

Adams County Legal Journal

Vol. 41

February 4, 2000

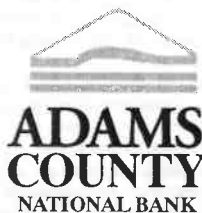
No. 36, pp. 205-214

YINGLING ESTATE

VS.

YINGLING ET AL

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



Member FDIC

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

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

Business Office - 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 334-6781 ext 336
Periodicals postage paid at Gettysburg, PA 17325.

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-235 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, March 17, 2000, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a corner at a point on the Northeastern edge of White Birch Drive at the southwestern most corner of Lot N, 7-A as shown on the hereinafter referred to Subdivision Plan; thence along said Lot No. 7-A, and lands now or formerly of Rosville V. Topper, III, North forty-six (46) degrees ten (10) minutes twenty-eight (28) seconds East, ninety-two and twenty-seven hundredths (92.27) feet to a point at lands now or formerly of Michael D. Sentz and Lot No. 9 on the hereinafter referred to Subdivision Plan; thence along said Lot No. 9, South forty-three (43) degrees forty-nine minutes thirty-two (32) seconds East, ninety-seven and forty-nine hundredths (97.49) feet to a point on the Northwestern edge of Holly Court on the hereinafter referred to Subdivision Plan; thence along said Holly Court the following three (3) courses and distances; (1) by a curve to the right having a radius of fifteen (15) feet the long chord of which is South twenty-two (22) seconds West, eight and sixty-seven hundredths (8.67) feet for an arc distance of eight and eighty hundredths (8.80) feet to a point; (28) seconds West, sixty and twenty-six hundredths (60.26) feet to a point; (3) North eighty-nine (89) degrees fifty-one (51) minutes fifty-two (52) seconds West, twenty-four and eighty-one hundredths (24.81) feet to a point on the Northeastern edge of White Birch Drive on the hereinafter referred to Subdivision Plan; thence along said Northeastern edge of White Birch Drive the following two (2) courses and distances; (1) by a curve to the left having a radius of one hundred eighty-five (185) feet the long chord of which is North forty-four (44) degrees fifty-one (51) minutes ten (10) seconds West, fifty-two and thirty-two hundredths (52.32) feet for an arc distance of fifty-two and fifty hundredths (52.50) feet to a point; (2) North fifty-two (52) degrees fifty eight (58) minutes fifty-nine (59) seconds West, thirty and eighty-five hundredths (30.85) feet to a point at the Southwestern most corner of Lot No., 7-A on the hereinafter referred to

Subdivision Plan being the point and place of BEGINNING.

BEING THE SAME PREMISES which Jeremy D. Forbes and Peggy L. Forbes, by their Deed dated September 24, 1993 and recorded in Adams County Recorder of Deeds Office on October 1, 1993 in Deed Book 786, page 219, granted and conveyed unto Carrol E. Snyder and Barbara J. Snyder. Barbara J. Snyder is deceased.

Seized in execution as the property of Carrol E. Snyder under Adams County Judgement No. 1997-s-235.

Parcel: 9-104

SEIZED and taken into execution as the property of Carrol E. Snyder and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 10, 2000 and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.

1/21, 28 & 2/4

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-55 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, March 10, 2000, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land lying and being in Mount Pleasant Township, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING for a point in the middle of a public road identified as Township Road T-428 (Storms Store Road) and at lands now or formerly of James A. Seymore, Lot No. 1; thence through and across one-half (1/2) of said Township Road T-428 and along lands now or formerly of James A. Seymore, North fifty-three (53) degrees nine (9) minutes forty-two (42) seconds

West, three hundred seven and ninety-seven hundredths (307.97) feet to a steel pin at lands now or formerly of Dacin, Inc., thence along said lands North thirty-five (35) degrees twenty-three (23) minutes fifty (50) seconds East, one hundred thirty and sixteen hundredths (130.16) feet to a steel pin at lands now or formerly of Thomas L. Myerg; thence along said lands and through a steel pin located twenty-three and eighty-five hundredths (23.85) feet from the center of Township Road T-428, South fifty-two (52) degrees forty-nine (49) minutes thirty (30) seconds East, three hundred eleven and twenty-five hundredths (311.25) feet to a point in the middle of the aforementioned Township Road T-428 (Storms Store Road); thence through and along Township Road T-428, South thirty-six (36) degrees fifty (50) minutes eighteen (18) seconds West, One Hundred twenty-eight and twenty-nine hundredths (128.29) feet to a point in the middle of Township Road T-428 (Storms Store Road), the place of BEGINNING. CONTAINING 40,000 square feet.

THE ABOVE described tract of land has been prepared in keeping with a survey and plan rendered by Mort, Brown & Associates and identified as Lot No. 2 on said plan. The subdivision of Lot No. 2 from a larger tract of land has been approved by the Mount Pleasant Township Planning Commission, the Mount Pleasant Township Supervisors and reviewed by Adams County Planning Commission, all in keeping with the Subdivision ordinance of Mount Pleasant Township and said plan has been recorded in the Recorder of Deeds Office in and for Adams County, Pennsylvania, in Plan Book 32 at page 13.

Tax Parcel# J-13-35-E

SEIZED and taken into execution as the property of Stephen A. Epley & Pamela J. Epley and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 3, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.

1/21, 28 & 2/4

YINGLING ESTATE VS. YINGLING ET AL

1. Action in divorce is personal to the parties and, upon the death of either party, the action necessarily dies.
2. However, property or marriage settlement agreements between spouses are governed by the law of contracts. Actions on these agreements will survive the death of a party.
3. Contracts made during a decedent's lifetime are not dissolved by death unless they involve peculiar skills or are based on distinctly personal considerations.
4. The intention of the parties at the time the contract is entered into governs.
5. When construing agreements involving clear and unambiguous terms, this Court need only examine the writing itself to give effect to the parties' understanding. The Court must construe the contract only as written and may not modify the plain meaning of the words under the guise of interpretation.
6. When the language is ambiguous and the intention of the parties cannot be reasonably ascertained from the language of the writing alone, the parole evidence rule does not apply to the admission of oral testimony to show both the intent of the parties and the circumstances attending the execution of the contract.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil No. 98-S-384. JULIE A. CROMER, EXECUTRIX OF THE LAST WILL AND TESTAMENT OF JAMES M. YINGLING, VS. MARTINA R. YINGLING AND ALAN CASHMAN, ESQUIRE.

John J. Mooney, II, Esq., for Plaintiff
Clayton R. Wilcox, Esq., for Defendant Martina R. Yingling
H. Robert Fiebach, Esq. and William H. Howard, Esq.,
for Defendant, Alan M. Cashman

OPINION ON DEFENDANT MARTINA YINGLING'S PRELIMINARY OBJECTIONS

Bigham, J., November 18, 1998.

Statement of Facts

On April 3, 1992, James Yingling ("Decedent") married Martina Yingling ("Wife"). On July 22, 1997, Decedent and Wife separated.

On August 5, 1997, Decedent executed his Last Will and testament as drafted and witnessed by his attorney, Alan Cashman ("Attorney"); this will names Decedent's three daughters as his beneficiaries. This Will makes no mention or provisions for Wife.

On August 5, 1997, Decedent also executed the Marriage Settlement Agreement ("MSA"); Attorney also represented Decedent in the preparation and execution of the MSA. Wife was without counsel at the preparation and execution of the MSA.

The "Witnesseth" paragraph of the MSA states that the parties "have agreed to live separate and apart for the rest of their lives . . ." This section also states that "the parties desire to confirm their separation and make arrangements in connection therewith, including the settlement of their property rights and any and all other rights and obligations growing out of the marital relationship . . ."

The "Now, Therefore" paragraph of the MSA states that it is the "intention of the parties hereto that their agreement shall inure to the benefit of and be legally binding upon the parties hereto, their heirs, executors, administrators, and assigns . . ."

Paragraph 4 of the MSA states "The marital property . . . shall become the sole and exclusive property of Husband. Wife shall immediately execute a deed transferring all of her right, title and interest to the above-described property to Husband alone. The deed to the property shall be held by Alan M. Cashman, Esquire and recorded upon the entry of the final decree of divorce."

Paragraph 5 of the MSA states in part that "Wife and Husband shall each be entitled to retain those items of their personal effects and belongings. . . Each party shall retain sole possession, control and entitlement to any checking, savings or time deposit account currently in the sole name of that party. . . Husband shall retain full and exclusive possession of his . . . Civil Service Retirement Account . . ."

Paragraph 7 of the MSA states:

"Except as herein otherwise provided, each party may dispose of his or her property in any way, and each party hereby waives and relinquishes any and all rights he or she may have or hereafter acquire . . . to share in the property or estate or [sic] the other as a result of the marital relationship, including without limitation dower, thirds, curtesy, thirds, equitable distribution, allowance, widow's allowance, homestead rights, right to take in intestacy, right to elect against the will of the other, and right to act as administrator or executor of the other's estate, and each party will at the request of the other execute, acknowledge and deliver any and all instruments which may be necessary or advisable to carry into effect this mutual waiver and relinquishment of all such interests, rights, and claims."

Paragraph 8 of the MSA states that

“ . . . the execution and delivery of this Agreement is predicated upon and made subject to the Agreement for the institution, and consent of both parties to a No-Fault divorce. Both parties warrant they will sign Affidavits of Consent and Waivers of Notice to a 3301(c) divorce being granted promptly. If they fail to do so they agree to pay attorney fees for the other to seek to rescind this Agreement or void any transfers made hereunder.”

Paragraph 16 of the MSA provides for fees and court costs as the Court finds appropriate in the event of a breach by either party. Section (h) of this paragraph specifically states that this agreement was to survive the divorce decree.

On August 5, 1997, Wife signed and delivered the deed, and the deed is presently in the possession of Attorney. That same day, Wife filed an action in divorce against Decedent, docketed at 97-S-767. Wife was represented by Attorney in this action. The complaint in divorce was served on August 16, 1997, and the 90-day waiting period began to run, but the action proceeded no further. On October 22, 1997, Decedent died; as a result, the divorce decree could not be finalized. On October 28, 1997, Letters Testamentary were issued to Julie Cromer, Decedent's daughter and Executrix of his estate (“Executrix”).

Neither Wife nor Attorney has turned over the signed deed; Wife has allegedly attempted to collect Decedent's pension benefits, and is alleged to have misappropriated Decedent's final paycheck. Executrix believes and alleges that Attorney may have advised Wife that she is entitled to the pension benefits and final paycheck.

This suit is brought by Executrix. Executrix's first cause of action seeks declaratory judgment that Wife and Attorney must deliver the signed deed, and that Wife is not entitled to receive Decedent's final paycheck or pension benefits. Executrix's second cause of action alleges a violation by Attorney of the Pennsylvania Rules of Professional Conduct, in that Attorney represented both Decedent and Wife, and created a conflict of interests. If it is determined that Wife is entitled to the marital residence, the pension benefits and the final paycheck, then Executrix alleges that Attorney has committed professional negligence. Executrix alleges that Attorney represented a party, Wife, adverse to his client Decedent's interests, and improperly drafted

the MSA, such that Decedent's estate was not protected when he died before the divorce decree was entered. As a result, Executrix alleges the estate has suffered damages in the amount of the house, the pension, and the paycheck, approximately \$30,000.

Wife filed preliminary objections, first in the nature of a failure of a pleading to conform; Wife argues that the entering of the final divorce decree is a condition precedent to her obligation to deliver and record the signed deed. Wife cites Pa.R.C.P. §1019 as requiring Executrix to plead the condition precedent to the contract, and states that the condition precedent has not been pleaded. Decedent asks that the complaint be stricken. Second, Wife raises a preliminary objection in the nature of a demurrer, arguing that, because the condition precedent has not occurred, no performance is due, and Executrix has not stated a cause of action.

Executrix responded to Wife's Preliminary Objections, arguing that Paragraph 8 of the MSA does not create a condition precedent to the effectiveness of the MSA.

Attorney filed preliminary objections and a supporting brief, arguing first that a violation of the R.P.C. does not amount to professional negligence, such that the claim is not actionable and should be dismissed and paragraphs 38 and 41(a) should be stricken.

On August 25, 1998, Executrix and Attorney entered into a temporary settlement agreement, staying the action against Attorney, pending the outcome of the action against Wife.

Briefs in support of and in response to the Preliminary Objections raised by Wife have been filed; it is on these briefs that the Court now decides.

LEGAL DISCUSSION OF DEFENDANT MARTINA
YINGLING'S PRELIMINARY OBJECTIONS FOR
(A) FAILURE OF PLEADING TO CONFORM AND
(B) DEMURRER

This Court is of the opinion that Wife's Preliminary Objections must fail because the language of Clause 8, cited in support of the Preliminary Objections, does not create a condition precedent; as such, Executrix does not need to plead the condition, and has stated a cause of action. If the language were to create a condition precedent to the effectiveness of the agreement, then the condition precedent is the

termination of the marriage; that condition did occur through the death of Decedent and Executrix has pleaded the condition precedent and has stated a cause of action.

In Pennsylvania, an "action in divorce is personal to the parties and, upon the death of either party, the action necessarily dies." *Drumheller v. Marcello*, 576 Pa. 428, 431 (1987). However, property or marriage settlement agreements between spouses are governed by the law of contracts." *Carosone v. Carosone*, 455 Pa.Super. 450, 453 (1997), *Caccavo v. Caccavo*, 388 Pa.Super. 459, 464 (1989). Actions on these agreements will survive the death of a party. *Wolfsohn v. Solms*, 396 Pa. 206 (1959). Additionally, "contracts made during a decedent's lifetime are not dissolved by death unless they involve peculiar skills or are based on distinctly personal considerations." *Ress v. Barent*, 378 Pa.Super. 397, 402-403 (1988).

The rules of contract interpretation state that "the intention of the parties at the time the contract is entered into govern." *Ress*, at 402. The rules of contract interpretation have been summarized as follows:

"When construing agreements involving clear and unambiguous terms, this Court need only examine the writing itself to give effect to the parties' understanding. The Court must construe the contract only as written and may not modify the plain meaning of the words under the guise of interpretation. When the terms of a written contract are clear, this Court will not re-write it to give it a construction in conflict with the accepted and plain meaning of the languages used. Conversely, when the language is ambiguous and the intention of the parties cannot be reasonably ascertained from the language of the writing alone, the parole evidence rule does not apply to the admission of oral testimony to show both the intent of the parties and the circumstances attending the execution of the contract." *Acme Markets v. Federal Armored Exp.*, 437 Pa.Super. 41, 46-47 (1994), *cites omitted*.

Additionally, "act or event designated in a contract will not be construed as constituting [a condition precedent] unless that clearly appears to have been the parties' intention." *Acme Markets* at 46.

In *Ratony Estate*, a wife attempted to elect against her husband's will, although they had executed a Separation Agreement 27 years

earlier and had lived separately since. The language of the Agreement was cited as follows: "in settlement and . . . compromise of all property, questions and rights, the parties hereto have mutually agreed that . . . this shall be a full and complete settlement of all property rights between the parties. From this time forward, neither party shall have any property interests in any property owned by the other." *Ratony Estate*, 443 Pa. 454, 460 (1971). The Agreement also stated that the parties intended to live separate and apart for the remainder of their lives, and the wife agreed not to assert future claims for support. The Supreme Court found that, by this Agreement, the wife "clearly and unequivocally" gave up "all rights to and all property rights and all property interests in any property of [her husband] then or from that time forward owned by the husband," *Ratony Estate* at 460. The wife's objections to the executrix's account were dismissed.

In *Caccavo*, the Court examined language in a property settlement agreement in a breach of contract suit between former spouses. The Court stated that the agreement, "when read as a whole and in a common sense fashion," and the clause in question, when "given its ordinary meaning," evidenced the intent of the parties. *Caccavo* at 464, 465. The *Caccavo* court, reading the agreement as a whole and in a common sense fashion, found husband's right to wife's tax return forms not to be absolute, but to be conditioned upon his first alleging that a modification of child support was merited by an increase in wife's income. The court held that wife did not breach the agreement by failing to provide copies of her tax records where husband did not first claim a modification of child support.

Most recently, the Superior Court quashed the appeal of a wife's estate against her husband, where the wife died after signing a Property Settlement Agreement, but before a divorce could be entered. The estate sought to enforce the Property Settlement Agreement. The trial court noted that the Agreement contained "express and clear" language which, on these facts, prohibited extrinsic evidence of the parties' intent and voided the Agreement. *Marr Estate v. Marr*, 6 D&C 4th, 249, 254 (1990), appeal quashed 408 Pa.Super. 655 (1990). Paragraph 17 of the Agreement states "This agreement shall remain in full force and effect unless and until it is terminated either by mutual written consent of both parties or to the extent it is appropriately terminated by the death of either party or under the terms hereof." *Marr Estate* at 250. Paragraph 24 states:

“Notwithstanding any of the provisions of this agreement, if a final decree in divorce shall not have been entered with respect of the parties within three months from the date of execution of this agreement, this agreement shall automatically become null and void and the covenants and undertakings contained herein shall not be binding upon the parties. In such event, any property, funds and/or documents shall be returned to the parties themselves or any escrowees named herein to their original sources, the intent of the parties being to restore themselves to their respective positions immediately prior to the date of execution of this agreement.” *Marr Estate* at 250-251.

This language, the court said, is “clearly a condition upon which the entire agreement was founded, and not being capable of fulfillment within the stipulated time, the agreement is canceled.” *Marr Estate* at 250.

This Court, reading the MSA as a whole and in a common sense fashion, is persuaded that the parties did not intend Clause 8 to act as a condition precedent to the effectiveness of the MSA. The MSA is clearly a contract to distribute marital property between two spouses, and does not indicate an intent that the agreement be effective only upon the entry of a divorce decree. Like *Ratony Estate*, the agreement contains mutual waivers and states that it is to be in full settlement of all claims arising from the marriage. Unlike *Marr Estate*, there is no language in the agreement that clearly and unequivocally indicates an intent that the entry of a divorce decree was a condition precedent to the effectiveness of the agreement.

If the clear and plain language of the agreement, taken in a whole and common sense fashion, with its ordinary meaning, does not clearly indicate that the entry of a divorce decree is a condition precedent to the effectiveness of the agreement, then the language is ambiguous, and this Court must apply other rules of contractual interpretation. The *Ress* court noted that “where a contract fails to provide for the contingency of the death of a party, it is not to be presumed that the contract was intended to ‘die’ with the decedent, but, rather, the contract is ambiguous and doubtful as to this contingency, and resort must be had to other rules of contract interpretation.” *Ress* at 403. “One of these rules is that the court will adopt the interpretation, which under

all the circumstances of the case, ascribes the most reasonable, probable, and natural conduct of the parties, bearing in mind the objects to be accomplished.” *Reese* at 403.

The *Ratony Estate* court also relied on the conduct of the parties in reaching its decision. The court noted that during the parties’ twenty-seven year separation, the wife never made an attempt to live with the husband, “or to get any support from him, or to claim any of his subsequently acquired property, or made any attempt to set aside or attack the Separation Agreement.” *Ratony Estate* at 456. It was only on her husband’s death that the wife challenged the validity of the Separation Agreement. The court posed the following question: “what is the use of having antenuptial or postnuptial written agreements which contain mutual promises, mutual agreements and mutual releases of all property and property interests and property rights if such agreements, promises and releases are treated by the Courts as worthless, meaningless nullities, and the rights of the husband and wife must . . . be determined by and dependent upon which spouse survives?” *Ratony Estate* at 465.

In *Reese*, the Superior Court stated that “one who requests pre-divorce equitable distribution, who receives the relief he has requested, and who acts to receive the benefits of an order distributing marital property is thereafter estopped from denying the jurisdiction of the court to enter the order prior to divorce.” *Reese* at 528-529. “Now, only after the death of the [spouse], and in an attempt to have title to the marital property revert to him as the survivor to a tenancy by the entireties, [the survivor] does not recognize the order as being final and permanent, but instead only as contingent upon the issuance of a final divorce decree.” *Reese* at 529.

The Supreme Court, in *Klein Estate*, 429 Pa. 27 (1968), discussed two cases raised in support of an appeal; the Court stated that, where a “will and the agreement were executed at substantially the same point in time . . . it is obvious that the decedent must have been aware of the bequests given to his wife by virtue of his will and that the will and agreement were part of a ‘package deal.’” *Klein’s Estate* at 32-33.

This Court, ascribing the most reasonable, probable, and natural interpretation of the conduct of the parties and bearing in mind the objects to be accomplished, is persuaded that the MSA was not intended to be effective only on the entry of a divorce decree. Like

Ratony Estate, the conduct of the parties is consistent with a final and immediate distribution of marital property. Wife and Decedent negotiated the MSA and acted pursuant to its terms: Wife signed the deed on August 5, 1997, delivered it to Attorney pursuant to the terms of the MSA, filed for divorce against Decedent, and the personal property of the parties was distributed per the MSA. It would be patently unjust to allow the parties to bargain for these terms, and act in reliance upon them, and yet allow Wife to benefit simply because Decedent died before she could divorce him. Like *Reese*, Wife filed for divorce and received her share of the marital property as agreed upon by the parties, and through Decedent's death, is released from the marriage; it is only now, when Wife could potentially receive the house through a tenancy by the entireties, that she choose to challenge the validity of the MSA. Last, like *Klein Estate*, Decedent executed a Will on the same day as the MSA, and made no provisions for Wife, evidencing an intent that she take nothing more than stated in the MSA.

Even if a condition precedent was intended by the parties, it would appear that the document was ultimately intended to distribute marital property upon the dissolution of the marriage. As the marriage was dissolved by the death of Decedent, the condition precedent was met, and was properly pleaded in Paragraph 17 of the Complaint. As the Superior Court has said, "A marriage may be "dissolved by death or divorce;" accordingly, a pending divorce action is abated by the death of one of the parties, for after death there is no marital relationship remaining to be dissolved." *Reese v. Reese*, 351 Pa.Super. 521, 526 (1986). "On the death of a party, we should recognize the acknowledgement that dissolution of the relationship had already occurred, and divide the martial property equitably." *Drumheller*, at 439, Hutchinson, concurring,

Accordingly, the attached Order is entered.

ORDER

AND NOW this 18th day of November, 1998, Defendant Martina Yingling's Preliminary Objections in the form of (A) Failure of Pleading to Conform and (B) Demurrer are overruled. Defendant Yingling is reminded of the pleading requirements of Pa.R.C.P. §1028(d).

ERRATA SHEET

AND NOW, this 8th day of December, 1998, the following corrections are made to the *Opinion on Defendant Martina Yingling's Preliminary Objections*:

1. Page 1, Paragraph 2 should read:
On August 5, 1997, Decedent executed his last Will and Testament as drafted and witnessed by his attorney, Alan Cashman ("Attorney"); this will names Decedent's three daughters as his beneficiaries. This Will makes no mention or provisions for Wife.
2. Page 1, Paragraph 3 should read:
On August 5, 1997, Decedent also executed the Marriage Settlement Agreement ("MSA"); ...
3. Page 2, First Full Paragraph should read:
On August 5, 1997, Wife signed and delivered the deed, and the deed is presently in the possession of Attorney...
4. Page 4, Paragraph 1, indentation, should read:
"When construing agreements involving clear and unambiguous terms, this court need only examine the writing itself to give effect to the parties' understanding..."

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 MILDRED S. LAWRENCE A/K/A MILDRED C. LAWRENCE, DEC'D
Late of the Borough of McSherrystown, Adams County, Pennsylvania
Co-Executors: Catherine F. Lawrence, 318 Fairview Avenue, McSherrystown, PA 17344; Anthony L. Lawrence, 309 Maple Avenue, Hanover, PA 17331

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

ESTATE OF SHIRLEY I. STROBEL A/K/A SHIRLEY L. STROBEL, DEC'D
Late of Franklin Township, Adams County, Pennsylvania
Administratrix: Pearl B. Grove, 6667 Reynolds Mill Road, Seven Vaileys, PA 17360

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

ESTATE OF IRENE R. TURNER, DEC'D
Late of the Borough of McSherrystown, Adams County, Pennsylvania
Executor: Paul Becker
Attorney: Alan M. Cashman, Esquire, 141 Broadway, Suite 230, Hanover, PA, 17331

SECOND PUBLICATION

ESTATE OF ROBERT PAUL BEAM, A/K/A R. PAUL BEAM, DEC'D
Late of Tyrone Township, Adams County, Pennsylvania

Executors: Linda K. Weidner, 110 Southside Drive, Newville, PA 17241; Donna M. Smith, 25 Pine Grove Road, Gardners, PA 17324; Anthony L. DeLuca, Esq., 113 Front Street, P.O. Box 358, Boiling Springs, PA 17007
Attorney: Anthony L. DeLuca, Esq., 113 Front Street, P.O. Box 358, Boiling Springs, PA 17007

ESTATE OF WILLIAM LEE BROWN, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania
Executor: Dorothy Catherine Brown, 2 Echo Trail, Fairfield, PA 17320
Attorney: Patrick W. Quinn, Esq., Wolfe & Rice, 47 West High Street, Gettysburg, PA 17325

ESTATE OF SARA S. RANDALL, DEC'D
Late of Conewago Township, Adams County, Pennsylvania

Executors: Phillip Zinn, 3635 Maple Avenue, Hanover, PA 17331; Edward Zinn, 2399 Ridge Road, Glenville, PA 17329

Attorney: Roy A. Keefer, Esq., Suite 204, 18 Carlisle Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF ANNA R. BANGE, DEC'D
Late of Mt. Pleasant Township, Adams County, Pennsylvania
Co-Executors: Nathan Bange, 3751 Ridge Rd., Gordonville, PA 17529; Lois Strite, 1601 Locust Lane, Manheim, PA 17545

ESTATE OF LOTTIE V. BREM, DEC'D
Late of Huntington Township, Adams County, Pennsylvania
Executrix: Mary E. Bobo, 689 Peach-Glen Idaville Road, Gardners, PA 17324

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

ESTATE OF DANIEL GRABILL, DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Co-Executors: Farmers and Merchants Trust Company of Chambersburg, 20 South Main Street, P.O. Box "T", Chambersburg, PA 17201; Chaimers J. Young, Jr., 12802 Short Road, Greencastle, PA 17225

Attorney: George E. Wenger, Jr., Esquire, Hoskinson & Wenger, 232 Lincoln Way East, Chambersburg, PA 17201

ESTATE OF WALTER S. MEHRING, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania
Executor: Walter G. Mehring, 1251 William Street, Hanover, PA 17331
Attorney: Barbara Jo Entwistle, Esq., Pyle and Entwistle, 25 South Washington Street, Gettysburg, PA 17325

ESTATE OF HELEN M. MURRAY, DEC'D
Late of Straban Township, Adams County, Pennsylvania
Executor: Elmer H. Miller, Jr., 415 Deerfield Drive, Hanover, PA 17331
Attorney: Ronald J. Hagarman, Esq., 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF HAZEL M. NOEL, DEC'D
Late of Mt. Pleasant Township, Adams County, Pennsylvania
Executrix: Emily Tomic, 491 Flatbush Road, Littlestown, PA 17340
Attorney: David K. James, III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARY FRANCES TATE, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania
Executor: Robert David Tate, 1185 Arendtsville Rd., Biglerville, PA 17307
Attorney: John R. White, Esq., Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

CERTIFICATE OF AUTHORITY

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA on January 5, 2000, by Amsdell Partners, Inc., a foreign corporation formed under the laws of the State of Ohio, where its principal office is located at 6745 Engle Road, Ste. 300, Middleburgh Heights, Ohio 44130, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located in Adams County.

2/4

INCORPORATION NOTICE

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

2/4

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 January 10, 2000, for the purposes of obtaining a Certificate of Incorporation of a proposed non-profit corporation to be organized under the provisions of the Pennsylvania Non-profit Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, as amended.

The name of the corporation is FRIENDS of the GUERNSEY BRIDGE, INC., and its purpose is to restore, preserve and maintain the Guernsey Bridge in Adams County, Pennsylvania.

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

2/4

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

NO. 99-S-958
ACTION TO QUIET TITLE

ATLEE L. KEEFER, and CHARLENE E. KEEFER, Plaintiffs,

VS.

PAUL R. KING JR. and DONNA M. KING, TRUSTEES of the METHODIST EPISCOPAL CHURCH of PETERSBURG and any person or entity claiming any interest in said land as the successors assigns or the descendants of William Penn, Defendants.

TO: ANY PERSON OR ENTITY CLAIMING INTEREST IN SAID LAND AS THE SUCCESSORS, ASSIGNS OR THE DESCENDANTS OF WILLIAM PENN

IMPORTANT NOTICE

You are notified that an Order Of Court has been entered on January 24th, 2000, directing that within thirty (30) days after this publication you shall enter an appearance and file an Answer to the Complaint or be forever barred from asserting any right, lien, title or interest inconsistent with the interest or claims set forth in the Plaintiff's Complaint to the land described as .269 acre tract on a draft of survey prepared by John R. Williams, P.L.S. located in Huntington Township, Adams County, Pennsylvania.

By: John C. Zepp, 111, Esq.
P.O. Box 204
York Springs, PA 17372
Phone: (717) 528-8900

2/4

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CHANGE OF NAME

NOTICE IS HEREBY GIVEN that on January 19, 2000, the petition of Bradley Hill Orndorff, Jr. was filed in the Court of Common Pleas of Adams County, Pennsylvania, praying for a decree to change his name from Bradley Hill Orndorff, Jr. to Bradley Jeremiah Wagner.

The Court has fixed March 30, 2000, at 9:00 A.M. in Courtroom 1, 2 or 3 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.

Puhl, Eastman, & Thrasher
Edward G. Puhl, Esquire
Attorney for Petitioner
220 Baltimore Street
Gettysburg, PA 17325

2/4

Adams County Legal Journal

Vol. 41

February 11, 2000

No. 37, pp. 215-218

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW
NO. 99-S-999

NOTICE OF ACTION IN MORTGAGE
FORECLOSURE

BANKERS TRUST COMPANY OF CALI-
FORNIA, N.A., AS TRUSTEE UNDER
THE POOLING AND SERVICING
AGREEMENT, SEPTEMBER 29, 1998,
DELTA FUNDING HOME EQUITY LOAN
TRUST 1998-3, PLAINTIFF,

VS.

CLEASON L. STONER, LaVONDA A.
STONER, DECEASED and UNKNOWN
HEIRS OF LaVONDA A. STONER, DE-
CEASED, DEFENDANTS.

TO: LaVONDA A. STONER, DE-
CEASED, REAL OWNER and UN-
KNOWN HEIRS OF LaVONDA A.
STONER, REAL OWNER, DECEASED,
Defendants, whose last known address
is 4199 York Road, Mt. Pleasant Town-
ship, PA 17350:

You are hereby notified that Plaintiff,
BANKERS TRUST COMPANY OF CALI-
FORNIA, N.A., AS TRUSTEE UNDER THE
POOLING AND SERVICING AGREE-
MENT, SEPTEMBER 29, 1998, DELTA
FUNDING HOME EQUITY LOAN TRUST
1998-3, has filed a Mortgage Foreclosure
Complaint endorsed with a Notice to De-
fend, against you in the Court of Common
Pleas of Adams County, Pennsylvania,
docketed to NO. 99-S-999, wherein Plain-
tiff seeks to foreclose its mortgage se-
cured on your property located, 4199 York
Road, Mt. Pleasant Township, Pennsylva-
nia 17350, whereupon your property would
be sold by the Sheriff of Adams County.

NOTICE

YOU HAVE BEEN SUED IN COURT. If
you wish to defend against the claims set
forth in the above, you must take action
within twenty (20) days after this com-
plaint and notice are served, by entering a
written appearance personally or by attor-
ney 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 en-

tered 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.

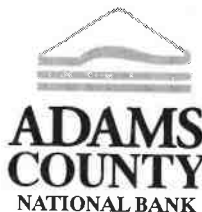
YOU SHOULD TAKE THIS PAPER TO
YOUR LAWYER AT ONCE. IF YOU DO
NOT HAVE A LAWYER OR CANNOT
AFFORD ONE, GO TO OR TELEPHONE
THE OFFICE SET FORTH BELOW TO
FIND OUT WHERE YOU CAN GET LE-
GAL HELP.

LAWYERS REFERRAL SERVICE
Pennsylvania Lawyer Referral Service
Pennsylvania Bar Association
P. O. Box 186
Harrisburg, PA 17108
800-692-7275

Mark J. Udren, Esq.
Attorney for Plaintiff
Mark J. Udren & Associates
1040 N. Kings Highway, Suite 500
Cherry Hill, NJ 08034
(609) 482-6900

2/11

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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

Business Office - 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 334-6781 ext 336

Periodicals postage paid at Gettysburg, PA 17325.

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

All rights reserved.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-863 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, March 17, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING for a point at Fawn Avenue at Lot No. 19; thence along Lot No. 19, North 66 degrees 59 minutes 28 seconds East, 127.20 feet to a point at land now or formerly of Michael M. Shemon; thence along said land, South 24 degrees 17 minutes 08 seconds East, 75.02 feet to a point at Lot No. 22; thence along Lot No. 22, South 66 degrees 59 minutes 28 seconds West, 128.87 feet to a point at Fawn Avenue; thence along Fawn Avenue, North 23 degrees 00 minutes 32 seconds West, 75.00 feet to the point and place of beginning. Containing 9,603 square feet.

THE above description was taken from a plan of lots entitled Phase II, Deer Park Estates, recorded in Plat Book 41 at page 109, designating the above as Lot No. 20.

Parcel # 2-20

TITLE TO SAID PREMISES IS VESTED IN Kenneth T. Klein and Gina M. Klein, husband and wife by Deed from James M. Robinson and Kimberly A. Robinson, husband and wife dated 7/19/94, recorded 7/21/94, in Record Book 915, Page 37.

BEING PREMISES KNOWN AS 44 FAWN AVENUE, TOWNSHIP OF READING, ADAMS COUNTY, PENNSYLVANIA

SEIZED and taken into execution as the property of **Kenneth T. Klein & Gina M. Klein** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 10, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.

2/11, 18, 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-1253 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, March 17, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land, with any improvements thereon erected, situate, lying and being in Reading Township, Adams County, Pennsylvania, being Lot No. 2 as shown on a Final Plan prepared for Robert C. Ruppert and Dorothy M. Ruppert by George M. Wildasin, PLS, dated May 21, 1988, and recorded in Adams County Plan Book 55, at page 74, as more fully bounded, limited and described as follows, to wit:

BEGINNING at a point in Stoney Point Road, at corner of Lot No. 1; thence along Lot No. 1 South forty-six degrees thirty minutes zero seconds East (S. 46 degrees 30' 00" E.), two hundred sixty-one and ninety hundredths (261.90) feet to an iron pin; thence continuing along Lot No. 1, South sixty-one degrees thirty minutes zero seconds West (S. 61 degrees 30' 00" W.), one hundred and zero hundredths (100.00) feet to an iron pin at lands now or formerly of Barry R. Rauhauser; thence along said lands now or formerly of Barry R. Rauhauser, North forty-six degrees thirty minutes zero seconds West (N. 46 degrees 30' 00" W.), two hundred sixty-one and ninety hundredths (261.90) feet to an existing RR stake in the centerline of Stoney Point Road; thence along in and through Stoney Point Road, North sixty-one degrees thirty minutes zero seconds East (N. 61 degrees 30' 00" E.) one hundred and zero hundredths (100.00) feet to a point and place of BEGINNING.

CONTAINING 24,910 square feet.

BEING Tax Parcel # J-8-126.

TITLE TO SAID PREMISES IS VESTED IN Timothy L. Myers, single man by Deed from Ray E. Ruppert and Kathryn M. Myers, Executors of the Will

of Velma K. Ruppert dated 1/10/97, recorded 1/15/97, in Record Book, 1317, page 39.

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

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 10, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.

2/11, 18, 25

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Amendment to the Articles of Incorporation to that business corporation known as Village Ices, Inc., has been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on or about January 27, 2000. The changes to be made to the corporation shall consist of a change of name to VILLAGE HOLDINGS, INC., and the purpose for which it is being amended is to permit said corporation to have unlimited powers to engage in and to do any lawful act concerning any and all business for which corporations may be incorporated under Pennsylvania Business 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 registered office of the corporation is 516 Baltimore Street, Gettysburg, PA 17325

Wilcox & James
David K. James, III, Esq.
234 Baltimore Street
Gettysburg, PA 17325

2/11

WILLIAMS VS. KOUTCH

1. In ruling on objections to the counterclaim, we accept as true all well-pleaded facts in the counterclaim and ignore conclusions of law.

2. Builders may recover for extras provided as a result of oral agreements. This liability can be based on several theories. For example, extra work may be said to have been done under an oral agreement separate from the written contract and not containing the requirement of a written authorization. The requirement of a written authorization may also be considered a condition that has been waived.

3. Generally, a litigant cannot recover counsel fees from an adverse party unless there is an express statutory authorization, a clear agreement of the parties, or some other established exception.

4. Objections may be overruled in favor of discovery if the plaintiffs are informed by the pleadings of what they will be required to meet at trial.

In the Court of Common Pleas of Adams County, Pennsylvania Civil. No. 97-S-1108. DODD A. WILLIAMS AND LAURIE L. WILLIAMS VS. RICHARD M. KOUTCH.

Scott A. Ruth, Esq., for Plaintiffs

Larry W. Wolf, Esq., for Defendant

OPINION ON PRELIMINARY OBJECTIONS

Spicer, P.J., November 19, 1998.

The procedural background of this case is rather interesting. Plaintiffs filed their complaint on November 24, 1997. Preliminary objections followed on January 16, 1998. An amended complaint was filed February 6, 1998, to which objections were filed February 18, 1998. On the same day that the objections were praeciped for argument, April 30, 1998, Plaintiffs requested leave to file a second amended complaint. On the day of scheduled argument, June 12, 1998, defendant filed an answer and consented to the request. Leave was granted that same day.

The second amended complaint, filed June 29, 1998, alleged that on March 1, 1995 plaintiffs, as owners of a waterfront lot in Lake Meade, contracted with defendant for the construction of a boathouse. A contract, embodied in a single page proposal and acceptance, provided that defendant would construct the boathouse for \$11,305.00. That figure was composed of items, including \$2,800.00 for "labor, equipment and tools for boathouse," and "clean out boat slip," (\$200.00). Included in the language of the proposal were the following: "Any alteration or deviation from above specifications involving extra cost, will be executed only upon written orders and will become an extra charge over and above the estimate," and "customer is liable for all legal and collection fees."

Plaintiffs alleged that defendant solicited draws, without legal right, justification or privilege, and that plaintiffs issued checks that totaled \$30,500.00. Plaintiffs alleged that defendant failed to complete work, that the work was

done in an unworkmanlike manner, and that various statutes, ordinances and regulations were breached by defendant. They ask the court to take judicial notice of various ordinances and restrictive covenants at Lake Meade subdivision, as well as liens that may have been filed against defendant. At this point of the proceedings, we fail to see the relevance of ordinances and find it improper to take judicial notice of collateral facts not appearing in the counterclaim itself. *220 Partnership v. Philadelphia Electric Co.*, 437 Pa. Super. 650, 650 A.2d 1094 (1994); *Rumbaugh v. Beck*, 411 Pa. Super 220, 601 A.2d 319 (1991).

On August 3, 1998, Defendant filed an answer with New Matter, and a counterclaim. Defendant alleged that he had done other work, described in twenty five subparagraphs, that the total costs for all work done was \$37,707.00, that plaintiff had paid only \$30,500.00 and that defendant was owed \$7, 207.00.

Plaintiff has filed objections to the counterclaim under Pa. R.C.P. 1028 (2), failure to comply to law or rule of court, (3), insufficient specificity, (4), legal insufficiency. We will, for convenience, refer to these objections as a motion to strike, a motion for more specific pleading, and a demurrer.

In ruling on objections to the counterclaim, we accept as true all well-pleaded facts in the counterclaim and ignore conclusions of law. 6 Standard Pennsylvania Practice 2d §29:47.

The counterclaim contains two alternate theories of recovery. The first is an oral contract, characterized by the following:

40. Since the Plaintiff completely changed the original proposal (limited to a boathouse) Plaintiff agreed to pay defendant on a time and material basis, except for the playroom addition for which defendant quoted a price of \$5,000. which was accepted by Plaintiffs.

The second basis is quantum meruit (Count II). In this Count, defendant incorporated all the other allegations of his pleading.

Plaintiffs have moved to strike Count II, arguing that defendant cannot proceed both on contract and quasi contract. However, as Judge Kuhn observed in *Barlow v. Sutphen*, 33 Adams Co. L.J. 105, 108 (1990), the rules allow pleading alternative causes of action, a promise to pay the reasonable value of services may be implied from circumstances and although the "existence of an express contract, whether oral or written, precludes recovery on the basis of quantum meruit (citations omitted), which theory to pursue must be resolved later in the proceedings."

Defendant has alleged a course of dealings between the parties whereby defendant provided and plaintiffs accepted improvements to plaintiffs' property. Although the complaint alleges that defendant refused to finish, defendant alleged that he was fired. The counterclaim further alleges that plaintiffs

have not paid the full value of the improvements.

The motion to strike is overruled.

Plaintiffs' demurrers generally rest on the argument that language in the written contract precludes recovery of costs of improvements based upon oral modifications of the written contract. Plaintiffs have argued Statutes of Fraud contained in 33 Pa.C.S.A. §1 and 13 Pa. C.S.A. §2209. About all we can say about both arguments is, first, the contract does not deal with an interest in land and is not subject to 33 Pa.C.S.A. §1; and, second, the theme of the contract is construction, and not the sale of goods. Therefore, the Uniform Commercial Code does not apply. See, *Angell v. Tubies*, 25 Adams Co. L.J. 114, 36 D&C 3d 41 (1983); *Keys v. Reaver*, 27 Adams Co. L.J. 191 (1986).

We might also add that the contract provision is not technically an integration clause because it purports to act prospectively. More importantly, our Supreme Court has held that builders may recover for extras provided as a result of oral agreements. "This liability can be based on several theories. For example, extra work may be said to have been done under an oral agreement separate from the written contract and not containing the requirement of a written authorization (citation omitted). The requirement of a written authorization may also be considered a condition that has been waived (citation omitted)." *Universal Builders, Inc. v. Moon Motor Lodge, Inc.* 430 Pa. 550, 558, 244 A.2d 10, (1968), cited in *McDonnell v. Null*, 22 Adams Co.L.J. 17 (1980). See also, *Epply Income Partners, L.P. v. Olinger*, 40 Adams Co. L.J. 105 (1997).

Furthermore, even if the requirement for written authorization were enforced, defendant could still recover for all items except painting (\$300.00). Decking, lighting, gutters and other items specified by defendant involve different work altogether and cannot really be considered "extras" involving the boathouse. Entering into a written agreement for specified work (boathouse) would not have precluded the parties from orally agreeing as to other work.

Thus, we overrule plaintiffs' demurrer as it pertains to recovery of costs of improvements, and now consider defendant's request for counsel fees.

"Generally, a litigant cannot recover counsel fees from an adverse party unless there is an express statutory authorization, a clear agreement of the parties, or some other established exception." 1 Standard Pennsylvania Practice 2d §4:95. There is authority that awards for counsel fees in litigation are considered a penalty, not liquidated damages. *Id.* §4:99. Clearly, none of the provisions of 42 Pa.C. S.A. §2503 apply, so we consider the request in light of the agreement.

Assuming that "legal and collection fees" clearly includes counsel fees, we still find that the demurrer must be sustained. Obviously, if defendant proceeds in quantum meruit, he would not be entitled to counsel fees, because

there would be no agreement. Despite defendant's argument that recovery may be based on a waiver of written authorization, it is obvious that only \$11,305.00, the original contract sum, and an extra of \$300.00 for painting, involves the boathouse. All other items involve different work entirely and, therefore, a different contract or contracts. Defendant, as he is entitled to do, has presented alternative arguments. He argues that separate oral agreements completely superseded the original writing. Next, he contends that, should the original contract apply, plaintiffs only waived the requirement of written authorization, while other contract provisions survived. We find it quite obvious that "legal and collection fees" pertained only to boathouse construction, that the agreement of the parties as evidenced by the pleadings underwent a profound change in scope, and nothing in the counterclaim supports a clear understanding that the written provision was to be extended to include work done and money owed resulting from oral arrangements.

Defendant nevertheless argues that it would be improper to sustain the demurrer because the counterclaim does not establish an allocation of payments between the boathouse and other work. He argues that something may still be owing on the original project. We find this too attenuated to be persuasive. Clearly, 1) boathouse construction came first, at a cost of \$11,305.00, and 2) plaintiffs have paid \$30,500.00.

The demurrer will be sustained as to counsel fees.

Plaintiffs contend that defendant should be required to specify the times and circumstances of the discussions between the parties and identify particular sums for labor and material. While the availability of discovery does not excuse defendant from pleading the essential material facts to support his cause of action, objections may be overruled in favor of discovery if the plaintiffs are informed by the pleadings of what they will be required to meet at trial. 5 Standard Pennsylvania Practice 2d. §25:61. We think that the counterclaim contains sufficient detail, especially in light of the complaint and answer, to enable plaintiffs to intelligently understand issues and prepare their defense. If plaintiffs desire more detail, they should rely upon discovery to obtain it.

The motion for a more specific pleading is overruled.

ORDER

And Now, this 19th day of November, 1998, plaintiffs' demurrer to defendant's request for attorneys' fees is sustained and that claim is dismissed. Otherwise, preliminary objections are overruled. Plaintiffs may have twenty days to respond to other allegations in the counterclaim.

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 RUTH E. CLEMENT, DEC'D
Late of Oxford Township, Adams
County, Pennsylvania

Executrix: Joan C. Howard

Attorney: Alan M. Cashman, Esquire,
141 Broadway, Suite 230, Hanover,
PA 17331

ESTATE OF MILDRED B. HOLLIMAN,
DEC'D

Late of Cumberland Township, Adams
County, Pennsylvania

Executrix: Lucille B. Adams, 102 Hills
Drive, Gettysburg, PA 17325

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

ESTATE OF GARY L. KEILHOLTZ,
DEC'D

Late of the Borough of Arendtsville,
Adams County, Pennsylvania

Administrator: Gregory M. Keilholtz, 14
Baltimore Street, Gettysburg, PA
17325

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

ESTATE OF MONTELL P. PAINTER,
DEC'D

Late of Berwick Township, Adams
County, Pennsylvania

Executrix: Huibertina J. Painter, 460
Beaver Creek Road, Hanover, PA
17331

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

SECOND PUBLICATION

ESTATE OF MILDRED S. LAWRENCE
A/K/A MILDRED C. LAWRENCE, DEC'D

Late of the Borough of McSherrystown,
Adams County, Pennsylvania

Co-Executors: Catherine F. Lawrence,
318 Fairview Avenue,
McSherrystown, PA 17344; Anthony
L. Lawrence, 309 Maple Avenue,
Hanover, PA 17331

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

ESTATE OF SHIRLEY I. STROBEL
A/K/A SHIRLEY L. STROBEL, DEC'D

Late of Franklin Township, Adams
County, Pennsylvania

Administratrix: Pearl B. Grove, 6667
Reynolds Mill Road, Seven Valleys,
PA 17360

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

ESTATE OF IRENE R. TURNER, DEC'D

Late of the Borough of McSherrystown,
Adams County, Pennsylvania

Executor: Paul Becker

Attorney: Alan M. Cashman, Esquire,
141 Broadway, Suite 230, Hanover,
PA, 17331

THIRD PUBLICATION

ESTATE OF ROBERT PAUL BEAM,
A/K/A R. PAUL BEAM, DEC'D

Late of Tyrone Township, Adams
County, Pennsylvania

Executors: Linda K. Weidner, 110
Southside Drive, Newville, PA 17241;
Donna M. Smith, 25 Pine Grove Road,
Gardners, PA 17324; Anthony L.
DeLuca, Esq., 113 Front Street, P.O.
Box 358, Boiling Springs, PA 17007

Attorney: Anthony L. DeLuca, Esq., 113
Front Street, P.O. Box 358, Boiling
Springs, PA 17007

ESTATE OF WILLIAM LEE BROWN,
DEC'D

Late of the Borough of Fairfield, Adams
County, Pennsylvania

Executor: Dorothy Catherine Brown, 2
Echo Trail, Fairfield, PA 17320

Attorney: Patrick W. Quinn, Esq., Wolfe
& Rice, 47 West High Street,
Gettysburg, PA 17325

ESTATE OF SARAS. RANDALL, DEC'D

Late of Conewago Township, Adams
County, Pennsylvania

Executors: Phillip Zinn, 3635 Maple
Avenue, Hanover, PA 17331; Edward
Zinn, 2399 Ridge Road, Glenville, PA
17329

Attorney: Roy A. Keefer, Esq., Suite
204, 18 Carlisle Street, Gettysburg, PA
17325

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-1155 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, March 17, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of land Situate, lying and being in Littlestown Borough, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a point on the right-of-way line of Colonial Court and Lot No. 31 as shown on the hereinafter referenced Subdivision Plan; thence along Lot No. 31 South forty-eight (48) degrees twenty-two (22) minutes zero (00) seconds West one hundred twenty-five (125.00) feet to a point at Lot No. 33 on the hereinafter referenced Subdivision plan; thence along said Lot No. 33 North forty-one (41) degrees thirty-eight (38) minutes zero (00) seconds West seventy-five (75.00) feet to a point on the right-of-way line of South Columbus Avenue; thence along said right-of-way line of South Columbus Avenue North forty-eight (48) degrees twenty-two (22) minutes zero (00) seconds East one hundred five (105.00) feet; thence further along said right-of-way line of South Columbus Avenue and the right-of-way line of Colonial Court by a curve to the right, having a radius of twenty (20.00) feet, an arc length of thirty-one and forty-two hundredths (31.42) feet and a long chord bearing and distance of South eighty-six (86) degrees thirty-eight (38) minutes zero (00) seconds East twenty-eight and twenty-eight hundredths (28.28) feet to a point; thence further along said right-of-way line of Colonial Court South forty-one (41) degrees thirty-eight (38) minutes zero (00) seconds East fifty-five (55.00) feet to a point, the point and place of Beginning.

CONTAINING 9,289.16 square feet or 0.21 acre. The above described lot being designated as Lot No. 32 on the Final Subdivision Plan of "Heritage Hill - Phase I", prepared by James R. Holley, Registered Professional Surveyor, dated July 31, 1992, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Plat Book 61 page 84.

BEING 495 Columbus Avenue.
Tax Parcel #11- 150

TITLE TO SAID PREMISES IS VESTED IN Robert W. Allewalt and Liliann Allewalt, husband and wife by Deed from Harry P. McKean, a single man, t/d/b/a New Age Associates dated 8/20/93, recorded 9/2/93, in Record Book 775, Page 83.

BEING PREMISES KNOWN As 495 COLUMBUS AVENUE, LITTLESTOWN, PA 17340

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

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
TO ALL PARTIES IN INTEREST AND

CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 10, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.

2/11, 18, 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-572 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, March 17, 2000, 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, lot and parcel of land lying and being in the TOWNSHIP of STRABAN, County of Adams and State of Pennsylvania, being more particularly described as follows:

BEGINNING at a nail located 4.5 feet South of the Northern edge of the concrete roadway of U.S. Route 30 running from Gettysburg to New Oxford at corner of lands of Connie M. Grinage; thence by said land of Connie M. Grinage and running through an iron pin located 15.86 feet from the place of BEGINNING and running through another iron pin located 17.10 feet from the end of this line North 8 degrees 31 minutes 40 seconds West, 173.11 feet to an iron pin; thence running along and in the right of way of the Western Maryland Railway Company North 89 degrees 15 minutes East, 260 feet to an iron pin in the center of said right of way; thence by land of Roy C. Mondorff and running through an iron pin located 16.59 feet from the beginning of this line and running through another iron pin located 22.53 feet from the end of this line South 9 degrees 34 minutes 40 seconds East, 128.50 feet to a nail located 4.5 feet South of the Northern edge of the aforementioned concrete roadway; thence in said U.S. Route 30 South 79 degrees 23 minutes 30 seconds West, 260.13 feet to a nail, the place of BEGINNING. CONTAINING 0.896 Acres.

The foregoing description was obtained from a draft of survey prepared by Penn Forestry Co., on November 4, 1971.

NOTE: Being known and designated as Map/Parcel H11-57A.

SEIZED and taken into execution as the property of **Peter A. Rondeau and Gloria W. Rondeau** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 10, 2000,

and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.

2/11, 18, 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-571 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, March 17, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point on the intersecting property lines of the West side of South Peters Street and the North property line of East George Street; thence along the North property line of East George Street South 75 degrees West, 110 feet to a point on the East property line of an alley known as Stock Street; thence along the East property line of said alley North 18 degrees West, 107 feet to an iron pin at corner of lot of Leslie E. Klinefelter; thence by said lands North 75 degrees East, 56 feet to a stake at line of lands of Fleming E. Hess, thence by said lands South 18 degrees East, 46 feet to a post for a corner; thence continuing by said lands North 75 degrees East, 57 feet to a post on the West side of South Peters Street; thence along the West side of South Peters Street South 15 degrees East, 61 feet to the intersection aforesaid, the place of beginning.

Street Address: 115 South Peters Street, New Oxford, PA 17350

Tax Map 5, Parcel 167

SEIZED and taken into execution as the property of **P.A. Rondeau Real Estate, Inc.** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 10, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.

2/11, 18, 25

Adams County Legal Journal

Vol. 41

February 18, 2000

No. 38, pp. 219-222

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

No. 99-S-940
Action to Quiet Title

RANDALL B. INSKIP and JUDITH G.
INSKIP, Plaintiffs,

v.

ROBERT A. YOUNG and MARY A.
YOUNG, husband and wife, their heirs
and assigns, Defendants.

TO: ANY PERSON CLAIMING ANY
INTEREST IN SAID LAND

NOTICE

You are notified that Plaintiffs have commenced an action to quiet title against you which you are required to defend. You are required to plead to the Complaint within twenty (20) days after the service has been completed by publication. This action concerns Lot No. 136 Lake Heritage Subdivision, Miscellaneous Deed Book 4, Page 233, further being parcel 43 Adams County Tax Map 8, located in Mt. Joy Township, Adams County, Pennsylvania.

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing to the Court. You are warned that if you fail to do so this case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the Plaintiffs. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE 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 HELP.

Court Administrator
Adams County Court House
Gettysburg, PA 17325
Phone: (717) 337-9846
or 1-888-337-9846

By: John C. Zepp, III, Esq.
P.O. Box 204
York Springs, PA 17372

2/18

FICTITIOUS NAME NOTICE

NOTICE is hereby given that an Application for Registration of a Fictitious Name has been filed with the Department of State of the Commonwealth of Pennsylvania in Harrisburg, Pennsylvania, on January 19, 2000, pursuant to the Fictitious Name Act, Act No. 1982-295, setting forth that Brian K. Gobrecht of 4425 York Road, New Oxford, Adams County, Pennsylvania is the only individual engaged or interested in a business, the character of which is for the purpose of preparing race cars for racing, buying and selling of race cars and related accessories and equipment, and racing cars professionally, and that the name, style and designation under which said business is and will be conducted is K G MOTORSPORTS, and the principal office or place of business is 4425 York Road, New Oxford, Adams County, Pennsylvania.

Daniel M. Frey & Associates,
a div. of Barley, Snyder, Senft &
Cohen, LLC.
Solicitor

2/18

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County - Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Tuesday, February 29, 2000, at 9:00 o'clock a.m.

TYSON—Orphans' Court Action Number OC-3-98. The First and Final Account of Linda T. Goens, Administratrix, of the Estate of Emilie D. Tyson, deceased, late of Huntingdon Township, Adams County, Pennsylvania.

FOX—Orphans' Court Action Number OC-2-00. The First and Final Account of Charles R. Fox, Executor of the Estate of Effie R. Fox, deceased, late of the Borough of McSherrystown, Adams County, Pennsylvania.

GRIEST—Orphans' Court Action Number OC-4-00. The First and Final Account of Jean G. Brannock, Executrix of the Last Will and Testament of Richard Griest, deceased, late of Berwick Township, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

2/18 & 25

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW
NO. 99-S-1045

ELEANA DELAFLOR, Plaintiff

v.

JOSE MANUEL ARANCIBIA, Defendant

NOTICE TO DEFEND AND CLAIM RIGHTS

To: Jose Manuel Arancibia, Defendant:

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take prompt action. You are warned that if you fail to do so, the case may proceed without you and a decree of divorce or annulment may be entered against you by the Court. A judgment may also be entered against you for any other claim or relief requested in these papers by the Plaintiff. You may lose money or property or other rights important to you.

When the ground for the divorce is indignities or irretrievable breakdown of the marriage, you may request marriage counseling. A list of marriage counselors is available in the Office of the Prothonotary, Room 104, Adams County Courthouse, Gettysburg, Pennsylvania 17325.

IF YOU DO NOT FILE A CLAIM FOR ALIMONY, DIVISION OF PROPERTY, LAWYER'S FEES OR EXPENSES BEFORE A DIVORCE OR ANNULMENT IS GRANTED, YOU MAY LOSE THE RIGHT TO CLAIM ANY OF THEM.

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

COURT ADMINISTRATOR
Adams County Courthouse
Gettysburg, PA 17325
717, 337-9846

2/18

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, John W. Phillips, Esq., Editor and Business Manager.

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

Business Office - 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 334-6781 ext 336

Periodicals postage paid at Gettysburg, PA 17325.

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

All rights reserved.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-863 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, March 17, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING for a point at Fawn Avenue at Lot No. 19; thence along Lot No. 19, North 66 degrees 59 minutes 28 seconds East, 127.20 feet to a point at land now or formerly of Michael M. Shemon; thence along said land, South 24 degrees 17 minutes 08 seconds East, 75.02 feet to a point at Lot No. 22; thence along Lot No. 22, South 66 degrees 59 minutes 28 seconds West, 128.87 feet to a point at Fawn Avenue; thence along Fawn Avenue, North 23 degrees 00 minutes 28 seconds West, 75.00 feet to the point and place of beginning. Containing 9,603 square feet.

THE above description was taken from a plan of lots entitled Phase II, Deer Park Estates, recorded in Plat Book 41 at page 109, designating the above as Lot No. 20.

Parcel # 2-20

TITLE TO SAID PREMISES IS VESTED IN Kenneth T. Klein and Gina M. Klein, husband and wife by Deed from James M. Robinson and Kimberly A. Robinson, husband and wife dated 7/19/94, recorded 7/21/94, in Record Book 915, Page 37.

BEING PREMISES KNOWN AS 44 FAWN AVENUE, TOWNSHIP OF READING, ADAMS COUNTY, PENNSYLVANIA

SEIZED and taken into execution as the property of **Kenneth T. Klein & Gina M. Klein** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 10, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.

2/11, 18, 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-1253 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, March 17, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land, with any improvements thereon erected, situate, lying and being in Reading Township, Adams County, Pennsylvania, being Lot No. 2 as shown on a Final Plan prepared for Robert C. Ruppert and Dorothy M. Ruppert by George M. Wildasin, PLS, dated May 21, 1988, and recorded in Adams County Plan Book 55, at page 74, as more fully bounded, limited and described as follows, to wit:

BEGINNING at a point in Stoney Point Road, at corner of Lot No. 1; thence along Lot No. 1 South forty-six degrees thirty minutes zero seconds East (S. 46 degrees 30' 00" E.), two hundred sixty-one and ninety hundredths (261.90) feet to an iron pin; thence continuing along Lot No. 1, South sixty-one degrees thirty minutes and zero seconds West (S. 61 degrees 30' 00" W.), one hundred and zero hundredths (100.00) feet to an iron pin at lands now or formerly of Barry R. Rauhauser; thence along said lands now or formerly of Barry R. Rauhauser, North forty-six degrees thirty minutes zero seconds West (N. 46 degrees 30' 00" W.), two hundred sixty-one and ninety hundredths (261.90) feet to an existing RR stake in the centerline of Stoney Point Road; thence along in and through Stoney Point Road, North sixty-one degrees thirty minutes zero seconds East (N. 61 degrees 30' 00" E.) one hundred and zero hundredths (100.00) feet to a point and place of BEGINNING.

CONTAINING 24,910 square feet.

BEING Tax Parcel # J-8-126.

TITLE TO SAID PREMISES IS VESTED IN Timothy L. Myers, single man by Deed from Ray E. Ruppert and Kathryn M. Myers, Executors of the Will of Velma K. Ruppert dated 1/10/97, recorded 1/15/97, in Record Book, 1317, page 39.

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

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 10, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.

2/11, 18, 25

NOTICE

CARY INSULATION CO. INC. OF MD, a MD Corporation with its principal office located at 612 River Road, Fair Haven NJ 07704, intends to file an Application For A Certificate of Withdrawal under Section 2015 of the Business Corporation Law and the registered office is located at 694 Grant Avenue, Gettysburg, PA 17325

2/18

YEAGER ESTATE

1. It is the burden of the party asserting that a judge should be disqualified to make sufficient allegations of bias, prejudice or unfairness necessitating recusal, and a failure to do so will result in denial of the recusal motion.

2. Even if a trial judge is made aware of improper evidence, that does not require recusal because a trial judge is presumed to be capable of disregarding improper evidence.

In the Court of Common Pleas of Adams County, Pennsylvania, Orphans' Court Division. No. OC-86-97. ESTATE OF ANNA M. YEAGER, DECEASED.

Leo E. Gribbin, Esq., for Petitioners

Robert L. McQuaide, Esq., for Respondents

OPINION ON PETITION FOR RECUSAL

Kuhn, J., November 20, 1998

August 26, 1999.

This action was commenced with the filing of a Petition to Probate a Trued Copy of a Lost Will or Will Destroyed by Persons Other Than the Testatrix. By Court Order dated August 15, 1997, that Petition was granted and the Register of Wills of Adams County was directed to accept for probate a trued copy of a Will of Anna M. Yeager dated January 31, 1990. Additionally, C. David Redding and Robert Dunkelberger were named Successor Executors of the estate. On October 22, 1997, Paul Shaffer, the Executor named in a Will of Anna M. Yeager dated January 6, 1997, filed a Petition to Open Probate Record, Receive Proof of Later Instrument, and Amend Probate Record. By petition dated March 5, 1998, Paul Shaffer asked this Court to recuse itself. By Court Order dated March 6, 1998, that petition was denied. A pre-trial conference was scheduled for September 9, 1998, at which time the issues of recusal and venue were raised. By Court Order dated September 9, 1998, the Court permitted the issues to be briefed by the attorneys. Briefs were filed and the matter is now before this Court for disposition.

STATEMENT OF FACTS

The crux of Petitioner's argument arises out of a guardianship proceeding docketed at OC-7-97. In that proceeding, a Petition for the Appointment of Emergency Guardian of the Estate and Person of Anna M. Yeager in Accordance with 20 Pa.C.S.A. §5513 was filed on January 17, 1997, by C. David Redding, who was later appointed emergency guardian by Court Order entered the same day. Hearings were held before this Court between January 17, 1997 and February 6, 1997. Two of the hear-

ings were held at the Gettysburg Lutheran Retirement Village where Anna M. Yeager was residing. The Court made findings of fact as a result of the guardianship proceeding, including but not limited to, the following:

6. On December 10, 1996, Dr. McBeth [treating physician] opined by letter that said Anna M. Yeager was disoriented as to person, place and time and incompetent to answer questions or make decisions regarding herself or her household.

...

9. After being placed in the Lutheran Home said Anna M. Yeager began to improve physically and mentally.

10. Despite that improvement said Anna M. Yeager is, because of the frailties of age, unable to make reasonable decisions regarding her health, safety and medical condition nor is she able to handle her financial affairs.

...

12. Although said Anna M. Yeager is pleasant and can articulate and make decisions on some minor issues, she does display confusion and forgetfulness from time-to-time regarding persons, places and conversations.

...

14. Said Anna M. Yeager has an overwhelming desire to return to her home and would execute any document she believed would effectuate that desire.

15. Said Anna M. Yeager could be taken advantage of by designing persons.

In Re: Anna M. Yeager, No. OC-7-97 (Adams February 7, 1997).

LEGAL DISCUSSION

Petitioner first alleges that the Court's involvement with the guardianship proceeding subjected it to highly prejudicial information that would not be admissible at a hearing on the present will contest. Petitioner further alleges that the Court has already formed an opinion as to Anna M. Yeager's testamentary capacity around the time of the execution of the January 6, 1997 Will and should therefore recuse itself from these proceedings.

"It is the burden of the party asserting that a judge should be disqualified to make sufficient allegations of bias, prejudice or unfairness necessitating recusal, and a failure to do so will result in denial of the recusal

motion.” *Barrack v. Kolea*, 438 Pa. Super. 11, 21, 651 A.2d 149, 154 (1994); alloc. den. 668 A.2d 1134 (citations omitted). Our Superior Court has held as follows with regard to recusals:

The determination of whether a trial judge should recuse himself depends upon the following:

...“the type of evidence that the judge hears; if the evidence is inadmissible and is of a highly prejudicial nature, the judge should recuse himself or declare a mistrial if it is too late for recusal.” The judge should also recuse himself whenever there is substantial doubt as to his ability to preside impartially. The burden to show prejudice, however, is on the party seeking recusal. “If the evidence is admissible, or not of a highly prejudicial nature, recusal is not required,” and while it may be the better practice to have a different judge preside over pre-trial proceedings, such a practice is not constitutionally required and has not been made the basis for setting aside a verdict reached in an otherwise proper trial. This principle appears to be based on “the prevailing view that judicial fact-finders are capable of disregarding prejudicial evidence.”

Commonwealth v. Lewis, 314 Pa. Super. 298, 303-304, 460 A.2d 1149, 1151-52 (1983). Even if a trial judge is made aware of improper evidence, that does not require recusal because a trial judge is presumed to be capable of disregarding improper evidence. *Commonwealth v. Irwin*, 432 Pa. Super. 508, 513, 639 A.2d 52, 54 (1994); alloc. den. 658 A.2d 793.

Mr. Shaffer cites no authority and makes no argument supporting his statement that the findings of fact regarding Anna M. Yeager’s mental capacity at the time of the guardianship hearing would not be admissible at trial in the instant matter. The evidence that this Court was exposed to in the guardianship proceeding dealt with Anna M. Yeager’s mental capacity. This evidence is clearly relevant to the present proceedings. Although the Court’s knowledge of this information may not be beneficial to Petitioner’s cause, exposure to it does not warrant recusal. The personal contact this Court had with Anna M. Yeager will only aid in the truth determining process and the Court is fully capable of taking into account all relevant facts to be presented before forming an opinion on Anna M. Yeager’s testamentary capacity, as opposed to her mental capacity (two separate legal conclusions), at the time the contested will was signed.

Mr. Shaffer has also argued that the Court has demonstrated a personal bias against him. On January 21, 1997 the Court held a hearing in OC-7-97 to determine whether Mrs. Yeager was an incapacitated person. Attorney Patrick Quinn, Esquire, had been appointed to represent Mrs. Yeager's interests. Before the hearing began Clyde Vedder, Esquire, represented that he had been engaged to represent Mrs. Yeager and that he was being assisted by Mr. Shaffer. Mr. Vedder further represented that it would be he, not Mr. Shaffer, who would be making statements and conducting examination of witnesses. The Court permitted both Mr. Quinn and Mr. Vedder to represent Mrs. Yeager. (T. at 5-10). Subsequently, Mr. Shaffer became a witness and testified as to the merits of the issue before the Court. (T. at 152-176). When the situs of the proceedings shifted to the Lutheran Home, a nursing facility, where Mrs. Yeager was examined the Court indicated that the proceeding would be restricted to the attorneys of record, the stenographer, and the Court. (T. at 176-7). Mr. Shaffer did not appear at the Lutheran Home and nothing was placed on the record protesting his absence. In fact, having become a material witness the Court questions whether Mr. Shaffer could ethically proceed as Mrs. Yeager's counsel. The Court has not seen Mr. Shaffer on any other occasion. Therefore, the Court finds Mr. Shaffer's allegations that the Court was biased against him and prevented him access to the guardianship proceedings misrepresentative of the facts.

Of a curious nature Mr. Shaffer's brief states that Mr. Vedder actually represented persons named Crane in the guardianship hearing. This representation is completely contrary to statements made on the record in the guardianship proceeding.

In regard to the death certificate, the Court in no way impeded Mr. Shaffer's attempts to obtain a copy. The only contact the Court can recall that remotely relates to the death certificate was a call from the funeral director to the Court inquiring about who would pay for his services. The Court informed the director that he would need to contact Mrs. Yeager's family. This communication was the only contact the Court had with the funeral director and it dealt solely with the bill for services. It is unfortunate that Mr. Shaffer believes the Court is personally biased against him; however, the perceived bias does not exist.

Accordingly, the attached Order is issued.

ORDER OF COURT

AND NOW, this 20th day of November 1998, Petitioner's Petition for Recusal is hereby denied.

IN THE COURT OF COMMON PLEAS OF
ADAMS COUNTY
COMMONWEALTH OF
PENNSYLVANIA
ORPHANS' COURT DIVISION

NOTICE

To: ROBERT LERAY STOKES

RT-1 -00(A)

YOU ARE HEREBY NOTIFIED that a Petition for Involuntary Termination of Parental Rights to Child has been filed in the Orphans' Court Division of the Court of Common Pleas of Adams County, Pennsylvania. A hearing has been set for April 3, 2000, at 1:30 p.m., prevailing time, at the Courthouse at Gettysburg, Adams County, Pennsylvania, for the purpose of determining whether or not statutory grounds exist for the involuntary termination of your parental rights with respect to your child.

You should contact 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.

Court Administrator
Adams County Courthouse
111- 117 Baltimore Street
Gettysburg, PA 17325
Telephone number: 717-337-9846,
or 1-888-337-9846

Chester G. Schultz
Attorney at Law
145 Baltimore Street
Gettysburg, PA 17325

2/18,25 & 3/3

IN THE COURT OF COMMON PLEAS
OF ADAMS COUNTY
COMMONWEALTH OF
PENNSYLVANIA
ORPHANS' COURT DIVISION

NOTICE

To: SAROJA BROWN RT-1-00(B)

YOU ARE HEREBY NOTIFIED that a Petition for Involuntary Termination of Parental Rights to Child has been filed in the Orphans' Court Division of the Court of Common Pleas of Adams County, Pennsylvania. A hearing has been set for April 3, 2000, at 1:30 p.m., prevailing time, at the Courthouse at Gettysburg, Adams County, Pennsylvania, for the purpose of determining whether or not statutory grounds exist for the involuntary termination of your parental rights with respect to your child.

You should contact 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.

Court Administrator
Adams County Courthouse
111-117 Baltimore Street
Gettysburg, PA 17325

Telephone number: 717-337-9846,
or 1-888-337-9846

Chester G. Schultz
Attorney at Law
145 Baltimore Street
Gettysburg, PA 17325

2/18,25 & 3/3

IN THE COURT OF COMMON PLEAS OF
ADAMS COUNTY
COMMONWEALTH OF
PENNSYLVANIA
ORPHANS' COURT DIVISION

NOTICE

To: ROBERT LERAY STOKES

RT-2-00(A)

YOU ARE HEREBY NOTIFIED that a Petition for Involuntary Termination of Parental Rights to Child has been filed in the Orphans' Court Division of the Court of Common Pleas of Adams County, Pennsylvania. A hearing has been set for April 3, 2000, at 1:30 p.m., prevailing time, at the Courthouse at Gettysburg, Adams County, Pennsylvania, for the purpose of determining whether or not statutory grounds exist for the involuntary termination of your parental rights with respect to your child.

You should contact 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.

Court Administrator
Adams County Courthouse
111- 117 Baltimore Street
Gettysburg, PA 17325
Telephone number: 717-337-9846,
or 1-888-337-9846

Chester G. Schultz
Attorney at Law
145 Baltimore Street
Gettysburg, PA 17325

2/18,25 & 3/3

IN THE COURT OF COMMON PLEAS
OF ADAMS COUNTY
COMMONWEALTH OF
PENNSYLVANIA
ORPHANS' COURT DIVISION

NOTICE

To: SAROJA BROWN RT-2-00(B)

YOU ARE HEREBY NOTIFIED that a Petition for Involuntary Termination of Parental Rights to Child has been filed in the Orphans' Court Division of the Court of Common Pleas of Adams County, Pennsylvania. A hearing has been set for April 3, 2000, at 1:30 p.m., prevailing time, at the Courthouse at Gettysburg, Adams County, Pennsylvania, for the purpose of determining whether or not statutory grounds exist for the involuntary termination of your parental rights with respect to your child.

You should contact 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.

Court Administrator
Adams County Courthouse
111-117 Baltimore Street
Gettysburg, PA 17325

Telephone number: 717-337-9846,
1-888-337-9846

Chester G. Schultz
Attorney at Law
145 Baltimore Street
Gettysburg, PA 17325

2/18, 25 & 3/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-1189 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, March 17, 2000, 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 Cumberland Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point in the center of the state highway leading from Gettysburg to Fairfield, said point of beginning being at corner of land now or formerly of Robert Koontz; thence along land of said Koontz South 9 degrees East, 325 feet to a point on line of land now or formerly of Lloyd Brantner, formerly a part of the original tract now or formerly of Roy C. Wolf and wife; thence along said Brantner land South 75-1/2 degrees West, 100 feet to a corner of land now or formerly of Kenneth Redding; thence along said Redding land North 9 degrees West, 325 feet to a point in the center of the Gettysburg-Fairfield State Highway, aforesaid; thence running in the center of said highway North 75-1/2 degrees East, 100 feet to the place of BEGINNING.

BEING Tax Parcel # E-13-78.

TITLE TO SAID PREMISES IS VESTED IN Harry P. Smith and Judith O. Smith, husband and wife by Deed from Mary L. Wolfe, single and Ruth E. Wolfe, single dated 7/16/92, recorded 7/22/92, in Record Book 635, page 527.

BEING PREMISES KNOWN AS 1480 FAIRFIELD ROAD, GETTYSBURG, PA 17325

SEIZED and taken into execution as the property of **Harry P. Smith (Deceased) & Judith O. Smith** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 10, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.
2/18, 25, 3/3

ESTATE NOTICES

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

FIRST PUBLICATION

ESTATE OF CLINTON R. ALDEN, DEC'D
Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Alice S. Alden, 302D New Jersey Avenue, Riverside, NJ 08075
Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF DOROTHY V. BOWMAN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Jean Bowman, 2727 Manchester Road, Westminster, MD 21157

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

ESTATE OF ATLEE L. KEEFER, DEC'D
Late of Huntington Township, Adams County, Pennsylvania

Executrix: Charlene E. Keefer c/o Mark L. James, Esq.

Attorney: Mark L. James, Esq., James & Black, LLP, 1907 Division Highway, Ephrata, PA 17522

ESTATE OF GRACE A. MENGES, DEC'D
Late of Conewago Township, Adams County, Pennsylvania

Executrix: Dolores M. Raubenstine, 107 Sunset Avenue, Hanover, PA 17331; Nadine C. Starnier, 4630 Wolfs Church Road, York, PA 17404; Arlene M. McSherry, 689 Washington Avenue, Apt. 2, Hanover, PA 17331

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

ESTATE OF VALERIE A. WAYNE, DEC'D
Late of the Borough of Hanover, York County, Pennsylvania

Executor: Theodore J. Wayne, 3 Newberry Street, Hanover, PA 17331

Attorney: Lynn G. Peterson, Esq., Peterson & Peterson, 515 Carlisle Street, Hanover, PA 17331

ESTATE OF CARL W. ZEIGLER, DEC'D
Late of Mt. Joy Township, Adams County, Pennsylvania

Executor: G. Steven Zeigler, 4002 Baltimore Pike, Littlestown, PA 17340

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

SECOND PUBLICATION

ESTATE OF RUTHE CLEMENT, DEC'D
Late of Oxford Township, Adams County, Pennsylvania

Executrix: Joan C. Howard

Attorney: Alan M. Cashman, Esquire, 141 Broadway, Suite 230, Hanover, PA 17331

ESTATE OF MILDRED B. HOLLIMAN, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Lucille B. Adams, 102 Hills Drive, Gettysburg, PA 17325

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

ESTATE OF GARY L. KEILHOLTZ, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Administrator: Gregory M. Keilholtz, 14 Baltimore Street, Gettysburg, PA 17325

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

ESTATE OF MONTELL P. PAINTER, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Executor: Huibertina J. Painter, 460 Beaver Creek Road, Hanover, PA 17331

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

THIRD PUBLICATION

ESTATE OF MILDRED S. LAWRENCE A/K/A MILDRED C. LAWRENCE, DEC'D
Late of the Borough of McSherrystown, Adams County, Pennsylvania

Co-Executors: Catherine F. Lawrence, 318 Fairview Avenue, McSherrystown, PA 17344; Anthony L. Lawrence, 309 Maple Avenue, Hanover, PA 17331

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

ESTATE OF SHIRLEY I. STROBEL A/K/A SHIRLEY L. STROBEL, DEC'D
Late of Franklin Township, Adams County, Pennsylvania

Administratrix: Pearl B. Grove, 6667 Reynolds Mill Road, Seven Valleys, PA 17360

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

ESTATE OF IRENER R. TURNER, DEC'D
Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Paul Becker

Attorney: Alan M. Cashman, Esquire, 141 Broadway, Suite 230, Hanover, PA, 17331

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-1155 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, March 17, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of land Situate, lying and being in Littlestown Borough, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a point on the right-of-way line of Colonial Court and Lot No. 31 as shown on the hereinafter referenced Subdivision Plan; thence along Lot No. 31 South forty-eight (48) degrees twenty-two (22) minutes zero (00) seconds West one hundred twenty-five (125.00) feet to a point at Lot No. 33 on the hereinafter referenced Subdivision plan; thence along said Lot No. 33 North forty-one (41) degrees thirty-eight (38) minutes zero (00) seconds West seventy-five (75.00) feet to a point on the right-of-way line of South Columbus Avenue; thence along said right-of-way line of South Columbus Avenue North forty-eight (48) degrees twenty-two (22) minutes zero (00) seconds East one hundred five (105.00) feet; thence further along said right-of-way line of South Columbus Avenue and the right-of-way line of Colonial Court by a curve to the right, having a radius of twenty (20.00) feet, an arc length of thirty-one and forty-two hundredths (31.42) feet and a long chord bearing and distance of South eighty-six (86) degrees thirty-eight (38) minutes zero (00) seconds East twenty-eight and twenty-eight hundredths (28.28) feet to a point; thence further along said right-of-way line of Colonial Court South forty-one (41) degrees thirty-eight (38) minutes zero (00) seconds East fifty-five (55.00) feet to a point, the point and place of Beginning.

CONTAINING 9,289.16 square feet or 0.21 acre. The above described lot being designated as Lot No. 32 on the Final Subdivision Plan of "Heritage Hill - Phase I", prepared by James R. Holley, Registered Professional Surveyor, dated July 31, 1992, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Plat Book 61 page 84.

BEING 495 Columbus Avenue.
Tax Parcel #11- 150

TITLE TO SAID PREMISES IS VESTED IN Robert W. Allewalt and Liliann Allewalt, husband and wife by Deed from Harry P. McKean, a single man, t/d/b/a New Age Associates dated 8/20/93, recorded 9/2/93, in Record Book 775, Page 83.

BEING PREMISES KNOWN As 495 COLUMBUS AVENUE, LITTLESTOWN, PA 17340

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

Raymond W. Newman
Sheriff
Sheriff's Office, Gettysburg, PA
TO ALL PARTIES IN INTEREST AND

CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 10, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.
2/11, 18, 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-572 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, March 17, 2000, 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, lot and parcel of land lying and being in the TOWNSHIP of STRABAN, County of Adams and State of Pennsylvania, being more particularly described as follows:

BEGINNING at a nail located 4.5 feet South of the Northern edge of the concrete roadway of U.S. Route 30 running from Gettysburg to New Oxford at corner of lands of Connie M. Grinage; thence by said land of Connie M. Grinage and running through an iron pin located 15.86 feet from the place of BEGINNING and running through another iron pin located 17.10 feet from the end of this line North 8 degrees 31 minutes 40 seconds West, 173.11 feet to an iron pin; thence running along and in the right of way of the Western Maryland Railway Company North 89 degrees 15 minutes East, 260 feet to an iron pin in the center of said right of way; thence by land of Roy C. Mondorff and running through an iron pin located 16.59 feet from the beginning of this line and running through another iron pin located 22.53 feet from the end of this line South 9 degrees 34 minutes 40 seconds East, 128.50 feet to a nail located 4.5 feet South of the Northern edge of the aforementioned concrete roadway; thence in said U.S. Route 30 South 79 degrees 23 minutes 30 seconds West, 260.13 feet to a nail, the place of BEGINNING. CONTAINING 0.896 Acres.

The foregoing description was obtained from a draft of survey prepared by Penn Forestry Co., on November 4, 1971.

NOTE: Being known and designated as Map/Parcel H11-57A.

SEIZED and taken into execution as the property of **Peter A. Rondeau and Gloria W. Rondeau** and to be sold by me

Raymond W. Newman
Sheriff
Sheriff's Office, Gettysburg, PA
TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 10, 2000,

and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.
2/11, 18, 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-571 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, March 17, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point on the intersecting property lines of the West side of South Peters Street and the North property line of East George Street; thence along the North property line of East George Street South 75 degrees West, 110 feet to a point on the East property line of an alley known as Stock Street; thence along the East property line of said alley North 18 degrees West, 107 feet to an iron pin at corner of lot of Leslie E. Klinefelter; thence by said lands North 75 degrees East, 56 feet to a stake at line of lands of Fleming E. Hess, thence by said lands South 18 degrees East, 46 feet to a post for a corner; thence continuing by said lands North 75 degrees East, 57 feet to a post on the West side of South Peters Street; thence along the West side of South Peters Street South 15 degrees East, 61 feet to the intersection aforesaid, the place of beginning.

Street Address: 115 South Peters Street, New Oxford, PA 17350

Tax Map 5, Parcel 167

SEIZED and taken into execution as the property of **P.A. Rondeau Real Estate, Inc.** and to be sold by me

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 10, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.
2/11, 18, 25

Adams County Legal Journal

Vol. 41

February 25, 2000

No. 39, pp. 223-228

CONTINUING LEGAL EDUCATION PROGRAM

LLC's and LLPs in Pennsylvania.

Wednesday, April 12, 2000 – 9:00 a.m. - 12:30 p.m.
Room 307, Adams County Courthouse
Credits: Substantive Law – 3, Ethics – 0

Agreements of Sale for Residential Real Estate.

Wednesday, April 26, 2000 – 9:00 a.m. - 1:30 p.m.
Room 307, Adams County Courthouse
Credits: Substantive Law – 4, Ethics – 0

Understanding Real Estate Appraisals and Appraisers.

Wednesday, May 10, 2000 – 9:00 a.m. - 1:30 p.m.
Room 307, Adams County Courthouse
Credits: Substantive Law – 4, Ethics – 0

Alternative Medical Approaches to Reduce Stress.

Wednesday, June 28, 2000 – 9:00 a.m. - 10:00 a.m.
Room 307, Adams County Courthouse
Credits: Substantive Law – 0, Ethics – 1

Issues in Commercial Mortgage Foreclosures.

Wednesday, August 9, 2000 – 9:00 a.m. - 1:30 p.m.
Room 307, Adams County Courthouse
Credits: Substantive Law – 4, Ethics – 0

Registration through P.B.I. 800-247-4724

IN THE COURT OF COMMON PLEAS
OF ADAMS COUNTY
COMMONWEALTH OF
PENNSYLVANIA
ORPHANS' COURT DIVISION

NOTICE

To: CHARLOTTE ANN POST

No. RT-7-99(B)

YOU ARE HEREBY NOTIFIED that a Petition for Involuntary Termination of Parental Rights to Child has been filed in the Orphans' Court Division of the Court of Common Pleas of Adams County, Pennsylvania. A hearing has been set for April 3, 2000, at 1:00 p.m., prevailing time, at the Courthouse at Gettysburg, Adams County, Pennsylvania, for the purpose of determining whether or not

statutory grounds exist for the involuntary termination of your parental rights with respect to your child.

You should contact 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.

Court Administrator
Adams County Courthouse
111-117 Baltimore Street
Gettysburg, PA 17325
Telephone number: 717-337-9846,
or 1-888-337-9846

Chester G. Schultz
Attorney at Law
145 Baltimore Street
Gettysburg, PA 17325

2/25, 3/3 & 10

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that the Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, 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 TRYIN TRUCKIN, INC.

Steven E. Williams
45 Spangler Rd.
New Oxford, PA 17350

2/25

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, John W. Phillips, Esq., Editor and Business Manager.

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

Business Office - 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 334-6781 ext 336
Periodicals postage paid at Gettysburg, PA 17325.

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-863 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, March 17, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING for a point at Fawn Avenue at Lot No. 19; thence along Lot No. 19, North 66 degrees 59 minutes 28 seconds East, 127.20 feet to a point at land now or formerly of Michael M. Shemon; thence along said land, South 24 degrees 17 minutes 08 seconds East, 75.02 feet to a point at Lot No. 22; thence along Lot No. 22, South 66 degrees 59 minutes 28 seconds West, 128.87 feet to a point at Fawn Avenue; thence along Fawn Avenue, North 23 degrees 00 minutes 32 seconds West, 75.00 feet to the point and place of beginning. Containing 9,603 square feet.

THE above description was taken from a plan of lots entitled Phase II, Deer Park Estates, recorded in Plat Book 41 at page 109, designating the above as Lot No. 20.

Parcel # 2-20

TITLE TO SAID PREMISES IS VESTED IN Kenneth T. Klein and Gina M. Klein, husband and wife by Deed from James M. Robinson and Kimberly A. Robinson, husband and wife dated 7/19/94, recorded 7/21/94, in Record Book 915, Page 37.

BEING PREMISES KNOWN AS 44 FAWN AVENUE, TOWNSHIP OF READING, ADAMS COUNTY, PENNSYLVANIA

SEIZED and taken into execution as the property of **Kenneth T. Klein & Gina M. Klein** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 10, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.

2/11, 18, 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-1253 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, March 17, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land, with any improvements thereon erected, situate, lying and being in Reading Township, Adams County, Pennsylvania, being Lot No. 2 as shown on a Final Plan prepared for Robert C. Ruppert and Dorothy M. Ruppert by George M. Wildasin, PLS, dated May 21, 1988, and recorded in Adams County Plan Book 55, at page 74, as more fully bounded, limited and described as follows, to wit:

BEGINNING at a point in Stoney Point Road, at corner of Lot No. 1; thence along Lot No. 1 South forty-six degrees thirty minutes zero seconds East (S. 46 degrees 30' 00" E.), two hundred sixty-one and ninety hundredths (261.90) feet to an iron pin; thence continuing along Lot No. 1, South sixty-one degrees thirty minutes zand zero seconds West (S. 61 degrees 30' 00" W.), one hundred and zero hundredths (100.00) feet to an iron pin at lands now or formerly of Barry R. Rauhauser; thence along said lands now or formerly of Barry R. Rauhauser, North forty-six degrees thirty minutes zero seconds West (N. 46 degrees 30' 00" W.), two hundred sixty-one and ninety hundredths (261.90) feet to an existing RR stake in the centerline of Stoney Point Road; thence along in and through Stoney Point Road, North sixty-one degrees thirty minutes zero seconds East (N. 61 degrees 30' 00" E.) one hundred and zero hundredths (100.00) feet to a point and place of BEGINNING.

CONTAINING 24,910 square feet.

BEING Tax Parcel # J-8-126.

TITLE TO SAID PREMISES IS VESTED IN Timothy L. Myers, single man by Deed from Ray E. Ruppert and Kathryn M. Myers, Executors of the Will

of Velma K. Ruppert dated 1/10/97, recorded 1/15/97, in Record Book, 1317, page 39.

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

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 10, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.

2/11, 18, 25

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County - Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Tuesday, February 29, 2000, at 9:00 o'clock a.m.

TYSON—Orphans' Court Action Number OC-3-98. The First and Final Account of Linda T. Goens, Administratrix, of the Estate of Emilie D. Tyson, deceased, late of Huntington Township, Adams County, Pennsylvania.

FOX—Orphans' Court Action Number OC-2-00. The First and Final Account of Charles R. Fox, Executor of the Estate of Effie R. Fox, deceased, late of the Borough of McSherrystown, Adams County, Pennsylvania.

GRIEST—Orphans' Court Action Number OC-4-00. The First and Final Account of Jean G. Brannock, Executrix of the Last Will and Testament of Richard Griest, deceased, late of Berwick Township, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

2/18 & 25

LOSH VS. BROWN

1. A dog's vicious propensities may be brought to the owner's notice by acts of aggression on the part of the dog. These acts of aggression need not be precisely similar to the act or acts on which the action is founded. Although a single instance of the vicious conduct on the part of the dog is sufficient to effect the owner with notice of the dog's vicious propensities, it is not the rule in this state that a dog is entitled to one 'free' bite, before it becomes a source of liability to its owner.

2. To prove a claim based on negligence *per se*, the following must be shown: the purpose of the statute must be, at least in part, to protect the interest of a group of individuals, as opposed to the public generally; the statute or regulation must clearly apply to the conduct of the defendant; the defendant must violate the statute or regulation; the violation of the statute or regulation must be the proximate cause of the plaintiff's injuries.

3. Proximate cause requires that a violation of a statute be a substantial factor in causing the injury complained of.

4. Proximate causation, which differs from causation-in-fact, is generally a question of law and depends on whether responsibility for the negligent conduct will extend to the harm which in fact occurred. When the harm which ultimately results appears to the court to be a remote and highly extraordinary consequence of the defendant's conduct, legal causation will not be found and liability will not attach.

5. Generally, the determination of whether an individual is a trespasser, licensee or invitee is one of fact for the jury.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil. No. 97-S-469. KENNETH W. LOSH, PLAINTIFF, VS. RONALD BROWN AND LINDA BROWN.

David A. Ody, Esq., for Plaintiff

W. Darren Powell, Esq., for Defendants

OPINION ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Kuhn, J., December 15, 1998.

On May 14, 1997, Plaintiff, Kenneth W. Losh, filed a complaint against Defendants, Ronald and Linda Brown. Plaintiff filed amended complaints on June 15, 1998, and on June 29, 1998. A pre-trial conference was held on October 14, 1998. This Court issued an Order of Court that same day permitting Defendants to file a motion for summary judgment if done by October 26, 1998. Defendants filed a timely motion for summary judgment and the matter is now before this Court for disposition.

STATEMENT OF FACTS

Plaintiff makes the following allegations in his amended complaint:

The parties in the present action are neighbors in East Berlin, Pennsylvania. Defendants own a dog, which they keep on their premises. On August 19, 1996, Defendants' dog attacked and bit Plaintiff causing injury to his upper thigh and buttocks. Plaintiff alleges that Defendants knew or should have known of their dog's vicious propensities and were therefore negligent in failing to keep the dog properly confined and/or under their reasonable control. Additionally, Plaintiff alleges that Defendants have violated 3 P.S. § 459-305 ("Dog Law"). Plaintiff claims Defendants' only means of confining the dog was an underground electronic fence, which they should have known was inadequate.

LEGAL DISCUSSION

A court may properly grant a motion for summary judgment only where the pleadings, depositions, answers to interrogatories, admissions and affidavits demonstrate that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. *Albright v. Abington Memorial Hospital*, 548 Pa. 268, 280, 696 A.2d 1159, 1165 (1997). The moving party has the burden of proving the non-existence of any genuine issue of fact, and all doubts are resolved against the moving party. *Merriweather v. Philadelphia Newspapers, Inc.*, 453 Pa. Super. 464, 471, 684 A.2d 137, 140 (1997). Furthermore, the moving party's right must be clear and free from doubt. *Electronic Laboratory Supply Co. v. Cullen*, ___ Pa. Super. ___, 712 A.2d 304, 307 (1998).

Defendants argue in their motion that there is no evidence that their dog had vicious propensities and Plaintiff has therefore failed to establish common law negligence. Under a theory of common law negligence if a dog owner knows or has reason to know of his dog's vicious propensities he must exercise reasonable care to secure the dog. *Deardorff v. Burger*, 414 Pa. Super. 45, 48, 606 A.2d 489, 491-92 (1992); *alloc. den.*, 613 A.2d 1209 (citing *Andrews v. Smith*, 324 Pa. 455, 188 A. 146 (1936)).

Plaintiff cites three incidents in support of the claim that Defendants' dog had vicious propensities. First, Plaintiff cites a fight between Defendants' dog and a rottweiler before the electric fence was installed. (Deposition of Debra L. Losh at 25-26; Deposition of Ronald E. Brown at 20-21; Deposition of Linda Brown at 9-10). Second, Plaintiff cites another fight, attested to by Defendant Linda Brown, between Defendants' dog and a neighbor's dog on Defendant's property. (Deposition

of Linda L. Brown at 10-11). Lastly, Plaintiff points to an incident where Defendants' dog acted aggressively towards a man on a bicycle by chasing him and sniffing his pants. (Deposition of Ronald E. Brown at 17; Deposition of Linda L. Brown at 10-11).

In determining whether an owner knew or had reason to know of his dog's vicious propensities our Superior Court has held as follows:

Discussing the test, *Proof of Facts 2nd*, in Volume 13, at Page 473, by Stephen R. Pritcher, J.D. sets forth circumstances that constitute knowledge of a dog's viciousness or dangerous propensities:

- Sec. 14. Complaints brought to the owner's attention.
- Sec. 15. Fighting with other dogs.
- Sec. 16. Frequent confinement of dog.
- Sec. 18. Warning sign on owner's premises.
- Sec. 19. Statements by owner as to dog's character.

Snyder v. Milton Auto Parts, Inc., 285 Pa. Super. 559, 562, 428 A.2d 186,188 (1981).

The Court went on to state:

"A dog's vicious propensities may be brought to the owner's notice by acts of aggression on the part of the dog. These acts of aggression need not be precisely similar to the act or acts on which the action is founded. Although a single instance of the vicious conduct on the part of the dog is sufficient to effect the owner with notice of the dog's vicious propensities, it is not the rule in this state that a dog is entitled to one 'free' bite, before it becomes a source of liability to its owner."

Snyder v. Milton Auto Parts, Inc., 285 Pa. Super. at 562, 428 A.2d at 188.

Thus, in light of the standard of review in a motion for summary judgment, this Court believes there is a genuine issue of material fact concerning whether the dog's previous actions were enough to put Defendants on notice of his vicious propensities.

Defendants' second argument is (1) that as a matter of law they have not violated 3 P.S. § 459-305 and (2) that even if it is found they did violate the Dog Law that the violation was not a proximate cause of

Plaintiff's injuries.

Section 459-305 requires confinement of dogs as follows:

It shall be unlawful for the owner or keeper of any dog to fail to keep at all times such dog either:

- (1) confined within the premises of the owner;
- (2) firmly secured by means of a collar and chain or other device so that it cannot stray beyond the premises on which it is secured; or
- (3) under the reasonable control of some person, or when engaged on lawful hunting, exhibition or field training.

3 P.S. § 459-305.

The Court finds no case law indicating whether an "invisible fence" would be considered sufficient restraint under 3 P.S. § 459-305. However, under the facts as alleged by Plaintiff, the dog was at one point off of Defendants' property.¹ Thus, sufficient evidence has been alleged at this stage of the pleadings to show that the dog was not adequately confined on Defendants' premises thereby causing a violation of the Dog Law.

A violation of 3 P.S. § 459-305 constitutes negligence *per se*.² *Miller v. Hurst*, 302 Pa. Super. 235, 448 A.2d 614 (1982). To prove a claim based on negligence *per se*, the following must be shown:

- (1) The purpose of the statute must be, at least in part, to protect the interest of a group of individuals, as opposed to the public generally;
- (2) The statute or regulation must clearly apply to the conduct of the defendant;
- (3) The defendant must violate the statute or regulation;
- (4) The violation of the statute or regulation must be the proximate cause of the plaintiff's injuries.

¹In Plaintiff's deposition testimony he states that as he was leaving the Defendants' property in the midst of the attack by the dog that the dog "knocked me down again under the bank, sliding into my yard." (Deposition of Kenneth W. Losh at 8).

²The Court notes that even though a violation of the Dog Law is negligence *per se*, Defendants may escape liability if they show that they exercised due care and that the dog escaped despite their efforts. *Villaume v. Kaufman*, 379 Pa. Super. 561, 565, 550 A.2d 793, 795 (1988). The determination of whether due care was exercised is an issue that is properly determined by the fact finder.

Wagner v. Anzon, Inc., 453 Pa. Super. 619, 627, 684 A.2d 570, 574 (1996); *alloc. den.*, 710 A.2d 443.

Defendants argue that Plaintiff has failed to sufficiently prove proximate causation. Proximate cause requires that a violation of a statute be a substantial factor in causing the injury complained of. *Miller v. Hurst*, 302 Pa. Super. 235, 245, 448 A.2d 614, 619 (1982).

Proximate causation, which differs from causation-in-fact, is generally a question of law and depends on whether responsibility for the negligent conduct will extend to the harm which in fact occurred. When the harm which ultimately results appears to the court to be a remote and highly extraordinary consequence of the defendant's conduct, legal causation will not be found and liability will not attach.

Amarhanov v. Fassel, 442 Pa. Super. 111,115-16, 658 A.2d 808, 810 (1995) (citations omitted); *see also, Miron v. Fisher*, 37 Ad. Co. L. J. 211, 213 (1995).

Plaintiff represented in his deposition that the dog attack began on Defendants' property and continued onto Plaintiff's property. (Deposition of Kenneth W. Losh at 8). It is this Court's determination that reasonable minds could not differ in the conclusion that the violation of the Dog Law was not a substantial factor in causing Plaintiff's injuries. It was not the lack of confinement that caused the attack or the injury. Everyone would concede that fencing used to confine the dog would constitute an "other device" under subsection (2). Had a fence been present between the parties' properties, the initial bite would have still occurred because it transpired on Defendants' land. The fact that the attack allegedly continued onto Plaintiff's land is of no consequence because the presence of a fence would not have prevented the injury but rather would have made it more difficult for Plaintiff to remove himself from Defendant's yard. In fact, Plaintiff's injuries may well have been worse had there been a fence making his departure more difficult. Therefore, the Court believes that even when the facts are taken in the light most favorable to Plaintiff, the violation of the Dog Law is too remotely related to the to attack to warrant a finding of proximate causation.

Lastly, Defendants' argue that as a trespasser on their land, Plaintiff cannot recover damages caused by the dog.

The Restatement (Second) of Torts § 329 defines a trespasser as “a person who enters or remains upon land in the possession of another without a privilege to do so created by the possessor’s consent or otherwise.” See also *Oswald [v. Hausman]*, *supra*, 378 Pa. Super. 245, 253, 548 A.2d 594, 598 (1988). In contrast, a licensee is “a person who is privileged to enter or remain on land only by virtue of the possessor’s consent.” § 330 of the Restatement; see also *Oswald*, 378 Pa. Super. at 254, 548 A.2d at 599. Finally, an invitee is described as follows:

- (1) An invitee is either a public invitee or a business visitor.
- (2) A public invitee is a person who is invited to enter or remain on land as a member of the public for a purpose for which the land is held open to the public.
- (3) A business visitor is a person who is invited to enter or remain on land for a purpose directly or indirectly connected with the business dealings with the possessor of the land.

Restatement (Second) of Torts § 332. *Ott v. Unclaimed Freight Co.*, 395 Pa. Super. 483, 488, 577 A.2d 894, 896 (1990).

Plaintiff argues that he was not a trespasser because he had “implied consent” to enter onto Defendants’ property to retrieve his personal property. Generally, the determination of whether an individual is a trespasser, licensee or invitee is one of fact for the jury. *Palange v. City of Philadelphia, Law Department*, 433 Pa. Super. 373, 377, 640 A.2d 1305, 1307 (1994). Clearly, whether Plaintiff had implied consent to enter onto Defendants’ property to retrieve his personal property he had left there the night before is a factual issue to be determined by the jury.

Accordingly, the attached Order is issued.

ORDER OF COURT

AND NOW, this 15th day of December 1998, Defendant’s Motion for Summary Judgment is hereby granted in part and denied in part. Count II of Plaintiff’s Amended Complaint is dismissed; otherwise the motion is denied.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-1028 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, March 31, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land together with any and all improvements thereon erected, Situate in Reading Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point in the center of Township Road 574 at a corner of lands now or formerly of Donald Linebaugh, thence along the lands of said Donald Linebaugh and through a reference pin set back ten and eight-tenths (10.8) feet from the corner of said road, North fifty-eight (58) degrees East three hundred (300) feet to a point at lands now or formerly of Joseph L. Eshelman and wife, of which this was formerly a part; thence along same South fifty-one (51) degrees thirty (30) minutes East one hundred fifty (150) feet to a point at lands now or formerly of Joseph L. Eshelman and wife; thence along same South fifty-eight (58) degrees West three hundred (300) feet to a point at the center line of Township Road 574; thence in and through the said center line of Township Road North fifty-one (51) degrees thirty (30) minutes West one hundred fifty (150) feet to a point and place of beginning.

Tax Parcel # L-7-23-C

TITLE TO SAID PREMISES IS VESTED IN Reginald R. Bush, a single man by Deed from James R. Cousler, Jr., et al. dated 8/25/98, recorded 9/9/98, in Record Book 1657 page 150.

Premises being known as 135 Rife Road, East Berlin, PA 17316

SEIZED and taken into execution as the property of **Reginald R. Bush** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 24, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.

2/25, 3/3 & 10

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-923 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, March 31, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain unit in the property known, named and identified in the Declaration Plan referred to below as Devonshire Village located in Cumberland Township, Adams County, Pennsylvania, which has heretofore been submitted to the provisions of the Unit Property Act of Pennsylvania, Act of July 3, 1963, P.L. 196, by the recording in the Office of the Recorder of Deeds of Adams County, Pennsylvania of a Declaration dated October 28, 1980 in Miscellaneous Book 36 at page 549 and Amendment to Declaration of Devonshire Village Condominiums acknowledged November 12, 1985 and recorded in Record Book 413 at page 599; a Declaration Plan dated May 15, 1980 and recorded in Plat Book 34 at page 100; and a Code of Regulations dated October 28, 1980 and recorded in Miscellaneous Book 36 at page 560 and Amendment to Code of Regulations of Devonshire Village Condominiums dated August 30, 1984 recorded in Record Book 385 at page 804, such unit being designated as Unit 46, together with proportionate undivided interest in the Common Elements as defined in said Declaration of 1.382%.

UNDER AND SUBJECT to any and all easements, conditions, covenants, agreements, rights and restrictions of record, including, but not limited to, those contained in Declaration of Reciprocal Easements dated March 13, 1973, recorded in Miscellaneous Book 18 at page 23, as amended by Amendment thereto dated December 5, 1973 recorded in Miscellaneous Book 19 at page 872 and to those contained in the aforesaid Declaration, as amended, Code of Regulations, as amended and Declaration Plan.

BEING THE SAME PREMISES which Ricky B. Nell and Lisa A. Settle, both single individuals, by their Deed dated February 9, 1995 and recorded in the Office of the Recorder of Deeds in and for Adams County on February 28, 1995 in Record Book 1000, Page 53, granted and conveyed unto Ricky B. Nell, the Defendant herein.

Property is a one-story, attached, single-family home.

SEIZED and taken into execution as the property of **Ricky B. Nell** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 24, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.

2/25, 3/3 & 10

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-843 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, March 31, 2000, 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 Mount Joy Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a stone in the center of the Gettysburg and Petersburg Turnpike, now the Gettysburg-Baltimore State Highway; thence South 49-1/2 degrees West, 27.5 perches to a stone; thence South 39 degrees East, 6 perches to a stone; thence South 49-3/4 degrees West, 11.6 perches to a stone; thence South 69 degrees West, 14.7 perches to a stone in the Creek; thence North 29 degrees West, 23 perches along White Run to a stone in the Creek; thence North 48 degrees East, 51.6 perches to the middle of the Gettysburg-Baltimore State Highway; thence South 34 degrees East, 23 perches to the place of BEGINNING. CONTAINING 8 acres, neat measure.

IT BEING THE SAME TRACT OF LAND which John P. Pannick and Betty Jane Pannick, by Deed dated October 12, 1987, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 476 at Page 701, sold and conveyed unto John P. Pannick and Betty Jane Pannick, husband and wife, as tenants of an estate by the entireties, the Defendants herein.

IMPROVED WITH a 2-1/2 story residence and a barn converted to a retail shop known as Sword and Saber.

SEIZED and taken into execution as the property of **John P. Pannick & Betty Jane Pannick** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 24, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.

2/25, 3/3 & 10

IN THE COURT OF COMMON PLEAS OF
ADAMS COUNTY
COMMONWEALTH OF
PENNSYLVANIA
ORPHANS' COURT DIVISION

NOTICE

To: ROBERT LERAY STOKES
RT-1--00(A)

YOU ARE HEREBY NOTIFIED that a Petition for Involuntary Termination of Parental Rights to Child has been filed in the Orphans' Court Division of the Court of Common Pleas of Adams County, Pennsylvania. A hearing has been set for April 3, 2000, at 1:30 p.m., prevailing time, at the Courthouse at Gettysburg, Adams County, Pennsylvania, for the purpose of determining whether or not statutory grounds exist for the involuntary termination of your parental rights with respect to your child.

You should contact 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.

Court Administrator
Adams County Courthouse
111- 117 Baltimore Street
Gettysburg, PA 17325
Telephone number: 717-337-9846,
or 1-888-337-9846

Chester G. Schultz
Attorney at Law
145 Baltimore Street
Gettysburg, PA 17325

2/18, 25 & 3/3

IN THE COURT OF COMMON PLEAS OF
ADAMS COUNTY
COMMONWEALTH OF
PENNSYLVANIA
ORPHANS' COURT DIVISION

NOTICE

To: ROBERT LERAY STOKES
RT-2-00(A)

YOU ARE HEREBY NOTIFIED that a Petition for Involuntary Termination of Parental Rights to Child has been filed in the Orphans' Court Division of the Court of Common Pleas of Adams County, Pennsylvania. A hearing has been set for April 3, 2000, at 1:30 p.m., prevailing time, at the Courthouse at Gettysburg, Adams County, Pennsylvania, for the purpose of determining whether or not statutory grounds exist for the involuntary termination of your parental rights with respect to your child.

You should contact 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.

Court Administrator
Adams County Courthouse
111- 117 Baltimore Street
Gettysburg, PA 17325
Telephone number: 717-337-9846,
or 1-888-337-9846

Chester G. Schultz
Attorney at Law
145 Baltimore Street
Gettysburg, PA 17325

2/18, 25 & 3/3

IN THE COURT OF COMMON PLEAS
OF ADAMS COUNTY
COMMONWEALTH OF
PENNSYLVANIA
ORPHANS' COURT DIVISION

NOTICE

To: SAROJA BROWN RT-1-00(B)

YOU ARE HEREBY NOTIFIED that a Petition for Involuntary Termination of Parental Rights to Child has been filed in the Orphans' Court Division of the Court of Common Pleas of Adams County, Pennsylvania. A hearing has been set for April 3, 2000, at 1:30 p.m., prevailing time, at the Courthouse at Gettysburg, Adams County, Pennsylvania, for the purpose of determining whether or not statutory grounds exist for the involuntary termination of your parental rights with respect to your child.

You should contact 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.

Court Administrator
Adams County Courthouse
111-117 Baltimore Street
Gettysburg, PA 17325
Telephone number: 717-337-9846,
or 1-888-337-9846

Chester G. Schultz
Attorney at Law
145 Baltimore Street
Gettysburg, PA 17325

2/18, 25 & 3/3

IN THE COURT OF COMMON PLEAS
OF ADAMS COUNTY
COMMONWEALTH OF
PENNSYLVANIA
ORPHANS' COURT DIVISION

NOTICE

To: SAROJA BROWN RT-2-00(B)

YOU ARE HEREBY NOTIFIED that a Petition for Involuntary Termination of Parental Rights to Child has been filed in the Orphans' Court Division of the Court of Common Pleas of Adams County, Pennsylvania. A hearing has been set for April 3, 2000, at 1:30 p.m., prevailing time, at the Courthouse at Gettysburg, Adams County, Pennsylvania, for the purpose of determining whether or not statutory grounds exist for the involuntary termination of your parental rights with respect to your child.

You should contact 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.

Court Administrator
Adams County Courthouse
111-117 Baltimore Street
Gettysburg, PA 17325
Telephone number: 717-337-9846,
1-888-337-9846

Chester G. Schultz
Attorney at Law
145 Baltimore Street
Gettysburg, PA 17325

2/18, 25 & 3/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-1189 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, March 17, 2000, 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 Cumberland Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point in the center of the state highway leading from Gettysburg to Fairfield, said point of beginning being at corner of land now or formerly of Robert Koontz; thence along land of said Koontz South 9 degrees East, 325 feet to a point on line of land now or formerly of Lloyd Brantner, formerly a part of the original tract now or formerly of Roy C. Wolf and wife; thence along said Brantner land South 75-1/2 degrees West, 100 feet to a corner of land now or formerly of Kenneth Redding; thence along said Redding land North 9 degrees West, 325 feet to a point in the center of the Gettysburg-Fairfield State Highway, aforesaid; thence running in the center of said highway North 75-1/2 degrees East, 100 feet to the place of BEGINNING.

BEING Tax Parcel # E-13-78.

TITLE TO SAID PREMISES IS VESTED IN Harry P. Smith and Judith O. Smith, husband and wife by Deed from Mary L. Wolfe, single and Ruth E. Wolfe, single dated 7/16/92, recorded 7/22/92, in Record Book 635, page 527.

BEING PREMISES KNOWN AS 1480 FAIRFIELD ROAD, GETTYSBURG, PA 17325

SEIZED and taken into execution as the property of **Harry P. Smith (Deceased) & Judith O. Smith** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 10, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.

2/18, 25, 3/3

ESTATE NOTICES

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

FIRST PUBLICATION

ESTATE OF M. PAULINE ACKERMAN, A/K/A MARY PAULINE ACKERMAN, A/K/A MARY P. ACKERMAN, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Beverly A. Boone, 6284 Hilltop Drive, Spring Grove, PA 17362

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

ESTATE OF WALTER W. BORTNER, A/K/A WALTER WILSON BORTNER A/K/A JACK BORTNER, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executrix: Mary E. Snyder, 686 Hanover Pike, Littlestown, PA 17340

Attorney: Thomas E. Miller, Esq., Miller & Shultis, P.C., 249 York Street, Hanover, PA 17331

ESTATE OF DOROTHY M. COOK, DEC'D

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

Executors: W. Eugene Cook, Dale W. Cook, Donald L. Cook

Attorney: Wm. D. Schrack, III, Esq., 124 West Harrisburg Street, Dillsburg, PA 17019-0310

ESTATE OF SAMUEL B. GROSS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Stephen W. Gross, 231 Eichelberger St., Hanover, PA 17331; Peter M. Gross, 4712 N. Galen Rd., Harrisburg, PA 17110

Attorney: Charles J. Long, Esq., Smith, Anderson, Baker & Long, 25 North Duke Street, York, PA 17401

ESTATE OF MARION E. WHITMAN, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: John W. Phillips, 101 W. Middle Street, Gettysburg, PA 17325

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

SECOND PUBLICATION

ESTATE OF CLINTON R. ALDEN, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Alice S. Alden, 302D New Jersey Avenue, Riverside, NJ 08075

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

ESTATE OF DOROTHY V. BOWMAN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Jean Bowman, 2727 Manchester Road, Westminster, MD 21157

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

ESTATE OF ATLEE L. KEEFER, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executrix: Charlene E. Keefer c/o Mark L. James, Esq.

Attorney: Mark L. James, Esq., James & Black, LLP, 1907 Division Highway, Ephrata, PA 17522

ESTATE OF GRACE A. MENGES, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Dolores M. Raubenstine, 107 Sunset Avenue, Hanover, PA 17331; Nadine C. Starnier, 4630 Wolfs Church Road, York, PA 17404; Arlene M. McSherry, 689 Washington Avenue, Apt. 2, Hanover, PA 17331

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

ESTATE OF VALERIA A. WAYNE, DEC'D

Late of the Borough of Hanover, York County, Pennsylvania

Executor: Theodore J. Wayne, 3 Newberry Street, Hanover, PA 17331

Attorney: Lynn G. Peterson, Esq., Peterson & Peterson, 515 Carlisle Street, Hanover, PA 17331

ESTATE OF CARL W. ZEIGLER, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Executor: G. Steven Zeigler, 4002 Baltimore Pike, Littlestown, PA 17340

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

THIRD PUBLICATION

ESTATE OF RUTHE. CLEMENT, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Joan C. Howard

Attorney: Alan M. Cashman, Esquire, 141 Broadway, Suite 230, Hanover, PA 17331

ESTATE OF MILDRED B. HOLLIMAN, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Lucille B. Adams, 102 Hills Drive, Gettysburg, PA 17325

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

ESTATE OF GARY L. KEILHOLTZ, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Administrator: Gregory M. Keilholtz, 14 Baltimore Street, Gettysburg, PA 17325

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

ESTATE OF MONTELL P. PAINTER, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Executor: Huibertina J. Painter, 460 Beaver Creek Road, Hanover, PA 17331

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-1155 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, March 17, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of land Situate, lying and being in Littlestown Borough, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a point on the right-of-way line of Colonial Court and Lot No. 31 as shown on the hereinafter referenced Subdivision Plan; thence along Lot No. 31 South forty-eight (48) degrees twenty-two (22) minutes zero (00) seconds West one hundred twenty-five (125.00) feet to a point at Lot No. 33 on the hereinafter referenced Subdivision plan; thence along said Lot No. 33 North forty-one (41) degrees thirty-eight (38) minutes zero (00) seconds West seventy-five (75.00) feet to a point on the right-of-way line of South Columbus Avenue; thence along said right-of-way line of South Columbus Avenue North forty-eight (48) degrees twenty-two (22) minutes zero (00) seconds East one hundred five (105.00) feet; thence further along said right-of-way line of South Columbus Avenue and the right-of-way line of Colonial Court by a curve to the right, having a radius of twenty (20.00) feet, an arc length of thirty-one and forty-two hundredths (31.42) feet and a long chord bearing and distance of South eighty-six (86) degrees thirty-eight (38) minutes zero (00) seconds East twenty-eight and twenty-eight hundredths (28.28) feet to a point; thence further along said right-of-way line of Colonial Court South forty-one (41) degrees thirty-eight (38) minutes zero (00) seconds East fifty-five (55.00) feet to a point, the point and place of Beginning.

CONTAINING 9,289.16 square feet or 0.21 acre. The above described lot being designated as Lot No. 32 on the Final Subdivision Plan of "Heritage Hill - Phase I", prepared by James R. Holley, Registered Professional Surveyor, dated July 31, 1992, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Plat Book 61 page 84.

BEING 495 Columbus Avenue.

Tax Parcel #11-150

TITLE TO SAID PREMISES IS VESTED IN Robert W. Allewalt and Liliann Allewalt, husband and wife by Deed from Harry P. McKean, a single man, 1/d/b/a New Age Associates dated 8/20/93, recorded 9/2/93, in Record Book 775, Page 83.

BEING PREMISES KNOWN As 495 COLUMBUS AVENUE, LITTLESTOWN, PA 17340

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

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND

CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 10, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.

2/11, 18, 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-572 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, March 17, 2000, 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, lot and parcel of land lying and being in the TOWNSHIP of STRABAN, County of Adams and State of Pennsylvania, being more particularly described as follows:

BEGINNING at a nail located 4.5 feet South of the Northern edge of the concrete roadway of U.S. Route 30 running from Gettysburg to New Oxford at corner of lands of Connie M. Grinage; thence by said land of Connie M. Grinage and running through an iron pin located 15.86 feet from the place of BEGINNING and running through another iron pin located 17.10 feet from the end of this line North 8 degrees 31 minutes 40 seconds West, 173.11 feet to an iron pin; thence running along and in the right of way of the Western Maryland Railway Company North 89 degrees 15 minutes East, 260 feet to an iron pin in the center of said right of way; thence by land of Roy C. Mondorff and running through an iron pin located 16.59 feet from the beginning of this line and running through another iron pin located 22.53 feet from the end of this line South 9 degrees 34 minutes 40 seconds East, 128.50 feet to a nail located 4.5 feet South of the Northern edge of the aforementioned concrete roadway; thence in said U.S. Route 30 South 79 degrees 23 minutes 30 seconds West, 260.13 feet to a nail, the place of BEGINNING. CONTAINING 0.896 Acres.

The foregoing description was obtained from a draft of survey prepared by Penn Forestry Co., on November 4, 1971.

NOTE: Being known and designated as Map/Parcel H11-57A.

SEIZED and taken into execution as the property of **Peter A. Rondeau and Gloria W. Rondeau** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 10, 2000,

and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.

2/11, 18, 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-571 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, March 17, 2000, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point on the intersecting property lines of the West side of South Peters Street and the North property line of East George Street; thence along the North property line of East George Street South 75 degrees West, 110 feet to a point on the East property line of an alley known as Stock Street; thence along the East property line of said alley North 18 degrees West, 107 feet to an iron pin at corner of lot of Leslie E. Klinefelter; thence by said lands North 75 degrees East, 56 feet to a stake at line of lands of Fleming E. Hess, thence by said lands South 18 degrees East, 46 feet to a post for a corner; thence continuing by said lands North 75 degrees East, 57 feet to a post on the West side of South Peters Street; thence along the West side of South Peters Street South 15 degrees East, 61 feet to the intersection aforesaid, the place of beginning.

Street Address: 115 South Peters Street, New Oxford, PA 17350

Tax Map 5, Parcel 167

SEIZED and taken into execution as the property of **P.A. Rondeau Real Estate, Inc.** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 10, 2000, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after 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.

2/11, 18, 25