel abandoned the client in viola-
tion of the rules and case law, the
matter will automatically be referred
to the Disciplinary Board of the
Supreme Court for consideration.** See
Pa.R.Crim.P. 122(C)(3) and Pa.R.A.Crim.P.
904(E) and Comments thereto.

Prothonotary
Supreme Court of Pennsylvania

6/10 & 17

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

NOTICE IS HEREBY GIVEN to all
heirs, legatees and other persons con-
cerned 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 con-
firmation of accounts and entering
decrees of distribution on Monday, June
13, 2005, at 9:00 a.m.

KISSLING—Orphans' Court Action
Number OC-124-03. The First and
Partial Account of Judy M. Prillaman,
Patricia K. Ziegler and Donald W.
Kiessler, Administrators of the Estate of
Walter Kiessler, deceased, late of
Franklin Township, Adams County,
Pennsylvania.

BELLEW—Orphans' Court Action
Number OC-38-05. The First and Final
Account of Robert M. Bellew, Personal
Representative of John C. Bellew,
deceased, late of Berwick Township,
Adams County, Pennsylvania.

YEALY—Orphans' Court Action
Number OC-40-05. The First and Final
Account of Wiima M. Noel and Mark W.
Yealy, Co-Administrators of the Estate of
Dorothy M. Yealy, deceased, late of the
Borough of McSherrystown, Adams
County, Pennsylvania.

STRAYER—Orphans' Court Action
Number OC-41-05. The First and Final
Account of Robert C. Baker and Jane A.
Baker, Executors of the Estate of Velma
V. Strayer, deceased, late of Oxford
Township, Adams County, Pennsylvania.

WOLFE—Orphans' Court Action
Number OC-49-05. The First and Final
Account of Karen D. Brodbeck and Keith
L. Wolfe, Co-Executors of the Estate of
Millard A. Wolfe, deceased, late of
Huntington Township, Adams County,
Pennsylvania.

Lisa K. Grubbs
Clerk of Courts

6/3 & 10

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that
Articles of Incorporation were filed with
the Pennsylvania Department of State
on May 2, 2005 to incorporate SHAR-
RAH DESIGN GROUP, INC., a business
corporation incorporated under the provi-
sions of the Pennsylvania Business
Corporation Law of 1988.

Teeter, Teeter & Teeter
108 W. Middle Street
Gettysburg, PA 17325

6/10

Adams County Legal Journal

Vol. 47

June 17, 2005

No. 4, pp. 18-25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-1122 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of July, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point in the center of a private road 50 feet in width at the Westernmost corner of the lot designated as Lot No. 1 on the plan of lots referred to below; thence by said Lot No. 1 and running through an iron pin located 25 feet from the place of beginning South 48 degrees 23 minutes 38 seconds East, 183.56 feet to an iron pin; thence by lot now or formerly of Charles E. Ott and wife South 41 degrees 5 minutes 37 seconds West, 353.01 feet to an iron pin; thence by the lot designated as Lot No. 5 on the plan of lots referred to below and running through an iron pin located 25 feet from the end of this line North 48 degrees 23 minutes 38 seconds West, 186.72 feet to a point in the center of the aforementioned private road; thence in the center of said private road and by the lot designated as Lot No. 4 on the plan of lots referred to below North 41 degrees 36 minutes 22 seconds East, 353 feet to a point in the center of said private road, the place of BEGINNING. CONTAINING 1.499 acres.

TOGETHER WITH the right to use the 50-foot private road referred to in the foregoing description as a means of ingress, egress and regress from Legislative Route 01041 to the lot hereby conveyed.

SUBJECT, HOWEVER, to the restrictions and responsibilities contained in a deed recorded in the aforementioned Recorder's Office in Deed Book 356 at Page 654.

The foregoing description was obtained from a plan of lots of Big Flat Acres prepared by Richard W. Boyer, registered surveyor, trading as Boyer Surveys, dated September 27, 1978,

and recorded in Adams County Plat Book 24 at Page 10, the lot hereby conveyed being designated as Lot No. 3 on said plan of lots.

Address: 2630 D Shippensburg Rd., Biglerville, PA 17307

Tax Map or Parcel ID No.: (29) B05-57

SEIZED and taken into execution as the property of **Patricia Slaybaugh a/k/a Patricia A. Trimmer** 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 August 15, 2005, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/17, 24 & 7/1

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-844 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of July, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

95 Barlow-Greenmount Road, Gettysburg, Pennsylvania, Cumberland Township, Adams County

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

BEGINNING at a concrete nail in the center line of Legislative Route 01002, Barlow-Greenmount Road, at the Southwest corner of land formerly of Leroy Bowers, now lands of Paul P.

Frazer and Juanita C. Frazer; thence in the center of said Legislative Route 01002, Barlow-Greenmount Road, North 80 degrees 58 minutes West, 100 feet to a concrete nail; thence by lands formerly of Hylda Eyler and Betty J. Dickson, now lands of Roger M. Houser and Katherine E. Houser, and running through an iron pipe set back along the line 18.58 feet from the beginning of this course, North 20 degrees 52 minutes East, 515.75 feet to an iron pipe; thence by lands of Viebo Viersma and Ann Viersma, South 77 degrees 34 minutes East, 100 feet to an iron pin on a line of land formerly of Leroy Bowers, now lands of Paul P. Frazer and Juanita C. Frazer, South 20 degrees 59 minutes West, 510.13 feet to a concrete nail at the center of Legislative Route 01002, Barlow-Greenmount Road, the point and place of BEGINNING.

CONTAINING 1.1519 Acres.

BEING Tax Map N. F-16 Parcel 40A.

TITLE IS VESTED in Victor D. Burkett, Jr. by Deed from Ven Ralf Patterson, Executor, by Deed dated 4/25/1966 and recorded 6/3/1996 in Record Book 1204 page 129.

SEIZED and taken into execution as the property of **Victor D. Burkett, Jr.** 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 August 15, 2005, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/10, 17 & 24

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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

Business Office – 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 337-9812

Periodicals postage paid at Gettysburg, PA 17325.

Copyright© 1959 by Wm. W. Gaunt & Sons, Inc., for Adams County Bar Association, Gettysburg, PA 17325. All rights reserved.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-360 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of July, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground situate, lying and being in Abbottstown Borough, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin at corner of the Lincoln Highway and a 32 foot wide street; thence North 68-1/4 degrees East along Lincoln Highway 50 feet to an iron pin at corner of Lot #4 now or formerly of Mellie E. Atland et al; thence along lands of Mellie E. Atland et al South 21-3/4 degrees East 181.5 feet to an iron pin at a 16 foot wide public alley; thence along said public alley South 68-1/4 degrees West 50 feet to an iron pin at corner of 16 foot wide public alley and a 32 foot wide street; thence along said street North 21-3/4 degrees West 181.5 feet to an iron pin, the place of BEGINNING. CONTAINING 33 perches and 91 square feet. Said lot of ground being known as Lot #5 on a plan of lots laid out by P.S. Orner on December 3, 1946.

BEING THE SAME PREMISES which Ralph E. Nieman, by Jamice J. Manula and Barbara A. Trish, his agents, by Deed dated 1/13/04 and recorded 1/23/04 in the Office for the Recorder of Deeds in and for Adams County in Deed Book 3451 at Page 61, granted and conveyed unto Benedict A. Kuhn.

Tax Parcel #: 1-3-53

Premises being: 496 W. King Street, Abbottstown, PA.

SEIZED and taken into execution as the property of **Benedict 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 August 15, 2005, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after

the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/10, 17 & 24

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-327 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of July, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a spike in the center of a State Highway, Legislative Route No. 01020 leading from the Bendersville and Brysonia Road to Route No. 34 and being 890 feet from Route No. 234; thence through land now or formerly of George H. Cole and Jane Wise Cole, North 68 degrees 30 minutes West 190.00 feet to an iron pin; thence through the same, North 09 degrees 55 minutes East 100.00 feet to an iron pin; thence by same, South 68 degrees 30 minutes East 190.00 feet to a spike in the center of the above mentioned State Highway; thence along and in the center of said Road, South 09 degrees 55 minutes West 100.00 feet to a spike, the place of BEGINNING. CONTAINING 68.36 perches.

TITLE TO SAID PREMISES IS VESTED IN Michael L. McKenrick by deed from Estate of Robert E. McKenrick (deceased) by deed by Lisa K. Grubbs, Acting Clerk of the Orphans Court Division of the Court of Common Pleas of Adams County, Pennsylvania, pursuant to the provisions of a Final decree entered to No. OC-142-03, signed 12-2-2003 by Hon. Robert G. Bigham, Judge for the estate, dated 1-8-2004 and

recorded 1-29-2004 in Deed Book 3455, Page 293.

Premises being: 80 Nawakwa Road, Biglerville, PA 17307

Tax Parcel No. 29-D07-0020

SEIZED and taken into execution as the property of **Michael L. McKenrick** 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 August 15, 2005, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/17, 24 & 7/1

NOTICE TO APPOINTED COUNSEL

The Supreme Court is receiving petitions from criminal defendants alleging that appointed counsel failed to pursue available avenues of appellate review. Effective immediately, in reviewing such petitions the Court will advise the attorney of the allegation and request a response. **If the Court concludes that counsel abandoned the client in violation of the rules and case law, the matter will automatically be referred to the Disciplinary Board of the Supreme Court for consideration.** See Pa.R.Crim.P. 122(C)(3) and Pa.R.A.Crim.P. 904(E) and Comments thereto.

Prothonotary
Supreme Court of Pennsylvania

6/10 & 17

MYERS VS. BERWICK TWP.

1. The party challenging the rate structure has the burden of proving a manifest and flagrant abuse of discretion or an arbitrary establishment of the rate system. In considering such a challenge on appeal from an agency hearing, the court must consider whether the factual findings are supported by substantial evidence and whether the law was properly applied to the facts.

2. In determining whether a sewage rate is reasonable, it must have a reasonable relation to the value of the services rendered either as actually consumed or as readily available for use. It is not required, however, that sewage rate charges be based solely upon services actually consumed.

3. That a court may have a different opinion or judgment in regard to the action of an agency is not a sufficient ground for interference.

In the Court of Common Pleas of Adams County, Pennsylvania,
Civil, No. 03-S-1292, MAURICE D. MYERS AND DANIEL
MYERS VS. BOARD OF SUPERVISORS OF BERWICK TOWNSHIP,
ADAMS COUNTY, PENNSYLVANIA.

Robert P. Kane, Esq., for Plaintiffs

Timothy Shultis, Esq., for Defendant

George, J., October 5, 2004

OPINION

The Appellants, Maurice D. Myers and Daniel Myers (hereinafter referred to as “the Myers”), appeal the Berwick Township Board of Supervisors’ decision, which rejected their claim that the sewerage fees imposed on their business by the Township were unreasonable. The Myers argue that the charges imposed by the Township are arbitrary, capricious, and illegal because the fee assessments greatly exceed the actual sewage service provided to their business.

The Myers are owners of a business known as The Tropical Treat, a drive-in restaurant that serves fast food and ice cream. The restaurant has an outdoor seating capacity of one hundred twenty-two (122) seats, which is comprised of eighteen (18) picnic tables (four seats each), one (1) small picnic table (two seats), twenty (20) drive-in spaces for waitress service (two seats per car), and eight (8) seats on a deck. Additionally, there are fifty-two (52) parking spaces that serve the property.¹ The Tropical Treat has two (2) public restrooms

¹ Although not critical to this determination, the record indicates that the best estimate as to the peak number of patrons at The Tropical Treat on any given day is seven hundred (700). Additionally, The Tropical Treat employs sixty-two (62) individuals consisting of three (3) full-time employees and fifty-nine (59) part-time employees.

available to its customers. The business is a seasonal business open Monday through Saturday from March 15 until the end of September.

On October 22, 2001, the Berwick Township Board of Supervisors enacted Ordinance No. 56 relating to the general rules and regulations for the Township's sanitary sewer system. The Ordinance provides, among other things, for the payment of a capital charges fee and a sewer rental fee, which are based upon the number of EDU's assigned to each respective property receiving sewerage service.² According to the Ordinance, the fees ultimately paid by the consumer are based upon a flat rate per EDU assigned to the respective consumer. Ordinance No. 56 specifically provides that the number of seats at a restaurant or drive-in restaurant determines the number of applicable EDU's. Specifically, the Ordinance provides that a drive-in restaurant will be assessed one EDU for each group of twelve (12) seats available for customer use. The Ordinance further clarifies that a parking space with food service shall equal two (2) seats. According to the calculations provided in the Ordinance, the Tropical Treat has one hundred twenty-two (122) seats, which amounts to eleven (11) EDU's. As a result of this calculation, and after applying a flat rate charge assigned to each EDU for tapping fees and rental fees, the Myers were assessed \$11,000 to tap into the sewage system and a monthly rental fee in the amount of \$550 per month.³

The Myers challenge these fees arguing that the application of Township Ordinance No. 56 to their property has resulted in a fee assessment equal to an annual usage of one million eighty-four thousand fifty (1,084,050) gallons of sewage.⁴ They contest this amount of usage and allege that their actual sewage flow from October 1,

² An EDU refers to an "equivalent dwelling unit" and, according to the Ordinance, is represented by "a volume of waste water generated by a typical residential dwelling unit...." The Berwick Township Ordinance equates a single EDU to two hundred seventy (270) gallons of waste water generated per day by a typical residential dwelling.

³ Berwick Township assigns a capital charge fee (tapping fee) of \$1,000 per EDU. The monthly rental charge assigned by the Township is \$50 per EDU.

⁴ This number is calculated as follows: 11 EDU's x 270 gallons per day x 365 days per year.

2002, through September 27, 2003, was only 70,840 gallons.⁵ The Myers ask the Court to find that the Township's application of the Ordinance to their property is blatantly unfair and request the Court to impose a more equitable assignment of EDU's. The Myers also question the Township's propriety in charging a flat rate in assessing the capital charges fee.

The party challenging the rate structure has the burden of proving a manifest and flagrant abuse of discretion or an arbitrary establishment of the rate system. *Twp. of Hopewell v. The Mun. Water Auth.*, 475 A.2d 878, 880 (Pa.Cmwlt. 1984). In considering such a challenge on appeal from an agency hearing, the court must consider whether the factual findings are supported by substantial evidence and whether the law was properly applied to the facts. *Smith v. Athens Twp. Auth.*, 685 A.2d 651, 655 (Pa.Cmwlt. 1996). With these standards in mind, I will address each of the challenged assessments separately.

Capital Charges Fee

The Myers were assessed a fee of \$11,000, imposed by the Township pursuant to Section 3 of Ordinance No. 56. This particular section of the Ordinance referenced the Pennsylvania Municipality Authorities Act as enabling authority.⁶ A reading of the enabling legislation reveals that the Township is authorized to charge

⁵ According to their testimony, the Myers derived this number by metering the water consumption used at the property. Although the testimony reflects that the metering of water consumption is an acceptable means to measure sewage output, the record is silent as to whether it is a generally accepted principle that water consumption is equal to sewage output or, in the alternative, whether an adjustment factor is applied to the calculation.

⁶ Although it is not entirely clear in the record, it appears that the sewage system servicing Berwick Township is operated by the Township rather than a municipal authority. Nevertheless, Pennsylvania's Second Class Township Code authorizes the Board of Supervisors of a Second Class Township to construct sanitary sewer systems and to impose fees, customer facility fees, tapping fees, and similar fees as enumerated by the Pennsylvania Municipal Authorities Act of 1945. See 53 P.S. § 67501. This is the same Act referenced by Berwick Township Ordinance No. 56. Incidentally, prior to the adoption of Ordinance No. 56 by Berwick Township, the Pennsylvania Municipal Authorities Act of 1945 was repealed. At the same time, that Act was replaced by a new "Municipal Authorities Act" made effective June 19, 2001. See 53 Pa. C.S.A. § 5601, et. seq. Since both parties reference this new Act in their arguments and briefs, the Court will consider the current issue under the enabling legislation of the 1991 Municipal Authorities Act.

customers for the cost of construction to the extent of the benefits rendered to the customer;⁷ for the cost of construction in accordance with the front foot rule;⁸ and for the cost of connecting to the sewer system.⁹ The authority to charge connection fees, however, contains several limitations. For instance, while the connection fee may be in addition to fees imposed for the cost of construction, charges imposed as tapping fees do not include any costs used in calculating the construction cost assessment. This section does not prohibit a flat rate based upon estimated use but rather envisions calculating a rate based on the connection costs, the cost of capacity-related facilities, the cost of distribution facilities, and the cost of collection facilities.

Based upon my review of the enabling legislation, I cannot automatically conclude that the Township's decision to employ a connection fee schedule using EDU's as a bench mark violates the enabling legislation. While a thorough review of Berwick Township's calculations would give this Court the ability to address the propriety of the rate charge, that issue was neither brought before the Board nor raised by the Myers in their Notice of Appeal. The focus of the Myers' challenge throughout this litigation has been on the number of EDU's assigned to The Tropical Treat Restaurant and not on the formula used in attaching and assigning a flat rate per EDU for the purpose of tapping fee assessment. Having found that a flat rate structure in regard to assessing a connection fee is not, in and of itself, improper, I find that the Myers waived their challenge to the calculation of that assessment by raising it for the first time in their brief. 2 Pa.C.S.A. § 753 (relating to the scope of review of the local agency appeals). See also *Lower Providence Twp. v. Nagle*, 469 A.2d 338, 343 (Pa.Comwlth. 1984) (recognizing that under local agency law, only legal, and not factual issues, may be raised for the first time on appeal).¹⁰

⁷53 Pa.C.S.A. § 5607(21).

⁸53 Pa.C.S.A. § 5607(22). The front foot rule allows the township to charge sewage system construction costs based on the foot frontage of the properties benefited.

⁹53 Pa.C.S.A. § 5607.

¹⁰Although the issue of whether the Township may properly employ a flat rate scheme in imposing a connection fee was not raised before the Board, I conclude, based upon the enabling legislation, that the issue is purely legal. On the other hand, in order to calculate the amount of the flat rate assigned by the Township as a
(footnote 10 continued to next page)

Assignment of Eleven (11) EDU's

The Myers argue that the assignment of eleven (11) EDU's to The Tropical Treat property resulted in an unreasonable rate. In determining whether a sewage rate is reasonable, it "must have a reasonable relation to the value of the services rendered either as actually consumed or as readily available for use...." *Patton-Ferguson Joint Auth. v. Hawbaker*, 322 A.2d 783, 786 (Pa.Cmwlt. 1974). It is not required, however, that sewage rate charges be based solely upon services actually consumed. *Life Serv.'s, Inc. v. Chalfont-New Britain Twp. Joint Sewage Auth.*, 528 A.2d 1038, 1041 (Pa.Cmwlt. 1987). After reviewing the record, I find that the assignment of eleven (11) EDU's at The Tropical Treat is rationally related to the value of the services readily available for use.

The Berwick Sanitary Sewer System was designed in accordance with the Pennsylvania Department of Environmental Protection Domestic Waste Water Facilities Manual. According to the Ordinance, "[e]ach EDU shall be represented by a volume of waste water generated by a typical residential dwelling unit (270 g/b/d) or in accordance with Chapter 94 Report Projections, as prepared annually".¹¹ The Myers do not challenge this assignment of 270 gallons per EDU, but rather, they attack the assignment of eleven EDU's to The Tropical Treat Restaurant. Compare *West v. Hampton Twp. Sanitary Auth.*, 661 A.2d 459 (Pa.Cmwlt. 1995).

(footnote 10 continued from previous page)

connection fee, a factual record is required. Compare *West v. Hampton Twp. Sanitary Auth.*, 661 A.2d 459 (Pa.Cmwlt. 1995). Instantly, the Myers not only failed to raise this issue before the Board but also stipulated that the Ordinance was properly enacted. Counsel cannot void an otherwise valid stipulation to argue a legal theory after the record is now closed when the Township has been denied the opportunity to develop a factual record.

¹¹The Department of Environmental Protection Domestic Waste Water Facilities Manual suggests that a sewage system design be based on an annual average flow of 100 gallons per day per person. Although the record fails to include specific information concerning census figures for Berwick Township, it appears that 100 gallons per day is multiplied by the average household of 2.7 persons resulting in a 270 gallon-per-day figure used in assessing one EDU per household. The Myers have not challenged the use of 270 gallons per day being equal to one EDU. In fact, the Myers' own expert, James R. Holly, a registered professional engineer, acknowledged that there is nothing wrong with the Township's figure of 270 gallons per day. Mr. Holly acknowledged that this figure is approximately 1.48 times less than what DEP requires for an on-site septic system.

In determining the proper amount of EDU's to be assigned to a drive-in restaurant, Berwick Township factors not only hydraulic load,¹² but also organic load.¹³ In doing so, Berwick Township recognizes that the organic load for a restaurant is approximately four to five times more concentrated than a load from a normal residence. In support of this claim, the Township introduced a study showing the average concentration of organic waste resulting from restaurant facilities. The Myers' expert not only agreed that the study showed that organic waste levels exceeded residential organic wastes by four to six times, but also acknowledged that the Township's reliance on the data was proper.

In addition to taking into account the interplay between hydraulic flow and organic flow, the Township consulted a number of authorities in assigning eleven EDU's to The Tropical Treat restaurant. For instance, the Township considered and removed data from a referenced engineering textbook for waste water; the commercial flow of calculations prepared by the Environmental Protection Agency; calculations from the sewer authorities of State College, Pennsylvania, and Broward County, Florida; and EDU assignments from approximately six to eight nearby municipalities. Interestingly, in each instance, Berwick Township's assignment of EDU's was lower than the projected assignments of each of the foregoing authorities. Under these circumstances, it appears that the Board's decision was supported by substantial evidence. This evidence establishes that the Berwick Township rental fees were not made in reliance on an arbitrary establishment of a rate system.

The crux of the Myers' argument is that the rate system at issue is unreasonable. As mentioned, in support thereof, the Myers claim that The Tropical Treat uses only 70,840 gallons of water per year while they are being assessed for producing approximately 1,084,050 gallons of sewage per year. Although this argument appears attractive at first glance, I am unable to find that the Board abused its discretion in refusing to provide the Myers relief.

Initially, I note that the Board gave little weight to the Myers' testimony that The Tropical Treat consumes only 70,840 gallons of water per year. In the Board's finding of fact, they note that "no direct

¹² Berwick Township's expert, Engineer Timothy R. Knoebel, testified that hydraulic load is the actual amount of water that flows through a sewage system.

¹³ According to Mr. Knoebel, organic load is the polluttional strength of the waste waters passing through a sewage system.

evidence of water usage has been produced and, importantly, no evidence was produced as to peak flows". The Board concluded that even if they were to believe the Myers' testimony in regard to water consumption, it is still impossible to determine, from the face of the record, the peak hydraulic flow produced by The Tropical Treat.

The significance of this lack of evidence is apparent in light of the instruction from our appellate courts that the evaluation of the propriety of rental charges takes into account not only the value of the services actually consumed but also the value of services readily available for use. See *Patton-Ferguson Joint Auth.*, 322 A.2d at 786. The Township's Engineer testified that the Department of Environmental Protection rates a sewage system based on both organic and hydraulic loads. He explained that each year the Township is required to file a report with the Department of Environmental Protection concerning the system's capacity. Based on the report, the Department of Environmental Protection may limit the Township's connections or, in the alternative, require the Township to upgrade its system. In determining capacity, the Township Engineer explained that the report focuses on the peak hydraulic load calculated from the three highest consecutive months over the course of a calendar year. The Department of Environmental Protection's capacity calculation also takes into account the organic load from the highest single month over the same calendar year. The Board determined that absent information concerning peak usage, the 70,000 gallon per year figure provides little, if any, usable information in regard to determining the value of services readily available to the Myers.¹⁴ Since the burden is

¹⁴ For instance, the record reveals that The Tropical Treat restaurant was open approximately 168 days during the time that water consumption equaled 70,840 gallons, (i.e., Monday through Saturday from March 15 through September 27, 2003). Dividing 70,840 gallons by 168 days of operation equals 421.66 gallons of water consumed per day. Expert testimony at the hearing from both parties revealed that a restaurant's organic load is approximately four to six times greater than a residential load. Using this multiplier, the reserve capacity necessary for actual sewage use at The Tropical Treat is between 1,684 gallons per day (421.66×4) and 2,530 gallons (421.66×6). Dividing these numbers by the EDU rate of 270 gallons leaves a daily usage equivalent, during actual days of operation, of between seven and ten EDU's. This calculation is based on consistent daily usage over the number of days that The Tropical Treat is in business. It is unknown from the record as to whether business is consistent over the months the restaurant is open or, on the other hand, whether there is a peak in business during the summer months. Obviously, a peak in the volume of business over the summer months would result in a higher figure.

on the Myers to prove that the Township's rate system is unreasonable, I am unable to find that the Board's decision constituted an abuse of discretion.

The Myers argue that the use of actual data through a metered system is the preferred alternative. Although Ordinance No. 56 allows for such an alternative, I find nothing in the Ordinance which requires the installation of a metered system. The search for legal authority in this area has proved equally fruitless. In the absence of such a requirement, I will not exercise judicial discretion to review a discretionary decision made by the Township. See *Blumenschein v. Pittsburgh Hous. Auth.*, 109 A.2d 331 (Pa. 1954); *Ack v. Carroll Twp. Auth.*, 661 A.2d 514 (Pa.Cmwlth. 1995). "That a court may have a different opinion or judgment in regard to the action of an agency is not a sufficient ground for interference." *Blumenschein*, 109 A.2d at 335; *Ack*, 661 A.2d at 517.

Although actual data may indeed allow this Court to reach a contrary decision, I cannot find that the Board erred in determining that the Myers failed to carry their burden of proof. In fact, Maurice Myers acknowledged as much when he indicated that after factoring in the organic load, he wasn't sure what the appropriate EDU assessment would be. See Tr. pages 85-86. Although the Myers have consistently argued that it is the Township's obligation to determine the actual organic load of the waste produced by The Tropical Treat, I have been unable to find any legal support for this proposition. To the contrary, appellate authority has consistently held that the burden of proof is on the party challenging the assessment. *Ack*, 661 A.2d at 517. For the foregoing reasons, the attached Order is entered.¹⁵

ORDER

AND NOW, this 5th day of October, 2004, the decision of the Board of Supervisors of Berwick Township is affirmed. The Appeal of Maurice D. Myers and Daniel Myers is dismissed.

¹⁵ In their Notice of Appeal, the Myers seek reimbursement for attorney fees, expert witness fees, and costs due to their claim that the Township's behavior was "obdurate, vexatious, dilatory and without substantial merit in law or in fact." These claims are not cognizable under the local agency law. Moreover, they are meritless.

ESTATE NOTICES

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

FIRST PUBLICATION

ESTATE OF CHARLES R. BAKEY, JR., DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrices: Charlotte L. Bakey, 108 A Stock Street, Hanover, PA 17331; Suzanne Bakey Fricke, 13104 Olive Branch Court, Silver Spring, MD 20904

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

ESTATE OF PAULINE VICTORIA SHANK, DEC'D

Late of Liberty Township, Adams County, Pennsylvania

Executrix: Naomi V. Smith, 10039 Old Frederick Terrace, Frederick, MD 21701

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

ESTATE OF LLOYD L. STEVENS, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executor: Wayne L. Stevens, 112 Center Mills Rd., Aspers, PA 17304

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

ESTATE OF RUTH ATWOOD TURNER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Robert E. Turner, 320 Greenwood Ave., Rumford, RI 02916

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

ESTATE OF VERNE V. VAN ORDEN, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Martha Huebsch, 392 Burr Road, Cochection, NY 12726

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

SECOND PUBLICATION

ESTATE OF WILLIAM S. BLESSLEY, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: H. Webb Blessley, 910 Baja, Laguna Beach, CA 92651

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

ESTATE OF HENRY J. CONRAD, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executors: Henry Wayne Conrad, 11003 Grey's Corner Road, House #71, Berlin, MD 21811; Victoria A. Bunty, 687 Poplar Street, Hanover, PA 17331

Attorney: Crabbs & Crabbs, Attorneys for the Estate, 202 Broadway, Hanover, PA 17331

ESTATE OF MARY REBECCA FLYNN, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

John E. Flynn, 660 Red Patch Ave., Gettysburg, PA 17325

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

ESTATE OF ELVA M. KLINE, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Marie Kline, 635 Hanover Pike, Littlestown, PA 17340

Attorney: Judith Koper Morris, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF HELEN G. LEREW a/k/a HELEN R. LEREW, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Executrix: Joan Trcka, 6470 Old Harrisburg Road, York Springs, PA 17372

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

ESTATE OF DANIEL A. MONTREUIL, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Administrator: Donald P. Montreuil, 410 Bottom Road, Orrtanna, PA 17353

ESTATE OF RUTH V. WISNIEWSKI, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Jean D. Hopwood, 388 Lexington Way, Littlestown, PA 17340

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

THIRD PUBLICATION

ESTATE OF SAMUEL D. CHAPMAN, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administratrix: Betty K. Chapman, 1005 Biglerville Road, Gettysburg, PA 17325

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

ESTATE OF BERNARD MICHAEL COCHRAN, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administrator: Steven M. Cochran, 45 Brown's Dam Road, #219, New Oxford, PA 17350

Attorney: Donald W. Dorr, Esq., 846 Broadway, Hanover, PA 17331

ESTATE OF NANCY JEAN COOL, DEC'D

Late of Abbottstown Borough, Adams County, Pennsylvania

Administrator: Lisa Jo Smith, 525 Meade Avenue, Hanover, PA 17331

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

ESTATE OF NORMA K. DEVENER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: M&T Trust Company, 13 Baltimore Street, Hanover, PA 17331

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

ESTATE OF ROMAINE E. EBERSOLE, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executors: Julia E. Highlands, 2445 Stoney Point Road, East Berlin, PA 17316; Steven E. Ebersole, P.O. Box 31, McSherrystown, PA 17344

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

(continued on page 4)

THIRD PUBLICATION (continued)

ESTATE OF EVELYN R. FRANTZ, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: M&T Trust Company, formerly Allfirst Trust Company of PA, N.A., 13 Baltimore Street, Hanover, PA 17331

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

ESTATE OF HARVEY W. KLINE, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executrix: Marie C. Kline, c/o Richard W. Stevenson, Esq., McNeese Wallace & Nurick LLC, 100 Pine Street, P. O. Box 1166, Harrisburg, PA 17108

Attorney: Richard W. Stevenson, Esq., McNeese Wallace & Nurick LLC, 100 Pine Street, P. O. Box 1166, Harrisburg, PA 17108

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-350 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of July, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THOSE TWO CERTAIN lots, parcels, pieces of ground situate in Huntington Township, Adams County, Pennsylvania, bounded and described as follows, to wit:

TRACT NO. 1:

BEGINNING at a point in the North side of the public road leading from York Springs to Route 34 and lands now or late of Melvin O. Murtoff, Jr. and Marian Murtoff; thence by said lands North Twenty and Three quarters (20-3/4) degrees East One Hundred Fifty (150) feet to a point; thence by other lands now or late of Thaddeus I. Keefer, et ux., South Sixty-nine and One quarter (69-1/4) degrees East, Fifty (50) feet to a point; thence by same, South Twenty and Three quarters (20-3/4) degrees West, One Hundred Fifty (150) feet to a point in the North side of the aforesaid road; thence by said public road, North Sixty-nine and One quarter (69-1/4) degrees West, Fifty (50) feet to the place of BEGINNING.

TRACT NO. 2:

BEGINNING at a point on the Northern side of PA L.R. 01047 leading from Idaville to York Springs and other lands

now or late of Melvin O. Murtoff, Sr., et ux; thence by said lands of Murtoff, Sr., North Twenty (20) degrees Forty (40) minutes East One Hundred Fifty-one and Sixty-five hundredths (151.65) feet to an iron pin at other lands now or late of Thaddeus I. Keefer, et ux; thence by same, South Sixty-nine (69) degrees Fifteen (15) minutes East, Five (5) feet to an iron pin at lands about to be conveyed to Leland E. King, thence by same, South Twenty (20) degrees Forty (40) minutes West, One Hundred Fifty-one and Sixty-one hundredths (151.61) feet to an iron pin at the Northern side of the aforesaid PA L.R. 01047; thence along the Northern side of said L.R. 01047, North Sixty-nine (69) degrees Thirty-eight (38) minutes West, Five (5) feet to the place of BEGINNING.

THE ABOVE DESCRIPTION was taken from a draft of survey dated May 4, 1963, prepared by Robert E. Stoffler, R.S.

Parcel No. G4-15

BEING KNOWN AS 106 Idaville York Springs Road, Gardners, PA 17324

BEING the same premises which Melvin O. Murtoff, Jr. and Marian M. Murtoff, husband and wife, by Deed dated August 13, 2001 and recorded on August 22, 2001 in the Office of the Recorder of Deeds in and for Adams County, in Deed Book 2382, Page 113, granted and conveyed unto Richard W. Crouse, a/k/a Richard W. Crouse, Jr. and Lisa K. Crouse.

SEIZED and taken into execution as the property of **Richard W. Crouse a/k/a Richard W. Crouse, Jr. & Lisa K. Crouse** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 15, 2005, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/17, 24 & 7/1

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State, of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania on April 4, 2005, for the purpose of obtaining a Certificate of Incorporation of a business Corporation organized under the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444, No 177.

The name of the corporation is R.M. WOLF TRUCKING, INC. The purpose for which the corporation has been organized is: The corporation shall have unlimited power to engage in and do any law act concerning any or all lawful business for which corporations may be organized under the Pennsylvania Business Corporation Law.

R.M. Wolf Trucking, Inc.
5627 Carlisle Pike
New Oxford, Pennsylvania 17350

6/17

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania.

1. The name of the Corporation is: D. L. BLACK, INC.
2. The Corporation has been incorporated under the provisions of the Business Corporation Law of 1988.

John M. Crabbs, Solicitor
Crabbs & Crabbs
202 Broadway
Hanover, PA 17331

6/17

Adams County Legal Journal

Vol. 47

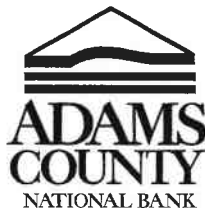
June 24, 2005

No. 5, pp. 26-29

IN THIS ISSUE

TAYLOR VS. WARNER ET AL

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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

Business Office – 111 Baltimore Street, Room 305, Gettysburg, PA 17325, Telephone: (717) 337-9812

Periodicals postage paid at Gettysburg, PA 17325.

Copyright© 1959 by Wm. W. Gaunt & Sons, Inc., for Adams County Bar Association, Gettysburg, PA 17325, All rights reserved.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-360 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of July, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground situate, lying and being in Abbotstown Borough, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin at corner of the Lincoln Highway and a 32 foot wide street; thence North 68-1/4 degrees East along Lincoln Highway 50 feet to an iron pin at corner of Lot #4 now or formerly of Mellie E. Atland et al; thence along lands of Mellie E. Atland et al South 21-3/4 degrees East 181.5 feet to an iron pin at a 16 foot wide public alley; thence along said public alley South 68-1/4 degrees West 50 feet to an iron pin at corner of 16 foot wide public alley and a 32 foot wide street; thence along said street North 21-3/4 degrees West 181.5 feet to an iron pin, the place of BEGINNING. CONTAINING 33 perches and 91 square feet. Said lot of ground being known as Lot #5 on a plan of lots laid out by P.S. Orner on December 3, 1946.

BEING THE SAME PREMISES which Ralph E. Nieman, by Jamice J. Manula and Barbara A. Trish, his agents, by Deed dated 1/13/04 and recorded 1/23/04 in the Office for the Recorder of Deeds in and for Adams County in Deed Book 3451 at Page 61, granted and conveyed unto Benedict A. Kuhn.

Tax Parcel #: 1-3-53

Premises being: 496 W. King Street, Abbotstown, PA.

SEIZED and taken into execution as the property of **Benedict 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 August 15, 2005, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after

the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/10, 17 & 24

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-327 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of July, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a spike in the center of a State Highway, Legislative Route No. 01020 leading from the Bendersville and Brysonia Road to Route No. 34 and being 890 feet from Route No. 234; thence through land now or formerly of George H. Cole and Jane Wise Cole, North 68 degrees 30 minutes West 190.00 feet to an iron pin; thence through the same, North 09 degrees 55 minutes East 100.00 feet to an iron pin; thence by same, South 68 degrees 30 minutes East 190.00 feet to a spike in the center of the above mentioned State Highway; thence along and in the center of said Road, South 09 degrees 55 minutes West 100.00 feet to a spike, the place of BEGINNING. CONTAINING 68.36 perches.

TITLE TO SAID PREMISES IS VESTED IN Michael L. McKenrick by deed from Estate of Robert E. McKenrick (deceased) by deed by Lisa K. Grubbs, Acting Clerk of the Orphans Court Division of the Court of Common Pleas of Adams County, Pennsylvania, pursuant to the provisions of a Final decree entered to No. OC-142-03, signed 12-2-2003 by Hon. Robert G. Bigham, Judge for the estate, dated 1-8-2004 and

recorded 1-29-2004 in Deed Book 3455, Page 293.

Premises being: 80 Nawakwa Road, Biglerville, PA 17307

Tax Parcel No. 29-D07-0020

SEIZED and taken into execution as the property of **Michael L. McKenrick** 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 August 15, 2005, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/17, 24 & 7/1

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN pursuant to the provisions of Sec. 311 of the Act of Assembly of December 16, 1982, 54 PA C.S.A. 311, that an application for registration of a fictitious name was filed on May 23, 2005, with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, for the conducting of a business under the fictitious name of GETTYSBURG ACTION with its principal office or place of business at 229 Table Rock Road, Gettysburg, PA 17325. The names and addresses of all persons owning or interested in said business are: Robert E. Wagner, 229 Table Rock Road, Gettysburg, PA 17325.

John J. Murphy III, Esq.
Patrono & Associates, LLC

6/24

TAYLOR VS. WARNER ET AL

1. An action to recover damages for personal injury must be commenced within two years following the date of the underlying incident.

2. Although Pennsylvania law provides for the tolling of the statute of limitations while a defendant conceals his identity, it does not support the notion that a party's failure to file a fictitious name is the equivalent of concealment.

3. Pennsylvania case law requires clear, precise, and convincing evidence to prove fraudulent concealment on the part of a defendant before the statute of limitations may be tolled. In order to establish concealment sufficient to toll the statute of limitations, a defendant must commit some affirmative independent act of concealment upon which the Plaintiff justifiably relied; mere silence or nondisclosure is insufficient.

4. Pennsylvania law allows a party to amend a pleading to correct a name at any time. However, if a new or distinct party is brought into the litigation after the statute of limitations expires, an amendment is improper.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 02-S-1278, NICOLE TAYLOR VS. JESSICA WARNER AND DARREN E. MCKINLEY AND HEALTH-MOR INDUSTRIES, INC., FILTER QUEEN, INC., AND ANY AND ALL RELATED JOHN DOE INDUSTRIES, SUBSIDIARIES OR CORPORATIONS AND HMI INDUSTRIES, INC., FILTER QUEEN, INC., AND ANY AND ALL RELATED JOHN DOE INDUSTRIES, SUBSIDIARIES OR CORPORATIONS, AND WAYNE A. KRAMER AND TERESA A. KRAMER.

Gerard E. Rickards, Esq., for Plaintiff

Jessica Warner, Defendant, *pro se*

Darren E. McKinly, Defendant, *pro se*

Timothy J. McMahon, Esq., for Defendant HMI Industries, Inc.

Gibson Smith, Esq., for Defendants Wayne and Teresa Kramer

George, J., October 5, 2004

OPINION

This matter was initiated by Writ of Summons on December 10, 2002, against Health-Mor Industries, Inc., Filter Queen, Inc., HMI Industries, Inc., and any and all related John Doe Industries, Subsidiaries, or Corporations. The Defendants requested that this matter be consolidated by a petition filed on May 30, 2003, with a civil action pending against Jessica Warner and Darren E. McKinly. Since both matters involve the same incident and witnesses, the actions were consolidated for the purpose of trial. On July 3, 2003, the Plaintiff filed a Petition to Amend the Caption by specifically

naming Wayne Kramer and Teresa Kramer as Defendants. As a result of the Petition, a Rule was issued on all parties to show cause why the relief should not be granted. The Rule went unanswered and the Petition to Amend was granted. Thereafter, Wayne Kramer and Teresa Kramer served a Rule upon the Plaintiff to file a Complaint. On May 26, 2004, the Plaintiff filed a Complaint alleging that Jessica Warner and Darren McKinly were negligent and that the remaining Defendants were vicariously liable. With regard to the Plaintiff's negligence claim, she alleges a cause of action based on a vehicle accident that occurred on December 13, 2000. In response to the Plaintiff's Complaint, Wayne and Teresa Kramer raised the statute of limitations as a defense.

An action to recover damages for personal injury must be commenced within two years following the date of the underlying incident. 42 Pa.C.S.A. § 5524 (2). The pleadings before the Court establish that the action against Wayne and Teresa Kramer was not commenced within the required time period. In an effort to avoid dismissal, however, the Plaintiff argues that the Kramers concealed their identity by failing to register a fictitious name with the Corporation Bureau pursuant to the Fictitious Name Act. Although Pennsylvania law provides for the tolling of the statute of limitations while a defendant conceals his identity,¹ it does not support the notion that a party's failure to file a fictitious name is the equivalent of concealment. I have been unable to find anything in the Fictitious Name Act which suggests such a result. Moreover, the Plaintiff has not cited, nor has my research revealed, any authority supporting such a claim. Rather, Pennsylvania case law requires clear, precise, and convincing evidence to prove fraudulent concealment on the part of a defendant before the statute of limitations may be tolled. *Knuth v. Erie-Crawford Dairy Cooperative Ass'n*, 463 F.2d 470, 481 (1972). In order to establish concealment sufficient to toll the statute of limitations, a "defendant must commit some affirmative independent act of concealment upon which the Plaintiff justifiably relied...; mere silence or nondisclosure is insufficient." *Montanya v. McGonegal*, 757 A.2d 947, 951 (Pa.Super. 2000). The Defendants' failure to register their business pursuant to the Fictitious Name Act does not meet this standard.

¹See *Hubert v. Greenwald*, 743 A.2d 977, 981 (Pa.Super. 1999).

The Plaintiff also argues that the filing of a Writ of Summons against a “John Doe Industry, Subsidiary, or Corporation” sufficiently identified the Kramers as parties prior to the expiration of the statute of limitations period. I do not agree.²

Pennsylvania Rule of Civil Procedure 1033 allows a party to amend a pleading at any time with either the consent of the adverse party or leave of court. Although this rule permits amendments to pleadings at any time, amendments “subsequent to the running of a statute of limitations are restricted to minor rectifications, not substitution of parties.” *Fredericks v. Sophocles*, 841 A.2d 147, 150 (Pa.Super. 2003). In other words, Pennsylvania law allows a party to amend a pleading to correct a name at any time. However, if a new or distinct party is brought into the litigation after the statute of limitations expires, an amendment is improper. *Anderson Equip. Co. v. Huchber*, 690 A.2d 1239, 1241 (Pa.Super. 1997). Despite the Plaintiff’s gallant effort, I cannot conclude that the Writ of Summons filed against HMI Industries, Inc., and “any and all related John Doe Industries, Subsidiaries, or Corporations”, is sufficient to include Wayne and Teresa Kramer as Defendants.

The Plaintiff cites *Goolsby v. Papanikolau*, 637 A.2d 707, 709 (Pa.Cmwlth. 1994), as authority for the proposition that a plaintiff may amend a complaint to allege a named defendant for a “John Doe” defendant after the expiration of the statute of limitations. However, I find this case distinguishable.

In *Goolsby*, the plaintiffs filed suit against “Peter Papanikolau, t/a Feltonville Pizza, and Feltonville Pizza, a business entity, and John Doe, an adult whose identity was unknown, acting as Manager of Fentonville Pizza, and Jane Doe, an unknown employee of Fentonville Pizza....” *Id.* at 708. The defendants filed an answer verifying that an individual by the name of John Bageas was “John Doe” and a second individual by the name of Rose Dalessio was “Jane Doe.” The answer was filed within the applicable statute of limitations and the action was defended on its merits. In finding that

²The only reference in any of the pleadings concerning the relationship between Wayne and Teresa Kramer and Health-Mor Industries, Inc., Filter Queen, Inc., or HMI Industries, Inc., is contained in the Plaintiff’s Petition to Amend. The Plaintiff claims that “Wayne and Teresa Kramer operated a Filter Queen franchise and sold Filter Queen products.” Plaintiff’s Petition to Amend Caption, paragraph 4. This allegation of fact, however, is not verified.

the amendment to the caption correcting the parties' names was appropriate, the Commonwealth Court specifically relied upon the fact that John Bageas and Rose Dalessio entered their appearance and filed an Answer to the Complaint prior to the expiration of the statute of limitations. As such, they became parties to the action.

Instantly, neither Wayne nor Teresa Kramer took any action before the statute of limitations expired. In fact, the first indication in the record that the Kramers were aware of this litigation is a Certificate of Service dated July 17, 2003, indicating that they had been served with a copy of the Plaintiff's Petition to Amend the Caption approximately seven months after the statute of limitations expired. Moreover, after being served with the Complaint, the Kramers acted promptly in raising the statute of limitations in their New Matter. Finally, unlike *Goolsby*, the Plaintiff did not initiate this action against specifically-identified individuals whose names were unknown; rather, they took a shotgun approach in styling the original Writ. I find that the Plaintiff's designation in the original Writ is insufficient to identify Wayne and Teresa Kramer as parties. Therefore, Wayne and Teresa Kramer's Motion for Judgment on the Pleadings will be granted.

ORDER OF COURT

AND NOW, this 5th day of October, 2004, the Motion for Judgment on the Pleadings filed by Defendants Wayne Kramer and Teresa Kramer is granted.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-350 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of July, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THOSE TWO CERTAIN lots, parcels, pieces of ground situate in Huntington Township, Adams County, Pennsylvania, bounded and described as follows, to wit:

TRACT NO. 1:

BEGINNING at a point in the North side of the public road leading from York Springs to Route 34 and lands now or late of Melvin O. Murtoff, Jr. and Marian Murtoff; thence by said lands North Twenty and Three quarters (20-3/4) degrees East One Hundred Fifty (150) feet to a point; thence by other lands now or late of Thaddeus I. Keefer, et ux., South Sixty-nine and One quarter (69-1/4) degrees East, Fifty (50) feet to a point; thence by same, South Twenty and Three quarters (20-3/4) degrees West, One Hundred Fifty (150) feet to a point in the North side of the aforesaid road; thence by said public road, North Sixty-nine and One quarter (69-1/4) degrees West, Fifty (50) feet to the place of BEGINNING.

TRACT NO. 2:

BEGINNING at a point on the Northern side of PA L.R. 01047 leading from Idaville to York Springs and other lands now or late of Melvin O. Murtoff, Sr., et ux; thence by said lands of Murtoff, Sr., North Twenty (20) degrees Forty (40) minutes East One Hundred Fifty-one and Sixty-five hundredths (151.65) feet to an iron pin at other lands now or late of Thaddeus I. Keefer, et ux; thence by same, South Sixty-nine (69) degrees Fifteen (15) minutes East, Five (5) feet to an iron pin at lands about to be conveyed to Leland E. King; thence by same, South Twenty (20) degrees Forty (40) minutes West, One Hundred Fifty-one and Sixty-one hundredths (151.61) feet to an iron pin at the Northern side of the aforesaid PA L.R. 01047; thence along the Northern side of said L.R. 01047, North Sixty-nine (69) degrees Thirty-eight (38) minutes West, Five (5) feet to the place of BEGINNING.

THE ABOVE DESCRIPTION was taken from a draft of survey dated May 4, 1963, prepared by Robert E. Stoffler, R.S.

Parcel No. G4-15

BEING KNOWN AS 106 Idaville York Springs Road, Gardners, PA 17324

BEING the same premises which Melvin O. Murtoff, Jr. and Marian M. Murtoff, husband and wife, by Deed dated August 13, 2001 and recorded on August 22, 2001 in the Office of the Recorder of Deeds in and for Adams County, in Deed Book 2382, Page 113, granted and conveyed unto Richard W. Crouse, a/k/a Richard W. Crouse, Jr. and Lisa K. Crouse.

SEIZED and taken into execution as the property of Richard W. Crouse a/k/a Richard W. Crouse, Jr. & Lisa K. Crouse and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 15, 2005, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/17, 24 & 7/1

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-1122 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of July, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point in the center of a private road 50 feet in width at the Westernmost corner of the lot designated as Lot No. 1 on the plan of lots referred to below; thence by said Lot No. 1 and running through an iron pin located 25 feet from the place of beginning South 48 degrees 23 minutes 38 seconds East, 183.56 feet to an iron pin; thence by land now or formerly of Charles E. Ott and wife South 41 degrees 5 minutes 37 seconds West, 353.01 feet to an iron pin; thence by the lot designated as Lot No. 5 on the plan of lots referred to below and running through an iron pin located 25 feet from the end of this line North 48 degrees 23

minutes 38 seconds West, 186.72 feet to a point in the center of the aforementioned private road; thence in the center of said private road and by the lot designated as Lot No. 4 on the plan of lots referred to below North 41 degrees 36 minutes 22 seconds East, 353 feet to a point in the center of said private road, the place of BEGINNING. CONTAINING 1.499 acres.

TOGETHER WITH the right to use the 50-foot private road referred to in the foregoing description as a means of ingress, egress and regress from Legislative Route 01041 to the lot hereby conveyed.

SUBJECT, HOWEVER, to the restrictions and responsibilities contained in a deed recorded in the aforementioned Recorder's Office in Deed Book 356 at Page 654.

The foregoing description was obtained from a plan of lots of Big Flat Acres prepared by Richard W. Boyer, registered surveyor, trading as Boyer Surveys, dated September 27, 1978, and recorded in Adams County Plat Book 24 at Page 10, the lot hereby conveyed being designated as Lot No. 3 on said plan of lots.

Address: 2630 D Shippensburg Rd., Biglerville, PA 17307

Tax Map or Parcel ID No.: (29) B05-57

SEIZED and taken into execution as the property of Patricia Slaybaugh a/k/a Patricia A. Trimmer 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 August 15, 2005, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/17, 24 & 7/1

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-844 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of July, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

95 Barlow-Greenmount Road, Gettysburg, Pennsylvania, Cumberland Township, Adams County

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

BEGINNING at a concrete nail in the center line of Legislative Route 01002, Barlow-Greenmount Road, at the Southwest corner of land formerly of Leroy Bowers, now lands of Paul P. Frazer and Juanita C. Frazer, thence in the center of said Legislative Route 01002, Barlow-Greenmount Road, North 80 degrees 58 minutes West, 100 feet to a concrete nail; thence by lands formerly of Hylde Eyler and Betty J. Dickson, now lands of Roger M. Houser and Katherine E. Houser, and running through an iron pipe set back along the line 18.58 feet from the beginning of this course, North 20 degrees 52 minutes East, 515.75 feet to an iron pipe; thence by lands of Viebo Viersma and Ann Viersma, South 77 degrees 34 minutes East, 100 feet to an iron pin on a line of land formerly of Leroy Bowers, now lands of Paul P. Frazer and Juanita C. Frazer, South 20 degrees 59 minutes West, 510.13 feet to a concrete nail at the center of Legislative Route 01002, Barlow-Greenmount Road, the point and place of BEGINNING.

CONTAINING 1.1519 Acres.

BEING Tax Map N. F-16 Parcel 40A.

TITLE IS VESTED in Victor D. Burkett, Jr. by Deed from Ven Ralf Patterson, Executor, by Deed dated 4/25/1966 and recorded 6/3/1996 in Record Book 1204 page 129.

SEIZED and taken into execution as the property of **Victor D. Burkett, Jr.** 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 August 15, 2005, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/10, 17 & 24

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed on May 26, 2005 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 DELISO PIZZA PASTA & SUBS, INC. The registered office is at 829 Biglerville Road, Gettysburg, Adams County, Pennsylvania 17325-8004. 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

6/24

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on or about April 1, 2005, for the incorporation of THE BRAFFERTON INN MANAGEMENT COMPANY, INC. under the Pennsylvania Business Corporation Law of 1988. The corporation shall engage in the business of the management of a bed & breakfast, together with any legal function of a corporation under PA law. The initial registered office of the corporation is 44 York Street, Gettysburg, PA 17325.

Gary E. Hartman, Esq.
Hartman & Yannetti
Solicitors

6/24

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Tuesday, July 5, 2005, at 9:00 a.m.

PRICE—Orphans' Court Action Number OC-57-05. The First and Final Account of Larry E. Miller, Executor of the Estate of Sharon E. Price, deceased, late of the Township of Straban, Adams County, Pennsylvania.

SMITH—Orphans' Court Action Number OC-60-05. The First and Final Account of Eugene Elmer Smith, Jr., Executor of the Estate of Evelyn S. Smith aka Evelyn Sarah Smith, deceased, late of the Borough of New Oxford, Adams County, Pennsylvania.

Lisa K. Grubbs
Clerk of Courts

6/24 & 7/1

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that pursuant to the provisions of the Fictitious Name Act approved December 16, 1982, as amended, an application for the registration of a fictitious name was filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on May 25, 2005 for the purpose of conducting business in Pennsylvania under the assumed or fictitious name, style or designation of SOUTHERN LAND TRUST, with its principal place of business at 1633A Shepherd Road, Chattanooga, TN. The name and address of the person owning or interested in said business is the following: Elaine Tate, 6515 Lake Shadows Circle, Hixson, Tennessee.

6/24

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 ROGER C. FANCOVIC, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Administrator: Richard S. Fancovic, 1508 Stanton St., York, PA 17404

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

ESTATE OF RUTH ROYER MILLER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Gwendolyn E. Nash, 2510 Virginia Ave., NW, Washington, D.C. 20037

ESTATE OF JOHN D. SMITH, JR., DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Administrator: Joan D. Miller, 352 Arendtsville Road, P.O. Box 138, Biglerville, PA 17307

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

ESTATE OF RICHARD H. SPRINCE, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Executrix: Jean M. Sprince, 813 Heritage Drive, Gettysburg, PA 17325

Attorney: Craig A. Hatch, Esq., Gates, Halbruner & Hatch, P.C., 1013 Mumma Road, Suite 100, Lemoyne, PA 17043

SECOND PUBLICATION

ESTATE OF CHARLES R. BAKEY, JR., DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrices: Charlotte L. Bakey, 108 A Stock Street, Hanover, PA 17331; Suzanne Bakey Fricke, 13104 Olive Branch Court, Silver Spring, MD 20904

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

ESTATE OF PAULINE VICTORIA SHANK, DEC'D

Late of Liberty Township, Adams County, Pennsylvania

Executrix: Naomi V. Smith, 10039 Old Frederick Terrace, Frederick, MD 21701

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

ESTATE OF LLOYD L. STEVENS, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executor: Wayne L. Stevens, 112 Center Mills Rd., Aspers, PA 17304

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

ESTATE OF RUTH ATWOOD TURNER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Robert E. Turner, 320 Greenwood Ave., Rumford, RI 02916

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

ESTATE OF VERNE V. VAN ORDEN, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Martha Huebsch, 392 Burr Road, Cochection, NY 12726

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

THIRD PUBLICATION

ESTATE OF WILLIAM S. BLESSLEY, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: H. Webb Blessley, 910 Baja, Laguna Beach, CA 92651

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

ESTATE OF HENRY J. CONRAD, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executors: Henry Wayne Conrad, 11003 Grey's Corner Road, House #71, Berlin, MD 21811; Victoria A. Bunty, 687 Poplar Street, Hanover, PA 17331

Attorney: Crabbs & Crabbs, Attorneys for the Estate, 202 Broadway, Hanover, PA 17331

ESTATE OF MARY REBECCA FLYNN, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

John E. Flynn, 660 Red Patch Ave., Gettysburg, PA 17325

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

ESTATE OF ELVA M. KLINE, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Marie Kline, 635 Hanover Pike, Littlestown, PA 17340

Attorney: Judith Koper Morris, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF HELEN G. LEREW a/k/a HELEN R. LEREW, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Executrix: Joan Trcka, 6470 Old Harrisburg Road, York Springs, PA 17372

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

ESTATE OF DANIEL A. MONTREUIL, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Administrator: Donald P. Montreuil, 410 Bottom Road, Orrtanna, PA 17353

ESTATE OF RUTH V. WISNIEWSKI, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Jean D. Hopwood, 388 Lexington Way, Littlestown, PA 17340

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

