

# Adams County Legal Journal

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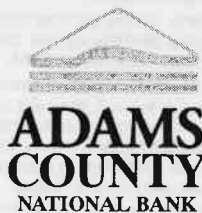
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VS.  
BOROUGH OF GETTYSBURG

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



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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-757 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of September, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot of ground situate in Reading Township, Adams County, Pennsylvania, designated as LOT NUMBER 39 on subdivision plat of Hampton Plains, Inc., which plat is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 19 at Page 30.

UNDER AND SUBJECT, HOWEVER, to Declaration of Restrictions recorded in Miscellaneous Book 31 at Page 605, as amended on November 14, 1983, by instrument recorded in Miscellaneous Book 44 at Page 854, and again amended on June 24, 1985, by instrument recorded in Adams County Record Book 403 at Page 184.

BEING the same premises which Hampton Plains, Inc., a Pennsylvania Corporation, by Deed dated September 9, 1990 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book Volume 569, Page 948, sold and conveyed unto Michael L. Scott and Brenda S. Scott, his wife, as tenants of an estate by entirety.

SEIZED and taken into execution as the property of **Michael L. & Brenda S. Scott** and to be sold by me

Raymond W. Newman  
Sheriff

Sheriff's Office, Gettysburg, PA  
July 11, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 19, 1998, 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.

8/28, 9/4 & 11

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-159 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of September, 1998, 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 piece or parcel of land situate lying and being in Oxford Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING for a point on the Southern edge of Drummer Drive at Lot No. 85 of the hereinafter referenced subdivision plan; thence along said Southern edge of Drummer Drive North eighty (80) degrees two (02) minutes twenty-eight (28) seconds East, one hundred and zero hundredths (100.00) feet to a point at Lot No. 87 of said plan; thence along same South nine (09) degrees fifty-seven (57) minutes thirty-two (32) seconds East, one hundred thirty-six and zero hundredths (136.00) feet to a point at Lot No. 76 of said plan; thence along same and Lot No. 77 South eighty-two (82) degrees one (01) minutes zero (00) seconds West, one hundred and six hundredths (100.06) feet to a point at Lot No. 85 of said plan; thence along same North nine (09) degrees fifty-seven (57) minutes thirty-two (32) seconds West, one hundred thirty-two and fifty-five hundredths (132.55) feet to a point on the Southern edge of Drummer Drive, the point and place of BEGINNING. CONTAINING 13,428 square feet.

The above described lot being designated as Lot No. 86 on the Subdivision Plan of "South Branch Estates", dated February 3, 1993, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Plat Book 63, page 93.

HAVING THEREON ERECTED A DWELLING KNOWN AS 245 DRUMMER DRIVE, NEW OXFORD, PA.

BEING THE SAME PREMISES WHICH J. A. Myers Building and Development, Inc., et al by deed dated 1/22/96 and recorded 2/6/96 in Adams County Deed Book 1143 Page 78 granted and conveyed unto Patrick E. Topper.

TO BE SOLD AS THE PROPERTY OF PATRICK E. TOPPER UNDER ADAMS COUNTY JUDGMENT NO. 98 S 159.

PARCEL: 1-106

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

Raymond W. Newman  
Sheriff

Sheriff's Office, Gettysburg, PA  
August 8, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 19, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/4, 11 & 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 Thursday, September 10, 1998, at 9:00 o'clock a.m.

IAEA—Orphans' Court Action Number OC-53-98. The First and Final Account of Naida Iaea, Executrix for the Estate of John N. Iaea, Jr., deceased, late of Hamiltonban Township, Adams County, Pennsylvania.

KETTERMAN—Orphans' Court Action Number OC-61-98. The First and Final Account of Richard Lee Ketterman, Executor of the Last Will and Testament of Clara M. Ketterman, deceased, late of the Borough of Gettysburg, Adams County, Pennsylvania.

SINGLEY—Orphans' Court Action Number OC-75-98. The First and Final Account of Sterling Calvin Singley, Executor of the Last Will and Testament of Fleeta Fay Singley, deceased, late of the Borough of Gettysburg, Adams County, Pennsylvania.

LOSMAN—Orphans' Court Action Number OC-77-98. The First and Final Account of Bernard C. Brady, Executor of the Last Will and Testament of Christine N. Losman a/k/a Christine Naomi Losman, deceased, late of the Borough of McSherrystown, Adams County, Pennsylvania.

Peggy J. Breighner  
Clerk of Courts

8/28 & 9/4

## COOK VS. BOROUGH OF GETTYSBURG

1. A demurrer is properly sustained where the complaint indicates on its face that the Plaintiff's claim cannot be sustained, and the law will not permit recovery.

2. A volunteer fire company must show that it has been created pursuant to relevant law and is legally recognized as the official fire company for a political subdivision in order to come within the definition of a local agency under the Political Subdivision Tort Claim Act.

3. Where the fire company had a duty to police the site after the fireworks display to make sure all debris had been removed and the Borough, as owner of the land, had a duty to ensure the property was safe for public use after the carnival, the failure of both to properly care for the real estate would fall under the recently expanded notion of the real estate exception under the Political Subdivision Tort Claim Act as set forth by our Supreme Court.

4. Our Supreme Court has held that the Recreational Use of Land and Water Act which holds generally that an owner of land has no duty to keep the premises safe for recreational use by others has been held by our Supreme Court to apply only to lands that are largely unimproved and where no admission fee is charged.

5. Plaintiff's cause of action for negligent infliction of emotional distress is permissible as falling within the recovery for "pain and suffering" permitted by the Political Subdivision Tort Claim Act.

6. Allegations in the Complaint will withstand challenge under Rule 1019 (a), which requires fact pleading, if (1) they contain averments of all of the facts the Plaintiff will eventually have to prove in order to recover and (2) they are sufficiently specific so as to enable Defendant to prepare his defense.

7. The failure to police the grounds after a fireworks display cannot be viewed as an ultrahazardous activity under Restatement Second of Torts §519 since an ultrahazardous activity is defined as one that (1) necessarily involves a risk of serious harm to the person, land, or chattels of others which cannot be eliminated by the exercise of the utmost care, and (2) is not a matter of common usage.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 96-S-626, **DEBRA COOK, INDIVIDUALLY AND AS THE PARENT AND NATURAL GUARDIAN OF ROBERT J. COOK, JR. VS. BOROUGH OF GETTYSBURG, GETTYSBURG FIRE COMPANY AND FIREWORKS PRODUCTION, INC.**

Joseph H. Blum, Esq., and Jeffrey M. Cook, Esq., for Plaintiffs  
James K. Thomas, II, Esq., for Defendants Borough of Gettysburg and  
Gettysburg Fire Company  
James F. Carl, Esq., for Defendant Fireworks Production, Inc.

### OPINION ON DEFENDANTS' PRELIMINARY OBJECTIONS

Kuhn, J., October 28, 1997.

On November 25, 1996, Plaintiffs, Debra Cook and her son Robert J. Cook, filed a Complaint against Defendants, Borough of Gettysburg, Gettysburg Fire Company, and Fireworks Production, Inc. Defendants,

Borough of Gettysburg and Gettysburg Fire (“Objecting Defendants”) filed Preliminary Objections. This Court heard oral argument on February 7, 1997.

### STATEMENT OF THE FACTS

It is alleged that on approximately July 3, 1996, the Borough of Gettysburg allowed a carnival, sponsored by the Gettysburg Fire Company, to take place at Borough property known as Rec Park. Fireworks Production, Inc., as set forth in a contract with the Gettysburg Fire Company, conducted a fireworks display. The contract required the Gettysburg Fire Company to conduct a “search for post display debris” and to police the area “at first light following the exhibition.” (Exhibit A, Answer of Def. Fireworks Production, Inc.)

It is further alleged that on July 6, 1996, Plaintiffs were in the park when Robert picked up some debris left from the fireworks display. Robert took the debris home, which later proved to be unexploded firework charges. The firework charges exploded while Robert was playing with them outside and caused serious injuries, including the permanent loss of his left hand. Debra Cook felt the explosion from inside her home and rushed to Robert’s aid.

### LEGAL DISCUSSION

Objecting Defendants’ have raised Preliminary Objections in the nature of a demurrer. Therefore, it is important to set out the standard by which a demurrer is to be decided. In deciding on an objection in the nature of a demurrer, the Pennsylvania Supreme Court has stated that “[a] demurrer admits every well-pleaded material fact set forth in the pleadings to which it is addressed as well as all inferences reasonably deducible therefrom, but not conclusions of law.” *Gekas v. Shap*, 469 Pa. 1, 5, 364 A.2d 691, 693 (1976). A demurrer is properly sustained where the complaint indicates on its face that the plaintiff’s claim cannot be sustained, and the law will not permit recovery. *Lobdell v. Leichtenberger*, 442 Pa. Super. 21, 24, 658 A.2d 399, 401 (1995) (citations omitted). If there is any doubt as to the propriety of a judgment in favor of a demurring party, it should not be entered. *Creeger Brick & Building Supply, Inc. v. Mid-State Bank and Trust Co.*, 385 Pa. Super. 30, 32-33, 560 A.2d 151, 152 (1989).

#### I. Political Subdivision Tort Claims Act

We will first address the Objecting Defendants claim that they are

immune from suit under the Political Subdivision Tort Claim Act (“PSTCA”).<sup>1</sup> 42 Pa.C.S.A. § 8541-8564.

Section 8541 states:

Except as otherwise provided in this subchapter, no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person.

There are exceptions to this general rule with the applicable exception in the case at hand being the real estate exception. This exception reads as follows:

(b) The following acts by a local agency or any of its employees may result in the imposition of liability on a local agency:

(3) Real Property - The care custody or control of real property in the possession of the local agency, except that the local agency shall not be liable for damages on account of any injury sustained by a person intentionally trespassing on real property in the possession of the local agency.

42 Pa. C.S.A. § 8542(b)(3).

In applying the PSTCA we must first determine whether the Objecting Defendants fall within the definition of local agency. Local agency is defined as a “government unit other than the Commonwealth government.” 42 Pa.C.S.A. § 8501. A “government unit” is defined as any political subdivision, or any other officer or agency of any such political subdivision. 42 Pa.C.S.A. § 102.

The parties do not dispute that the Borough of Gettysburg falls into the definition of local agency; however, the Gettysburg Fire Company presents more of an issue. A volunteer fire company must show that it has been created pursuant to relevant law and is legally recognized as the official fire company for a political subdivision in order to come within the definition of a local agency. *Kniaz v. Benton Borough*, 164

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<sup>1</sup> Plaintiffs’ correctly argue that the Rules of Civil Procedure require that affirmative defenses, including immunity from suit, be raised in *New Matter*. Pa.R.C.P. 1030, 42 Pa.C.S.A. However, “[w]here a party improperly raises ‘immunity from suit’ in preliminary objections and the opposing party does not object to this defect, then the question of immunity from suit may be decided by the court.” *Fewell v. Besner*, 444 Pa. Super. 559, 570, 664 A.2d 577, 582 (1995). Plaintiffs’ have argued this issue in their brief but have not formerly objected by filing preliminary objections to Defendants’ preliminary objections. Therefore, we will consider that Plaintiffs’ have waived this pleading defect.

Pa. Commw. 109, 115, 642 A.2d 551, 554 (1994). A volunteer fire company is entitled to governmental immunity pursuant to 42 Pa.C.S.A. § 8541, even when they are not involved in firefighting activities. *Guinn v. Alburdis Fire Company*, 531 Pa. 500, 503, 614 A.2d 219, 220 (1992).

Plaintiff has correctly argued that because the Articles of Incorporation of the Gettysburg Fire Company are outside the record, as having only been attached to Defendant Gettysburg Fire Company's Preliminary Objections, they may not be considered in determining whether the Company was legally recognized. See, *Mellon Bank, N.A. v. Fabinyi*, 437 Pa. Super. 559, 568, 650 A.2d 895, 899 (1994) (citations omitted) (holding that exhibits outside the record may not be considered in ruling on preliminary objections). Because this Court may not consider the Articles of Incorporation, Gettysburg Fire Company's claim of immunity under the PSTCA is rejected.

However, even assuming that the Gettysburg Fire Company falls within the definition of local agency as set forth in 42 Pa.C.S.A. § 8541, the real estate exception applies to the case at hand and neither Objecting Defendant is immune from suit.

Historically, Pennsylvania Courts have interpreted the real estate exception narrowly permitting its application only in cases where the real estate itself was defective. As recently as February of 1997, the Pennsylvania Commonwealth Court narrowly construed the real estate exception when it held that "[l]iability may not be imposed upon a governmental entity for injuries caused by its negligent failure to remove foreign substances from its real estate." *Wolfe v. Stroudsburg Area School Dist.*, \_\_\_ Pa. Commw. \_\_\_, 688 A.2d 1245, 1248 (1997). However, a recent Pennsylvania Supreme Court decision has broadened this application of the real estate exception. *Grieff v. Reisinger*, \_\_\_ Pa. \_\_\_, 693 A.2d 195 (1997).

In *Grieff*, a visitor at the local Volunteer Fire Association was burned when *Grieff*, the Fire Association Chief, poured paint thinner onto the floor resulting in a fire. The trial court held that the real property exception applied; however, the Commonwealth Court reversed that decision holding that Plaintiffs did "not assert that the real property itself was defective." *Grieff*, 693 A.2d at 196. On appeal to the Pennsylvania Supreme Court, the Commonwealth Court was reversed. Our Supreme Court held that *Grieff* was caring for the real property and his activity therefore fell directly under the plain language of the real estate exception. *Id.* at 197. The Court went on to distinguish cases in which government property merely facilitated unlawful actions by

third parties stating that “the government is not liable for harm caused by third parties.” Id.

In the case at hand, it was the alleged “negligent care of the property” by Objecting Defendants that caused Robert’s injuries. The Gettysburg Fire Company had a duty, as set forth in its contract with Fireworks Production, Inc., to police the site after the display to make sure all debris had been removed. Additionally, the Borough of Gettysburg, as owner of the Rec Park, had a duty to ensure the property was safe for public use after the carnival. Failure of both Objecting Defendants to properly care for the real estate would fall under the expanded notion of the real estate exception as set forth by our Supreme Court.

## II. Recreational Use of Land and Water Act

The Borough of Gettysburg has claimed immunity under the Recreational Use of Land and Water Act. 68 P.S. § 477-1 to 477-8. Generally, this Act holds that an owner of land has no duty to keep the premises safe for recreational use by others. 68 P.S. § 477-3. Our Supreme Court has held that the Act applies only to lands that are largely unimproved and where no admission fee is charged. *Lory v. City of Philadelphia*, 544 Pa. 38, 41, 674 A.2d 673, 674 (1996) (citations omitted), cert. denied, 117 S.Ct. 184, 136 L.Ed.2d 123.

For purposes of a demurrer, there is no indication in Plaintiffs’ Complaint that the real estate in question was largely unimproved. Therefore, it is not clear at this stage of the pleadings that the Recreational Land Use and Water Act would be applicable.

## III. Impermissible Claim for Negligent Infliction of Emotional Distress

Both Objecting Defendants contend that Debra Cook’s claim for negligent infliction of emotional distress is impermissible under the limitation of damages provision of the PSTCA. 42 Pa.C.S.A. § 8553(c). This subsection recognizes only certain listed claims. Objecting Defendants argue that negligent infliction of emotional distress is not recoverable because it is not included in the list.

Section 8553 is applicable to the case at hand because local governmental agencies are involved. However, case law analyzing Section 8528 (Limitations on damages for actions against Commonwealth parties) is helpful in determining permissibility of bringing a negligent infliction of emotional distress claim against a governmental party. Section 8528 is very similar to Section 8553, and is in fact identical in allowing claims for “pain and suffering,” the relevant permissible claim in the case at hand.

In *Francart v. Smith*, 2 D&C 4th 585 (Chester 1989), the Chester County Court addressed a similar issue. In that case, the mother heard an accident and immediately thereafter saw her daughter on the road after being struck and killed by a car. The mother raised a claim for negligent infliction of emotional distress. Defendants argued that Section 8528(c)(2) did not permit such a claim. The Court held that “giving the words of the statute their plain and ordinary meaning, we find that such damages are, in fact provided for, under 42 Pa.C.S.A. § 8528(c)(2) which permits damages for pain and suffering to be recovered.” *Francart v. Smith*, 2 D&C4th at 615.

Additionally, our Commonwealth Court has included emotional injuries within the permissible recovery for pain and suffering. The Court held that a victim involved in an accident who suffered physical injuries was also able to bring a claim for emotional injuries under the concept of pain and suffering. *Tomikel v. Commonwealth of Pennsylvania Department of Transportation*, \_\_ Pa. Commw. \_\_, 658 A.2d 861 (1995).

Therefore, taking this case law into consideration, it is this Court’s determination that Debra Cook’s cause of action for negligent infliction of emotional distress is permissible as falling within the recovery for “pain and suffering.”

#### IV. Violations of Pa.R.C.P. 1028(a)(2) and (3).

Objecting Defendants both argue that Plaintiffs’ Complaint is in violation of Pa.R.C.P. 1028(a)(2) and (3). This portion of the rule is as follows:

- (a) Preliminary objections may be filed by any party to any pleading and are limited to the following grounds:
  - (2) failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter,
  - (3) insufficient specificity in a pleading;

Pa.R.C.P. 1028(a)(2)-(3), 42 Pa.C.S.A.

The Borough of Gettysburg claims that paragraph 32(e) is an impermissible boilerplate averment of negligence. Gettysburg Fire Company claims that paragraph 45(f) is insufficient for the same reasons. The paragraphs are identical and state that the Objecting Defendants were negligent for “being otherwise negligent, reckless and careless under the circumstances.” (Plt. Complaint, ¶¶ 32(e), 45(f)).

Superior Court in *Baker v. Rangos*, 229 Pa. Super. 333, 324 A.2d 498 (1974) set forth the standard for pleading material facts. It stated,



Rule 1019(a) requires fact pleading...” The purpose of [1019(a)] is to require the pleader to disclose the ‘material facts’ sufficient to enable the adverse party to prepare his case.”... A complaint therefore must do more than “give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.”...It should formulate the issues by fully summarizing the material facts. “Material facts” are “ultimate facts”, i.e. those facts essential to support the claim. Evidence from which such facts may be inferred not only need not but should not be alleged...Allegations will withstand challenge under 1019(a) if (1) they contain averments of all of the facts the plaintiff will eventually have to prove in order to recover...and (2) they are “sufficiently specific so as to enable defendant to prepare his defense,”...

229 Pa. Super. at 349-50, 324 A.2d at 505-6 (citations omitted).

A defendant must move to strike or seek a more specific pleading when the plaintiff avers a general allegation of negligence otherwise it is assumed that the defendant understood the allegation well enough to respond. *Connor v. Allegheny Hospital*, 501 Pa. 306, 311, 461 A.2d 600, 602 n.3 (1983). Additionally, one should not be permitted to discover their way through the lawsuit. *Starr v. Myers*, 109 Dauph. 147, 154 (1988); See also, *Collins v. Gettysburg Hospital*, 39 Ad.Co.L.J. 55, 58-9 (1996). Therefore, the averments in paragraphs 32(e) and 45(f) of the Complaint are stricken as being impermissible general averments of negligence.

#### V. Failure to State a Cause of Action for Strict Liability

Gettysburg Fire Company argues that Plaintiffs’ Complaint does not state a cause of action for strict liability pursuant to the Restatement (Second) of Torts § 519.

This Section reads as follows:

- (1) One who carries on an abnormally dangerous activity is subject to liability for harm to the person, land or chattels of another resulting from the activity, although he has exercised the utmost care to prevent the harm.
- (2) This strict liability is limited to the kind of harm, the possibility of which makes the activity abnormally dangerous.

The Gettysburg Fire Company argues that Section 519 does not apply to them because they did not “carry on” the activity of displaying

the fireworks. Furthermore, they argue that a fireworks display is not an "abnormally dangerous" activity. However, at this stage, we need not decide whether the Gettysburg Fire Company was carrying on the activity or whether the activity was abnormally dangerous because the fireworks display is not what caused the injuries.<sup>2</sup> On the contrary, it was the failure to clean up the firework debris that caused the resultant injuries to Robert.

This failure to police the grounds cannot be viewed as an ultrahazardous activity. An ultrahazardous activity is defined as one that (1) necessarily involves a risk of serious harm to the person, land, or chattels of others which cannot be eliminated by the exercise of the utmost care, and (2) is not a matter of common usage. *Albig v. Mun. Auth. Of Westmoreland County*, 348 Pa. Super. 505, 512, 502, A.2d 658, 662 (1985). Clearly, if the Gettysburg Fire Company exercised the utmost care in cleaning up the leftover debris, the harm would not have occurred. Thus, Counts V, VII, and IX that make claims for strict liability are dismissed. Accordingly the attached Order is entered.

#### ORDER

AND NOW, this 28th day of October, 1997, it is hereby ordered as follows:

- (1) Counts V, VII and IX of Plaintiffs' Complaint are dismissed;
- (2) Paragraphs 32(e) and 45(f) of Plaintiffs' Complaint are stricken;
- (3) All remaining Preliminary Objections of the Borough of Gettysburg and the Gettysburg Fire Company are denied.

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<sup>2</sup>We recognize that our Supreme Court, in discussing ultrahazardous activities, has held that "a public fireworks display, handled by a competent operator in a reasonably safe area and properly supervised...is not so dangerous an activity." *Haddon v. Lotto*, 399 Pa. 521, 523, 161 A.2d 160, 162 (1960). However, we need not make this determination today as the harm was not caused by the fireworks display.

## 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 PATRICIA H. DAVIS, DEC'D

Late of Conewago Township, Adams County, Pennsylvania  
 Executrix: Patricia Harloe DeGroat  
 Attorney: Douglas H. Gent, Esquire, Menges, Gent & McLaughlin, 1157, Eichelberger Street, Hanover, PA 17331

## ESTATE OF WINIFRED B. HOLTZ-APPLE, DEC'D

Late of Franklin Township, Adams County, Pennsylvania  
 Executor: Peter Housman, a/k/a Robert L. Housman, P.O. Box 3296, Gettysburg, PA 17325  
 Attorney: Teeter, Teeter, Teeter, 108 West Middle Street, Gettysburg, PA 17325

## ESTATE OF ROBERTA R. MYERS a/k/a ROBERTA RUBY MAYERS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Executor: Eugene R. Myers  
 Attorney: Douglas H. Gent, Esquire, Menges, Gent & McLaughlin, 1157, Eichelberger Street, Hanover, PA 17331

## ESTATE OF DONALD G. OYLER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania  
 Executors: Mary L. Oyler, 225 Old Mill Road, Gettysburg, PA 17325; Ralph D. Oyler, 31 South Washington Street, Gettysburg, PA 17325  
 Attorney: Ralph D. Oyler, 31 South Washington Street, Gettysburg, PA 17325

## ESTATE OF GLADYS O. SPANGLER, DEC'D

Late of Union Township, Adams County, Pennsylvania  
 Executor: David E. Spangler, Jr., 49 Rockland Road, Westminster, MD 21158  
 Attorney: Teeter, Teeter, Teeter, 108 West Middle Street, Gettysburg, PA 17325

## SECOND PUBLICATION

## ESTATE OF BETTY ANN ALEXANDER, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania  
 Executor: Hugh L. Alexander, 4330 Fairfield Road, Fairfield, PA 17320  
 Attorney: John R. White, Esquire, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF JOHN I. KENNEDY, JR., DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania  
 Administratrix: Melva L. Kennedy, 693 Grant Drive, Gettysburg, PA 17325  
 Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF RAY J. KITZMILLER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania  
 Executors: Thomas L. Kitzmiller, 33 Ford Avenue, Wharton, NJ 07885; Richard L. Kitzmiller, 6316 Flamingo Drive, Apollo Beach, FL 33572; Kenneth R. Kitzmiller, RR 2 Box 29, Middlebury Center, PA 16935  
 Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

## ESTATE OF STEPHANIE OLSZEWSKI MOHRHOFF, DEC'D

Late of Menallen Township, Adams County, Pennsylvania  
 Executor: Chester S. Mohrhoff, 726 West Mountain Road, Sparta, NJ 07871  
 Attorney: Robert E. Campbell, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF ABBIE A. TRONE A/K/A ABBIE A. MURREN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Executor: Robert H. Trone, 124 Artillery Drive, Gettysburg, PA 17325  
 Attorney: Clayton R. Wilcox, Esquire, 234 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF VERA M. WOODWARD, DEC'D

Late of 30 Penn Street, Biglerville, Adams County, Pennsylvania  
 Executrix: E. Grace Hassler, 572 Kraiss Avenue, Chambersburg, PA 17201  
 Attorney: Gary E. Hartman, Esquire, Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

## THIRD PUBLICATION

## STATE OF JOAN L. BAILEY, DEC'D

Late of Franklin Township, Adams County, Pennsylvania  
 Executrix: Nancy B. Seetoo, c/o Donald L. Kornfield, 17 North Church Street, Waynesboro, PA 17268  
 Attorney: Donald L. Kornfield, 17 North Church Street, Waynesboro, PA 17268

## ESTATE OF GENEVIEVE SUSAN MECKLEY, DEC'D

Late of Latimore Township, Adams County, Pennsylvania  
 Executor: Carl O. Meckley, c/o Peter J. Mangan, Esq., 39 E. King Street, York, PA 17401  
 Attorney: Peter J. Mangan, 39 E. King Street, York, PA 17401

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-513 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of September, 1998, 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 ground situate on the east side of North Queen Street, in the Borough of Littlestown, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point on the inside line of the sidewalk on the East side of North Queen Street aforesaid at other lands now or formerly of Lorraine A. Mellott; thence by said lands and through a center line of the center wall of double dwelling (the southern portion of which double dwelling is on the lot hereby conveyed) North 60 degrees 18 minutes East, 184.5 feet to a point on the western side of a 20 feet alley; thence by said alley South 29 degrees 42 minutes East, 29.4 feet to a point at land now or formerly of P. Emory Weaver; thence by said lands South 60 degrees 18 minutes West, 184.5 feet to a point on the inside line of the sidewalk aforesaid; thence along the inside line of the sidewalk North 29 degrees 42 minutes West, 29.4 feet to a point, the place of BEGINNING.

BEING KNOWN AS 327 North Queen Street

Tax I.D. No. 5-51A

Title to said premises being vested in Roland W. Rode and Barbara E. Rode by Deed from Albert J. Stothard and Kristi K. Stothard, Dated 10/25/1991, Recorded in Deed Book 603, Page 756 10/25/1991.

SEIZED and taken into execution as the property of **Roland W. Rode Jr. and Barbara E. Rode** and to be sold by me  
Raymond W. Newman  
Sheriff

Sheriff's Office, Gettysburg, PA  
August 1, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 19, 1998, 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.

8/28, 9/4 & 11

## INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on July 29, 1998, for the purpose of obtaining a Certificate of Incorporation of a business Corporation organized under the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444, No. 177.

The name of the corporation is TOM KEEFER AUTO & TRUCK REPAIR, INC.

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

Tom Keefer Auto &  
Truck Repair, Inc  
2540 Baltimore Pike  
Gettysburg, PA 17325.

9/4

## 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 STEEL RECORDS, INC.

9/4

## 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, 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 PROGRAM FOR STRATEGIC PEST MANAGEMENT, INC.

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

9/4

## FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN a certificate was or will be filed under the Fictitious Name Act approved May 24, 1945, in the Office of the Secretary of the Commonwealth of Pennsylvania, setting forth that Michael D. and Nina M. Walter, 13 Pin Oak Drive, Gettysburg, PA 17325 are the only persons owning or interested in a business, the character of which is trucking and that the name, style and designation under which said business is and will be conducted is M&N TRUCKING and the location where said business is and will be located is 13 Pin Oak Drive, Gettysburg, PA 17325.

9/4

# Adams County Legal Journal

Vol. 40

September 11, 1998

No.16, pp. 89-94

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-365 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of October, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING for a point at the Southern side of Deer Drive and Lot No. 33; thence along Lot No. 33, South 06 degrees 52 minutes 38 seconds East, 110.00 feet to a point at Lot No. 28; thence along Lot No. 20, South 83 degrees 07 minutes 22 seconds West, 75.00 feet to a point at Lot No. 31; thence along Lot No. 31, North 06 degrees 52 minutes

38 seconds West, 110.00 feet to a point at the aforementioned Deer Drive; thence along Deer Drive, North 83 degrees 07 minutes 22 seconds East, 75.00 feet to the point and place of BEGINNING.

CONTAINING 6,256 square feet and identified as Lot No. 32 on a plan of lots entitled Phase I, Conewago Estates, recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 41 at page 46.

TAX PARCEL #9-133

TITLE TO SAID PREMISES IS VESTED IN Michael J. Bowman and Elaine M. Bowman, his wife by Deed from Pennsylvania Housing Finance Agency, dated 6/30/95, recorded 7/5/95, in Record Book 1050 page 344.

SEIZED and taken into execution as the property of **Michael J. Bowman & Elaine M. Bowman** and to be sold by me

Raymond W. Newman  
Sheriff

Sheriff's Office, Gettysburg, PA  
August 8, 1998.

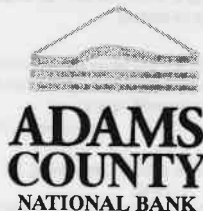
TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on November 2, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser 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.

9/11, 18 & 25

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-159 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of September, 1998, 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 piece or parcel of land situate lying and being in Oxford Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING for a point on the Southern edge of Drummer Drive at Lot No. 85 of the hereinafter referenced subdivision plan; thence along said Southern edge of Drummer Drive North eighty (80) degrees two (02) minutes twenty-eight (28) seconds East, one hundred and zero hundredths (100.00) feet to a point at Lot No. 87 of said plan; thence along same South nine (09) degrees fifty-seven (57) minutes thirty-two (32) seconds East, one hundred thirty-six and zero hundredths (136.00) feet to a point at Lot No. 76 of said plan; thence along same and Lot No. 77 South eighty-two (82) degrees one (01) minutes zero (00) seconds West, one hundred and six hundredths (100.06) feet to a point at Lot No. 85 of said plan; thence along same North nine (09) degrees fifty-seven (57) minutes thirty-two (32) seconds West, one hundred thirty-two and fifty-five hundredths (132.55) feet to a point on the Southern edge of Drummer Drive, the point and place of BEGINNING. CONTAINING 13,428 square feet.

The above described lot being designated as Lot No. 86 on the Subdivision Plan of "South Branch Estates", dated February 3, 1993, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Plat Book 63, page 93.

HAVING THEREON ERECTED A DWELLING KNOWN AS 245 DRUMMER DRIVE, NEW OXFORD, PA.

BEING THE SAME PREMISES WHICH J. A. Myers Building and Development, Inc., et al by deed dated 1/22/96 and recorded 2/6/96 in Adams County Deed Book 1143 Page 78 granted and conveyed unto Patrick E. Topper.

TO BE SOLD AS THE PROPERTY OF PATRICK E. TOPPER UNDER ADAMS COUNTY JUDGMENT NO. 98 S 159.

PARCEL: 1-106

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

Raymond W. Newman  
 Sheriff

Sheriff's Office, Gettysburg, PA  
 August 8, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 19, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/4, 11 & 18

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-757 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of September, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot of ground situate in Reading Township, Adams County, Pennsylvania, designated as LOT NUMBER 39 on subdivision plat of Hampton Plains, Inc., which plat is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 19 at Page 30.

UNDER AND SUBJECT, HOWEVER, to Declaration of Restrictions recorded in Miscellaneous Book 31 at Page 605, as amended on November 14, 1983, by instrument recorded in Miscellaneous Book 44 at Page 854, and again amended on June 24, 1985, by instrument recorded in Adams County Record Book 403 at Page 184.

BEING the same premises which Hampton Plains, Inc., a Pennsylvania Corporation, by Deed dated September 9, 1990 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book Volume 569, Page 948, sold and conveyed unto Michael L. Scott and Brenda S. Scott, his wife, as tenants of an estate by entirety.

SEIZED and taken into execution as the property of Michael L. & Brenda S. Scott and to be sold by me

Raymond W. Newman  
 Sheriff

Sheriff's Office, Gettysburg, PA  
 July 11, 1998.

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

Sheriff in his office on October 19, 1998, 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.

8/28, 9/4 & 11

NOTICE

The Pennsylvania Bar Association, a 26,000 member statewide association with 50 full-time staff and an annual budget of \$6,600,000 seeks an Executive Director. The duties of this position include providing strong leadership to staff; working with governance to develop programs and goals for the Association; developing non-dues sources of revenue; communicating effectively with the members, legal community and general public; supervising the budgetary process; and assuring that the Association provides the best possible services and benefits to members.

The individual must have a minimum of a Bachelor's degree, at least five years experience in senior-level management in an organization of comparable scope and purpose, strong leadership ability and excellent communications skills. The Association, which is headquartered in Harrisburg, PA, offers an excellent fringe benefit package. Please send a cover letter, resume and salary requirements to: Executive Director, Pennsylvania Bar Association, P.O. Box 186, Harrisburg, PA 17108.

The Association is an equal opportunity employer and has a strong commitment to gender, racial, cultural, and ethnic diversity.

9/11

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on August 19, 1998.

The name of the corporation is KOSTA DINO'S PIZZA & SUBS, INC.

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

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

9/11

## TAYLOR, ET UX. VS. ELIAS, ET AL.

1. An entry of summary judgment may be granted only in cases where the right is clear and free from doubt and in ruling on such a motion, the record must be viewed in the light most favorable to the non-moving party.
2. Conclusions of law are not within the permissible scope of requests for admissions; requests must call for matters of fact rather than legal opinions and conclusions.
3. Negligence is a question of law and therefore not within the scope of what may be admitted through a request for admission.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 96-S-493, DANNY E. TAYLOR AND SHELLEY TAYLOR VS. HILARIO ELIAS AND ELIDIO AGUILAR.

James R. Carroll, Esq., for Plaintiffs  
George B. Faller, Esq., for Defendant Elias  
William A. Addams, Esq., for Defendant Aguilar

### OPINION ON PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Kuhn, J., October 28, 1996.

On June 5, 1996, Plaintiff, Danny E. Taylor filed a Complaint against Defendants, Hilario Elias and Elidio Aguilar. On August 9, 1996, Plaintiff filed an Amended Complaint adding his wife, Shelley Taylor, as a Plaintiff. Defendant has filed a Motion for Partial Summary Judgment against Defendant Elidio Aguilar. For the following reasons, the Motion is denied.

#### STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

On January 29, 1996, Danny Taylor was driving his car northbound on Route 34 in Huntington Township when a car driven by Elidio Aguilar ("Aguilar") struck him. Aguilar was driving a car, owned by Hilario Elias, eastbound on York Springs-Idaville Road when he allegedly failed to stop at a stop sign at the Route 34 intersection. After hitting Danny Taylor's car, Aguilar supposedly fled the scene. Danny Taylor allegedly suffered severe bodily injuries as a result of the crash.

On approximately December 11, 1996, Plaintiffs' served Aguilar with Requests for Admissions. Aguilar's attorney filed an answer to the Request on December 19, 1996, claiming that he could neither admit nor deny the admissions because he was unable to communicate with Aguilar. Plaintiffs' then filed a Motion for Partial Summary Judgment claiming that the Answer was in effect not an Answer because it was not verified by Aguilar and the admissions were therefore deemed admitted.

## LEGAL DISCUSSION

Summary judgment shall be entered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Allstate Insurance Co. v. McFadden*, 407 Pa. Super. 537, 540, 595 A.2d 1277, 1278 (1991); *Alloc. den.* 602 A.2d 855 (1991) (citations omitted). Any party may move for judgment in whole or in part. Pa. R.C.P.1035.2, 42 Pa. C.S.A. An entry of summary judgment may be granted only in cases where the right is clear and free from doubt. In ruling on such a motion, the record must be viewed in the light most favorable to the non-moving party. *Demmler v. Smithkline Beecham Corp.*, 448 Pa. Super. 425, 671 A.2d 1151, 1153 (1996).

Plaintiffs argue that Aguilar's Answer to the Request for Admissions was unacceptable under Pa.R.C.P. 4014 because he did not verify it personally. Rule 4014(b) states in pertinent part that:

[t]he matter is admitted unless, within thirty days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission an answer verified by the party or an objection, signed by the party or his attorney...

Plaintiffs' request for admissions were set forth as follows:

1. That prior to January 29, 1996, Defendant Hilario Elias permitted you to **operate a 1984 Buick Skylark** owned and registered to **Defendant Hilario Elias** and bearing Pennsylvania license plate number BAF-1008.
2. That on January 29, 1996, Defendant Hilario Elias permitted you to operate Defendant Hilario Elias' 1984 Buick Skylark.
3. That subsequent to January 29, 1996, Defendant Hilario Elias has allowed you to operate Defendant Hilario Elias' 1984 Buick Skylark.
4. That on January 29, 1996, at approximately 7:18 A.M., you were driving Defendant Hilario Elias' 1984 Buick Skylark with Defendant Hilario Elias' permission, and negligently collided with a vehicle driven by Plaintiff, Danny E. Taylor.



5. That your negligent operation of Defendant Hilario Elias' 1984 Buick Skylark was the sole cause of the collision.

6. That you fled the scene of the collision.

(Exhibit A, Plt. Motion for Partial Summary Judg.)

The purpose of permitting requests for admissions under Pa.R.C.P.4014 is to "clarify and simplify the issues raised in prior pleadings in order to expedite the litigation process." *Christian v. Pa. Financial Responsibility Assigned Claims Plan*, 454 Pa. Super. 512, 521, 686 A.2d 1, 5 (1996) (citations omitted). Conclusions of law are not within the permissible scope of requests for admissions; requests must call for matters of fact rather than legal opinions and conclusions. *Id.*

Numbers 4 and 5 of Plaintiffs' Request for Admissions deal with Aguilar's negligence. Negligence is a question of law and is therefore not within the scope of what may be admitted through a request for admission. In the case at hand, it is only the admission of negligence in these paragraphs that would have permitted a finding of summary judgement in Plaintiffs' favor. The remaining paragraphs deal with the issues of permission and of Aguilar's flight from the scene. Even taking these paragraphs as having been admitted (which we need not conclude for purposes of this motion), they do not provide sufficient evidence of negligence to permit a grant of summary judgment. Therefore, the attached order is issued.

#### ORDER

AND NOW, this 28th day of October 1997, Plaintiffs' Motion for Partial Summary Judgement is hereby denied.

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#### SITES REALTY, INC. VS. GETTYSBURG AREA SCHOOL DISTRICT

1. An entry of summary judgment may be granted only if cases where the right is clear and free from doubt and, in ruling on such a motion, the record must be viewed in the light most favorable to the non-moving party.

2. When construing agreements involving clear and unambiguous terms, the Court need only examine the writing itself to give effect to the parties' understanding.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-622, SITES REALTY, INC. VS. GETTYSBURG AREA SCHOOL DISTRICT.

Kevin Robinson, Esq., for Plaintiff

Clayton R. Wilcox, Esq., for Defendant

## OPINION ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Kuhn, J., October 31, 1997.

Sites Realty, Inc. ("Sites") filed a Complaint against Defendant, Gettysburg Area School District which was dismissed by this Court on September 28, 1995. Plaintiff was given 20 days to file an amended complaint which it did on October 20, 1995. Defendant served Plaintiff with interrogatories and requests for production of documents which Plaintiff failed to timely answer. On September 9, 1996, after Defendant filed a Motion for Sanctions, Plaintiff answered. By Court Order dated September 16, 1996, Plaintiff was given 20 days to supplement the interrogatories and request for production of documents. The Order specifically stated that any responses or documents received after that date would be inadmissible at trial. Plaintiff did not supplement and Defendant proceeded to file a Motion for Summary Judgment. For the following reasons, the Motion is granted.

### STATEMENT OF FACTS

This matter arises out of a contract for the sale of real estate. Plaintiff is a licensed real estate broker and was hired by Defendant to sell Meade School. The agency contract included an addendum which listed four potential buyers. It was agreed by the parties that if one of the four parties purchased the property, Plaintiff would not receive a commission but would be reimbursed for "verifiable marketing costs not to exceed \$6,000.00." (Exhibit A, Plt. Complaint). The property was sold to one of the listed purchasers and the ensuing case was filed.

### LEGAL DISCUSSION

Summary judgment shall be entered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Allstate Insurance Co. v. McFadden*, 407 Pa. Super. 537, 540, 595 A.2d 1277,1278 (1991); *Alloc. den.* 602 A.2d 855 (1991) (citations omitted). An entry of summary judgment may be granted only in cases where the right is clear and free from doubt. In ruling on such a motion, the record must be viewed in the light most favorable to the non-moving party. *Demmler v. Smithkline Beecham Corp.*, 448 Pa. Super.425, 671 A.2d 1151,1153 (1996).

Defendant argues that Plaintiff's failure to supplement the interrogatories and request for production of documents justifies an award

of summary judgment because the record is not sufficient to show “verifiable marketing costs.” Plaintiff counters that it is not clear what constitutes “verifiable marketing costs” and that the decision is therefore one for the trier of fact.

The Superior Court has summarized general contract principles 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 language 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 parol 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.

*Harrity v. Medical College of Pa. Hosp.*, 439 Pa. Super. 10, 20-21, 653 A.2d 5, 11 (1994) (citations omitted).

In the case at hand, the agreement entered into between the parties listed four potential buyers and stated, “if the property is sold to one of these entities, that Gettysburg Area School District will reimburse Sites Realty, Inc. for verifiable marketing costs not to exceed \$6,000.00.” (Exhibit A, Plt. Complaint). The term “verifiable” has a plain meaning and therefore is not ambiguous. Webster’s defines verifiable as that which is “capable of being verified.” Merriam Webster’s Collegiate Dictionary, 10th ed., 1312 (1993). The definition of verify is “to confirm or substantiate in law by oath; or to establish the truth, accuracy, or reality of.” *Id.* The term “cost” also has a plain meaning. It is “the amount or equivalent paid or charged for something” or “the outlay or expenditure.” *Id.* Thus, the corporate plaintiff was required by the contract to substantiate sums it paid or was charged to market the real estate.

Thus, Plaintiff had a duty to provide some tangible evidence substantiating its general claims that it incurred costs up to \$6,000.00. Instead, in Plaintiff’s answer to the interrogatories and request for documents, only an approximation of time spent on the sale and marketing of the real estate was provided. (Exhibit B, Def. Motion for

Summary Judg.). In fact, Plaintiff provided no verifiable proof of marketing costs.

For example, in response to interrogatory number 7, Mr. Sites, Plaintiff's broker-owner, made a general allegation of he had dedicated a "minimum" of 50 hours at \$120.00 per hour" to the sale and marketing of the real estate. (Exhibit B, Def. Motion for Summary Judg.). However, no proof was provided to substantiate this claim. Additionally, by letter dated January 25, 1996, Mr. Montoya, one of Plaintiff's agents, claimed to have "placed ads in numerous publications." (Exhibit B, Def. Motion for Summary Judg.). However, Plaintiff refused to "pay someone to go through, piece by piece, all of the advertising bills." (Exhibit B, Def. Motion for Summary Judg.). Without providing proof of billing for these advertisements, Plaintiff has failed to verify its claims. Mr. Montoya alleged expenses for preparing a brochure on the property, a market valuation report, for phone communications and property showings. Again, without some proof to substantiate these broad claims, they may not be considered verified.

Therefore, it is this Court's determination that Plaintiff's general assertions are insufficient to substantiate its claim of having costs up to \$6,000.00. Because any attempt to supplement the interrogatories and request for documents at this point would be inadmissible at trial, there is no genuine issue of material fact and Defendant is entitled to judgment as a matter of law. Thus, the attached Order is issued.

#### ORDER

AND NOW, this 31st day of October 1997, Defendant's Motion for Summary Judgement is hereby granted.

## 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 JOHN R. BLOOM, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: J. Larry Hawk, 1938 White

Hall Road, Littlestown, PA 17340

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

## ESTATE OF WALTER A WOLF, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Kenneth Kemper, 318

Main Street, York Springs, PA

17372; Bradley W. Wolf, 7140 Old

Harrisburg Road, York Springs, PA

17372

Attorney: John C. Zepp, III, Esquire,

P.O. Box 204, 8438 Carlisle Pike,

York Springs, PA 17372

## SECOND PUBLICATION

## ESTATE OF PATRICIA H. DAVIS, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Patricia Harloe DeGroat

Attorney: Douglas H. Gent, Esquire,

Menges, Gent & McLaughlin, 1157,

Eichelberger Street, Hanover, PA

17331

## ESTATE OF WINIFRED B. HOLTZ-APPLE, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Peter Housman, a/k/a Robert

L. Housman, P.O. Box 3296,

Gettysburg, PA 17325

Attorney: Teeter, Teeter, Teeter, 108

West Middle Street, Gettysburg, PA

17325

## ESTATE OF ROBERTA R. MYERS a/k/a

## ROBERTA RUBY MAYERS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Eugene R. Myers

Attorney: Douglas H. Gent, Esquire,

Menges, Gent & McLaughlin, 1157,

Eichelberger Street, Hanover, PA

17331

## ESTATE OF DONALD G. OYLER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executors: Mary L. Oyler, 225 Old

Mill Road, Gettysburg, PA 17325;

Ralph D. Oyler, 31 South Washing-

ton Street, Gettysburg, PA 17325

Attorney: Ralph D. Oyler, 31 South

Washington Street, Gettysburg, PA

17325

## ESTATE OF GLADYS O. SPANGLER, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executor: David E. Spangler, Jr., 49

Rockland Road, Westminster, MD

21158

Attorney: Teeter, Teeter, Teeter, 108

West Middle Street, Gettysburg, PA

17325

## THIRD PUBLICATION

## ESTATE OF BETTY ANN ALEXANDER, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executor: Hugh L. Alexander, 4330

Fairfield Road, Fairfield, PA 17320

Attorney: John R. White, Esquire,

Campbell & White, 122 Baltimore

Street, Gettysburg, PA 17325

## ESTATE OF JOHN I. KENNEDY, JR., DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Administratrix: Melva L. Kennedy, 693

Grant Drive, Gettysburg, PA 17325

Attorney: Ronald J. Hagarman, Es-

quire, 110 Baltimore Street,

Gettysburg, PA 17325

## ESTATE OF RAY J. KITZMILLER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executors: Thomas L. Kitzmiller, 33

Ford Avenue, Wharton, NJ 07885;

Richard L. Kitzmiller, 6316 Flamingo

Drive, Apollo Beach, FL 33572;

Kenneth R. Kitzmiller, RR 2 Box 29,

Middlebury Center, PA 16935

Attorney: Bulleit, Schultz & Thrasher,

16 Lincoln Square, Gettysburg, PA

17325

## ESTATE OF STEPHANIE OLSZEWSKI MOHRHOFF, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executor: Chester S. Mohrhoff, 726

West Mountain Road, Sparta, NJ

07871

Attorney: Robert E. Campbell,

Campbell & White, 122 Baltimore

Street, Gettysburg, PA 17325

## ESTATE OF ABBIE A. TRONE A/K/A ABBIE A. MURREN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Robert H. Trone, 124 Artillery

Drive, Gettysburg, PA 17325

Attorney: Clayton R. Wilcox, Esquire,

234 Baltimore Street, Gettysburg,

PA 17325

## ESTATE OF VERA M. WOODWARD, DEC'D

Late of 30 Penn Street, Biglerville, Adams County, Pennsylvania

Executrix: E. Grace Hassler, 572 Kraiss

Avenue, Chambersburg, PA 17201

Attorney: Gary E. Hartman, Esquire,

Hartman & Yannetti, 126 Baltimore

Street, Gettysburg, PA 17325

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-513 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of September, 1998, 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 ground situate on the east side of North Queen Street, in the Borough of Littlestown, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point on the inside line of the sidewalk on the East side of North Queen Street aforesaid at other lands now or formerly of Lorraine A. Mellott; thence by said lands and through a center line of the center wall of double dwelling (the southern portion of which double dwelling is on the lot hereby conveyed) North 60 degrees 18 minutes East, 184.5 feet to a point on the western side of a 20 feet alley; thence by said alley South 29 degrees 42 minutes East, 29.4 feet to a point at land now or formerly of P. Emory Weaver; thence by said lands South 60 degrees 18 minutes West, 184.5 feet to a point on the inside line of the sidewalk aforesaid; thence along the inside line of the sidewalk North 29 degrees 42 minutes West, 29.4 feet to a point, the place of BEGINNING.

BEING KNOWN AS 327 North Queen Street

Tax I.D. No. 5-51A

Title to said premises being vested in Roland W. Rode and Barbara E. Rode by Deed from Albert J. Stothard and Kristi K. Stothard, Dated 10/25/1991, Recorded in Deed Book 603, Page 756 10/25/1991.

SEIZED and taken into execution as the property of **Roland W. Rode Jr. and Barbara E. Rode** and to be sold by me

Raymond W. Newman  
Sheriff

Sheriff's Office, Gettysburg, PA  
August 1, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 19, 1998, 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.

8/28, 9/4 & 11

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-529 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of October, 1998, 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 THOSE 3 tracts or Lots of ground situate in Butler Township, Adams County, Pennsylvania, bounded and described as follows:

Lot No. 1: BEGINNING at a point in the center of Pennsylvania Route 394; thence through an iron pin set 23 feet from said point and by lands of Earl C. Dunlap and wife North 21 degrees 37 minutes East, 275 feet to an iron pin; thence by same South 70 degrees East, 100 feet to a stake; thence by lands of same, recently conveyed to Harold E. Cluck, South 21 degrees 37 minutes West, 275 feet to a point in the center of said Pennsylvania Route 394; thence in said Pennsylvania Route 394 North 70 degrees West, 100 feet to the place of BEGINNING. CONTAINING 100.98 perches. Taken from a draft of survey dated December 2, 1961, prepared by Wilbur V. Redding, R.S.

Lot No. 2: BEGINNING at a point in the center of State Highway between Biglerville and Table Rock; thence through an iron pin set near the Northern side of said State Highway 23 feet from said place of beginning North 21 degrees 37 minutes East, 275 feet to a stake at lands of Earl C. Dunlap, thence by said lands South 70 degrees East, 88.5 feet to a point at land of Guy W. Ketterman; thence by said land of Guy W. Ketterman South 21 degrees 37 minutes West, 275 feet to a point in the center of the aforesaid State Highway; thence in said State Highway North 70 degrees West, 88.5 feet to the place of BEGINNING.

The above description was taken in part from a draft of a survey made on December 2, 1961 by Wilbur V. Redding, R.S.

Lot No. 3: BEGINNING at a P.K. nail located in Pennsylvania Route 394 at the Southwest corner i; of land of Charles Strausbaugh and wife; thence in said Pennsylvania Route 394, North 70 degrees West 98.7 feet to a railroad spike in road; thence by land of Earl C. Dunlap and wife, and running through a reference iron pin located 30 feet from the beginning of this line, North 31 degrees 6 minutes 10 seconds East 590.79 feet to a 20-inch white oak; thence by land of Joseph Sunbury, North 65 degrees 7 minutes 25 seconds East 368.99 feet to a stone at a post; thence South 27 degrees 39 minutes 40 seconds East 34.66 feet to an iron pin; thence by lands of Howard C. Shreve, and Charles W. Anderson, South 21 degrees 42 minutes West 385.88 feet to an existing pipe; thence by land of Robert Miller, North 68 degrees 13 minutes 55 seconds West 108.5 feet to an existing pipe; thence by land of same, South 21 degrees 46 minutes 5 seconds West 161.46 feet to an existing pipe; thence by land of Charles Strausbaugh and wife, North 69 degrees 21 minutes 10 seconds West 169.97 feet to a stake; thence by land of same, South 21 degrees 31 minutes 30 seconds West 275 feet to a P.K. nail located in Pennsylvania Route 394, the place of BEGINNING.

CONTAINING 3.132 acres.

The above description was taken from

a draft of survey made by Boyer-Price Surveys, Inc., dated August 20, 1974.

Tax Parcel# F-8-55

TITLE TO SAID PREMISES IS VESTED IN Douglas I. Whitworth and Cynthia K. Dudash, as tenants in common by Deed from Charles W. Strausbaugh and Alverda A. Strausbaugh, his wife dated 7/29/93 recorded 7/30/93 in Deed Book 759 Page 264.

SEIZED and taken into execution as the property of **Douglas I. Whitworth and Cynthia K. Dudash** and to be sold by me

Raymond W. Newman  
Sheriff

Sheriff's Office, Gettysburg, PA  
August 1, 1998.

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 November 2, 1998, 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.

9/11, 18 & 25

## INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania for the purpose 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 HEARTLAND ANTIQUES & GIFTS, INC.

9/11

## INCORPORATION NOTICE

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

Miller & Shultis  
Solicitors

9/11

## INCORPORATION NOTICE

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

Miller & Shultis  
Solicitors

9/11

# Adams County Legal Journal

Vol. 40

September 18, 1998

No.17, pp. 95-100

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-365 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of October, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING for a point at the Southern side of Deer Drive and Lot No. 33; thence along Lot No. 33, South 06 degrees 52 minutes 38 seconds East, 110.00 feet to a point at Lot No. 28; thence along Lot No. 20, South 83 degrees 07 minutes 22 seconds West, 75.00 feet to a point at Lot No. 31; thence along Lot No. 31, North 06 degrees 52 minutes 38 seconds West, 110.00 feet to a point at the aforementioned Deer Drive; thence along Deer Drive, North 83 degrees 07 minutes 22 seconds East, 75.00 feet to the point and place of BEGINNING.

CONTAINING 6,256 square feet and identified as Lot No. 32 on a plan of lots entitled Phase I, Conewago Estates, recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 41 at page 46.

TAX PARCEL #9-133

TITLE TO SAID PREMISES IS VESTED IN Michael J. Bowman and Elaine M. Bowman, his wife by Deed from Pennsylvania Housing Finance Agency, dated 6/30/95, recorded 7/5/95, in Record Book 1050 page 344.

SEIZED and taken into execution as the property of **Michael J. Bowman & Elaine M. Bowman** and to be sold by me

Raymond W. Newman  
Sheriff

Sheriff's Office, Gettysburg, PA  
August 8, 1998.

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 November 2, 1998, 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.

9/11, 18 & 25

## FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that an application to register the business name HIWASSEE ACRES, LLC D/B/A ADAMS COUNTY WINERY under the Fictitious Name Act has been filed with the Department of State of Pennsylvania. The principal place of business and the main office is located at 251 Peach Tree Road, Orrtanna, PA 17353. John G. Kramb and Katherine M. Bigler of 251 Peach Tree Road, Orrtanna, PA 17353 are the individual parties to this registration.

9/18

IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION LAW  
NO. 98-S-744  
Mortgage Foreclosure

PNC BANK, NATIONAL ASSOCIATION, Plaintiff,

vs.

KARYL M. SPEELMAN, Defendant.

## NOTICE

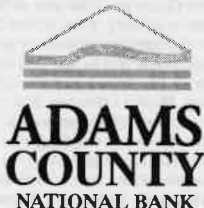
You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses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

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

Adams County Court House  
Court Administrator's Office  
117 Baltimore Street  
Gettysburg, PA 17325  
(717) 337-9846

9/18

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Our promise to you every day.



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## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-159 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of September, 1998, 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 piece or parcel of land situate lying and being in Oxford Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING for a point on the Southern edge of Drummer Drive at Lot No. 85 of the hereinafter referenced subdivision plan; thence along said Southern edge of Drummer Drive North eighty (80) degrees two (02) minutes twenty-eight (28) seconds East, one hundred and zero hundredths (100.00) feet to a point at Lot No. 87 of said plan; thence along same South nine (09) degrees fifty-seven (57) minutes thirty-two (32) seconds East, one hundred thirty-six and zero hundredths (136.00) feet to a point at Lot No. 76 of said plan; thence along same and Lot No. 77 South eighty-two (82) degrees one (01) minutes zero (00) seconds West, one hundred and six hundredths (100.06) feet to a point at Lot No. 85 of said plan; thence along same North nine (09) degrees fifty-seven (57) minutes thirty-two (32) seconds West, one hundred thirty-two and fifty-five hundredths (132.55) feet to a point on the Southern edge of Drummer Drive, the point and place of BEGINNING. CONTAINING 13,428 square feet.

The above described lot being designated as Lot No. 86 on the Subdivision Plan of "South Branch Estates", dated February 3, 1993, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Plat Book 63, page 93.

HAVING THEREON ERECTED A DWELLING KNOWN AS 245 DRUMMER DRIVE, NEW OXFORD, PA.

BEING THE SAME PREMISES WHICH J. A. Myers Building and Development, Inc., et al by deed dated 1/22/96 and recorded 2/6/96 in Adams County Deed Book 1143 Page 78 granted and conveyed unto Patrick E. Topper.

TO BE SOLD AS THE PROPERTY OF PATRICK E. TOPPER UNDER ADAMS COUNTY JUDGMENT NO. 98 S 159.

PARCEL: 1-106

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

Raymond W. Newman  
 Sheriff

Sheriff's Office, Gettysburg, PA  
 August 8, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 19, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.  
 9/4, 11 & 18

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-417 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of October, 1998, 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 Menallen Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a 5/8 inch rebar to be set at the northeastern corner of this lot where it intersects with the northwestern corner of land now or formerly of M. Lisa Bard; thence running by land now or formerly of M. Lisa Bard, South 21 degrees 00 minutes 00 seconds East, 105.17 feet to a 2 inch pipe found on line of land now or formerly of Clinton and Charlene Atha; thence running by land now or formerly of Clinton and Charlene Atha, through a 2 inch pipe found in a curb which is set back 73.41 feet from the end of this course and crossing the Center Mills Road, South 73 degrees 51 minutes 43 seconds West, 204.69 feet to a 5/8 inch rebar to be set along the Opossum Creek and on line of land now or formerly of the Aspers Community Fire Company; thence running along Opossum Creek and by the land now or formerly of the Aspers Community Fire Company, North 11 degrees 00 minutes 00 seconds West, 99.11 feet to a drill rod to be set; thence re-crossing the Center Mills Road and running in and along the curb and sidewalk situate on the South side of Aspers Road - North, North 72 degrees 00 minutes 00 seconds East, 187.00 feet to a

5/8 inch rebar to be set at the corner of land now or formerly of M. Lisa Bard, the point and place of BEGINNING. CONTAINING .457 Acres more or less.

The description was taken from a draft of survey of Robert A. Sharrah, R.S. dated July 19, 1995.

TAX PARCEL NUMBER: 1-26

TITLE TO SAID PREMISES IS VESTED IN Jose S. Molina and Isidro V. Lopez by Deed from Oscar E. Centeno and Maribel Centeno by her attorney-in-fact, Berlid Plaza, pursuant to a Power of Attorney dated July 18, 1995 and intended to be recorded; dated 7/21/95 recorded 7/24/95 in Record Book 1057 Page 299.

SEIZED and taken into execution as the property of **Jose S. Molina and Isidro V. Lopez** and to be sold by me

Raymond W. Newman  
 Sheriff

Sheriff's Office, Gettysburg, PA  
 August 1, 1998.

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 November 2, 1998, 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.  
 9/18, 25 & 10/2

## CORPORATE DISSOLUTION

NOTICE IS HEREBY GIVEN that the voluntary dissolution of JOHANNES BAKERY & COFFEE CO., INC., a Pennsylvania corporation with its registered office at 69 E. Middle Street, Gettysburg, PA 17325, has been approved by the Board of Directors and shareholders of the corporation. Said corporation is now engaged in winding up its affairs so that the existence of the corporation shall cease upon the filing of the Articles of Dissolution in the Department of State of the Commonwealth of Pennsylvania.

Mary Esther Boyd  
 69 East Middle Street  
 Gettysburg, PA 17325

9/18



## GIARDULLO, ET AL. VS. REILLY

1. Preliminary Objections, the end result of which would be dismissal of a cause of action, should be sustained only in cases that are clear and free from doubt.

2. The party asserting laches must demonstrate first, a delay arising from the other's failure to exercise diligence in prosecuting his claim, and, second, prejudice resulting from such delay.

3. The prejudice required for laches may be established where witnesses die or become unavailable, records are lost or destroyed, or one changes his position due to the anticipation that a party will not pursue a claim.

4. Unless all indispensable parties are made parties to an action, a court is powerless to grant relief.

5. A party is indispensable when his or her rights are so connected with the claims of the litigants that no decrees can be made without impairing those rights.

6. Attorney's fees are generally not recoverable from an adverse party unless there is express statutory authorization, a clear agreement of the parties, or some other established exception.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 96-S-884, SAMUEL AND DEBRA GIARDULLO, KENNETH AND LESLIE BAKER, ROGER AND WANDA BAKER, MARTY AND TIM HOFFMIER, REX AND CATHY TOWERS, KEVIN AND TAMMY MEEKER, MARLIN AND LINDA YOHN VS. SACHIKO REILLY.

Ron Turo, Esq., for Plaintiffs

Robert E. Campbell, Esq., for Defendant

### OPINION ON DEFENDANT'S PRELIMINARY OBJECTIONS

Kuhn, J., November 5, 1997.

On October 15, 1996, Plaintiffs filed a Complaint against Defendant, Sachiko Reilly. Defendant filed Preliminary Objections on November 6, 1996, which are before this Court for disposition.

### STATEMENT OF FACTS

Plaintiffs are property owners in Green-Field Estates subdivision located in Latimore Township. A subdivision plan was filed in the Office of the Recorder of Deeds of Adams County on January 3, 1980 and designated an area of 3.309 acres as an "Open-Space Recreation Area." Plan restrictions were recorded on January 9, 1980 and created easements for the property owners as ingress and egress the Open-Space Recreation Area.

It is alleged that on July 7, 1992, High Vista Estates, Inc., the developer of Green-Field Estates, sold the Open-Space Recreation Area to Defendant. It is further alleged that Defendant made attempts to have Plaintiffs give up their easement rights and failed to maintain the property as an Open-Space Recreation Area. Plaintiffs evidently

offered to form a Homeowners Association to purchase and maintain the Open-Space Recreation Area.

Plaintiffs seek to have Defendant maintain the subject real estate as an Open-Space Recreation Area.

### LEGAL DISCUSSION

Defendant raises four arguments in her Preliminary Objections: (1) that Plaintiffs' Complaint should be dismissed pursuant to Pa.R.C.P. 1509(b) (dealing with laches); (2) that Plaintiffs' Complaint should be dismissed for nonjoinder of necessary parties pursuant to Pa.R.C.P. 1028(a)(5); (3) that Plaintiffs' claim for attorneys fees should be stricken for failure to conform to law or rule of court pursuant to Pa.R.C.P. 1028(a)(2); and (4) that Plaintiffs' attachments to the Complaint should be stricken for insufficient specificity pursuant to Pa.R.C.P. 1028(a)(3).

Preliminary Objections, the end result of which would be dismissal of a cause of action, should be sustained only in cases that are clear and free from doubt. *League of Women Voters of PA v. Commonwealth*, \_\_\_ Pa. Commw. \_\_\_, 692 A.2d 263, 267 (1997) (citations omitted).

#### I. Pa.R.C.P. 1509(b) - Laches

We will first address Defendant's equitable defense of laches. This Court summarized the law of laches in *Bowman v. Smith et ux.*, 30 Ad.Co.L.J. 277, 279-80 (1988), as follows:

Laches is an affirmative defense and the burden of proof is upon the pleading party. *Harrington v. Commonwealth, Dept. of State*, 58 Pa. Commw. 137, 140, 427 A.2d 719, 721 (1981). The party asserting laches must demonstrate first, a delay arising from the other's failure to exercise diligence in prosecuting his claim, and, second, prejudice resulting from such delay. *Snyder v. Queen Cutetry Co.*, 357 Pa. Super. 456, 461, 516 A.2d 71, 74 (1986). Prejudice may be established where witnesses die or become unavailable, records are lost or destroyed, or one changes his position due to the anticipation that a party will not pursue a claim. *Del-Val Electrical Inspection Service, Inc. v. Stroudsburg-East Stroudsburg Zoning & Codes Office*, 100 Pa. Commw. 429, 433, 515 A.2d 75, 76 (1986)....

The subdivision plan and its restrictions were filed in early 1980. Defendant argues that because this suit was not brought until 1996, laches applies. We find this argument to be without merit.

Plaintiffs had no cause to bring suit when High Vista Estates, Inc. was still in ownership of the property because they would have had no reason to think that the Open-Space Recreation Area would be developed.

It was not until Defendant purchased the property and attempted to restrict the easements and develop the land that Plaintiffs had motive to bring suit. Therefore, because it has been alleged that Defendant did

not purchase the real estate until 1992 and did not make overtures to develop the parcel until after that date, we do not believe bringing suit in 1996 was prejudicial to Defendant as to warrant dismissal of the case on the grounds of laches.

Additionally, Defendant seems to be claiming that because the area was not used as a recreational area before she purchased the property that Plaintiffs waived their rights to use the property as such now. Defendant alleges that the recreational area is overgrown; however, it is not clear that this necessarily means it cannot be used for recreation. Simply because the area has not been developed into a park like facility previously, does not mean Plaintiffs' have waived their rights to build recreational facilities at a later time. Furthermore, we cannot conclude at this time that recreational use is so narrowly restricted that it limits itself to conventional forms of recreation. For example, could not walking among trees and shrubs or bird watching be considered a recreational activity consistent with this three acre parcel?

## II. Pa.R.C.P. 1028(a)(5) - Nonjoinder of Indispensable Parties

Defendant's second argument is that Plaintiffs' Complaint should be dismissed for nonjoinder of indispensable parties pursuant to Pa.R.C.P. 1028(a)(5). Defendant argues three parties should have been joined in the action by Plaintiffs: (1) the remaining Green-Field Estates subdivision homeowners, (2) High Vista Estates, Inc., and (3) the Homeowners Association.

Superior Court has summarized the law relating to indispensable parties as follows:

The general law regarding joinder of indispensable parties is well established in Pennsylvania. Our Supreme Court explained:

It is true of course, that unless all indispensable parties are made parties to an action, a court is powerless to grant relief. Thus, the absence of such a party goes absolutely to the court's jurisdiction. A party is indispensable when his or her rights are so connected with the claims of the litigants that no decrees can be made without impairing those rights.

*Sprague v. Casey*, 520 Pa. 38, 48, 550 A.2d 184, 189 (1988) (citations omitted). To determine whether a party is indispensable, a court must consider:

1. Do absent parties have a right or interest related to the claim?
2. If so, what is the nature of that right or interest?
3. Is that right or interest essential to the merits of the issue?
4. Can justice be afforded without violating the due process rights of absent parties?

*Mechanicsburg Area School District v. Kline*, 494 Pa. 476, 481, 431 A.2d 953, 956 (1981).

*Campanaro v. Pennsylvania Elec. Co.*, 440 Pa. Super. 519, 521-22, 656 A.2d 491, 493 (1995), Alloc. den. 666 A.2d 1049.

It is this Court's determination that the remaining homeowners in Green-Field Estates subdivision are indispensable parties. It is clear that the homeowners who have not been joined have an interest in the outcome of this case because their access to and interests in the Open-Space Recreation Area will be affected. If Defendant is meritorious in her claim, the homeowners within Green-Field Estates subdivision may not be permitted to use the Open-Space Recreation Area. Therefore, Plaintiffs are given leave to amend their Complaint to join all homeowners within Green-Field Estates subdivision.

Defendant has also argued that High Vista Estates, Inc. must be joined as a defendant in the action because it constructed the subdivision, failed to build recreational facilities, and never maintained the Open-Space Recreation Area.

We do not believe that High Vista Estates, Inc. is an indispensable party to this action. High Vista Estates, Inc. has sold its interest in the land in question to Defendant. At this point, they have no interest in the outcome of this litigation and do not have rights that will be affected by the decision.

Defendant has argued that a Homeowners Association for Green-Field Estates subdivision must be created and joined in this lawsuit. We do not agree.

Defendant contends that Plaintiffs have *demand*ed the property be transferred to the "homeowners' association which will be made up of homeowners from the subdivision." (Def. Preliminary Objections ¶ 17). However, Plaintiffs' Complaint states in paragraph 16 that "[t]he Plaintiffs have offered to purchase the property and form a Home Owner's Association which would guarantee that the open space recreation area be continued and maintained in perpetuity for the benefit and use of all lot owners of the subdivision." (Plts. Complaint ¶ 16, *emphasis added*). The Complaint goes on to ask this Court to "order Defendant to maintain the said open space recreation area for the benefit of each and every Plaintiff and other holders of lots in the said subdivision, to order Defendant to not restrict, in any way, the Plaintiffs access to the property, to restrict the ability of the Defendant to transfer said *property unless such transfer is to a Home Owner's Association made up of homeowners from the subdivision...*" (Plts. Complaint, *emphasis added*).

Whether or not a Homeowners Association will ever need to be created will depend on the outcome of this suit. Additionally, because the Homeowners Association would be made up of the homeowners within Green-Field Estates subdivision any future rights will be adequately protected by the homeowners themselves. Therefore, it is this Court's determination that at this point in the proceedings, a Homeowners Association need not be formed nor joined as a party.

### III. Pa.R.C.P. 1028(a)(2) - Attorneys Fees

Defendant has also argued that Plaintiffs' claim for attorneys fees should be stricken for failure to conform to law or rule of court pursuant

to Pa.R.C.P. 1028(a)(2). Attorneys fees are generally not recoverable from an adverse party unless there is express statutory authorization, a clear agreement of the parties, or some other established exception. *Snyder v. Snyder*, 533 Pa. 203, 212, 620 A.2d 1133, 1138 (1993) (citations omitted).

Plaintiffs' Complaint simply states that "[t]he Defendant's failure, after reasonable requests by the Plaintiffs, to maintain and to continue the property as an open space recreation area, as contemplated by the original subdivision and with the agreements between the developer and Township of Latimore, have jeopardized Plaintiffs holding in the said subdivision and have cost them a loss in value of their property as well as attorneys fees and costs." (Plts. Complaint ¶ 20, emphasis added).

Plaintiffs have asked for an award of counsel fees without setting forth any basis for this claim. Therefore, Plaintiffs' claim for attorneys fees as set forth in paragraph 20 of the Complaint is dismissed.

#### IV. Pa.R.C.P. 1028(a)(3) - Insufficient Specificity

Defendant's last objection is that Plaintiffs' attachments to the Complaint should be stricken for insufficient specificity pursuant to Pa.R.C.P. 1028(a)(3). Defendant argues that paragraph 10 of Plaintiffs' Complaint has failed to properly incorporate or label attachments to the Complaint.

Paragraph 10 of Plaintiffs' Complaint states that "[a]s part of the said subdivision plan which was approved by Latimore Township, Adams County, Pennsylvania, certain plan restrictions were imposed approved by Latimore Township Board of Supervisors on December 3, 1979. These plan restrictions include a specific reference to the 'open space recreation area' which is designated on said plan. A copy of the plan restrictions is attached hereto and made a part hereof." (Plts. Complaint ¶ 10, emphasis added).

Within the attachments is a document entitled "Greenfield Estates, Plan Restrictions." Plaintiffs' Complaint refers to plan restrictions and the attachment is entitled plan restrictions. Additionally, Plaintiffs have stated that the restrictions are "attached hereto and made a part hereof." Clearly, this attachment has been correctly incorporated and labeled.

Defendant also argues that an attachment entitled "Building and Use Restrictions" has not been incorporated into Plaintiffs' Complaint. However, when taking the Complaint as a whole, it is clear that these Building and Use Restrictions have been properly incorporated.

Rule 1019(g) permits a party to incorporate by reference "any matter of record in any State or Federal court of record whose records are within the county in which the action is pending, or any matter which is recorded or transcribed verbatim in the office of the prothonotary, clerk of any court of record, recorder of deeds or register of wills of such county." Pa.R.C.P. 1019(g), 42 Pa.C.S.A.

Plaintiffs' Complaint states in paragraph 9 that "the said plaintiffs above are all owners of certain lots located in the Green-Field Estates

subdivision located in Latimore Township, Adams County, Pennsylvania, which subdivision plan is recorded in the Office of the Recorder of Deeds of Adams County in Plan Book 31 at Page 40 and dated August 17, 1979.” (Plts. Complaint ¶ 9). It is this Court’s determination that, in keeping with Pa.R.C.P. 126 calling for the liberal construction of the rules, this paragraph is sufficient to incorporate by reference the subdivision plan as it is recorded in the Recorder of Deeds of Adams County.

Paragraph 12 of Plaintiffs’ Complaint states,

“[f]ollowing the approval of the subdivision plan...High Vista Estates, Inc., did sell lots in the subdivision to various individuals including, ultimately, all of the Plaintiffs above who currently own lots in the said subdivision which are *controlled by the subdivision plan, the building and use restrictions referred to within the plan* and the plan restrictions entered into on December 3, 1979 referring to the easement which was created the access the open space recreation area.” (Plts. Complaint ¶ 12, emphasis added).

Because Plaintiffs have claimed the Building and Use Restrictions are part of the subdivision plan, which was properly incorporated in paragraph 9, this attachment was also sufficiently incorporated. More importantly the Building and Use Restrictions have no bearing on whether the subject real estate should be maintained as a recreational area and, therefore, its inclusion is surplusage.

Thus, the attached order is issued.

#### ORDER OF COURT

AND NOW, this 5th day of November, 1997, Defendant’s Preliminary Objections are decided as follows:

1. Defendant’s objection on the grounds of laches is denied.
2. Defendant’s objection for failure to join indispensable parties as required under Pa. R.C.P. 1028(a)(5) is granted as to the remaining homeowners but denied as to the Homeowners Association and High Vista Estates, Inc. Plaintiffs are granted twenty (20) days from the date of mailing of this Order to join the remaining homeowners as plaintiffs.
3. Defendant’s objection to Plaintiffs’ claim for attorney fee is sustained.
4. Defendant’s objection for lack of specificity is denied.

## ESTATE NOTICES

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

## FIRST PUBLICATION

## ESTATE OF MARY JANE CAREY, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Executor: Douglas R. Carey, 841 Brickcrafter Road, New Oxford, PA 17350

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

## ESTATE OF IVA J. MOORE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Linda M. Snyder, 8 Chinkapin Drive, New Oxford, PA 17350

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

## ESTATE OF WILLIAM H. RIDINGER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Ralph D. Oyler, Esq., 31 S. Washington Street, Gettysburg, PA 17325

Attorney: Ralph D. Oyler, Esquire, 31 S. Washington Street, Gettysburg, PA 17325

## ESTATE OF FRANKLIN C. WEAVER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: PNC Bank, N.A., 10 York Street, Gettysburg, PA 17325

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

## SECOND PUBLICATION

## ESTATE OF JOHN R. BLOOM, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: J. Larry Hawk, 1938 White Hall Road, Littlestown, PA 17340

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

## ESTATE OF WALTER A WOLF, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Kenneth Kemper, 318 Main Street, York Springs, PA 17372; Bradley W. Wolf, 7140 Old Harrisburg Road, York Springs, PA 17372

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

## THIRD PUBLICATION

## ESTATE OF PATRICIA H. DAVIS, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Patricia Harloe DeGroat  
Attorney: Douglas H. Gent, Esquire, Menges, Gent & McLaughlin, 1157, Eichelberger Street, Hanover, PA 17331

## ESTATE OF WINIFRED B. HOLTZ-APPLE, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Peter Housman, a/k/a Robert L. Housman, P.O. Box 3296, Gettysburg, PA 17325

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

## ESTATE OF ROBERTA R. MYERS a/k/a ROBERTA RUBY MAYERS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Eugene R. Myers  
Attorney: Douglas H. Gent, Esquire, Menges, Gent & McLaughlin, 1157, Eichelberger Street, Hanover, PA 17331

## ESTATE OF DONALD G. OYLER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executors: Mary L. Oyler, 225 Old Mill Road, Gettysburg, PA 17325; Ralph D. Oyler, 31 South Washington Street, Gettysburg, PA 17325

Attorney: Ralph D. Oyler, 31 South Washington Street, Gettysburg, PA 17325

## ESTATE OF GLADYS O. SPANGLER, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executor: David E. Spangler, Jr., 49 Rockland Road, Westminster, MD 21158

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

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-529 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of October, 1998, 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 THOSE 3 tracts or Lots of ground situate in Butler Township, Adams County, Pennsylvania, bounded and described as follows:

Lot No. 1: BEGINNING at a point in the center of Pennsylvania Route 394; thence through an iron pin set 23 feet from said point and by lands of Earl C. Dunlap and wife North 21 degrees 37 minutes East, 275 feet to an iron pin; thence by same South 70 degrees East, 100 feet to a stake; thence by lands of same, recently conveyed to Harold E. Cluck, South 21 degrees 37 minutes West, 275 feet to a point in the center of said Pennsylvania Route 394; thence in said Pennsylvania Route 394 North 70 degrees West, 100 feet to the place of BEGINNING. CONTAINING 100.98 perches. Taken from a draft of survey dated December 2, 1961, prepared by Wilbur V. Redding, R.S.

Lot No. 2: BEGINNING at a point in the center of State Highway between Biglerville and Table Rock; thence through an iron pin set near the Northern side of said State Highway 23 feet from said place of beginning North 21 degrees 37 minutes East, 275 feet to a stake at lands of Earl C. Dunlap, thence by said lands South 70 degrees East, 88.5 feet to a point at land of Guy W. Ketterman; thence by said land of Guy W. Ketterman South 21 degrees 37 minutes West, 275 feet to a point in the center of the aforesaid State Highway; thence in said State Highway North 70 degrees West, 88.5 feet to the place of BEGINNING.

The above description was taken in part from a draft of a survey made on December 2, 1961 by Wilbur V. Redding, R.S.

Lot No. 3: BEGINNING at a P.K. nail located in Pennsylvania Route 394 at the Southwest corner i; of land of Charles Strausbaugh and wife; thence in said Pennsylvania Route 394, North 70 degrees West 98.7 feet to a railroad spike in road; thence by land of Earl C. Dunlap and wife, and running through a reference iron pin located 30 feet from the beginning of this line, North 31 degrees 6 minutes 10 seconds East 590.79 feet to a 20-inch white oak; thence by land of Joseph Sunbury, North 65 degrees 7 minutes 25 seconds East 368.99 feet to a stone at a post; thence South 27 degrees 39 minutes 40 seconds East 34.66 feet to an iron pin; thence by lands of Howard C. Shreve, and Charles W. Anderson, South 21 degrees 42 minutes West 385.88 feet to an existing pipe; thence by land of Robert Miller, North 68 degrees 13 minutes 55 seconds West 108.5 feet to an existing pipe; thence by land of same, South 21 degrees 46 minutes 5 seconds West 161.46 feet to an

existing pipe; thence by land of Charles Strausbaugh and wife, North 69 degrees 21 minutes 10 seconds West 169.97 feet to a stake; thence by land of same, South 21 degrees 31 minutes 30 seconds West 275 feet to a P.K. nail located in Pennsylvania Route 394, the place of BEGINNING.

CONTAINING 3.132 acres.

The above description was taken from a draft of survey made by Boyer-Price Surveys, Inc., dated August 20, 1974.

Tax Parcel# F-8-55

TITLE TO SAID PREMISES IS VESTED IN Douglas I. Whitworth and Cynthia K. Dudash, as tenants in common by Deed from Charles W. Strausbaugh and Alverda A. Strausbaugh, his wife dated 7/29/93 recorded 7/30/93 in Deed Book 759 Page 264.

SEIZED and taken into execution as the property of **Douglas I. Whitworth and Cynthia K. Dudash** and to be sold by me

Raymond W. Newman  
Sheriff

Sheriff's Office, Gettysburg, PA  
August 1, 1998.

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 November 2, 1998, 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.

9/11, 18 & 25

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-371 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of October, 1998, 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 Oxford Township, Adams County, Pennsylvania, more particularly bounded and described as follows to wit:

BEGINNING from a point at Berlin Road and lands now or formerly of Joseph L. Hockensmith; thence along said lands of Hockensmith, South forty-one (41) degrees forty-one (41) minutes twenty-four (24) seconds East, One hundred fifty (150.00) feet to a point at Lot No. 53; thence along Lot No. 53 and Lot No. 44, South forty-eight (48) degrees thirty-four (34) minutes twelve (12) seconds West, eighty-five (85.00) feet to a point at lands now or formerly of Dale E. Shultz; thence along said lands of Shultz, formerly of

Dale E. Shultz; thence along said lands of Shultz, North forty-one (41) degrees forty-one (41) minutes twenty-four (24) seconds West, one hundred fifty (150.00) feet to a point at Berlin Road; thence along Berlin Road, North forty-eight (48) degrees eighteen (18) minutes thirty-six (36) seconds East, eighty-five (85.00) feet to the point and place of BEGINNING.

CONTAINING 12,780 square feet and identified as Lot No. 54 on a plan of lots entitled Heritage Estates, recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 63, page 25.

Tax Parcel# 2-69

TITLE TO SAID PREMISES IS VESTED IN Randy W. Warner and Melissa A. Warner, his wife by Deed from Jeffrey J. Schoolcraft and Karen L. Schoolcraft, husband and wife dated 11/22/94 recorded 11/28/94 in Record Book 969 Page 40.

SEIZED and taken into execution as the property of **Randy W. Warner and Melissa A. Warner** and to be sold by me

Raymond W. Newman  
Sheriff

Sheriff's Office, Gettysburg, PA  
August 1, 1998.

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 November 2, 1998, 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.

9/18, 25 & 10/2

## INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania on the 16th day of January, 1998, for the purpose of obtaining a Certificate of Incorporation of a corporation under the Non-Profit Corporation Law of 1988, 15 Pa. C.S.A. §5101 et seq.

The name of the corporation is THE CENTER/EL CENTRO. The purpose of the corporation is to provide social, educational, spiritual, and holistic health services to residents of Adams County, Pennsylvania.

Bulleit, Schultz & Thrasher  
Attorneys for the corporation

9/18



# Adams County Legal Journal

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## CONTINUING LEGAL EDUCATION PROGRAMS

1. *Estate Planning for the Owner of a Family Business*

Friday, November 13, 1998—9:00 a.m.

Room 307, Adams County Courthouse

Credits: Substantive Law—4, Ethics—0

2. *New Pennsylvania Rules of Evidence*

Thursday, November 19, 1998—9:00 a.m.

Room 307, Adams County Courthouse

Credits: Substantive Law—6, Ethics—0

3. *How to Use the Tax Code to Facilitate Resolutions-*

*How to Avoid the Top Divorce Tax Mistakes*

Monday, November 23, 1998—9:00 a.m.

Room 307, Adams County Courthouse

Credits: Substantive Law—4, Ethics—0

4. *Driving Under the Influence*

Wednesday, December 16, 1998—9:00 a.m.

Adams County Cooperative Extension

Credits: Substantive Law—4, Ethics—0

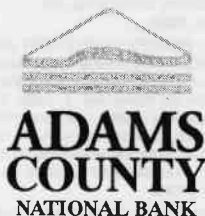
5. *A Practical Approach to Liens on Real Estate*

Friday, December 18, 1998—9:00 a.m.

Room 307, Adams County Courthouse

Credits: Substantive Law—4, Ethics—0

**Registration through P.B.I. 800-932-4637.**



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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-417 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of October, 1998, 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 Menallen Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a 5/8 inch rebar to be set at the northeastern corner of this lot where it intersects with the northwestern corner of land now or formerly of M. Lisa Bard; thence running by land now or formerly of M. Lisa Bard, South 21 degrees 00 minutes 00 seconds East, 105.17 feet to a 2 inch pipe found on line of land now or formerly of Clinton and Charlene Atha; thence running by land now or formerly of Clinton and Charlene Atha, through a 2 inch pipe found in a curb which is set back 73.41 feet from the end of this course and crossing the Center Mills Road, South 73 degrees 51 minutes 43 seconds West, 204.69 feet to a 5/8 inch rebar to be set along the Opossum Creek and on line of land now or formerly of the Aspers Community Fire Company; thence running along Opossum Creek and by the land now or formerly of the Aspers Community Fire Company, North 11 degrees 00 minutes 00 seconds West, 99.11 feet to a drill rod to be set; thence re-crossing the Center Mills Road and running in and along the curb and sidewalk situate on the South side of Aspers Road - North, North 72 degrees 00 minutes 00 seconds East, 187.00 feet to a 5/8 inch rebar to be set at the corner of land now or formerly of M. Lisa Bard, the point and place of BEGINNING. CONTAINING .457 Acres more or less.

The description was taken from a draft of survey of Robert A. Sharrah, R.S. dated July 19, 1995.

TAX PARCEL NUMBER: 1-26

TITLE TO SAID PREMISES IS VESTED IN Jose S. Molina and Isidro V. Lopez by Deed from Oscar E. Centeno and Maribel Centeno by her attorney-in-fact, Berlid Plaza, pursuant to a Power of Attorney dated July 18, 1995 and intended to be recorded; dated 7/21/95 recorded 7/24/95 in Record Book 1057 Page 299.

SEIZED and taken into execution as the property of Jose S. Molina and Isidro V. Lopez and to be sold by me

Raymond W. Newman  
Sheriff

Sheriff's Office, Gettysburg, PA  
August 1, 1998.

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 November 2, 1998, 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.

9/18, 25 & 10/2

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-365 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of October, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING for a point at the Southern side of Deer Drive and Lot No. 33; thence along Lot No. 33, South 06 degrees 52 minutes 38 seconds East, 110.00 feet to a point at Lot No. 28; thence along Lot No. 20, South 83 degrees 07 minutes 22 seconds West, 75.00 feet to a point at Lot No. 31; thence along Lot No. 31, North 06 degrees 52 minutes 38 seconds West, 110.00 feet to a point at the aforementioned Deer Drive; thence along Deer Drive, North 83 degrees 07 minutes 22 seconds East, 75.00 feet to the point and place of BEGINNING.

CONTAINING 6,256 square feet and identified as Lot No. 32 on a plan of lots entitled Phase I, Conewago Estates, recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 41 at page 46.

TAX PARCEL #9-133

TITLE TO SAID PREMISES IS VESTED IN Michael J. Bowman and Elaine M. Bowman, his wife by Deed from Pennsylvania Housing Finance Agency, dated 6/30/95, recorded 7/5/95, in Record Book 1050 page 344.

SEIZED and taken into execution as the property of Michael J. Bowman & Elaine M. Bowman and to be sold by me

Raymond W. Newman  
Sheriff

Sheriff's Office, Gettysburg, PA  
August 8, 1998.

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 November 2, 1998, 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, which-

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

9/11, 18 & 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-374 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 16th day of October, 1998, 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 or parcel of land situate, lying and being in the Township of Conewago, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point in the Legislative Route 01005 at lands formerly of R. H. Sheppard, now Peter Sheppard; thence along said last mentioned lands, South 78 degrees 21 minutes West, 207 feet to a stone; thence along said last mentioned lands, South 44 degrees 58 minutes East, 62 feet to a point at lands now or formerly of Phyllis Snyder; thence along said last mentioned lands, South 73 degrees 30 minutes East, 126.75 feet to a point in the center line of Legislative Route 01005; thence along and with the center line of Legislative Route 01005, North 12 degrees East, 126.67 feet to the point and place of beginning known as 251 Narrow Drive, Hanover, PA 17331.

Having A dwelling erected thereon known as 251 Narrow Drive, Hanover, PA.

BEING THE SAME PREMISES which Donald W. Teal and Debra Ann Teal by deed dated 5/24/97 and recorded 6/4/97 in Adams County Deed Book 1383 Page 253 granted and conveyed unto Jo Zartman.

To Be sold as the property of Jo Zartman under Adams County Judgment No. 98-S-374.

Parcel: K16-11

SEIZED and taken into execution as the property of Jo Zartman and to be sold by me

Raymond W. Newman  
Sheriff

Sheriff's Office, Gettysburg, PA  
August 22, 1998.

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 November 9, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.  
9/25, 10/2 & 9

**ST. PAUL FIRE AND MARINE INSURANCE COMPANY  
VS. O'MALLEY, ET AL.**

1. A demurrer is properly sustained where the Complaint indicates on its face that the Plaintiff's claim cannot be sustained, and the law will not permit recovery; but if there is any doubt as to the propriety of judgment in favor of a demurring party, it should not be entered.

2. Abuse of process and malicious use of process are separate claims in the law.

3. To prevail in an action for wrongful use of process, the Plaintiff must show that the Defendant maliciously instituted proceedings, that the Defendant lacked probable cause to institute the proceedings and that the proceedings terminated in favor of the Plaintiff.

4. In order to state a cause of action for abuse of process, it must be alleged that the Defendant used a legal process to accomplish a purpose for which the process was not designed.

5. The gist of an action for abuse of process is the improper use of process after it has been issued, that is, perversion of it.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 96-S-261, ST. PAUL FIRE AND MARINE INSURANCE COMPANY, AS SUBROGEE OF E.L.C.A. RISK MANAGEMENT, A/K/A ELCARM C/O E.I.I.A.

Melissa A. Kelly, Esq., for Plaintiffs

Defendant O'Malley pro se

C. Kent Price, Esq., for Defendant Fager

Jeffrey B. Rettig, Esq., for Defendant Friman

Louis J. Rizzo, Jr., Esq., for Defendant Rizzo

John N. Keller, Esq., for Defendant Kowerski

William A. Addams, Esq., for Defendant Riihimaki

Dean F. Picarella, Esq. for Defendant McKerahan

Defendant Stevcic, pro se

**OPINION**

Kuhn, J., November 7, 1997.

On March 26, 1996, Plaintiff, St. Paul Fire and Marine Insurance Company ("St. Paul"), issued a Writ of Summons as subrogee of E.L.C.A. Risk Management, Inc., a/k/a ELCARM c/o E.I.I.A., against Defendants. The Complaint was filed on May 13, 1996 and an amended Complaint ("First Amended Complaint") was filed on August 9, 1996. Defendant Larry Kowerski ("Kowerski") filed Preliminary Objections to the First Amended Complaint and Plaintiff has raised preliminary objections in response to Defendant Christine Rizzo's Counterclaim. Argument on both Motions was heard on March 24, 1997.

**STATEMENT OF FACTS**

Defendants were students of Gettysburg College on April 4, 1994, when a fire broke out in Defendant Miriah O'Malley's dormitory room located at 42 North Washington Street. Extensive damage to the dormitory resulted costing in excess of \$66,000.00. It is alleged that Defendants acted negligently in burning and leaving lit candles unattended in the dormitory room.

## LEGAL DISCUSSION

### I. Defendant Kowerski's Preliminary Objections

Defendant Kowerski argues in his Preliminary Objections that paragraph 21(f) of Plaintiff's First Amended Complaint violates Pa.R.C.P. 1019(a) and should be stricken, or in the alternative, pled with more specificity.<sup>1</sup>

Paragraph 21(f) of Plaintiff's First Amended Complaint reads as follows:

21. The damages sustained by the insured were proximately caused, in whole or in part, by the joint and severable negligence, recklessness and carelessness of defendants, said actionable conduct including, but not limited to the following:

... (f) causing or failure to prevent the aforesaid damage at the subject premises.

(Plt.'s First Amended Complaint ¶ 21).

In *Hosler v. Reich*, 19 D&C 4th 46, 48-49 (Snyder 1992), a similar allegation was held to be insufficient when it simply stated that the defendant was negligent in "failing to bring his vehicle to a stop or otherwise [failing to] avoid the accident..." The Court held that the "defendant is entitled to know the specific conduct he should have taken to avoid the accident, as opposed to being confronted with a generalized claim of a failure to avoid the accident which arguably could permit the assertion of an act or omission to form the basis of the negligent conduct. *Id.* at 49.

In the case at hand, Plaintiff has in the same manner alleged that Defendants were negligent because they failed to "prevent the damage." (Plt.'s First Amended Complaint ¶ 21). It is this Court's determination that Defendant is "entitled to know the specific conduct" he allegedly should have taken to prevent the fire and resulting damage. Thus, paragraph 21(f) is stricken for lack of specificity.<sup>2</sup>

Defendant Kowerski's second objection is in the nature of a demurrer and argues that he could not be negligent because he had no duty in relation to the candle burning. Defendant Kowerski claims that because the burning did not take place in his room he is not responsible. He further contends that the allegations that he failed to prevent the discarding of burning candles and that he failed to prohibit burning candles, (Plt. Complaint ¶21 (b) and (d)), do not set forth actionable negligence without proof that he also actually lit the candles.

In deciding on an objection in the nature of a demurrer, the Pennsylvania Supreme Court has stated that "[a] demurrer admits every well-pleaded material fact set forth in the pleadings to which it is addressed as well as all inferences reasonably deducible therefrom, but not conclusions of law." *Gekas v. Shap*, 469 Pa. 1, 5, 364 A.2d 691, 693 (1976). A demurrer is properly sustained where the complaint

<sup>1</sup> Rule 1019(a) states that, "[t]he material facts on which a cause of action or defense is based shall be stated in a concise and summary form." Pa.R.C.P. 1019(a), 42 Pa.C.S.A.

indicates on its face that the plaintiff's claim cannot be sustained, and the law will not permit recovery. *Lobdell v. Leichtenberger*, 442 Pa. Super. 21, 24, 658 A.2d 399, 401 (1995) (citations omitted). If there is any doubt as to the propriety of a judgment in favor of a demurring party, it should not be entered. *Creeger Brick and Building Supply, Inc. v. Mid-State Bank and Trust Co.*, 385 Pa. Super. 30, 32-33, 560 A.2d 151, 152 (1989).

At this stage in the pleadings, it is unclear whether Defendant had a duty related to candle burning in the residence hall which could subject him to liability. As set forth in Plaintiff's First Amended Complaint, the student Guidebook for 1993/1994 Gettysburg Residents states that the burning of candles is prohibited in residence halls. (Plt.'s First Amended Complaint ¶ 15). This prohibited conduct is not limited to activity only within one's own dormitory room but is restricted throughout the residence halls. Paragraph 21(a) of Plaintiff's Complaint can be read as alleging that Defendant Kowerski lit the candles, therefore his failure to properly discard the candles or to prohibit their burning have been sufficiently connected to the original act of burning the candles. Under the demurrer standard, it is not clear at this stage of the proceedings that Plaintiff's claim cannot be sustained.

## II. Plaintiff's Preliminary Objections to Defendant Rizzo's Counterclaim

Defendant Rizzo's Counterclaim raises issues of abuse of process and malicious use of process. Defendant Rizzo alleges that Plaintiff brought suit against her knowing she was not present in the room the night of the fire and knowing she had no involvement in the circumstances.

Plaintiff's Preliminary Objections in the nature of a demurrer argue that Defendant Rizzo's counterclaim is premature because no judgment has been entered in this suit.

Defendant Rizzo has entitled her counterclaim "Counterclaim of Defendant, Christine Rizzo against Plaintiff, Abuse of Process/Malicious Use of Process." (Def. Rizzo's Answer with New Matter). Abuse of process and malicious use of process are separate claims in the law. Our Superior Court explained it as follows:

Often the two torts are confused. In fact, however, they are distinct...Wrongful use of process, which is now defined by statute at 42 Pa.C.S.A. § 8351, involves the initiation of process without probable cause. To prevail in an action for wrongful use of process, the plaintiff must show that the defendant maliciously instituted proceedings, that the defendant lacked probable cause to institute the proceedings and that the proceedings terminated in favor of the plaintiff. . . The common law tort of abuse of process involved the perversion of legal process after it has begun in order to achieve a result for which the process was

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<sup>2</sup> Defendant Kowerski has asked that paragraph 21 be stricken in its entirety. However, his Preliminary Objections only raise an argument as to paragraph 21 (f) and therefore, this is the only section that will be stricken.

not intended. . . In order to state a cause of action for abuse of process it must be alleged that the defendant used a legal process to accomplish a purpose for which the process was not designed...

*Al Hamilton Contracting Company v. Cowder*, 434 Pa. Super. 491, 498-99, 644 A.2d 188, 191 (1994) (citations omitted); see also, *Roth v. Sharpe, et al.*, 36 Ad. Co. L. J. 17, 22 (1993) (discussing distinction between abuse of process and malicious use of process).

Defendant Rizzo's counterclaim for malicious use of process is premature. 42 Pa.C.S.A. § 8351 states that the proceedings must have "terminated in favor of the person against whom they are brought" in order to bring an action for wrongful use of civil proceedings. 42 Pa.C.S.A. § 8351(a)(2). Recent case law concurs. See, e.g., *Al Hamilton Contracting Company v. Cowder*, 644 A.2d at 191.

The case at hand has not terminated because no judgment has been rendered for or against Plaintiff. Thus, Defendant Rizzo may not bring a claim for wrongful use of process at this time.

Abuse of process is a common law action. A party must prove the opposing party has acted in perversion of legal process after it has begun in order to achieve a result for which the process was not intended. Our Supreme Court said that the "gist of an action for abuse of process is the improper use of process after it has been issued, that is, perversion of it..." *Publix Drug Company v. Breyer Ice Cream Company*, 347 Pa. 346, 348, 32 A.2d 413, 415 (1943) (emphasis added); See also, *In the Matter of Larsen*, 532 Pa. 326, 439-40, 616 A.2d 529, 586 (1992), cert. denied, 114 S. Ct. 65; *Al Hamilton Contracting Company v. Cowder*, 644 A.2d at 191.

Therefore, Defendant Rizzo would have to allege some improper action by Plaintiff after the issuance of the process. However, in Defendant Rizzo's Counterclaim, she has merely alleged that "Plaintiff has instituted suit in the instant action in an attempt to utilize the legal process for an unlawful purpose, other than that for which it was intended so as to coerce the payment of a claim which Plaintiff knows to be meritless." (Def. Rizzo's Answer with New Matter ¶ 46.) There has been no allegation of improper use of the legal process after the initiation of the suit. Therefore, there is not yet an abuse of process.

Thus, the attached order is issued.

#### ORDER OF COURT

AND NOW, this 7 th day of November, 1997, the Court orders as follows:

1. As to Defendant Larry Kowerski's Preliminary Objections:
  - (a) The objection for lack of specificity is sustained and paragraph 21(f) is stricken.
  - (b) The demurrer to Plaintiff's claim is denied.
2. Plaintiff's Preliminary Objection in the nature of a demurrer to Defendant Christine Rizzo's Counterclaim is sustained. Defendant Christine Rizzo is given 20 days from the date of mailing of this Order to amend her 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 JOSEPH P. BURLEIGH, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania  
 Executor: PNC Bank, N.A., 10 York Street, Gettysburg, PA 17325  
 Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

## ESTATE OF JULIA M. HOLTZWORTH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Co-Executors: William C. Holtzworth, 103 Hanover Street, Gettysburg, PA 17325; Julia Marie Strausbaugh, 121 Penwood Road, York, PA 17402  
 Attorney: Gary E. Hartman, Esquire, Hartman and Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF MAYE A. MCELHENNEY, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania  
 Executor: Kenneth E. Toner, 371 Torway Road, Gardners, PA 17324  
 Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

## SECOND PUBLICATION

## ESTATE OF MARY JANE CAREY, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania  
 Executor: Douglas R. Carey, 841 Brickcrafter Road, New Oxford, PA 17350  
 Attorney: David K. James, Esquire, 234 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF IVA J. MOORE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Executrix: Linda M. Snyder, 8 Chinkapin Drive, New Oxford, PA 17350  
 Attorney: John R. White, Esquire, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF WILLIAM H. RIDINGER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania  
 Executor: Ralph D. Oyler, Esq., 31 S. Washington Street, Gettysburg, PA 17325  
 Attorney: Ralph D. Oyler, Esquire, 31 S. Washington Street, Gettysburg, PA 17325

## ESTATE OF FRANKLIN C. WEAVER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Executor: PNC Bank, N.A., 10 York Street, Gettysburg, PA 17325

## THIRD PUBLICATION

## ESTATE OF JOHN R. BLOOM, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Executor: J. Larry Hawk, 1938 White Hall Road, Littlestown, PA 17340  
 Attorney: G. Steven McKonly, Attorney, 119 Baltimore Street, Hanover, PA 17331

## ESTATE OF WALTER A. WOLF, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Executors: Kenneth Kemper, 318 Main Street, York Springs, PA 17372; Bradley W. Wolf, 7140 Old Harrisburg Road, York Springs, PA 17372  
 Attorney: John C. Zepp, III, Esquire, P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

## FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of an Act of the General Assembly, approved December 16, 1982, P.L. 1309, there has been filed in the Office of the Secretary of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on the 3rd day of September, 1998, a certificate for the conduct of a business in Adams County, Pennsylvania, under the fictitious name, style or designation of "S.M. HOME IMPROVEMENTS", with its principal place of business at 19 Maple Street, Gettysburg, Pennsylvania, 17325. The name and address of the person owning or interested in said business is Steve A. McGoldrick of 19 Maple Street, Gettysburg, Pennsylvania, 17325.

John James Mooney, III, Esquire  
 Mooney & Associates  
 Attorneys at Law  
 230 York Street  
 Hanover, PA 17331

9/25

## INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation for Ivan C. Dutterer, Inc. were filed with the Department of State of the Commonwealth of Pennsylvania on August 26, 1998, under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444

Rudisill, Guthrie, Nonemaker,  
 Guthrie & Yingst  
 Solicitor

9/25

## FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of an Act of the General Assembly, approved December 16, 1982, P.L. 1309, there has been filed in the Office of the Secretary of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on the 20th day of August, 1998, a certificate for the conduct of a business in Adams County, Pennsylvania, under the fictitious name, style or designation of "SCOZZARO'S OLD MILL INN", with its principal place of business at 4797 York Road, New Oxford, Pennsylvania, 17350. The name and address of the person owning or interested in said business are Carl Joseph Scozzaro, Jr. and Laura Scozzaro of 315 Hunterstown Hampton Road, Gettysburg, Pennsylvania, 17325.

John James Mooney, III, Esquire  
 Mooney & Associates  
 Attorneys at Law  
 230 York Street  
 Hanover, PA 17331

9/25

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-529 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of October, 1998, 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 THOSE 3 tracts or Lots of ground situate in Butler Township, Adams County, Pennsylvania, bounded and described as follows:

**Lot No. 1: BEGINNING at a point in the center of Pennsylvania Route 394; thence through an iron pin set 23 feet from said point and by lands of Earl C. Dunlap and wife North 21 degrees 37 minutes East, 275 feet to an iron pin; thence by same South 70 degrees East, 100 feet to a stake; thence by lands of same, recently conveyed to Harold E. Cluck, South 21 degrees 37 minutes West, 275 feet to a point in the center of said Pennsylvania Route 394; thence in said Pennsylvania Route 394 North 70 degrees West, 100 feet to the place of BEGINNING. CONTAINING 100.98 perches. Taken from a draft of survey dated December 2, 1961, prepared by Wilbur V. Redding, R.S.**

**Lot No. 2: BEGINNING at a point in the center of State Highway between Biglerville and Table Rock; thence through an iron pin set near the Northern side of said State Highway 23 feet from said place of beginning North 21 degrees 37 minutes East, 275 feet to a stake at lands of Earl C. Dunlap, thence by said lands South 70 degrees East, 88.5 feet to a point at land of Guy W. Ketterman; thence by said land of Guy W. Ketterman South 21 degrees 37 minutes West, 275 feet to a point in the center of the aforesaid State Highway; thence in said State Highway North 70 degrees West, 88.5 feet to the place of BEGINNING.**

The above description was taken in part from a draft of a survey made on December 2, 1961 by Wilbur V. Redding, R.S.

**Lot No. 3: BEGINNING at a P.K. nail located in Pennsylvania Route 394 at the Southwest corner I; of land of Charles Strausbaugh and wife; thence in said Pennsylvania Route 394, North 70 degrees West 98.7 feet to a railroad spike in road; thence by land of Earl C. Dunlap and wife, and running through a reference iron pin located 30 feet from the beginning of this line, North 31 degrees 6 minutes 10 seconds East 590.79 feet to a 20-inch white oak; thence by land of Joseph Sunbury, North 65 degrees 7 minutes 25 seconds East 368.99 feet to a stone at a post; thence South 27 degrees 39 minutes 40 seconds East 34.66 feet to an iron pin; thence by lands of Howard C. Shreve, and Charles W. Anderson, South 21 degrees 42 minutes West 385.88 feet to an existing pipe; thence by land of Robert Miller, North 88 degrees 13 minutes 55 seconds West 108.5 feet to an existing pipe; thence by land of same, South 21 degrees 46 minutes 5 seconds West 161.46 feet to an**

existing pipe; thence by land of Charles Strausbaugh and wife, North 69 degrees 21 minutes 10 seconds West 169.97 feet to a stake; thence by land of same, South 21 degrees 31 minutes 30 seconds West 275 feet to a P.K. nail located in Pennsylvania Route 394, the place of BEGINNING.

CONTAINING 3.132 acres.

The above description was taken from a draft of survey made by Boyer-Price Surveys, Inc., dated August 20, 1974.

Tax Parcel# F-8-55

TITLE TO SAID PREMISES IS VESTED IN Douglas I. Whitworth and Cynthia K. Dudash, as tenants in common by Deed from Charles W. Strausbaugh and Alverda A. Strausbaugh, his wife dated 7/29/93 recorded 7/30/93 in Deed Book 759 Page 264.

SEIZED and taken into execution as the property of **Douglas I. Whitworth and Cynthia K. Dudash** and to be sold by me

Raymond W. Newman  
Sheriff

Sheriff's Office, Gettysburg, PA  
August 1, 1998.

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 November 2, 1998, 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.

9/11, 18 & 25

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-371 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of October, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land, situate, lying and being in Oxford Township, Adams County, Pennsylvania, more particularly bounded and described as follows to wit:

BEGINNING from a point at Berlin Road and lands now or formerly of Joseph L. Hockensmith; thence along said lands of Hockensmith, South forty-one (41) degrees forty-one (41) minutes twenty-four (24) seconds East, One hundred fifty (150.00) feet to a point at Lot No. 53; thence along Lot No. 53 and Lot No. 44, South forty-eight (48) degrees thirty-four (34) minutes twelve (12) seconds West, eighty-five (85.00) feet to a point at lands now or formerly of Dale E. Shultz; thence along said lands of Shultz, formerly of

Dale E. Shultz; thence along said lands of Shultz, North forty-one (41) degrees forty-one (41) minutes twenty-four (24) seconds West, one hundred fifty (150.00) feet to a point at Berlin Road; thence along Berlin Road, North forty-eight (48) degrees eighteen (18) minutes thirty-six (36) seconds East, eighty-five (85.00) feet to the point and place of BEGINNING.

CONTAINING 12,780 square feet and identified as Lot No. 54 on a plan of lots entitled Heritage Estates, recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 63, page 25..

Tax Parcel# 2-69

TITLE TO SAID PREMISES IS VESTED IN Randy W. Warner and Melissa A. Warner, his wife by Deed from Jeffrey J. Schoolcraft and Karen L. Schoolcraft, husband and wife dated 11/22/94 recorded 11/28/94 in Record Book 969 Page 40.

SEIZED and taken into execution as the property of **Randy W. Warner and Melissa A. Warner** and to be sold by me

Raymond W. Newman  
Sheriff

Sheriff's Office, Gettysburg, PA  
August 1, 1998.

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 November 2, 1998, 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.

9/25, 10/2 & 9