

Adams County Legal Journal

Vol. 37

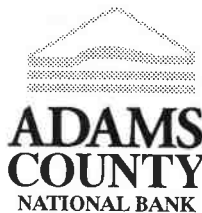
July 7, 1995

No. 6, pp. 31-34

IN THIS ISSUE

UPPER ADAMS SCHOOL DISTRICT VS.
UPPER ADAMS EDUCATION ASSOCIATION

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

Subscribers within Adams County should send subscriptions direct to the business office. Subscribers outside of Adams County should send subscriptions to Wm. W. Gaunt & Sons, Inc., 3011 Gulf Drive, Holmes Beach, FL 34217-2199. Postmaster: Send address changes to Adams County Legal Journal, 112 Baltimore Street, Gettysburg, PA 17325.

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NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County - Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, July 10, 1995, at 9:00 o'clock a.m.

FISSEL—Orphans' Court Action Number OC-124-91. The First and Final Account of Fred Fissel, Executor of the Last Will and Testament of Paul T. Fissel, deceased, late of Hamilton Township, Adams County, Pennsylvania.

SNYDER—Orphans' Court Action Number OC-128-87. The First and Final Account of Victor L. Reynolds, Executor of the Estate of Theresa Stavely Snyder, deceased, late of Borough of Littlestown, Adams County, Pennsylvania, including the First and Final Account of the Adams County National Bank, Guardian of the Estate.

KIME—Orphans' Court Action Number OC-63-95. The First and Final Account of Sheila F. Bowmaster and Lynn F. Kime, Executors of the Estate of Glenn F. Kime, deceased, late of Tyrone Township, Adams County, Pennsylvania.

LITTLE—Orphans' Court Action Number OC-67-95. The First and Final Account of Dorothy J. O'Dell, Executrix of the Last Will and Testament of Mary E. Little, deceased, late of the Borough of Gettysburg, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

6/30, 7/7

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-N-362 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 28th day of July, 1995, 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 Tyrone Township, Adams County, Pennsylvania, improved with a two-story frame house, three outbuildings and a springhouse, more particularly bounded and described as follows:

BEGINNING at a point in the public road known locally as the Pine Grove Road; thence North 63 degrees 15 minutes West in said road, 56 feet to a stake; thence North 77 degrees 35 minutes West in said road, 470.25 feet to a stake; thence North 77 degrees 5 minutes West in said road, 132 feet to a stake in the junction of aforesaid road and Racoon Road; thence North 71 degrees 40 minutes East in said Racoon Road, 627 feet to a stake; thence diagonally across said Racoon Road, North 53 degrees 40 minutes East, 90.75 feet to a stake; thence South 36 degrees 35 minutes East, 18.15 feet to a spike in Racoon Road; thence North 61 degrees 55 minutes East in Racoon Road, 336.60 feet to stake on line of land of Norman Stamer; thence South 37 degrees 35 minutes East along line of land of Norman Stamer, 198.45 feet to a point; thence South 54 degrees 20 minutes West along land of Leroy E. Stamer et ux, 629 feet to a spike in the Pine Grove Road, to the place of BEGINNING.

This description was taken from a survey by T. A. Neff, Registered Surveyor.

BEING all and the same tract of land which John W. Stamer and Vernon A. Stamer, husband and wife, by their Deed dated June 12, 1975 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Deed Book 318 at page 1148, sold and conveyed unto A. Linwood Stamer and Judith E. Stamer, husband and wife; Judith E. Stamer being deceased, title thereto is vested in A. Linwood Stamer.

Seized and taken into execution as the property of Linwood Stamer, and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
June 12, 1995.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 18, 1995, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.
6/30, 7/7, 14

UPPER ADAMS SCHOOL DISTRICT VS.
UPPER ADAMS EDUCATION ASSOCIATION

1. It is the function of the Court to determine: (1) whether a valid agreement to arbitrate was entered into; and (2) whether the dispute in question is within the scope of that agreement.

2. While agreements to arbitrate are strictly construed and should not be extended by implication, if the parties have agreed to arbitrate in a clear and unmistakable manner, every reasonable effort should be made to favor the agreement unless the arbitration clause is not susceptible to an interpretation that covers the asserted dispute.

3. The scope of matters to be resolved by grievance arbitration is in the first instance for the arbitrator to determine.

4. An employer may file a petition for a stay if it can show a substantial, bona fide dispute as to arbitrability.

5. Unless it can be said with positive assurance that the parties have agreed that the dispute is not subject to arbitration, a stay may not be granted.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-820, UPPER ADAMS SCHOOL DISTRICT VS. UPPER ADAMS EDUCATION ASSOCIATION.

Emily J. Leader, Esq., for Plaintiff

Thomas W. Scott, Esq., for Defendant

OPINION ON MOTION TO STAY ARBITRATION

Spicer, P.J., December 28, 1994.

On June 23, 1994, Upper Adams School District (District) took action to furlough five teachers and demote two others. Those affected are represented by Upper Adams Education Association (Association), which has a collective bargaining contract with the District. Association filed a timely grievance and seeks arbitration. District, contending that the action is not within the scope of its collective bargaining agreement, seeks to stay arbitration.¹ District argues that its actions were in conformity with the Public School Code of 1949, 24 P.S. 11-1124. Subsection (2) authorizes suspensions of professional employees for curtailment or alteration of the educational program on recommendations of the superintendent, vote of the school board and approval by the Department of Public Instruction as a result of: 1) a substantial decline in class or course enrollments; or 2) to conform with standards of organization or educational activities required by law or recommended by the Department of Public Instruction.

¹The Uniform Arbitration Act, 42 Pa. C.S.A. 7304 (b) authorizes a stay on showing there is no agreement to arbitrate.

Association concedes that District obtained necessary approvals and that power to reduce teacher positions is for District to exercise.² Furthermore, the agreement reserves this power to District. Since the dispute involves reduction and reassignment of teaching positions, and not the manner by which it was accomplished, District argues it is entitled to a stay order.

The court's consideration must begin with the agreement, viewed in the light of relevant law. District would be entitled to a stay if either: a) the agreement does not provide for arbitration; or b) arbitration necessarily involves implementation contrary to the law.

Superior Court has, on several occasions, said that it is the function of the court to determine: 1) whether a valid agreement to arbitrate was entered into; and 2) whether the dispute in question is within the scope of that agreement. Arbitration, it has been said, is a matter of contract and absent an agreement between the parties to arbitrate an issue, they cannot be compelled to do so. Furthermore, that court has said agreements to arbitrate are strictly construed and should not be extended by implication. On the other hand, if the parties have agreed to arbitrate in a clear and unmistakable manner, every reasonable effort should be made to favor the agreement unless it may be said the arbitration clause is not susceptible to an interpretation that covers the asserted dispute. Arbitration is a favored means of settling disputes. *Emlenton Area Municipal Authority v. Miles*, 378 Pa.Super. 303, 548 A.2d 623 (1988); *PBS Coal, Inc. v. Hardhat Mining, Inc.*, 429 Pa.Super. 372, 632 A.2d 903 (1993).

In areas covered by The Public Employees Relation Act 43 P.S.A. 1101.101 et seq., arbitration is especially favored. *Office of Administration v. Pennsylvania Labor Relations Board*, 528 Pa. 472, 598 A.2d 1274 (1991). Supreme Court has said that it is in the best interests of the health and safety of the citizens of this Commonwealth that necessary and essential public employees have their labor disputes resolved promptly and with a minimum of counter-productive acrimony, *id.* Although teachers may not fall into the same category as fire and police personnel, it is clear that the same policy considerations apply.

² Issues of arbitrability are determined by the agreement and statutory provisions. Parties may not, by arbitration, effectuate a provision in the agreement which would be contrary to the Public School Code. *Greater Johnstown School v. Johnstown, Pa. Cmwlth.*, 647 A.2d 611 (1994).

Therefore, it is generally for the arbitrator to determine if an issue falls within the scope of the arbitration agreement, *id.* *Chester Upland Education Assoc. v. Pennsylvania Labor Relations Board*, 158 Pa.Cmwlth. 134, 631 A.2d 723 (1993). Synthesizing other cases, Commonwealth Court has announced the following principles:

1) The scope of matters to be resolved by grievance arbitration is in the first instance for the arbitrator to determine.

2) An employer may, however, file a petition for a stay if it can show a substantial, bona fide dispute as to arbitrability.

3) If it can be said with certainty that the collective bargaining agreement does not address the dispute, a stay may be granted.

4) Unless it can be said with positive assurance that the parties have agreed that the dispute is not subject to arbitration, a stay may not be granted. *id.* 631 A.2d at 727.

The agreement between District and Association clearly provides that grievances are subject to arbitration. Thus, the first test is met. The next step requires determination of whether the dispute falls within the definition of that term. A grievance is defined in A4 of Article XXIII as any charge concerning the violation or misinterpretation of the agreement, a charge of discrimination, grievance or dispute that may arise at anytime concerning wages, hours and terms and conditions of employment.

This language is certainly broad enough to require submission. District argues, however, two things: 1) that furloughs are reserved to it; and 2) that any implementation of the agreement contrary to this position would violate the Public School Code, *supra*.

Association concedes, as previously noted, that District's actions complied with the law, at least superficially. However, it charges District with providing false and misleading data to the Department of Education to obtain approval for diminution of teaching staff. Specifically, Association claims that District violated provisions in the agreement by decreasing preparation time in accordance with Article XV c. That section guarantees teachers four class periods a week for preparation time and requires District to make reasonable efforts to provide five such periods a week. Association alleges that District shortened preparation time, creating the false impression of an overabundance of teaching time.

District retorts that the issue does not involve the reduction of preparation time. Rather, it involves furlough and demotions.

District also cites *North Star School Districts v. North Star Education Assoc.*, 155 Pa.Cmwlth. 368, 625 A.2d 159 (1993), wherein the court held that the manner of laying off teachers was a matter reserved for the employer and, thus, not arbitrable.

We agree that our case is distinguishable from that decided by Commonwealth Court.³ First, the dispute between our parties does not involve the manner in which furloughs and demotion should occur. It involves a charge that District violated its agreement with Association by reducing preparation time and presenting data to the Department of Public Education that it knew to be misleading.

This is not a simple case or one easily decided. On the one hand, some presumption of regularity must attach to official proceedings. On the other, Association was not a party to that proceeding and cannot be collaterally estopped from questioning the propriety of the decision. Importantly, Association's grievance involves reduction of preparation time. It would certainly seem that Association must prove this essential charge before being entitled to relief.

Association also stresses that District agreed to comply with The Public School Code, *supra.*, and it should be allowed to prove this was not done. As we view the case, this argument is part and parcel of the issue concerning preparation time. If information presented to the Department of Education involved a reduction of preparation time, the grievance involves contract, and not Code, provisions.

However, it would seem that these arguments should be presented to an arbitrator, in the first instance. There is enough viability to defeat District's request for a stay. It may be that an arbitrator's determination will be reversed on appeal, but that is not a consideration. This court cannot say that the dispute clearly falls outside the very comprehensive language of arbitration.

Accordingly, the attached order is entered.

ORDER OF COURT

AND NOW, this 28th day of December, 1994, the petition for stay of arbitration is refused.

³ We ignore the fact that the decision came on appeal from an arbitrator's decision since the holding, if applicable, would be binding no matter how accomplished. However, we understand that matters of contract interpretation may involve the factual context in which considered.

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 ALICE McCAUSLIN, DEC'D

Late of Menallen Township, Adams County, Pennsylvania
Executors: Dean L. McCauslin, 181 Dug Hill Road, Biglerville, PA 17307; Reid E. McCauslin, St. George Drive, Sherwood Forest, Dillsburg, PA 17019

ESTATE OF LEROY C. MILLER, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania
Executors: Marvin L. Stauffer, 64 Two Taverns Road, Littlestown, PA 17340; Terry Lee Miller, R.D. 1, Box 69, Abbottstown, PA 17301
Attorney: Teeter, Teeter, & Teeter, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF LEO C. SCHMIDT, JR., DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
Executrix: Julia L. Schmidt, 405 Ridgewood Drive, Gettysburg, PA 17325
Attorney: John A. Wolfe, Esq., Wolfe & Rice, 47 West High Street, Gettysburg, PA 17325

ESTATE OF RAYMOND I. SLAYBAUGH, DEC'D

Late of Butler Township, Adams County, Pennsylvania
Executors: Donna S. Heyser, 587 Orchard Lane, Aspers, PA 17304; William R. Slaybaugh, 101 Orchard View Drive, Bendersville, PA 17306
Attorney: Bigham & Raffensperger, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF BEULAH M. WATSON, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania
Executor: George S. Lambert, 2104 Taneytown Road, Gettysburg, PA 17325
Attorney: Teeter, Teeter, & Teeter, 108 West Middle Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF MILDREDA. CARBAUGH, DEC'D

Late of Franklin Township, Adams County, Pennsylvania
Executor: Adams County National Bank, 675 Old Harrisburg Road, Gettysburg, PA 17325
Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF LAWRENCE W. GUISE, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania
Executrix: Melissa Ann Guise, 447 Poppinga Way, Santa Maria, CA 93455
Attorney: Walton V. Davis, 31 S. Washington Street, Gettysburg, PA 17325

ESTATE OF GRACE A. SHANK, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
Executors: Anna R. Bange, 351 Smoketown Road, Hanover, PA 17331; Jacob Shank, 260 Hershey Heights Road, Hanover, PA 17331
Attorney: Donald W. Dorr, 126 Carlisle Street, Hanover, PA 17331

ESTATE OF MADELEINE C. STEEL, DEC'D

Late of Franklin Township, Adams County, Pennsylvania
Executrix: Diana M. Rarig, 274 Bottom Road, Orrtanna, PA 17353
Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF GLENN Y. KINDIG, DEC'D

Late of Germany Township, Adams County, Pennsylvania
Executors: John R. Kindig, 508 York Street, Hanover, PA 17331; James D. Kindig, 439 South Queen Street, Littlestown, PA 17340
Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF ROBERT J. MARTIN, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania
Administratrix: Candy J. Spahr, 1885 Fish & Game Road, East Berlin, PA 17316
Attorney: Sharon E. Myers, Esq., Countess Gilbert Andrews, 29 North Duke Street, York, PA 17401

ESTATE OF HARRIET I. REED, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
Executrix: Tina A. Sigafoose, R.D. #1, Box 188, Thomasville, PA 17364
Attorney: W.W. Hafer, Esquire, 215 Baltimore Street, Hanover, PA 17331

ESTATE OF WAYNE KENNETH SNADER, DEC'D

Late of Huntington Township, Adams County, Pennsylvania
Executrix: Tracy L. Snader, 294 Labor Camp Road, Gardeners, PA 17324
Attorney: John R. White, Campbell, White & George, 122 Baltimore Street, Gettysburg, PA 17325

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 93-S-968 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of July, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a railroad spike in the center of the public road running North-erly from the Arendtsville-Bigler State Highway to Yellow Hill, where the same is intersected by the center line of University Drive, being another public road running Easterly from said Yellow Hill Public Road to Biglerville; thence running in the center of said public road to Yellow Hill, North 6 degrees 15 minutes East, 719 feet to a railroad spike in the center of said public road to Yellow Hill; thence by land formerly a part hereof, now or formerly of Dennis W. and Lois E. Little, South 86 degrees 28 minutes East 234.25 feet to an iron pin; thence running through the original tract of Fred C. Raffensperger, et al., South 6 degrees 15 minutes West, 730.1 feet to a railroad spike driven in the center of said University Drive, thence continuing through the original tract of said Fred C. Raffensperger, et al., and thence by land now or formerly of Fred C. Raffensperger, North 83 degrees 45 minutes West, 234 feet to the above described place of BEGINNING. CONTAINING 3 Acres and 142 Perches, more or less.

The above description was principally taken from a draft of survey dated August 30, 1971, made by LeRoy H. Winebrenner, Adams County Surveyor.

BEING the same tract of land which Fred C. Raffensperger and Edith D. Raffensperger, his wife, and Emory E. Raffensperger, Jr., and Vivian J. Raffensperger, his wife, by their deed dated October 5, 1971, and recorded in the Office Of the Recorder Of Deeds Of Adams County, Pennsylvania, in Deed Book 296 at page 102, sold and conveyed unto Norman K. Lady and Willetta D. Lady, husband and wife.

LESS, HOWEVER, the following two (2) tracts of land:

1. A tract of land containing approximately 0.858 Acres or 37,400 Square Feet as more fully set forth in deed dated December 20, 1972, which Norman K. Lady and Willetta D. Lady, husband and wife, conveyed to Frederick J. Tilberg and Anna F. Tilberg, husband and wife, recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 304 at page 352 and designated as Lot #1 and Parcel A of Adams County, Pennsylvania, Plat Book 2 at page 11.

2. A tract of land containing 1.287 Acres, more or less, as more fully set forth in deed dated October 2, 1978, which Norman K. Lady and Willetta D. Lady, husband and wife conveyed to Robert L. McCleaf, Jr. and Betty E. McCleaf, husband and wife, recorded in the aforesaid Recorder's Office in Deed Book 340 at page 938 and designated as Lots Nos. 4 and 5 of Adams County, Pennsylvania, Plat Book 2 at page 50.

Seized and taken into execution as the property of **Norman K. Lady and Willetta D. Lady**, and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
June 12, 1995.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 14, 1995, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/23, 30 & 7/7

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed by WW DEVELOPERS, INC. on June 13, 1995, with the Department of State of the Commonwealth of Pennsylvania, in Harrisburg, Pennsylvania, for the purpose of incorporating under the Pennsylvania Business Corporation Law of 1988 (15 Pa. C.S.A. §1101 et seq.).

Chester G. Schultz, Esquire
Bulleit, Schultz, & Thrasher
16 Lincoln Square
Gettysburg, PA 17325

7/7

Adams County Legal Journal

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July 14, 1995

No. 7, pp. 35-40

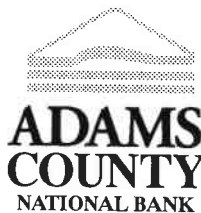
IN THIS ISSUE

COMMONWEALTH VS. JONES

and

COMMONWEALTH VS. REED

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



Member FDIC

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This description was taken from a survey by T. A. Neff, Registered Surveyor.

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Seized and taken into execution as the property of **Linwood Stamer**, and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
June 12, 1995.

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6/30,7/7, 14

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, in compliance with the requirements of Section 311, of Act 1982-295 (54 Pa. C.S. 311), the undersigned entity (ies) announce their intention to file in the Office of the Secretary of the Commonwealth of Pennsylvania, on approximately July 3, 1995, a certificate for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of **BATHE AND SHAVE DOG BOUTIQUE**, with its principal place of business at 1315 York Road, Gettysburg, PA 17325. The names and addresses of the persons owning or interested in the said business are Diane and Tom Redding, residing at 1956 Emmitsburg Rd, Gettysburg, PA 17325. The character or nature of the business is dog grooming.

7/14

COMMONWEALTH VS. JONES

1. Robbery is committed if a person inflicts either serious bodily injury, or bodily injury, or places another in fear of such, in the course of committing a theft and includes not only the actual commission of theft, but in flight thereafter.
2. For robbery to be committed, visual display of a weapon is unnecessary.
3. Possession of goods recently stolen in the perpetration of a robbery or burglary is evidence of guilt on charges of not only larceny but of both robbery and burglary as well.

In the Court of Common Pleas, Adams County, Pennsylvania, Criminal No. CC-98, 99-95, COMMONWEALTH OF PENNSYLVANIA VS. JOHN LEE JONES.

Roy Keefer, Esq., District Attorney
Anthony E. Miley, Esq., for Defendant

OPINION ON PETITION FOR WRIT OF HABEAS CORPUS

Spicer, P.J., February 22, 1995.

Defendant seeks dismissal of various robbery and burglary charges through his petition for a writ of habeas corpus. He argues that insufficient evidence was presented at his preliminary hearing, which occurred January 3, 1995. The court scheduled a hearing for February 21, 1995 at which time Commonwealth supplemented the record by introducing one exhibit consisting of eight photographs. A transcript of the preliminary hearing appears of record.

The function of the court is to review the evidence and determine if it would justify submission to the jury at a trial in the case. Evidence must be read in a light most favorable to the Commonwealth, which will be also given the benefit of all reasonable inferences deducible therefrom.

Commonwealth v. Owen, 397 Pa.Super. 507, 580 A.2d 412 (1990).

Laszlo Dobos, the person claiming to be the victim of these crimes, is a man of Hungarian descent with a meager mastery over the English language. He testified through an interpreter, who often paraphrased the witness's statements. Nevertheless, it is clear that Mr. Dobos went to the Seven Eleven convenience store in Gettysburg on September 30, 1994, where he bought and drank coffee. He paid for the beverage with a credit card. Upon leaving, he noticed defendant, who was a complete stranger, following. Defendant told

Dobos to give him money and opened his hand three times. By these gestures, Mr. Dobos concluded that defendant wanted fifteen dollars.

After apparently eluding the defendant for a time, Dobos said he was approached once again near the Meridian Bank in Gettysburg. Defendant indicated he wanted Dobos to use his MAC card to withdraw money from a machine at the bank. Dobos said he was frightened and that defendant kept his right hand hidden.

The two went to the machine, where both participated in the withdrawal process. Dobos punched in his personal identification number. Defendant "pushed the number in, but as the money was coming out, pushed him aside and took the money." (N.T. 18) Dobos said he felt something in his back, which he believed to be a knife, while standing at the MAC machine.

The photographs, taken automatically at the machine, indicate that defendant was more than a passive bystander. Although the pictures are not detailed enough to indicate that defendant held a knife, they do not rule out the possibility. They do show him reaching consistent with his taking money and/or punching in numbers.

Later, Mr. Dobos said he learned that two hundred dollars had been withdrawn. He also said that, as he was leaving the bank, defendant displayed a knife and warned him not to contact the police.

Mr. Dobos said he did not see a weapon until after the money was withdrawn.

The Crimes Code, 18 Pa. C.S.A. §3701, defines robbery in a number of ways. Robbery is committed if a person inflicts either serious bodily injury, or bodily injury, or places another in fear of such, in the course of committing a theft. This latter phrase includes not only the actual commission of theft, but in flight thereafter. See, also, *Commonwealth v. Ford*, ___ Pa. ___, 650 A.2d 433 (1994). Visible display of a weapon is unnecessary. For example, telling someone that it is a stick up and pressing an object, no matter what it is, in the victim's side is enough.

Commonwealth v. Mays, 248 Pa.Super 318, 375 A.2d 116 (1977).

In addition to testimony by the alleged victim that he was forced to withdraw the money, we find that the threats and display of the knife occurred temporally and spatially in close proximity to the actual theft. A jury could find this action to have been associated with flight. The court, therefore, finds the evidence sufficient.

Mr. Dobos also testified that his residence was entered by someone, who had broken the door, on or about October 3, 1994. Among the items stolen was his Meridian Bank Advantage card, which was the same one used at the MAC machine.

Defendant, while being interviewed by Sergeant Roosevelt Sistrunk, of the Gettysburg Borough police department on October 10, 1994, said that he had the card, but gave it to his brother who tried to withdraw money with it. According to defendant, the MAC machine "had eaten" the card. He told the sergeant that Dobos gave him the card during the episode involving withdrawal of two hundred dollars. The card has never been recovered.

"[P]ossession of goods recently stolen in the perpetration of a robbery or burglary is evidence of guilt on charges of not only larceny but of both robbery and burglary as well." *Commonwealth v. Lehman*, 166 Pa.Super. 181, 185, 70 A.2d 404, 406 (1955), cited and quoted in *Commonwealth v. Calderini*, 416 Pa.Super 258, 263, 611 A.2d 206, 208 (1992).

In this case, the type of property involved almost certainly indicates a theft. People do not legitimately trade in credit cards of another. The explanation given to Sergeant Sistrunk conflicts with the testimony of Mr. Dobos. The admission came within a short time of the date of the burglary.

On this charge, also, the court finds the evidence sufficient to establish a prima facie case of burglary.

The attached order is entered.

ORDER OF COURT

AND NOW, this 22nd day of February, 1995, the petition for a writ of habeas corpus is denied.

COMMONWEALTH VS. REED

1. Applications for a search warrant must be read in a non-technical, common sense manner, with deference given to the decision of the issuing authority, and must set forth a time frame upon which the magistrate can determine there is a fair probability that contraband will be found at a particular place.
2. The Court, in determining whether the issuing authority had a substantial basis for issuing a search warrant, must deal with probabilities, not whether a prima facie case has been established, and must also deal with the real world.

In the Court of Common Pleas, Adams County, Pennsylvania,
Criminal No. CC-898-94 and CC-162-95 COMMONWEALTH
OF PENNSYLVANIA VS. FRANK DAVID REED AND
DONNA JEAN REED.

Roy Keefer, Esq., District Attorney
Anthony Miley, Esq., for Defendant

OPINION ON MOTION TO SUPPRESS

Spicer, P. J., March 24, 1995.

Defendants move to suppress the results of a search conducted pursuant to a warrant. The affidavit upon which the warrant was issued recited that, within 72 hours of the application, a confidential informant disclosed that marijuana could be purchased at defendants' residence. The officer went with the informant to a place where the informant was given money, searched and sent into defendants' apartment. The officer kept the informant under constant observation until that person entered the apartment. Such observation resumed when the person exited. Upon returning, the informant produced marijuana.

Defendants argue that these facts are insufficient to establish probable cause, in that nothing indicates a continuing course of conduct from which it could be inferred that marijuana could probably be found in the premises.

Stated more bluntly, defendants contend that one controlled buy, no matter when accomplished, can never be sufficient to indicate that circumstances continue to exist.

Arguments and discussions in this area generally relate to freshness (or staleness) of information. "Staleness, as the name suggests, presupposes that at an earlier point in time the information was "fresh", i.e., probable cause once existed." Commonwealth v. Flaherty, 400 Pa.Super. 397, 583 A.2d 1175, 1179 (1990).¹

There is almost an inexhaustible supply of cases reciting prin-

¹ Commonwealth asked Superior Court to apply the analysis in a case involving a search warrant issued for an automobile. That court pointed out that that probable cause must initially exist, before any consideration may be given to its continuing. Evidence was suppressed because no information was related making it likely that drugs would ever have been discovered in defendant's car.

ciples which govern the validity of search warrants. Affidavits are read in a non-technical, common sense manner, with deference given to the decision of the issuing authority. Applications must set forth a time frame upon which the magistrate can determine there is a fair probability that contraband will be found at a particular place, *Commonwealth v. Murphy*, 427 Pa.Super. 578, 629 A.2d 1020 (1993); *Commonwealth v. Haggerty*, 388 Pa.Super. 67, 564 A.2d 1269 (1989). Sometimes, language indicating information was presented in the immediate past is sufficient. The continuity of activity can be established by the inherent nature of the activity *Commonwealth v. Vergotz*, 420 Pa.Super. 440, 616 A.2d 1379 (1992).

Our task is to determine whether the issuing authority had a substantial basis for issuing the warrant. We deal with probabilities, not whether a prima facie case has been established. *Commonwealth v. Baker*, 532 Pa. 121, 615 A.2d 23 (1992).² We also deal with the real world.

Commonwealth v. Murphy, supra.

If the identity of a confidential informant is to remain confidential, the exact time and circumstances of a purchase can rarely be given. The time of 72 hours, while somewhat vague, still speaks of the present.

Reading the affidavit in a common sense manner, we learn: 1) the informant told the police that drugs could be purchased at the location; and 2) at a time selected by the police, a purchase was made. That is enough to indicate the likelihood that selling would continue during at least the period in which the warrant was issued.

We have carefully considered the cases submitted by defendants. Most, if not all, upheld the validity of search warrants. None suggested that more than one controlled purchase is required. The most that can be said is that the police would be wiser, in these

²Facts in *Baker*, in which a search was upheld, were both stronger and weaker than the one at bar. A controlled buy was accomplished within 72 hours. The informant admitted purchasing cocaine at the location on March 4, 1988 (really, see 615 A.2d at 24), September 28, 1988, and October 17, 1988. However, the informant was not searched prior to the controlled purchase. Supreme Court relied upon declarations against penal interests.

situations, to include more description of the informant's observations while in the targeted premises. If the recitations were stale, we would agree that a course of conduct be included. Paraphrasing Flaherty, supra, we are satisfied that probable cause existed and that it was fresh.

The attached order is entered.

ORDER OF COURT

AND NOW, this 24th day of March, 1995, defendants' pretrial motions are 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 RUTH K. CLAPSADL, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania
 Executrices: Mary T. Mickley, 2419 Mt. Hope Road, Fairfield, PA 17320; Jane C. Reed, 780 Bendersville-Wenksville Road, Aspers, PA 17304
 Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF CLYDE JENNINGS HAHN, DEC'D

Late of Carroll Valley, Adams County, Pennsylvania
 Co-Executrices: Shirley H. Pittinger, 6420 Mountindale Rd., Thurmont, MD 21788; Mary H. Rohrbaugh, 16658 Old Emmitsburg Rd., Emmitsburg, MD 21727

ESTATE OF JOHN P. SEARS, DEC'D

Late of Franklin Township, Adams County, Pennsylvania
 Administratrix: Barbara Shingleton, 2614 Chambersburg Road, Biglerville, PA 17307
 Attorney: Andrew F. Kagen, Esquire, 2600 Eastern Boulevard, Suite 102, York, Pennsylvania 17402

ESTATE OF SAMUEL R. WELSH, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
 Executrix: Judy Ellen Zeis, 811 Hillcrest Avenue, Chambersburg, PA 17201
 Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF MARY ALICE McCauslin, DEC'D

Late of Menallen Township, Adams County, Pennsylvania
 Executors: Dean L. McCauslin, 181 Dug Hill Road, Biglerville, PA 17307; Reid E. McCauslin, St. George Drive, Sherwood Forest, Dillsburg, PA 17019

ESTATE OF LEROY C. MILLER, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania
 Executors: Marvin L. Stauffer, 64 Two Taverns Road, Littlestown, PA 17340; Terry Lee Miller, R.D.1, Box 69, Abbottstown, PA 17301
 Attorney: Teeter, Teeter, & Teeter, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF LEO C. SCHMIDT, JR., DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
 Executrix: Julia L. Schmidt, 405 Ridgewood Drive, Gettysburg, PA 17325
 Attorney: John A. Wolfe, Esq., Wolfe & Rice, 47 West High Street, Gettysburg, PA 17325

ESTATE OF RAYMOND I. SLAYBAUGH, DEC'D

Late of Butler Township, Adams County, Pennsylvania
 Executors: Donna S. Heyser, 587 Orchard Lane, Aspers, PA 17304; William R. Slaybaugh, 101 Orchard View Drive, Bendersville, PA 17306
 Attorney: Bigham & Raffensperger, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF BEULAH M. WATSON, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania
 Executor: George S. Lambert, 2104 Taneytown Road, Gettysburg, PA 17325
 Attorney: Teeter, Teeter, & Teeter, 108 West Middle Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF MILDRED A. CARBAUGH, DEC'D

Late of Franklin Township, Adams County, Pennsylvania
 Executor: Adams County National Bank, 675 Old Harrisburg Road, Gettysburg, PA 17325
 Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF LAWRENCE W. GUISE, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania
 Executrix: Melissa Ann Guise, 447 Poppinga Way, Santa Maria, CA 93455
 Attorney: Walton V. Davis, 31 S. Washington Street, Gettysburg, PA 17325

ESTATE OF GRACE A. SHANK, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executors: Anna R. Bange, 351 Smoketown Road, Hanover, PA 17331; Jacob Shank, 260 Hershey Heights Road, Hanover, PA 17331
 Attorney: Donald W. Dorr, 126 Carlisle Street, Hanover, PA 17331

ESTATE OF MADELEINE C. STEEL, DEC'D

Late of Franklin Township, Adams County, Pennsylvania
 Executrix: Diana M. Rarig, 274 Bottom Road, Orrtanna, PA 17353
 Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

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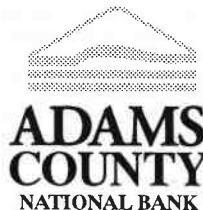
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In times like these,
you and your clients need
the experience and expertise
provided by a trust professional.



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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 92-S-617 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 11th day of August, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain parcel of land lying and being situate in the Borough of Carroll Valley, Adams County, Pennsylvania, more particularly described as Lot No. 75, in Section R1, bounded and described as follows:

BEGINNING at a point in the center of Fruitwood Trail at corner land of Alfred E. Coffey; thence by land of the said Alfred E. Coffey and running through a pipe located 25 feet from the place of beginning, South 2 degrees 37 minutes 20 seconds West 225 feet to a pipe set on an iron pin; thence by land of Thomas Golatz and by land now or formerly of Charnita, Inc., North 87 degrees 22 minutes 40 seconds West 184.80 feet to a one-inch pipe; thence by land of Barrick and running through a pipe located 27.36 feet from the end of this line, North 26 degrees 37 minutes East 246.28 feet to a point in the center of Fruitwood Trail; thence in the center of Fruitwood Trail South 87 degrees 22 minutes 40 seconds East 84.65 feet to a point in the center of Fruitwood Trail, the place of BEGINNING.

CONTAINING 30,313 square feet or 0.696 acre.

BEING the same property which Wilbert D. Leech and Shirley D. Leech, husband and wife, by deed from Albert F. Wivell & Sons, Inc. dated September 6, 1989, and recorded September 22, 1989, in Adams County Deed Book Volume 534, page 406, in fee simple. IMPROVED WITH DWELLING.

Seized and taken into execution as the property of **Wilbert D. Leech and Shirley D. Leech**, and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
June 23, 1995.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 1, 1995, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/21, 28 & 8/4

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Section 311 of Act 1982-295, that an Application to conduct business in Adams County, Pennsylvania under the assumed or fictitious name, style or designation of GREYSTONE'S HISTORY EMPORIUM & GALLERY was filed in the office of the Secretary of the Commonwealth of Pennsylvania, in Harrisburg, Pennsylvania. The business is located at 461 Baltimore Street, Gettysburg, Pennsylvania. The entity owning or interested in said business is Greystone Communications, Inc.

Campbell, White & George
122 Baltimore Street
Gettysburg, PA 17325
Attorneys

7/21

IN THE COURT
OF COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

LEGAL NOTICE
No. 95-S-260
Action to Quiet Title

Q. BAIRD HERSHEY, JR. and SHARON K. HERSHEY, Plaintiffs

vs.

THE HEIRS OF ALBERT DARR and THE HEIRS OF ELSIE WEISER, specifically JEAN WENNEL, CLARA GOUFFER, KENNETH WEISER, LESTER CLAYTON RITTER, ANNIE MIXELL, SUE MILLER, DONALD WEISER, EDWARD WEISER, NANCY WEISS, JEFFERY WEISER, DEBRA BOYER, VICTOR WEISER, FRANK W. WEISER and BARBARA SHANNON, Defendants

TO: Edward Weiser

YOU ARE NOTIFIED that an Order has been entered on July 10, 1995, directing that within thirty (30) days after this publication, you shall commence an Action in Ejectment or other appropriate action against the Plaintiffs above to assert any claim you may have in and to the lands herein described or be forever barred from asserting any right, lien, title or interest inconsistent with the interest or claim set forth in Plaintiffs' Complaint with respect to the land herein described:

BEGINNING at a stone inside of fence; thence by lands now or formerly of David Plank South 28-1/2 degrees West, 18.2 perches to a post; thence by lands now or formerly of Willis A. Myers North 45 degrees East, 13 perches to stone; thence North 48-1/4 degrees West, 8/10 of a perch to willow; thence North 71-1/4 degrees East, 33.86 perches to a chestnut;

thence by lands now or formerly of H. H. Hershey North 18 degrees West, 8.05 perches to a stone; thence by lands now or formerly of Hiram Jacobs South 75-3/4 degrees West, 47.62 perches to a stone, the place of BEGINNING. CONTAINING 3 acres and 32 perches, neat measure.

LESS, HOWEVER, from the above-described tract the following:

1) A tract of land containing 1.23 acres and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 225 at Page 447.

2) A tract of land containing 134.4 perches and recorded in the aforementioned Recorder's Office in Deed Book 360 at Page 757.

BEING THE SAME WHICH Boyd Darr, Executor under the Last Will and Testament of Albert Darr, deceased, and Boyd C. Darr, a/k/a Boyd Darr, and Martena V. Darr, husband and wife, individually, by deed dated June 24, 1994, and recorded in the aforementioned Recorder's Office in Record Book 904 at Page 76, sold and conveyed unto Q. Baird Hershey, Jr. and Sharon K. Hershey, husband and wife, Plaintiffs herein.

Hartman & Yannetti
Gary E. Hartman
126 Baltimore Street
Gettysburg, PA 17325
Attorney for Plaintiffs

7/21

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Corporation Bureau, Department of State, Commonwealth of Pennsylvania, Harrisburg, PA, on June 23, 1995, for BARTS CENTENARY UNITED METHODIST CHURCH, 56 E. King Street, Littlestown, Pennsylvania 17340. Said nonprofit corporation has been organized under the Nonprofit Corporation Law of 1988.

The purpose or purposes for which the corporation was incorporated are as follows:

To worship God according to the faith, ritual and discipline of the church and to promote the civic, educational, social and spiritual improvement of its members and communicants, and to have unlimited power to engage in and do any lawful act concerning any and all lawful business purposes for which corporations may be incorporated under the Non-profit Corporate Law.

Hartman & Yannetti
Attorneys for Corporation
126 Baltimore Street
Gettysburg, PA 17325

7/21

COMMONWEALTH VS. BLACK

1. While leave to withdraw a guilty plea should be liberally granted before sentencing, permission is not automatically given.

2. In order to withdraw a guilty plea before sentencing, Defendant must assert a fair and just reason and if this is done, Commonwealth must fail to show that substantial prejudice would result from the withdrawal.

3. Although, on a motion to withdraw a plea of guilty, an assertion of innocence is generally sufficient to shift the burden to the Commonwealth to show that substantial prejudice would result from the withdrawal, this is not true when Defendant has admitted guilt during the plea colloquy.

In the Court of Common Pleas, Adams County, Pennsylvania, Criminal No. CC-31-92, CC-572-89 and CC-630-89, COMMONWEALTH OF PENNSYLVANIA VS. DAVID RAY BLACK.

Roy Keefer, Esq., District Attorney

Robert John Chester, Esq., for Defendant

OPINION ON CHALLENGE TO DENIAL OF MOTION TO WITHDRAW GUILTY PLEA (PCRA PETITION)

Spicer, P.J., March 9, 1995.

Although the caption in this case indicates a number of proceedings, we deal only with defendant's plea of guilty and sentence in CC-31-92, on a charge of driving under the influence. Other cases are germane only because defendant's parole has been revoked and composite sentences reflect bad time assessed to the driving under the influence charge.

Defendant originally appeared for arraignment on January 15, 1992, entered a plea of not guilty and requested a jury trial. For reasons that will appear later, it should be noted that he was instructed that a notice of alibi defense was required within thirty days of that date. Trial was scheduled and subsequently continued six times, all at defendant's request. Finally, on November 16, 1992, which was the first day of the criminal term in which the case was scheduled for trial, defendant appeared with counsel and entered a plea of guilty. The colloquy has been transcribed and filed of record. The Commonwealth related that the police received a complaint from a motorist, Denise Kelly, about being followed by a cream blue pickup with a cap on it. The time of her phone call was 1:00 p.m. on September 12, 1991. Police proceeded to the vicinity and discovered defendant's truck, which "had apparently gone off the roadway and impacted into a rock." (N.T. 3) After running a check on the license, police proceeded to defendant's home.

They described him as visibly intoxicated. Defendant admitted driving the truck earlier, but said he parked it when it ran out of gas.

A blood test yielded a blood alcohol concentration of .26 percent. The following transpired during the colloquy:

THE COURT: Do you understand that by pleading guilty you're admitting that those facts are true?

THE DEFENDANT: Yes, sir.

(N.T. 4)

Later:

THE COURT: Are you doing this because you are in fact guilty and for no other reason?

THE DEFENDANT: Yes, sir.

(N.T. 5)

At the defendant's request, sentencing was postponed to January 7, 1993. In the interim, the cases of *Commonwealth v. Jarman*, 529 Pa. 92, 601 A.2d 1229 (1992) and *Commonwealth v. Modaffare*, 529 Pa. 101, 601 A.2d 1233 (1992) were publicized. Defendant appeared for sentencing and moved to withdraw his plea of guilty.

The sentencing proceeding has also been transcribed. It might appear, at first, that defendant's request was based upon an assertion of innocence. However, it became clear that he merely wished to take advantage of the rulings in those Supreme Court cases. As counsel stated, "its [sic] a relation back problem." (N.T. 3)

The court did not consider that assertion a fair and just reason and did not consider the effect on the Commonwealth. In light of *Commonwealth v. Yarger*, ___ Pa. ___, 648 A.2d 529 (1994), it is still not a fair and just reason.

The court appointed counsel for defendant, after the PCRA petition was filed. A preliminary conference was held January 18, 1995, which was followed by a hearing February 21, 1995. Both proceedings have been transcribed and filed of record. Since it was uncontradicted that defendant told his counsel to appeal following sentence, leave was granted to file a motion challenging the court's denial of the motion to withdraw the guilty plea.

It is interesting to read defendant's response when asked by the District Attorney, why he pleaded guilty.

There was [sic] a couple of reasons. It had been going

on and there had been a lot of continuances. I wanted to get it done with. That was the main reason. From what he told me, he didn't think I had a very good chance of winning the case, and I also wanted to have some more time, because I had a couple of alibi witnesses that I couldn't get in touch with and I was trying to get them lined up and he told me I could withdraw my plea up until the day of the sentencing and I thought, well, if you have a little more time to get in touch with these guys that can testify where I was, at what time, that it would give me a case.

(N.T. 2-31-95, p. 6)

It is obvious the "he" referred to defendant's counsel.

As we previously pointed out, defendant was informed about the requirement for giving notice of an alibi defense within thirty days after arraignment. No notice was ever given.

The system liberally accommodated defendant, even after his plea of guilty. Sentencing was delayed over a month. He was released on special furlough after sentencing, so that he could place his affairs in order. Despite having been granted numerous continuances, he attempted to use his plea to gain yet another one.

There is nothing fair nor just about defendant's tactics.

We are aware that leave should be liberally granted before sentencing. However, permission is not automatically given. There is a two prong test. First, defendant must assert a fair and just reason. Second, if this is done, Commonwealth must fail to show that substantial prejudice would result from the withdrawal. *Commonwealth v. Forbes*, 450 Pa. 185, 299 A.2d 268 (1973). Although an assertion of innocence generally is sufficient to shift the burden to the Commonwealth, this is not true when defendant has admitted guilt during the plea colloquy. *Commonwealth v. Miller*, 432 Pa.Super. 619, 639 A.2d 815 (1994). More than a bald assertion of innocence is required.¹

We do not find that defendant's desire to take advantage of a technicality concerning the blood test, or to gain time to search for witnesses amounts to a fair and just reason. To the contrary, under the

¹Denial of a request to withdraw was affirmed in that case. Purists may find the holding weakened by a separate finding of substantial prejudice. Commonwealth was faced with a need for a change of venue. However, the need predated the plea and venue change would have been required had the case gone to trial, either before or after the plea.

circumstances, both motives only indicate a flagrant attempt to manipulate the system.

For reasons explained, we deny defendant's motion.

The attached order is entered.

ORDER OF COURT

AND NOW, this 9th day of March, 1995, defendant's motion is denied. He is notified that he has thirty (30) days from today's date to appeal to Superior Court. He has the right of qualified bail on appeal. He may proceed in forma pauperis, if his financial condition warrants. Defendant shall be represented by PCRA counsel on appeal.

The clerk will furnish a copy of this opinion and order to the Adams County Warden who shall see that defendant is personally served with it.

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 ROY A. CARBAUGH, DEC'D

Late of Highland Township, Adams County, Pennsylvania

Executrix: Shirley L. Carbaugh, 675 Knoxlyn Road, Gettysburg, PA 17325

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

ESTATE OF GLADYS V. HOWARD, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Administratrix: Margaret J. Green, 66 Natural Springs Road, #22, Gettysburg, PA 17325

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

ESTATE OF MARY JANE LEAVY, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Co-Executors: Harold Jones; Mary Jones

Attorney: Jared W. Ingersoll, 427 Baltimore Street, Hanover, PA 17331

SECOND PUBLICATION

ESTATE OF RUTH K. CLAPSADL, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executrices: Mary T. Mickley, 2419 Mt. Hope Road, Fairfield, PA 17320; Jane C. Reed, 780 Bendersville-Wenksville Road, Aspers, PA 17304

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

ESTATE OF CLYDE JENNINGS HAHN, DEC'D

Late of Carroll Valley, Adams County, Pennsylvania

Co-Executrices: Shirley H. Pittinger, 6420 Mountindale Rd., Thurmont, MD 21788; Mary H. Rohrbaugh, 16658 Old Emmitsburg Rd., Emmitsburg, MD 21727

ESTATE OF JOHN P. SEARS, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Administratrix: Barbara Shingleton, 2614 Chambersburg Road, Biglerville, PA 17307

Attorney: Andrew F. Kagen, Esquire, 2600 Eastern Boulevard, Suite 102, York, Pennsylvania 17402

ESTATE OF SAMUEL R. WELSH, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Judy Ellen Zeis, 811 Hillcrest Avenue, Chambersburg, PA 17201

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

THIRD PUBLICATION

ESTATE OF MARY ALICE McCauslin, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executors: Dean L. McCauslin, 181 Dug Hill Road, Biglerville, PA 17307; Reid E. McCauslin, St. George Drive, Sherwood Forest, Dillsburg, PA 17019

ESTATE OF LEROY C. MILLER, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Executors: Marvin L. Stauffer, 64 Two Taverns Road, Littlestown, PA 17340; Terry Lee Miller, R.D. 1, Box 69, Abbotstown, PA 17301

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

ESTATE OF LEO C. SCHMIDT, JR., DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Julia L. Schmidt, 405 Ridgewood Drive, Gettysburg, PA 17325

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

ESTATE OF RAYMOND I. SLAY-BAUGH, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executors: Donna S. Heyser, 587 Orchard Lane, Aspers, PA 17304; William R. Slaybaugh, 101 Orchard View Drive, Bendersville, PA 17306

Attorney: Bigham & Raffensperger, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF BEULAH M. WATSON, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executor: George S. Lambert, 2104 Taneytown Road, Gettysburg, PA 17325

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

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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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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 92-S-617 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 11th day of August, 1995, 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 parcel of land lying and being situate in the Borough of Carroll Valley, Adams County, Pennsylvania, more particularly described as Lot No. 75, in Section R1, bounded and described as follows:

BEGINNING at a point in the center of Fruitwood Trail at corner land of Alfred E. Coffey; thence by land of the said Alfred E. Coffey and running through a pipe located 25 feet from the place of beginning, South 2 degrees 37 minutes 20 seconds West 225 feet to a pipe set on an iron pin; thence by land of Thomas Goltz and by land now or formerly of Chamita, Inc., North 87 degrees 22 minutes 40 seconds West 184.80 feet to a one-inch pipe; thence by land of Barrick and running through a pipe located 27.36 feet from the end of this line, North 26 degrees 37 minutes East 246.28 feet to a point in the center of Fruitwood Trail; thence in the center of Fruitwood Trail South 87 degrees 22 minutes 40 seconds East 84.65 feet to a point in the center of Fruitwood Trail, the place of BEGINNING.

CONTAINING 30.313 square feet or 0.696 acre.

BEING the same property which Wilbert D. Leech and Shirley D. Leech, husband and wife, by deed from Albert F. Wivell & Sons, Inc. dated September 6, 1989, and recorded September 22, 1989, in Adams County Deed Book Volume 534, page 406, in fee simple, IMPROVED WITH DWELLING.

Seized and taken into execution as the property of **Wilbert D. Leech and Shirley D. Leech**, and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
June 23, 1995.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 1, 1995, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

7/21, 28 & 8/4

NOTICE

In re: Estate of Helen T. Walker, an incapacitated person (OC-119-94).

NOTICE IS HEREBY GIVEN THAT ADAMS COUNTY NATIONAL BANK, plenary permanent guardian of the above estate, has filed a petition requesting permission to sell the real estate of the incapacitated person above, known as 1265 Old Waynesboro Road, Adams County, Pennsylvania, at public sale; that the Orphans' Court of the Court of Common Pleas of Adams County by decree dated July 21, 1995 has authorized and directed the said Adams County National Bank, as such guardian, to expose said premises to public sale; that said premises will be offered for sale at a public sale conducted by Gertie Murdorf-McDannell, Auctioneer, at the premises at 5:30 p.m. on Thursday, August 17, 1995; and that the conditions of sale will be read immediately prior to sale. If no exceptions are filed to said decree of the Court, or objections made to said sale, and the premises is struck down as sold, a return of public sale will be made and the Court will be asked to approve or confirm the sale after its consummation on Monday, August 21, 1995 at 9:00 a.m. in Courtroom No. 1 of the Adams County Courthouse, Gettysburg, Pennsylvania.

Teeter, Teeter & Teeter
Attorney for Guardian

7/28, 8/4 & 8/11

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on or about July 20, 1995, for the purpose of obtaining a Certificate of Incorporation for a proposed business corporation to be organized under the Pennsylvania Business Corporation Law of 1988. The name of the corporation is MEDIATION SERVICES OF ADAMS COUNTY, INC. and the purpose for which it is being organized is to provide services for conflict resolution and to provide training and education in mediation services and all other activities permitted by the PA Business Corporation Law, as amended, within and outside the Commonwealth of Pennsylvania, and the corporation shall have unlimited powers to engage in and to do

any lawful act concerning any and all business for which corporations may be incorporated under the Pennsylvania Business Corporation Law of 1988, and for these purposes to have, possess, and enjoy all the rights, benefits and privileges of said Act of Assembly and its supplements and amendments.

The initial registered office of the corporation is 181 Orrtanna Road, Orrtanna, Pennsylvania 17353.

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

7/28

FLICKINGER VS. SPICER, ET AL.

1. Failure to include with the Praeceptum for Entry of Default Judgment the Certification of Notice required by Pa. R.C.P. 237.1 can be considered a fatal defect appearing on the face of the record allowing a judgment to be stricken because essentially the Prothonotary has entered judgment without authority to do so.

2. An application to open a judgment does not constitute a waiver of a fundamental or vital defect, such as, where the Plaintiff had no right to enter the judgment in the first place.

3. Where a Prothonotary has no power to enter a Default Judgment a valid judgment does not exist and a laches or estoppel theory does not bar a petition to strike filed subsequent to a petition to open.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 93-S-461, ROGER E. FLICKINGER, D/B/A ROGER FLICKINGER & SONS VS. JOHN SPICER, RAYMOND E. CLEARY, JR. AND LUCIE S. CLEARY VS. JAMES R. ANDERSON.

Scott A. Ruth, Esq., for Plaintiff

Bernard A. Yannetti, Jr., Esq., for Defendant

John M. Crabbs, Esq., for Additional Defendant

MEMORANDUM OPINION

Spicer, P.J., March 10, 1995.

By Order and Opinion dated January 11, 1995, we addressed and denied a Petition To Open Default Judgment filed by Defendant, John Spicer. The following day said Defendant filed Motion To Strike wherein he alleged that the Prothonotary was without authority to enter default judgment because the praecipe for entry of judgment did not contain the certification required by Pa. R.C.P. 237.1. Plaintiff filed an Answer on January 30, 1995. Hearing was held on February 10, 1995. The parties primarily relied on the pleadings.

Pa. R.C.P. 237.1 provides:

(a) No judgment by default shall be entered by the Prothonotary unless the praecipe for entry includes a certification that a written notice of intention to file the praecipe was mailed or delivered to the party against whom judgment is to be entered . . . A copy of the notice . . . shall be attached to the praecipe.

Failure to include the certification can be considered a fatal defect appearing on the face of the record allowing a judgment to be stricken

because essentially the Prothonotary has entered judgment without authority to do so. *Feigley v. Suomela*, 129 Pa. Comlth. Ct. 81, 564 A.2d 1032 (1989).

Here, Plaintiff attached a copy of the notice to the praecipe but failed to include the certification. Plaintiff makes three arguments: first, that the praecipe did contain a certification, second that his counsel gave an oral certification to a deputy Prothonotary and third that Defendant waived any irregularities and is estopped from raising any at this time.

We have little difficulty in concluding that the praecipe did not contain a certification. The Rule makes clear that a copy of the notice of default and a certification be included. See Explanatory Note (Entry of Judgment) following the Rule. Plaintiff merely attached the notice and nothing more.

Next we feel confident that the rule contemplates a written and not oral certification for the reason that the Rule makes clear the certification is to be contained in this praecipe.

Finally, Plaintiff cites *Fierst v. Commonwealth Land Title Insurance Company*, 369 Pa. Super. 355, 535 A.2d 196 (1987), alloc. denied 520 Pa. 575, 549 A.2d 135 (1988) for the proposition that Defendant waived his right to raise the lack of certification. In *Fierst* a default judgment was entered. The praecipe for entry of judgment recited that notice of intent to enter default had been served upon defendant's counsel and a copy of the notice was attached. After a petition to open the default judgment was filed the parties stipulated, inter alia, that appropriate notice of intent to take default was sent and that the praecipe "along with proper certification in compliance with the" rules was entered. The petition to open was denied. Subsequently, a petition for reconsideration was filed raising for the first time plaintiff's failure to comply with the notice requirements of Rule 237.1. That request was denied. Defendant then filed a petition to strike again on the basis of plaintiff's failure to comply with Rule 237.1.

On appeal Superior Court held

A petition to strike a judgment will be granted only for defects appearing on the face of the record . . . If the record affirmatively shows a failure to comply with Pa. R.C.P. 237.1, the record is defective. Such a record fails to support the entry of a default judgment . . .

In the instant case, however, the record is not defective.

Moreover, appellant was estopped to assert any irregularity in the proceedings leading up to the entry of a default judgment. After the default judgment had been entered, appellant did not challenge the validity of the judgment but acknowledged its validity and moved to open it. Its petition to open the judgment did not allege that the judgment was defective because of a failure to give notice under Rule 237.1. Instead, appellant assumed the validity of the judgment, stipulated that notice of intent to enter a default judgment had been appropriately given, and asked the trial court, by the application of equitable principles, to open the judgment and allow a defense to plaintiffs' cause of action. The trial court found that equitable principles did not warrant an opening of the judgment and denied relief. It was only then, in a petition requesting reconsideration, that appellant sought to repudiate its stipulation and aver a default judgment based on inadequate compliance with Pa. R.C.P. 237.1. This was too late. Appellant was bound by its stipulation and estopped from seeking to strike the judgment on grounds that prior notice had not been given...369 Pa. Super. at 360-1, 535 A.2d at 196 (emphasis added) (citations omitted).

As can be seen the primary focus of the estoppel issue was the stipulation (a judicial admission) that there was compliance with Rule 237.1. No such stipulation exists in this case.

There is authority which suggests that,

Generally, a rule to open a judgment admits the regularity of the judgment, or is deemed to be a waiver of any defect or irregularity in the entry of the judgment which might have been, yet was not, attacked by a motion to strike.

This admission of regularity applies generally to irregularities of procedure...

An application to open a judgment does not constitute a waiver of a fundamental or vital defect, such as, where the plaintiff had no right to enter the judgment in the first place ...

Stand. Pa. Prac. §71:149.

In *Fleck v. McHugh*, 241 Pa. Super. 307, 361 A.2d 410 (1976) the Superior Court notes that where a Prothonotary has no power to enter a default judgment a valid judgment does not exist and a laches or estoppel theory does not bar a petition to strike filed subsequent to a petition to open. 361 A.2d at 414.

Here, without proper certification the Prothonotary had no authority to enter the default judgment. *Feigley v. Suomela*, supra. Therefore, estoppel does not bar Defendant's petition to strike.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 10th day of March, 1995, the Motion to Strike filed on January 16, 1995, by Defendant, John Spicer, is granted and default judgment entered March 7, 1994, is stricken.

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 DAISY KETURAH LEONARD a/k/a DAISY K. LEONARD, DEC'D

Late of Mount Joy Township, Adams County, Pennsylvania

Executrix: Connie A. Gulden, 651 White Church Road, Gettysburg, PA 17325

Attorney: Michael A. George, Campbell, White & George, 122 Baltimore Street, Gettysburg, PA 17325

CAROLLINDSAY, a/k/a CAROLYNE LINDSAY, FORMERLY CAROLYN E. SWEETING, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325

Attorney: Bigham & Raffensperger, Esqs., Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF RUTH TATE SHETRON, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executor: Robert G. Tate, 118 West Middlesex Drive, Carlisle, PA 17013

Attorney: Pyle and Entwistle, 33 West Middle Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF ROY A. CARBAUGH, DEC'D

Late of Highland Township, Adams County, Pennsylvania

Executrix: Shirley L. Carbaugh, 675 Knoxlyn Road, Gettysburg, PA 17325

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

ESTATE OF GLADYS V. HOWARD, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Administratrix: Margaret J. Green, 66 Natural Springs Road, #22, Gettysburg, PA 17325

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

ESTATE OF MARY JANE LEAVY, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Co-Executors: Harold Jones; Mary Jones

Attorney: Jared W. Ingersoll, 427 Baltimore Street, Hanover, PA 17331

THIRD PUBLICATION

ESTATE OF RUTH K. CLAPSADL, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executrices: Mary T. Mickley, 2419 Mt. Hope Road, Fairfield, PA 17320; Jane C. Reed, 780 Bendersville-Wenkville Road, Aspers, PA 17304

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

ESTATE OF CLYDE JENNINGS HAHN, DEC'D

Late of Carroll Valley, Adams County, Pennsylvania

Co-Executrices: Shirley H. Pittinger, 6420 Mountindale Rd., Thurmont, MD 21788; Mary H. Rohrbaugh, 16658 Old Emmitsburg Rd., Emmitsburg, MD 21727

ESTATE OF JOHN P. SEARS, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Administratrix: Barbara Shingleton, 2614 Chambersburg Road, Biglerville, PA 17307

Attorney: Andrew F. Kagen, Esquire, 2600 Eastern Boulevard, Suite 102, York, Pennsylvania 17402

ESTATE OF SAMUEL R. WELSH, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Judy Ellen Zeis, 811 Hillcrest Avenue, Chambersburg, PA 17201

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-554 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 1st day of September, 1995, 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, parcel or tract of land situate, lying and being in Conewago Township, Adams County, Pennsylvania, more particularly bounded, limited and described as follows:

BEGINNING at a point on the northern right-of-way line of Sycamore Lane, a 60-foot wide right-of-way, at corner of Lot No. 138 on the subdivision plan hereinafter referred to; thence along the northern right-of-way line of Sycamore Lane, by a curve to the right having a radius of 501.42 feet, the long chord bearing and distance of which is South 88 degrees 01 minute 32 seconds West, 85.85 feet for

an arc distance of 85.95 feet to a point at the intersection of Sycamore Lane and Butternut Lane; thence along the eastern right-of-way line of Butternut Lane, the following three (3) courses and distances: (1) North 56 degrees 54 minutes 28 seconds West, 21.30 feet; (2) North 11 degrees 54 minutes 28 seconds West, 95.08 feet to a point, and (3) by a curve to the left having a radius of 185 feet, the long chord bearing and distance of which is North 20 degrees 02 minutes 02 seconds West, 52.30 feet for an arc distance of 52.48 feet to a point at Lot No. 140 on the subdivision plan hereinafter referred to; thence along Lot No. 140, North 61 degrees 50 minutes 24 seconds East, 65.39 feet to a point at Lot No. 138 on the subdivision plan hereinafter referred to; thence along Lot No. 138, South 26 degrees 53 minutes 06 seconds East, 171.02 feet to a point on the northern right-of-way line of Sycamore Lane, the point and place of BEGINNING. (CONTAINING 13,341 square feet and being Lot No. 139 on plan prepared for Diller's Village, Phase II, by Donald E. Worley, Registered Surveyor, dated April 29, 1987, designated as File No. G-93, which said subdivision plan is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 47 at page 22.)

IT BEING the same tract of land which Joseph A. Myers Real Estate, Inc., a Pennsylvania corporation, by deed dated June 6, 1988, and recorded in the office of the aforesaid Recorder of Deeds in Record Book 501 at page 336, granted and conveyed unto Cynthia R. Tavares, the Defendant herein.

UNDER AND SUBJECT, NEVERTHELESS, to easements and setbacks as set forth in the above-recited deed.

IMPROVED WITH a brick and vinyl siding, single family dwelling with attached garage.

Seized and taken into execution as the property of **Cynthia R. Tavares**, and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
July 14, 1995.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 25, 1995, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/28, 8/4, 11

IN THE COURT
OF COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
No. 95-185
Action to Quiet Title

TED A. ROWLAND, Plaintiff
vs.

RALPH J.S. HOFFACKER, JR., LOUISE HOFFACKER, MARY SPALDING, MARGARET BANGE, WILLIAM S. HOFFACKER, JOHN HOFFACKER, and NORMAN FORNWALT, their heirs, executors, administrators and representatives and assigns; and the heirs, executors, administrators and representatives of the Estate of RALPH J.S. HOFFACKER, deceased and MARGARET B. HOFFACKER, deceased, Defendants

TO: The Heirs, Executors, Administrators and Representatives of the Estates of Ralph J. S. Hoffacker, deceased and Margaret B. Hoffacker, deceased, Defendants

TAKE NOTICE that on February 23, 1995, Ted A. Rowland filed a Complaint in an Action to Quiet Title against you as Defendants, averring that he is the owner of real property described therein. The Complaint requests the Court to extinguish any possible interest you may have in said real estate. The subject property consists of two tracts of land situate, lying and being in Berwick Township, Adams County, Pennsylvania, bounded and described as follows to wit:

TRACT #1: BEGINNING at a point in the center of State Highway Legislative Route No. 0104, at the Northeastern corner of Lot No. 7 in the plan of lots below identified; thence running in the center of said State Highway, North seventy-three (73) degrees, forty-five (45) minutes East, one hundred (100) feet to a point in the center of the same at the Northwestern corner of Lot No. 5, in said plan; thence by said Lot No. 5 and through a steel pin twenty-five (25) feet from the beginning of this course, South sixteen (16) degrees, fifteen (15) minutes East, two hundred forty and ninety-six hundredths (240.96) feet to an iron pin at the Southwestern corner of Lot No. 5; thence through the original tract now or formerly of Ralph J. S. Hoffacker and wife, South seventy-three (73) degrees, forty-five (45) minutes West, one hundred (100) feet to a steel pin at the Southeastern corner of Lot No. 7 in said plan; thence by said Lot No. 7, North sixteen (16) degrees, fifteen (15) minutes West, two hundred forty and ninety-six hundredths (240.96) feet, running through a steel pin twenty-five (25) feet from the end of this course, to the above described plan of beginning. CONTAINING 0.5532 Acres.

TRACT #2: BEGINNING at a point in the center of State Highway Legislative Route No. 01046, at the Northeastern corner of Lot No. 7 in the Plan of lots below identified; thence running in the center of said State Highway North seventy-three (73) degrees, forty-five (45) minutes East, one hundred (100) feet to

a point in the center of the same at the Northwestern corner of Lot No. 5 in said Plan; thence by said Lot No. 5 and through a steel pin twenty-five (25) feet from the beginning of this course, South sixteen (16) degrees, fifteen (15) minutes East, two hundred forty and ninety-six hundredths (240.96) feet to an iron pin at the Southwestern corner of Lot No. 5; thence through the original tract now or formerly of Ralph J. S. Hoffacker and wife, South seventy-three (73) degrees, forty-five (45) minutes West, one hundred (100) feet to a steel pin at the Southeastern corner of Lot No. 7 in said Plan; thence by said Lot No. 7, North sixteen (16) degrees, fifteen (15) minutes West, two hundred forty and ninety-six hundredths (240.96) feet, running through a steel pin twenty-five (25) feet from the end of this course, to the above described place of BEGINNING. CONTAINING 0.5532 acres.

Said Complaint requests the Court to enter a decree that the Plaintiff, Ted A. Rowland, is the owner in fee simple absolute of the property described herein, and that title to such property now rests in the Plaintiff in fee simple absolute free and clear of any and all claims whatsoever of the Defendants, and further, an Order declaring the Defendants, their heirs, executors, administrators and assigns are forever barred from asserting any right, lien, title, or interest in the property which is the subject matter of this action.

WHEREFORE, the Court of Common Pleas of Adams County, Pennsylvania, has ordered that service of the Complaint be made on the above Defendants, the heirs, executors, administrators and representatives of the Estates of Ralph J. S. Hoffacker, deceased and Margaret B. Hoffacker, deceased, as well as their heirs, executors, administrators and assigns, by publication once a week for three (3) consecutive weeks in the Adams County Legal Journal and one daily newspaper of general circulation in Adams County, Pennsylvania. Plaintiff will request the Court to enter a final judgment ordering that any possible legal interest the said Defendants might have had in said property be extinguished.

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the foregoing 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 OR KNOW A LAWYER OR CANNOT AFFORD ONE, GO TO OR

TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Adams County Courthouse
Gettysburg, PA 17325
Telephone: (717) 334-6781, Ext. 213
7/28, 8/4, 11

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-147 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of July, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in Latimore Township, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a point in the center of State Highway running from Route 94 to Route 15; thence in the center of said Highway North seventy-three (73) degrees East, ninety and six tenths (90.6) feet to a point in the center of said Highway; thence leaving said highway and by lands N/F of Mabel Thomas Lehmer, South seven (7) degrees East, one hundred eighty-nine and five tenths (189.5) feet to a post; thence by lands N/F of George and Cora Heller, South seventy-four and three-fourths (74 3/4) degrees West, seventy-four (74) feet to an iron pin; thence by lands N/F of Robert I. Stonesifer, North twelve (12) degrees West, one hundred eighty-nine (189) feet to a point in the center of the aforesaid State Highway, the place of BEGINNING.

Containing fifty-five (55) perches and one hundred fifty-nine (159) square feet.

The above described description was taken from draft of survey prepared by P. S. Orner County Surveyor, on July 27, 1946.

TAX MAP NO.: 1-2; PARCEL 28

Seized and taken into execution as the property of Paul E. Day and Jane L. Day, and to be sold by me.

Bernard V. Miller
Sheriff
Sheriff's Office, Gettysburg, PA
July 17, 1995.

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 23, 1995, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/28, 8/4, 11