

# *Adams County* Legal Journal

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ol. 38

July 5, 1996

No. 6, pp. 41-46

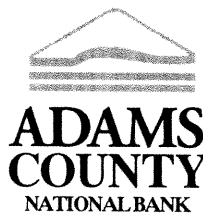
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## **IN THIS ISSUE**

LOVETT VS. BIEVENOUR

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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-214 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of July, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

BEGINNING at an iron pipe at land now formerly of Donald L. Fetters; thence by said Fetters land, North 76 degrees 16 minutes East, 101.39 feet to an iron pipe; thence by the same, South 13 degrees 21 minutes East, 130.05 feet to an iron pipe at land now or formerly of Duffy-Mott, Inc., thence by said land of Duffy-Mott, Inc., South 79 degrees 30 minutes West 99.95 feet to an iron pipe at other land now or formerly of John S. Baumgardner, thence by said other land of John S. Baumgardner, North 14 degrees 02 minutes West, 124.38 feet to an iron pipe, the place of BEGINNING. CONTAINING 0.2934 Acres.

TRACT NO. 2:

BEGINNING at a point along the east side of Prospect Avenue at the southwest corner of Lot No. 6, now or formerly of Orin T. Galusha; thence along the southern line of Lot No. 6, in an eastwardly direction, 175 feet, more or less, to a 12 foot alley, in a southerly direction, 60 feet, more or less, to the northeast corner of Lot No. 5; thence along the northeast line of Lot No. 5, in a westwardly direction, 175 feet, more or less, to the east side of Prospect Avenue; thence along the east side of Prospect Avenue, in a northerly direction 60 feet, more or less, to a point, the place of BEGINNING.

TRACT NO. 3:

BEGINNING at a point on the east side of Prospect Avenue at the northwest corner of tract now or formerly of Kenneth Warrenfeltz; thence by said land Warrenfeltz, North 81 degrees 60 minutes East, 175 feet to a point at North 81 degrees 60 minutes East, 175 feet to a point at other land now or formerly of John S. Baumgardner; thence by said land of John S. Baumgardner, North 08 degrees, 50 minutes West, 58 feet to a point at the southeast corner of other land of John S. Baumgardner; thence by said other land of John S. Baumgardner, South 81 degrees 10 minutes West, 175 feet to a point on the east side of Prospect Avenue; thence along said Prospect Avenue South 8 degrees 50 min-

utes East, 58 feet to the northwest corner of land Warrenfeltz, the place of BEGINNING.

BEING the same premises which John S. Baumgardner and Patricia A. Baumgardner by their deed dated September 28, 1977 and recorded on September 28, 1977 in Deed Book Volume 333, p. 770, et seq., Adams County Records, granted and conveyed unto Bruce M. Robison and Nancy A. Robison, as tenants by the entireties, in fee.

SEIZED and taken into execution as the property of **Bruce M. Robison and Nancy A. Robison**, and to be sold by me  
Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
June 13, 1996.

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 19, 1996, 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.

6/28, 7/5 & 12

NOTICE

NOTICE IS HEREBY GIVEN that Adams County National Bank, Guardian of the Estate of Sadie Dolly, an incompetent, appointed as such on April 29, 1991, has filed its First and Final Account as Guardian and a Statement of Proposed Distribution with the Clerk of the Court of Common Pleas of Adams County, Orphans' Court Division, Commonwealth of Pennsylvania, and that the same will be presented to said Court for confirmation and approval on August 12, 1996, at 9:00 a.m., D.S.T.

Peggy J. Breighner, Clerk  
Donald G. Oyler, Esq.  
112 Baltimore Street  
Gettysburg, PA 17325

7/5, 12, 19

INCORPORATION NOTICE

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

The name of the corporation is: FLOWING, INC.

This notice is given pursuant to Section 1307 of the Business Corporation Law of 1988.

Matthew A. Cosenza, Esquire  
Mette, Evans & Woodside  
3401 North Front Street  
P. O. Box 5950  
Harrisburg, PA 17110-0950

7/5

INCORPORATION NOTICE

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

The name of the corporation is TOLEE CORPORATION.

Swope, Heiser & McQuaibe  
104 Baltimore Street  
Gettysburg, PA 17325

7/5

## LOVETT VS. BIEVENOUR

1. Strict liability cannot be asserted against a possessor of a white tailed deer which has escaped from its enclosure and returned to its natural state as a wild animal indigenous to the locality.
2. To impose liability for negligence on the possessor of a white tailed deer which has escaped from its enclosure, Plaintiff must prove knowledge by the possessor of the animal's vicious or mischievous traits.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-926, ELAINE LOVETT VS. JAMES C. BIEVENOUR AND SUSAN BIEVENOUR.

James D. Greenburg, Esq., for Plaintiff  
James Nealon, III, Esq., for Defendants

### OPINION ON MOTION FOR SUMMARY JUDGMENT

Spicer, P.J., November 29, 1995.

In her complaint, filed March 6, 1995, plaintiff alleged that she was attacked and injured by a male deer on November 19, 1992.<sup>1</sup> She said the incident occurred around 10:32 in the morning, while she was walking along North Slocum Avenue, near its intersection with the access road to Culp's Hill tower. She identified her assailant as an animal "owned" by defendants and previously maintained by them in an enclosure from which the deer escaped. Liability was asserted on theories both of negligence and strict liability.

An answer and new matter was filed April 21, 1995. Among other averments, defendants advanced the following: 1) The Pennsylvania Game Commission, and not they, owned the deer in question. They are correct. Game and Wildlife Code, 34 Pa. C.S.A § 103; 2) Provisions of the Code which apply to exotic wildlife, specifically § 2962 (c) (3), do not apply because the animal was a whitetail deer; 3) Defendants held a propagator's license or permit issued by the Pennsylvania Game Commission pursuant to § 2930, and; 4) the deer possessed by defendants was indigenous to this area.

Defendants' allegations were generally denied by plaintiff.

The case was listed for trial and a pre-trial conference and was scheduled for October 17, 1995. Prior to the conference, on September 11, 1995, defendants moved for summary judgment, claiming that the Restatement 2d Torts §508 exonerates them from liability. The

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<sup>1</sup> The undersigned is tempted to refer to the animal as a stag, but is not sure whether that term applies to whitetail deer. The dictionary used as a resource states that it is commonly used with red deer and some other species, without identifying them. The deer in question was sometimes referred to as Bucky or Buckey by defendants, but generally as a male deer by plaintiff.

conference was conducted, as scheduled, before argument occurred. In its order, the court noted that a more comprehensive pretrial order would be issued after the motion for summary judgment was decided.

The court's function in ruling on a motion for summary judgment is to determine if there are material issues of fact. It is not our role to resolve the issues, only to decide if they exist. We view the record in a light most favorable to plaintiff to determine if the case is so free and clear from doubt as to entitle defendants to judgment as a matter of law. We cannot grant summary judgment if credibility is an issue and defendants' motion rests on the deposition of themselves or their witnesses. *RTC v. Urban Redevelopment Authority*, 536 Pa. 219, 638 A.2d 972 (1994); *Dudley v. USX Corporation*, 414 Pa.Super. 160, 606 A.2d 916 (1992); *Johnson v. Johnson*, 410 Pa.Super. 631, 600 A.2d 965 (1991).

In the case before us, we have pleadings, the depositions of defendants and several exhibits attached to plaintiff's brief. Although the depositions are informative, and many facts described therein seem undisputed, we cannot grant the motion based on that form of testimony. Likewise, the exhibits may point to the existence of factual disputes, but cannot be used to settle disagreements as to facts, since they are not admissions.

Generally, we consider the Game and Wildlife Code, *supra*, common law and the Restatement in disposing of defendant's motion.

The Restatement proposes different rules for different classes of animals. Consideration begins with definitions in § 506, wherein wild and domestic animals are distinguished. Because our situation does not involve the somewhat sophisticated concepts of locale, we can ignore them and merely note that a domestic animal is one "devoted to the service of mankind at the time and place in which it is kept." Wild animals, on the other hand, are those not so devoted.

Section 507 imposes absolute liability for harm occasioned by some wild animals. If harm results from dangerous propensities which are characteristic of wild animals of that particular class, or of which the possessor knows or has reason to know, liability attaches even though the possessor has exercised the utmost care in confining the animal, or taken steps to prevent it from doing harm.

Section 508, on the other hand, provides:

A possessor of a wild animal indigenous to the locality in which it is kept is not liable for harm done by it after it has gone out of his possession and returned to its natural state as a wild animal indigenous to the locality.

Comments to the section make it clear that a possessor owes no duty to his neighbors to confine an indigenous wild animal and liability may not attach upon the escape of such an animal from confinement.

Section 509 deals with domestic animals which are abnormally dangerous. Since abnormality refers to the class of animals as a whole, the section is not pertinent to our discussion.

The Game and Wildlife Code reflects Restatement treatment, to a certain degree. It distinguishes between exotic wildlife, which can be classified as dangerous, and game animals. Whitetail deer are defined as game animals in § 102. Different standards are prescribed for licenses and permits issued by the Game Commission for these different classes of animals.

The section relied upon by plaintiff as a basis for liability refers to exotic wildlife. This phrase is defined in §2961 as including bears, coyotes, lions, tigers, leopards, jaguars, cheetahs, cougars, wolves and any crossbreeds of those animals with characteristics of the species. The legislature has made it unlawful to release such animals into the wild, or to fail to exercise due care in safeguarding the public from attacks by them. §2962, 2963.

Obviously, since whitetail deer is a game animal, sections pertaining to exotic wildlife have no application to this case.

The only indication of a legislatively imposed duty of care in §2930, which relates to propagator's licenses or permits for game animals, is contained in subsection (c), which provides that enclosures "shall provide for the health and comfort of the game or wildlife and be designed to protect the public..." There is no requirement that directly deals with maintenance of fences, however. Moreover, the policy reflected in this language is reconcilable with the Restatement position, as we find it to be modified.

Thus far, we conclude that strict liability cannot be asserted. Defendants are entitled to summary judgment with respect to Count II of the complaint. There remains the issue of negligence.

Defendants contend that the means by which the deer escaped is irrelevant, and that, once returned to the wilds, the deer is subject to the rule announced in § 508.

Neither party has provided authority indicating that Pennsylvania has either adopted or rejected the Restatement position. Defendants cite the memorandum opinion of Judge Kelly, in *Calvert v. Zimmer*, 1995 WL 549106 (E.D. Pa.) as indicating approval for the Restatement section. The case involved large numbers of deer which congregated upon defendant's land, with one becoming involved in a vehicular collision on an adjoining highway. We might observe that such accidents are fairly common in Adams County and it is not surprising that cases involving this situation can be found. Attacks, fortunately, are rare. Although Judge Kelly held for the landowner, ruling that possession of land does not entail possession of wildlife thereon, he indicated that the results may have been otherwise had his defendant

enclosed and maintained the deer. We say this because the learned judge stated, "To prove that Hawkins had a duty, plaintiff must establish she possessed or harbored the deer." (slip opinion, p. 5)

One might conclude, therefore, that had the District Court been confronted with the fact situation sub judice, it would have held the landowner responsible. However, it is unwise to analogize or conjecture in this area. There are comments to Restatement § 508, which indicate that an owner may be liable if he stocks his land with such a quantity of wild animals as to constitute an actionable interference with his neighbor's land. (comment c.) General principles of nuisance may apply. In the case of one deer, the Restatement is quite specific.

Plaintiff argues that even if § 508 is found to be the law, there remains a factual determination of whether the animal had returned to its natural state. There is some support for this contention in the record. Mr. Bievenour testified, in his deposition, that his animal was between 200 to 500 yards from his house, when it was shot, and that he claimed it as his property. In fact, the carcass rested within Mr. Bievenour's freezer, and the pelt, stuffed by a taxidermist, was in his possession at the time of the deposition. We think, but do not find, there is a substantial likelihood that Mr. Bievenour could have corralled the animal upon discovering its whereabouts.

That is not to say, however that we agree with plaintiff. We believe it proper to consider facts and circumstances commonly known in the community. First, whitetail deer are numerous in this county and in the area where the attack occurred. The animals do not confine their activities to deep woods or open expanses, except perhaps during hunting season. They tread blithely in backyards and gardens, cross roads with insouciance, nibble on ornamental shrubbery close to dwellings, and sometimes jump through windows to enter commercial establishments. Their common habitat may be said to encompass the entire county, especially the area in which the unfortunate incident occurred.

If the Restatement was meant to cover only released deer, taken into the wild, a la heart traps, there would be need to discuss liability following escape.

If § 508 represents Pennsylvania law, it would absolve defendants, unless the court finds an exception to the rule.

Pennsylvania's appellate courts have generally followed the Restatement, in other areas, and we see no reason that they would do otherwise concerning wildlife. However, we also find persuasive an exception discussed in 4 AmJur 2d. Animals, §94, wherein it is provided:

§94. Effect of taming or domestication.

Certain wild animals may be domesticated to such an

extent as to be classed, in respect of the liability of the owner for injuries they commit, with tame or domestic animals. In such a case, to impose liability on the owner, a keeping with knowledge of vicious and mischievous propensities must be shown. Thus, deer are subject to such substantial domestication as to come within this principle.

One of the cases cited for this principle, *Swain v. Tillet*, 269 N.C. 46, 152 SE 2d 297, (Supreme Court of North Carolina, 1967), bears some resemblance to the facts before us. A plaintiff, injured by a deer, sued the possessor of an escaped pet. The trial court excluded evidence of an unrelated but similar confrontation involving an admittedly wild deer and a third party. The Supreme Court of North Carolina ruled that exclusion constituted reversible error and awarded a new trial. The court also held that North Carolina's general rule which pertained to domestic animals applied. That rule is virtually identical with the Pennsylvania rule, described in PLE, Animals, § 21. Before liability can be asserted, plaintiff must prove knowledge by the possessor of the animal's vicious or mischievous traits.

Such knowledge has been neither pleaded nor asserted. In reviewing depositions and the incident report attached to the plaintiff's brief, we find that Mr. Bievenour has claimed mistaken identity, just as the defendant in the North Carolina case. The report, however, indicates that three women in the vicinity were subject to unwelcome attention by a deer and that park personnel shot Bucky when the deer approached them. More importantly, Mr. Bievenour said that, although Bucky displayed some traits common to male deer in rut, it never acted in a hostile or aggressive manner. Its rutting personality was limited to meeting Mr. Bievenour's stare and approaching for peanuts. Thus, there are no admissions.

As the record stands, therefore, nothing makes the exception pertinent. The complaint merely alleges that deer are generally vicious during the rutting season. That trait, however, may be common to all deer and does not bring plaintiff within the exception.

The North Carolina court, while mentioning that it was not required to take judicial notice of the habits of deer, observed as follows:

"In 7 Encyclopedia Britannica, we find the following:

"Most deer are shy and furtive although the larger species are dangerous opponents and should not be approached closely even when tamed."

"Especially in the rutting season deer are likely to be unpredictable \*\*\* Deer attack with either antlers or hooves, impaling with the former and slashing with the latter."

152 SE 2d at 305

We thus conclude that defendants are entitled to summary judgment.

The attached order is entered.

#### ORDER OF COURT

AND NOW, this 29th day of November, 1995, Summary Judgment is granted in favor of defendants and against plaintiffs.

#### SUPPLEMENTAL OPINION

Spicer, P. J., March 20, 1996.

Plaintiff requested reconsideration after this court entered summary judgment on November 29, 1995. Accordingly, we temporarily vacated the order, until we could consider additional argument.

Summary judgment was entered when the court determined that defendants were not strictly liable for damages caused by a deer they had enclosed and maintained. The court further ruled that Restatement of Torts, 2d, § 508 applied, with an exception grafted thereon in accordance with the holding in *Swain v. Tillet*, 269 N.C. 46, 152 SE 2d 297 (1967). Understanding that plaintiff pursued only strict liability, the court granted relief as requested by defendants. Since we were unsure whether amendment would add a new cause of action, and because plaintiff had not requested amendment, the order and opinion were silent with respect to right to amend. The court's understanding of issues was primarily based on plaintiff's pre-trial memorandum, which listed strict liability, but not simple negligence, as a basis for relief.

Plaintiff has brought to our attention allegations in the complaint which would support an action based on negligence. Accordingly, we rule that summary judgment was prematurely granted.

Since plaintiff still has a viable cause of action, it would be error to foreclose her from disputing the factual conclusion, based upon judicial notice, that the deer had returned to its natural state as a wild animal. see *220 Partnership v. Philadelphia Electric*, 437 Pa. Super 650, 650 A.2d 1094 (1994). Accordingly, the order previously entered is replaced with the one attached to this opinion.

#### SUPPLEMENTAL ORDER OF COURT

AND NOW, this 20th day of March, 1996, Summary Judgment is granted in favor of defendants and against plaintiffs, insofar as the court rules that defendants are not strictly liable to plaintiff for her injuries, and that Restatement, 2d. Torts § 508, as modified in accordance with discussion in the accompanying opinion, applies to this case. The court refuses the motion for Summary Judgment as to the ultimate issue of liability. This order replaces the order entered November 29, 1995.



## 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 RUSSELL F. CLUCK, DEC'D

Late of Union Township, Adams County, Pennsylvania  
 Executor: Edward A. Cluck, 460 Hoffacker Road, Littlestown, PA 17340  
 Attorney: David K. James, Esq., 234 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF ROBERT CARMAN HOCH, SR., DEC'D

Late of 104 Ocelot Drive, Hanover, PA 17331, Adams County, Pennsylvania  
 Executors: Robert C. Hoch, Jr., 14469 Fortuna Palms Place, Yuma, AZ 85367; Ronald W. Hoch, 4747 Bluegrass Avenue, Boise, ID 83703

## ESTATE OF RICHARD WILLIAM LESLIE, DEC'D

Late of Mount Joy Township, Adams County, Pennsylvania  
 Executrix: Mary Elizabeth Leslie, 369 Heritage Drive, Gettysburg, PA 17325  
 Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF ESTHER M. NICHOLS, DEC'D

Late of Germany Township, Adams County, Pennsylvania  
 Executor: Herbert L. Nichols, Hanover Station, 1157 Eichelberger Street, Hanover, PA 17331  
 Attorney: Douglas H. Gent, Esquire

## ESTATE OF DONALD H. SWISHER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania  
 Co-Executors: Carlotta Strevig, 617 St. Johns Road, Littlestown, PA 17340; Jay C. Swisher, Jr., Box 544, 10 N. High Street, Arendtsville, PA 17303  
 Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF MILDRED B. WILSON, DEC'D

Late of the Borough of New Oxford, Adams County, Pennsylvania  
 Executor: Adams County National Bank, P. O. Box 4566, Gettysburg, PA 17325  
 Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

## SECOND PUBLICATION

## ESTATE OF DALE R. FIDLER, DEC'D

Late of Straban Township, Adams County, Pennsylvania  
 Administrator: Fred D. Fidler, 620 Locust Street, Wrightsville, PA 17368  
 Attorney: Walton V. Davis, Esquire, 31 S. Washington St., Gettysburg, PA 17325

## ESTATE OF ANNA Z. SANDERS, a/k/a ANNA M. SANDERS, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania  
 Administratrix, c.t.a.: Theresa A. Tudor, 4906 Golfview Drive, Chattanooga, TN 37411  
 Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF WALTER L. SHEELY, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania  
 Executors: Walter L. Sheely, Jr., 373 East Catherine Street, Chambersburg, PA 17201; Thomas E. Sheely, 481 Berlin Road, New Oxford, PA 17350  
 Attorney: Pyle and Entwistle, 33 West Middle Street, Gettysburg, PA 17325

## ESTATE OF PAUL I. WAGNER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Executors: William J. Groft, 237 Hanover Street, New Oxford, PA 17350; Scott R. Bell, 101 Lincolnway West, New Oxford, PA 17350  
 Attorney: William W. Hafer, Esquire, 215 Baltimore Street, Hanover, PA 17331

## ESTATE OF CORNELIA G. ZEGER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Representatives: Galen C. Zeger; Elnora Danzberger; Jacqueline Izer; Thomas A. Zeger, c/o Patterson, Kiersz & Ganley, P.C., 239-B East Main Street, Waynesboro, PA 17268-1681  
 Attorney: Patterson, Kiersz & Ganley, P.C., 239-B East Main Street, Waynesboro, PA 17268-1681

## THIRD PUBLICATION

## ESTATE OF ELIZABETH M. BACHELIER, DEC'D

Late of 678 Grant Drive, Gettysburg, PA 17325  
 Testatrices: Anne Kovall, 678 Grant Drive, Gettysburg, PA 17325; Rose Marie Allison, 2070 Enfield Street, Camp Hill, PA 17011  
 Attorney: Matthew R. Battersby, P.O. Box 215, 20 West Main Street, Fairfield, PA 17320

## ESTATE OF ROSSWELL F. DUSMAN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Executor: William H. Dusman, 229 Kennedy Court, Severna Park, MD 21146  
 Attorney: Stonesifer and Kelley, 209 Broadway, Hanover, PA 17331

## ESTATE OF MAE I. PHILLIPS, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania  
 Co-Executors: Brian G. Phillips, 1166 N. Brown's Dam Drive, New Oxford, PA 17350; Michelle M. Flickinger, 255 Brown's Dam Road, New Oxford, PA 17350; Christopher M. Phillips, 710 Stoney Point Road, East Berlin, PA 17316; Tina M. Gladhill Smith, 460 Cedar Ridge Road, New Oxford, PA 17350  
 Attorney: Clayton R. Wilcox, Esquire, 234 Baltimore St., Gettysburg, PA 17325

## ESTATE OF DALE STANLEY SITES, SR., DEC'D

Late of Franklin Township, Adams County, Pennsylvania  
 Administratrix: Penelope S. Sites, P.O. Box 4834, Gettysburg, PA 17325  
 Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF RALPH H. WHISLER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Executors: A. Jean Martin, 822 Broadway, Hanover, PA 17331; Frederick L. Whisler, 276 Georgetown Road, Littlestown, PA 17340  
 Attorney: Stonesifer and Kelley, 209 Broadway, Hanover, PA 17331

IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW  
NO. 96-S-523  
Mortgage Foreclosure

PNC BANK, NATIONAL ASSOCIATION,  
SUCCESSOR BY MERGER TO CCNB  
BANK, N.A., Plaintiff,

vs.

ROBERT P. LEMOINE AND BLANCHE  
E. LEMOINE, HIS WIFE, Defendants.

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint is served, by entering a written appearance personally or by attorneys and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Adams County Court Administrator  
Adams County Courthouse  
117 Baltimore Street  
Gettysburg, PA 17325  
(717) 334-6781 Ext. 213

Respectfully Submitted,  
Johnna J. Deily, Esquire  
Saidis, Guido, Shuff & Masland  
2109 Market Street  
Camp Hill, PA 17011  
(717) 761-1881  
Attorney for PNC Bank, National  
Association

7/5

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on or about April 24, 1996, for the purpose of obtaining a Certificate of Incorporation for a proposed business corporation to be organized under the Pennsylvania Business Corporation Law of 1988. The name of the corporation is VILLAGE ICES, INC., and the purpose for which it is being organized is to sell and distribute food and beverages and beverage items and the corporation shall have unlimited powers to engage in and to do any lawful act concerning any and all business for which corporations may be incorporated under the Pennsylvania Business Corporation Law of 1988, and for these purposes to have, possess, and enjoy all the rights, benefits and privileges of said Act of Assembly and its supplements and amendments.

The initial registered office of the corporation is 516 Baltimore Street, Gettysburg, Pennsylvania, 17325.

Wilcox, James and Cook  
Attorneys at Law  
234 Baltimore Street  
Gettysburg, PA 17325

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# *Adams County* Legal Journal

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## **PENNSYLVANIA CONTINUING LEGAL EDUCATION BOARD AMENDS REGULATIONS**

MECHANICSBURG, PA (July 2, 1996)—James C. Schwartzman, Chair of the Pennsylvania Continuing Legal Education (PA CLE) Board, announces change to the Board Fee Schedule to be effective for courses held on or after August 1, 1996. These changes reduce the per credit hour fees as follows:

Fee per credit hour to be paid by provider with attendance certification—from \$2.50 to \$2.00.

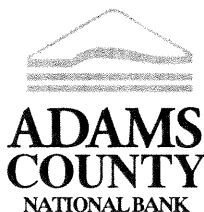
Fee per credit hour to be paid by lawyer for certification when fee not paid by provider—from \$2.50 to \$2.00.

This fee reduction is another step in the Board's continuing commitment to be lawyer friendly while meeting the CLE objectives in Pennsylvania.

Lawyers and Providers of courses are encouraged to call 717-795-2139 or write to the PA CLE Board administrative office at PO Box 869, Mechanicsburg, PA 17055 for further information concerning credit hour fees.

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



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

Designated for the Publication of Court and other Legal Notices. Published every Friday by Adams County Bar Association, Donald G. Oyler, Esq., Editor and Business Manager.

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## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-214 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of July, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

**BEGINNING** at an iron pipe at land now formerly of Donald L. Fetters; thence by said Fetters land, North 76 degrees 16 minutes East, 101.39 feet to an iron pipe; thence by the same, South 13 degrees 21 minutes East, 130.05 feet to an iron pipe at land now or formerly of Duffy-Mott, Inc., thence by said land of Duffy-Mott, Inc., South 79 degrees 30 minutes West 99.95 feet to an iron pipe at other land now or formerly of John S. Baumgardner, thence by said other land of John S. Baumgardner, North 14 degrees 02 minutes West, 124.38 feet to an iron pipe, the place of **BEGINNING**. CONTAINING 0.2934 Acres.

## TRACT NO. 2:

**BEGINNING** at a point along the east side of Prospect Avenue at the southwest corner of Lot No. 6, now or formerly of Orin T. Galusha; thence along the southern line of Lot No. 6, in an eastwardly direction, 175 feet, more or less, to a 12 foot alley, in a southerly direction, 60 feet, more or less, to the northeast corner of Lot No. 5; thence along the northeast line of Lot No. 5, in a westwardly direction, 175 feet, more or less, to the east side of Prospect Avenue; thence along the east side of Prospect Avenue, in a northerly direction 60 feet, more or less, to a point, the place of **BEGINNING**.

## TRACT NO. 3:

**BEGINNING** at a point on the east side of Prospect Avenue at the northwest corner of tract now or formerly of Kenneth Warrenfeltz; thence by said land Warrenfeltz, North 81 degrees 60 minutes East, 175 feet to a point at North 81 degrees 60 minutes East, 175 feet to a point at other land now or formerly of John S. Baumgardner; thence by said land of John S. Baumgardner, North 08 degrees, 50 minutes West, 58 feet to a point at the southeast corner of other land of John S. Baumgardner; thence by said other land of John S. Baumgardner, South 81 degrees 10 minutes West, 175 feet to a point on the east side of Prospect Avenue; thence along said Prospect Avenue South 8 degrees 50 minutes

East, 58 feet to the northwest corner of land Warrenfeltz, the place of **BEGINNING**.

**BEING** the same premises which John S. Baumgardner and Patricia A. Baumgardner by their deed dated September 28, 1977 and recorded on September 28, 1977 in Deed Book Volume 333, p. 770, et seq., Adams County Records, granted and conveyed unto Bruce M. Robison and Nancy A. Robison, as tenants by the entireties, in fee.

**SEIZED** and taken into execution as the property of **Bruce M. Robison and Nancy A. Robison**, and to be sold by me  
Bernard V. Miller  
Sheriff  
Sheriff's Office, Gettysburg, PA  
June 13, 1996.

**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 19, 1996, 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.

6/28, 7/5 & 12

## NOTICE

**NOTICE IS HEREBY GIVEN** that Adams County National Bank, Guardian of the Estate of Sadie Dolly, an incompetent, appointed as such on April 29, 1991, has filed its First and Final Account as Guardian and a Statement of Proposed Distribution with the Clerk of the Court of Common Pleas of Adams County, Orphans' Court Division, Commonwealth of Pennsylvania, and that the same will be presented to said Court for confirmation and approval on August 12, 1996, at 9:00 a.m., D.S.T.

Peggy J. Breighner, Clerk  
Donald G. Oyler, Esq.  
112 Baltimore Street  
Gettysburg, PA 17325

7/5, 12 & 19

## FICTITIOUS NAME NOTICE

**NOTICE IS HEREBY GIVEN** that an Application for Registration of a Fictitious Name will be filed with the Department of State, Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on or about the 10th of June, 1996, pursuant to the Fictitious Name Act of 1982, as amended, setting forth that George Lower, of 40 Spigot Valley Rd., Biglerville, Pennsylvania, is an individual engaged in a business, the character of which is the sale of fine art, prints, civil war memorabilia and general merchandise, and that such business will be conducted under the name of **LORD NELSON'S NATURE STORE AND GALLERY** and have a principal office or location at 27 1/2 Chambersburg St., Gettysburg, Pennsylvania, 17325

Wilcox, James and Cook  
234 Baltimore St.  
Gettysburg, PA 17325

7/12

## NOTICE

To all claimants and persons interested in the estate of Mary Kmetz Dohl, an incapacitated person: The First and Final Account of the Adams County National Bank, guardian of the estate, has 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, Pennsylvania - Orphans Court, 111 Baltimore Street, Gettysburg, PA., for confirmation on Monday, July 22, 1996, at 9:00 o'clock a.m.

7/12, 19

## FENTIMAN VS. FENTIMAN

There is no requirement that there must be a registration of a prior foreign support order in Pennsylvania before a support order action can be commenced here.

In the Court of Common Pleas, Adams County, Pennsylvania, Domestic Relations #DR-437-95, DONNA L. FENTIMAN VS. DAVID J. FENTIMAN.

Bernard A. Yannetti, Jr., Esq., Assistant District Attorney  
Janice J. Repka, Esq., for Defendant

### MEMORANDUM OPINION

Kuhn, J., December 1, 1995.

The following background is obtained from the record. The parties are the parents of a minor child, Danielle, born October 4, 1983. On November 13, 1989, the parties were divorced in the State of California. At that time, a child support order was entered directing Defendant to pay \$200.00 per month plus one-half of unreimbursed medical expenses. Thereafter, Defendant maintained his support obligation.

Complainant and the child now reside in Northampton County and Defendant now resides in Adams County. The California support order, however, was never registered pursuant to the provisions of the Revised Uniform Reciprocal Enforcement of Support Act, 23 Pa. C.S.A. §4501 et seq., specifically 23 Pa. C.S.A. §4539. On July 18, 1995, Complainant filed a Complaint for support in Northampton County seeking child support. Paragraph 7 of the Complaint averred that there was no active support order entered against the Defendant. That Complaint was forwarded to Adams County.

On September 20, 1995, Defendant filed a Motion To Dismiss alleging (1) lack of jurisdiction and (2) failure to comply with Pa. R.C.P. 1910.19(a). Responsive pleadings were filed. Disposition of the Motion To Dismiss will be made on the pleadings alone.

Defendant's argument that neither Northampton or Adams County

has jurisdiction is based upon the proposition that the California support order must be first registered in Pennsylvania before jurisdiction lies here. Complainant counters that under federal procedures for the full faith and credit for child support orders, 28 USCA §1738B, California no longer has jurisdiction. We view the matter from a different perspective in determining that Pennsylvania has jurisdiction.

There can be no question that Pennsylvania has jurisdiction over these parties for support purposes and that Northampton County was a proper venue to initiate a support action. 23 Pa. C.S.A. §4533. There is no indication in RURESA that there must be a registration of a prior foreign support order in Pennsylvania before a support order action can be commenced here. In fact, caselaw indicates otherwise. In *Commonwealth ex rel. Brendel v. Brendel*, 429 Pa. Super. 319, 632 A.2d 876 (1993), the Court recognized that a prior Texas support order not registered in Pennsylvania, would not bar the entry of another support order in Pennsylvania covering the same time frame. The Court cautioned, however, that amounts paid for a particular period in one state should be credited by the other state in the interest of comity among states and fairness to the parties. Our court can proceed accordingly. In turn, Complainant could also request suspension of the California order and registration of any arrearages in Pennsylvania.

Because of our ruling on jurisdiction and because the Complainant seeks entry of an initial order there is no need to aver a material and substantial change in circumstance as would be required if a modification was being requested.

Accordingly, the attached Order is entered.

#### ORDER OF COURT

AND NOW, this 1st day of December, 1995, Defendant's Motion To Dismiss is denied. The Domestic Relations Office is directed to schedule a support conference.

## LEASE V. PESSOGNELLI

1. One of the three requirements for opening any judgment is the prompt filing of the petition.

2. A petition to strike a judgment is in the nature of a demurrer directed to defects in the record and will be granted only if a fatal defect appears on the face of the record.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 92-N-779, DAVID R. LEASE VS. JAMES T. PESSOGNELLI.

Farley G. Holt, Esq. for Plaintiff

John J. Moran, II, Esq., for Defendant

### MEMORANDUM OPINION

Kuhn, J., December 1, 1995.

In essence, Defendant seeks to open or strike a judgment originally entered June 21, 1978 on a judgment note in the amount of \$88,000 and subsequently revived in 1983 and 1992. Defendant contends that Plaintiff forged the amount of the indebtedness on the note.

One of the three requirements for opening any judgment is the prompt filing of the petition. *Germantown Savings Bank v. Talacki*, \_\_\_ Pa. Super. \_\_\_, 657 A.2d 1285 (1995) (judgment by confession); *Dorich v. DiBacco*, \_\_\_ Pa. Super. \_\_\_, 656 A.2d 522 (1995) (judgment of non pros); *Deer Park Lumber, Inc. v. Major*, 384 Pa. Super. 625, 559 A.2d 941 (1989), Alloc. den. 575 A.2d 113 (1990), (default judgment). The instant petition was filed on March 14, 1995, or over 16 years after judgment was entered. Defendant certainly knew of the alleged forgery because in 1981 he filed an equity action against Plaintiff to have a receiver appointed in connection with a partnership business and alleged therein that Plaintiff fraudulently induced him to enter into the \$88,000 judgment note. Therefore, the petition to open must fail.

A petition to strike a judgment is in the nature of a demurrer directed to defects in the record and will be granted only if a fatal defect appears on the face of the record. Such a request cannot be granted if the record is self-sustaining. *U. K. LaSalle, Inc. v. Lawless*, 421 Pa. Super. 496, 499-500, 618 A.2d 447, 449 (1992). Defendant has presented absolutely no evidence of any such defect.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 1st day of December, 1995, in consideration of the Petition For Relief of Judgment on Non Pros Pursuant To Pa. R.C.P. Rule 3051 filed March 14, 1995, and the hearing held on November 20, 1995, said Petition is denied.



## ESTATE NOTICES

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

## FIRST PUBLICATION

## ESTATE OF D. GLENN BENCHOFF, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania  
 Representative: Financial Trust Services Company, Successor In Interest to First National Bank and Trust Co., Waynesboro, PA, 13 West Main Street (P.O. Box 391), Waynesboro, PA 17268  
 Attorney: LeRoy S. Maxwell, Jr., Esq., Maxwell, Maxwell, Walsh & Lisko, Wayne Building, 92 West Main Street, Waynesboro, PA 17268

## ESTATE OF ESTHER S. BOLLINGER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Administratrix: Connie S. Plunkert  
 Attorney: Alan M. Cashman, Esquire, 141 Broadway, Suite 230, Hanover, PA 17331

## ESTATE OF CHARLES G. NAYLOR, DEC'D

Late of Butler Township, Adams County, Pennsylvania  
 Executor: Harry A. Naylor, Sr., 3325 Biglerville Road, Biglerville, PA 17307  
 Attorney: Clayton R. Wilcox, Esquire, 234 Baltimore St., Gettysburg, PA 17325

## ESTATE OF WILLARD W. RAUDABAUGH, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania  
 Administratrix: Helen M. Raudabaugh, 449 North 46th Street, Harrisburg, PA 17111  
 Attorney: Geoffrey S. Shuff, Esquire, Saidis, Guido, Shuff & Masland, P.O. Box 737, Camp Hill, PA 17001-0737

## SECOND PUBLICATION

## ESTATE OF RUSSELL F. CLUCK, DEC'D

Late of Union Township, Adams County, Pennsylvania  
 Executor: Edward A. Cluck, 460 Hoffacker Road, Littlestown, PA 17340  
 Attorney: David K. James, Esq., 234 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF ROBERT CARMAN HOCH, SR., DEC'D

Late of 104 Ocelot Drive, Hanover, PA 17331, Adams County, Pennsylvania  
 Executors: Robert C. Hoch, Jr., 14469 Fortuna Palms Place, Yuma, AZ 85367; Ronald W. Hoch, 4747 Bluegrass Avenue, Boise, ID 83703

## ESTATE OF RICHARD WILLIAM LESLIE, DEC'D

Late of Mount Joy Township, Adams County, Pennsylvania  
 Executrix: Mary Elizabeth Leslie, 369 Heritage Drive, Gettysburg, PA 17325  
 Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF ESTHER M. NICHOLS, DEC'D

Late of Germany Township, Adams County, Pennsylvania  
 Executor: Herbert L. Nichols, Hanover Station, 1157 Eichelberger Street, Hanover, PA 17331  
 Attorney: Douglas H. Gent, Esquire

## ESTATE OF DONALD H. SWISHER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania  
 Co-Executors: Carlotta Strevig, 617 St. Johns Road, Littlestown, PA 17340; Jay C. Swisher, Jr., Box 544, 10 N. High Street, Arendtsville, PA 17303  
 Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF MILDRED B. WILSON, DEC'D

Late of the Borough of New Oxford, Adams County, Pennsylvania  
 Executor: Adams County National Bank, P. O. Box 4566, Gettysburg, PA 17325  
 Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

## THIRD PUBLICATION

## ESTATE OF DALE R. FIDLER, DEC'D

Late of Straban Township, Adams County, Pennsylvania  
 Administrator: Fred D. Fidler, 620 Locust Street, Wrightsville, PA 17368  
 Attorney: Walton V. Davis, Esquire, 31 S. Washington St., Gettysburg, PA 17325

## ESTATE OF ANNA Z. SANDERS, a/k/a ANNA M. SANDERS, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania  
 Administratrix, c.t.a.: Theresa A. Tudor, 4906 Golfview Drive, Chattanooga, TN 37411  
 Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF WALTER L. SHEELY, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania  
 Executors: Walter L. Sheely, Jr., 373 East Catherine Street, Chambersburg, PA 17201; Thomas E. Sheely, 481 Berlin Road, New Oxford, PA 17350  
 Attorney: Pyle and Entwistle, 33 West Middle Street, Gettysburg, PA 17325

## ESTATE OF PAUL I. WAGNER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Executors: William J. Groft, 237 Hanover Street, New Oxford, PA 17350; Scott R. Bell, 101 Lincolnway West, New Oxford, PA 17350  
 Attorney: William W. Hafer, Esquire, 215 Baltimore Street, Hanover, PA 17331

## ESTATE OF CORNELIA G. ZEGER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Representatives: Galen C. Zeger; Elnora Danzberger; Jacqueline Izer; Thomas A. Zeger, c/o Patterson, Kiersz & Ganley, P.C., 239-B East Main Street, Waynesboro, PA 17268-1681  
 Attorney: Patterson, Kiersz & Ganley, P.C., 239-B East Main Street, Waynesboro, PA 17268-1681

NOTICE BY THE ADAMS COUNTY  
CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, July 22, 1995, at 9:00 a.m.

**WILLIAMS**—Orphans' Court Action Number OC-71-96 The First and Final Account of E. Louise Williams, Executrix of the Last Will and Testament of Dorothy G. Williams, deceased, late of Cumberland Township, Adams County, Pennsylvania.

**BUTT**—Orphans' Court Action Number OC-74-96 The First and Final Account of PNC Bank, National Association, formerly The Gettysburg National Bank, Executor of the Will of Ralph B. Butt, Sr., deceased, late of Straban Township, Adams County, Pennsylvania [with First and Final Account of PNC Bank, N.A. Trustee under Funded Revocable Trust Agreement established October 17, 1990 by decedent annexed hereto pursuant to §3501.2 of the Probate, Estates and Fiduciaries Code].

**MYERS**—Orphans' Court Action Number OC-75-96 The First and Final Account of Adams County National Bank, Administrator c.t.a. of the estate of Paul E. Myers, deceased, late of Cumberland Township, Adams County, Pennsylvania.

**CARBAUGH**—Orphans' Court Action Number OC-76-96 The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Mildred A. Carbaugh, deceased, late of Franklin Township, Adams County, Pennsylvania.

**OLINGER**—Orphans' Court Action Number OC-77-96 The First and Final Account of Paula D. Olinger, Executrix of the Estate of Mae E. Olinger, deceased, late of Gettysburg Borough, Adams County, Pennsylvania.

**COX**—Orphans' Court Action Number OC-78-96 The First and Final Account of Doris Showers and Eleanor H. Cooley, Executrices of the Estate of Martha E. Cox, deceased, late of Menallen Township, Adams County, Pennsylvania.

**HOFF**—Orphans' Court Action Number OC-79-96 The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Dennis E. Hoff, deceased, late of the Borough of Littlestown, Adams County, Pennsylvania.

Peggy J. Breighner  
Clerk of Courts

# Adams County Legal Journal

ol. 38

July 19, 1996

No. 8, pp. 51-56

## PENNSYLVANIA CONTINUING LEGAL EDUCATION BOARD AMENDS REGULATIONS

MECHANICSBURG, PA (July 2, 1996)—James C. Schwartzman, Chair of the Pennsylvania Continuing Legal Education (PA CLE) Board, announces change to the Board Fee Schedule to be effective for courses held on or after August 1, 1996. These changes reduce the per credit hour fees as follows:

Fee per credit hour to be paid by provider with attendance certification—from \$2.50 to \$2.00.

Fee per credit hour to be paid by lawyer for certification when fee not paid by provider—from \$2.50 to \$2.00.

This fee reduction is another step in the Board's continuing commitment to a lawyer friendly while meeting the CLE objectives in Pennsylvania.

Lawyers and Providers of courses are encouraged to call 717-795-2139 or write to the PACLE Board administrative office at PO Box 869, Mechanicsburg, PA 17055 for further information concerning credit hour fees.

### SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-1113 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of August, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the following described two (2) tracts of land situate, lying and being in Berwick Township, Adams County, Pennsylvania, bounded and limited as follows:

#### TRACT NO. 1:

BEGINNING for a point at the intersection of Stanley Drive and Little Avenue (two proposed streets 50 feet wide); thence along said Little Avenue, North 67 degrees East 130 feet to a point; thence South 23 degrees East 180 feet to a point at land now or formerly of Paul Vegas; thence along said lands, South 67 degrees West 130 feet to a point at Stanley Drive; thence along said Drive, North 23 degrees West 180 feet to a point and the place of BEGINNING. Being known as Lot Nos. 8 and 10 on a draft

prepared December 30, 1965, by Leroy H. Winebrenner, C.S.

#### TRACT NO. 2:

BEGINNING for a point along Little Avenue (a proposed 50 feet wide street) at other lands now or formerly of Charles L. Strausbaugh and wife; thence along said Little Avenue, North 67 degrees East 130 feet to a point at lands now or formerly of Walter J. Hamm; thence along said lands, South 23 degrees East 180 feet to a point; thence South 67 degrees West 130 feet to a point at lands now or formerly of Charles L. Strausbaugh and wife; thence along said lands, North 23 degrees West 180 feet to a point, the place of BEGINNING. CONTAINING 23,400 square feet and being known as Lot No. 16 on a plan of lots prepared for Sabre Heights, Inc., by J. H. Rife, Registered Engineer, dated August 27, 1968.

BEING the same two (2) tracts of land which Ronald L. Stevens and Judith A. Stevens, husband and wife, by deed dated March 11, 1994, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 868 at page 167, granted and conveyed to Matthew L. Krug and Gail

M. Krug, husband and wife, the Defendants herein.

IMPROVED WITH a ranch-style, single family dwelling with a two-car detached garage.

SEIZED and taken into execution as the property of **Matthew L. Krug and Gail M. Krug**, and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
July 5, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 16, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/19, 26 & 8/2

Designated for the Publication of Court and other Legal Notices. Published every Friday by Adams County Bar Association, Donald G. Oyler, Esq., Editor and Business Manager.

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#### SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-324 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 16th day of August, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate, lying and being in Mt. Joy Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point in Township Road T-406 at the southeastern corner of land of Frederick C. Hickman and wife; thence running in Township Road T-406 South 3 degrees 53 minutes 7 seconds West, 441.26 feet to a railroad spike in a private lane located to the south of the intersection of Township Road T-406 and Legislative Route 01003; thence crossing Legislative Route 01003, South 87 degrees 37 minutes 21 seconds West, 367.39 feet to an iron pin on land now or formerly of Timothy G. Shelly; thence by land of Shelly, North 33 degrees 12 minutes 38 seconds West, 304.37 feet to an iron pipe; thence by the same, South 87 degrees 37 minutes 21 seconds West 133.65 feet to an iron stake on land now or formerly of Robert E. Anders; thence by Anders land and by land now or formerly of Philip P. Jeffcoat, North 48 degrees 17 minutes 57 seconds West, 344.37 feet to an iron pipe; thence by Jeffcoat land and by other land now or formerly of Timothy G. Shelly, North 0 degrees 45 minutes 5 seconds East 231.79 feet to a pipe; thence running by land now or formerly of Frederick C. Hickman and wife, and through an iron pipe set back 25 feet from the end of this course, South 75 degrees 1 minute 23 seconds East, 984.75 feet to a point in Township Road T-406, the point and place of BEGINNING.

CONTAINING 9.145 acres.

This description is taken from a draft of survey of LaRue Surveys, Inc., dated January 15, 1976, which draft of survey is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 15, Page 6.

HAVING THEREON erected a frame dwelling house known and numbered as 745 Rock Creek Ford Road, Gettysburg, Pennsylvania.

BEING THE SAME PREMISES which George R. Eller and Rose M. Eller, by deed dated April 14, 1992 and recorded

in the Office of the Recorder of Deeds for Adams County in Record Book 622, Page 592, granted and conveyed unto Mark H. Kitzinger and Kimberly A. Butry.

TAX PARCEL NO. 7A MAP G-17

SEIZED and taken into execution as the property of **Kimberly A. Butry and Mark H. Kitzinger**, and to be sold by me  
Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
July 9, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 9, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/19, 26 & 8/2

#### INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on 06/11/1996, 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 B. STAUB HAIR STUDIO, 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.

B. Staub Hair Studio, Inc.  
423 Main Street  
McSherrystown, PA 17344

7/19

#### INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Pennsylvania Department of State, Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of obtaining a Certificate of Incorporation of a proposed business corporation under the Pennsylvania Business Corporation Law of 1988. The name of the Corporation is R&B HARDWOOD FLOORING, INC.

Kevin G. Robinson, Esquire  
28 East High Street  
Gettysburg, PA 17325

7/19

#### INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that an application has been filed with the Pennsylvania Department of State by CRAFT COUNTRY, INC., a Maryland corporation, with its principal office at 1814 Town Center Drive, Olney, Maryland 20832, for a Certificate of Authority to do business within Pennsylvania under the provisions of the Business Corporation Law of 1988. The proposed registered office for the corporation in Pennsylvania is 1820 Bullfrog Road, Fairfield, Pennsylvania 17320.

Teeter, Teeter & Teeter, Solicitor  
108 West Middle Street  
Gettysburg, PA 17325

7/19

#### INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Pennsylvania Department of State, Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of obtaining a Certificate of Incorporation of a proposed business corporation under the Pennsylvania Business Corporation Law of 1988. The name of the Corporation is DAVE & JANE'S, INC

Kevin G. Robinson, Esquire  
28 East High Street  
Gettysburg, PA 17325

7/19

## MYERS VS. NATIONWIDE MUTUAL INSURANCE COMPANY

1. While Pennsylvania courts are limited in adjudicating causes of action arising beyond the borders of this Commonwealth such constraints do not apply when Pennsylvania residents sue insurance companies doing business in this State, seeking to apply Pennsylvania law to their contracts of insurance.

2. Factors applicable in judging forum non conveniens are: (1) Plaintiff's choice of forum will not be disturbed except for weighty reasons; (2) a suit will be entertained, no matter how inconvenient, if defendant cannot be subjected to jurisdiction in another state; (3) private interests of litigants, such as access to proof, availability of process to compel witness attendance, cost of attendance, view of premises, and other material considerations; (4) public interest, such as clogging courts or compelling jury duty on citizens in the community with no interest in the litigation, and possible conflicts of law.

3. Balancing of factors applicable in judging forum non conveniens will be weighed in favor of Plaintiff, and lack of a record with respect to private interests negates any meaningful balance of public factors.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil  
No. 95-S-264, JOHN E. MYERS VS. NATIONWIDE MUTUAL  
INSURANCE COMPANY.

Ralph D. Oyler, Esq., for Plaintiff

Lee E. Ullman, Esq., for Defendant

### OPINION ON CHALLENGE TO JURISDICTION

Spicer, P.J., December 1, 1995.

Plaintiff seeks to recover underinsurance benefits under a policy issued by defendant.<sup>1</sup> The insurance carrier has filed preliminary objections, seeking dismissal of the action either because of the lack of subject matter jurisdiction, or because of forum non conveniens. Because we find the objections lacking in merit, we dismiss them and direct that defendant plead to the complaint within twenty days hereof.

No testimony has been provided and the preliminary objections were not accompanied by a notice to plead. On the basis of the minimal record before us, we can surmise that plaintiff was in-

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<sup>1</sup>The complaint alleges that defendant has insured two vehicles belonging to plaintiff and that plaintiff is entitled to stack coverage. This court does not decide this issue, but notes the provisions of 75 Pa. C.S.A. §1717

volved in an automobile accident in Maryland on November 11, 1991. After settling with the tortfeasor for that party's policy limits, plaintiff sought underinsurance on his own policy, which does not provide such coverage. Because he claims that he is entitled to such benefits by law, plaintiff instituted this suit.

The policy, attached as an exhibit to preliminary objections, listed plaintiff's address as P.O. Box 572, St. Anthony's Road, Emmitsburg, Maryland. In his complaint, plaintiff alleged he was a Pennsylvania resident when accident occurred and gave his address as 1210 Iron Springs Road, Fairfield, Pennsylvania. The record does not support any finding where plaintiff resided when the policy was issued. It may be that he was a resident of Maryland and later moved to the Fairfield address, or it might be that his mailing address was in Maryland. Further, we know nothing about the registration or garaging of plaintiff's vehicle.<sup>2</sup>

Although the complaint identifies defendant's home office as being located in Columbus, Ohio, and service was effected at that location, defendant does not contend that it does not regularly conduct business in this Commonwealth. In fact, we know from experience that the company does a thriving business here.

Defendant really seeks a legal determination that the Motor Vehicle Financial Responsibility Act, 75 Pa. C.S.A. § 1731, (MVFRL), does not apply to its policy. Perhaps its purposes would be better served by a motion for summary judgment, with a more complete record. At any rate, that is a substantive legal issue that must be determined, but this court assuredly has jurisdiction to decide it.

The sizable number of cases holding that mere injury suffered by Pennsylvania residents in other states does not confer jurisdiction on our courts, and that our courts may not decide controversies involving certain foreign insurance policies all revolve around the lack of contact by defendants with Pennsylvania. Our courts are

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<sup>2</sup> The MVFRL, § 1731 (a), states, in part, "No motor vehicle liability insurance policy shall be delivered or issued for delivery in this Commonwealth, with respect to any motor vehicle registered or principally garaged in this Commonwealth, unless uninsured motorist and underinsured motorist coverages are provided therein..." Without a signed consent to lower coverage, maximum limits in the act apply. *Motorists Insurance Companies v. Emig*, \_\_\_ Pa.Super. \_\_\_, 664 A.2d 559 (1995).

thus limited in adjudicating causes of action arising beyond the borders of this Commonwealth. see, e.g., *Bloom v. Fine*, 439 Pa.Super. 350, 653 A.2d 1292 (1995). *Colmon v. Maryland Automobile Insurance Fund*, 393 Pa. Super 313, 574 A.2d 628, (1990); *Rivello v. New Jersey Automobile Full Insurance*, 432 Pa.Super. 336, 638 A.2d 253 (1994). Such constraints do not apply when Pennsylvania residents sue insurance companies doing business in this state, seeking to apply Pennsylvania law to their contracts of insurance.

In its objections based upon forum non conveniens, defendant appears to assume that facts of the Maryland accident will be litigated. This is not true. The issues presented by the complaint are: 1) settlement of the Maryland case for the tortfeasor's policy limits; 2) injuries in excess of those policy limits; and 3) applicability of the MVFRL.

Factors applicable in judging forum non conveniens are: 1) plaintiff's choice of forum will not be disturbed, except for weighty reasons; 2) a suit will be entertained, no matter how inconvenient, if defendant cannot be subjected to jurisdiction in another state; 3) private interests of litigants, such as access to proof, availability of process to compel witness attendance, cost of attendance, view of premises, and other material considerations; 4) public interest, such as clogging courts or compelling jury duty on citizens in a community with no interest in the litigation, and possible conflicts of law. *Cinousis v. Hechinger Department Store*, 406 Pa.Super. 500, 594 A.2d 731 (1991). Balancing will be weighed in favor of plaintiff, and lack of a record with respect to private interests negates any meaningful balance of public factors. *Rubin v. Lehman*, \_\_\_ Pa.Super. \_\_\_, 660 A.2d 636 (1995); see also, *Scola v. AC&S, Inc.*, 540 Pa. 353, 657 A.2d 1234 (1995).

We cannot imagine a Maryland court entertaining a suit by a Pennsylvania resident seeking an interpretation of the MVFRL. Defendant has not established a record which make private interests outweigh plaintiff's choice of forum. Since we deal mainly with the applicability of MVFRL, Pennsylvania would seem the appropriate place to adjudicate the controversy between the parties.

The attached order is entered.

## ORDER OF COURT

AND NOW, this 1st day of December, 1995, preliminary objections are dismissed. Defendant shall have twenty (20) days in which to file an answer.

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### COMMONWEALTH VS. BERLAN

1. For double jeopardy to exist, the charges must basically merge before a former prosecution bars a later one.
2. Factors to be considered in determining whether incidents are part of the same criminal episode include: (1) the temporal sequence of events; (2) the logical relationship between the acts; and (3) whether they share common issues of law and fact.

In the Court of Common Pleas, Adams County, Pennsylvania,  
Criminal No. CC-674-95, COMMONWEALTH OF PENNSYLVANIA VS. PATRICK H. BERLAN

Roy Keefer, Esq., District Attorney

Robert Chester, Esq., for Defendant

### OPINION ON MOTION TO DISMISS

Spicer, P.J., December 13, 1995.

Defendant stands charged with violations of the Crimes Code, 18 Pa. C.S.A. § 5501 (1), 903 (a) (1), 3307 (a) (3), and 5503 (a) (1), riot, conspiracy to commit riot, institutional vandalism and disorderly conduct. The information alleges that the crimes were committed February 25 and 26, 1995. He has moved to dismiss the charges, claiming that principles of double jeopardy and §110 of the Crimes Code prevent the prosecution. His argument rests on the fact that he has been previously convicted of various counts of arson and institutional vandalism based on the same conduct or occurring during the same criminal episode.

Under the latest applicable analysis of double jeopardy, the charges must basically merge before a former prosecution bars a later one. *Commonwealth v. Breeland*, \_\_\_ Pa.Super. \_\_\_, 664 A.2d 1355 (1995). It is obvious that crimes involved in the former proceedings are different from those presently charged and, there-



fore, defendant cannot successfully assert a violation of double jeopardy rights.

However, §110 is another matter. The section requires the government to consolidate in a single proceeding all known charges based on the same conduct or arising from the same criminal episode unless the court orders separate trials. The rule of compulsory joinder is intended to protect a defendant from governmental harassment which would result from being forced to undergo successive trials for offenses stemming from the same event, and also, as a matter of judicial economy and administration, to ensure finality without unduly burdening the judicial system by repetitious litigation. Determination whether incidents are part of the same criminal episode depends on the fact of each case. Factors to be considered include: 1) the temporal sequence of events; 2) the logical relationship between the acts; and 3) whether they share common issues of law and fact. Two separate incidents may be included, if one offense is a necessary step in the accomplishment of a criminal objective, or if additional offenses occur because of an attempt to secure the benefit of a previous offense or conceal its commission. *Commonwealth v. Walton*, 405 Pa.Super. 281, 592 A.2d 335 (1991).

Of course, principles are sometimes easier to state than to apply. Just as an example, courts have viewed drug purchases with varying results, perhaps depending on the identity of the purchaser. *Commonwealth v. Starr*, 416 Pa.Super 250, 610 A.2d 1066 (1992), appeal granted 533 Pa. 636, 621 A.2d 580, (1993); *Commonwealth v. Hude*, 500 Pa. 482, 458 A.2d 177 (1983).

This writer has attempted to carefully compare facts in the former case with the ones presently pending. Commonwealth has conceded that §110 bars Counts I and III. We come to the same conclusion with respect to the other two counts. Testimony presented at the former trial described the conduct presently charged. Despite minor differences in detail, acts of destruction and the unlawful confederation of inmates were the same. All crimes are temporally and logically connected and were staged to protest a ban on smoking. Issues of law and fact are basically identical. The conspiracy alleged by Commonwealth was designed to accomplish not only riot but the offenses charged in the former proceeding.

Stated most simply, inmates at Adams County Prison, including defendant, rioted February 25 and 26, 1995. Inmates talked, planned and conspired. Property was damaged. The police charged defendant with some of the consequences of his actions earlier and now attempt to prosecute for additional individual actions. In our judgment, §110 clearly applies and the motion for dismissal must be granted. The attached order is entered.

#### ORDER OF COURT

AND NOW, this 13th day of December, 1995, charges against the defendant are dismissed pursuant to 18 Pa. C.S.A. §110.

Costs shall be paid by the County of Adams.

## 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 ETHEL P. GUISE, DEC'D**  
Late of the Borough of Gettysburg, Adams County, Pennsylvania  
Co-Executors: D. Richard Guise, Adams County National Bank, c/o P. O. Box 4566, Gettysburg, PA 17325  
Attorney: Neal S. West, Esq., Attorney for the Estate, c/o McNees, Wallace & Nurick, 100 Pine Street, P.O. Box 1166, Harrisburg, PA 17108

**ESTATE OF ELIZABETH A. SMITH, DEC'D**  
Late of Cumberland Township, Adams County, Pennsylvania  
Administrator: Peter G. Wilson, 289 Oak Lane, Gettysburg, PA 17325  
Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF DONALD F. STEVENS, DEC'D**  
Late of Oxford Township, Adams County, Pennsylvania  
Executors: Robert L. Stevens, John E. Stevens, Patsy Ann Keller  
Attorney: John L. Mooney, III, 250 York Street, (Gates & Mooney), Hanover, PA 17331

## SECOND PUBLICATION

**ESTATE OF D. GLENN BENCHOFF, DEC'D**  
Late of Hamiltonban Township, Adams County, Pennsylvania  
Representative: Financial Trust Services Company, Successor In Interest to First National Bank and Trust Co., Waynesboro, PA, 13 West Main Street (P.O. Box 391), Waynesboro, PA 17268  
Attorney: LeRoy S. Maxwell, Jr., Esq., Maxwell, Maxwell, Walsh & Lisko, Wayne Building, 92 West Main Street, Waynesboro, PA 17268

**ESTATE OF ESTHER S. BOLLINGER, DEC'D**  
Late of Oxford Township, Adams County, Pennsylvania  
Administratrix: Connie S. Plunkert  
Attorney: Alan M. Cashman, Esquire, 141 Broadway, Suite 230, Hanover, PA 17331

**ESTATE OF CHARLES G. NAYLOR, DEC'D**  
Late of Butler Township, Adams County, Pennsylvania  
Executor: Harry A. Naylor, Sr., 3325 Biglerville Road, Biglerville, PA 17307  
Attorney: Clayton R. Wilcox, Esquire, 234 Baltimore St., Gettysburg, PA 17325

**ESTATE OF WILLARD W. RAUDABAUGH, DEC'D**  
Late of the Borough of Biglerville, Adams County, Pennsylvania  
Administratrix: Helen M. Raudabaugh, 449 North 46th Street, Harrisburg, PA 17111  
Attorney: Geoffrey S. Shuff, Esquire, Saidis, Guido, Shuff & Masland, P.O. Box 737, Camp Hill, PA 17001-0737

## THIRD PUBLICATION

**ESTATE OF RUSSELL F. CLUCK, DEC'D**  
Late of Union Township, Adams County, Pennsylvania  
Executor: Edward A. Cluck, 460 Hoffacker Road, Littlestown, PA 17340  
Attorney: David K. James, Esq., 234 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF ROBERT CARMAN HOCH, SR., DEC'D**  
Late of 104 Ocelot Drive, Hanover, PA 17331, Adams County, Pennsylvania  
Executors: Robert C. Hoch, Jr., 14469 Fortuna Palms Place, Yuma, AZ 85367; Ronald W. Hoch, 4747 Bluegrass Avenue, Boise, ID 83703

**ESTATE OF RICHARD WILLIAM LESLIE, DEC'D**  
Late of Mount Joy Township, Adams County, Pennsylvania  
Executrix: Mary Elizabeth Leslie, 369 Heritage Drive, Gettysburg, PA 17325  
Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF ESTHER M. NICHOLS, DEC'D**  
Late of Germany Township, Adams County, Pennsylvania  
Executor: Herbert L. Nichols, Hanover Station, 1157 Eichelberger Street, Hanover, PA 17331  
Attorney: Douglas H. Gent, Esquire

**ESTATE OF DONALD H. SWISHER, DEC'D**  
Late of Cumberland Township, Adams County, Pennsylvania  
Co-Executors: Carlotta Strevig, 617 St. Johns Road, Littlestown, PA 17340; Jay C. Swisher, Sr., Box 544, 10 N. High Street, Arendtsville, PA 17303  
Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF MILDRED B. WILSON, DEC'D**  
Late of the Borough of New Oxford, Adams County, Pennsylvania  
Executor: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325  
Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

## NOTICE

To all claimants and persons interested in the estate of Mary Kmetz Dohl, an incapacitated person: The First and Final Account of the Adams County National Bank, guardian of the estate, has 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, Pennsylvania - Orphans Court, 111 Baltimore Street, Gettysburg, PA., for confirmation on Monday, July 22, 1996, at 9:00 o'clock a.m.

7/12, 19

## NOTICE

**NOTICE IS HEREBY GIVEN that Adams County National Bank, Guardian of the Estate of Sadie Dolly, an incompetent, appointed as such on April 29, 1991, has filed its First and Final Account as Guardian and a Statement of Proposed Distribution with the Clerk of the Court of Common Pleas of Adams County, Orphans' Court Division, Commonwealth of Pennsylvania, and that the same will be presented to said Court for confirmation and approval on August 12, 1996, at 9:00 a.m., D.S.T.**

Peggy J. Breighner, Clerk  
Donald G. Oyler, Esq.  
112 Baltimore Street  
Gettysburg, PA 17325

7/5, 12 &amp; 19

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, July 22, 1995, at 9:00 a.m.

**WILLIAMS**—Orphans' Court Action Number OC-71-96 The First and Final Account of E. Louise Williams, Executrix of the Last Will and Testament of Dorothy G. Williams, deceased, late of Cumberland Township, Adams County, Pennsylvania.

**BUTT**—Orphans' Court Action Number OC-74-96 The First and Final Account of PNC Bank, National Association, formerly The Gettysburg National Bank, Executor of the Will of Ralph B. Butt, Sr., deceased, late of Straban Township, Adams County, Pennsylvania [with First and Final Account of PNC Bank, N.A. Trustee under Funded Revocable Trust Agreement established October 17, 1990 by decedent annexed hereto pursuant to §3501.2 of the Probate, Estates and Fiduciaries Code].

**MYERS**—Orphans' Court Action Number OC-75-96 The First and Final Account of Adams County National Bank, Administrator c.t.a. of the estate of Paul E. Myers, deceased, late of Cumberland Township, Adams County, Pennsylvania.

**CARBAUGH**—Orphans' Court Action Number OC-76-96 The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Mildred A. Carbaugh, deceased, late of Franklin Township, Adams County, Pennsylvania.

**OLINGER**—Orphans' Court Action Number OC-77-96 The First and Final Account of Paula D. Olinger, Executrix of the Estate of Mae E. Olinger, deceased, late of Gettysburg Borough, Adams County, Pennsylvania.

**COX**—Orphans' Court Action Number OC-78-96 The First and Final Account of Doris Showers and Eleanor H. Cooley, Executrices of the Estate of Martha E. Cox, deceased, late of Menallen Township, Adams County, Pennsylvania.

**HOFF**—Orphans' Court Action Number OC-79-96 The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Dennis E. Hoff, deceased, late of the Borough of Littlestown, Adams County, Pennsylvania.

Peggy J. Breighner  
Clerk of Courts

7/12 & 19

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-484 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of August, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in Menallen Township, Adams County, Pennsylvania, being more fully bounded, limited, and described as follows:

BEGINNING at a point in or near the centerline of Legislative Route 01080 (S.R. 4012), thence leaving said roadway and extending along the dividing line of Lots No. 2 and 3 of the hereinafter referred to subdivision plan, North 42 degrees 26 minutes 45 seconds West a distance of 465.07 feet to a point at other lands now or formerly of Wayne Ogburn; thence along the last mentioned lands, North 43 degrees 24 minutes 20 seconds East 100.00 feet to a point at the dividing line of Lots 1 and 2 on the hereinafter referred to subdivision plan; thence along said dividing line, South 45 degrees 15 minutes 05 seconds East 490.59 feet to a point in or near the centerline of Legislative Route 01080 (S.R. 4012), thence in, along and through said last mentioned roadway South 55 degrees 41 minutes 40 seconds West 125.00 feet to the point and Place of BEGINNING.

CONTAINING 1.224 acres and being designated as Lot No. 2 on a Final Plan of Subdivision for Wayne Ogburn, prepared by J. Ruey Redding, R.S., Said Plan is recorded in Adams County Records in Plat Book 55, Page 78.

Being known and numbered as 1515 Coon Road.

BEING the same premises which Wayne B. Ogburn and Shirley D. Ogburn, his wife, by deed dated June 15, 1990, and recorded June 29, 1990 in the Office of the Recorder of Deeds in and for Adams County at Gettysburg, Pennsylvania in Deed Book 560, Page 374, granted and conveyed to Patrick S. Dietz, single man and Susan F. Hoover, single woman. The said Susan F. Hoover is now intermarried with the said Patrick S. Dietz, and is known as Susan F. Hoover.

UNDER AND SUBJECT to certain restrictions now of record.

SEIZED and taken into execution as the property of **Patrick S. Dietz and Susan F. Dietz**, and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
July 8, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 16, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser

must settle for property on or before filing date.

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

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

7/19, 26 & 8/2

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-961 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of August, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point on the eastern edge of Hooker Drive at Lot No. 640; thence by said lot South 79 degrees 00 minutes 00 seconds East, 200.00 feet to a point at Lot No. 650; thence by said lot and by Lots No. 651 and 652 South 11 degrees 00 minutes 00 seconds West 220.00 feet to a point at Lot No. 65 thence by said lot and by Lots No. 644 and 643 North 79 degrees 00 minutes 00 seconds West, 200.00 feet to a point on the eastern edge of Hooker Drive; thence along said Hooker Drive North 11 degrees 00 minutes 00 seconds East, 220.00 feet to the place of BEGINNING CONTAINING 44,000 Square feet.

The above description was taken from a plan of lots prepared by Donald E. Worley, dated March 12, 1986.

BEING NO. 642 HOOKER DRIVE.

PARCEL #: 5-97

SEIZED and taken into execution as the property of **Merrill A. Mummert and Barbara A. Mummert**, and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
July 9, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 16 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/19, 26 & 8/2

# Adams County Legal Journal

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## IN THIS ISSUE

### THE MARIAN STATE BANK VS. FIGUEROA

#### SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-1113 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of August, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the following described two (2) tracts of land situate, lying and being in Berwick Township, Adams County, Pennsylvania, bounded and limited as follows:

#### TRACT NO. 1:

BEGINNING for a point at the intersection of Stanley Drive and Little Avenue (two proposed streets 50 feet wide); thence along said Little Avenue, North 67 degrees East 130 feet to a point; thence South 23 degrees East 180 feet to a point at land now or formerly of Paul Vegas; thence along said lands, South 67 degrees West 130 feet to a point at Stanley Drive; thence along said Drive, North 23 degrees West 180 feet to a point and the place of BEGINNING. Being known as Lot Nos. 8 and 10 on a draft

prepared December 30, 1965, by Leroy H. Winebrenner, C.S.

#### TRACT NO. 2:

BEGINNING for a point along Little Avenue (a proposed 50 feet wide street) at other lands now or formerly of Charles L. Strausbaugh and wife; thence along said Little Avenue, North 67 degrees East 130 feet to a point at lands now or formerly of Walter J. Hamm; thence along said lands, South 23 degrees East 180 feet to a point; thence South 67 degrees West 130 feet to a point at lands now or formerly of Charles L. Strausbaugh and wife; thence along said lands, North 23 degrees West 180 feet to a point, the place of BEGINNING. CONTAINING 23,400 square feet and being known as Lot No. 16 on a plan of lots prepared for Sabre Heights, Inc., by J. H. Rife, Registered Engineer, dated August 27, 1968.

BEING the same two (2) tracts of land which Ronald L. Stevens and Judith A. Stevens, husband and wife, by deed dated March 11, 1994, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 868 at page 167, granted and conveyed to Matthew L. Krug and Gail

M. Krug, husband and wife, the Defendants herein.

IMPROVED WITH a ranch-style, single family dwelling with a two-car detached garage.

SEIZED and taken into execution as the property of **Matthew L. Krug and Gail M. Krug**, and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
July 5, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 16, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/19, 26 & 8/2

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-324 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 16th day of August, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate, lying and being in Mt. Joy Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point in Township Road T-406 at the southeastern corner of land of Frederick C. Hickman and wife; thence running in Township Road T-406 South 3 degrees 53 minutes 7 seconds West, 441.26 feet to a railroad spike in a private lane located to the south of the intersection of Township Road T-406 and Legislative Route 01003; thence crossing Legislative Route 01003, South 87 degrees 37 minutes 21 seconds West, 367.39 feet to an iron pin on land now or formerly of Timothy G. Shelly; thence by land of Shelly, North 33 degrees 12 minutes 38 seconds West, 304.37 feet to an iron pipe; thence by the same, South 87 degrees 37 minutes 21 seconds West 133.65 feet to an iron stake on land now or formerly of Robert E. Anders; thence by Anders land and by land now or formerly of Philip P. Jeffcoat, North 48 degrees 17 minutes 57 seconds West, 344.37 feet to an iron pipe; thence by Jeffcoat land and by other land now or formerly of Timothy G. Shelly, North 0 degrees 45 minutes 5 seconds East 231.79 feet to a pipe; thence running by land now or formerly of Frederick C. Hickman and wife, and through an iron pipe set back 25 feet from the end of this course, South 75 degrees 1 minute 23 seconds East, 984.75 feet to a point in Township Road T-406, the point and place of BEGINNING.

CONTAINING 9.145 acres.

This description is taken from a draft of survey of LaRue Surveys, Inc., dated January 15, 1976, which draft of survey is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 15, Page 6.

HAVING THEREON erected a frame dwelling house known and numbered as 745 Rock Creek Ford Road, Gettysburg, Pennsylvania.

BEING THE SAME PREMISES which George R. Eller and Rose M. Eller, by deed dated April 14, 1992 and recorded

in the Office of the Recorder of Deeds for Adams County in Record Book 622, Page 592, granted and conveyed unto Mark H. Kitzinger and Kimberly A. Buttry.

TAX PARCEL NO. 7A MAP G-17

SEIZED and taken into execution as the property of **Kimberly A. Buttry and Mark H. Kitzinger**, and to be sold by me  
Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
July 9, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 9, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/19, 26 & 8/2

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-484 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of August, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in Menallen Township, Adams County, Pennsylvania, being more fully bounded, limited, and described as follows:

BEGINNING at a point in or near the centerline of Legislative Route 01080 (S.R. 4012), thence leaving said roadway and extending along the dividing line of Lots No. 2 and 3 of the hereinafter referred to subdivision plan, North 42 degrees 26 minutes 45 seconds West a distance of 465.07 feet to a point at other lands now or formerly of Wayne Ogburn; thence along the last mentioned lands, North 43 degrees 24 minutes 20 seconds East 100.00 feet to a point at the dividing line of Lots 1 and 2 on the hereinafter referred to subdivision plan; thence along said dividing line, South 45 degrees 15 minutes 05 seconds East 490.59 feet to a point in or near the centerline of

Legislative Route 01080 (S.R. 4012), thence in, along and through said last mentioned roadway South 55 degrees 41 minutes 40 seconds West 125.00 feet to the point and Place of BEGINNING.

CONTAINING 1.224 acres and being designated as Lot No. 2 on a Final Plan of Subdivision for Wayne Ogburn, prepared by J. Ruey Redding, R.S., Said Plan is recorded in Adams County Records in Plat Book 55, Page 78.

Being known and numbered as 1515 Coon Road.

BEING the same premises which Wayne B. Ogburn and Shirley D. Ogburn, his wife, by deed dated June 15, 1990, and recorded June 29, 1990 in the Office of the Recorder of Deeds in and for Adams County at Gettysburg, Pennsylvania in Deed Book 560, Page 374, granted and conveyed to Patrick S. Dietz, single man and Susan F. Hoover, single woman. The said Susan F. Hoover is now intermarried with the said Patrick Dietz, and is known as Susan F. Hoover.

UNDER AND SUBJECT to certain restrictions now of record.

SEIZED and taken into execution as the property of **Patrick S. Dietz and Susan F. Dietz**, and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
July 8, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 16, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/19, 26 & 8/2

## THE MARIAN STATE BANK VS. FIGUEROA

1. The lien of a judgment on a note or bond which was given in connection with a mortgage relates back to the priority of the mortgage only as to the mortgaged premises.
2. Petitions to the Court to set aside a sheriff's sale are grounded in equitable principles and the applicant has the burden of proving by clear evidence the circumstances which would justify setting aside the sheriff's sale.
3. Grounds constituting proper cause for setting aside a sheriff's sale are based on the theme of fairness designed to avoid an injustice.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 93-S-957, THE MARIAN STATE BANK VS. PAUL C. FIGUEROA AND ALTAGRACIA FIGUEROA

Enid R. Stebbins, Esq. for Plaintiff  
Ralph D. Oyler, Esq., for Plaintiff  
John R. White, Esq., for Defendants

### MEMORANDUM OPINION ON PETITION TO SET ASIDE SHERIFF'S SALE

Kuhn, J., December 12, 1995.

In order to resolve the matter before the Court it was necessary to review the record history under this case number as well as the cases captioned 1) The Marian State Bank v. Paul C. Figueroa and Altagracia Figueroa at 93-N-277 and 2) The Marian State Bank v. Paul C. Figueroa and Altagracia Figueroa and Golden Ridge Farms at 93-S-846.

On December 15, 1987, the Figueros purchased a 9.2 acre parcel of real estate, hereinafter referred to as "the real estate," situate on the south side of Ridge Road in Latimore Township, Adams County, Pennsylvania from Mr. and Mrs. Glenn F. Guise. The real estate is described in the deed (Deed Book 475, Page 624) as Lot No. 5 on the Guise subdivision plan recorded at Plat Book 47, Page 99.

On July 2, 1990, Import Used Cars, Ltd., by its President, Paul Figueroa, executed a Promissory Note in the amount of \$100,000 in favor of Marian Bank. At the same time both Figueros executed a Surety Agreement to cover the debt of Import Used Cars. In addition, both Figueros executed a mortgage in favor of The Marian Bank covering the real estate to secure the \$100,000 note and their obligation under the Surety Agreement. The mortgage also identified the real estate as Parcel I-4-65.

On April 17, 1992, the Secretary of Banking took possession of the assets of The Marian Bank.

On September 3, 1992, the Figueroas deeded their interest in the real estate to Golden Ridge Farms, a Pennsylvania general partnership, with the deed being recorded on October 9, 1992, in Record Book 644, Page 602. This conveyance was not with Plaintiff's consent. At hearing held on March 27, 1995, G. Lynn Golden, one of the partners of Golden Ridge Farm, admitted that prior to purchase he had not seen a lien search on the property nor was he aware that a mortgage encumbered the property.

On April 28, 1993, Plaintiff filed a praecipe to enter judgment against the Figueroas in 93-N-277 on a promissory note dated January 13, 1989, and two surety agreements dated July 2, 1990 and May 21, 1991 respectively. The July 2, 1990 surety agreement was the one mentioned above.

On August 2, 1993, Plaintiff sent notices to the Figueroas of its intent to foreclose as to three mortgages, one of which was the \$100,000 mortgage executed by the Figueroas on July 2, 1990. The same notices were sent to Golden Ridge Farms. The notices identified the loan number, the original principal, the amount past due and the premises subject to the mortgages (221 Bonner Hill Road, York Springs, PA 17372, A/K/A Parcel I-4-65). The notices were received by each party. Subsequently, on September 23, 1993, Plaintiff filed a mortgage foreclosure action against Figueroas and Golden Ridge Farms at 93-S-846. Count II of that Complaint referenced the \$100,000 mortgage. The Complaint was served on each party.

On October 8, 1993, Plaintiff filed a Lis Pendens in 93-N-277 against real estate identified as 221 Bonner Hill Road, York Springs, Pa. aka Twp Road 630, aka Parcel I-3-50. Prior to this point all documents referred to 221 Bonner Hill Road as Parcel I-4-65.

On October 26, 1993, Plaintiff filed a Complaint to Conform Confessed Judgment By Statutory Action against the Figueroas in 93-S-957. This action was filed pursuant to 41 P.S. §407(a). Service of that Complaint was made by mid-November, 1993.

Meanwhile on November 9, 1993, in 93-S-846 Plaintiff filed a praecipe to enter default judgment.

On January 20, 1994, Plaintiff filed a praecipe to enter a default judgment in 93-S-957. On May 24, 1994, Plaintiff filed an Affidavit Pursuant To Rule 3129.1 stating that "as of the date the Praecipe for Writ of Execution was filed the following information concerning the real property located at Ridge Road, Latimore Township, Adams County, Pennsylvania." The Affidavit listed Golden Ridge Farms as the owner of the property and attached a description of the real estate similar to the description set forth in the deed into Golden Ridge Farms.



The description also identified the real estate as Tax No. I-4-65. The Writ of Execution was apparently served on the Figueroas as defendants and upon Golden Ridge Farms as garnishee on July 18, 1994.

On September 16, 1994, a sheriff's sale was held under 93-S-957. The notice of Sheriff's Sale although described the real estate being sold by a metes and bounds description in the manner set forth in the deed into Golden Ridge Farms and indicated that it was Lot #5 on the Guise subdivision plan recorded a Plat Book 47, Page 99. The notice also stated that it was the property of the Figueroas. Before the sale G. Lynn Golden asked the Deputy Sheriff what property was being sold but neither the deputy nor Attorney Oyler, Plaintiff's local counsel, was able to answer that question. The real estate was purchased by Plaintiff for costs.

On October 17, 1994, Golden Ridge Farms filed a document under both 93-S-846 and 93-S-957 styled Notice of Intention To Petition To Set Aside Sheriff's Sale and Notice of Intention to file Exceptions to Sheriff's Proposed Schedule of Distribution. Therein Golden Ridge Farms averred that Plaintiff's conduct in the various actions created confusion in that Golden Ridge Farms was unable to determine whether its interest in the real estate was being sold. At that time the Sheriff's Proposed Schedule of Distribution had not yet been filed. On November 17, 1994, the Court issued a Rule on Plaintiff to show cause, if any it had, why all proceedings should not be stayed pending the filing of the Sheriff's Proposed Schedule of Distribution. The Rule was returnable on December 19, 1994. That hearing was continued at the request of the parties until January 17, 1995, after which the stay was directed to remain until the Sheriff's Proposed Schedule of Distribution was filed. The Proposed Schedule of Distribution was filed with the Sheriff on February 21, 1995, under both 93-S-846 and 93-S-957.

On March 2, 1995, Golden Ridge Farms filed a Petition To Set Aside the Sheriff's Sale and Exceptions to Sheriff's Proposed Schedule of Distribution. Again Golden Ridge Farms averred confusion as to the various documents and the property or interest being sold. A hearing was held on March 27, 1995. At the hearing Chief Deputy Sheriff William Orner also expressed substantial confusion because he was being asked to sell real estate owned by Golden Ridge Farms under the judgment against the Figueroas wherein Golden Ridge Farms was listed as a garnishee. The parties were given an opportunity to file briefs on the issue before the Court.

Because the sheriff's sale was conducted strictly under 93-S-957, the court must carefully examine the rights of the parties thereunder. That action was brought on October 26, 1993, pursuant to 41 P.S.

§407(a) and Pa. R.C.P. 2981 et seq. At that time title to the real estate had already passed to Golden Ridge Farms. However, whenever judgment was entered in 93-S-957 on January 20, 1994, the lien of that judgment related back to April 28, 1993 which is the priority date for the lien based upon the confessed judgment in 93-N-277. *RCK, Inc. v. Katz*, 331 Pa. Super. 163, 171; 480 A.2d 295, 299 (1984) note 5. This date is also after the date title to the real estate passed to Golden Ridge Farms.

Plaintiff argues, however, that the lien also relates all the way back to the date the mortgage for the subject real estate was recorded on July 30, 1990, under the theory that the lien of a judgment on a note or bond which was given in connection with a mortgage relates back to the priority of the mortgage. *First Federal Savings & Loan Association v. Porter*, 408 Pa. 236, 243, 183 A.2d 318, 323 (1962). However, a judgment on the note or bond relates back to the date of the mortgage only as to the mortgaged premises. *Standard Pa. Prac. 2d* §121:130. The inquiry therefore turns on whether this action proceeded on a note or bond which was given in connection with the July 30, 1990, mortgage.

As noted earlier the actual note for \$100,000 was executed by Import Used Cars, Ltd. The Figueroas did not execute the note. Instead they executed a Surety Agreement which was unlimited in its scope as to liability. The mortgage was executed by the Figueroas not Import Used Cars, Ltd. Considering the nature of the mortgage and the Surety agreement executed by the Figueroas and their obligations thereunder it is appropriate to follow the general rule and find that the priority of the lien of the judgment entered in 93-S-957 relates back to July 30, 1990, a date prior to the purchase by Golden Ridge Farms.

Our inquiry must also focus on whether the property listed for sheriff's sale was the mortgaged premises. If it was not the same, execution could not be had on that property because the lien of the judgment would have arisen after title to the real estate passed from the Figueroas. As noted, the mortgage described the premises subject to the mortgage as 221 Bonners Hill Road, York Springs, Latimore Township and being the same as was conveyed to the Figueroas on December 15, 1987 and recorded in Deed Book 475, Page 624. Although that deed gives the Figueroas' residence address as 221 Bonners Hill Road, it is clear that the real estate is 9.2 acres fronting on Ridge Road and is Lot #5 on the Guise subdivision recorded in Plat Book 47 Page 99. A careful review of the description of the real estate set forth in the Affidavit Pursuant to Rule 3129.1 and the notice of Sheriff's Sale leaves no doubt that it refers to the same real estate

described in the mortgage.

Pa. R.C.P. 3132 allows the court upon petition of any party in interest to set aside a sheriff's sale "upon proper cause shown." Such petitions are grounded in equitable principles. The applicant has the burden of proving by clear evidence the circumstances which would justify setting aside the sheriff's sale. *Greater Pittsburgh Business Development Corp. v. Braunstein*, 390 Pa. Super. 454, 458, 568 A.2d 1261, 1263 (1989). Several sources have set forth various grounds as constituting proper cause for setting aside a sale. *Goodrich Amram* 2d Vol. 8 §3132:6-11; *Standard Pa. Prac.* 2nd §76:52-69. The general theme seems to be one of fairness designed to avoid an injustice.

As discussed above there appears to be a legal basis for the sheriff's sale held in this case. With respect to the argument by Golden Ridge Farms that Plaintiff inter-mixed the two actions at 93-S-846 and 93-S-957 we find no evidence of that in the record. Neither do we find any confusion by virtue of Golden Ridge Farms being identified as a defendant in the mortgage foreclosure action and as a garnishee in the §407(a) action. In a mortgage foreclosure action the real owner of the subject real estate (Golden Ridge Farms) as well as the mortgagors (the Figueroas) are to be named as party defendants. Pa. R.C.P. 1144. In the §407(a) action there would be no basis to identify Golden Ridge Farms as a party defendant where Plaintiff was seeking a judgment for the personal liability of the Figueroas. Golden Ridge Farms was identified as a garnishee based upon the purchase money obligation it owed to the Figueroas.

The only issue of any worthy merit concerns the inability of the deputy sheriff and Attorney Oyler to identify for Mr. Golden what property or interest was being sold at the sheriff's sale. It appears that Attorney Oyler was only acting as Plaintiff's local counsel and that all instructions and paperwork were generated through out-of-town counsel who was not present for the sale. Therefore, there is some reason to believe that Attorney Oyler was not trying to be deceptive when responding to the inquiry. At the time Golden Ridge Farms bought the real estate the actions at 93-S-957 and 93-N-277 had not been filed, however, the mortgage was on record and should have alerted the partnership of that interest and the Figueroas' possible personal liability. As noted several times herein, the notice of sheriff's sale clearly identified the real estate being sold. Nevertheless, Mr. Golden said he tried to contact Plaintiff and its counsel about the matter after being served by the Sheriff with various documents but received no information.

Although Golden Ridge Farms perhaps should have been more

aware of the various actions and perhaps should have secured counsel at an earlier date, we can conclude that the information given at the sheriff's sale was confusing. We note that Plaintiff bought the property for costs at the sale. Plaintiff will likely have to market the property for resale if the sale is upheld. For equitable reasons the court will conditionally set aside the sale. Because the court does not find Plaintiff at fault for the confusion and Golden Ridge Farms partially responsible for the present circumstances, the sale will be set aside and rescheduled only if within 30 days of the date of mailing of this Opinion and Order the partnership deposits with the Sheriff of Adams County a sum sufficient to cover all costs associated with another sale. If that deposit is not timely made, the sale will be approved and the exceptions dismissed.

Accordingly, the attached Order is entered.

#### ORDER OF COURT

AND NOW, this 12th day of December, 1995, in consideration of the Petition To Set Aside Sheriff's Sale and Exceptions to Sheriff's Proposed Schedule of Distribution filed by Golden Ridge Farms on March 2, 1995, it is hereby ordered that the Petition be conditionally approved. The sheriff's sale held September 16, 1994, will be set aside and rescheduled if within 30 days after the date of mailing of this Order Petitioner deposits with the Sheriff of Adams County a sum sufficient to cover all costs associated with the rescheduled sale. If the deposit is not timely made, the sale held September 16, 1994, will be automatically approved and Petitioner's exceptions dismissed.

## 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 LAWRENCE J. CULLISON, DEC'D

Late of Freedom Township, Adams County, Pennsylvania  
 Executrix: Nora M. Cullison, 345 Natural Dam Road, Gettysburg, PA 17325  
 Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

## SECOND PUBLICATION

## ESTATE OF ETHEL P. GUISE, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania  
 Co-Executors: D. Richard Guise, Adams County National Bank, c/o P. O. Box 4566, Gettysburg, PA 17325  
 Attorney: Neal S. West, Esq., Attorney for the Estate, c/o McNees, Wallace & Nurick, 100 Pine Street, P.O. Box 1166, Harrisburg, PA 17108

## ESTATE OF ELIZABETH A. SMITH, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania  
 Administrator: Peter G. Wilson, 289 Oak Lane, Gettysburg, PA 17325  
 Attorney: Swope, Heiser & McQuaibe, 104 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF DONALD F. STEVENS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Executors: Robert L. Stevens, John E. Stevens, Patsy Ann Keller  
 Attorney: John L. Mooney, III, 250 York Street, (Gates & Mooney), Hanover, PA 17331

## THIRD PUBLICATION

## ESTATE OF D. GLENN BENCHOFF, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania  
 Representative: Financial Trust Services Company, Successor In Interest to First National Bank and Trust Co., Waynesboro, PA, 13 West Main Street (P.O. Box 391), Waynesboro, PA 17268

Attorney: LeRoy S. Maxwell, Jr., Esq., Maxwell, Maxwell, Walsh & Lisko, Wayne Building, 92 West Main Street, Waynesboro, PA 17268

## ESTATE OF ESTHER S. BOLLINGER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Administratrix: Connie S. Plunkert  
 Attorney: Alan M. Cashman, Esquire, 141 Broadway, Suite 230, Hanover, PA 17331

## ESTATE OF CHARLES G. NAYLOR, DEC'D

Late of Butler Township, Adams County, Pennsylvania  
 Executor: Harry A. Naylor, Sr., 3325 Biglerville Road, Biglerville, PA 17307  
 Attorney: Clayton R. Wilcox, Esquire, 234 Baltimore St., Gettysburg, PA 17325

## ESTATE OF WILLARD W. RAUDABAUGH, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania  
 Administratrix: Helen M. Raudabaugh, 449 North 46th Street, Harrisburg, PA 17111  
 Attorney: Geoffrey S. Shuff, Esquire, Saidis, Guido, Shuff & Masland, P.O. Box 737, Camp Hill, PA 17001-0737

IN THE COURT OF  
 COMMON PLEAS OF  
 ADAMS COUNTY, PENNSYLVANIA  
 CHANGE OF NAME

NOTICE IS HEREBY GIVEN that on the 15th day of July, 1996, the petition of Alexander Nikos Bulterman-Schein filed in the Court of Common Pleas of Adams County, Pennsylvania, praying for a decree to change his name from Alexander Nikos Bulterman-Schein to Alexander Bulterman Schein. The Court has fixed the 29th day of August, 1996, at 8:30 A.M., in Courtroom No. 1 of the Adams County Courthouse, at Gettysburg, Pennsylvania, as the time and place for hearing of said petition when and where all persons interested may appear and show cause, if any they have, why the prayer of said petitioner should not be granted.

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

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-961 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of August, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point on the eastern edge of Hooker Drive at Lot No. 640; thence by said lot South 79 degrees 00 minutes 00 seconds East, 200.00 feet to a point at Lot No. 650; thence by said lot and by Lots No. 651 and 652 South 11 degrees 00 minutes 00 seconds West, 220.00 feet to a point at Lot No. 653; thence by said lot and by Lots No. 644 and 643 North 79 degrees 00 minutes 00 seconds West, 200.00 feet to a point on the eastern edge of Hooker Drive; thence along said Hooker Drive North 11 degrees 00 minutes 00 seconds East, 220.00 feet to the place of BEGINNING CONTAINING 44,000 Square feet.

The above description was taken from a plan of lots prepared by Donald E. Worley, dated March 12, 1986.

BEING NO. 642 HOOKER DRIVE.

PARCEL #: 5-97

SEIZED and taken into execution as the property of **Merrill A. Mummert and Barbara A. Mummert**, and to be sold by me

Bernard V. Miller  
 Sheriff

Sheriff's Office, Gettysburg, PA  
 July 9, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 16, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/19, 26 & 8/2

## INCORPORATION NOTICE

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

Timothy J. Shultis  
 Solicitor

IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA  
CIVIL DIVISION—LAW  
NO. 95-S-484

FEDERAL NATIONAL MORTGAGE AS-  
SOCIATION, Plaintiff,

vs.

PATRICK S. DIETZ and SUSAN F. DIETZ  
"NOTICE OF SHERIFF SALE  
OF REAL PROPERTY"

TO: PATRICK S. DIETZ, whose last  
known address is 7 Pine Road, Apt. #204,  
Mt. Holly, PA 17065:

Your house (real estate) at 1515 Coon  
Road, Aspers, PA 17304, is scheduled to  
be sold at Sheriff's Sale on Friday, Au-  
gust 23, 1996, at 10:00 a.m. in the Office  
of the Sheriff of Adams County, Adams  
County Courthouse, located at 111 Balti-  
more Street, Gettysburg, PA 17325, to  
enforce the Court Judgment of  
\$104,533.81, obtained by FEDERAL  
NATIONAL MORTGAGE ASSOCIATION  
(the mortgagee) against you.

NOTICE OF OWNERS RIGHTS

YOU MAY BE ABLE TO PREVENT  
THIS SHERIFF'S SALE

To prevent this Sheriff's Sale you must  
take immediate action. The sale will be  
cancelled if you pay to the Federal Na-  
tional Mortgage Association the back pay-  
ments, late charges, costs and reason-  
able attorney's fees due. To find out how  
much you must pay, you may call (610)  
941-6050. You may be able to stop the  
sale by filing a petition asking the Court to  
strike or open the judgment, if the judg-  
ment was improperly entered. You may  
also ask the Court to postpone the sale  
for good cause. You may also be able to  
stop the sale through other legal pro-  
ceedings.

You may need an attorney to assert  
your rights. The sooner you contact one,  
the more chance you will have of stop-  
ping the sale (see notice below on how to  
obtain an attorney).

YOU MAY STILL BE ABLE TO SAVE  
YOUR PROPERTY AND YOU HAVE  
OTHER RIGHTS EVEN IF THE  
SHERIFF'S SALE DOES TAKE PLACE.

If the Sheriff's Sale is not stopped, your  
property will be sold to the highest bidder.  
You may find out the price bid by calling  
(717) 334-6781 ext. 230.

You may be able to petition the Court to  
set aside the sale if the bid price was  
grossly inadequate compared to the value  
of your property.

The sale will go through only if the  
buyer pays the Sheriff the full amount due  
in the sale. To find out if this has hap-  
pened, you may call: (717) 334-6781 ext.  
230.

If the amount due from the Buyer is not  
paid to the Sheriff, you will remain the

owner of the property as if the sale never  
happened.

You have a right to remain in the prop-  
erty until the full amount due is paid to the  
Sheriff and the Sheriff gives a deed to the  
buyer. At that time, the buyer may bring  
legal proceedings to evict you.

You may be entitled to a share of the  
money which was paid for your house. A  
schedule of distribution of the money bid  
for your house will be filed by the Sheriff  
on a date specified by the Sheriff not later  
than thirty (30) days after the sale. This  
schedule will state who will be receiving  
the money. The money will be paid out in  
accordance with this schedule unless  
exceptions (reasons why the proposed  
distribution is wrong) are filed with the  
Sheriff within ten (10) days after the filing  
of the schedule.

You may also have other rights and  
defenses, or ways of getting your home  
back, if you act immediately after the  
sale.

YOU SHOULD TAKE THIS PAPER  
TO YOUR LAWYER AT ONCE. IF YOU  
DO NOT HAVE A LAWYER OR CAN-  
NOT AFFORD ONE, GO TO OR TELE-  
PHONE THE OFFICE LISTED BELOW  
TO FIND OUT WHERE YOU CAN GET  
LEGAL HELP.

Adams County Court Administrator  
Adams County Courthouse  
Gettysburg, PA 17325  
(717) 334-6781 Ext. 213

Thomas I. Puleo  
Attorney for Plaintiff  
1710 Walton Road, Suite 206  
Blue Bell, PA 19422  
(610) 941-6050

7/26 SHERIFF'S SALE

IN PURSUANCE of a Writ of Execu-  
tion, Judgment No. 96-S-397 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 13th  
day of September, 1996, at 10:00 o'clock  
in the forenoon at the Courthouse in the  
Borough of Gettysburg, Adams County,  
PA, the following Real Estate, viz.:

ALL the following described two (2)  
tracts of land situate in Reading Town-  
ship, Adams County, Pennsylvania, more  
particularly bounded and described as  
follows:

TRACT NO. 1: BEGINNING at a post  
of lands now or formerly of Michael  
Rebert; thence South two (2) degrees  
East, two hundred thirty-one (231) feet to  
a point at the Big Conewago Creek;  
thence South sixty-eight (68) degrees  
West, one hundred ninety-eight (198)  
feet to a point at lands now or formerly of  
William Hildebrand; thence along the  
same, North eighteen (18) degrees West,  
two hundred seventy-two and twenty-  
five hundredths (272.25) feet to a post at  
lands now or formerly of William Brough;  
thence along the same, North seventy-  
nine (79) degrees East, one hundred  
seven and twenty-five hundredths  
(107.25) feet to a stone in a public road

and lands now or formerly of C. M.  
Spangler; thence along property now or  
formerly of C. M. Spangler, North eighty-  
three (83) degrees thirty (30) minutes  
East, one hundred fifty-six and seventy-  
five hundredths (156.75) feet to a point,  
the place of BEGINNING, CONTAINING  
one (1) acre and seventy (70) perch  
more or less.

TRACT NO. 2: BEGINNING at the cen-  
ter of a public road and intersection of  
another public road at lands of East Ber-  
lin Borough and now or formerly of Arthur  
F. Peiffer; thence through said public  
road and along lands now or formerly of  
Arthur F. Peiffer, South twenty (20) de-  
grees thirty (30) minutes East, one hun-  
dred twenty-two and twenty-five hun-  
dredths (122.25) feet to a point; thence  
by land now or formerly of Arthur F.  
Peiffer, North sixty-four (64) degrees thirty  
(30) minutes East, twenty-seven (27) feet  
to a point; thence South five (5) degrees  
thirty (30) minutes East, forty-three and  
two-tenths (43.2) feet to a point; thence  
by land now or formerly of East Berlin  
Borough, North fifty-eight (58) degrees  
twenty-five (25) minutes West, one hun-  
dred six and ten hundredths (106.10)  
feet to a point beyond the public road;  
thence along land now or formerly of  
East Berlin Borough and in said public  
road North ten (10) degrees East, one  
hundred thirteen and eighty hundredth  
(113.80) feet to the place of BEG-  
NING, CONTAINING thirteen hundredths  
(.013) acres.

This description taken from a draft of  
survey made by George M. Wildasin,  
Professional Engineer, on July 17, 1954.

IT BEING the same premises which  
Larry W. Peterman and Nancy L. Peter-  
man, his wife, by their Deed dated June  
28, 1990 and recorded in the Office of the  
Recorder of Deeds in and for Adams  
County, Pennsylvania, in Record Book  
560, Page 510, granted and conveyed  
unto Bonnie L. Schmidt.

SEIZED and taken into execution as  
the property of **Bonnie L. Schmidt**, and  
to be sold by me

Bernard V. Miller  
Sheriff  
Sheriff's Office, Gettysburg, PA  
July 15, 1996.

TO ALL PARTIES IN INTEREST AND  
CLAIMANTS: You are notified that a  
schedule of distribution will be filed by  
the Sheriff in his office on October 7,  
1996, 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, which-  
ever may be the higher, shall be paid  
forthwith to the Sheriff.

7/26, 8/2 & 9