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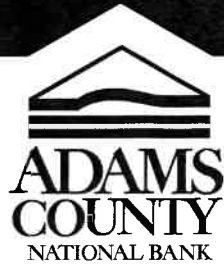
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SPEELMAN VS. SPEELMAN


This opinion continued from last issue (2/23/2007)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1276 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of March, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot, parcel or tract of land situate in Butler Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at an existing steel rod located near the West edge of Township Route T-530 (Stone Jug Road), said steel rod also being near the North edge of Township Route T-531 (Oak Hill Road); thence in said Township Route T-531 South Seventy-Seven (77) degrees Forty-Seven (47) minutes Thirty (30) seconds West Two Hundred Sixty-One and Eleven Hundredths (261.11) feet to a steel rod; thence by land now or formerly of Harold D. Shaffer and running through a utility pole located Ten and Fifty-Eight Hundredths (10.58) feet from the beginning of this line North Seventeen (17) degrees Zero (0) minutes Fifty (50) seconds West One Hundred Seven and Fifty-Eight Hundredths (107.58) feet to a steel rod; thence by the same South Seventy-seven (77) degrees Forty-Seven (47) minutes Thirty (30) seconds West Four Hundred Thirty-Six and Eight Hundredths (436.08) feet to a steel rod; thence by the same North Twenty-Six (26) degrees Thirty (30) minutes Fifty (50) seconds West One Hundred Twenty-Five and Five Hundredths (125.05) feet to a steel rod; thence by the same North Seventy-Seven (77) degrees Forty-Seven (47) minutes Thirty (30) seconds East One Hundred Sixteen and Sixty-Three Hundredths (116.63) feet to a steel rod; thence by the same North Twelve (12) degrees Thirty-Six (36) minutes Thirty-Five (35) seconds West One Hundred Thirty and Zero Hundredths (130.00) feet to a steel rod; thence by the same North Seventy-Seven (77) degrees Twenty-Three (23) minutes Twenty-Five (25) seconds East Two Hundred Thirty-Five and Forty-Four Hundredths (235.44) feet to a stainless

steel rod; thence by the same and running through a stainless steel rod located Thirty-One and Ninety-Four Hundredths (31.94) feet from the end of this line North Forty-Six (46) degrees Twenty-Three (23) minutes Zero (0) seconds East Ninety-One and Fifteen Hundredths (91.15) feet to a railroad spike in the centerline of the aforementioned Township Route T-530; thence along the centerline of said Township Route South Fifty-Three (53) degrees Sixteen (16) minutes Ten (10) seconds East Two Hundred Fifty-Four and Thirty-Nine Hundredths (254.39) feet to a railroad spike; thence continuing along said centerline South Fifty (50) degrees Twenty-Eight (28) minutes Twenty (20) seconds East One Hundred Twenty-Two and Ninety-Three Hundredths (122.93) feet to a railroad spike; thence in said Township Route South Forty (40) degrees Forty-Seven (47) minutes Thirty (30) seconds East One Hundred Thirty-Five and Seventy-Three Hundredths (135.73) feet to an existing steel rod; the point and place of BEGINNING.

BEING described in accordance with a subdivision plan prepared for Harold D. Shaffer by Adams County Surveyors dated November 18, 1986 and recorded in Adams County Plat Book 45, Page 79 and being known as Lot No. 2 on said subdivision plan.

BEING THE SAME PREMISES WHICH Harold D. Shaffer and Genevieve D. Shaffer by Deed dated December 30, 1986 and recorded December 31, 1986 in Deed Book 446, Page 12 in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, granted and conveyed unto Mark Oliver Lemley, Grantor herein.

UNDER and subject to any and all covenants, conditions, reservations, restrictions, limitations, right-of-ways, objection, easements, agreements, etc., as they appear of record including those in Deed Book 446, Page 12.

ALSO, ALL THAT CERTAIN lot, parcel or tract of land situate in Butler Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a steel rod near the North edge of Township Route T-531 (Oak Hill Road) at the Southeastern corner of Lot No. 4 on the plan of lots referred to below; thence by said Lot No. 4, and

running through a reference pipe located Twelve and one Tenth (12.1) feet from the beginning of this line North Eighteen (18) degrees Thirty-nine (39) minutes Ten (10) seconds West Three hundred sixty-three and fifty-four hundredths (363.54) feet to a steel rod at Lot No. 5 on the plan of lots referred to below; thence by said Lot No. 5, North Seventy-eight (78) degrees Forty-nine (49) minutes Ten (10) seconds East Two hundred eighteen and sixty-six hundredths (218.66) feet to a steel rod; thence by same, North Seventy-seven (77) degrees Twenty-three (23) minutes Twenty-five (25) seconds East One hundred forty-eight and sixty-one hundredths (148.61) feet to a steel rod at Lot No. 2 on the plan of lots referred to below; thence by said Lot No. 2, South Twelve (12) degrees Thirty-six (36) minutes Thirty-five (35) seconds East One hundred thirty and zero hundredths (130.00) feet to a steel rod; thence by the same South Seventy-Seven (77) degrees Forty-Seven (47) minutes Thirty (30) seconds West One Hundred Sixteen and Sixty-Three Hundredths (116.63) feet to a steel rod; thence by same and by Lot No. 6 on the plan of lots referred to below and running through a steel rod located One hundred twenty-five and five hundredths (125.05) feet from the beginning of this line South Twenty-six (26) degrees Thirty (30) minutes Fifty (50) seconds East Two Hundred thirty-five and sixty-nine hundredths (235.69) feet to a steel rod near the North edge of Township Route T-531 (Oak Hill Road); thence along the North edge of Township Route T-531 (Oak Hill Road) South Seventy-Seven (77) degrees Forty-Seven (47) minutes Thirty (30) seconds West Two hundred sixty-eight and ninety-three hundredths (268.93) feet to a steel rod, the place of BEGINNING.

BEING described in accordance with a subdivision plan prepared for Harold D. Shaffer by Adams County Surveyors dated November 18, 1986 and revised December 29, 1986, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 46 at page 68 and being known as Lot No. 3 on the subdivision plan referred to below.

UNDER and subject to any and all covenants, conditions, reservations, restrictions, limitations, right-of-ways, objections, easements, agreements, etc., as they appear of record including those in Record Book 456, Page 133.

(continued on page 3)

SPEELMAN VS. SPEELMAN
Continued from last issue (2/23/2007)

2) Whether the master erred in not considering the increase in value of the Defendant's pension which occurred in June & December of 2005?

In this case, Wife has an ESOP. This is an employee benefit that she receives without having to make any contributions. The allocation of shares to participants is done on December 31st of each year. The allocation of shares depends on how good the company is doing, how good the economy is doing, how long you have worked there, and how much money you make. The share price valuation is done on June 30th of each year. At the Master's hearing held on November 18, 2005, Wife presented two copies of her ESOP statements dated on December 31, 2002 and December 31, 2004. The most recent statement of December 31, 2004 valued her 1,681.145 shares at \$153,824.76 based on a share price of \$91.50. This value was used by the Master in fashioning his equitable distribution award.

Husband attached as Exhibit One to his Exceptions filed to the Master's Report a letter by Robert C. Brown, a Retirement Plans Administrator of Herff Jones, Inc. dated November 17, 2005.¹⁰ The letter explained that the ESOP is valued once a year, however the valuation of their stock price and the allocation of participants accounts are performed at separate times. The share price in effect for July 1, 2005 through June 30, 2006 is \$101.25 per share. Husband argues the value of Wife's ESOP based on a share price of \$101.25 should be \$170,215.93 based on the share balance of 1,681.145.

Husband characterizes Wife's ESOP as a pension and cites to case law where the courts valued pension plans at the time of distribution, as opposed to the time of separation. Husband cited to *Holland v. Holland*, 588 A.2d 58 (Pa. Super. 1991), *Brown v. Brown*, 669 A.2d 969 (Pa. Super. 1995) and at oral argument he referenced to *Sutliff v. Sutliff*, 543 A.2d 534 (Pa. Super. 1988). In *Holland* and *Brown*, the Superior Court recognized that if a pension has vested and its value increases aside from contributions of the parties beyond the date of separation, then the increase in value is marital property. *Holland*, 588 A.2d at 59; *Brown*, 669 A.2d at 972. In *Sutliff*, the Supreme

¹⁰ Apparently the day before the Master's hearing, Husband attempted to introduce this letter into evidence for purposes of valuing Wife's ESOP. However, Wife successfully argued to have this letter excluded because of the lateness of its discovery and desire to have it introduced as an exhibit.

Court held the proper date for valuing marital assets should be the date of distribution as opposed to the date of separation. *Sutliff*, 543 A.2d at 536. Based on these cases, Husband believes the Court should use the share price of \$101.25 as indicated on Mr. Brown's November 18, 2005 letter as opposed to the share price of \$91.50 as indicated on the December 31, 2004 ESOP statement.

Under the reasoning of *Holland* and *Brown*, Husband points out that Wife's ESOP is vested, all shares were accrued during the time period that the parties were married and Wife has made no contribution toward the ESOP. Therefore, Husband argues the entire value of Wife's ESOP is marital property. Based on the decision of *Sutliff*, Husband argues the most recent calculation of share price should be used because marital assets should be valued as close to the date of distribution as possible.

Wife argues the Master correctly determined the share price based on the evidence presented to him on November 18, 2005. Wife does not believe the Court can consider post-hearing evidence based on Pa.R.C.P. 1920.55. Wife believes the procedure outlined in Pa.R.C.P. 1920.55 would mean after a Master's Hearing has been conducted, a trial court should not conduct a de novo hearing but should only hear argument on those matters raised in the exceptions. *Pavie v. Pavie*, 606 A.2d 1207 (Pa. Super. 1992). Even though Wife points out that Husband should have requested a de novo hearing pursuant to Pa.R.C.P. 1920.55-3 or filed a Motion to Accept Additional Evidence, she proposes a resolution to this issue. Wife requests the Court to treat the ESOP separately from the remaining assets and to make a separate award to Husband of a percentage of Wife's shares. This would allow Husband to receive the then-existing share price value at the time that he cashes in his percentage of shares and it would reduce or eliminate the amount that Wife would be required to obtain in refinance.

This Court agrees with Husband that the share price should be based on the most recent evaluation of \$101.25 per share because marital assets should be valued as close to the time of distribution as possible. We believe if the Master had Mr. Brown's letter at the time of the hearing, then he would have valued her ESOP based on the more recent calculation of share price. However, we will take into account Wife's proposal to eliminate her obligation to refinance her home in order to effectuate distribution.

3) Whether the master erred in using the mortgage amount owed at the time of the separation instead of using the mortgage amount owed at the time of the hearing?

The Master calculated the mortgage debt at \$33,313.84 by using the date of separation, July 30, 2003. Husband argues the Master should have calculated the mortgage debt at \$24,469.43 by using the date of the Master's Hearing, November 18, 2005, because he used an appraisal from October 14, 2005. He points to *Sutliff* for his argument that the Master should have used the mortgage debt existing at the time of the hearing. The central holding in *Sutliff* was that the proper date for valuing parties' marital assets is the distribution date, rather than the date the parties separated.

Wife cites to *Silver v. Silver*, 47 Pa. D.&C. 3d 595 (Mont. Cty. 1987) where the court used the date of separation rather than the date of hearing to value marital property because undue economic burdens were placed on the spouse prior to and following separation. The case pointed out that the divorce code does not specifically provide a benchmark for valuing marital property and it allows courts leeway in selecting a valuation for the increase in marital property. Thus, it is appropriate for the trial court to select the date which best serves to provide economic justice between the parties.

We believe the Master should have used the value of the mortgage existing at the time of the hearing based on our reading of *Sutliff*. Marital assets should be valued as close to the date of distribution, as opposed to separation. We are mindful that Wife made those monthly mortgage payments from the date of their separation. However, we are also mindful that Husband neither requested nor received any rental value. Therefore, we believe it is appropriate to use the mortgage debt of \$24,469.43 when calculating the value of the marital estate.

Based on our decision to split the marital estate by giving Wife 63.5% and Husband 36.5%, we enter this distribution scheme based on the following valuations:

Marital Estate:

• Real Estate	\$290,000
o Less mortgage (Value at hearing date)	<u>\$ 24,469.43</u>
▪ Total Value	\$265,530.57
• Personal Property	\$ 16,316

• 3 Motor Vehicles		\$ 21,430
• Husband's AERO Oil Retirement & Profit Sharing		\$ 69,386.36
• Getty Petroleum Stock		\$ 2,793
• Herff Jones Profit Sharing 401K		\$ 33,593.63
• Herff Jones ESOP (Valued closer to date of hearing)		<u>\$170,215.94</u>
		\$579,265.50
63.5% split to Wife	(\$579,265.50 x .635)	\$367,833.59
36.5% split to Husband	(\$579,265.50 x .365)	\$211,431.91

Wife gets:

• Real Estate		\$265,530.57
• 1998 Yukon		\$ 7,050
• Personal Property		\$ 4,301
• Herff Jones ESOP		<u>\$ 90,952.02</u>
		\$367,833.59

Husband gets:

• AERO Oil Retirement		\$ 69,386.36
• Getty Petroleum Stock		\$ 2,793
• 1998 Bravado		\$ 3,085
• 1999 Chevy Silverado		\$ 11,295
• Personal Property		\$ 12,015
• Herff Jones Profit Sharing		\$ 33,593.63
• Herff Jones ESOP		<u>\$ 79,263.92</u>
		\$211,431.19

Accordingly, the attached Order is entered.

ORDER

AND NOW, this 15th day of May 2006, in consideration of Plaintiff's Exceptions to the Master's Report and Recommendation, IT IS ORDERED THAT, the Exceptions are denied in part and granted in part. Plaintiff's request to increase his share of 36.5% of the marital assets is denied. Plaintiff's requests to use the most recent calculation of Defendant's Employee Stock Ownership Plan and mortgage balance are granted. Subject to these revisions, the Master's Report and Recommendation is approved and the following distribution of assets is directed as follows:

Wife gets 63.5% of the marital estate composed of the following:

- Real Estate (\$290,000 - \$24,469.43) **\$265,530.57**
 - 1998 Yukon \$ 7,050
 - Personal Property \$ 4,301
 - Herff Jones ESOP (Total Value \$170,215.94) **\$ 66,482.59**
- \$367,833.59

Husband gets 36.5% of the marital estate composed of the following:

- AERO Oil Retirement \$ 69,386.36
 - Getty Petroleum Stock \$ 2,793
 - 1998 Bravado \$ 3,085
 - 1999 Chevy Silverado \$ 11,295
 - Personal Property \$ 12,015
 - Herff Jones Profit Sharing \$ 33,593.63
 - Herff Jones ESOP **\$ 79,263.92**
- \$211,431.19

(continued from page 2)

BEING THE SAME PREMISES WHICH Harold D. Shaffer and Genevieve D. Shaffer by Deed dated May 4, 1987 and recorded May 6, 1987 in Deed Book 456, Page 133 in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania granted and conveyed unto Mark Oliver Lemley, Grantor herein.

TITLE TO SAID PREMISES IS VESTED IN Charles J. Dunkle and Mary Dunkle, husband and wife, by Deed from Mark Oliver Lemley, single man, dated 07/25/2003, recorded 08/05/2003, in Deed Book 3230, page 315.

Premises being: 324 Stone Jug Road, Biglerville, PA 17307

SEIZED and taken into execution as the property of Charles J. Dunkle & Mary Dunkle a/k/a Mary Christine Saunders a/k/a Mary Christine Dunkle and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 14, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

2/16, 23 & 3/2

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1425 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of March, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain unit in the property known, named and identified in the declaration referred to below as 'South Branch Estates', located in the Township of Oxford, Adams County, Pennsylvania, which has heretofore been submitted to the provisions of the Pennsylvania Uniform condominium act, 68 P.S.A. Section 3101, et seq., by the recording in the Office of the Recorder of Deeds in and for Adams County, PA, of a land development plan dated October 6, 1995, last revised December 14, 1995 and recorded in Book 69 Page 23 (together with all

amendments and supplements thereto recorded on or before the date hereof) being all designated in such plan as Unit No. 1 as more fully bounded and described in such plan, together with a proportionate undivided interest in the Common Elements as defined in a Declaration Plan recorded in the Office of the Recorder of Deeds, in and for York County, PA in Record Book 1271 Page 34.

UNDER AND SUBJECT to any and all covenants, conditions, restrictions, rights of way, easements and agreements of record, including (but not limited to) those contained in the instruments recorded in the aforesaid Recorder's Office in Record Book 69, page 23.

TOGETHER with the limited common elements appurtenant as more fully shown of Plan 1271 Page 34.

TOGETHER with all buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging, or in any wise appertaining, and any reversions, remainders, rents, issues and profits thereof, and of every part and parcel thereof, including any interest specifically set forth, if any. And also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the Grantor of, in and to the same.

TO have and to hold the same premises, and the appurtenances, hereby granted to Grantees and Grantee's heirs, successors and assigns, to and for the only proper use, benefit and behoof of the said Grantee and Grantee's heirs, successors and assigns forever, under and subject to the conditions set forth, if any.

AND the said Grantor hereby covenants and agrees that Grantor will warrant specially the property hereby conveyed.

UNDER AND SUBJECT, nevertheless to the same condition, restrictions, exceptions and reservations as exist by virtue of prior recorded instruments, deeds and conveyances.

IT BEING the same premises which J.A. Myers Building and Development, Inc., a Pennsylvania Corporation, by their deed dated May 25, 1996 and recorded in the Office of the Recorder of Deeds in and for York County, Pennsylvania in Record Book 1218, Page 139, granted and conveyed unto Philip R. Garland 1/d/b/a Garland Construction, Inc., Grantors herein.

TITLE TO SAID PREMISES IS VESTED IN Vincent Nieves, III and Nitza Nieves, husband and wife by Deed from Philip R. Garland, 1/d/b/a, Garland Construction, Inc., dated 3-25-99, recorded 4-13-99 in Deed Book 1807, page 276.

Premises being: 2 Fiddler Drive, New Oxford, PA 17350

Tax Parcel No. 35-001-0052-001

SEIZED and taken into execution as the property of Vincent M. Nieves, III a/k/a Vincent M. Miezies & Nitza Nieves and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 14, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

2/16, 23 & 3/2

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1289 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of March, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land, situate, lying and being in Germany Township, Adams County, Pennsylvania, shown as Lot No. 8 on a final subdivision plan prepared by Adams County Surveyors dated May 26, 1976, and recorded in Adams County Plat Book 11, page 21, and more particularly described as follows:

BEGINNING at a point in the right-of-way of Pennsylvania Route 194 and the Southwest corner of Lot No. 7 as shown on said final subdivision plan; thence along Lot No. 7 South 65 degrees 05 minutes 05 seconds East, 198.58 feet to a point; thence South 19 degrees 35 minutes 05 seconds West, 125.00 feet to a point at the Eastern corner of Lot No. 9 as shown on said plan; thence along Lot No. 9 North 65 degrees 36 minutes 45 seconds West, 207.66 feet to a point located in the right-of-way of Pennsylvania Route 194; thence along and through said Pennsylvania Route 194 North 27 degrees 03 minutes 50 seconds East, 35.00 feet to a point in the right-of-way of said Pennsylvania Route 194; thence along and through the same North 22 degrees 30 minutes 07 seconds East, 91.48 feet to a point in said right-of-way, the point and place of BEGINNING. CONTAINING 25,353 square feet.

Parcel Identification No: 15-117-0138-000

TITLE TO SAID PREMISES IS VESTED IN James W. Stewart and Kimberly J. Toms, as Joint Tenants with Right of Survivorship, by Deed from Kirk Douglas Degroft, a single man and Priscilla Degroft, widow, dated 06/30/2004, recorded 07/14/2004, in Deed Book 3638, page 157.

Premises being: 1056 Frederick Pike, Littlestown, PA 17340

SEIZED and taken into execution as the property of **James W. Stewart, Jr. & Kimberly J. Toms** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 14, 2007, and distribution will be made in accordance with said schedule, unless exceptions are

filed thereto within 20 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.

2/16, 23 & 3/2

 NOTICE BY THE ADAMS COUNTY
CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Tuesday, March 13, 2007, at 9:00 a.m.

WOLF—Orphans' Court Action Number OC-4-07. The First and Final Account of Roger L. Green, Executor of the Estate of Rhoda Virginia Wolf, deceased, late of Germany Township, Adams County, Pennsylvania.

BREAM—Orphans' Court Action Number OC-6-07. The First and Final Account of Rodney W. Weidner, Executor of the Estate of Alverda V. Bream, deceased, late of Straban Township, Adams County, Pennsylvania.

SNYDER—Orphans' Court Action Number OC-12-07. The First and Final Account of G. Steven McKonly, Personal Representative of the Estate of Shirley A. Snyder, deceased, late of the Borough of Gettysburg, Adams County, Pennsylvania.

Kelly A. Lawver
Clerk of Courts

3/2 & 9

NOTICE OF FORFEITURE

NOTICE IS HEREBY GIVEN that a petition for forfeiture and condemnation of property was filed with the Adams County Clerk of Courts on December 15, 2006, and docketed at CP-01-MD-459-2006. The subject property, which is six hundred dollars (\$600.00) in United States currency, was seized near the intersection of Filbert Street and South Street, Conewago Township, Adams County, PA, on May 5, 2006. Any person claiming a possessory interest in the currency shall file a written response with the Adams County Clerk of Courts, Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, on or before April 6, 2007. Failure to file a response by the aforementioned date will result in automatic forfeiture of the currency to the Commonwealth of Pennsylvania.

3/2 & 9

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 GRACE W. COOLEY, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Roger Cooley, 1812 Center Mills Road, Aspers, PA 17304

Attorney: John J. Mooney, III, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF JEAN L. FORTENBAUGH, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Linda A. Thompson, 2468 18-1/2 Street, Rice Lake, WI 54868

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

ESTATE OF THOMAS F. NORTON, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administrator: William J. Norton, 2534 Littlestown Pike, Westminster, MD 21158

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

ESTATE OF MAURICE J. ROCHE, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executor: Clay D. Roche, c/o Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 135 North George Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 135 North George Street, York, PA 17401

ESTATE OF CATHARINE B. SHAFFER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Ned F. Shaffer, 3491 South River Terrace, Edgewater, MD 21037

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

SECOND PUBLICATION

ESTATE OF MARY F. HARTMAN, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Administrator c.t.a.: Merial E. Heldt, 31 Twin Lakes Drive, Gettysburg, PA 17325

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

ESTATE OF ERMA M. LEREW, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executrix: Carol L. Nye, 51 Idaville-York Springs Road, Gardners, PA 17324

Attorney: Ann Marie Rotz, Esq., 63 West High Street, Gettysburg, PA 17325

ESTATE OF RUTH CATHERINE MOLES, a/k/a R. CATHERINE MOLES, a/k/a CATHERINE R. MOLES, a/k/a CATHERINE S. MOLES, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Steven C. Moles, 515 Old Carlisle Road, Biglerville, PA 17307; Susan A. McCarrey, 4 Homestead Drive, Gettysburg, PA 17325

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

ESTATE OF EMMA E. PIPP, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Clara Flohr, c/o Schrack & Linsnbach Law Offices, 124 West Harrisburg Street, Post Office Box 310, Dillsburg, PA 17019-0310

Attorney: Schrack & Linsnbach Law Offices, 124 West Harrisburg Street, Post Office Box 310, Dillsburg, PA 17019-0310

THIRD PUBLICATION

ESTATE OF LORETTA AGNES McMASTER, DEC'D

Late of the Borough of Abbotstown, Adams County, Pennsylvania

Executrix: Janet Rinehart, 4685 Holtzswamm, R.D. 1, Thomasville, PA 17364

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

ESTATE OF E. ELIZABETH SMITH a/k/a EDNA ELIZABETH SMITH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Richard I. Howes, Sr., 4807 Westfield Drive, Hampstead, MD 21074

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

ESTATE OF DOROTHY C. WALDMAN, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: William H. Lilley, c/o Peterson & Peterson, 515 Carlisle Street, Hanover, PA 17331

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

ESTATE OF DIANE LOUISE WOLF, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Personal Representative: Merle E. Wolf, 19 Sycamore Lane, Hanover, PA 17331

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

Adams County Legal Journal

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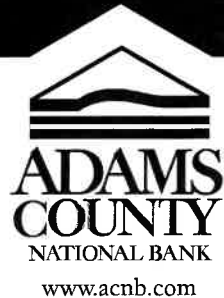
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COMMONWEALTH VS. TRACEY

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

Celebrating 150 years!
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 Equal Housing Lender Equal Opportunity Lender 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. 06-S-1395 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of April, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that the following described lot of ground, with the improvements thereon erected, situate, lying and being in Conewago Township, County of Adams and State of Pennsylvania, bounded and limited as follows, to wit:

BEGINNING for a corner at the State Highway (commonly known as Third Street), formerly the Hanover and McSherrystown Turnpike, at lot now or formerly owned by William Senft; thence along said lot Southward, one hundred seventy-five (175) feet to a corner at a twenty (20) feet wide alley; thence along said alley Eastward, thirty (30) feet to a corner at lot formerly owned by Ezra E. Myers; thence along said last mentioned lot Northward, one hundred seventy-five (175) feet to a corner at the aforesaid State Highway, and thence along said State Highway Westward, thirty (30) feet to a corner, the place of BEGINNING.

Having erected thereon a dwelling known as 314 Third Street, Hanover, Pennsylvania.

Parcel Identification Number 8-268.

SEIZED and taken into execution as the property of **Daniel Epps, Cheryelona Mirchandani & Rueben Verdin** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 4, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/9, 16 & 23

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1128 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of April, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THE FOLLOWING described tract of land situate in the Borough of New Oxford, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a stake on the North side of High Street at lands now or formerly of J. Lloyd Wolf; thence by the North side of High Street seventy-seven and three fourths (77-3/4) degrees West, seventy-six (76) feet to a point at a twenty (20) foot alley; thence by said alley North twelve and one-fourth (12-1/4) degrees West, ninety-seven (97) feet, more or less, to a point at lands now or formerly of St. Paul's Evangelical and Reformed Church; thence by said lands North seventy-seven and three-fourths (77-3/4) degrees East, seventy-six (76) feet to a point; thence by the same and by lands now or formerly of J. Lloyd Wolf aforesaid South twelve and one-fourth (12-1/4) degrees East, ninety-seven (97) feet, more or less, to a stake, the place of BEGINNING.

Map # 34-5-132

Being known as 14 E. High Street, New Oxford, PA 17350

SEIZED and taken into execution as the property of **Sean M. Potter & Melissa A. Potter** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 4, 2007, and

distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/9, 16 & 23

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Tuesday, March 13, 2007, at 9:00 a.m.

WOLF—Orphans' Court Action Number OC-4-07. The First and Final Account of Roger L. Green, Executor of the Estate of Rhoda Virginia Wolf, deceased, late of Germany Township, Adams County, Pennsylvania.

BREAM—Orphans' Court Action Number OC-6-07. The First and Final Account of Rodney W. Weidner, Executor of the Estate of Alverda V. Bream, deceased, late of Straban Township, Adams County, Pennsylvania.

SNYDER—Orphans' Court Action Number OC-12-07. The First and Final Account of G. Steven McKonly, Personal Representative of the Estate of Shirley A. Snyder, deceased, late of the Borough of Gettysburg, Adams County, Pennsylvania.

Kelly A. Lawver
Clerk of Courts

3/2 & 9

COMMONWEALTH VS. TRACEY

1. Gag orders are entered in an effort to help insure that an accused receives the benefit of a fair trial untainted by prejudicial pretrial publicity. Gag orders are not issued as a matter of course but are generally reserved for highly sensational and/or emotional cases which generate unusual interest.

2. In this Commonwealth, policemen and members of the staffs of the office of District Attorneys shall not release to the media any inflammatory statements as to the merits of the case, or the character of the accused.

3. In a widely-publicized or sensational case, the court may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury.

4. Ps.R.Crim.P. 588 allows a person to move for return of property seized pursuant to or in the absence of a warrant. In such proceeding, the moving party has the initial burden of demonstrating lawful possession of the property and, if successful, the burden then shifts to the commonwealth to show by a preponderance of the evidence, that the property is contraband or derivative contraband.

In the Court of Common Pleas of Adams County, Pennsylvania,
Criminal, No. CR-47-2006, COMMONWEALTH VS. RALPH D.
TRACEY.

Sarah Caldwell, Esq., for Commonwealth

Steve Rice, Esq., for Defendant

Kuhn, P.J., May 16, 2006

OPINION ON DEFENDANT'S OMNIBUS PRE-TRIAL MOTION

Before the Court for disposition is a Motion for a Gag Order filed February 8, 2006, and a Motion for Return of Property filed March 2, 2006. Both motions were set for hearing on March 13, 2006. The hearing was only partially completed that day because the prosecuting officer was unavailable. The hearing was concluded on April 18, 2006.

By way of background, on January 30, 2006, Chief James Holler and other officers of the Liberty Township Police Department conducted a search of Defendant's residence. As a result, numerous videos, computers, and related items were seized. Furthermore, on February 7, 2006, a criminal complaint was filed charging Defendant with Sexual Abuse of Children and Criminal Use of Communication Facility, 18 Pa. C.S.A. §6312(c), (d)(1), and 7512.

On February 7, 2006, Chief Holler forwarded a press release to the *Gettysburg Times*, a newspaper of general circulation in Adams County, concerning the arrest of Defendant. The following day, an article appeared in the newspaper, together with a photograph of Defendant, which included the following language:

Liberty Township police have been affiliated with the Internet Crimes Against Children (ICAC) Task Force of Delaware County since January, 2005. The police work closely with the task force and police departments around the country on undercover investigations involving offenders that use the Internet to sexually exploit children.

“We are taking an aggressive stand on this sick, perverted activity within our area,” said Chief Jim Holler.

“That is why we became a part of the ICAC task force.”

In addition, Defendant alleges that on February 7, 2006, television Channels 8 and 43 featured a story about the case and displayed Defendant’s photograph.

Defendant requests this Court issue a gag order “directing the Commonwealth and its agents not to make any extrajudicial statements related directly or indirectly to the above case, without prior court approval or guidance of court order.”

My research has revealed no appellate guidance on the issuance of gag orders. It is readily apparent, however, that such orders are entered in an effort to help insure that an accused receives the benefit of a fair trial untainted by prejudicial pretrial publicity. Gag orders are not issued as a matter of course but are generally reserved for highly sensational and/or emotional cases which generate unusual interest. This is because the courts expect attorneys and prosecutors to comply with the standard enunciated by our Supreme Court in *Commonwealth v. Pierce*, 303 A.2d 209 (Pa. 1973),

that in this Commonwealth policemen and members of the staffs of the office of District Attorneys shall not release to the news media: (a) the existence or contents of any statement or confession given by the accused, or his refusal to give a statement or to take tests; (b) prior criminal records of the accused including arrests and convictions; (c) any inflammatory statements as to the merits of the case, or the character of the accused; (d) the possibility of a plea of guilty; (e) nor shall the authorities deliberately pose the accused for photographs at or near the scene of the crime, or in photographs which connect him with the scene of the crime . . .

We hold that anything short of compliance with these standards can operate to deprive an accused of due process of law . . . Moreover, we strongly suggest that trial courts employ the precautions set forth in *Sheppard v. Maxwell, supra.*¹ and *Commonwealth v. Hoss*, 445 Pa. 98, 283 A.2d 58 (1971).² 303 A.2d at 215 (emphasis added.) (citations omitted.)

I am also cognizant of the authority granted to the trial court by Pa.R.Crim.P. 110. That rule provides that in “a widely-publicized or sensational case” the court “may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury . . .”

Here, Chief Holler testified that his statement was not intended to be inflammatory or directed to Defendant’s case. I have no doubt that Chief Holler is being sincere. The Court is aware that this officer has a passionate interest in the protection of children and that he particularly deplores conduct which exploits them. I trust that his expression was intended to speak to child pornography in general and not specifically to Defendant’s yet unproven guilt. Nevertheless, no matter how well-intentioned his remarks, they were perhaps ill-advised because this case illustrates how general beliefs can become entwined in a news account and be read as an inflammatory comment about this accused individual.

I do not believe, however, that this apparent isolated comment rises to the level where red flags of potential prejudice mandate the issuance of a gag order. The court has seen little publicity concerning

¹384 U.S. 333, 86 S. Ct. 1507, 16 L.Ed. 2nd 600 (1966). In its opinion concerning extensive prejudicial pre-trial publicity in the infamous murder trial of Dr. Samuel Sheppard, the Supreme Court discussed a number of measures the trial court could have taken to help insure fairness. Included, among the actions which might have been instituted are 1) undertaking effort to control the release of leads, information, and gossip to the press by police and counsel; 2) proscribing extrajudicial statements by lawyers or witnesses which divulge prejudicial matters; 3) requesting officials to promulgate regulations with respect to disseminating information about the case; and 4) warning reporters of the impropriety of publishing materials not introduced in the proceedings.

²*Hoss* involved a murder case in Allegheny County where, after months of extensive publicity, the trial court issued an order prohibiting any statements by counsel about any aspect of the case and wrote to all radio, television and newspaper outlets requesting an abatement of publicity so as not to prejudice the defendant’s right to a fair trial.

this case since February 8, 2006, and certainly not a repeat of the officer's comment. The matter is not close to trial.³

Perhaps Defendant's motion had its intended effect of abating publicity or perhaps, as the Court suspects based on my 20 years on the bench, the professionalism of local police, prosecuting attorneys, and the media has guided further reporting of this case. Certainly, if publicity becomes intense and unduly prejudicial, the issue can be revisited. Because numerous sanctions are available, when needed, gag orders should be issued cautiously.⁴ I trust that such action will not be required in the matter sub judice.

In his Motion for Return of Property, Defendant seeks return of all property seized on January 30, 2006. The property seized is identified below by its inventory number and brief description:

- 279 – laptop computer
- 280 – laptop computer
- 281 – floppy disc
- 282 – power cord
- 283 – matrix server
- 284 – video cassette
- 285 – 4 video tapes
- 286 – box of 96 video tapes
- 287 – box of 19 video tapes
- 288 – power cord
- 289 – computer
- 290 – floppy disc

Pa.R.Crim.P. 588 allows a person to move for return of property seized pursuant to or in the absence of a warrant. In such proceeding, the moving party has the initial burden of demonstrating lawful

³The preliminary hearing was scheduled for April 20, 2006.

⁴This is not to say that a court need not be vigilant and proactive. It is better to prevent a wrong than to correct it. As noted in *Sheppard supra.*, "if publicity during the proceedings threatens the fairness of a trial, a new trial should be ordered. But we must remember that reversals are but palliatives; the cure lies in those remedial measures that will prevent the prejudice at its inception. The courts must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences. Neither prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function. Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not subject to regulation, but is highly censurable and worthy of disciplinary measures." 16 L.Ed.2d at 620.

possession of the property and, if successful, the burden then shifts to the Commonwealth to show by a preponderance of the evidence, that the property is contraband or derivative contraband. *Commonwealth v. Howard*, 713 A.2d 89, 92 (Pa. 1998); *Commonwealth v. Wintel, Inc.*, 829 A.2d 753, 756 (Pa. Comwlth. 2003).

At hearing on March 13, 2006, Commonwealth agreed to return items 279 and 280 to Defendant and on April 18, 2006, agreed to return items 281, 284, and 285. Furthermore, Defendant does not contest that items 288, 289 and 290 have potential evidentiary value. Accordingly, the only items in dispute are 282, 283, 286, and 287.

The parties have stipulated that Defendant has a possessory interest in the items at issue. Item 283 is a computer seized in Defendant's home. Chief Holler made arrangements for the computer to be examined for evidence of the downloading of child pornography. Braden Cook, a computer forensic examiner, with the Office of Attorney General of Pennsylvania, found one suspected child pornography movie in a temporary internet file. He further determined that the file had been loaded on October 27, 2005, and last accessed on January 30, 2006. Item 282 is the power cord for item 283. Commonwealth has satisfactorily demonstrated that the computer contains prima facie evidence of child pornography possessed by Defendant and constitutes derivative contraband. Although technology may allow removal of the file from the computer, the case has not progressed to the point where it is appropriate or necessary to do so. As noted, this case had not yet reached the preliminary hearing state. Attempts to remove the file at this point may raise questions of taint, tampering or destruction.

Items 286 and 287 total 115 VCR tapes which primarily contain explicit adult sexual videos. By April 18, 2006, Chief Holler had viewed approximately one-half of the videos. He was searching for child pornography spliced into the adult contents. Each tape could contain up to eight hours of viewing material. To date, no child pornography has been identified.

I find, and Commonwealth concedes, that any video tape that does not contain evidence of child pornography must be returned to Defendant. Defendant argues that the police have had sufficient time (three months) to view the tapes and further delay is unwarranted. I disagree. Although the prosecution does not have unlimited discretion to hold a person's property to search for evidence of crime, there are no

strict time limits overriding that examination. The applicable standard must be one of reasonableness under the totality of the circumstances.

Here, the tapes were seized on January 30, 2006. The Liberty Township Police Department has two full-time and four part-time officers. Chief Holler was the only officer involved in examining the tapes. In March, 2006, he was in Florida for four days and in Alabama for one week. There could be as much as 920 hours of video to analyze. Chief Holler has completed over one-half of the viewing. He has not devoted full-time to the examination and, based upon the subject matter, I would not expect him to do so. To the extent the tapes have been determined not to contain child pornography, they must be returned to Defendant.⁵ The police must be given a reasonable time to complete the review. I find that the police have been sufficiently diligent. Unviewed tapes need not be returned at this time.

ORDER OF COURT

AND NOW, this 16th day of May, 2006, for the reasons set forth in the attached Opinion:

1. Defendant's Motion for Gag Order filed February 8, 2006, is denied.
2. Defendant's Motion for Return of Property filed March 2, 2006, is granted as to Inventory Items 279, 280, 281, 284, and 285; and said items shall be immediately returned to Defendant if they have not already been returned. The Motion is denied as to Items 282, 283, 288, 289, and 290. The Motion is partially denied and partially granted as to Items 286 and 287. To the extent those video tapes have been examined and determined not to contain alleged child pornography or in the future are determined not to contain child pornography, they shall be immediately returned to Defendant. If any tape contains alleged child pornography, it may be retained as evidence by the Commonwealth.

⁵ This case is distinguished from *Commonwealth v. Stipetich*, 623 A.2d 360 (Pa. Super. 1993) where the defendant was charged with various sexual offenses involving a teenage female. A search of the defendant's home resulted in the seizure of over 100 videotapes depicting consensual adult sexual activity. Eight months after the search, the trial court granted the Commonwealth's nolle pros and directed return of the tapes. The Commonwealth sought retention of copies of the tapes "as potential future evidence." The court held that where charges are dismissed, property may only be retained by the Commonwealth if it constitutes contraband (per se or derivative) and found no basis for retention.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-859 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of April, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THE FOLLOWING 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 Poplar Street and Lot No. 125; thence along Lot No. 125, South thirty-nine (39) degrees two (02) minutes fifty-six (56) seconds East, one hundred eighty (180.00) feet to a point at Lot No. 121; thence along Lot No. 121, North fifty-eight (58) degrees two (02) minutes twenty-one (21) seconds East, ninety and sixty-nine hundredths (90.69) feet to a point at Lot No. 122; thence along Lot No. 122 and Lot No. 123, North thirty-nine (39) degrees two (02) minutes fifty-six (56) seconds West, one hundred ninety-one and nineteen hundredths (191.19) feet to a point at Poplar Street; thence along Poplar Street, South fifty (50) degrees fifty-seven (57) minutes four (04) seconds West, ninety (90.00) feet to the point and place of BEGINNING.

CONTAINING 16,703 square feet and identified as Lot No. 124 on a plan of lots entitled Phase III, Conewago Estates, recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 51, page 82.

Tax Parcel #6-166

Premises Being: 719 Poplar Street, Hanover, PA

SEIZED and taken into execution as the property of **Lois A. Misiti** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 4, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/9, 16 & 23

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1442 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of April, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot or piece of ground situate in Carroll Valley Borough, formerly Liberty Township, County of Adams, Commonwealth of Pennsylvania, being known as Lot #129 in Section RI, bounded and described as follows:

BEGINNING at the intersection of the center lines of Shuff Trail (now Maple Trail) with Kramer Trail (now Peach Tree Trail); thence in said center line of Shuff Trail (now Maple Trail), South 26 degrees 37 minutes West, 128.28 feet to a point; thence in same, South 71 degrees 25 minutes 20 seconds West, 188.68 feet to a point at corner of Lot #130; thence by said Lot #130, North 18 degrees 34 minutes 40 seconds West, 198.89 feet to a point in the center line of said Kramer Trail (now Peach Tree Trail); thence in and along said Kramer Trail (now Peach Tree Trail); South 87 degrees 22 minutes 40 seconds East, 300 feet to a point, the place of BEGINNING.

THE above description was obtained from a sub-division plan, labeled Section RI, Chamita, Inc. by Gordon L. Brown, dated May 29, 1970, which plan is recorded in Adams County Plat Book 1, page 83.

BEING the same premises which Gilbert C. Smith and Susan F. Smith, husband and wife, by deed dated April 26, 2003, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Book 3108, Page 234, granted and conveyed unto William G. Hudson and Sharon E. Hudson, husband and wife, the Grantors herein.

TOGETHER with and subject to rights, restrictions, conditions, covenants, regulations of Record as set forth in Deed Book 330 at Page 1119.

TOGETHER with all and singular the buildings and improvements, ways, streets, alleys, driveways, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever unto the hereby granted premises belonging, or in any-wise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and all the estate, right title, interest, property, claim and demand whatsoever of them, the said grantors, as well at law as in equity, of, in and to the same.

TO have and to hold the said lot or piece of ground described above, with the buildings and improvements thereon erected, hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the said grantee, his heirs and assigns, forever.

AND the said Grantors, for themselves and their heirs, Executors and Administrators, do by these presents, covenant, grant and agree, to and with the said Grantee, his heirs and assigns, that they, the said Grantors, and their heirs, all and singular the hereditaments, and premises, herein described and granted, or mentioned and intended so to be, with the appurtenances, unto the said Grantee, his heirs, and assigns, against them, the said grantors, and their heirs, will specially warrant and defend against the lawful claims of all persons claiming by, through or under the said grantors but not otherwise.

Tax Parcel No.: 41-4

Premises Being: 12 Peachtree Trail, Fairhill, PA 17320

SEIZED and taken into execution as the property of **Charles M. Trubey** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 4, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/9, 16 & 23

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on or about February 8, 2007 for the incorporation of KJ CONTRACTORS, INC. under the Pennsylvania Corporation Law of 1988. The initial registered office of the corporation is 125 Chambersburg St., Gettysburg, PA 17325.

Bernard A. Yannetti, Jr., Esq.
Hartman & Yannetti
Solicitors

3/9

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-800 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of April, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the following described lot of ground situate, lying and being in Carroll Valley Borough (formerly Hamiltonban Township), Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point in the center of Black Bass Trail at Lot No. 78; thence by said lot, North 68 degrees 23 minutes 24 seconds East, 225 feet to lands designated as Recreational Area on the draft hereinafter identified; thence by said lands, South 21 degrees 36 minutes 36 seconds East, 100 feet to Lot No. 76; thence by said lot, South 68 degrees 23 minutes 24 seconds West, 225 feet to a point in the center of said Black Bass Trail; thence in said Black Bass Trail, North 21 degrees 36 minutes 36 seconds West, 100 feet to the place of BEGINNING.

THE above description was taken from a plan of lots labeled 'Section K, Charmita' dated March 3, 1969, prepared by Evans, Hagan & Holdener, and recorded in Adams County Plat Book 1 at page 42, known as Lot No. 77.

TITLE TO SAID PREMISES IS VESTED IN Neal A. Wuethrich and Helen B. Wuethrich, husband and wife, as tenants of an estate by the entirety, by Deed from Helen Wuethrich, Executrix and Sole Heir named in the Last Will and Testament of Harvey W. Ritter, deceased, dated 02/12/2003, recorded 02/19/2003, in Deed Book 2983, page 58.

Premises being: 16 Black Bass Trail, Fairfield, PA 17320

Tax Parcel No. 43-6-46

SEIZED and taken into execution as the property of **Neal A. Wuethrich a/k/a Neal Alan Wuethrich & Helen B. Wuethrich** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 4, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/9, 16 & 23

NOTICE OF FORFEITURE

NOTICE IS HEREBY GIVEN that a petition for forfeiture and condemnation of property was filed with the Adams County Clerk of Courts on December 15, 2006, and docketed at CP-01-MD-459-2006. The subject property, which is six hundred dollars (\$600.00) in United States currency, was seized near the intersection of Filbert Street and South Street, Conewago Township, Adams County, PA, on May 5, 2006. Any person claiming a possessory interest in the currency shall file a written response with the Adams County Clerk of Courts, Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, on or before April 6, 2007. Failure to file a response by the aforementioned date will result in automatic forfeiture of the currency to the Commonwealth of Pennsylvania.

3/2 & 9

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 pursuant to the provisions of the Nonprofit Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988 (P.L. 1444, No. 177).

The name of the corporation is: **THOMAS BROTHERS COUNTRY STORE MUSEUM, INC.**

John A. Wolfe, Esq.
Wolfe & Rice, LLC
47 West High Street
Gettysburg, PA 17325
(717) 334-3754

3/9

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1441 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of April, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot of ground situate on the West side of Main Street in the Borough of York Springs, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a point on Main Street, aforesaid on the South side of an alley; thence along Main Street South 12 degrees, East 60 feet; more or less, to a point now or formerly of Public School Grounds, a/k/a Lot No. 3; thence by the same South 66 degrees West 198 feet, more or less, to a point; at a 12-foot alley; thence by said alley North 27 degrees, 61 feet, more or less to a point at another 12 foot alley; thence by the last mentioned point North 66 degrees East 193 feet, more or less, to a point, the place of BEGINNING.

CONTAINING 11,484 square feet, more or less.

Said Lot being known on the plan of said Borough as Lot No. 4.

Tax Parcel #: 42-2-16

Property Address: 323 Main Street, York Springs, PA 17372

SEIZED and taken into execution as the property of **Tyson Levelsberger & Julie W. Levelsberger** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 4, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/9, 16 & 23

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 CHAD VICTOR KENISTON, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Administratrix: Susan Dianne Keniston, 53 East King Street, Littlestown, PA 17340

Attorney: Barbara Jo Entwistle, Esq., Pyle and Entwistle, 66 West Middle Street, Gettysburg, PA 17325

ESTATE OF MARY ELIZABETH KNOX, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Co-Executors: David P. Knox, 1275 Old Harrisburg Road, Gettysburg, PA 17325; Dennis J. Knox, 1375 Table Rock Road, Gettysburg, PA 17325

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

ESTATE OF MARK E. REDDING, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executrix: Helen J. Redding, 5 Cherry Valley Road, Hanover, PA 17331

ESTATE OF STRATHER R. WEATHERLY, DEC'D

Late of Liberty Township, Adams County, Pennsylvania

Executrix: Mildred D. Weatherly, 2760 Pumping Station Road, Fairfield, PA 17320

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

SECOND PUBLICATION

ESTATE OF GRACE W. COOLEY, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Roger Cooley, 1812 Center Mills Road, Aspers, PA 17304

Attorney: John J. Mooney, III, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF JEAN L. FORTENBAUGH, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Linda A. Thompson, 2468 18-1/2 Street, Rice Lake, WI 54868

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

ESTATE OF THOMAS F. NORTON, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administrator: William J. Norton, 2534 Littlestown Pike, Westminster, MD 21158

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

ESTATE OF MAURICE J. ROCHE, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executor: Clay D. Roche, c/o Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 135 North George Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 135 North George Street, York, PA 17401

ESTATE OF CATHARINE B. SHAFFER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Ned F. Shaffer, 3491 South River Terrace, Edgewater, MD 21037

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

THIRD PUBLICATION

ESTATE OF MARY F. HARTMAN, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Administrator c.t.a.: Merial E. Heldt, 31 Twin Lakes Drive, Gettysburg, PA 17325

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

ESTATE OF ERMA M. LEREW, DEC'D

Late of Huntingdon Township, Adams County, Pennsylvania

Executrix: Carol L. Nye, 51 Idaville-York Springs Road, Gardners, PA 17324

Attorney: Ann Marie Rotz, Esq., 63 West High Street, Gettysburg, PA 17325

ESTATE OF RUTH CATHERINE MOLES, a/k/a R. CATHERINE MOLES, a/k/a CATHERINE R. MOLES, a/k/a CATHERINE S. MOLES, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Steven C. Moles, 515 Old Carlisle Road, Biglerville, PA 17307; Susan A. McCarrey, 4 Homestead Drive, Gettysburg, PA 17325

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

ESTATE OF EMMA E. PIPP, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Clara Flohr, c/o Schrack & Linsnbach Law Offices, 124 West Harrisburg Street, Post Office Box 310, Dillsburg, PA 17019-0310

Attorney: Schrack & Linsnbach Law Offices, 124 West Harrisburg Street, Post Office Box 310, Dillsburg, PA 17019-0310

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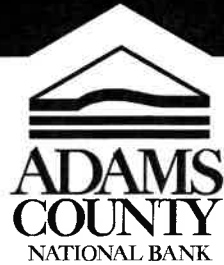
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COMMONWEALTH VS. BOCH

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1395 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of April, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that the following described lot of ground, with the improvements thereon erected, situate, lying and being in Conewago Township, County of Adams and State of Pennsylvania, bounded and limited as follows, to wit:

BEGINNING for a corner at the State Highway (commonly known as Third Street), formerly the Hanover and McSherrystown Turnpike, at lot now or formerly owned by William Senft; thence along said lot Southward, one hundred seventy-five (175) feet to a corner at a twenty (20) feet wide alley; thence along said alley Eastward, thirty (30) feet to a corner at lot formerly owned by Ezra E. Myers; thence along said last mentioned lot Northward, one hundred seventy-five (175) feet to a corner at the aforesaid State Highway, and thence along said State Highway Westward, thirty (30) feet to a corner, the place of BEGINNING.

Having erected thereon a dwelling known as 314 Third Street, Hanover, Pennsylvania.

Parcel Identification Number 8-268.

SEIZED and taken into execution as the property of **Daniel Epps, Cheryelona Mirchandani & Rueben Verdin** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 4, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/9, 16 & 23

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1128 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of April, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THE FOLLOWING described tract of land situate in the Borough of New Oxford, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a stake on the North side of High Street at lands now or formerly of J. Lloyd Wolf; thence by the North side of High Street seventy-seven and three fourths (77-3/4) degrees West, seventy-six (76) feet to a point at a twenty (20) foot alley; thence by said alley North twelve and one-fourth (12-1/4) degrees West, ninety-seven (97) feet, more or less, to a point at lands now or formerly of St. Paul's Evangelical and Reformed Church; thence by said lands North seventy-seven and three-fourths (77-3/4) degrees East, seventy-six (76) feet to a point; thence by the same and by lands now or formerly of J. Lloyd Wolf aforesaid South twelve and one-fourth (12-1/4) degrees East, ninety-seven (97) feet, more or less, to a stake, the place of BEGINNING.

Map # 34-5-132

Being known as 14 E. High Street, New Oxford, PA 17350

SEIZED and taken into execution as the property of **Sean M. Potter & Melissa A. Potter** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 4, 2007, and

distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/9, 16 & 23

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 pursuant to the provisions of the Nonprofit Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988 (P.L. 1444, No. 177).

The name of the corporation is: PROJECT GAIA, INC.

John A. Wolfe, Esq.
Wolfe & Rice, LLC
47 West High Street
Gettysburg, PA 17325
(717) 337-3754

3/16

COMMONWEALTH VS. BOCH

1. Generally, a mistrial because of a jury's inability to reach a verdict does not implicate the principles of double jeopardy, and retrial is not prohibited. An exception to this general rule exists, however, when a defendant was acquitted or convicted on some charges in the same trial, and the same jury was unable to reach a verdict on other charges.

2. The critical focus in determining whether double jeopardy is violated is the same which the Court considers in determining whether crimes are greater or lesser included offenses and therefore merge for sentencing purposes.

3. To determine whether offenses are greater and lesser included offenses, we compare the element of the offenses. If the elements of the lesser offense are all included within the elements of the greater offense and the greater offense has at least one additional element, which is different, then the sentences merge.

4. If the two offenses are mutually exclusive and the same evidence could not possibly have satisfied the distinct elements of the two crimes, then this Court is not permitted to view the circumstances so broadly as to redefine the elements of each crime.

5. In finding that the separate sentences violated double jeopardy, the Supreme Court determined that the elements of involuntary manslaughter were subsumed in the elements of homicide by vehicle, since both offenses required the same proof.

6. The sole distinction in the elements of the two crimes is that the homicide by vehicle statute (versus involuntary manslaughter) requires the additional element of a violation of the Vehicle Code or other law. As such, these offenses shall fall squarely within the test enunciated in **Allen** for purposes of merger and, consequently, double jeopardy considerations.

7. Inconsistent verdicts, while often perplexing, are not considered mistakes and do not constitute a basis for reversal.

8. The rationale for allowing inconsistent verdicts is that it is the jury's sole prerogative to decide on which counts to convict in order to provide a Defendant with sufficient punishment.

9. Retrial on the charges of homicide by vehicle is barred by Constitutional provisions prohibiting double jeopardy.

10. The principle that no one shall be put twice in jeopardy for the same offense is one of the oldest ideas found in western civilization. The rationale behind this principle is that guilt should be established by proving the elements of a crime to the satisfaction of a single jury, not by capitalizing on the increased probability of conviction resulting from repeated prosecutions before many juries.

11. On the other hand, an accused's valued right to have his trial completed by a particular tribunal must in some instances be subordinated to the public's interest in fair trials designed to end in just judgments.

In the Court of Common Pleas of Adams County, Pennsylvania,
Criminal, No. CP-01-CR-30-2005, COMMONWEALTH OF
PENNSYLVANIA VS. WILLIAM THOMAS BOCH, JR.

Brian R. Sinnett, Esq., Assistant District Attorney, for Commonwealth
Roy A. Keefer, Esq., for Defendant

George, J., May 18, 2006

OPINION

This matter comes before the Court as a result of a tragic accident on April 10, 2004, when a car operated by the Defendant, William T. Boch, Jr., (“Boch”) was involved in a head-on collision resulting in the death of three (3) passengers in his vehicle. The accident occurred when Boch attempted to pass another vehicle on Carroll’s Tract Road, Hamiltonban Township, Adams County, Pennsylvania. As a result of the accident, Boch was charged with three (3) counts of homicide by vehicle (75 Pa. C.S.A. §3732), three (3) counts of involuntary manslaughter (18 Pa. C.S.A. §2504), and a number of summary traffic offenses. Following a two (2) day trial held on October 5, 2005, and October 6, 2005, the jury returned not guilty verdicts to the three (3) counts of involuntary manslaughter, but was unable to reach a verdict as to the three (3) counts of homicide by vehicle.

The Commonwealth has subsequently rescheduled Boch for trial on the homicide by vehicle charges. Prior to retrial, the Commonwealth has filed a Motion to Amend the Criminal Information by adding five (5) additional counts of recklessly endangering another person.¹ The Commonwealth’s Motion to Amend was met by Boch’s Motion to Dismiss alleging that retrial on the homicide by vehicle charges is barred by the statutory and constitutional protections against double jeopardy.² For the reasons set forth below, the Commonwealth’s Motion to Amend the Information is denied. Additionally, the three (3) counts of involuntary manslaughter against Boch are dismissed with prejudice.

¹Three (3) of the counts related to the decedents with the two (2) additional counts listing the occupants of the other vehicle involved in the head-on collision.

²The Commonwealth seeks to dismiss Boch’s Motion to Dismiss on the basis that Boch’s claim has been waived for failure to comply with Pa.R.Crim.P. 579. That rule provides that an Omnibus Pretrial Motion shall be filed within thirty (30) days following arraignment absent limited exceptions that are currently inapplicable. The Commonwealth’s objection, however, is misguided in that Rule 579 is applicable to pretrial procedures that are triggered by formal arraignment. The issue currently before the Court relates to issues arising post-trial. Although there is no specific rule of procedure addressing this circumstance, Appellate authority implies that a Motion to Dismiss on double jeopardy grounds following a trial may be considered by the Court as being timely, provided it is raised prior to the commencement of the second trial. See *Commonwealth v. Pries*, 861 A.2d 951 (Pa.Super. 2004) (a trial court’s consideration of an oral Motion to Dismiss on grounds of double jeopardy raised on the

(Footnote 2 continued to next page)

An integral part of both our State and Federal Constitutions is that no person shall "be twice put in jeopardy of life or limb." Pa.Const. Art. 1 § 10; U.S. Constitution 5th Amendment.³ Generally, a mistrial because of a jury's inability to reach a verdict does not implicate the principles of double jeopardy, and retrial is not prohibited. *Commonwealth v. McCane*, 539 A.2d 340, 346 (Pa. 1988). An exception to this general rule exists, however, "when a defendant was acquitted or convicted on some charges in the same trial, and the same jury was unable to reach a verdict on other charges." *Commonwealth v. McCord*, 700 A.2d 938, 946 (Pa.Super. 1997). Under such circumstances, double jeopardy implications may prohibit retrial.

The critical focus in determining whether double jeopardy is violated is the same which the Court considers in determining "whether crimes are greater or lesser included offenses and therefore merge for sentencing purposes." *Commonwealth v. Comer*, 716 A.2d 593, 598 n.10 (Pa. 1998) (citing *Commonwealth v. Anderson*, 650 A.2d 20, 23 (Pa. 1994)). The inquiry was recently explained by the Superior Court in *Commonwealth v. Allen*, as follows:

To determine whether offenses are greater and lesser included offenses, we compare the element of the offenses. If the elements of the lesser offense are all included within the elements of the greater offense and the greater offense has at least one additional element, which is different, then the sentences merge. If both crimes require

(Footnote 2 continued from previous page)

date of trial is appropriate exercise of the court's obligation to protect due process rights of accused.) Although not entirely reflected in the record, during the time period following the initial trial, the parties undertook discussion in an effort to resolve the charges through agreement. Only after it became clear that negotiations proved unfruitful did Boch file his Motion to Dismiss. Under these circumstances, I find no prejudice to the Commonwealth. This lack of prejudice is evidenced by the Commonwealth's filing a Motion to Amend the Information just immediately prior to Boch's filing of his Motion to Dismiss. Accordingly, in exercise of discretion, I will address the merits of Boch's Motion.

³In addition to the Constitutional considerations, Pennsylvania Rule of Criminal Procedure 648(D) (formerly Pa.R.Crim.P. 1120) codifies circumstances where retrial is prohibited following the entry of a verdict on other counts in the Information. This rule, however, provides no greater protection than that provided by double jeopardy principles. *Commonwealth v. Kemmerer*, 584 A.2d 940, 942 (Pa. 1991).

proof of at least one element that the other does not, then the sentences do not merge. In addition to analyzing whether the convictions are greater and lesser included offenses, the underlying factual circumstances must also be considered. If the two offenses are mutually exclusive and the same evidence could not possibly have satisfied the distinct elements of the two crimes, then this Court is not permitted to view the circumstances so broadly as to redefine the elements of each crime.

Commonwealth v. Allen, 856 A.2d 1251 (Pa.Super. 2004) (citations omitted) (citing *Anderson*, 650 A.2d at 24).

Since the charges on which Boch was acquitted are based upon the same facts as the charges upon which the jury was hung, I must determine whether the offenses of homicide by vehicle and involuntary manslaughter are greater and lesser-included offenses. If they are not greater and lesser-included offenses, they would not merge, and no double jeopardy problem would be presented. On the other hand, if they are, they would merge for sentencing purposes and therefore implicate double jeopardy principles.

Resolution of this issue is assisted by a review of the Pennsylvania Supreme Court's decision in *Comer*. In *Comer*, the Supreme Court wrestled with the issue of whether the imposition of multiple sentences for convictions of involuntary manslaughter and homicide by vehicle, which were based upon the same conduct and caused a single death, violated the double jeopardy protections of our Constitutions. *Comer*, 716 A.2d at 598. In finding that the separate sentences violated double jeopardy, the Court determined that the elements of involuntary manslaughter were subsumed in the elements of homicide by vehicle, since both offenses required the same proof. *Id.* at 599. Interestingly, in *Comer*, the Supreme Court reversed the conclusion of the Superior Court that the offense of involuntary manslaughter was not a lesser-included offense of homicide by vehicle. The Superior Court incorrectly reached its conclusion by distinguishing the degrees of culpability for the respective offenses. The Supreme Court disagreed with this reasoning.

The significance of the *Comer* decision is magnified by the fact that the decision interpreted former homicide by vehicle legislation. That prior statute defined the mens rea for homicide by vehicle as

“the unintentional causing of a death.”⁴ In 2000, the Pennsylvania Legislature brought the language of the current homicide by vehicle statute in line with Appellate Court decisions interpreting the previous section. The homicide by vehicle statute now defines the mens rea as “recklessly or with gross negligence.” 75 Pa. C.S.A. § 3732. Incidentally, this mens rea is identical to the mens rea required to establish involuntary manslaughter. Thus, the statutory amendment to the homicide by vehicle offense only reaffirmed the vitality of the *Comer* decision.

After examining the relevant offenses side by side, it is evident that both require the Commonwealth to establish beyond a reasonable doubt the commission of an act recklessly or with gross negligence which caused the death of another person. The sole distinction in the elements of the two crimes is that the homicide by vehicle statute requires the additional element of a violation of the Vehicle Code or other law. As such, these offenses fall squarely within the test enunciated in *Allen* for purposes of merger and, consequently, double jeopardy considerations. Specifically, the elements of involuntary manslaughter are all included within the elements of homicide by vehicle although the latter has one additional element.

The Commonwealth seeks to avoid the ramifications of Appellate authority by asking this Court to take into account the possibility of “inconsistent verdicts.” The basis of this argument is found in the Supreme Court’s Opinion in *Commonwealth v. Strand*, 347 A.2d 675 (Pa. 1975). This line of cases recognizes that “inconsistent verdicts, while often perplexing, are not considered mistakes and do not constitute a basis for reversal.” *Commonwealth v. Petteway*, 847 A.2d 713, 718 (Pa.Super. 2004). “When an acquittal on one count in an indictment is inconsistent with a conviction on a second count, the court looks upon the acquittal as no more than the jury’s assumption of a power which they had no right to exercise, but to which they were disposed through lenity.” *Id.* (quoting *Commonwealth v. Swann*, 635 A.2d 1103, 1104-05 (Pa. Super. 1994)). “The rationale for allowing inconsistent verdicts is that it is the jury’s sole prerogative to decide on which counts to convict in order to provide a

⁴Appellate Courts have found that this element is satisfied when a Defendant acts in a criminally negligent or reckless manner. *Commonwealth v. Heck*, 535 A.2d 575 (Pa. 1987).

Defendant with sufficient punishment.” *Commonwealth v. Miller*, 657 A.2d 946, 948 (Pa.Super. 1995).

In the present case the Commonwealth attempts to apply this authority arguing that double jeopardy prohibitions should not preclude retrial since inconsistent verdicts are not prohibited. This argument suggests that it is possible for the jury to have reached a verdict on some counts without having necessarily intended the same finding on other counts. Therefore, retrial is proper as the jury’s verdicts on the acquitted charges were based upon the improper exercise of lenity. I reject this argument advanced by the Commonwealth.

In essence, the Commonwealth suggests that this Court ignore controlling precedent on issues of double jeopardy in favor of creating law on the basis of precedent relating to inconsistent verdicts. If this argument is adopted by the Court, the protections against double jeopardy would be meaningless since it is impossible to imagine any circumstance where retrial would be prohibited. Unfortunately for the Commonwealth, this Court has neither the luxury nor the right to casually disregard volumes of applicable Appellate precedent. *Commonwealth v. Hayward*, 756 A.2d 23, 38 (Pa.Super. 2000). Accordingly, I decline the Commonwealth’s invitation to ignore this precedent pursuant to a novel legal theory.⁵

⁵Both the Commonwealth and Boch analyze the double jeopardy issue under the doctrine of “collateral estoppel.” “The phrase ‘collateral estoppel,’ also known as ‘issue of preclusion,’ simply means that when an issue of law, evidentiary fact, or ultimate fact has been determined by a valid final judgment, that issue cannot be litigated again between the same parties in any future lawsuit.” *Commonwealth v. Holder*, 805 A.2d 499, 502 (Pa. 2002). Although “[c]ollateral estoppel does not automatically bar a subsequent prosecution...it bars redetermination in a second prosecution of those issues necessarily determined between the parties in the first proceeding that has become a final judgment.” *Id.* Pennsylvania Appellate Courts have included the doctrine of collateral estoppel as a consideration in evaluating double jeopardy claims. *Commonwealth v. States*, 891 A.2d 737 (Pa.Super. 2005). This line of cases reveals a common theme that the theory of collateral estoppel is applicable where the charge upon which an acquittal has been entered is a necessarily included offense of the charge for which retrial is sought. *Commonwealth v. Hickson*, 586 A.2d 393 (Pa.Super. 1990). These cases instruct that a crime is a “necessarily included offense” when it must be proven to establish the other crime. *Commonwealth v. McCord*, 700 A.2d 938, 946 (Pa.Super. 1997). Although it is not necessary to consider this issue in light of the disposition above, a cursory application of this test produces the same result. Since all of the elements of involuntary manslaughter are subsumed in the elements of homicide by vehicle, the acquittal of Boch on involuntary manslaughter necessarily prevents retrial of the offense on which the jury could not agree upon a verdict as the jury must have found the Commonwealth’s proof lacking in regard to a necessary element of both charges.

Having found that retrial on the charges of homicide by vehicle is barred by Constitutional provisions prohibiting double jeopardy, I must also deny the Commonwealth's Motion to Amend to add charges of recklessly endangering another person. Permitting an amendment at this stage, in essence, would be a direct affront to the principle deeply held by our society that an accused should not be subjected to the "severe psychological, physical and economic burdens" of multiple punishments for the same offense. See generally *Commonwealth v. DeLong*, 879 A.2d 234, 238 (Pa.Super. 2005).

The principle that no one shall be put twice in jeopardy for the same offense "is one of the oldest ideas found in western civilization." *Bartkus v. Illinois*, 359 U.S. 121, 151 (1959). The rationale behind this principle is that "guilt should be established by proving the elements of a crime to the satisfaction of a single jury, not by capitalizing on the increased probability of conviction resulting from repeated prosecutions before many juries." *Commonwealth v. Mills*, 286 A.2d 638, 641 (Pa. 1971). A related basis for protection against double jeopardy "is that a person shall not be harassed by successive trials [and] an accused shall not have to marshal the resources and energies necessary for his defense more than once for the same alleged criminal acts." *Abbate v. United States*, 359 U.S. 187, 198-99, (1959).

On the other hand, an accused's "valued right to have his trial completed by a particular tribunal must in some instances be subordinated to the public's interest in fair trials designed to end in just judgments." *Richardson v. United States*, 468 U.S. 317, 325 (1984). Similarly, the protections against double jeopardy are not meant to give criminals a "volume discount" on crime. *Anderson*, 650 A.2d at 22. In weighing these sometimes competing interests, I find that retrial is not permitted. Undoubtedly, had Boch been convicted of all offenses, the resulting sentences for involuntary manslaughter and homicide by vehicle would have merged. See *Comer*, cited above. Permitting the Commonwealth to proceed on a more specific charge following Boch's acquittal on the underlying general charge would impermissibly allow the Commonwealth the opportunity to capitalize on a second prosecution for the same acts before a different jury.

In reaching this conclusion, I recognize that some may disagree with the jury's partial verdict following the first trial. Nevertheless,

after hearing the evidence, the jury has spoken. Unquestionably, the very foundation of our system of justice gives the jury the prerogative to decide whether an individual should be convicted and punished for a criminal offense. See generally *Miller*, cited above. While I am sympathetic to the possibility that this result may aggravate, for some, an already tragic circumstance, I must be cognizant of the Court's solemn obligation to safeguard the Constitutional principles that weave the fiber of a free and democratic society.

ORDER OF COURT

AND NOW, this 18th day of May, 2006, the Commonwealth's Motion to Amend the Information is denied. Counts 1, 2 and 3 of the Criminal Information are dismissed with prejudice. Hearing on the summary offenses listed as Counts 7 through 11 are scheduled for disposition on May 26, 2006 at 9:00 a.m. in Courtroom No. 2 of the Adams County Courthouse at which time the Defendant is directed to appear. Disposition will be entered based upon the trial transcript of the jury trial held on October 5, 2005.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-859 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of April, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THE FOLLOWING 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 Poplar Street and Lot No. 125; thence along Lot No. 125, South thirty-nine (39) degrees two (02) minutes fifty-six (56) seconds East, one hundred eighty (180.00) feet to a point at Lot No. 121; thence along Lot No. 121, North fifty-eight (58) degrees two (02) minutes twenty-one (21) seconds East, ninety and sixty-nine hundredths (90.69) feet to a point at Lot No. 122; thence along Lot No. 122 and Lot No. 123, North thirty-nine (39) degrees two (02) minutes fifty-six (56) seconds West, one hundred ninety-one and nineteen hundredths (191.19) feet to a point at Poplar Street; thence along Poplar Street, South fifty (50) degrees fifty-seven (57) minutes four (04) seconds West, ninety (90.00) feet to the point and place of BEGINNING.

CONTAINING 16,703 square feet and identified as Lot No. 124 on a plan of lots entitled Phase III, Conewago Estates, recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 51, page 82.

Tax Parcel #6-166

Premises Being: 719 Poplar Street, Hanover, PA

SEIZED and taken into execution as the property of **Lois A. Misiti** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 4, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/9, 16 & 23

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1442 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of April, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot or piece of ground situate in Carroll Valley Borough, formerly Liberty Township, County of Adams, Commonwealth of Pennsylvania, being known as Lot #129 in Section R1, bounded and described as follows:

BEGINNING at the intersection of the center lines of Shuff Trail (now Maple Trail) with Kramer Trail (now Peach Tree Trail); thence in said center line of Shuff Trail (now Maple Trail), South 26 degrees 37 minutes West, 128.28 feet to a point; thence in same, South 71 degrees 25 minutes 20 seconds West, 188.68 feet to a point at corner of Lot #130; thence by said Lot #130, North 18 degrees 34 minutes 40 seconds West, 198.89 feet to a point in the center line of said Kramer Trail (now Peach Tree Trail); thence in and along said Kramer Trail (now Peach Tree Trail); South 87 degrees 22 minutes 40 seconds East, 300 feet to a point, the place of BEGINNING.

THE above description was obtained from a sub-division plan, labeled Section R1, Charnita, Inc. by Gordon L. Brown, dated May 29, 1970, which plan is recorded in Adams County Plat Book 1, page 83.

BEING the same premises which Gilbert C. Smith and Susan F. Smith, husband and wife, by deed dated April 26, 2003, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Book 3108, Page 234, granted and conveyed unto William G. Hudson and Sharon E. Hudson, husband and wife, the Grantors herein.

TOGETHER with and subject to rights, restrictions, conditions, covenants, regulations of Record as set forth in Deed Book 330 at Page 1119.

TOGETHER with all and singular the buildings and improvements, ways, streets, alleys, driveways, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever unto the hereby granted premises belonging, or in any-wise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and all the estate, right title, interest, property, claim and demand whatsoever of them, the said grantors, as well at law as in equity, of, in and to the same.

TO have and to hold the said lot or piece of ground described above, with the buildings and improvements thereon erected, hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the said grantee, his heirs and assigns, forever.

AND the said Grantors, for themselves and their heirs, Executors and Administrators, do by these presents, covenant, grant and agree, to and with the said Grantee, his heirs and assigns, that they, the said Grantors, and their heirs, all and singular the hereditaments, and premises, herein described and granted, or mentioned and intended so to be, with the appurtenances, unto the said Grantee, his heirs, and assigns, against them, the said grantors, and their heirs, will specially warrant and defend against the lawful claims of all persons claiming by, through or under the said grantors but not otherwise.

Tax Parcel No.: 41-4

Premises Being: 12 Peachtree Trail, Fairfield, PA 17320

SEIZED and taken into execution as the property of **Charles M. Trubey** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 4, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/9, 16 & 23

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-800 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of April, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the following described lot of ground situate, lying and being in Carroll Valley Borough (formerly Hamiltonban Township), Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point in the center of Black Bass Trail at Lot No. 78; thence by said lot, North 68 degrees 23 minutes 24 seconds East, 225 feet to lands designated as Recreational Area on the draft hereinafter identified; thence by said lands, South 21 degrees 36 minutes 36 seconds East, 100 feet to Lot No. 76; thence by said lot, South 68 degrees 23 minutes 24 seconds West, 225 feet to a point in the center of said Black Bass Trail; thence in said Black Bass Trail, North 21 degrees 36 minutes 36 seconds West, 100 feet to the place of BEGINNING.

THE above description was taken from a plan of lots labeled 'Section K, Chamita' dated March 3, 1969, prepared by Evans, Hagan & Holdefer, and recorded in Adams County Plat Book 1 at page 42, known as Lot No. 77.

TITLE TO SAID PREMISES IS VESTED IN Neal A. Wuethrich and Helen B. Wuethrich, husband and wife, as tenants of an estate by the entirety, by Deed from Helen Wuethrich, Executrix and Sole Heir named in the Last Will and Testament of Harvey W. Ritter, deceased, dated 02/12/2003, recorded 02/19/2003, in Deed Book 2983, page 58.

Premises being: 16 Black Bass Trail, Fairfield, PA 17320

Tax Parcel No. 43-6-46

SEIZED and taken into execution as the property of **Neal A. Wuethrich a/k/a Neal Alan Wuethrich & Helen B. Wuethrich** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 4, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/9, 16 & 23

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1042 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 20th day of April, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point in Pennsylvania Route 34, Carlisle Road, at corner of other lands of the grantor; thence in Pennsylvania Route 34, Carlisle Road, North four (04) degrees thirty (30) minutes zero (00) seconds West, forty-three and forty-nine hundredths (43.49) feet to a point in road; thence North eleven (11) degrees fifty-nine (59) minutes fifty-two (52) seconds East, four hundred twenty-eight and thirty hundredths (428.30) feet to a point in old roadbed on line of lands now or formerly of Cameron R. and Grace S. Garretson and at corner of other lands of grantor; thence by other lands of grantor, and passing through a steel reference pin set thirty and forty-four hundredths (30.44) feet from the beginning of this course, North seventy-four (74) degrees thirty-seven (37) minutes fifty-three (53) seconds East, one hundred seventy-two and forty-four hundredths (172.44) feet to a rifle barrel set; thence by the same, South seventy-five (75) degrees thirty-nine (39) minutes thirty-three (33) seconds East, seventy-three and ninety-two hundredths (73.92) feet to a rifle barrel set; thence by the same, South thirteen (13) degrees forty-one (41) minutes thirty-eight (38) seconds West, sixty and sixty-two hundredths (60.62) feet to a rifle barrel set; thence by the same, South thirty-six (36) degrees forty-five (45) minutes eighteen (18) seconds West, eighty-five and eighteen hundredths (85.18) feet to a 2 inch pipe set; thence by the same, South two (02) degrees twenty-three (23) minutes six (06) seconds East, three hundred eighty-three and seventy-five hundredths (383.75) feet to a rifle barrel set; thence by the same, North eighty-five (85) degrees thirty-eight (38) minutes forty-seven (47) seconds West, two hundred seventy-four and ninety-five hundredths (274.95) feet, and passing through a 1 inch pipe set twenty-two and eighteen

hundredths (22.18) feet from the end of this course, to a point in road, Pennsylvania Route 34, Carlisle Road, the place of BEGINNING.

CONTAINING 2.700 Acres, more or less.

TOGETHER WITH an easement over other lands of the grantor, Crestmont Orchards, Inc. situated to the East of the premises herein conveyed, to be for the use of the grantee herein, her heirs and assigns, to provide access to the existing septic system and drainage lines, presently located on other lands of the grantor, as more fully shown on a draft of survey prepared by Boyer Surveys, Richard W. Boyer, Registered Professional Surveyor 17399-E, dated September 21, 1984, as recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 40 at page 147; with ingress, egress and regress to the existing septic lines for purposes of maintenance and repair; maintenance and repair costs shall be at the exclusive and sole cost of the grantee herein, her heirs and assigns.

BEING THE SAME PREMISES WHICH Crestmont Orchards, Inc., by Deed Book 390 Page 840 dated November 9, 1984, and recorded November 20, 1984, in the Recorder of Deeds Office in and for Adams County, granted and conveyed unto Cheri A. Freeman.

Premises Being: 1075 Carlisle Rd., Biglerville, PA 17307

SEIZED and taken into execution as the property of **Cheri A. Freeman a/k/a Cheri Freeman Book & Richard L. Book** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 11, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/16, 23 & 30

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 EVELYN B. GUISE a/k/a EVELYN M. GUISE, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Personal Representative: William E. Baldwin, c/o Patterson, Kiersz & Murphy, PC, 239 East Main Street, Waynesboro, PA 17268-1681

Attorney: David F. Spang, Esq., Patterson, Kiersz & Murphy, P.C., 239 East Main Street, Waynesboro, PA 17268-1681

ESTATE OF LINDA J. KRITSCHGAU, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Megan A. Kritschgau, 5012 E. Trindle Rd., Mechanicsburg, PA 17050

Attorney: Richard S. Friedman, Esq., Friedman & King, P.C., P.O. Box 984, Harrisburg, PA 17108

ESTATE OF BEULAH M. KUHN, DEC'D
Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Donna Denise (Hemler) Huston, 10 Moongale Drive, Carlisle, PA 17013

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

SECOND PUBLICATION

ESTATE OF CHAD VICTOR KENISTON, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Administratrix: Susan Dianne Keniston, 53 East King Street, Littlestown, PA 17340

Attorney: Barbara Jo Entwistle, Esq., Pyle and Entwistle, 66 West Middle Street, Gettysburg, PA 17325

ESTATE OF MARY ELIZABETH KNOX, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Co-Executors: David P. Knox, 1275 Old Harrisburg Road, Gettysburg, PA 17325; Dennis J. Knox, 1375 Table Rock Road, Gettysburg, PA 17325

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

ESTATE OF MARK E. REDDING, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executrix: Helen J. Redding, 5 Cherry Valley Road, Hanover, PA 17331

ESTATE OF STRATHER R. WEATHERLY, DEC'D

Late of Liberty Township, Adams County, Pennsylvania

Executrix: Mildred D. Weatherly, 2760 Pumping Station Road, Fairfield, PA 17320

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

THIRD PUBLICATION

ESTATE OF GRACE W. COOLEY, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Roger Cooley, 1812 Center Mills Road, Aspers, PA 17304

Attorney: John J. Mooney, III, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF JEAN L. FORTENBAUGH, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Linda A. Thompson, 2468 18-1/2 Street, Rice Lake, WI 54868

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

ESTATE OF THOMAS F. NORTON, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administrator: William J. Norton, 2534 Littlestown Pike, Westminster, MD 21158

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

ESTATE OF MAURICE J. ROCHE, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executor: Clay D. Roche, c/o Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 135 North George Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 135 North George Street, York, PA 17401

ESTATE OF CATHARINE B. SHAFFER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Ned F. Shaffer, 3491 South River Terrace, Edgewater, MD 21037

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1359 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 20th day of April, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Mount Pleasant Township, Adams County, Pennsylvania, more particularly bounded, limited and described as follows:

BEGINNING at Lot No. 9; thence along the Lincoln Highway, South 88-1/2 degrees East, 100 feet to a stake at a public alley; thence along said public alley, South 2-1/2 degrees West, 200 feet to a stake at a 16 feet wide alley; thence along said last mentioned alley, North 88-1/2 degrees West, 100 feet to Lot No. 9; thence along Lot No. 9, North 2-1/2 degrees East, 200 feet to a stake at the Lincoln Highway, aforesaid, the place of BEGINNING.

EXCEPTING THEREOUT all that portion of land conveyed to the Commonwealth of Pennsylvania, Department of Transportation by deed recorded in Adams County on 10/02/2006 @ instrument #200600020413 for a right-of-way.

UNDER AND SUBJECT, NEVERTHELESS, to the recorded restrictions and conditions particularly those restrictions and conditions recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 292 at page 130.

Parcel Identification No.: 32-J11-0102-000

TITLE TO SAID PREMISES IS VESTED IN James E. Trimmer and Susan L. Trimmer, husband and wife, as Tenants by the Entireties, by Deed from Gary F. Reaver, II and Vivian Reaver, his wife, dated 01/07/2004, recorded 01/09/2004, in Deed Book 3441, page 50.

Premises Being: 4467 York Road, New Oxford, PA

SEIZED and taken into execution as the property of **James E. Trimmer & Susan L. Trimmer a/k/a Susan Laughman** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 11, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/16, 23 & 30

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1269 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 20th day of April, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot of land situate in Mount Joy Township, Adams County, Pennsylvania, being more particularly described as Lot No. 1023 on a plan of lots of Lake Heritage Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Misc. Book 4 at Page 778.

TOGETHER with and subject to restrictions, conditions and agreements as contained in Deed Book 258 at Page 419.

TAX PARCEL#: 31-10-51

PROPERTY ADDRESS: 1023 Burnside Drive, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **David E. Walling & Suzan D. Walling** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 11, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/16, 23 & 30

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that on March 6, 2007, Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania incorporating LIBERTY ADJUSTMENT, INC., under the provisions of the Business Corporation Law of 1988.

The purpose for which said corporation is formed: The corporation shall have unlimited power to engage in and do any lawful act concerning any and all lawful business for which corporations may be incorporated under the Business Corporation Law of 1988.

The location and post office address of the initial registered office of said corporation is 121 Janet Trail, Fairfield, PA 17320.

Matthew R. Battersby, Esq.
20 W. Main St., PO Box 215
Fairfield, PA 17320
(717) 642-6260

3/16

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Amendment were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on or about February 15, 2007 for the purpose of changing the name of The Adams County Interfaith Housing Corporation to PENNSYLVANIA INTERFAITH COMMUNITY PROGRAMS INCORPORATED. The current registered office of the corporation is 40 East High Street, Gettysburg, PA 17325.

Bernard A. Yannetti, Esq.
Hartman & Yannetti
Solicitors

3/16

Adams County Legal Journal

Vol. 48

March 23, 2007

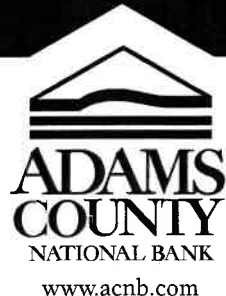
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LAPOF ET AL VS. STEIN

Serving individuals, businesses and organizations in our shared communities for 150 years is definitely something to celebrate.

Celebrating 150 years!
1857-2007



 Equal Housing Lender. Equal Opportunity Lender. 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. 06-S-1395 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of April, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that the following described lot of ground, with the improvements thereon erected, situate, lying and being in Conewago Township, County of Adams and State of Pennsylvania, bounded and limited as follows, to wit:

BEGINNING for a corner at the State Highway (commonly known as Third Street), formerly the Hanover and McSherrytown Turnpike, at lot now or formerly owned by William Senft; thence along said lot Southward, one hundred seventy-five (175) feet to a corner at a twenty (20) feet wide alley; thence along said alley Eastward, thirty (30) feet to a corner at lot formerly owned by Ezra E. Myers; thence along said last mentioned lot Northward, one hundred seventy-five (175) feet to a corner at the aforesaid State Highway, and thence along said State Highway Westward, thirty (30) feet to a corner, the place of BEGINNING.

Having erected thereon a dwelling known as 314 Third Street, Hanover, Pennsylvania.

Parcel Identification Number 8-268.

SEIZED and taken into execution as the property of **Daniel Epps, Cheryelona Mirchandani & Rueben Verdin** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 4, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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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.

3/9, 16 & 23

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1128 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of April, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THE FOLLOWING described tract of land situate in the Borough of New Oxford, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a stake on the North side of High Street at lands now or formerly of J. Lloyd Wolf; thence by the North side of High Street seventy-seven and three fourths (77-3/4) degrees West, seventy-six (76) feet to a point at a twenty (20) foot alley; thence by said alley North twelve and one-fourth (12-1/4) degrees West, ninety-seven (97) feet, more or less, to a point at lands now or formerly of St. Paul's Evangelical and Reformed Church; thence by said lands North seventy-seven and three-fourths (77-3/4) degrees East, seventy-six (76) feet to a point; thence by the same and by lands now or formerly of J. Lloyd Wolf aforesaid South twelve and one-fourth (12-1/4) degrees East, ninety-seven (97) feet, more or less, to a stake, the place of BEGINNING.

Map # 34-5-132

Being known as 14 E. High Street, New Oxford, PA 17350

SEIZED and taken into execution as the property of **Sean M. Potter & Melissa A. Potter** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 4, 2007, and

distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/9, 16 & 23

LAPOF ET AL VS. STEIN

1. A shareholder derivative suit involves a shareholder asserting a derivative action on behalf of the corporation where the shareholder has demanded that the corporation assert a cause of action and the corporation refuses.

2. Before instituting a shareholder derivative action, a shareholder must demonstrate that a demand has been made on the corporation's board of directors allowing them to redress his grievances.

3. Once a shareholder has made a demand on the board of directors, it must next be determined whether the demand was adequate and whether the derivative suit was filed prematurely after the demand. Adequacy of a demand must be determined on a case-by-case basis.

4. A demand is adequate if it identifies the alleged wrongdoers, describes the factual basis of the wrongful acts and the harm caused to the corporation, and requests remedial relief. Moreover, the demand need not specify the legal theory, facts in support of that theory, or the precise quantum of damages.

5. Generally, if demand is required, the amount of time needed for a response will vary in direct proportion to the complexity of the technological, quantitative, and legal issues raised by the demand.

6. There is no precise rule as to how much time a board must be given to respond to a demand. Moreover, if a suit is found to be filed prematurely after a demand is made, it becomes the equivalent of failing to make a demand in a demand required case and the suit must be dismissed.

7. In deciding whether a demand has been refused, both the averments in the pleading and the written documents attached to that pleading must be examined. If an inconsistency exists between the averments in the pleading and a written document, the written document will prevail.

8. Demand on the board should be excused only if the plaintiff makes a specific showing that irreparable injury to the corporation would otherwise result, and in such instances demand should be made promptly after commencement of the action.

9. The Supreme Court's adoption of Section 7.03 of the specific ALI sections was not intended to be exclusive and courts are free to rely upon other sections if helpful and consistent with Pennsylvania law. Accordingly, a number of courts have applied §701(d) in the case of closely held corporations. This section provides:

In the case of a closely held corporation, the court in its discretion may treat an action raising derivative claims as direct action, exempt it from those restrictions and defenses applicable only to derivative actions, and order an individual recovery, if it finds that to do so will not (i) unfairly expose the corporation or the defendants to a multiplicity of actions; (ii) materially prejudice the interests of the creditors of the corporation, or (iii) interfere with a fair distribution of the recovery among all interested persons.

10. A distinction must be drawn between a shareholder derivative suit and a shareholder's direct right to sue the corporation. In contrast to a shareholder derivative suit, a shareholder direct suit is appropriate where an individual shareholder pleaded injury separate and distinct from that suffered by the corporation. In a shareholder direct suit, a shareholder sues the corporation or its managers for any direct injury which is personal to himself and any recovery inures to his benefit.

11. Officers and directors of a corporation owe a fiduciary duty to the corporation and must discharge their duties in good faith and with the skill, diligence, and care which ordinarily prudent persons would exercise under similar circumstances.

Additionally, majority shareholders owe a fiduciary duty to the corporation and may not use their voting power to benefit themselves personally at the expense of the minority. With each group, the test of liability for breach of fiduciary duty is whether the officer, director, or shareholder was unjustly enriched by their actions.

12. While it has been clearly established that officers, directors, and majority shareholders owe a duty to the corporation, it is less clear whether an employee of a corporation owes any fiduciary duty to the corporation.

13. The law of agency provides guidance on whether a corporate employee owes a fiduciary duty to the corporation. An employee as an agent of his employer, is considered a fiduciary with respect to matters within the scope of his agency.

14. An employee breaches his fiduciary duty if he does not act solely for the benefit of his principal or the advancement of his principal's interests in all matters concerned with the agency.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 05-S-1225, RAY C. LAPOF, DERIVATIVELY ON BEHALF OF BAR-RAY PRODUCTS, INC., VS. JEFFREY M. STEIN AND MARI STEIN.

Robert Schaub, Esq., for Plaintiff

Richard Thrasher, Esq., Norman Greenspan, Esq., and Rebecca J. Hillyer, Esq., for Defendants.

Kuhn, P.J., May 22, 2006

OPINION PURSUANT TO DEFENDANTS' PRELIMINARY OBJECTIONS

Before this Court are Preliminary Objections of Jeffrey M. Stein (hereinafter "Jeffrey Stein") and Mari Stein (hereinafter "Mari Stein") (collectively "Defendants") to the Complaint of Ray C. Lapof (hereinafter "Plaintiff"), derivatively on behalf of Bar-Ray Products, Inc. ("Bar-Ray")¹. For the reasons set forth herein, said objections are denied in part and granted in part.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed his Complaint on November 8, 2005 in which he brought a shareholder derivative action in the name and right of Bar-Ray against Defendants. Therein, Plaintiff alleges that Defendants

¹ Jeffrey Stein is the president, a 50% shareholder, and a director of Bar-Ray and Mari Stein is the office manager of Bar-Ray. Plaintiff is the semi-retired ex-president of Bar-Ray and has been the other 50% shareholder of Bar-Ray at all relevant times. Plaintiff has also nominally been Bar-Ray's secretary, treasurer, and one of its two directors, although without any effective power to act. Together, Jeffrey Stein and Plaintiff comprise the Bar-Ray Board of Directors.

assumed effective control of Bar-Ray and all of its operations in 1999. From 1999 through until 2004, Plaintiff avers that Defendants breached their fiduciary duties to Bar-Ray by treating it as their “personal piggy-bank,” wasting and misappropriating corporate funds to pay their personal expenses in amounts exceeding \$1.15 million, and giving themselves unauthorized advances. Additionally, Plaintiff asserts that Defendants falsely and fraudulently recorded their personal expenses on the corporate books as business expenses and up until March 2005, improperly deducted as such on Bar-Ray’s tax returns. Plaintiff avers that these actions, which defrauded Bar-Ray’s lender and stockholders, were not approved by the Bar-Ray Board of Directors, were fraudulently concealed from Bar-Ray’s lender, and have left Bar-Ray unable to pay its debts to its creditors.

When Jeffrey Stein’s defalcations and improper expense charges were purportedly discovered in early 2005, Plaintiff alleges that Stein kept the benefits he misappropriated and did not repay Bar-Ray the amounts he caused Bar-Ray to expend on his behalf. Plaintiff avers that of the 1.15 million in personal expenses Defendants had improperly charged to Bar-Ray and should have repaid, Jeffrey Stein (without approval of the Bar-Ray Board of Directors or consultation with Plaintiff) chose to have Bar-Ray cancel approximately \$530,000 of that debt by recording it in an “adjustment account” and deeming it to be a distribution of corporate profits instead of recording it as a debt he personally owed to Bar-Ray.

Furthermore, Plaintiff avers that Jeffrey Stein failed to provide Plaintiff or the Bar-Ray Board of Directors with a true and accurate accounting of Bar-Ray’s finances and refused to relinquish control of Bar-Ray because of his unlawful conduct when the demand to do so was made upon him.

Plaintiff also asserts that Defendants’ misappropriation of corporate funds to pay their personal expenses constitutes a waste of corporate assets and conversion. Moreover, Plaintiff alleges that Defendants engaged in a civil conspiracy by acting together and in concert for the common purpose of knowingly converting Bar-Ray’s money to their own uses, breaching their fiduciary duties to Bar-Ray, misappropriating funds from Bar-Ray, and wasting corporate assets.

Because Defendants allegedly acted illegally, oppressively, and fraudulently toward Bar-Ray, its lenders, and Plaintiff, Plaintiff is

seeking to remove Defendants from their respective positions and to enjoin them from taking any action with respect to Bar-Ray's property. Plaintiff further requests imposition of a constructive trust on the money misappropriated by Defendants. Finally, Plaintiff seeks an accounting, punitive damages, and compensatory damages on behalf of Bar-Ray on its claims for breach of fiduciary duty, corporate waste, conversion, and civil conspiracy.

On October 7, 2005, Plaintiff faxed a letter to Jeffrey Stein enclosing two documents, one entitled "Demand on Board of Directors of Bar-Ray Products, Inc. (hereinafter "Demand")"² and one entitled "Action by Unanimous Consent in Writing of the Board of Directors

² Specifically, Plaintiff demanded that the Bar-Ray Board of Directors confirm, based upon its financial statements, income tax returns, and accounting records (1) that Bar-Ray's financial statements submitted to its lending bank do not properly set forth Bar-Ray's income, expenses and balance sheets for the years 1999-2004; (2) that Bar-Ray's Federal Income Tax Returns for the years 1999-2003 reflect that Jeffrey Stein has caused or permitted to be made improper payments, loans, and advances of Bar-Ray funds to and/or for the benefit of Defendants in the amount of approximately \$916,820; (3) that the tax returns do not fully and accurately reflect all the improper personal expenses wrongfully deducted as business expenses by Defendants; (4) that the accounting records of Bar-Ray, under control of Defendants at all relevant times, reflect that in 2004 and thereafter that Jeffrey Stein caused and permitted improper payments of Bar-Ray funds to be made for the benefit of Defendants in the amount of at least \$241,336; (5) that Defendants together have, in breach of their fiduciary duties to Bar-Ray, received at least \$1.15 million in corporate funds during the years 1999 through 2004 without proper authority; (6) that Defendants have not repaid Bar-Ray at least \$970,000 in misappropriated funds; and (7) that Defendants have at all relevant times controlled and operated Bar-Ray for their personal benefit in violation of their fiduciary duties to Bar-Ray, its remaining shareholder, and its creditors and in violation of civil and criminal law.

Additionally, Plaintiff demanded that the Bar-Ray Board of Directors (1) demand repayment by Defendants for misappropriated funds in the amount of \$970,000; (2) initiate an action against Jeffrey Stein for breach of his fiduciary duties to Bar-Ray and for return of all monies improperly received by him or paid for his benefit; (3) initiate an action against Mari Stein for return of the monies improperly received by her or paid for her benefit; (4) promptly inform its lending bank and law enforcement authorities of the defalcations and possible criminal actions of Defendants; (5) remove and terminate Jeffrey Stein as Director, officer, and employee of Bar-Ray; (6) make a claim upon its fidelity bonding company with respect to at least \$169,089 in personal expenses of Mari Stein which were improperly paid by Bar-Ray at her behest; (7) remove and terminate Mari Stein as Office Manager and employee of Bar-Ray; (8) require that Defendants cease using Bar-Ray funds to pay personal expenses; and (9) advise the Blank Rome law firm of Jeffrey Stein's illegal and unauthorized use of Bar-Ray funds to pay for their services and demand that it cease representing both Jeffrey Stein and Bar-Ray.

of Bar-Ray Products, Inc. (hereinafter "Consent")."³ In this letter, Plaintiff stated that if Jeffrey Stein did not respond by October 26, 2005, Plaintiff's Demand would be deemed rejected.⁴

On October 25, 2005, Defendants' counsel responded in writing to Plaintiff's letter and Demand by stating that any business of Bar-Ray must "be conducted in accordance with Bar-Ray's By-Laws. If Mr. Lapof wants to schedule a Bar-Ray Board meeting to address his concerns, he should notice a meeting as required by the By-Laws... We reject out of hand any attempt by Mr. Lapof to make any assumptions as the result of Mr. Stein's failure to respond as Mr. Lapof unilaterally directs in his letter."⁵

On December 6, 2005, Defendants filed their Preliminary Objections to Plaintiff's Complaint wherein two issues were raised. The first contends that Plaintiff did not make a proper demand upon the corporation or wait a sufficient time for a response before initiating this suit. The second issue focuses on whether Mari Stein owes a fiduciary duty to the corporation. All briefs were submitted by January 27, 2006. The Court did not hold oral argument.

³Specifically, this document resolved that (1) Bar-Ray shall initiate and pursue an action against Jeffrey Stein for breach of his fiduciary duties to Bar-Ray and for return of all monies properly received by him or paid for his benefit; (2) Bar-Ray shall initiate and pursue an action against Mari Stein for return of monies improperly received by her or paid for her benefit; (3) Bar-Ray shall make a claim upon its fidelity bonding company with respect to at least \$169,089 in personal expenses of Mari Stein which were improperly paid by Bar-Ray at her behest; and (4) Plaintiff be authorized, empowered and directed (i) to cause to be prepared, executed, attested and filed any and all pleadings, (ii) to incur and pay any costs and expenses, and (iii) to take any and all other actions as may be necessary or appropriate in connection with the initiation, pursuit, or settlement of the actions authorized by the foregoing resolutions.

⁴The relevant language from the letter was "A failure by you [Jeffrey Stein] to either sign and return the Consent, make yourself available for a Directors Meeting in this fashion, or otherwise respond favorably to the Demand by October 26, 2005 will constitute a rejection of the Demand."

⁵Plaintiff avers that response constitutes a rejection of his Demand while Defendants argue to the contrary.

DISCUSSION

Defendants first object that pursuant to Pa. R.C.P. 1028(a)(2), Plaintiff's Complaint fails to conform to Pa. R.C.P. 1506(a).⁶ Plaintiff counters that his Demand on Bar-Ray was sufficient under Pa. R.C.P. 1506(a).⁷

Pa. R.C.P. 1028(a)(2) states:

- (a) Preliminary objections may be filed by any party to any pleading and are limited to the following grounds:

...

⁶ Specifically, Defendants contend that Plaintiff failed to make a proper demand on Bar-Ray under Pa. R.C.P. 1506(a) and that whatever demand was made by Plaintiff was not refused by Bar-Ray. Because Plaintiff offered Jeffrey Stein only 19 days to respond to his Demand, Defendants argue that Jeffrey Stein did not have adequate time to properly respond to the Demand and that, therefore, Plaintiff's Complaint was premature. Moreover, Defendants maintain that the October 25, 2005 letter by Defendants' counsel cannot be considered a refusal because the Demand was never properly made.

Defendants also argue that even if Plaintiff had made a proper demand, there is no language in the October 25, 2005 letter which could be construed as constituting a refusal. Furthermore, Defendants contend that because the language of exhibits prevails over averments in a complaint and Plaintiff's exhibit contradicts Plaintiff's averments in the Complaint, this Court need not accept as true Plaintiff's allegations regarding the purported Demand and refusal.

Plaintiff contends that under the circumstances of this case, a demand would have been futile and therefore, if deficient, it should be excused. Defendants argue that Plaintiff cannot now assert that any proper demand would have been refused and excused as futile because such allegations were not explicitly made in the Complaint. Consequently, Defendants maintain that because Plaintiff's exhibits to the Complaint establish that Plaintiff never properly made a demand on Bar-Ray and that any purported Demand was never actually refused, Plaintiff's Complaint violates the Pennsylvania Rules of Civil Procedure and must be dismissed.

In Defendants' Response to Plaintiff's Brief in Opposition to Preliminary Objections to the Complaint, Defendants argue that Plaintiff did not give Jeffrey Stein three months to respond to his Demand. Defendants further contend that the reason Jeffrey Stein did not respond to the purported Demand was because of the present litigation.

⁷ Specifically, Plaintiff argues that for three months (from October 7, 2005 to January 5, 2006), Jeffrey Stein has not responded in any substantive way to the alleged Demand. Plaintiff contends that no lengthy period of notice to Bar-Ray's Board of Directors was required because the issues in this case are simple. Moreover, Plaintiff argues that Defendants' objection is meritless and interposed merely for purposes of delay and to prevent Plaintiff from getting access to corporate records through the discovery process. Thus, because Bar-Ray's Board of Directors failed to act in response to the Demand, Plaintiff maintains that this action should be allowed to proceed.

- (2) failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter;

Pa. R.C.P. 1506(a) states:

- (a) In an action to enforce a secondary right brought by one or more stockholders or members of a corporation or similar entity because the corporation or entity refuses or fails to enforce rights which could be asserted by it, the complaint shall set forth:
 - (1) that each plaintiff is a stockholder or owner of an interest in the corporation or other entity,
 - (2) the efforts made to secure enforcement by the corporation or similar entity or the reason for not making any such efforts, and
 - (3) either
 - (i) that each plaintiff was a stockholder or owner of an interest in the corporation or other entity at the time of the transaction of which the plaintiff complains or that the plaintiff's stock or interest devolved upon the plaintiff by operation of law from a person who was a stockholder or owner at that time, or
 - (ii) that there is a strong prima facie case in favor of the claim asserted on behalf of the corporation and that without the action serious injustice will result.

Before instituting a shareholder derivative action, a shareholder must demonstrate that a demand has been made on the corporation's board of directors allowing them to redress his grievances. *See Korman Corp. v. Franklin Town Corp.*, 34 Pa. D. & C.3d 495, 508-509 (Philadelphia Co. 1984). This requirement recognizes the authority vested in the board of directors to manage the corporation and "to choose, in the existence of sound business judgment, whether or not to enforce a right on its own behalf." *Id.* at 509. Thus, pursuant to Pa. R.C.P. 1506(a), a shareholder may commence an action for the benefit of the corporation only after the board of directors refuses or fails to enforce rights which could be asserted by it. *See Id.*

Once a shareholder has made a demand on the board of directors, it must next be determined whether the demand was adequate and

whether the derivative suit was filed prematurely after the demand. Adequacy of a demand must be determined on a case-by-case basis. *Recchion on behalf of Westinghouse Elec. Corp. v. Kirby*, 637 F. Supp. 1309, 1318 (W.D. Pa. 1986) (citing *Allison on behalf of General Motors Corp. v. General Motors Corp.*, 604 F. Supp. 1106, 1117 (D. Del. 1985)). A demand is adequate if it identifies the alleged wrongdoers, describes the factual basis of the wrongful acts and the harm caused to the corporation, and requests remedial relief. *Id.* Moreover, the demand need not specify the legal theory, facts in support of that theory, or the precise quantum of damages. *Id.*

In evaluating whether a derivative suit was filed prematurely after a demand,

the question...is not how much time is needed to respond to the demand, but whether the time between demand and filing of suit was sufficient to permit the board of directors to discharge its duty to consider the demand. Generally, if demand is required, the amount of time needed for a response will vary in direct proportion to the complexity of the technological, quantitative, and legal issues raised by the demand.

Allison, 604 F. Supp. at 1117.

Thus, "there is no precise rule as to how much time a board must be given to respond to a demand." *Recchion*, 637 F. Supp. at 1319. Moreover, if a suit is found to be filed prematurely after a demand is made, it becomes the equivalent of failing to make a demand in a demand required case and the suit must be dismissed. *Allison*, 604 F. Supp. at 1118.

In *Allison*, the court held that a suit filed two and one-half months after a demand was made was filed prematurely. *Id.* at 119. In that case, the demand asserted that the braking system of X-cars was defective. *Id.* at 118. Because members of General Motor's [hereinafter "GM"] board of directors were not knowledgeable about these braking systems, they had to gain a minimal understanding of the technology of automobile braking systems before evaluating the demand. *Id.* Additionally, GM's board had to investigate the extent of the damages GM incurred because of the defect in the braking system. *Id.* This involved an "investigation of government litigation efforts to secure a mandatory recall, over fifty personal injury lawsuits, and the other

unidentified 'numerous accidents' and settlements by General Motors." *Id.* As a result of the magnitude and complexity of the issues presented to GM's board, the court found that two and one-half months was not sufficient time for it to complete an adequate investigation of the matters set forth in the demand letter. *Id.*

In deciding whether a demand has been refused, both the averments in the pleading and the written documents attached to that pleading must be examined. If an inconsistency exists between the averments in the pleading and a written document, the written document will prevail. *Framlau Corp. v. County of Delaware*, 299 A.2d 335, 338 (Pa. Super. 1972). Moreover, "it is not necessary to accept as true averments in the complaint which are in conflict with exhibits attached to the complaint." *Philmar Mid-Atlantic, Inc. v. York Street Assoc. II*, 566 A.2d 1253, 1254 (Pa. Super. 1989).

Here, Plaintiff made the Demand on Bar-Ray's Board of Directors on October 7, 2005 by noticing the only director other than himself and gave Jeffrey Stein until October 26, 2005 to respond. On October 25, 2005, Defendants' counsel responded in a letter by stating that any business of Bar-Ray must be conducted in accordance with its bylaws and that Defendants reject any attempt by Plaintiff to make any assumptions as the result of Jeffrey Stein's failure to respond as Plaintiff unilaterally directed.

Continued to next issue (3/30/2007)

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-859 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of April, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THE FOLLOWING 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 Poplar Street and Lot No. 125; thence along Lot No. 125, South thirty-nine (39) degrees two (02) minutes fifty-six (56) seconds East, one hundred eighty (180.00) feet to a point at Lot No. 121; thence along Lot No. 121, North fifty-eight (58) degrees two (02) minutes twenty-one (21) seconds East, ninety and sixty-nine hundredths (90.69) feet to a point at Lot No. 122; thence along Lot No. 122 and Lot No. 123, North thirty-nine (39) degrees two (02) minutes fifty-six (56) seconds West, one hundred ninety-one and nineteen hundredths (191.19) feet to a point at Poplar Street; thence along Poplar Street, South fifty (50) degrees fifty-seven (57) minutes four (04) seconds West, ninety (90.00) feet to the point and place of BEGINNING.

CONTAINING 16,703 square feet and identified as Lot No. 124 on a plan of lots entitled Phase III, Conewago Estates, recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 51, page 82.

Tax Parcel #6-166

Premises Being: 719 Poplar Street, Hanover, PA

SEIZED and taken into execution as the property of **Lois A. Misiti** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 4, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/9, 16 & 23

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1442 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of April, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot or piece of ground situate in Carroll Valley Borough, formerly Liberty Township, County of Adams, Commonwealth of Pennsylvania, being known as Lot #129 in Section R1, bounded and described as follows:

BEGINNING at the intersection of the center lines of Shuff Trail (now Maple Trail) with Kramer Trail (now Peach Tree Trail); thence in said center line of Shuff Trail (now Maple Trail), South 26 degrees 37 minutes West, 128.28 feet to a point; thence in same, South 71 degrees 25 minutes 20 seconds West, 188.68 feet to a point at corner of Lot #130; thence by said Lot #130, North 18 degrees 34 minutes 40 seconds West, 198.89 feet to a point in the center line of said Kramer Trail (now Peach Tree Trail); thence in and along said Kramer Trail (now Peach Tree Trail); South 87 degrees 22 minutes 40 seconds East, 300 feet to a point, the place of BEGINNING.

THE above description was obtained from a sub-division plan, labeled Section R1, Charnita, Inc. by Gordon L. Brown, dated May 29, 1970, which plan is recorded in Adams County Plat Book 1, page 83.

BEING the same premises which Gilbert C. Smith and Susan F. Smith, husband and wife, by deed dated April 26, 2003, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Book 3108, Page 234, granted and conveyed unto William G. Hudson and Sharon E. Hudson, husband and wife, the Grantors herein.

TOGETHER with and subject to rights, restrictions, conditions, covenants, regulations of Record as set forth in Deed Book 330 at Page 1119.

TOGETHER with all and singular the buildings and improvements, ways, streets, alleys, driveways, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever unto the hereby granted premises belonging, or in any-wise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and all the estate, right title, interest, property, claim and demand whatsoever of them, the said grantors, as well at law as in equity, of, in and to the same.

TO have and to hold the said lot or piece of ground described above, with the buildings and improvements thereon erected, hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the said grantee, his heirs and assigns, forever.

AND the said Grantors, for themselves and their heirs, Executors and Administrators, do by these presents, covenant, grant and agree, to and with the said Grantee, his heirs and assigns, that they, the said Grantors, and their heirs, all and singular the hereditaments, and premises, herein described and granted, or mentioned and intended so to be, with the appurtenances, unto the said Grantee, his heirs, and assigns, against them, the said grantors, and their heirs, will specially warrant and defend against the lawful claims of all persons claiming by, through or under the said grantors but not otherwise.

Tax Parcel No.: 41-4

Premises Being: 12 Peachtree Trail, Fairfield, PA 17320

SEIZED and taken into execution as the property of **Charles M. Trubey** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 4, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/9, 16 & 23

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-800 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of April, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the following described lot of ground situate, lying and being in Carroll Valley Borough (formerly Hamiltonban Township), Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point in the center of Black Bass Trail at Lot No. 78; thence by said lot, North 68 degrees 23 minutes 24 seconds East, 225 feet to lands designated as Recreational Area on the draft hereinafter identified; thence by said lands, South 21 degrees 36 minutes 36 seconds East, 100 feet to Lot No. 76; thence by said lot, South 68 degrees 23 minutes 24 seconds West, 225 feet to a point in the center of said Black Bass Trail; thence in said Black Bass Trail, North 21 degrees 36 minutes 36 seconds West, 100 feet to the place of BEGINNING.

THE above description was taken from a plan of lots labeled 'Section K, Chamita' dated March 3, 1969, prepared by Evans, Hagan & Holdefer, and recorded in Adams County Plat Book 1 at page 42, known as Lot No. 77.

TITLE TO SAID PREMISES IS VESTED IN Neal A. Wuethrich and Helen B. Wuethrich, husband and wife, as tenants of an estate by the entirety, by Deed from Helen Wuethrich, Executrix and Sole Heir named in the Last Will and Testament of Harvey W. Ritter, deceased, dated 02/12/2003, recorded 02/19/2003, in Deed Book 2983, page 58.

Premises being: 16 Black Bass Trail, Fairfield, PA 17320

Tax Parcel No. 43-6-46

SEIZED and taken into execution as the property of **Neal A. Wuethrich a/k/a Neal Alan Wuethrich & Helen B. Wuethrich** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 4, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/9, 16 & 23

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1042 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 20th day of April, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point in Pennsylvania Route 34, Carlisle Road, at corner of other lands of the grantor; thence in Pennsylvania Route 34, Carlisle Road, North four (04) degrees thirty (30) minutes zero (00) seconds West, forty-three and forty-nine hundredths (43.49) feet to a point in road; thence North eleven (11) degrees fifty-nine (59) minutes fifty-two (52) seconds East, four hundred twenty-eight and thirty hundredths (428.30) feet to a point in old roadbed on line of lands now or formerly of Cameron R. and Grace S. Garretson and at corner of other lands of grantor; thence by other lands of grantor, and passing through a steel reference pin set thirty and forty-four hundredths (30.44) feet from the beginning of this course, North seventy-four (74) degrees thirty-seven (37) minutes fifty-three (53) seconds East, one hundred seventy-two and forty-four hundredths (172.44) feet to a rifle barrel set; thence by the same, South seventy-five (75) degrees thirty-nine (39) minutes thirty-three (33) seconds East, seventy-three and ninety-two hundredths (73.92) feet to a rifle barrel set; thence by the same, South thirteen (13) degrees forty-one (41) minutes thirty-eight (38) seconds West, sixty and sixty-two hundredths (60.62) feet to a rifle barrel set; thence by the same, South thirty-six (36) degrees forty-five (45) minutes eighteen (18) seconds West, eighty-five and eighteen hundredths (85.18) feet to a 2 inch pipe set; thence by the same, South two (02) degrees twenty-three (23) minutes six (06) seconds East, three hundred eighty-three and seventy-five hundredths (383.75) feet to a rifle barrel set; thence by the same, North eighty-five (85) degrees thirty-eight (38) minutes forty-seven (47) seconds West, two hundred seventy-four and ninety-five hundredths (274.95) feet, and passing through a 1 inch pipe set twenty-two and eighteen

hundredths (22.18) feet from the end of this course, to a point in road, Pennsylvania Route 34, Carlisle Road, the place of BEGINNING.

CONTAINING 2.700 Acres, more or less.

TOGETHER WITH an easement over other lands of the grantor, Crestmont Orchards, Inc. situated to the East of the premises herein conveyed, to be for the use of the grantee herein, her heirs and assigns, to provide access to the existing septic system and drainage lines, presently located on other lands of the grantor, as more fully shown on a draft of survey prepared by Boyer Surveys, Richard W. Boyer, Registered Professional Surveyor 17399-E, dated September 21, 1984, as recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 40 at page 147; with ingress, egress and regress to the existing septic lines for purposes of maintenance and repair; maintenance and repair costs shall be at the exclusive and sole cost of the grantee herein, her heirs and assigns.

BEING THE SAME PREMISES WHICH Crestmont Orchards, Inc., by Deed Book 390 Page 840 dated November 9, 1984, and recorded November 20, 1984, in the Recorder of Deeds Office in and for Adams County, granted and conveyed unto Cheri A. Freeman.

Premises Being: 1075 Carlisle Rd., Biglerville, PA 17307

SEIZED and taken into execution as the property of **Cheri A. Freeman a/k/a Cheri Freeman Book & Richard L. Book** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 11, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/16, 23 & 30

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 RUBY V. COLE, DEC'D

Late of Menallen Township, Adams County, Pennsylvania
Co-Executors: June Bobb, 2261 Coon Road, Aspers, PA 17304; Georgieann Dettinburn, 880 Yellow Hill Road, Biglerville, PA 17307
Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF ALICE M. HAGARMAN, DEC'D

Late of Conewago Township, Adams County, Pennsylvania
Executor: Donald G. Hagarman, 366 Fairview Avenue, McSherrystown, PA 17344
Attorney: Crabbs & Crabbs, Attorneys for the Estate, 202 Broadway, Hanover, PA 17331

ESTATE OF REBECCA ANN LYONS, DEC'D

Late of Gettysburg Borough, Adams County, Pennsylvania
Executrix: Terry L. Latschar, 815 Taneytown Road, Gettysburg, PA 17325
Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF FRANCIS E. REED, DEC'D

Late of Conewago Township, Adams County, Pennsylvania
Executrix: Patricia R. Finch, 209 Stafford Drive, Hanover, PA 17331
Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

ESTATE OF HELEN M. WEAVER, DEC'D

Late of Reading Township, Adams County, Pennsylvania
Administrator: Jay E. Weaver, Sr., 200 Harrisburg Street, East Berlin, PA 17316
Attorney: Paul C. McCleary, Jr., Esq., 1998-A Carlisle Road, York, PA 17404

ESTATE OF PAULINE W. WEIDNER, DEC'D

Late of Huntington Township, Adams County, Pennsylvania
Co-Executors: Ronald L. Weidner and Wayne B. Weidner, c/o Roger B. Irwin, Esq., 60 West Pomfret Street, Carlisle, PA 17013
Attorney: Roger B. Irwin, Esq., Irwin & McKnight, 60 West Pomfret Street, Carlisle, PA 17013

SECOND PUBLICATION

ESTATE OF EVELYN B. GUISE a/k/a EVELYN M. GUISE, DEC'D

Late of Franklin Township, Adams County, Pennsylvania
Personal Representative: William E. Baldwin, c/o Patterson, Kiersz & Murphy, PC, 239 East Main Street, Waynesboro, PA 17268-1681
Attorney: David F. Spang, Esq., Patterson, Kiersz & Murphy, P.C., 239 East Main Street, Waynesboro, PA 17268-1681

ESTATE OF LINDA J. KRITSCHGAU, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
Executrix: Megan A. Kritschgau, 5012 E. Trindle Rd., Mechanicsburg, PA 17050
Attorney: Richard S. Friedman, Esq., Friedman & King, P.C., P.O. Box 984, Harrisburg, PA 17108

ESTATE OF BEULAH M. KUHN, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
Executrix: Donna Denise (Hemler) Huston, 10 Moongale Drive, Carlisle, PA 17013
Attorney: John R. White, Campbell & White, P.C., 112 Baltimore Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF CHAD VICTOR KENISTON, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania
Administratrix: Susan Dianne Keniston, 53 East King Street, Littlestown, PA 17340
Attorney: Barbara Jo Entwistle, Esq., Pyle and Entwistle, 66 West Middle Street, Gettysburg, PA 17325

ESTATE OF MARY ELIZABETH KNOX, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
Co-Executors: David P. Knox, 1275 Old Harrisburg Road, Gettysburg, PA 17325; Dennis J. Knox, 1375 Table Rock Road, Gettysburg, PA 17325
Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARK E. REDDING, DEC'D

Late of Union Township, Adams County, Pennsylvania
Executrix: Helen J. Redding, 5 Cherry Valley Road, Hanover, PA 17331

ESTATE OF STRATHER R. WEATHERLY, DEC'D

Late of Liberty Township, Adams County, Pennsylvania
Executrix: Mildred D. Weatherly, 2760 Pumping Station Road, Fairfield, PA 17320
Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1359 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 20th day of April, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Mount Pleasant Township, Adams County, Pennsylvania, more particularly bounded, limited and described as follows:

BEGINNING at Lot No. 9; thence along the Lincoln Highway, South 88-1/2 degrees East, 100 feet to a stake at a public alley; thence along said public alley, South 2-1/2 degrees West, 200 feet to a stake at a 16 feet wide alley; thence along said last mentioned alley, North 88-1/2 degrees West, 100 feet to Lot No. 9; thence along Lot No. 9, North 2-1/2 degrees East, 200 feet to a stake at the Lincoln Highway, aforesaid, the place of BEGINNING.

EXCEPTING THEREOUT all that portion of land conveyed to the Commonwealth of Pennsylvania, Department of Transportation by deed recorded in Adams County on 10/02/2006 @ instrument #200600020413 for a right-of-way.

UNDER AND SUBJECT, NEVERTHELESS, to the recorded restrictions and conditions particularly those restrictions and conditions recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 292 at page 130.

Parcel Identification No.: 32-J11-0102-000

TITLE TO SAID PREMISES IS VESTED IN James E. Trimmer and Susan L. Trimmer, husband and wife, as Tenants by the Entireties, by Deed from Gary F. Reaver, II and Vivian Reaver, his wife, dated 01/07/2004, recorded 01/09/2004, in Deed Book 3441, page 50.

Premises Being: 4467 York Road, New Oxford, PA

SEIZED and taken into execution as the property of **James E. Trimmer & Susan L. Trimmer a/k/a Susan Laughman** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 11, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/16, 23 & 30

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1269 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 20th day of April, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot of land situate in Mount Joy Township, Adams County, Pennsylvania, being more particularly described as Lot No. 1023 on a plan of lots of Lake Heritage Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Misc. Book 4 at Page 778.

TOGETHER with and subject to restrictions, conditions and agreements as contained in Deed Book 258 at Page 419.

TAX PARCEL#: 31-10-51

PROPERTY ADDRESS: 1023 Burnside Drive, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **David E. Walling & Suzan D. Walling** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 11, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/16, 23 & 30

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Tuesday, April 3, 2007, at 9:00 a.m.

STEVENS—Orphans' Court Action Number OC-17-07. The First and Final Account of Robert Henry Elmiger, Executor under the Last Will and Testament of Dorothy Mae Stevens, deceased, late of Oxford Township, Adams County, Pennsylvania.

REAM—Orphans' Court Action Number OC-20-06. The First and Final Account of Tena L. Washers, Troy A. Ream and Stacy L. Myers, Administrators of the Estate of Chester H. Ream, deceased, late of Adams County, Pennsylvania.

OWINGS—Orphans' Court Action Number OC-21-07. The First and Final Account of Stacy L. Owings, Executrix of the Estate of Carl V. Owings, Jr., deceased, late of Straban Township, Adams County, Pennsylvania.

MEHRING—Orphans' Court Action Number OC-23-07. The First and Final Account of Daryl M. Mehring, Administratrix of the Estate of Scott A. Mehring, late of Reading Township, Pennsylvania.

HUGHES—Orphans' Court Action Number OC-24-07. The First and Final Account of Manufacturers and Traders Trust Company, Executor of the Estate of Jane S. Hughes a/k/a Mary Jane Hughes, deceased, late of Franklin Township, Adams County, Pennsylvania.

MEHMAN—Orphans' Court Action Number OC-25-07. The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Hedy A. Mehman, deceased, late of the Borough of Gettysburg, Adams County, Pennsylvania.

Kelly A. Lawver
Clerk of Courts

3/23 & 30

Adams County Legal Journal

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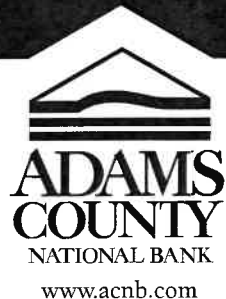
IN THIS ISSUE


LAPOF ET AL VS. STEIN

This opinion continued from last issue (3/23/2007)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1348 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of May, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land situate, lying and being in Union Township, Adams County, Pennsylvania, bounded and limited as follows, to wit:

BEGINNING for a point along the Northerly right-of-way line of Wheaton Drive and Lot No. 131 of the hereinafter referred to subdivision plan; thence along said Lot No. 131, North thirteen (13) degrees four (04) minutes twelve (12) seconds West, two hundred twenty-one and zero hundredths (221.00) feet to a point at other lands now or formerly of the Lynn Lee Construction Co., Inc., South eighty-one (81) degrees thirty (30) minutes zero (00) seconds East, one hundred eighty-four and twenty-six hundredths (184.26) feet to a point at Lot No. 129; thence along said Lot No. 129, South fourteen (14) degrees twenty-nine (29) minutes forty-one (41) seconds West, one hundred ninety-five and twenty-nine hundredths (195.29) feet to a point along the Northerly right-of-way line of Wheaton Drive; thence along the Northerly right-of-way line of Wheaton Drive by a curve to the left which has a radius of one hundred seventy-five and zero hundredths (175.00) feet, an arc distance of eighty-four and nineteen hundredths (84.19) feet, the long chord of which is North eighty-nine (89) degrees seventeen (17) minutes fifteen (15) seconds West, eighty-three and thirty-eight hundredths (83.38) feet to a point, the place of BEGINNING. CONTAINING 26,560.9854 square feet and being identified as Lot No. 130 on the final subdivision plan of Meadow View Estates, Phases III and IV, which plan is recorded in the Adams County Recorder of Deeds Office in Plat Book 65, Page 39.

SAID tract of land is subject to the declaration of restrictions dated September 8, 1994, and recorded September 16, 1994 in the Adams County Recorder of Deeds Office in Record Book 939, Page 210.

Being Known As: 113 Wheaton Drive, (Union Township), Littlestown, PA 17340
Property ID No.: 41-3-69

TITLE TO SAID PREMISES IS VESTED IN Norman L. Brown and Linda J. Brown, husband and wife, as tenants by the entireties by Deed from Helwig Construction Company dated 11/17/00 recorded 11/28/00 in Deed Book 2169, Page 220.

SEIZED and taken into execution as the property of **Norman L. Brown & Linda J. Brown** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 8, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/30, 4/5 & 13

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1359 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 20th day of April, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Mount Pleasant Township, Adams County, Pennsylvania, more particularly bounded, limited and described as follows:

BEGINNING at Lot No. 9; thence along the Lincoln Highway, South 88-1/2 degrees East, 100 feet to a stake at a public alley; thence along said public alley, South 2-1/2 degrees West, 200 feet to a stake at a 16 feet wide alley;

thence along said last mentioned alley, North 88-1/2 degrees West, 100 feet to Lot No. 9; thence along Lot No. 9, North 2-1/2 degrees East, 200 feet to a stake at the Lincoln Highway, aforesaid, the place of BEGINNING.

EXCEPTING THEREOUT all that portion of land conveyed to the Commonwealth of Pennsylvania, Department of Transportation by deed recorded in Adams County on 10/02/2006 @ instrument #200600020413 for a right-of-way.

UNDER AND SUBJECT, NEVERTHELESS, to the recorded restrictions and conditions particularly those restrictions and conditions recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 292 at page 130.

Parcel Identification No.: 32-J11-0102-000

TITLE TO SAID PREMISES IS VESTED IN James E. Trimmer and Susan L. Trimmer, husband and wife, as Tenants by the Entireties, by Deed from Gary F. Reaver, II and Vivian Reaver, his wife, dated 01/07/2004, recorded 01/09/2004, in Deed Book 3441, page 50.

Premises Being: 4467 York Road, New Oxford, PA

SEIZED and taken into execution as the property of **James E. Trimmer & Susan L. Trimmer a/k/a Susan Laughman** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 11, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/16, 23 & 30

LAPOF ET AL VS. STEIN
Continued from last issue (3/23/2007)

This Court finds that Plaintiff's Demand was adequate because it identified the alleged wrongdoers, described the factual basis of the wrongful act and the harm caused to the corporation, and requested remedial relief. However, there remains the question whether Plaintiff's Demand was filed prematurely. Since Plaintiff made the Demand on Bar-Ray's Board of Directors on October 7, 2005 and Plaintiff filed the Complaint on November 18, 2005, Plaintiff effectively gave the Board, through Jeffrey Stein, only forty-two days to consider the Demand and respond to it.⁸ Whether forty-two days was sufficient time for the Board or Jeffrey Stein to consider the Demand and respond to it depends upon the technological, quantitative, and legal issues raised by Plaintiff's Demand.

Here, the issues⁹ raised in Plaintiff's Demand were based upon Bar-Ray's financial statements, income tax returns, and accounting records. Mr. Stein, as the president, a 50% shareholder, and a director of Bar-Ray had access to and controlled all of these financial records. Moreover, given his position, Mr. Stein would have had knowledge of all of the issues raised in Plaintiff's Demand. Therefore, unlike in *Allison*, where the directors had to obtain a minimal understanding of automobile braking systems before evaluating the demand, the technological, quantitative, and legal issues raised in the Demand in this case are not complex and are within the full knowledge and understanding of Mr. Stein. Consequently, I find that forty-two days was sufficient time for the Board and/or Jeffrey Stein to respond to Plaintiff's Demand and that Plaintiff's Complaint was not filed prematurely.

Although Plaintiff contends that Defendants' counsel's response in the October 25, 2005 letter that "We reject out of hand any attempt by Mr. Lapof to make any assumptions as the result of Mr. Stein's failure to respond as Mr. Lapof unilaterally directs in his letter" constitutes a rejection of Plaintiff's Demand, I find that there is no language in the October 25, 2005 letter that would constitute a refusal by Defendants. Since any inconsistency between an averment in a

⁸ Although Defendants maintain that Jeffrey Stein had only nineteen days to respond to Plaintiff's Demand based on Plaintiff's October 7, 2005 letter, pursuant to *Allison*, Defendants had forty-two days to respond because the correct way to measure the time given to respond to a demand is the difference between the time the demand was made and suit was filed.

⁹ *Supra*, footnote 2.

pleading and a written document is resolved in favor of the written document and Plaintiff's averment in the Complaint that the above response constitutes a refusal of the Demand is inconsistent with the plain language of the October 25, 2005 letter, I must resolve this inconsistency in favor of the language of the October 25, 2005 letter and find that the response of Defendants' counsel does not constitute a refusal of Plaintiff's Demand.

Furthermore, it appears that a demand is excusable in this case. Until recently in Pennsylvania, the demand requirement could be excused

where, under the facts presented, such a request would be "vain and useless...." Although more conclusory allegations in the complaint will not suffice to excuse demand...where the allegations "permit the inference by the court that the directors upon whom demand would be made lack the requisite disinterestedness to determine fairly whether the corporate claim should be pursued," a demand on the board is not required.

Id. at 511-12 (citations omitted).

The Third Circuit reviewing Pennsylvania law concluded that to excuse demand, the plaintiff must allege that a majority of the directors engaged in fraud. *Gardner v. Lego*, 11 F.3d 1197, 1203 (3rd Cir. 1993).

In 1997, our Supreme Court adopted inter alia, § 7.03 of the American Law Institute (hereinafter "ALI"), Principles of Corporate Governance, which provides

§ 7.03 Exhaustion of Intracorporate Remedies: The Demand Rule

(a) Before commencing a derivative action, a holder or a director should be required to make a written demand upon the board of directors of the corporation, requesting it to prosecute the action or take suitable corrective measures, unless demand is excused under § 7.03 (b). The demand should give notice to the board, with reasonable specificity, of the essential facts relied upon to support each of the claims made therein.

(b) Demand on the board should be excused only if the plaintiff makes a specific showing that irreparable injury to the corporation would otherwise result, and in such

instances demand should be made promptly after commencement of the action.

Cuker v. Mikalauskas, 692 A.2d 1042, 1049 (Pa. 1997).

Subsequent decisions of that Court made clear that *Cuker* established a new rule excusing demand only if irreparable harm is shown. *Drain v. Covenant Life Ins. Co.*, 712 A.2d 273, 278-79 (Pa. 1998); *See White v. George*, 66 Pa. D. & C.4th 129, 134 (Mercer Co. 2004).

However, *Cuker* opened the door to another exception to the demand rule applicable here. *Cuker* noted that its adoption of the specific ALI sections was not intended to be exclusive and that courts were free to rely upon other sections if helpful and consistent with Pennsylvania law. *Cuker*, 692 A.2d at 1049 n. 5. Accordingly, a number of courts have applied § 7.01(d) in the case of closely held corporations. *Nedler v. Vaisberg*, 2006 U.S. Dist. LEXIS 21056 (E.D. Pa. 2006); *Top Quality Manufacturing, Inc. v. Sinkow*, 2004 Phila. Ct. Com. Pl. LEXIS 61; *White*, 66 Pa. D. & C.4th at 129; *Liss v. Liss*, 2002 Phila. Ct. Com. Pl. LEXIS 89; *Baron v. Pritzker*, 52 Pa. D. & C. 4th 14, 26-27 (Philadelphia Co. 2001); *Levin v. Schiffman*, 54 Pa. D. & C. 4th 152 (Philadelphia Co. 2001). This section provides:

(d) In the case of a closely held corporation, the court in its discretion may treat an action raising derivative claims as direct action, exempt it from those restrictions and defenses applicable only to derivative actions, and order an individual recovery, if it finds that to do so will not (i) unfairly expose the corporation or the defendants to a multiplicity of actions; (ii) materially prejudice the interests of the creditors of the corporation, or (iii) interfere with a fair distribution of the recovery among all interested persons.¹⁰

Bar-Ray is a closely held corporation pursuant to 15 PA. CONS. STAT. ANN. § 1103 (2006).¹¹ Plaintiff and Jeffrey Stein each own 50% of the corporate shares. Any derivative action must be institut-

¹⁰ Based on this Court's research and the cases cited interpreting § 7.01(d), § 7.01(d) has only been applied by courts as an exception to the demand requirement in a closely held corporation. § 7.01(d) has not served as an exception to any of the other requirements of a shareholder derivative action when a shareholder direct suit is brought in a closely held corporation.

¹¹ A closely held corporation is a business corporation that has not more than 30 shareholders or is a statutory close corporation. 15 PA. CONS. STAT. ANN. § 1103 (2006).

ed by one of them and any recovery must flow to them or the corporation. Moreover, pursuant to §7.01(d) of the ALI Principles, there is no indication that excusing Plaintiff's demand would invite multiple actions, materially prejudice the interests of creditors, or interfere with a just recovery.

Thus, for the reasons stated above, Defendants' Preliminary Objection pursuant to Pa. R.C.P. 1028(a)(2) must be denied.

Next, Defendants object that pursuant to Pa. R.C.P. 1028(a)(4), Plaintiff's Complaint fails to state a claim against Mari Stein.¹² Plaintiff counters that the claims against Mari Stein should not be dismissed.¹³

Pa. R.C.P. 1028(a)(4) states:

(a) Preliminary objections may be filed by any party to any pleading and are limited to the following grounds:

...

(4) legal insufficiency of a pleading (demurrer);

Preliminary objections in the nature of a demurrer test the legal sufficiency of a complaint. *Hykes v. Hughes*, 835 A.2d 382, 383 (Pa. Super. 2003) (citing *White v. PennDOT*, 738 A.2d 27, 31 (Pa. Commw. 1999)). When considering preliminary objections, all material facts set forth in the challenged pleadings are admitted as true, as well as all inferences reasonably deducible therefrom. Preliminary objections should be sustained only in cases in which it is clear and

¹²Specifically, Defendants argue that Plaintiff failed to state a claim for breach of fiduciary duty against Mari Stein in her capacity as the office manager of Bar-Ray. In support, Defendants maintain that there is no Pennsylvania law that even implies that a corporation's office manager owes any fiduciary duty to the corporation. Consequently, Defendants contend that because Plaintiff's entire case against Mari Stein is premised on her alleged breach of fiduciary duty and no such claim can be asserted against her, all of the other claims against her must be dismissed.

In Defendants' Response to Plaintiff's Brief in Opposition to Preliminary Objections to the Complaint, Defendants argue that without citing any supportive authority, Plaintiff simply states conclusory statements that Mari Stein had a fiduciary duty to Bar-Ray because she handled aspects of Bar-Ray's financial matters.

¹³Specifically, Plaintiff contends that Mari Stein, as an agent of Bar-Ray, owes a fiduciary duty to Bar-Ray because the existence of a fiduciary duty depends upon the nature of the agent's relationship to the principal and not upon titles. Plaintiff further argues that Mari Stein breached her fiduciary duty to Bar-Ray through self-dealing for her and her husband's benefit. Moreover, Plaintiff maintains that the claims for conversion (count V), civil conspiracy (count VI), and an accounting (count VII) are not subject to dismissal since they are not the subject of any preliminary objection.

free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief. *Hykes*, 835 A.2d at 383 (citations omitted). Preliminary objections that seek the dismissal of a cause of action should be sustained only in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish a right to relief. *Id.* (citing *Pacurariu v. Commonwealth*, 744 A.2d 389, 391 n.1 (Pa. Commw. 2000); *White*, 738 A.2d at 31). If any doubt exists as to whether a demurrer should be sustained, it should be resolved in favor of overruling the preliminary objections. *Hykes*, 835 A.2d at 383 (citing *Edwards v. Germantown Hosp.*, 736 A.2d 612, 614 (Pa. Super. 1999)).

As noted above, a shareholder derivative suit involves a shareholder asserting a derivative action on behalf of the corporation where the shareholder has demanded that the corporation assert a cause of action and the corporation refuses. *Fitzpatrick v. Shay*, 461 A.2d 243, 246 (Pa. Super. 1983). In such a situation, the shareholder brings the cause of action to enforce the corporation's claim and any recovery inures solely to the corporation's benefit. *See Knapp v. Bankers Sec. Corp.*, 230 F.2d 717, 720 (3rd Cir. 1956).

In addition to Pa. R.C.P. 1506(a), 15 Pa. Cons. Stat. Ann. § 1782(a) (West 1995) sets forth the parameters of a shareholder derivative suit:

(a) GENERAL RULE.-- Except as provided in subsection (b), in any action or proceeding brought to enforce a secondary right on the part of one or more shareholders of a business corporation against any present or former officer or director of the corporation because the corporation refuses to enforce rights that may properly be asserted by it, each plaintiff must aver and it must be made to appear that each plaintiff was a shareholder of the corporation or owner of a beneficial interest in the shares at the time of the transaction of which he complains, or that his shares or beneficial interest in the shares devolved upon him by operation of law from a person who was a shareholder or owner of a beneficial interest in the shares at that time.

It is well established that a distinction must be drawn between a shareholder derivative suit and a shareholder's direct right to sue the

corporation. *Moffatt Enterprises, Inc. v. Borden, Inc.*, 807 F.2d 1169, 1176 (3rd Cir. 1986). In contrast to a shareholder derivative suit, a shareholder direct suit is appropriate where an individual shareholder pleaded injury separate and distinct from that suffered by the corporation. *Tyler v. O'Neill*, F. Supp. 603, 609 (E.D. Pa. 1998). In a shareholder direct suit, a shareholder sues the corporation or its managers for any direct injury which is personal to himself and any recovery inures to his benefit. *Moffatt*, 807 F.2d at 1176. Thus, the general test for determining whether an action asserts a derivative or direct claim is:

If the injury is one to the plaintiff as a stockholder and to him individually, and not to the corporation, as where the action is based on a contract to which he is a party, or on a right belonging severally to him, or on a fraud affecting him directly, it is an individual action. On the other hand, if the wrong is primarily against the corporation, the redress for it must be sought by the corporation.

Tyler, F. Supp. at 603.

Here, Plaintiff's Complaint states that he is bringing a shareholder derivative action in the name and right of Bar-Ray against Defendants.¹⁴ Throughout each count of Plaintiff's Complaint, Plaintiff avers that he is seeking relief "on behalf of" or "for the benefit" of Bar-Ray. Plaintiff's Complaint also states that he is seeking compensatory damages on behalf of Bar-Ray on its claims for breach of fiduciary duty, corporate waste, conversion, and civil conspiracy. Additionally, Plaintiff avers that pursuant to Pa. R.C.P. 1506(a), he has made the Demand on the Bar-Ray Board of Directors to enforce the rights of the corporation which could be asserted by it. Nowhere in the Complaint does Plaintiff aver an injury separate and distinct from that suffered by Bar-Ray or state that he is seeking relief in his individual capacity as a stockholder against Defendants.¹⁵ Therefore,

¹⁴The caption of this case itself also describes Plaintiff bringing his action derivatively on behalf of Bar-Ray.

¹⁵Although Plaintiff does aver in his Complaint that Jeffrey Stein acted illegally, oppressively, and fraudulently toward him in his capacity as a shareholder, director, officer and employee of Bar-Ray and that Bar-Ray owes him significant sums that have been netted against Jeffrey Stein's debts, both allegations do not aver an injury that is separate and distinct from the injury suffered by Bar-Ray. Rather, Plaintiff's allegations that he suffered personal injuries are intertwined with the injuries sustained by Bar-Ray and cannot be considered separate as averred.

Plaintiff's cause of action must be considered a shareholder derivative action and not a shareholder direct suit.¹⁶

A fiduciary duty arises when a relationship between parties is based on trust and confidence such that the party in whom trust and confidence is placed must act with fairness and good faith in dealing with the other and refrain from using his position to his own advantage or to the other's detriment. *Id.* at 611. Moreover, a "[f]iduciary duty demands undivided loyalty, prohibits conflicts of interest and its breach is actionable." *Id.*

Officers and directors of a corporation owe a fiduciary duty to the corporation and must discharge their duties in good faith and with the skill, diligence, and care which ordinarily prudent persons would exercise under similar circumstances. *Id.* at 612. Additionally, majority shareholders owe a fiduciary duty to the corporation and may not use their voting power to benefit themselves personally at the expense of the minority. *Id.* With each group, the "test of liability for breach of fiduciary duty is whether the officer, director, or shareholder was unjustly enriched by their actions." *Id.*

While it has been clearly established that officers, directors, and majority shareholders owe a duty to the corporation, it is less clear whether an employee of a corporation owes any fiduciary duty to the corporation. However, *Tyler v. O'Neill* is instructive on this issue. In *Tyler*, the court held that a bookkeeper and manager of a corporation who was authorized to sign checks on the corporation's behalf breached her "fiduciary duty" to the corporation when she and her husband, an officer, director, and 90% share owner of the corporation, (1) usurped the corporation's opportunity to purchase the land and buildings out of which the corporation's operations were run; (2) took money from the corporation to pay themselves nearly \$1 million in rent; and (3) diverted proceeds from the sale of scrap copper from the corporation to themselves. *Id.* at 613.

Moreover, the law of agency provides guidance on whether a corporate employee owes a fiduciary duty to the corporation. "An employee...as an agent of his employer, is considered a fiduciary with respect to matters within the scope of his agency." *Id.* at 612.

¹⁶ § 7.01(d) of the ALI Principles is not applicable because as already explained, § 7.01(d) only provides an exception to the demand requirement of a shareholder derivative suit when a court decides to treat a derivative action as a direct action in the case of a closely held corporation.

As a fiduciary and an agent, an employee has a duty to act “with the utmost good faith in the furtherance and advancement of the interests of his principal. *Garbish v. Malvern Federal Sav. & Loan Asso.*, 517 A.2d 547, 554 (Pa. Super. 1986). Therefore, an employee breaches his fiduciary duty if he does not act solely for the benefit of his principal or the advancement of his principal’s interests in all matters concerned with the agency. *See SHV Coal, Inc. v. Continental Grain Co.*, 545 A.2d 917, 920-21 (Pa. Super. 1988), *rev’d on other grounds*, 587 A.2d 702 (Pa. 1991).

Pursuant to *Tyler* and the law of agency, this Court finds that Mari Stein, in her capacity as the office manager of Bar-Ray, could owe a fiduciary duty to Bar-Ray. Just like the bookkeeper and manager of the corporation in *Tyler* who was found to have a fiduciary duty to the corporation in a shareholder derivative suit, Mari Stein, as the office manager of Bar-Ray, might owe a fiduciary duty to Bar-Ray. The bookkeeper and manager of the corporation in *Tyler* and Mari Stein in this case were employees of corporations acting within the scope of their agency who had access to corporate funds and were expected to act with the utmost good faith in the furtherance and advancement of the interests of their corporation. Consequently, when Mari Stein allegedly misappropriated corporate funds for her own benefit, just as the bookkeeper in *Tyler*, she was not acting solely for the benefit of Bar-Ray or trying to further its interest and, therefore, could be found to have breached her fiduciary duty to Bar-Ray.

Thus, this Court concludes that Plaintiff was able to prove facts legally sufficient to state a claim for breach of fiduciary duty against Mari Stein. Moreover, because Plaintiff is able to state a claim for breach of fiduciary duty against Mari Stein and none of Plaintiff’s other counts are the subject of any preliminary objection, Defendants’ Preliminary Objection pursuant to Pa. R.C.P. 1028(a)(4) must be denied and all counts in Plaintiff’s Complaint must remain.

ORDER

AND NOW, this 22nd day of May, 2006, Defendants’ Preliminary Objections to Plaintiff’s Complaint, filed on December 6, 2005, are denied. Defendants are granted twenty (20) days from the day of mailing of this Order to file an answer and/or other responsive pleading to Plaintiff’s Complaint.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-758 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of May, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an iron pin at the intersecting property lines of Rodger W. Wagner and Karlis Neilands and Mary Michael Neilands, said iron pipe being at the Westernmost corner of the tract of land herein described and as established on the subdivision plan hereinafter referred to; thence by lands of Karlis Neilands and Mary Michael Neilands and lands of Eunice M. Sneeringer, North 58 degrees 25 minutes 0 seconds East, 333.40 feet to an iron pipe; thence by lands of John E. Shull and Wanda M. Shull and Thomas Joseph Smith and Joann Smith, East 212 feet to an iron pin at lands of Donald L. Walton and Beverly J. Walton; thence by lands of Donald L. Walton and Beverly J. Walton, Southeast 198 feet to a steel pin; thence by lands of Christopher E. Oberlander and Suzanne L. Casser and lands of Wayne F. Hardy and Angela F. Hardy, Southwest 181.5 feet to a tree stump; thence continuing by lands of Wayne F. Hardy and Angela F. Hardy, South 58 degrees 29 minutes 0 seconds West, 332 feet to a steel pin at lands of Rodger W. Wagner; thence by lands of Rodger W. Wagner, North 45 degrees 47 minutes 0 seconds West, 227.58 feet to an iron pipe at lands of Karlis Neilands and Mary Michael Neilands, aforesaid, the point and place of BEGINNING. (The foregoing description was taken from a Plan of Property of Ricky L. Laughman and Sandra R. Burchette dated October 2, 1990, as prepared by Rodney Lee Decker, Registered Surveyor, which said plot plan after having been approved by the municipal subdivisions and commissions of Adams County was duly recorded in the Office of the Recorder of Deeds of Adams County on January 16, 1991, in Plan Book 57, page 36.)

Tax Map Number: L 11-119

Premises Being: 660 B Greensprings Rd., Hanover, PA 17331

SEIZED and taken into execution as the property of **Lisanne T. Iolati** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a

schedule of distribution will be filed by the Sheriff in his office on June 8, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/30, 4/5 & 13

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1269 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 20th day of April, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot of land situate in Mount Joy Township, Adams County, Pennsylvania, being more particularly described as Lot No. 1023 on a plan of lots of Lake Heritage Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Misc. Book 4 at Page 778.

TOGETHER with and subject to restrictions, conditions and agreements as contained in Deed Book 258 at Page 419.

TAX PARCEL#: 31-10-51

PROPERTY ADDRESS: 1023 Burnside Drive, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **David E. Walling & Suzan D. Walling** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 11, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/16, 23 & 30

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Tuesday, April 3, 2007, at 9:00 a.m.

STEVENS—Orphans' Court Action Number OC-17-07. The First and Final Account of Robert Henry Elmiger, Executor under the Last Will and Testament of Dorothy Mae Stevens, deceased, late of Oxford Township, Adams County, Pennsylvania.

REAM—Orphans' Court Action Number OC-20-06. The First and Final Account of Tena L. Wasbers, Troy A. Ream and Stacy L. Myers, Administrators of the Estate of Chester H. Ream, deceased, late of Adams County, Pennsylvania.

OWINGS—Orphans' Court Action Number OC-21-07. The First and Final Account of Stacy L. Owings, Executrix of the Estate of Carl V. Owings, Jr., deceased, late of Straban Township, Adams County, Pennsylvania.

MEHRING—Orphans' Court Action Number OC-23-07. The First and Final Account of Daryl M. Mehning, Administratrix of the Estate of Scott A. Mehning, late of Reading Township, Pennsylvania.

HUGHES—Orphans' Court Action Number OC-24-07. The First and Final Account of Manufacturers and Traders Trust Company, Executor of the Estate of Jane S. Hughes a/k/a Mary Jane Hughes, deceased, late of Franklin Township, Adams County, Pennsylvania.

MEHMAN—Orphans' Court Action Number OC-25-07. The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Hedy A. Mehman, deceased, late of the Borough of Gettysburg, Adams County, Pennsylvania.

Kelly A. Lawver
Clerk of Courts

3/23 & 30

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-69 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of May, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land situate, lying and being in the Borough of McSherrystown, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING for a point along the Southerly right-of-way line of Squire Circle and Lot No. 26 of the hereinafter referred to Subdivision Plan; thence along said Lot No. 26, South fifteen (15) degrees forty-two (42) minutes twenty-one (21) seconds East, ninety and seventy-three hundredths (90.73) feet to a point at Lot No. 24-A; thence along said Lot No. 24-A, South seventy (70) degrees forty (40) minutes thirty-one (31) seconds West, forty-one and twenty-one hundredths (41.21) feet to a point at Lot No. 25; thence along said Lot No. 25, North thirty (30) degrees thirty-five (35) minutes ten (10) seconds West, eighty-one and fifty-four hundredths (81.54) feet to a point along the Southerly right-of-way line of Squire Circle; thence along the Southerly right-of-way of Squire Circle, North fifty-nine (59) degrees twenty-four (24) minutes fifty (50) seconds East, forty-two and zero hundredths (42.00) feet to a point; thence continuing along same by a curve to the right which has a radius of one hundred twenty-five and zero hundredths (125.00) feet, an arc distance of twenty-one and eighty-three hundredths (21.83) feet, the long chord of which is North sixty-four (64) degrees twenty-four (24) minutes fifty-eight (58) seconds East, twenty-one and eighty hundredths (21.80) square feet to a point, the place of BEGINNING. CONTAINING 4,510.3874 square feet and being identified as Lot No. 25-A on the final Subdivision Plan of McSherrystown West, which plan is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 64, page 20.

SAID tract of land being subject to the Protective Covenants and Restrictions for McSherrystown West dated January 12, 1994, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 835, page 35.

SUBJECT TO ALL covenants, restrictions, reservations, easements, conditions and rights appearing of record; and SUBJECT to any state of facts an accurate survey would show.

IT BEING that same tract of land which Mel Martinez, The Secretary of Housing and Urban Development, of Washington, D.C., by Attorney in Fact, Toni Johnson, by deed dated December 17, 2001 and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Deed Book 2531, page 1, granted and conveyed unto 787 Associates, LLC, GRANTOR HEREIN.

TITLE TO SAID PREMISES IS VESTED IN Christopher Sauers and Deborah Sauers, husband and wife, as tenants by the entireties, by Deed from 787 Associates, LLC, dated 02/21/2002, recorded 03/27/2002, in Deed Book 2602, Page 187.

Premises being: 41 Squire Circle, McSherrystown, PA 17344

Tax Parcel No. 28-002-0231-000

SEIZED and taken into execution as the property of **Christopher Sauers & Deborah Sauers a/k/a Deborah L. Sauers** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 8, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/30, 4/5 & 13

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-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 18th day of May, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract or lot of ground together with the improvements thereon located, situate, lying and being in Germany Township, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a point in the center of a public road known as Township Road No. T-448, at lands now or formerly of Evan Kline, Jr.; thence by said lands through a steel pin located thirty-one and

forty-five one-hundredths (31.45) feet from the said center of said road, South thirty-four (34) degrees seven (07) minutes twenty (20) seconds East two hundred five (205) feet to a steel pin; thence by said lands South fifty-five (55) degrees thirty-two (32) minutes eighteen (18) seconds West one hundred ten and ten one-hundredths (110.10) feet to a steel pin at lands now or formerly of Daniel Collins; thence by said lands North thirty-seven (37) degrees twenty-four (24) minutes ten (10) seconds West two hundred eight and ten one-hundredths (208.10) feet through a steel pin located thirty-one and eighty one-hundredths (31.80) feet from the center of the aforesaid road to a point at the center of said public road known as Township Road No. T-448; thence along the center of said road North fifty-six (56) degrees fifty-two (52) minutes eight (08) seconds East, one hundred twenty-two and two one-hundredths (122.02) feet to a point, the place of BEGINNING. This description is taken from a plan prepared by J.H. Rife, R.E., dated February 19, 1969, File No. A-1541, Field Book No. 139-63.

RECORD OWNER

TITLE TO SAID PREMISES IS VESTED IN Wayne P. Fleharty and Karen E. Fleharty, his wife, by Deed from Outreach For Christ Inc., dated 4-9-84, recorded 4-12-84 in Deed Book 377, page 1022.

Tax Parcel: (15) J17-0124

Premises being: 41 Kindig Road, Littlestown, PA 17340

SEIZED and taken into execution as the property of **Wayne P. Fleharty & Karen E. Fleharty a/k/a Tara E. Fleharty** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 8, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/30, 4/5 & 13

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 THEODORE L. STEPLER, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Evelyn M. Lydic, 1148 Brandon Drive, Chambersburg, PA 17201

Attorney: Jerrold A. Sulcove, Esq., 82 West Queen Street, Chambersburg, PA 17201

SECOND PUBLICATION**ESTATE OF RUBY V. COLE, DEC'D**

Late of Menallen Township, Adams County, Pennsylvania

Co-Executors: June Bobb, 2261 Coon Road, Aspers, PA 17304; Georgieann Dettinburn, 880 Yellow Hill Road, Biglerville, PA 17307

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

ESTATE OF ALICE M. HAGARMAN, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Donald G. Hagarman, 366 Fairview Avenue, McSherrystown, PA 17344

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

ESTATE OF REBECCA ANN LYONS, DEC'D

Late of Gettysburg Borough, Adams County, Pennsylvania

Executrix: Terry L. Latschar, 815 Taneytown Road, Gettysburg, PA 17325

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

ESTATE OF FRANCIS E. REED, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Patricia R. Finch, 209 Stafford Drive, Hanover, PA 17331

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

ESTATE OF HELEN M. WEAVER, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Administrator: Jay E. Weaver, Sr., 200 Harrisburg Street, East Berlin, PA 17316

Attorney: Paul C. McCleary, Jr., Esq., 1998-A Carlisle Road, York, PA 17404

ESTATE OF PAULINE W. WEIDNER, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Co-Executors: Ronald L. Weidner and Wayne B. Weidner, c/o Roger B. Irwin, Esq., 60 West Pomfret Street, Carlisle, PA 17013

Attorney: Roger B. Irwin, Esq., Irwin & McKnight, 60 West Pomfret Street, Carlisle, PA 17013

THIRD PUBLICATION**ESTATE OF EVELYN B. GUISE a/k/a EVELYN M. GUISE, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Personal Representative: William E. Baldwin, c/o Patterson, Kiersz & Murphy, PC, 239 East Main Street, Waynesboro, PA 17268-1681

Attorney: David F. Spang, Esq., Patterson, Kiersz & Murphy, P.C., 239 East Main Street, Waynesboro, PA 17268-1681

ESTATE OF LINDA J. KRITSCHGAU, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Megan A. Kritschgau, 5012 E. Trindle Rd., Mechanicsburg, PA 17050

Attorney: Richard S. Friedman, Esq., Friedman & King, P.C., P.O. Box 984, Harrisburg, PA 17108

ESTATE OF BEULAH M. KUHN, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Donna Denise (Hemler) Huston, 10 Moongale Drive, Carlisle, PA 17013

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1042 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 20th day of April, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point in Pennsylvania Route 34, Carlisle Road, at corner of other lands of the grantor; thence in Pennsylvania Route 34, Carlisle Road, North four (04) degrees thirty (30) minutes zero (00) seconds West, forty-three and forty-nine hundredths (43.49) feet to a point in road; thence North eleven (11) degrees fifty-nine (59) minutes fifty-two (52) seconds East, four hundred twenty-eight and thirty hundredths (428.30) feet to a point in old roadbed on line of lands now or formerly of Cameron R. and Grace S. Garretson and at corner of other lands of grantor; thence by other lands of grantor, and passing through a steel reference pin set thirty and forty-four hundredths (30.44) feet from the beginning of this course, North seventy-four (74) degrees thirty-seven (37) minutes fifty-three (53) seconds East, one hundred seventy-two and forty-four hundredths (172.44) feet to a rifle barrel set; thence by the same, South seventy-five (75) degrees thirty-nine (39) minutes thirty-three (33) seconds East, seventy-three and ninety-two hundredths (73.92) feet to a rifle barrel set; thence by the same, South thirteen (13) degrees forty-one (41) minutes thirty-eight (38) seconds West, sixty and sixty-two hundredths (60.62) feet to a rifle barrel set; thence by the same, South thirty-six (36) degrees forty-five (45) minutes eighteen (18) seconds West, eighty-five and eighteen hundredths (85.18) feet to a 2 inch pipe set; thence by the same, South two (02) degrees twenty-three (23) minutes six (06) seconds East, three hundred eighty-three and seventy-five hundredths (383.75) feet to a rifle barrel set; thence by the same, North eighty-five (85) degrees thirty-eight (38) minutes forty-seven (47) seconds West, two hundred seventy-four and ninety-five hundredths (274.95) feet, and passing through a 1 inch pipe set twenty-two and eighteen hundredths (22.18) feet from the end of this course, to a point in road, Pennsylvania Route 34, Carlisle Road, the place of BEGINNING.

CONTAINING 2.700 Acres, more or less.

TOGETHER WITH an easement over other lands of the grantor, Crestmont Orchards, Inc. situated to the East of the premises herein conveyed, to be for the use of the grantee herein, her heirs and assigns, to provide access to the existing septic system and drainage lines, presently located on other lands of the grantor, as more fully shown on a draft of survey prepared by Boyer Surveys, Richard W. Boyer, Registered Professional Surveyor 17399-E, dated September 21, 1984, as recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 40 at page 147; with ingress, egress and regress to the existing septic lines for purposes of maintenance and repair; maintenance and repair costs shall be at the exclusive and sole cost of the grantee herein, her heirs and assigns.

BEING THE SAME PREMISES WHICH Crestmont Orchards, Inc., by Deed Book 390 Page 840 dated November 9, 1984, and recorded November 20, 1984, in the Recorder of Deeds Office in and for Adams County, granted and conveyed unto Cheri A. Freeman.

Premises Being: 1075 Carlisle Rd., Biglerville, PA 17307

SEIZED and taken into execution as the property of **Cheri A. Freeman a/k/a Cheri Freeman Book & Richard L. Book** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 11, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/16, 23 & 30