

Adams County Legal Journal

Vol. 43

July 6, 2001

No. 6, pp. 26-39

IN THIS ISSUE

LAKE MEADE PROPERTY OWNERS ASSN. ET AL VS. ADAMS COUNTY BOARD OF ASSESSMENT APPEALS

This opinion continues to next issue (7/13/2001)

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-137 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of August, 2001, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land known as Lot 1 as shown on a Final Minor Subdivision Plan for GCW Properties, Inc., dated January 5, 1998 (hereinafter, the "Plan"), located in East Berlin Borough, Adams County, Pennsylvania, more particularly described as follows to wit.

BEGINNING at a point on the northern right-of-way of North Avenue at the common property corner of Lot 1 and Lot 2 as shown on said Plan; thence, from said point of beginning the following eleven courses and distances:

Along the northern right-of-way of North Avenue North 61 degrees 58 minutes 34 seconds West a distance of 464.64 feet to a point; thence,

North 11 degrees 33 minutes 30 seconds East a distance of 75.99 feet to a point; thence,

North 62 degrees 35 minutes 47 seconds West a distance of 49.84 feet to a point; thence,

North 11 degrees 13 minutes 23 seconds East a distance of 751.16 feet to a point at the southern bank of Conewago Creek; thence,

Along the southern bank of Conewago Creek North 82 degrees 51 minutes 16

seconds East a distance of 207.75 feet to a point; thence,

Along the southern bank of Conewago Creek South 85 degrees 39 minutes 5 seconds East a distance of 428.49 feet to a point; thence,

Along lands now or formerly of Clark E. and Faith L. Renoll and lands now or formerly of Frederick and Jessie M. Althouse South 14 degrees 15 minutes 00 seconds West a distance of 531.73 feet to a point; thence,

Along lands now or formerly of Frederick and Jessie M. Althouse, lands now or formerly of Dale R. and Edna M. Kennedy and lands now or formerly of Herbert and Roberta Walters South 72 degrees 30 minutes 00 seconds East a distance of 776.32 feet to a point at Fourth Avenue, a private road; thence,

Along Fourth Avenue, a private road, South 37 degrees 00 minutes 00 seconds West a distance of 328.88 feet to a point; thence,

Along Lot 2 North 64 degrees 00 minutes 00 seconds West a distance of 660.82 feet to a point; thence,

Along Lot 2 South 26 degrees 00 minutes 00 seconds West a distance of 360.53 feet to a point; the point of BEGINNING.

Said Lot 1 contains 757,404.86 square feet or 17.3877 acres, more or less, according to said Plan.

The foregoing description is intended to describe Lot 1 as shown on the Plan, which Plan was recorded on March 27, 1998 in the Office of the Recorder of Deeds for Adams County, Pennsylvania, at Book 73, Page 46.

IT BEING the same premises which Jerome I. Lunder, together with the joinder of his wife, Ruth Lunder, as to an undivided one-half interest, and Elinor Lunder, Deborah Lunder, a/k/a Deborah R. Lunder, and Mark A. Levy, Trustees of the Bruce A. Lunder Trust of October 6, 1978, as to an undivided one-half interest, by their Deed dated October 26, 1998, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 1697, Page 231, granted and conveyed unto Gary C. Wesner.

District 10

Map 002, Parcel 0004

SEIZED and taken into execution as the property of **Gary C. Wesner** and to be sold by me

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 27, 2001, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/29, 7/6 & 13

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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

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

Periodicals postage paid at Gettysburg, PA 17325.

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

All rights reserved.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-351 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 31st day of August, 2001, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those two lots of ground situate in Franklin Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point in the center of a proposed road at Lot No. 13; thence by said lot and through a steel pin set 30 feet back on the line, North 21 degrees 25 minutes 34 seconds East, 246.20 feet to a steel pin at lands now or formerly of Coppertop Orchards; thence by said lands, South 78 degrees 19 minutes 08 seconds East, 105 feet to a steel pin at Lot No. 15; thence by said lot, South 13 degrees 07 minutes 20 seconds East, 243.94 feet to a point in the center of said proposed road; thence in said proposed road by a curve to the right, the radius of which is 350 feet, for an arc distance of 201.40 feet, and having a chord bearing and distance of North 86 degrees 38 minutes 14 seconds West, 198.63 feet to a point in said proposed road; thence continuing in said proposed road North 70 degrees 09 minutes 08 seconds West, 53 feet to the place BEGINNING.

BEGINNING at a point in the center of a proposed road at Lot No. 14; thence by said lot and through a steel pin set 30 feet back on the line, North 13 degrees 07 minutes 20 seconds West, 243.94 feet to a steel pin at lands now or formerly of Coppertop Orchards; thence by said lands, South 78 degrees 19 minutes 08 seconds East, 292.01 feet to a point in the center of said proposed road; thence in said proposed road by a curve to the right; the radius of which is 350 feet, for an arc distance of 300.73 feet, and having a chord bearing and distance of South 52 degrees 15 minutes 46 seconds West, 291.57 feet to the place of BEGINNING.

BEING the same premises which Kathy Jo Ott, single, by Deed dated December 16, 1999 and recorded in the Office of the Recorder of Deeds of Adams County on December 16, 1999, in Deed Book Volume 1971, Page 123, granted and conveyed unto Dustin D. Sanders and Sara O. Sanders.

Parcel No. B12-40

GRENEN & BIRSIC, P.C.

By: /s/Kristine M. Faust
Kristine M. Faust, Esquire
Attorneys for Plaintiff
One Gateway Center, Nine West
Pittsburgh, PA 15222
(412) 281-7650

SEIZED and taken into execution as the property of **Dustin D. Sanders & Sara O. Sanders** and to be sold by me

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 24, 2001, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/6, 13 & 20

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-783 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 31st day of August, 2001, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the right, title, interest and claim of Ronnie Reed and Sharon K. Reed of, in and to:

ALL the following described real estate situated in the Township of Mount Pleasant, County of Adams, Commonwealth of Pennsylvania. Having erected thereon a dwelling known and numbered as 474 Smoketown Road, Hanover, PA 17331. Deed Book Volume 1757, Page 223, Parcel No. J14.

SEIZED and taken into execution as the property of **Ronnie Reed & Sharon K. Reed** and to be sold by me

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

TO ALL PARTIES IN INTEREST AND

CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 24, 2001, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/6, 13 & 20

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed on June 14, 2001, Commonwealth of Pennsylvania, Department of State, Harrisburg, Pennsylvania for the purpose of creating a non-profit corporation.

The name of the Corporation organized under the Pennsylvania Non-Profit Corporation Law is: GREENFIELD ESTATES RECREATION ASSOCIATION, INC.

The purpose for which the corporation was organized was to acquire and maintain the open space recreation area of the Greenfield Estates Subdivision in Latimore Township, Adams County, Pennsylvania and to conduct any other activity permitted under the Pennsylvania Non-Profit Corporation Law.

James M. Robinson, Esq.
Turo Law Offices
28 South Pitt
Carlisle, PA 17013
(717) 245-9688

7/6

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed by NPIPA, INC., with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of incorporating under the Pennsylvania Business Corporation Law of 1988, Act of December 21, 1988, P.L. 1444, No. 177, as amended and supplemented.

Craig A. Diehl, Esq., CPA

7/6

LAKE MEADE PROPERTY OWNERS ASSN. ET AL VS. ADAMS COUNTY BOARD OF ASSESSMENT APPEALS

1. Taxation is imposed upon a subject (i.e. real estate, income). The Pennsylvania Constitution authorizes the General Assembly, in its discretion, to exempt certain subjects from taxation.

2. The legislation (The Uniform Planned Community Act) does not free the real estate from a tax obligation, it merely shifts the obligation to pay taxes from the titleholder to those who are really benefited by the property...Obviously, by decreeing that assessments and taxes must be reflected in unit/lot assessments, the legislature has exempted a property owners association from the obligation to pay. The legislature has not, however, exempted as a subject of taxation common facilities in a planned development.

3. Section 5102(b) does not require that the planned community have been created in a manner which anticipated and included all provisions of the UPCA which must currently be satisfied in order to create a planned community.

4. We recognize that retroactive provisions, such as §5102(b), are to be strictly construed. Nevertheless in ascertaining that intent we must presume that the Legislature does not intend a result which is absurd or unreasonable. Furthermore, where words are not explicit legislative intent may be ascertained by considering the object to be obtained and the consequences of a particular interpretation.

5. The term 'planned community' as used in the UPCA is defined as constituting real estate with certain features. The documentary requirements for creating such a real estate entity do not alter its nature, only its creation. Thus, if a planned community was created under prior law, with different documentary provisions than are presently required, it does not change the nature of the entity itself.

6. Under the (Pa.) Uniformity Clause, taxation must be applied with uniformity upon property similarly situated and the tax burden must be borne with substantial equality by all members of the same class. Thus, where classifications exist within the taxing scheme there must be some legitimate distinction between the classes that provide some non-arbitrary, reasonable and just basis for the different treatment. Where no legitimate distinction exists, the resulting tax burden is unconstitutional.

7. One challenging a taxing statute under the Uniformity Clause has the burden to demonstrate, not only that the enactment results in some form of classification, but that such classification is unreasonable, in that it is not rationally related to any legitimate state purpose.

8. The Uniformity Clause requires substantial uniformity, not perfect uniformity.

9. The UPCA appears to be a legislative recognition that in a planned community where use of the facilities is limited to the owners of the units situated within the planned development and where the real estate is burdened by the easements associated therewith, the market value of the common areas is so minimal that the better approach to determine taxable value would be through taxation of each unit's appurtenant interest in the common areas.

10. In ascertaining legislative intent "no statute shall be construed to be retroactive unless clearly and manifestly so intended by the General Assembly." In reality, the UPCA has no retroactive effect. In order to withstand constitutional challenge, those provisions, which apply to previously existing planned communities, apply only with respect to events and circumstances occurring after the effective date of the enactment (future events rule).

11. Tax assessment appeals are statutory appeals and, as such are not governed by the Pennsylvania Rules of Civil Procedure. Statutory appeals are taken to the Court of Common Pleas pursuant to Section 752 of the Local Agency Law.

12. If a taxpayer is entitled to a (tax) refund under the provisions of the Assessment Law, we find no reason that he must expressly plead such relief in his appeal.

13. It would appear that the Associations would be entitled to refunds under the Refund Act for taxes paid in response to the 1997 assessment notice even though they technically had a right to appeal those assessments under the Assessment Law.

14. If a taxpayer is entitled to a tax refund, he is also entitled to interest on the refund so long as no statute or public policy militates against it.

15. However, where a taxpayer pays a specific amount under protest and it is later determined that the taxing authority had no right to demand payment of this tax, then the detention was improper from the date the tax was paid, interest accruing from that date provided a demand for refund has been made.

16. The UPCA is a legislative mandate that common areas of planned communities are not to be assessed or taxed. This mandate supersedes the more general aspects of the assessment statute. Here the Associations have not challenged the methodology used to compute the assessment but rather the right to impose the assessment in the first instance. Having concluded that the Board had no such right, the detention of the tax was improper from the date the tax was paid and a demand for refund was made (whichever date is later).

17. Simple interest is applicable to refunds under the Assessment Law. Enhanced rates of interest are only available where statutorily provided for and these appeals were not taken under such statutory authority.

18. As a general rule, a litigant is not entitled to recovery of attorney fees absent contractual agreement or statutory authority. The Assessment Law makes no specific mention of attorney fees although §5453.704(e) does allow the court to apportion the costs of the appeal and hearing as it so directs.

19. Attorney's fees may be awarded where a party with great resources but little law on his or her side acts in bad faith to protract litigation in an attempt to wear down an opponent to financial exhaustion.

In the Court of Common Pleas of Adams County, Pennsylvania,
Civil, No. 98-S-1126, LAKE MEADE PROPERTY OWNERS
ASSOCIATION AND LAKE HERITAGE PROPERTY OWNERS
ASSOCIATION VS. ADAMS COUNTY BOARD OF ASSESS-
MENT APPEALS.

John W. Phillips, Esq., for Plaintiffs

Thomas R. Campbell, Esq., for Defendant

Kuhn, J., October 4, 2000.

OPINION PURSUANT TO ORDER OF DECEMBER 8, 1999

On November 16, 1998, Lake Meade Property Owners Association, Inc. (hereinafter "LMPOA") filed a Petition for Review of Decision of The Board of Assessment Appeals Denying Property Tax Assessment Appeal (98-S-1126) and Lake Heritage Property Owners Association, Inc. (hereinafter "LHPOA") filed an Assessment Appeal (98-S-1127), both against the Adams County Board of Assessment Appeals (hereinafter "the Board"). Collectively, LMPOA and LHPOA shall be referred to herein as "the Associations". By stipulation, the two cases were consolidated under No. 98-S-1126 on January 4, 1999. Both cases involve the applicability of the Uniform Planned Community Act, 68 Pa. C.S.A. §510, et seq. (hereinafter "the UPCA"), specifically, whether since the effective date (February 2, 1997) of the UPCA, the common areas, such as the office, pool, recreation areas, lake, roadways, etc., owned by each association in its respective subdivision, should be assessed and taxed.

The parties have stipulated to the following facts:

1. LMPOA and LHPOA are Pennsylvania nonprofit corporations organized and existing under the laws of the Commonwealth of Pennsylvania.
2. LMPOA has a business address of 4 Forrest Drive, East Berlin, Adams County, Pennsylvania, and represents approximately 1025 property owners whose residential dwellings are located within the bounds of a planned residential community known as Lake Meade.
3. LHPOA has a business address of 1000 Heritage Drive, Gettysburg, Adams County, Pennsylvania, and represents approximately 809 property owners whose residential dwellings are located within the bounds of a planned residential community known as Lake Heritage.
4. The County of Adams conducted a countywide reassessment, for real estate tax purposes, in 1990.
5. Since the 1990 county-wide reassessment, the common facilities at issue, which various parcels are owned by the Associations and are located in their respective community, were separately assessed to LMPOA and LHPOA, respectively, for real estate tax purposes.

6. During that county-wide reassessment, extra value was not added to the individual lots for each lot's "appurtenant interest" in the common facilities;
7. Since the 1990 countywide reassessment, the value of each unit's "appurtenant interest" in the common facilities has not been added to any of the individual lots, tax parcels or units.
8. Since 1990, the value of the common facilities has only been assessed against the titled owners to each of those facilities, i.e. LMPOA and LHPOA, respectively.
9. On or about July 1, 1998, a notice assessing property tax was received by:
 - a) LMPOA for the Bermudian Springs School District regarding tax parcel No. 000-1-0003-902 situate in Latimore Township and owned by LMPOA.
 - b) LHPOA for the Gettysburg School District regarding tax parcel No. 012-0006-000 situate in the Mt. Joy Township and owned by LHPOA; and
 - c) LHPOA for the Littlestown School District regarding tax parcel No. 007-0001-000, No. 007-0002-000, and No. 002-0002-000 situate in Mt. Pleasant Township and owned by LHPOA.
10. On February 2, 1997, the Uniform Planned Community Act went into effect governing planned communities within the Commonwealth of Pennsylvania, and, by virtue of Section 5102(b) intends to retroactively apply Section 5101 to all planned communities created in this Commonwealth before the effective date of the UPCA.
11. All tax notices aforementioned were received in a timely fashion.
12. The tax assessment for each subject parcel will be stipulated at trial.
13. The Lake Meade and Lake Heritage subdivisions meet the definition of a "planned community" under the UPCA if the UPCA is otherwise applicable to the subdivisions.
14. The common areas owned by LMPOA and LHPOA meet the definition of "common facilities" under the UPCA if the UPCA is otherwise applicable to the subdivisions.

After a pre-trial conference held December 8, 1999, and based upon agreement of the parties, the Court directed that the following legal issues be briefed, argued and resolved before the cases proceeded further:

- a. Whether the Order and Opinion of President Judge Oscar F. Spicer, dated June 2, 1999, is determinative of the issues before the Court and entitles LMPOA and LHPOA, without further discussion, to the relief they request.
- b. Whether the Uniform Planned Community Act, and specifically, 68 Pa. C.S.A. §5105(b) thereof, is applicable to the Lake Meade and Lake Heritage subdivisions.
- c. Whether the UPCA violates the principal of uniformity as required by the Pennsylvania Constitution regarding assessment and taxation of real estate in Adams County.
- d. Whether the UPCA, specifically §5105(b), can be applied retroactively (as declared in §5102(b)) to developments, assessments and planned communities which were completed and in existence prior to the effective date of the UPCA, particularly the Lake Meade and Lake Heritage subdivisions.
- e. Whether the UPCA precludes the taxing authorities from shifting the tax burden for the common areas in the Lake Meade and Lake Heritage subdivisions without a county-wide reassessment and whether the answer to that question has any legal relevancy to the claims of LMPOA and LHPOA for relief from paying taxes on the common areas in the subdivisions to which they currently hold title.
- f. Whether the respective taxing authorities for the Lake Meade and Lake Heritage subdivisions are required by 72 P.S. §5453.704(e) and/or 42 Pa. C.S.A. §2503(9) to refund, with interest, taxes collected for the common facilities owned by LMPOA and LHPOA and, if so, in what amount(s) and from what date(s).

We address those issues herein.

I.

First, we address the degree to which President Judge Spicer's earlier opinion in these cases affects the remaining issues being presented. On April 12, 1999, the Board filed a Motion for Judgment on

the Pleadings arguing that to the extent the UPCA purports to exempt (as the Associations suggest) common parcels of real estate from real estate taxation it is in violation of Article XIII Section 2 of the Pennsylvania Constitution, and is, therefore, unconstitutional. On June 2, 1999, the Court denied the Motion.

President Judge Spicer noted that Article 8 Section 2 allows the General Assembly to exempt certain real estate from taxation but that the common parcels in these respective subdivisions do not qualify for one of the enumerated exemptions. The Associations contended that the UPCA did not create a tax exemption but rather a tax shifting mechanism and the Court agreed.

The UPCA provides, in pertinent part,

§5105. Separate titles and taxation

(a) Title. – Except as provided in subsection (b), each unit that has been created, together with the interests, benefits and burdens created by the declaration, including, without limitation, the rights to any common facilities, constitutes a separate parcel of real estate.

(b) Taxation and assessment. – If there is a unit owner other than a declarant, each unit must be separately taxed and assessed. The value of a unit shall include the value of that unit's appurtenant interest in the common facilities . . . The following shall apply:

(1) . . . no separate assessed value shall be attributed to and no separate tax shall be imposed against common facilities or controlled facilities.

(emphasis added)

Taxation is imposed upon a subject (i.e. real estate, income). The Pennsylvania Constitution authorizes the General Assembly, in its discretion, to exempt certain subjects from taxation. The legislation being scrutinized evidences an intent that any unit¹ in a planned

¹A physical portion of a planned community designed for separate ownership or occupancy, the boundaries of which are described. §5103.

community² created by a declaration³ including its appurtenant interest in the common facilities⁴ of the community would constitute a separate parcel of real estate and that each such unit (if there is a unit owner⁵ other than the declarant) is to be taxed and assessed separately. Furthermore, the value of each unit is to include the value of the unit's interest in the common facilities. The common facilities themselves are not to be separately assessed or taxed. As stated by President Judge Spicer, "The legislation (The Uniform Planned Community Act) does not free the real estate from a tax obligation, it merely shifts the obligation to pay taxes from the titleholder to those who are really benefited by the property. . . Obviously, by decreeing that assessments and taxes must be reflected in unit/lot assessments, the legislature has exempted a property owners association from the obligation to pay. The legislature has not, however, exempted as a subject of taxation common facilities in a planned development." (Slip Opinion p. 3) (emphasis added).

The Opinion rendered by President Judge Spicer on June 2, 1999, is limited in its scope to the specific constitutional challenge raised that the UPCA attempts without authority to exempt real estate from taxation. That ruling is the law in this case and may bear upon other issues that arise but, it is not dispositive of other issues, which must be considered on their individual merits.

II.

Next, we examine whether the UPCA, and specifically §5105(b), is applicable to the Lake Meade and Lake Heritage subdivisions. The UPCA itself begins with the premise that it "applies to all planned communities created within this Commonwealth after the

²Real estate with respect to which a person, by virtue of ownership of an interest in any portion of the real estate, is or may become obligated by covenant, easement or agreement imposed on the owner's interest to pay any amount for real property taxes, insurance, maintenance, repair, improvement, management, administration or regulation of any part of the real estate other than the portion or interest owned solely by the person. §5103

³Any instrument, however denominated, that creates a planned community and any amendment to that instrument.

⁴Any real estate within a planned community which is owned by the association. An "association" is an association of unit owners. §5103

⁵A declarant or other persons who own units. §5103

effective date” of the Act (February 2, 1997). §5102(a). However, the UPCA also provides that certain sections, including §5105, “apply to all planned communities created in this Commonwealth before the effective date of this subpart” but only as to events and circumstances occurring after the effective date of the enactment. §5102(b). The first step in determining the applicability of the UPCA to Lake Meade and Lake Heritage is to ascertain whether these subdivisions are “planned communities”. We have previously set forth the definition of a planned community (footnote 3) and note the parties have stipulated that the subdivisions meet that definition. (FOF 13).

Nevertheless, that stipulation is modified by the disclaimer that the subdivisions only meet the definition “if the Act is otherwise applicable to the subdivisions.” We agree with the Board that the stipulation appears limited to the technical definition of a planned community as it applies to these subdivisions and does not concede that other portions of the UPCA, necessary to make it applicable to the subdivisions, if any, have been satisfied.

The Board contends that even though the subdivisions in question meet the technical definition of a planned community that the UPCA is not applicable to them because they were not created in the manner required by that legislation. Specifically, §5201 provides that a planned community may only be created by the recording of a declaration and §5205 sets forth the information which must be contained in the declaration. The Board asserts that numerous of those requirements are not contained in the documents filed of record regarding the Lake Meade and Lake Heritage subdivisions. Although the Board may be correct that the documents recorded for these subdivisions in the 1960’s do not satisfy the requirement of §5205, that deficiency is not dispositive or even relevant to the applicability of the assessment and taxation provisions in §5105.

As noted, §5102(b) provided that §5105 would apply to all planned communities created before February 2, 1997. These subdivisions were, in fact, created before that date and, by stipulation, meet the definition of a planned community. Section 5102(b) does not require that the planned community have been created in a manner which anticipated and included all provisions of the UPCA which must currently be satisfied in order to create a planned

community. We are confident that the Legislature did not intend the interpretation suggested by the Board.⁶

In construing the language of a statute, the Court is guided by the rules of statutory construction. Those rules are premised upon the concept that the object of all interpretation of statutes is to ascertain and effectuate the intent of the Legislature. 1 Pa. C.S.A. §1921(a). We recognize that retroactive provisions, such as §5102(b), are to be strictly construed. 1 Pa. C.S.A. §1928(b). Nevertheless, in ascertaining that intent we must presume that the Legislature does not intend a result which is absurd or unreasonable. 1 Pa. C.S.A. §1922(1). Furthermore, where words are not explicit legislative intent may be ascertained by considering the object to be obtained and the consequences of a particular interpretation. 1 Pa. C.S.A. §1921(c)(4) and (6). It would, in our opinion, be absurd for the Legislature to have intended §5105 to be applied retroactively but only to those planned communities which were created in accordance with statutory requirements not then known or in effect. The term 'planned community' as used in the UPCA is defined as constituting real estate with certain features. The documentary requirements for creating such a real estate entity do not alter its nature, only its creation. Thus, if a planned community was created under prior law, with different documentary provisions than are presently required, it does not change the nature of the entity itself. To conclude otherwise would result in no planned community created before February 2, 1997 from enjoying the retroactive provisions of §5102(b). The Board's position would be illogical, based upon a thorough review of all provisions of the UPCA.

III.

The next issue involves the Board's contention that the UPCA violates the principle of uniformity as required by the Pennsylvania Constitution regarding assessment and taxation of real estate in Adams County.

⁶ Comment 2 to Section 1-102 (Applicability) of the Model Uniform Planned Community Act promulgated by the National Conference of Commissioners on Uniform State Laws in 1980 supports this position. The Comment reads, in part, "2. 'Creation' of a planned community pursuant to this Act occurs upon recordation of a declaration . . . , however, the definition of a 'planned community' contemplates that de facto planned communities may exist, if the nature of the ownership interest fits the definition, and the Act would apply to such a planned community."

Article VIII, Section I of the Pennsylvania Constitution provides that

All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.

In analyzing this issue, we begin with the principle that in matters of tax legislation the Legislature possesses wide discretion. *Parsowith v. Commonwealth, Department of Revenue*, 723 A.2d 659, 663 (Pa. 1999). Furthermore, legislation involving taxation is presumed to be constitutionally valid and the person challenging that legislation

bears a heavy burden of establishing that the [enactment] clearly, palpably and plainly violates the constitution. Any doubts regarding the constitutionality of tax legislation should be resolved in favor of upholding its constitutionality.

Conley Motor Inns, Inc. v. The Township of Penn, 728 A.2d 1012, 1014 (Pa. Comlth. 1999).

However, under the Uniformity Clause, taxation must be applied with uniformity upon property similarly situated and the tax burden must be borne with substantial equality by all members of the same class. *Lee Hospital v. Cambria County Board of Assessment Appeals*, 638 A.2d 344, 351 (Pa. Comlth. 1994). Thus, where classifications exist within the taxing scheme there must be some legitimate distinction between the classes that provide some non-arbitrary, reasonable and just basis for the different treatment. Where no legitimate distinction exists, the resulting tax burden is unconstitutional. *PPG Industries, Inc. v. Commonwealth*, 681 A.2d 824, 830-1 (Pa. Comlth. 1995).

In analyzing a constitutional challenge, the legislation is reviewed under a rational basis standard to determine whether there is some concrete justification for subjecting similarly situated entities to different tax burdens. *Conley Motor Inns, Inc., supra.*, 728 A.2d at 1014. Stated differently, one challenging a taxing statute under the Uniformity Clause has the

burden to demonstrate, not only that the enactment results in some form of classification, but that such

classification is unreasonable, in that it is not rationally related to any legitimate state purpose.

Wilson Partners, L.P. in Commonwealth, 737 A.2d 1215, 1220 (Pa. 1999).

Nevertheless, the Uniformity Clause requires substantial uniformity, *Lee Hospital, supra.* 638 A.2d at 351, not perfect uniformity. *Parsowith, supra.*, 723 A.2d at 663.⁷

It has been argued that the UPCA does not involve taxation because it neither imposes a tax nor exempts property from taxation. However, because it decrees how real estate units will be valued for tax purposes and who will be obligated to pay taxes associated with the value of the common areas of the community we will determine whether the UPCA can withstand this constitutional challenge.

The Board argues that the UPCA creates a taxing scheme which treats similarly situated real estate differently. More specifically, the common facilities involved include swimming pools, lakes, roadways, and recreation areas. The UPCA declares that no separate assessed value shall be attributed to nor separate tax imposed against common facilities in a planned community. The Board notes that other pools, lakes or recreation areas in Adams County owned by an association of persons but not constituting a planned community would have a separate assessment and tax imposed upon those properties. Thus, the Board would be taxing similarly situated properties differently in violation of the uniformity clause.

The record has not been developed to the point where the Board can point to specific property in the county that would fit its example except to mention the Gettysburg Country Club. Although not

⁷In *Leonard v. Thornburgh*, 489 A.2d 1349, 1352 (Pa. 1985), then Justice, now Chief Justice Flaherty, more succinctly stated,

Under the . . . Uniformity Clause, . . . perfect uniformity in taxation is not required . . . In cases where the validity of a classification for tax purposes is challenged, the test is whether the classification is based upon some legitimate distinction between the classes that provides a non-arbitrary and “ ‘reasonable and just’ “ basis for the difference in treatment . . . Stated alternatively, the focus of judicial review is upon whether there can be discerned “some concrete justification” for treating the relevant group of taxpayers as members of distinguishable classes subject to different tax burdens . . . When there exists no legitimate distinction between the classes, and, thus, the tax scheme imposes substantially unequal tax burdens upon persons otherwise similarly situated, the tax is unconstitutional . . . (citations omitted).

part of the record, it is well known that the Gettysburg Country Club is strictly a recreational and social organization which owns a golf course, tennis courts and swimming pools. Its members pay dues and assessments to maintain and improve the facilities. Membership is not dependent upon real estate ownership in a particular development. Furthermore, to the extent a member owns real estate, its value is not enhanced by his/her membership. In Lake Meade and Lake Heritage, persons become members of the Association and are entitled to use of the common facilities simply based upon ownership of a lot in the subdivision. That real estate's value is affected by the owner's exclusive access to the common areas.

There is no dispute that the UPCA creates a classification which treats the taxation of property within a planned community differently than the taxation of property not qualifying as a planned community.⁸ The question then becomes whether there is a justification for that distinction.⁹ Unfortunately, there is no express language in the UPCA itself which indicates the legislative intent on this issue¹⁰ nor can we look to other states for guidance because Pennsylvania was the first state to adopt the Uniform Act.¹¹

Pursuant to §602 of the Fourth to Eighth County Assessment Law, 72 P.S. §5453.602 (hereinafter "the Assessment Law"), applicable to Adams County, the chief assessor of the county is to value all subjects and objects of local taxation according to the actual value thereof. Generally, "actual market value is 'the price which a purchaser, willing but not obligated to buy, would pay an owner, willing but not obligated to sell, taking into consideration all uses to which the property is adapted and might in reason be applied.'" *RAS Development Corp. v. Fayette County Board of Assessment Appeals*, 704 A.2d 1130, 1134 (Pa. Comlth. 1997).

⁸Except that condominiums and common elements associated therewith are similarly treated for tax purposes under Section 3105(b) of the Uniform Condominium Act of 1980, 68 Pa. C.S.A. §3105(b).

⁹No challenge has been made to whether all units and common areas within a planned community are treated uniformly. That issue is clearly resolved by the provisions of §5105(b). Instead, we are solely addressing whether a distinction in classification exists.

¹⁰Likewise, the Comments to the Model Uniform Planned Community Act offer no insight on this question.

¹¹Common Interest Ownership In Pennsylvania: An Examination of Statutory Reform And Implications For Practitioners, *Duquesne Law Rev.*, Spring 1999.

Prior to enactment of the UPCA the Commonwealth Court had an opportunity to address the issue of the assessed value of common areas in a 69 acre development containing 47 residential units in *County of Monroe v. Pinecrest Development Corporation*, 510 A.2d 1274 (Pa. Comlth. 1986). The developer created a non-profit trust to hold title to and to maintain the common area which included tennis courts, swimming pools, a lake and recreation building, for the benefit of the unit owners who had exclusive rights of easement to the common areas, including the exclusive use thereof. Ruling that the county was required, under existing law, to tax the common area separately, the Court noted that,

a common area may have a market value which is substantial or nominal, so that its assessment may or may not be for a nominal figure.

...

Here, the property owners have exclusive rights of easement to the common area, including exclusive use of the facilities. That use exclusivity could diminish the actual market value of the common area to zero or nominal value because there may not be a buyer willing to purchase the common area subject to those restrictive easement provisions.

However, not all developments with common areas have such stringent easement provisions . . .

. . . the common area in this case could have value greater than the sum of the easements if the property owners released all or part of their easement rights. The actual market value of the common area could also change if the property owners modified their easement rights to permit the title holder of the common area to extend privileges to non-property owners.

. . . That value must be determined on a case-by-case basis because of the likelihood that any recreational development with a common area will have unique characteristics affecting the actual market value of the common area.

510 A.2d at 1276.¹² The Court remanded the case to the trial court to determine the value of the common areas.

The UPCA appears to be a legislative recognition that in a planned community where use of the facilities is limited to the owners of the units situated within the planned development and where the real estate is burdened by the easements associated therewith, the market value of the common areas is so minimal that the better approach to determine taxable value would be through taxation of each unit's appurtenant interest in the common areas. The Board contends that the property owners in each subdivision have authority to sell the common areas and because of that right of alienation some value is present. The record does not include the by-laws of the Associations; however, §5318(a) of the Act (which would be applicable to these subdivisions) requires at least 80% of the votes of the association in order to convey any portion of a common area. This restriction, together with the exclusivity provisions related to use of the common areas would appear to substantially minimize any true market value for the common area. We are not prepared to opine, as do the Associations, that the UPCA recognizes that the common areas have no market value but rather that the Legislature has concluded the value is so minimal that true value is more appropriately measured by valuing each unit's appurtenant interest in the common areas only.

IV.

Next we address whether the UPCA, specifically, §5105(b), can be applied retroactively (as declared in §5102(b)) to developments, assessments and planned communities which were completed and in existence prior to the effective date of the UPCA, particularly the Lake Meade and Lake Heritage subdivisions. As noted in the discussion at II, above, we have already concluded that the UPCA is applicable to these subdivisions. Nevertheless, the Board contends that it would be contrary to public policy to apply the UPCA to subdivisions created before February 1997, because it would necessitate an expensive countywide real estate tax reassessment.

¹²The Court also ruled that the value of each unit should be assessed similarly to how a condominium unit is assessed under the Uniform Condominium Act where the value of each unit's interest in the common area is included in its actual marked value.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-312 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 27th day of July, 2001, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a steel pin on the southern right of way line of Starlite Drive at corner of Lot No. 19 on the plan of lots hereinbelow identified thence by said lot No. 19 south 44 degrees 22 minutes 32 seconds east 100.00 feet to a steel pin at corner of Lot No. 13 of Lakeview Village-Phase one; thence by said No. 13 south 45 degrees 37 minutes 28 seconds west, 36.00 feet to a steel pin at corner of Lot No. 17; thence by said Lot No. 17 north 44 degrees 22 minutes 32 seconds west 100.00 feet to a steel pin on the southern right of way line of Starlite Drive, thence by said southern right of way line of Starlite Drive, north 45 degrees 37 minutes 28 seconds East, 36.00 feet to the above described place of BEGINNING.

OWNER AND SUBJECT to the restrictions, reservations, conditions and protective covenants for "Lakeview Village-Phase Two" set forth in the declaration of restrictions, reservations, conditions and protective covenants dated June 8, 1990 and recorded in the office of the recorder of deeds of Adams County, Pennsylvania, in record book 559 at page 653 as well as the restrictions, comments and notations as set forth on the subdivision for "Lakeview Village-Phase two" recorded in said office in Plat Book 54 at page 65 (2 pages)

TOGETHER WITH AND SUBJECT to a 58 foot right of way in, through and along the streets known as Crescent Lane and Starlite Drive, to be used in common with other lot owners of lots in "Lakeview Village-Phase two" as shown on the subdivision plan hereinabove referenced.

Map #: 12-71

BEING KNOWN AS: 28 Starlite Drive, Littlestown, PA 17340

SEIZED and taken into execution as the property of **Martin W. Jacoby & Glenda Jacoby** and to be sold by me

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 20, 2001, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/22, 29 & 7/6

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-296 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 27th day of July, 2001, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground, Situate, lying and being in Mt. Pleasant Township, Adams County, Pennsylvania, being (Lot No. 11) of Colonial Ridge Subdivision, more particularly bounded and described as follows:

BEGINNING at an iron pin on the edge of a 50 foot right of way known as Cannon Lane at the corner of Lot No. 10, as shown on the hereinafter identified draft of survey; thence by Lot No. 10 and running through the center of a party wall in a four unit townhouse separating Lot No. 10 and the lot hereby conveyed, North 42 degrees 17 minutes 22 seconds West, 125.00 feet to a point on line of Lot No. 8, as shown on said survey; thence by Lot No. 8, North 47 degrees 42 minutes 38 seconds East, 20.0 feet to a point at the corner of Lot No. 12, as shown on said survey; thence by Lot No. 12 and running through the center of a party wall in a four unit townhouse separating Lot No. 12 and the lot hereby conveyed, South 42 degrees 17 minutes 22 seconds East, 125.00 feet to an iron pin on the edge of a 50 foot right of way known as Cannon Lane; thence by same, along Cannon Lane, South 47 degrees 42 minutes 38 seconds West, 20.0 feet to an iron pin on the edge of a 50 foot right of way known as Cannon Lane at the corner of Lot No. 10, as shown on said survey, the point and place of BEGINNING. CONTAINING 2,500 square feet.

THE above description was taken from draft of survey, prepared by Gettysburg Engineering Company, Inc., dated January 9, 1981, revised February 1991, June 7, 1992, July 2, 1991, March 13, 1992, and May 4, 1992, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 60 at Page 69.

Premises being: 3 Cannon Lane, Gettysburg, PA 17325

Tax Parcel No. 11-10

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 20, 2001, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/22, 29 & 7/6

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, July 9, 2001, at 9:00 o'clock a.m.

WALLEN—Orphans' Court Action Number OC-44-01. The First and Final Account of Michael C. Wallen, Sr., Executor under the will of Elizabeth L. Wallen, deceased, late of East Berlin Borough, Adams County, Pennsylvania.

LOSS—Orphans' Court Action Number OC-45-01. The First and Final Account of Mary Lee Loss, Executrix of the Estate of Gary L. Loss, deceased, late of Conewago Township, Adams County, Pennsylvania.

WOLFE—Orphans' Court Action Number OC-55-01. The First and Final Account of Susan J. Hassinger and Richard J. Wolfe, Co-Executors of the Estate of J. Arthur Wolfe a/k/a John Arthur Wolfe, deceased, late of Oxford Township, Adams County, Pennsylvania.

WEHLER—Orphans' Court Action Number OC-62-01. The First and Final Account of Robert Wehler, Executor of the Estate of Pauline Wehler, deceased, late of Mt. Joy Township, Adams County, Pennsylvania.

SMITH—Orphans' Court Action Number OC-63-01. The First and Final Account of Karen A. Shepherd, Administratrix of the Estate of Roger Lee Smith, deceased, late of Gettysburg Borough, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

6/29 & 7/6

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-381 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of August, 2001, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

TRACT NO. 1: BEGINNING for a corner at a point in the centerline of Township Road No. T-673 (Shottie Road) at lands now or formerly of Richard Rummell; thence along said Rummell's lands, and through a steel pin set back thirty (30) feet from the beginning of this course, North eighty-four (84) degrees forty-eight (48) minutes thirty-seven (37) seconds East ninety-one and twelve hundredths (91.12) feet to a steel pin; thence along the same North fourteen (14) degrees fifty-five (55) minutes thirty-seven (37) seconds West three hundred eight and forty-five hundredths (308.45) feet to a steel pin at lands now or formerly of Curvin Study; thence along said Study's lands North eighty-four (84) degrees fifty-eight (58) minutes nineteen (19) seconds East one hundred forty and four hundredths (140.04) feet to a steel pin at lands now or formerly of Eli Byler; thence along said Byler's lands South fourteen (14) degrees thirty-two (32) minutes thirty (30) seconds East five hundred fifteen and seventy-five hundredths (515.75) feet to a steel pin at lands now or formerly of Francis Stainer; thence along said Stainer's lands North sixty (60) degrees no (00) minutes no (00) seconds West one hundred ninety-four (194) feet to a steel pin; thence along the same and through a steel pin set back thirty (30) feet from the terms of this course, South forty-five (45) degrees fifteen (15) minutes no (00) seconds West one hundred (100) feet to a point in the centerline of Township Road T-673, aforesaid; thence along the centerline of said Township Road T-673 North fifteen (15) degrees no (00) minutes no (00) seconds West one hundred fifty-nine and fifty hundredths (159.50) feet to the point and place of BEGINNING. CONTAINING 1.7038 Acres, neat measure. The foregoing description has been prepared in accordance with the survey of J.H. Rife, Registered Engineer, dated September 5, 1972.

TRACT NO. 2: BEGINNING at a spike in the center of the public road leading to the Hamey-Littlestown Highway, said spike being on line of other lands now or formerly of Granville A. Study and being

south forty-five (45) degrees thirty (30) minutes West from a rail post along the South side of said public road; thence along other lands now or formerly of Granville A. Study and through said rail post North forty-five (45) degrees thirty (30) minutes East one hundred (100) feet to a stake; thence by same South sixty (60) degrees East three hundred sixty-three and three-tenths (363.3) feet to a rail post; thence by same South sixty-three and three-tenths (363.3) feet to a rail post; thence by same South sixty-three (63) degrees fifty-six (56) minutes West three hundred fifty-one (351) feet through a stake to a spike in the center of said public road, said stake being North sixty-three (63) degrees fifty-six (56) minutes East sixteen and five-tenths (16.5) feet from the spike in the middle of said public road; thence along the middle of said public road North fifteen (15) degrees West two hundred seventy-five (275) feet to a spike, the place of BEGINNING. CONTAINING 1 acre and 77 perches. This description was taken from a Draft of survey made March 15, 1952, by LeRoy H. Winebrenner, R.S.

TITLE TO SAID PREMISES IS VESTED IN Michael W. Meadows and M. Susan Meadows, husband and wife by Deed from Wayne L. Sentz and Laurel L. Sentz, husband and wife dated 11/30/88, recorded 12/5/88, in Record Book 508, page 1045.

Premises being: 40 Schottie Road, Littlestown, PA 17340

Tax Parcel No. G18-30

SEIZED and taken into execution as the property of **Michael W. Meadows & M. Susan Meadows** and to be sold by me

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 27, 2001, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/29, 7/6 & 13

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-128 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 31st day of August, 2001, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate in the Borough of Biglerville, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point in the center of a 16 foot alley at a corner of land now or formerly of Ralph and Donald Shetter; thence along land now or formerly of the said Ralph and Donald Shetter South 86-1/2 degrees East, 48.4 feet to a point; thence along land now or formerly of J. Joke Stlaybaugh and crossing a 12 foot alley South 2 degrees West, 58.2 feet to an iron pin; thence along land now or formerly of Rice, Trew and Rice North 82 degrees West, 57 feet to a point eight feet from store building; thence recrossing said alley and running in the center of the aforesaid 16 foot alley, along land now or formerly of C.H. Musselman Company North 10 degrees East, 57.2 feet to the point, the place of BEGINNING. CONTAINING 11 perches and 93 square feet.

Parcel ID #: 4-41

Being Known as: 139 E. York St., Biglerville, PA 17307

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 24, 2001, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/6, 13 & 20

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 BENEDICT E. HUBER, DEC'D**

Late of Union Township, Adams County, Pennsylvania

Executor: Benedict E. Huber, Jr., 2129 Wood Avenue, Colorado Springs, CO 80907

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

ESTATE OF CARL C. SLAYBAUGH, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executor: David L. Smiley, 150 Tree Lane Road, Aspers, PA 17304

Attorney: Matthew L. Guthrie, Esq., Guthrie, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331

SECOND PUBLICATION**ESTATE OF CALVIN F. BREAM, DEC'D**

Late of Hamiltonban Township, Adams County, Pennsylvania

Co-Executors: Calvin P. Bream, 7903 Hope Valley Court, Adamstown, MD 21710; Thomas W. Bream, 4690 Charles Road, Mechanicsburg, PA 17055

Attorney: Matthew R. Battersby, Esq., Battersby & Sheffer, P O Box 215, Fairfield, PA 17320

ESTATE OF IVORY R. ENSOR, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Administrator: Judy I. Sheppard, 170 Woodland Road, Huntingdon Valley, PA 19006

Attorney: Robert E. Campbell, Esq., Campbell & White, 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF WELDO W. FUNT, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executor: Daniel Allen Funt, 18 Loop Drive, Hanover, PA 17331

Attorney: Robert E. Campbell, Esq., Campbell & White, 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF KATHRYN C. RYON, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: William Louis Ryon, Jr., 9003 Barb Anne Court, Springfield, VA 22152; James Percival Ryon, 121 Ruth Avenue, Hanover, PA 17331; Roderick Naylor Ryon, 904 Chestnut Hill Avenue, Baltimore, MD 21218

Attorney: Catherine J. Gault, Esq., 31 S. Washington Street, Gettysburg, PA 17325

THIRD PUBLICATION**ESTATE OF DORIS C. ADAMS, DEC'D**

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executors: Barbara Diane Shultz, 336 Green Ridge Road, Orrtanna, PA 17353; Rodney Jay Adams, 1399 Knoxlyn Road, Gettysburg, PA 17325

Attorney: Robert L. McQuaide, Esq., Suite 204, 18 Carlisle Street, Gettysburg, PA 17325

ESTATE OF BERNADINE S. BOLIN a/k/a BERNADINE VERONICA BOLIN, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executrix: Phyllis Hicks, 316 Vincent Drive, McSherrystown, PA 17344

Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

ESTATE OF THOMAS E. HADLOCK, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Administrators: Teresa L. Fowler, 925 Old Waynesboro Road, Fairfield, PA 17320; David E. Hadlock, 3 Cannon Lane, Gettysburg, PA 17325

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

ESTATE OF MARGARET E. LOBAUGH, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Guy M. Barbour, 6375 Chambersburg Road, Fayetteville, PA 17222

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

ESTATE OF ANNA ELIZABETH QUINN, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Patricia A. Behre, 1020 Hunterstown-Hampton Road, New Oxford, PA 17350

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

ESTATE OF ARCHIE V. STRICKLAND, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Executrix: Mary A. Strickland, 1040 Heritage Drive, Gettysburg, PA 17325

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

ESTATE OF THOMAS A. ZIMMERMAN, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Beverly K. Zimmerman, 105 Tiffany Lane, Gettysburg, PA 17325

Attorney: Buzgon Davis Law Offices, 525 South Eighth Street, PO Box 49, Lebanon, PA 17042-0049

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 00-S-330 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of August, 2001, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING for a corner at an existing steel pin on the southerly edge of Applewood Drive at previously approved Lot No. 3 as shown on the hereinafter referred to Subdivision Plan; thence along said previously approved Lot No. 3, the following two (2) courses and distances: 1) South eleven (11) degrees fifty-eight (58) minutes seven (07) seconds West three hundred twenty-six and twenty-three hundredths (326.23) feet to an existing steel pin; 2) South seventy-two (72) degrees seven (07) minutes three (03) seconds West three hundred eighty-six and twenty-seven hundredths (386.27) feet to an existing steel pin at lands now or formerly of Charles R. Chubb as shown on the hereinafter referred to Subdivision Plan; thence along said last mentioned lands now or formerly of Charles R. Chubb, South eighty-five (85) degrees five (05) minutes twenty (20) seconds West two hundred fifty-five and eighty hundredths (255.80) feet to a steel pin (set) at lands now or formerly of Warren T. Becker as shown on the hereinafter referred to Subdivision Plan; thence along said last mentioned lands now or formerly of Warren T. Becker, North thirty-two (32) degrees fifty-one (51) minutes thirty (30) seconds West, one thousand four hundred twenty-six and thirty-seven hundredths (1,426.37) feet to an existing stone at lands now or formerly of Raymond G. Burkett and Martha E. Fisher as shown on the hereinafter referred to Subdivision Plan; thence along said last mentioned lands now or formerly of Raymond G. Burkett and Martha E. Fisher and also along lands now or formerly of Paul C. Sipe, Jr. as shown on the hereinafter referred to Subdivision Plan, North twenty-six (26) degrees no (00) minutes no (00) seconds East eight hundred forty-five and twenty-eight hundredths (845.28) feet to a steel pin (set) at lands now or formerly of Donald J. Sneeringer as shown on the hereinafter referred to Subdivision Plan; thence along said last mentioned lands now or formerly of Donald J. Sneeringer and also along lands now or formerly of Paul C. Sipe, Jr. as shown on the hereinafter referred to Subdivision Plan, North eighty-eight (88) degrees fifty-two (52) minutes ten (10) seconds, East seven hundred thirty-five and ninety hundredths (735.90) feet to an existing steel pin at lands now or formerly of Elmer H. Miller, Jr. as shown on the hereinafter referred to Subdivision Plan; thence along

said last mentioned lands now or formerly of Elmer H. Miller, Jr. South thirteen (13) degrees forty-eight (48) minutes thirty (30) seconds East three hundred eighteen and forty-two hundredths (318.42) feet to a point at lands now or formerly of Mitchell O. Diviney as shown on the hereinafter referred to Subdivision Plan; thence along said last mentioned lands now or formerly of Mitchell O. Diviney, South thirteen (13) degrees twenty-one (21) minutes ten (10) seconds East two hundred sixty-six and forty-two hundredths (266.41) feet to a steel pin (set) at lands now or formerly of John C. Leese as shown on the hereinafter referred to Subdivision Plan; thence along said last mentioned lands now or formerly of John C. Leese, South seventy-eight (78) degrees fifty-nine (59) minutes twenty-two (22) seconds West one hundred fifty-eight and thirty-seven hundredths (158.37) feet to an existing steel pin at previously approved Lot No. 5 on the hereinafter referred to Subdivision Plan; thence along said previously approved Lot No. 5, the following two (2) courses and distances: 1) South forty-nine (49) degrees fifty-nine (59) minutes twenty-four (24) seconds West one hundred eighty-eight and twenty-five hundredths (188.25) feet to an existing steel pin; 2) South forty (40) degrees no (00) minutes thirty-six (36) seconds East, seven hundred twenty-seven and thirty-five hundredths (727.35) feet to an existing steel pin at lands now or formerly of Robert E. Lawyer as shown on the hereinafter referred to Subdivision Plan; thence along said last mentioned lands now or formerly of Robert E. Lawyer, the following three (3) courses and distances: 1) South eleven (11) degrees fifty-eight (58) minutes seven (07) seconds West one hundred seventy and two hundredths (170.02) feet to an existing steel pin; 2) South seventy-eight (78) degrees one (01) minute fifty-three (53) seconds East four hundred forty-two and sixty-three hundredths (442.63) feet to a point; 3) by a curve to the right having a radius of two hundred eighty (280.00) feet, the long chord of which is South sixty-six (66) degrees forty-nine (49) minutes one (01) second East one hundred eight and ninety-one hundredths (108.91) feet for an arc distance of one hundred nine and sixty-one hundredths (109.61) feet to a point on the northerly edge of Applewood Drive aforesaid, where it intersects with Township Road (T-706) as shown on the hereinafter referred to Subdivision Plan; thence in and along Township Road (T-306), South twenty-eight (28) degrees fifty-three (53) minutes fifty-three (53) seconds East one hundred sixty-two and forty-one hundredths (162.41) feet to a point in the centerline of SR-0194 (Abbottstown Pike) as shown on the hereinafter referred to Subdivision Plan; thence crossing said SR-0194 (Abbottstown Pike) North seventy-eight (78) degrees six (06) minutes twelve (12) seconds West twenty-seven and fifty-nine hundredths (27.59) feet to a point on the aforesaid southerly edge of Applewood Drive; thence in and along the southerly

edge of Applewood Drive, the following three (3) courses and distances: 1) by a curve to the left having a radius of two hundred thirty (230.00) feet, the long chord of which is North thirty-two (32) degrees twelve (12) minutes one (01) second West sixty-three and forty-seven hundredths (63.47) feet for an arc distance of sixty-three and sixty-seven hundredths (63.67) feet to an existing steel pin; 2) by a curve to the left having a radius of two hundred thirty (230.00) feet, the long chord of which is North fifty-nine (59) degrees forty (40) minutes fifty-two (52) seconds West one hundred forty-nine and thirty-eight hundredths (149.38) feet for an arc distance of one hundred fifty-two and fourteen hundredths (152.14) feet to a point; 3) North seventy-eight (78) degrees one (01) minute fifty-three (53) seconds West three hundred forty-two and sixty-three hundredths (342.63) feet to the point and place of BEGINNING. CONTAINING 42.276 acres.

The above description was taken from a Survey prepared by Mort, Brown and Assoc. for TRIPLD, INC., dated April 3, 1989, bearing File No. E-496.

SEIZED and taken into execution as the property of **Joseph A. & Wanda J. Lawrence** and to be sold by me

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 27, 2001, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/29, 7/6 & 13

Adams County Legal Journal

Vol. 43

July 13, 2001

No. 7, pp. 40-51

IN THIS ISSUE

LAKE MEADE PROPERTY OWNERS ASSN. ET AL VS. ADAMS COUNTY BOARD OF ASSESSMENT APPEALS

This opinion continued from last issue (7/6/2001)

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-137 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of August, 2001, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land known as Lot 1 as shown on a Final Minor Subdivision Plan for GCW Properties, Inc., dated January 5, 1998 (hereinafter, the "Plan"), located in East Berlin Borough, Adams County, Pennsylvania, more particularly described as follows to wit.

BEGINNING at a point on the northern right-of-way of North Avenue at the common property corner of Lot 1 and Lot 2 as shown on said Plan; thence, from said point of beginning the following eleven courses and distances:

Along the northern right-of-way of North Avenue North 61 degrees 58 minutes 34 seconds West a distance of 464.64 feet to a point; thence,

North 11 degrees 33 minutes 30 seconds East a distance of 75.99 feet to a point; thence,

North 62 degrees 35 minutes 47 seconds West a distance of 49.84 feet to a point; thence,

North 11 degrees 13 minutes 23 seconds East a distance of 751.16 feet to a point at the southern bank of Conewago Creek; thence,

Along the southern bank of Conewago Creek North 82 degrees 51 minutes 16

seconds East a distance of 207.75 feet to a point; thence,

Along the southern bank of Conewago Creek South 85 degrees 39 minutes 5 seconds East a distance of 428.49 feet to a point; thence,

Along lands now or formerly of Clark E. and Faith L. Renoll and lands now or formerly of Frederick and Jessie M. Althouse South 14 degrees 15 minutes 00 seconds West a distance of 531.73 feet to a point; thence,

Along lands now or formerly of Frederick and Jessie M. Althouse, lands now or formerly of Dale R. and Edna M. Kennedy and lands now or formerly of Herbert and Roberta Walters South 72 degrees 30 minutes 00 seconds East a distance of 776.32 feet to a point at Fourth Avenue, a private road; thence,

Along Fourth Avenue, a private road, South 37 degrees 00 minutes 00 seconds West a distance of 328.88 feet to a point; thence,

Along Lot 2 North 64 degrees 00 minutes 00 seconds West a distance of 660.82 feet to a point; thence,

Along Lot 2 South 26 degrees 00 minutes 00 seconds West a distance of 360.53 feet to a point; the point of BEGINNING.

Said Lot 1 contains 757,404.86 square feet or 17.3877 acres, more or less, according to said Plan.

The foregoing description is intended to describe Lot 1 as shown on the Plan, which Plan was recorded on March 27, 1998 in the Office of the Recorder of Deeds for Adams County, Pennsylvania, at Book 73, Page 46.

IT BEING the same premises which Jerome I. Lunder, together with the joinder of his wife, Ruth Lunder, as to an undivided one-half interest, and Elinor Lunder, Deborah Lunder, a/k/a Deborah R. Lunder, and Mark A. Levy, Trustees of the Bruce A. Lunder Trust of October 6, 1978, as to an undivided one-half interest, by their Deed dated October 26, 1998, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 1697, Page 231, granted and conveyed unto Gary C. Wesner.

District 10

Map 002, Parcel 0004

SEIZED and taken into execution as the property of **Gary C. Wesner** and to be sold by me

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 27, 2001, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/29, 7/6 & 13

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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

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

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-351 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 31st day of August, 2001, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those two lots of ground situate in Franklin Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point in the center of a proposed road at Lot No. 13; thence by said lot and through a steel pin set 30 feet back on the line, North 21 degrees 25 minutes 34 seconds East, 246.20 feet to a steel pin at lands now or formerly of Coppertop Orchards; thence by said lands, South 78 degrees 19 minutes 08 seconds East, 105 feet to a steel pin at Lot No. 15; thence by said lot, South 13 degrees 07 minutes 20 seconds East, 243.94 feet to a point in the center of said proposed road; thence in said proposed road by a curve to the right, the radius of which is 350 feet, for an arc distance of 201.40 feet, and having a chord bearing and distance of North 86 degrees 38 minutes 14 seconds West, 198.63 feet to a point in said proposed road; thence continuing in said proposed road North 70 degrees 09 minutes 08 seconds West, 53 feet to the place BEGINNING.

BEGINNING at a point in the center of a proposed road at Lot No. 14; thence by said lot and through a steel pin set 30 feet back on the line, North 13 degrees 07 minutes 20 seconds West, 243.94 feet to a steel pin at lands now or formerly of Coppertop Orchards; thence by said lands, South 78 degrees 19 minutes 08 seconds East, 292.01 feet to a point in the center of said proposed road; thence in said proposed road by a curve to the right; the radius of which is 350 feet, for an arc distance of 300.73 feet, and having a chord bearing and distance of South 52 degrees 15 minutes 46 seconds West, 291.57 feet to the place of BEGINNING.

BEING the same premises which Kathy Jo Ott, single, by Deed dated December 16, 1999 and recorded in the Office of the Recorder of Deeds of Adams County on December 16, 1999, in Deed Book Volume 1971, Page 123, granted and conveyed unto Dustin D. Sanders and Sara O. Sanders.

Parcel No. B12-40

GRENNEN & BIRSIC, P.C.

By: /s/Kristine M. Faust
Kristine M. Faust, Esquire
Attorneys for Plaintiff
One Gateway Center, Nine West
Pittsburgh, PA 15222
(412) 281-7650

SEIZED and taken into execution as the property of **Dustin D. Sanders & Sara O. Sanders** and to be sold by me

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 24, 2001, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/6, 13 & 20

NOTICE

The Pennsylvania Office of Attorney General is seeking a member of the Bar with complex civil litigation experience to fill a Deputy Attorney General position in the Tobacco Enforcement Section in Harrisburg. Primary duties include reviewing potential violations of the Tobacco Master Settlement Agreement; enforcing the Tobacco Settlement Agreement Act of 2000 involving non-participating tobacco companies located in the U.S. and abroad; and defending the Commonwealth from actions seeking to challenge the MSA or to obtain part of the tobacco settlement funds. Interested candidates should submit a resume, writing sample, salary history and requirement to Bruce Sarteschi, Office of Attorney General, 14th Fl, Strawberry Sq, Harrisburg, PA 17120. Salary commensurate with experience/excellent benefits package. The Pennsylvania Office of Attorney General is an equal opportunity employer.

7/13 & 20

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-783 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 31st day of August, 2001, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the right, title, interest and claim of **Ronnie Reed and Sharon K. Reed** of, in and to:

ALL the following described real estate situated in the Township of Mount Pleasant, County of Adams, Commonwealth of Pennsylvania. Having erected thereon a dwelling known and numbered as 474 Smoketown Road, Hanover, PA 17331. Deed Book Volume 1757, Page 223, Parcel No. J14.

SEIZED and taken into execution as the property of **Ronnie Reed & Sharon K. Reed** and to be sold by me

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 24, 2001, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/6, 13 & 20

LAKE MEADE PROPERTY OWNERS ASSN. ET AL VS.
ADAMS COUNTY BOARD OF ASSESSMENT APPEALS

Continued from last issue (7/6/2001)

Section 5102(b) of the UPCA provides, in pertinent part, that the provisions of §5105, applies

to all planned communities created in this Commonwealth before the effective date of this subpart; but those sections apply only with respect to events and circumstances occurring after the effective date of this subpart and do not invalidate specific provisions contained in existing provisions of the declaration, bylaws or plats or plans of those planned communities.

In ascertaining legislative intent “no statute shall be construed to be retroactive unless clearly and manifestly so intended by the General Assembly.” 1 Pa. C.S.A. §1926. However, retroactive provisions are to be strictly construed. 1 Pa. C.S.A. §1928(b)(2). In reality, the UPCA has no retroactive effect. In order to withstand constitutional challenge, those provisions, which apply to previously existing planned communities, apply only with respect to events and circumstances occurring after the effective date of the enactment (future events rule).

The UPCA became effective on February 2, 1997. As noted by one commentator, speaking on the effect of §5102(b) on §5105,

No separate tax is permitted on the common facilities. If not already done by all counties in Pennsylvania, the units or lots must be separately assessed for tax purposes, and the common facilities must have no assessed value. Despite the passage of the UPCA, Pennsylvania’s tax assessment rolls remained unchanged for calendar year 1997 because of the future events rule, but must be prepared in conformance with the UPCA by all counties for calendar year 1998 and later. Lot owners or associations could have filed timely tax appeals on common facilities to enforce the elimination of taxes on common facilities based on the requirements of §5105(b)(1).¹³

Here, the Associations waited until the 1998 tax notices were issued before seeking relief from taxation upon its common areas.

¹³ Alan Price Young, Esq., *The Effects of The Pennsylvania Uniform Planned Community Act On Old Planned Communities*, p. 4, Pennsylvania Bar Institute, July, 1998.

Thus, they are seeking to apply the UPCA only with regard to taxes being imposed subsequent to its effective date.

The Board suggests that public policy precludes the application of §5105(b) to these subdivisions because of the cost associated with a re-assessment. While fiscal management and practical concerns related to the impact of this legislation is of concern to the County, and not to be taken lightly, such concerns are not relevant in this context.¹⁴

We find the language of §5102(b) and §5105(b) to be clear and unambiguous and applicable to the common areas owned by the Associations.

V.

Next, we shall analyze whether the Act precludes the taxing authorities from shifting the tax burden for the common areas in the Lake Meade and Lake Heritage subdivisions without a county-wide reassessment and whether the answer to that question has any legal relevancy to the claims raised by the Associations for relief from paying taxes on the common areas in the subdivisions to which they currently hold title. After a careful consideration of this issue we conclude that the relief requested by the Associations must be granted.

The UPCA is clear that “no separate assessed value shall be attributed to and no separate tax shall be imposed against common facilities” in a planned community. 68 Pa. C.S.A. §5105(b)(1) (emphasis added). It is equally clear that this section of the UPCA applies to the common areas owned by the Associations. The Board attempts to sidestep this mandate by contending that compliance would require a countywide reassessment at substantial cost in order to re-value each unit within the two subdivisions to include its appurtenant interest in the common facilities. This dilemma arises from the fact that the 1990 reassessment did not include in the assessment of each lot that unit’s appurtenant interest in the common areas owned by the Association. The Board feels it is in a catch-22 situation. It fears that re-assessment limited to the lots in the subdivisions would

¹⁴ In *City of Lancaster v. County of Lancaster*, 599 A.2d 289, 300 (Pa. Comlth. 1991), that court observed “cost is not a relevant factor in determining whether a county’s taxing scheme is in accordance with the uniformity requirement of the Pennsylvania Constitution.” The same could be said about compliance with legislative enactments.

constitute improper spot assessments but that failure to do so could subject the Board to another challenge under the Uniformity Clause based upon undervaluation of those lots. In addition, the Board believes it should be relieved of any obligation to re-assess until the UPCA is clarified to indicate how each unit's appurtenant interest in the common areas is to be determined.

The only issue relevant to the present appeals, however, is whether the Associations are entitled to the relief requested. In the context of these cases, we cannot determine or be concerned whether a county-wide reassessment is required or the impact of such a decision.

By way of dicta, however, there are some interesting factors to consider. The *County of Monroe v. Pinecrest Development Corporation* case was decided in 1986, four years before the last countywide reassessment. As discussed earlier, that case set out factors to be considered in determining the assessed value of common areas in a recreational-residential development. The Court acknowledged that the assessed value of the common areas could vary based upon the extent to which access to and use thereof was restricted. The case also held that the method of assessing a residential unit should be analogous to the method used for assessing a condominium unit under the Uniform Condominium Act enacted in Pennsylvania in 1980. 68 Pa. C.S.A. §3101, et seq. Section 3105 of the UCA, similar to §5105 of the UPCA, requires each unit to be assessed "together with its common element interest." Thus, "the value of the easement must be reflected as an intangible element of the actual market value of the whole property." 510 A.2d at 1277. In addition, the Court noted that "The value of an appurtenant easement is inherent in the overall actual market value of the property because the easement influences the price which a willing buyer would pay a willing seller for that property." *Id.* This is exactly what the UPCA means when it provides that the value of a unit "shall include the value of that unit's appurtenant interest in the common facilities." §5105(b) (emphasis added).

It would appear that if the 1990 valuation of the lots did not include each lot's appurtenant interest in the common areas that those lots were not properly valued in accordance with the law as it then existed. Query: would a reassessment done to correct assessment errors in the calculation of actual market value be considered

spot assessment in violation of law¹⁵ and the Pennsylvania Constitution.¹⁶ See *Callas v. Armstrong County Board of Assessment*, 453 A.2d 25 (Pa. Comlth. 1982).

VI.

Finally, we address whether the Associations are entitled to a refund and interest upon tax payments made since February 1997.

The Associations initiated these appeals pursuant to provisions of the Assessment Law, 72 P.S. §5453.101, et seq. That law provides that on or before September 1, “any person aggrieved by any assessment” may appeal the assessment to the Board. 72 P.S. §5453.701(b). The Associations filed their appeals with the Board on August 28, 1998, from the tax notices issued in July 1998. The Associations were specifically requesting compliance with §5105(b) of the UPCA. The Board denied the appeals and issued notice of the same on October 20, 1998. The Associations then filed timely appeals to the Court of Common Pleas pursuant to 72 P.S. §5453.704.

The Assessment Law provides that on appeal the court shall determine the market value of the subject real estate as of the date of the appeal to the board of assessment appeals. 72 P.S. §5453.704(b)(1). Consistent with this Opinion, this Court has determined that the common areas of the respective subdivisions, as presently constituted,¹⁷ have no market value for real estate tax assessment purposes.

The Associations allege that they are entitled to refund of taxes paid since the effective date of the UPCA. The Board initially contends that the Associations waived their right to a refund because that request was not specifically pled. We disagree. Tax assessment appeals are statutory appeals and, as such, are not governed by the Pennsylvania Rules of Civil Procedure. *Airo Die Casting, Inc. v. Westmoreland County Board of Assessment Appeals*, 706 A.2d 1279, 1282 (Pa. Comlth. 1998). Statutory appeals are taken to the Court of

¹⁵ 72 P.S. §5348.1.

¹⁶ Article VIII, Section 1.

¹⁷ As noted recently in *E.L.C.A. Development Corp. v. Lackawanna County Board of Assessment Appeals*, 2000 WL 679750 (Pa. Comlth. 2000) “if in the future any parcel is sold or developed with additional units . . . the County may at that time separately assess and tax it.”

Common Pleas pursuant to Section 752 of the Local Agency Law, 2 Pa. C.S.A. §752, Id. However, that statute offers no guidance with regard to the pleading requirements for appeals to the court. The Commonwealth Court was recently faced with a challenge to the specificity of a citizen's appeal under the Right-To-Know Act, 65 P.S. 66.2 et seq., and reasoned:

We have been unable to ascertain what is specifically required to be pled in a statutory appeal, if anything. However, because an action challenging a local agency decision is captioned a "notice of appeal", fact pleading is not required; but at the very most, all that an appellant must plead is that an appeal is being taken and the reasons for the appeal in order to put the governmental entity on notice of why the appeal is being taken.

Knopsnider v. Derry Township Board of Supervisors, 725 A.2d 245, 247 (Pa. Comlth. 1999). In the matter, sub judice, the Associations have clearly averred that an appeal is being taken from the Board's decision, the reasons for the appeal, and the applicable statutory provisions. If a taxpayer is entitled to a (tax) refund under the provisions of the Assessment Law, we find no reason that he must expressly plead such relief in his appeal. Furthermore, the Board can hardly plead surprise at this stage of the proceeding.

The parties do not dispute that a refund is available to a taxpayer who successfully appeals a tax assessment determination under the Assessment Law. 72 P.S. §5453.704(e) provides, in pertinent part,

(e) . . . the appeal shall not prevent the collection of taxes based on the assessment complained of, but in case the same shall be reduced, then the excess shall be returned to the person or persons who shall have paid the same . . . (emphasis added).

Thus, if the Associations have paid excess real estate taxes because of the Board's failure to comply with the UPCA, they are entitled to a refund.

The first substantive dispute on this issue, however, relates to which payments should be refunded. The Associations argue entitlement to refunds for taxes paid since the effective date of the UPCA whereas the Board argues that refund, if any, is limited to taxes due and payable in 1999 and thereafter.

The Assessment Law provides that, "any person aggrieved by any assessment . . . may appeal to the board," 72 P.S. §5453.701(b), and that

so long as an appeal is pending before the board or before a court . . . the appeal will also be taken as an appeal by the taxpayer on the subject property . . . for any assessment subsequent to the filing of such appeal with the board and prior to the determination of the appeal by the board or the court."

72 P.S. §5453.704(f).

The instant appeal to the Board came in response to receipt by the Associations of school tax notices, not assessment notices, for the school tax year July 1, 1998-June 30, 1999.¹⁸ Assessments are issued for the following calendar year. Thus, contends the Board, the Associations are, at most, only entitled to refunds for taxes paid on tax notices issued during calendar year 1999 and thereafter.

The Associations counter, however, with the contention that Section 1 of the Act of May 21, 1943, P.L. 349, as amended, 72 P.S. §5566b (Refund Act) provides for the refund of any taxes paid since the effective date of the UPCA. That section provides, in pertinent part,

(a) Whenever any person or corporation of this Commonwealth has paid or caused to be paid . . . into the treasury of any political subdivision, directly . . . voluntarily or under protest, any taxes of any sort. . . to which political subdivision is not entitled; then, in such cases, the proper authorities of the political subdivision, upon the filing with them of a written and verified claim of refund of the payment, are hereby directed to make . . . refund of such taxes . . .

(b) The right to refund afforded by this Act may not be resorted to in any case in which the taxpayer involved had or has available under any other statute . . . a specific remedy by way of review, appeal, refund or otherwise, for

¹⁸ Thus, technically the Associations did not appeal the tax assessments. Nevertheless, all parties have treated the appeals as assessment appeals and we shall likewise do so.

recovery of money paid as aforesaid, unless the claim for refund is for recovery of moneys paid under a provision of a statute subsequently held, by final judgment of a court of competent jurisdiction, to be unconstitutional, or under an interpretation of such provision subsequently held by such court, to be erroneous.

(emphasis added).

The first question to be examined under the Refund Act is whether the Associations have filed a written and verified claim for refund with the various political subdivisions. The current record reveals no such written claim addressed to the school districts or the townships. The only “claims” made upon the County are the instant appeals and they are silent as to refund.

Even if evidence is produced that written claims were made, the Board contends that the Associations are not entitled to a refund because they had a specific remedy to refund under the Assessment Law. We partially agree.¹⁹ As noted, the UPCA went into effect on February 2, 1997. The assessment notices for 1997 would have been issued in July 1996 for the 1997 calendar year. Township and county real estate taxes are imposed on a calendar year basis whereas school taxes are imposed on a fiscal year basis beginning July 1. The right to appeal the 1996 assessment notices would have expired prior to the effective date of the UPCA. Therefore, the Associations would have had no opportunity to appeal the assessments for the 1997 township and county and the 1997-1998 school tax bills under the Assessment Law.²⁰ However, the Associations did have a right to challenge the assessment notices issued in July 1997 but failed to do so.

¹⁹ The Associations cite *Schaefer Flower Shop, Inc. v. Dallastown Area School District*, 21 D & C 3rd 355 (York Co. 1981) for the proposition that a taxpayer states a cause of action under the Refund Act for refund of taxes paid pursuant to a challenged assessment because the Fourth to Eighth Class County Assessment Law did not authorize the Board of Assessments to grant refunds. However, with all due respect to our York County brethren, that case, for reasons unknown, failed to cite Section 704(e), which we have set forth above as authority for refund of excess tax payments. That provision has been part of the law since its enactment in 1943.

²⁰ We would question whether the Associations have a right to a refund for taxes paid in 1997. The future events rule of §5102(b) of the UPCA would preclude a challenge to an assessment issued prior to February 2, 1997.

The Associations counter that the Refund Act offers another exception to the limitation on seeking a refund. If a refund is for money paid under an interpretation of a statute, which is later held by a court to be erroneous, the Refund Act will allow the taxpayer to pursue the refund. Here, the Board failed to apply the provisions of the UPCA when the assessment notices were issued in July 1997. The Associations paid taxes on the basis of that interpretation, which, by this Opinion, is held to have been erroneous. Therefore, it would appear that the Associations would be entitled to refunds under the Refund Act for taxes paid in response to the 1997 assessment notice even though they technically had a right to appeal those assessments under the Assessment Law.

However, as noted above, we are not presently in a position to determine whether written claims have been made under the Refund Act. We believe such claims are a condition precedent to the right to judicially demand a refund under the Refund Act.²¹ Therefore, at this time we are only prepared to direct refunds for the 1999 and 2000 township and county real estate taxes and the 1999-2000 and 2000-2001 school taxes paid by the Associations.

The Associations also claim they are entitled to interest on the refunds. The Board argues that the Assessment Law does not specifically authorize the payment of interest on a refund, therefore, it is improper to require a taxing body to pay interest to the Associations in this case. We are compelled to agree with the Associations. Our Supreme Court made clear in *Cities Service Oil Company v. City of Pittsburgh*, 297 A.2d 466 (Pa. 1972) that interest is due under the circumstances presented here, when it held that,

If a taxpayer is entitled to a tax refund, he is also entitled to interest on the refund so long as no statute or public policy militates against it.

That case involved challenged overpayments of mercantile tax. However, *Cities Service* has been applied to cases challenging real estate tax assessments. See *Rittenhouse Plaza v. Tax Review Board*,

²¹Furthermore, and perhaps most importantly, the Refund Act specifically requires a taxpayer to institute an action of assumpsit if the political subdivision fails or refuses to refund taxes to which it is not entitled. 72 P.S. §5566c. Such refunds are not available in appeals to a tax assessment board. See *Rittenhouse Plaza v. Tax Review Board*, 694 A.2d 1170 (Pa. Comlth. 1997).

supra.; *Consolidate Coal Company v. Board of Assessment Appeals of Greene County*, 617 A.2d 858 (Pa. Comlth. 1992), *Welsh Grant Developers Company v. Board of Revision of Taxes*, 503 A.2d 98 (Pa. Comlth. 1986).

The *Cities Service* case determined the point at which the taxpayer is entitled to interest varies with the circumstances. The Supreme Court ruled that,

a court can decide that a taxing body has improperly detained the taxpayer's money from a point in time prior to the determination that the detention is improper . . . there is a distinction between those cases where the amount of the refund is in issue and not the tax itself and those cases where the amount of the refund is not in issue because the tax itself is invalid . . . In the former situation, the tax is valid and, therefore, there is not an improper detention until it is determined that the amount of the tax was incorrectly computed, requiring the lower court to establish the amount of the refund, interest accruing from the date of the lower court's decision, e.g., a real estate tax based on an incorrect property assessment . . . However, where a taxpayer pays a specific amount under protest and it is later determined that the taxing authority had no right to demand payment of this tax, then the detention was improper from the date the tax was paid, interest accruing from that date provided a demand for refund has been made.

297 A.2d at 469 (citations omitted).

In the matter sub judice, the Board argues that interest, if any, should only accrue from the date of this court's determination because it is the method of calculating the assessed value of the common areas which is being challenged here rather than the Board's right to assess property under the Fourth to Eighth Class County Assessment Law. That argument, however, overlooks a very fundamental aspect of the UPCA. The UPCA is a legislative mandate that common areas of planned communities are not to be assessed or taxed. This mandate supersedes the more general aspects of the assessment statute. Here the Associations have not challenged the methodology used to compute the assessment but rather the right to

impose the assessment in the first instance. Having concluded that the Board had no such right, the detention of the tax was improper from the date the tax was paid and a demand for refund was made (whichever date is later).

The *Cities Service* case also makes clear that simple interest is applicable to refunds under the Assessment Law. The Associations' argument that interest should be calculated at a higher rate pursuant to 72 P.S. §5566b(c)(1) and Section 806.1 of the Fiscal Code is misplaced. Enhanced rates of interest are only available where statutorily provided for and these appeals were not taken under such statutory authority. See *Rittenhouse Plaza v. Tax Review Board*, *supra*.

Finally, the Associations argue they are entitled to legal fees. Initially, we note that entitlement to attorney fees was not an issue to be addressed at this time. Nevertheless, because the amount being requested is significant and because each party discussed the issue in their briefs, we will make a few comments.

As a general rule, a litigant is not entitled to recovery of attorney fees absent contractual agreement or statutory authority. The Assessment Law makes no specific mention of attorney fees although §5453.704(e) does allow the court to apportion the costs of the appeal and hearing as it so directs. The Associations contend that they are entitled to attorney fees pursuant to provisions of the Judicial Code, specifically, 42 Pa. C.S.A. §2503(9), which provides,

The following participants shall be entitled to a reasonable counsel fee as part of the taxable costs of the matter:

...

(9) Any participant who is awarded counsel fees because the conduct of another party in commencing this matter or otherwise was arbitrary, vexatious or in bad faith.

A property owners association unsuccessfully attempted to recover attorney fees under 42 Pa. C.S.A. §2503(9) in *Timber Trails Community Association v. County of Monroe*, 614 A.2d 342 (Pa. Comlth. 1992). The underlying issue was the assessed value to be given common areas. The case arose several years after the Commonwealth Court's decision in *County of Monroe v. Pinecrest*

Development Corp., supra. The Association argued that the tax assessments imposed by Monroe County on the common areas were arbitrary and had no factual basis. The Court wrote that,

Generally, attorney's fees may be awarded where a party with great resources but little law on his or her side acts in bad faith to protract litigation in an attempt to wear down an opponent to financial exhaustion . . . The instant matter does not present such a situation. (citations omitted).

614 A.2d at 347.

Although the issue of attorney fees may be premature at this time, there has been no evidence presented to date suggesting that the Board is acting in bad faith. Certainly, the applicability of the UPCA seemed rather straightforward to the Associations but the constitutional and statutory issues raised by the Board were genuine, especially considering the recent enactment of the UPCA and the lack of case authority analyzing its various complex provisions.

Accordingly, we enter the attached Order.

ORDER OF COURT

AND NOW, this 4th day of October, 2000, in consideration of the attached Opinion, this Court determines that:

1. President Judge Spicer's Opinion dated June 2, 1999, only addressed the issue whether the Uniform Planned Community Act violates Article 8 Section 2 of the Pennsylvania Constitution.
2. The Lake Meade and Lake Heritage subdivisions are planned communities as contemplated by the Uniform Planned Community Act, but only as to events and circumstances occurring after February 2, 1997.
3. Section 5105(b) of the Uniform Planned Community Act applies to the common facilities owned by the Lake Meade Property Owners Association, Inc. and the Lake Heritage Property Association, Inc.
4. The Uniform Planned Community Act does not violate the Uniformity Clause of the Pennsylvania Constitution, Article VIII Section 1.

5. Whether the County of Adams will be required to conduct a countywide real estate tax reassessment is irrelevant to the taxpayer's rights under the Uniform Planned Community Act.
6. Under these appeals Lake Meade Property Owners Association, Inc. and Lake Heritage Property Owners Association, Inc.:
 - a. Are entitled to a refund of the 1999 and 2000 county and township real estate tax and the 1999-2000 and 2000-2001 school real estate tax paid. Said refunds to be paid with simple interest of 6% per annum from the date of payment or the date of written demand for refund, whichever shall be later.
 - b. Are not entitled to a refund for any other tax.
7. The provisions of Section 1 of the Act of May 21, 1943, P.L. 349, as amended, 72 P.S. 5566b (Refund Act) are not applicable to these appeals.
8. The Petitioners have not established entitlement to recovery of attorney fees.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-381 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of August, 2001, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

TRACT NO. 1: BEGINNING for a corner at a point in the centerline of Township Road No. T-673 (Shottie Road) at lands now or formerly of Richard Rummell; thence along said Rummell's lands, and through a steel pin set back thirty (30) feet from the beginning of this course, North eighty-four (84) degrees forty-eight (48) minutes thirty-seven (37) seconds East ninety-one and twelve hundredths (91.12) feet to a steel pin; thence along the same North fourteen (14) degrees fifty-five (55) minutes thirty-seven (37) seconds West three hundred eight and forty-five hundredths (308.45) feet to a steel pin at lands now or formerly of Curvin Study; thence along said Study's lands North eighty-four (84) degrees fifty-eight (58) minutes nineteen (19) seconds East one hundred forty and four hundredths (140.04) feet to a steel pin at lands now or formerly of Eli Byler; thence along said Byler's lands South fourteen (14) degrees thirty-two (32) minutes thirty (30) seconds East five hundred fifteen and seventy-five hundredths (515.75) feet to a steel pin at lands now or formerly of Francis Stainer; thence along said Stainer's lands North sixty (60) degrees no (00) minutes no (00) seconds West one hundred ninety-four (194) feet to a steel pin; thence along the same and through a steel pin set back thirty (30) feet from the terms of this course, South forty-five (45) degrees fifteen (15) minutes no (00) seconds West one hundred (100) feet to a point in the centerline of Township Road T-673, aforesaid; thence along the centerline of said Township Road T-673 North fifteen (15) degrees no (00) minutes no (00) seconds West one hundred fifty-nine and fifty hundredths (159.50) feet to the point and place of BEGINNING. CONTAINING 1.7038 Acres, neat measure. The foregoing description has been prepared in accordance with the survey of J.H. Rife, Registered Engineer, dated September 5, 1972.

TRACT NO. 2: BEGINNING at a spike in the center of the public road leading to the Hamey-Littlestown Highway, said spike being on line of other lands now or

formerly of Granville A. Study and being south forty-five (45) degrees thirty (30) minutes West from a rail post along the South side of said public road; thence along other lands now or formerly of Granville A. Study and through said rail post North forty-five (45) degrees thirty (30) minutes East one hundred (100) feet to a stake; thence by same South sixty (60) degrees East three hundred sixty-three and three-tenths (363.3) feet to a rail post; thence by same South sixty-three and three-tenths (363.3) feet to a rail post; thence by same South sixty-three (63) degrees fifty-six (56) minutes West three hundred fifty-one (351) feet through a stake to a spike in the center of said public road, said stake being North sixty-three (63) degrees fifty-six (56) minutes East sixteen and five-tenths (16.5) feet from the spike in the middle of said public road; thence along the middle of said public road North fifteen (15) degrees West two hundred seventy-five (275) feet to a spike, the place of BEGINNING. CONTAINING 1 acre and 77 perches. This description was taken from a Draft of survey made March 15, 1952, by LeRoy H. Winebrenner, R.S.

TITLE TO SAID PREMISES IS VESTED IN Michael W. Meadows and M. Susan Meadows, husband and wife by Deed from Wayne L. Sentz and Laurel L. Sentz, husband and wife dated 11/30/88, recorded 12/5/88, in Record Book 508, page 1045.

Premises being: 40 Schottie Road, Littlestown, PA 17340

Tax Parcel No. G18-30

SEIZED and taken into execution as the property of **Michael W. Meadows & M. Susan Meadows** and to be sold by me

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 27, 2001, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/29, 7/6 & 13

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-128 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 31st day of August, 2001, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate in the Borough of Biglerville, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point in the center of a 16 foot alley at a corner of land now or formerly of Ralph and Donald Shetter; thence along land now or formerly of the said Ralph and Donald Shetter South 86-1/2 degrees East, 48.4 feet to a point; thence along land now or formerly of J. Joke Slaybaugh and crossing a 12 foot alley South 2 degrees West, 58.2 feet to an iron pin; thence along land now or formerly of Rice, Trew and Rice North 82 degrees West, 57 feet to a point eight feet from store building; thence recrossing said alley and running in the center of the aforesaid 16 foot alley, along land now or formerly of C.H. Musselman Company North 10 degrees East, 57.2 feet to the point, the place of BEGINNING. CONTAINING 11 perches and 93 square feet.

Parcel ID #: 4-41

Being Known as: 139 E. York St., Biglerville, PA 17307

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 24, 2001, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/6, 13 & 20

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 00-S-1171 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 31st day of August, 2001, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

BEING Lot No. 215 in Section W, Charnita, Inc. dated January 3, 1970, prepared by Gordon L. Brown, R.S., recorded in Adams County Plat Book No. 1, page 66 bounded and described as follows, to wit:

BEGINNING at a point in the center of Bonnie Trail at Lot No. 216; thence by said lot, South 60 degrees 17 minutes 40 seconds East, 225 feet to land now or formerly of Joseph M. Farkas; thence by said lands South 29 degrees 42 minutes 20 seconds West, 100 feet to Lot No. 214; thence by said Lot, North 60 degrees 17 minutes 40 seconds West, 225 feet to a point in the center of said Bonnie Trail, thence in said Bonnie Trail North 29 degrees 42 minutes 20 seconds East, 100 feet to the place of BEGINNING.

BEING the same premises which Dwayne E. Mort and Sharon K. Mort, by Deed dated December 30, 1996 and recorded in the Office of the Recorder of Deeds of Adams County on December 31, 1996, in Deed Book Volume 1310, Page 118, granted and conveyed unto Kenneth R. Hurley, Sr. and Mary A. Hurley.

Parcel No. 28-96

GRENE & BIRSIC, P.C.

By: /s/Kristine M. Faust
Kristine M. Faust, Esquire
Attorneys for Plaintiff
One Gateway Center, Nine West
Pittsburgh, PA 15222
(412) 281-7650

SEIZED and taken into execution as the property of **Kenneth R. Hurley, Sr. & Mary A. Hurley** and to be sold by me

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 24, 2001, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/13, 20 & 27

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-326 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of September, 2001, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in the Borough of Arendtsville, Adams County, Pennsylvania, containing 12,060 square feet, being designated as Lot No. 6 as shown on a plan of lots known as Glenwood Development in Plat Book 60 at page 90, having an address of 33 Glenwood Drive.

BEGINNING at a steel rod on the edge of a 50 foot right of way known as Glenwood Drive at corner of Lot No. 5, as shown on the Final Plan of Glenwood Development identified below; thence by Lot No. 5 North 39 degrees 58 minutes 15 seconds East, 154.10 feet to a steel rod at corner of Lot No. 5, as shown on said Plan and on line of other land now or formerly of Glenn E. Simpson & Son, Inc.; thence on line of other land now or formerly of Glenn E. Simpson & Son, Inc., South 16 degrees 42 minutes 35 seconds East, 133.55 feet to a steel rod at corner of Lot No. 7, as shown on said Plan; thence by Lot No. 7, South 63 degrees 32 minutes 45 seconds West, 104.02 feet to a steel rod at corner of Lot No. 7, as shown on said Plan and on the edge of a 50 foot right of way known as Glenwood Drive; thence continuing along the 50 foot right of way known as Glenwood Drive by a curve to the left, the radius of which is 175.00 feet, having an arc distance of 72.01 feet and a chord bearing and distance of North 38 degrees 14 minutes 30 seconds West, 71.30 feet to a steel rod on the edge of a 50 foot right of way known as Glenwood Drive at corner of Lot No. 5, as shown on said Plan, the place of BEGINNING. CONTAINING 12,060 square feet.

BEING THE SAME premises which Glenn E. Simpson & Son, Inc., a Pennsylvania corporation, by its Deed dated September 11, 1992, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania on September 25, 1992 in Record Book 642, page 981, granted and conveyed unto Donald G. Heffner and Debra W. Heffner, husband and wife, the Defendants herein.

Tax I.D. No.: Map 6, Parcel 140

SEIZED and taken into execution as the property of **Donald Heffner & Debra W. Heffner** and to be sold by me

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 15, 2001, and distribution will be made in

accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/13, 20 & 27

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN of the filing in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, PA of an application for registration under the Fictitious Names Act. The name of the business is RT. 30 SELF-STORAGE & CAR WASH, with its principal place of business at 31 Tiffany Lane, Gettysburg, PA 17325. The owner of the business is KJC Enterprises, L.L.C., of 31 Tiffany Lane, Gettysburg, PA 17325.

Teeter, Teeter & Teeter

7/13

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 LOUISA J. CURRENS, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Ms. June Warner, 46 Crouse Park, Littlestown, PA 17340; Ms. Bernice J. Fasnacht, 105 Holler Avenue, Shippensburg, PA 17257-2133

Attorney: David K. James, III, Esq., 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF ANNE W. DICKERSON, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Carol L. Dickerson, 14 Stephen Circle, Hanover, PA 17331

Attorney: Claudia L. DeArment, Esq., Korsak & DeArment, 33 North Queen Street, York, PA 17403

ESTATE OF WILLIAM C. NEWELL, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Personal Representative: Virginia E. Newell, c/o Patterson & Kiersz, PC, 239-B East Main Street, Waynesboro, PA 17268-1681

Attorney: Patterson & Kiersz, PC, 239-B East Main Street, Waynesboro, PA 17268-1681

ESTATE OF RUTH Y. ROBERTS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Earl W. Roberts, Jr., 1210-205 Clements Bridge Road, Barrington, NJ 08007

Attorney: Donald W. Dorr, Esq., Buchen, Wise & Dorr, 126 Carlisle Street, Hanover, PA 17331

ESTATE OF MARY HELEN SWOPE, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Susan Marie Thompson, 158 Early Avenue, Gettysburg, PA 17325

Attorney: Robert E. Campbell, Esq., Campbell & White, 112 Baltimore Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF BENEDICT E. HUBER, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executor: Benedict E. Huber, Jr., 2129 Wood Avenue, Colorado Springs, CO 80907

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

ESTATE OF CARL C. SLAYBAUGH, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executor: David L. Smiley, 150 Tree Lane Road, Aspers, PA 17304

Attorney: Matthew L. Guthrie, Esq., Guthrie, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331

THIRD PUBLICATION

ESTATE OF CALVIN F. BREAM, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Co-Executors: Calvin P. Bream, 7903 Hope Valley Court, Adamstown, MD 21710; Thomas W. Bream, 4690 Charles Road, Mechanicsburg, PA 17055

Attorney: Matthew R. Battersby, Esq., Battersby & Sheffer, P O Box 215, Fairfield, PA 17320

ESTATE OF IVORY R. ENSOR, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Administrator: Judy I. Sheppard, 170 Woodland Road, Huntingdon Valley, PA 19006

Attorney: Robert E. Campbell, Esq., Campbell & White, 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF WELDO W. FUNT, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executor: Daniel Allen Funt, 18 Loop Drive, Hanover, PA 17331

Attorney: Robert E. Campbell, Esq., Campbell & White, 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF KATHRYN C. RYON, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: William Louis Ryon, Jr., 9003 Barb Anne Court, Springfield, VA 22152; James Percival Ryon, 121 Ruth Avenue, Hanover, PA 17331; Roderick Naylor Ryon, 904 Chestnut Hill Avenue, Baltimore, MD 21218

Attorney: Catherine J. Gault, Esq., 31 S. Washington Street, Gettysburg, PA 17325

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 00-S-330 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of August, 2001, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING for a corner at an existing steel pin on the southerly edge of Applewood Drive at previously approved Lot No. 3 as shown on the hereinafter referred to Subdivision Plan; thence along said previously approved Lot No. 3, the following two (2) courses and distances: 1) South eleven (11) degrees fifty-eight (58) minutes seven (07) seconds West three hundred twenty-six and twenty-three hundredths (326.23) feet to an existing steel pin; 2) South seventy-two (72) degrees seven (07) minutes three (03) seconds West three hundred eighty-six and twenty-seven hundredths (386.27) feet to an existing steel pin at lands now or formerly of Charles R. Chubb as shown on the hereinafter referred to Subdivision Plan; thence along said last mentioned lands now or formerly of Charles R. Chubb, South eighty-five (85) degrees five (05) minutes twenty (20) seconds West two hundred fifty-five and eighty hundredths (255.80) feet to a steel pin (set) at lands now or formerly of Warren T. Becker as shown on the hereinafter referred to Subdivision Plan; thence along said last mentioned lands now or formerly of Warren T. Becker, North thirty-two (32) degrees fifty-one (51) minutes thirty (30) seconds West, one thousand four hundred twenty-six and thirty-seven hundredths (1,426.37) feet to an existing stone at lands now or formerly of Raymond G. Burkett and Martha E. Fisher as shown on the hereinafter referred to Subdivision Plan; thence along said last mentioned lands now or formerly of Raymond G. Burkett and Martha E. Fisher and also along lands now or formerly of Paul C. Sipe, Jr. as shown on the hereinafter referred to Subdivision Plan, North twenty-six (26) degrees no (00) minutes no (00) seconds East eight hundred forty-five and twenty-eight hundredths (845.28) feet to a steel pin (set) at lands now or formerly of Donald J. Sneeringer as shown on the hereinafter referred to Subdivision Plan; thence along said last mentioned lands now or formerly of Donald J. Sneeringer and also along lands now or formerly of Paul C. Sipe, Jr. as shown on the hereinafter referred to Subdivision Plan, North eighty-eight (88) degrees fifty-two (52) minutes ten (10) seconds, East seven hundred thirty-five and ninety hundredths (735.90) feet to an existing steel pin at lands now or formerly of Elmer H. Miller, Jr. as shown on the hereinafter referred to Subdivision Plan; thence along

said last mentioned lands now or formerly of Elmer H. Miller, Jr., South thirteen (13) degrees forty-eight (48) minutes thirty (30) seconds East three hundred eighteen and forty-two hundredths (318.42) feet to a point at lands now or formerly of Mitchell O. Diviney as shown on the hereinafter referred to Subdivision Plan; thence along said last mentioned lands now or formerly of Mitchell O. Diviney, South thirteen (13) degrees twenty-one (21) minutes ten (10) seconds East two hundred sixty-six and forty-one hundredths (266.41) feet to a steel pin (set) at lands now or formerly of John C. Leese as shown on the hereinafter referred to Subdivision Plan; thence along said last mentioned lands now or formerly of John C. Leese, South seventy-eight (78) degrees fifty-nine (59) minutes twenty-two (22) seconds West one hundred fifty-eight and thirty-seven hundredths (158.37) feet to an existing steel pin at previously approved Lot No. 5 on the hereinafter referred to Subdivision Plan; thence along said previously approved Lot No. 5, the following two (2) courses and distances: 1) South forty-nine (49) degrees fifty-nine (59) minutes twenty-four (24) seconds West one hundred eighty-eight and twenty-five hundredths (188.25) feet to an existing steel pin; 2) South forty (40) degrees no (00) minutes thirty-six (36) seconds East, seven hundred twenty-seven and thirty-five hundredths (727.35) feet to an existing steel pin at lands now or formerly of Robert E. Lawyer as shown on the hereinafter referred to Subdivision Plan; thence along said last mentioned lands now or formerly of Robert E. Lawyer, the following three (3) courses and distances: 1) South eleven (11) degrees fifty-eight (58) minutes seven (07) seconds West one hundred seventy and two hundredths (170.02) feet to an existing steel pin; 2) South seventy-eight (78) degrees one (01) minute fifty-three (53) seconds East four hundred forty-two and sixty-three hundredths (442.63) feet to a point; 3) by a curve to the right having a radius of two hundred eighty (280.00) feet, the long chord of which is South sixty-six (66) degrees forty-nine (49) minutes one (01) second East one hundred eight and ninety-one hundredths (108.91) feet for an arc distance of one hundred nine and sixty-one hundredths (109.61) feet to a point on the northerly edge of Applewood Drive aforesaid, where it intersects with Township Road (T-706) as shown on the hereinafter referred to Subdivision Plan; thence in and along Township Road (T-306), South twenty-eight (28) degrees fifty-three (53) minutes fifty-three (53) seconds East one hundred sixty-two and forty-one hundredths (162.41) feet to a point in the centerline of SR-0194 (Abbottstown Pike) as shown on the hereinafter referred to Subdivision Plan; thence crossing said SR-0194 (Abbottstown Pike) North seventy-eight (78) degrees six (06) minutes twelve (12) seconds West twenty-seven and fifty-nine hundredths (27.59) feet to a point on the aforesaid southerly edge of Applewood Drive; thence in and along the southerly

edge of Applewood Drive, the following three (3) courses and distances: 1) by a curve to the left having a radius of two hundred thirty (230.00) feet, the long chord of which is North thirty-two (32) degrees twelve (12) minutes one (01) second West sixty-three and forty-seven hundredths (63.47) feet for an arc distance of sixty-three and sixty-seven hundredths (63.67) feet to an existing steel pin; 2) by a curve to the left having a radius of two hundred thirty (230.00) feet, the long chord of which is North fifty-nine (59) degrees forty (40) minutes fifty-two (52) seconds West one hundred forty-nine and thirty-eight hundredths (149.38) feet for an arc distance of one hundred fifty-two and fourteen hundredths (152.14) feet to a point; 3) North seventy-eight (78) degrees one (01) minute fifty-three (53) seconds West three hundred forty-two and sixty-three hundredths (342.63) feet to the point and place of BEGINNING. CONTAINING 42.276 acres.

The above description was taken from a Survey prepared by Mort, Brown and Assoc. for TRIPL0, INC., dated April 3, 1989, bearing File No. E-496.

SEIZED and taken into execution as the property of **Joseph A. & Wanda J. Lawrence** and to be sold by me

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 27, 2001, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/29, 7/6 & 13

Adams County Legal Journal

Vol. 43

July 20, 2001

No. 8, pp. 52-60

IN THIS ISSUE

BITTLE VS. COMMONWEALTH

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-128 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 31st day of August, 2001, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate in the Borough of Biglerville, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point in the center of a 16 foot alley at a corner of land now or formerly of Ralph and Donald Shetter; thence along land now or formerly of the said Ralph and Donald Shetter South 86-1/2 degrees East, 48.4 feet to a point; thence along land now or formerly of J. Joke Slaybaugh and crossing a 12 foot alley South 2 degrees West, 58.2 feet to an iron pin; thence along land now or formerly of Rice, Trew and Rice North 82 degrees West, 57 feet to a point eight feet from store building; thence recrossing said alley and running in the center of the aforesaid 16 foot alley, along land now or formerly of C.H. Musselman Company North 10 degrees East, 57.2 feet to the point, the place of BEGINNING. CONTAINING 11 perches and 93 square feet.

Parcel ID #: 4-41

Being Known as: 139 E. York St., Biglerville, PA 17307

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 24, 2001, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/6, 13 & 20

INCORPORATION NOTICE

SNOWMOBILE CLUB OF ADAMS COUNTY, INC. has been incorporated under the provisions of the Business Corporation Law of 1988.

7/20

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation - Domestic Nonprofit Corporation, were filed by CAMP HOPE OF EAST BERLIN, PA, with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, under the provisions of 15 Pa. C.S. Section 5306, on June 13, 2001. The corporation is incorporated under the nonprofit corporation law of 1988 for the purpose of religious experiences in a camping environment.

Thomas R. Nell, Esq.
340 Nell Road
East Berlin, PA 17316

7/20, 27 & 8/3

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, Harrisburg, PA on May 14, 2001, on behalf of 61st/23rd REGIMENTS PENNSYLVANIA VOLUNTEER INFANTRY, INC., a nonprofit corporation organized under the provisions of the Pennsylvania Nonprofit Corporation Law of 1988, for any lawful purpose including educating the public about Civil War battles and the lifestyle of Americans during the Civil War.

Amy E.W. Ehrhart, Esq.
Solicitor

7/20

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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

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

Periodicals postage paid at Gettysburg, PA 17325.

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

All rights reserved.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-351 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 31st day of August, 2001, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those two lots of ground situate in Franklin Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point in the center of a proposed road at Lot No. 13; thence by said lot and through a steel pin set 30 feet back on the line, North 21 degrees 25 minutes 34 seconds East, 246.20 feet to a steel pin at lands now or formerly of Coppertop Orchards; thence by said lands, South 78 degrees 19 minutes 08 seconds East, 105 feet to a steel pin at Lot No. 15; thence by said lot, South 13 degrees 07 minutes 20 seconds East, 243.94 feet to a point in the center of said proposed road; thence in said proposed road by a curve to the right, the radius of which is 350 feet, for an arc distance of 201.40 feet, and having a chord bearing and distance of North 86 degrees 38 minutes 14 seconds West, 198.63 feet to a point in said proposed road; thence continuing in said proposed road North 70 degrees 09 minutes 08 seconds West, 53 feet to the place BEGINNING.

BEGINNING at a point in the center of a proposed road at Lot No. 14; thence by said lot and through a steel pin set 30 feet back on the line, North 13 degrees 07 minutes 20 seconds West, 243.94 feet to a steel pin at lands now or formerly of Coppertop Orchards; thence by said lands, South 78 degrees 19 minutes 08 seconds East, 292.01 feet to a point in the center of said proposed road; thence in said proposed road by a curve to the right; the radius of which is 350 feet, for an arc distance of 300.73 feet, and having a chord bearing and distance of South 52 degrees 15 minutes 46 seconds West, 291.57 feet to the place of BEGINNING.

BEING the same premises which Kathy Jo Ott, single, by Deed dated December 16, 1999 and recorded in the Office of the Recorder of Deeds of Adams County on December 16, 1999, in Deed Book Volume 1971, Page 123, granted and conveyed unto Dustin D. Sanders and Sara O. Sanders.

Parcel No. B12-40

GRENNEN & BIRSIC, P.C.

By: /s/Kristine M. Faust

Kristine M. Faust, Esquire

Attorneys for Plaintiff

One Gateway Center, Nine West

Pittsburgh, PA 15222

(412) 281-7650

SEIZED and taken into execution as the property of **Dustin D. Sanders & Sara O. Sanders** and to be sold by me

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 24, 2001, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/6, 13 & 20

NOTICE

The Pennsylvania Office of Attorney General is seeking a member of the Bar with complex civil litigation experience to fill a Deputy Attorney General position in the Tobacco Enforcement Section in Harrisburg. Primary duties include reviewing potential violations of the Tobacco Master Settlement Agreement; enforcing the Tobacco Settlement Agreement Act of 2000 involving non-participating tobacco companies located in the U.S. and abroad; and defending the Commonwealth from actions seeking to challenge the MSA or to obtain part of the tobacco settlement funds. Interested candidates should submit a resume, writing sample, salary history and requirement to Bruce Sarteschi, Office of Attorney General, 14th Fl, Strawberry Sq, Harrisburg, PA 17120. Salary commensurate with experience/excellent benefits package. The Pennsylvania Office of Attorney General is an equal opportunity employer.

7/13 & 20

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 99-S-783 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 31st day of August, 2001, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the right, title, interest and claim of **Ronnie Reed and Sharon K. Reed** of, in and to:

ALL the following described real estate situated in the Township of Mount Pleasant, County of Adams, Commonwealth of Pennsylvania. Having erected thereon a dwelling known and numbered as 474 Smoketown Road, Hanover, PA 17331. Deed Book Volume 1757, Page 223, Parcel No. J14.

SEIZED and taken into execution as the property of **Ronnie Reed & Sharon K. Reed** and to be sold by me

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 24, 2001, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/6, 13 & 20

BITTLE VS. COMMONWEALTH

1. Considerations involving the constitutional prohibition against impairment of contracts must be confined to whether the legislature's action in excusing technical deficiencies in foreign notices were either invalid, and entitled to no effect, or amounted to a de facto repeal of the compact.

2. Courts have held that member states to an Interstate Compact are free to legislate in respect to matters covered by the Compact so long as 1) the legislative action is in approbation and not in reprobation of the Compact; 2) the action does not conflict with the Compact's terms; 3) the change does not give final meaning to the terms of the Compact; and 4) the act does not impose an additional burden upon other members of the Compact. In this case we have a situation where the Pennsylvania Legislature has enacted legislation which is in direct contradiction to the terms of the Compact. However, this legislation applies only to Pennsylvania drivers who come under the Compact. The amendment 1) affects only Pennsylvania drivers, 2) is not in reprobation of the Compact and 3) does not impose additional burdens on other member states. Although the Amendment gives final meaning to the Compact, this meaning is only imposed upon Pennsylvania drivers. Under this analysis, the amendments to the Compact made by the Pennsylvania Legislature are permissible.

3. We start by recognizing that (defendant) enjoys a privacy interest in his social security number. That acknowledgment does not conclude the matter. This Commonwealth has a compelling interest in removing unsafe drivers from the highways. DOT discharges a government function meant to protect the public from unsafe drivers. Social security numbers are important means by which the identity of an individual may be established. (Defendant's) privacy rights are not important enough to override the more important public concerns.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 00-S-182, COREY T. BITTLE VS. COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, BUREAU OF DRIVER LICENSING.

George H. Kabusk, Esq., for Petitioner

Philip L. Zulli, Esq., for Defendant

Spicer, P.J., October 5, 2000.

OPINION IN LICENSE SUSPENSION APPEAL

Corey T. Bittle, petitioner, (Bittle) filed a timely appeal from Department of Transportation's one year suspension of his operating privileges. At the hearing, scheduled for May 30, 2000, certain exhibits were introduced without objection, but no testimony was received. Because Bittle raised numerous legal challenges to the action by Department of Transportation (DOT), the parties agreed to submit arguments on brief. Bittle was given 60 days to file, and DOT 60 days thereafter to respond. In the period that transpired, Supreme Court handed down its decision in consolidated appeals involving

numerous drivers who had their operating privileges suspended because of foreign convictions. Many of the issues presented in our case were addressed in *Commonwealth of Pennsylvania, Department of Transportation v. Elaine M. McCafferty et al.*, 1 E.D. Appeal Docket 1998. Slip opinion dated September 28, 2000.

DOT based its action on a report it received from Ohio Department of Public Safety, indicating that Bittle was convicted of "DUI-Alcohol/Liquor." At the hearing, the court received a letter from Judge Jacob M. Fridline that stated had Bittle been a resident of Ohio, he would have qualified for a diversion program similar to Pennsylvania's Accelerated Rehabilitative Disposition program. If he had participated in Ohio's program, Bittle would have been eligible for an occupational driver's license during his suspension and complete reinstatement of privileges at the end of six months. In addition, Bittle introduced a copy of the reading from a BAC DataMaster, showing an alcohol concentration of .0170, which would have qualified him for four months suspension in Adams County.

Bittle raises 11 challenges to DOT's action. Because *McCafferty et al.* involved a suspension based upon an Ohio conviction, we will dismiss many of Bittle's arguments without a great deal of comment. This is not to minimize counsel's contributions, nor to say that Bittle does not pose some very interesting arguments. The fact is, we are impressed with the efforts of both lawyers.

All issues involve the Driver's License Compact, 75 Pa. C.S.A. §1581. In his eleventh challenge, Bittle points out that the purpose of the Compact is to make "the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable." *Id.*, Article I(b)(2). The compact provides that the driver's home state (Pennsylvania) shall give the same effect to the driver's conduct as if the conduct occurred here. Article IV(a). See also *Petrovick v. Commonwealth, Department of Transportation, Bureau of Licensing*, 559 Pa. 614, 741 A.2d 1264 (1999) citing FN2, Article IV. Thus, he argues that he is entitled to the same treatment as a first time offender would receive in Adams County.

However, suspensions are based upon convictions, *Schrinkel v. Comm., Department of Transportation, Bureau of Driver Licensing*, Pa. , 755 A.2d 690 (2000), and a first offender convicted in Pennsylvania receives the same treatment as did Bittle.

Bittle concedes that caselaw is against his argument based on equitable reasons. *McCafferty* has disposed of the others with respect to this issue (11). All we can say is that first time offenders in Pennsylvania are not always admitted into ARD and that many suffer the same consequences as did Bittle. Unfortunately, he chose to drive in Ohio and subject himself to its laws.

In challenges one through five, he argues that Ohio's notice did not provide all the information required by Article III of the Compact. Three justices agreed with this argument in *McCafferty*, supra. The Compact provides:

Such report shall clearly identify the person convicted, describe the violation specifying the section of the statute, code or ordinance violated, identify the court in which action was taken, indicate whether a plea of guilty or not guilty was entered or the conviction was a result of the forfeiture of bail, bond or other security and shall include any special findings made in connection therewith.

Apparently, the notice in our case did not conform, since it appears to have been the same as that provided in *McCafferty et al.*, and in *Mazurek v. Department of Transportation, Bureau of Driver Licensing*, Pa. Cmwlth. , 717 A.2d 23 (1998).¹

Were this case ruled by the Commonwealth Court's decision, *Id.*, we would be compelled to sustain the appeal. However, we have *McCafferty* and a 1998 amendment to consider. The amendment provided:

1584. Furnishing of information to other states

The Department of Transportation of the Commonwealth shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of Articles III, IV and V of the compact. The omission from any report received by the department from a party state of any information required by Article III of the compact

¹ Department of Transportation's brief indicates allocatur has been granted by Supreme Court in this case.

shall not excuse or prevent the department from complying with its duties under Articles IV and V of the compact.

75 Pa. C.S.A. §1584.

Although the four justices forming the majority in *McCafferty et al.* opined that appellant-drivers had waived challenges based upon contents of notices generated by other states, they discussed the issue anyhow and clearly indicated that such challenges lacked merit. Even so, Bittle argues that “shall” is mandatory², that the legislature had no power to alter compact requirements, and that by attempting to do so abrogated the compact. It must be pointed out that none of Bittle’s contractual rights were impaired by the legislature’s amendment. Considerations involving the constitutional prohibition against impairment of contracts must be confined to whether the legislature’s action in excusing technical deficiencies in foreign notices were either invalid, and entitled to no effect, or amounted to a de facto repeal of the compact.

All justices in *McCafferty et al.* concurred in rejecting constitutional challenges based upon due process and equal protection, but the court did not expressly discuss impairment of contracts. Bittle’s argument may find support in the dissenting opinion, in which three justices refused to approve the legislative excuse expressed in the amendment. These three would have reversed DOT’s suspensions because of deficiencies in notices from various states including Ohio. The opinion, authored by Mr. Justice Cappy, generally confined its consideration to wording of the compact. However, he also said, “I also disagree with the majority’s intimation that the legislative attempt to amend the requirements of Article III by amending 75 Pa.C.S.A. §1584 supports its conclusion, since it is unclear whether this amendment can overrule the mandatory requirements of Article III. Rather, at this time, it is most prudent to limit our review to the plain meaning of the statute.” (slip opinion p.4).

²Mr. Justice Cappy acknowledged in his dissenting and concurring opinion that he had sometimes said (in other dissents) that “shall” could be directory, but still thought that stare decisis required that it be given a mandatory meaning. The form of notice given by various states was the sole basis for dissent by three justices. There was no dissent concerning a suspension based upon a Florida conviction, where all justices found the notice to conform. There were dissents regarding the Ohio suspension.

Even so, we think the majority opinion justifies rejection of Bittle's challenge.

Even if Supreme Court did not directly address the issue, another court has. President Judge Paul H. Millen, of the Court of Common Pleas of Warren County, has written:

Courts have held that member states to an Interstate Compact are free to legislate in respect to matters covered by the Compact so long as 1) the legislative action is in approbation and not in reprobation of the Compact, *Kansas City Area Trans. Auth. v. State of Missouri*, 640 F.2d 173, 174 (8th Cir., 1981) (quoting *Henderson v. Delaware River Joint Bridge Comm.*, 362 Pa. 475, 66 A.2d 843, 849 (1949), 2) the action does not conflict with the Compact's terms, *Roehl Transport Inc. v. Wisc. Div. Of Hearings and Appeals*, 213 Wisc. F.2d 452, 464, 5700 N.W. 2d. 864, 869 (1997) (citing *Kansas City Area Trans. Auth.*, 640 F.2d at 174), 3) the change does not give final meaning to the terms of the Compact, *State Ex. Rel. Dyer v. Simms*, 341 U.S. 22, 28 (1951), and 4) the act does not impose an additional burden upon other members of the Compact. *Nardi v. Delaware River Port Authority*, 88 Pa. Cmwlth. 558, 565 , 490 A.2d 949, 952 (1985). In this case, we have a situation where the Pennsylvania Legislature has enacted legislation which is in direct contradiction to the terms of the Compact. However, this legislation applies only to Pennsylvania drivers who come under the Compact. The amendment 1) affects only Pennsylvania drivers, 2) is not in reprobation of the Compact and 3) does not impose additional burdens on other member states. Although the Amendment gives final meaning to the Compact, this meaning is only imposed upon Pennsylvania drivers. Under this analysis, the amendments to the Compact made by the Pennsylvania Legislature are permissible. *Jaggi v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver License*, 195 of 1999 (Warren County Court of Common Pleas, slip opinion, p. 2).

The majority opinion in *McCafferty et al.* reflects much the same analysis, despite Justice Cappy's criticism that 1) the majority sidestepped the critical issue concerning mandatory requirements expressed in the compact by intimating that the legislature only narrowed its application to Pennsylvania report, and 2) interpreted "shall" as directory and not mandatory. This last criticism was addressed in footnote 13, where the majority confirmed that when a statute unambiguously states that a court shall do something, the word is mandatory. However, "There is nothing in the unambiguous language of Article III to indicate that technical deficiencies in an out-of-state conviction report somehow preclude the license suspensions at issue in this case." The majority went on to hold that mandatory provisions of Article III apply to reports generated by DOT, not received by that department.

Thus, the holding was based upon our highest court's interpretation of the compact. The amendment did nothing more than clarify the issue, without nullifying any of the compact's provisions. This being so, there is no basis for concluding that the 1998 legislative amendment violated any constitutional provision.

The argument that DOT failed to establish that Ohio's DUI law is substantially similar to 75 Pa.C.S.A. §3731, was rejected by all seven justices in *McCafferty*.

Thus, we reject challenges based upon issues 1 through 6 and 11.

Bittle argues that DOT's failure to publish the compact's procedure's manual requires restoration of his operating privileges. We agree with DOT that its action was based upon provisions of the Vehicle Code, not the compact. Furthermore, even assuming that DOT failed to comply with a compact requirement, it would only be the same type of technical deficiency ignored in *McCafferty*. We find no basis for relief. (Issue 6).

Bittle's 7th and 8th contentions relate to information in the Ohio notice. He argues that his social security number should not have been disseminated and that inclusion of information concerning two other drivers renders the notice inadmissible. We start by recognizing that Bittle enjoys a privacy interest in his social security number. *Tribute-Review Publishing Company v. Allegheny County Housing Authority*, Pa. Cmwlth. , 662 A.2d 677 (1995).

That acknowledgement does not conclude the matter. This Commonwealth has a compelling interest in removing unsafe drivers from its highways. DOT discharges a government function meant to protect the public from unsafe drivers. *McCafferty et al.; Pepperling v. Com. Dept. of Trans.*, Pa. Cmwlth. , 737 A.2d 310 (1999). Social security numbers are important means by which the identity of an individual may be established. Bittle's privacy rights are not important enough to override to more important public concerns.

Consideration of the federal Privacy Act of 1974³ does not compel a different result. As was noted in *Tribune-Review*, supra, the federal act protects an individual's right to refuse to divulge his or her social security number⁴ and requires the requesting authority to inform the individual, among other things, whether the number is being requested pursuant to a mandatory disclosure law. Furthermore, the most recent act of Congress in this regard, while protecting some information relating to state motor vehicle records, requires disclosure "in connection with matters of motor vehicle or driver safety." 12 U.S.C. 2721(b).

The names of two other Pennsylvania drivers were included in Bittle's Ohio notice. He argues that this was a violation of those persons' privacy and that the inclusion of irrelevant material makes the notice inadmissible. Bittle has no standing to raise another person's privacy rights, and chaff with kernels does not render a document inadmissible. We will simply ignore the irrelevant parts of the notice. Issue 8 affords no relief.

In issue 9, Bittle argues that the Commonwealth unlawfully delegated legislative and governmental powers to the American Association of Motor Vehicle Administrators, (AAMVA), which is said to control Driver License Compact Commission. Other than contending that this organization is the real power behind the compact, and works aggressively to establish uniform motor vehicle laws

³Commonwealth Court indicated that provisions of the act have not all been codified but may be found in notes to 5 U.S.C. 552a. Other information is available at 37 AmJur2d §6.

⁴This requirement might suggest that Bittle's challenge should have been made in an Ohio court.

throughout our nation⁵, Bittle has pointed to nothing that was delegated that is material to this case. We deal exclusively with legislative provisions and cannot reach this argument. (Issue 9).

The tenth argument is that the compact lacks congressional approval and is therefore void. Bittle's brief presents an interesting history of the compact and attempts to either distinguish or persuade us to ignore *Koterba v. Com. Dept. of Transportation*, Pa. Cmwlth. , 736 A.2d 761 (1999); alloc. dn. 561 Pa. 703, 751 A.2d 195 (2000); cert. dn. S. Ct. , 2000 WL 694192, 68 USLW 3742 (2000). Commonwealth Court began its consideration of the issue by saying:

Koterba's first argument is based upon the compact clause of the United States Constitution, which provides:

No state shall, without the Consent of Congress, lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

U.S. Const. Art. I, Section 10.

In 1958, Congress authorized the states to enter into the compact for the purpose of promoting safe driving on their respective highways. (citation omitted). This legislation was repealed, however, in 1966. Various states joined the Compact before enactment of the federal legislation, while it was in effect, and after its repeal. Pennsylvania purported to join the Compact in 1995, but did not lawfully do so until 1996. (citation omitted) The question presented, then, is the effect of the repeal of the federal statute. (footnotes omitted)

736 A.2d at 763, 764.

The court went on to state:

1. The power of Congress to subsequently alter, repeal or amend its consent is far from clear.

⁵The news of October 4, 2000, while this opinion was being prepared, indicates that Congress has just approved a nationwide standard of .008 BAC for driving under the influence, Hewitt's comments about AAMVA advocating a national comprehensive alcohol countermeasure program suddenly gains credibility. (Brief, p. 26).

2. The constitutional prohibition was directed at the formation of any combination tending to increase political power of states at the expense of those of the United States.
3. The compact did not authorize any member state to exercise powers that it did not enjoy in the absence of the compact.
4. The Driver's License Compact is not the sort of interstate agreement that required congressional approval.

This holding controls us, and we reject challenges based upon issue 10.

ORDER

AND NOW, this 5TH day of October, 2000, the agency's action is affirmed. Costs shall be paid by the petitioner, Corey T. Bittle.

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 KENDALL GRANT BRUMGARD, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Co-Administrators: Rose Marie Brumgard, 2667 York Road, Gettysburg, PA 17325; Gerald L. Brumgard, 2667 York Road, Gettysburg, PA 17325

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

ESTATE OF PAUL R. KNOX, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Sally Ann Raymond, 5819 Hanna Road, Eldersburg, MD 21784

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

ESTATE OF WILLIAM L. LARCAMP, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Diane M. Larcamp, 125 Ridgewood Drive, Gettysburg, PA 17325

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

ESTATE OF SHAWN M. McCLOSKEY, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Administrators: William McCloskey, 4599 Chambersburg Road, Biglerville, PA 17307; Vickie McCloskey, 4599 Chambersburg Road, Biglerville, PA 17307

ESTATE OF HELEN L. SEGRAVES, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Alfred Segraves, 224 N. Stevens Place, Hanover, PA 17331

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

ESTATE OF GLENN E. SHEFFER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrices: Betty Maser, 105 Station Avenue, Haddon Heights, NJ 08035; Ann Wickes, 106 South Jackson Street, Woodbury, NJ 08096

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

ESTATE OF C. AGNES SNEERINGER a/k/a CECELIA AGNES SNEERINGER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Antoinette M. Geiselman, 206 S. Franklin Street, Gettysburg, PA 17325

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

ESTATE OF E. BURNELL WARNER a/k/a ELMER BURNELL WARNER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Lydia F. Warner, 631 South Street, McSherrystown, PA 17344

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

SECOND PUBLICATION

ESTATE OF LOUISA J. CURENS, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Ms. June Warner, 46 Crouse Park, Littlestown, PA 17340; Ms. Bernice J. Fasnacht, 105 Holler Avenue, Shippensburg, PA 17257-2133

Attorney: David K. James, III, Esq., 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF ANNE W. DICKERSON, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Carol L. Dickerson, 14 Stephen Circle, Hanover, PA 17331

Attorney: Claudia L. DeArment, Esq., Korsak & DeArment, 33 North Queen Street, York, PA 17403

ESTATE OF WILLIAM C. NEWELL, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Personal Representative: Virginia E. Newell, c/o Patterson & Kiersz, PC, 239-B East Main Street, Waynesboro, PA 17268-1681

Attorney: Patterson & Kiersz, PC, 239-B East Main Street, Waynesboro, PA 17268-1681

ESTATE OF RUTH Y. ROBERTS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Earl W. Roberts, Jr., 1210-205 Clements Bridge Road, Barrington, NJ 08007

Attorney: Donald W. Dorr, Esq., Buchen, Wise & Dorr, 126 Carlisle Street, Hanover, PA 17331

ESTATE OF MARY HELEN SWOPE, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Susan Marie Thompson, 158 Early Avenue, Gettysburg, PA 17325

Attorney: Robert E. Campbell, Esq., Campbell & White, 112 Baltimore Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF BENEDICT E. HUBER, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executor: Benedict E. Huber, Jr., 2129 Wood Avenue, Colorado Springs, CO 80907

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

ESTATE OF CARL C. SLAYBAUGH, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executor: David L. Smiley, 150 Tree Lane Road, Aspers, PA 17304

Attorney: Matthew L. Guthrie, Esq., Guthrie, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 00-S-1171 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 31st day of August, 2001, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

BEING Lot No. 215 in Section W, Chamita, Inc. dated January 3, 1970, prepared by Gordon L. Brown, R.S., recorded in Adams County Plat Book No. 1, page 66 bounded and described as follows, to wit:

BEGINNING at a point in the center of Bonnie Trail at Lot No. 216; thence by said lot, South 60 degrees 17 minutes 40 seconds East, 225 feet to land now or formerly of Joseph M. Farkas; thence by said lands South 29 degrees 42 minutes 20 seconds West, 100 feet to Lot No. 214; thence by said Lot, North 60 degrees 17 minutes 40 seconds West, 225 feet to a point in the center of said Bonnie Trail, thence in said Bonnie Trail North 29 degrees 42 minutes 20 seconds East, 100 feet to the place of BEGINNING.

BEING the same premises which Dwayne E. Mort and Sharon K. Mort, by Deed dated December 30, 1996 and recorded in the Office of the Recorder of Deeds of Adams County on December 31, 1996, in Deed Book Volume 1310, Page 118, granted and conveyed unto Kenneth R. Hurley, Sr. and Mary A. Hurley.

Parcel No. 28-96

GRENEN & BIRSIC, P.C.

By: /s/Kristine M. Faust
Kristine M. Faust, Esquire
Attorneys for Plaintiff

One Gateway Center, Nine West
Pittsburgh, PA 15222
(412) 281-7650

SEIZED and taken into execution as the property of **Kenneth R. Hurley, Sr. & Mary A. Hurley** and to be sold by me

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 24, 2001, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/13, 20 & 27

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-326 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of September, 2001, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in the Borough of Arendtsville, Adams County, Pennsylvania, containing 12,060 square feet, being designated as Lot No. 6 as shown on a plan of lots known as Glenwood Development in Plat Book 60 at page 90, having an address of 33 Glenwood Drive.

BEGINNING at a steel rod on the edge of a 50 foot right of way known as Glenwood Drive at corner of Lot No. 5, as shown on the Final Plan of Glenwood Development identified below; thence by Lot No. 5 North 39 degrees 58 minutes 15 seconds East, 154.10 feet to a steel rod at corner of Lot No. 5, as shown on said Plan and on line of other land now or formerly of Glenn E. Simpson & Son, Inc.; thence on line of other land now or formerly of Glenn E. Simpson & Son, Inc., South 16 degrees 42 minutes 35 seconds East, 133.55 feet to a steel rod at corner of Lot No. 7, as shown on said Plan; thence by Lot No. 7, South 63 degrees 32 minutes 45 seconds West, 104.02 feet to a steel rod at corner of Lot No. 7, as shown on said Plan and on the edge of a 50 foot right of way known as Glenwood Drive; thence continuing along the 50 foot right of way known as Glenwood Drive by a curve to the left, the radius of which is 175.00 feet, having an arc distance of 72.01 feet and a chord bearing and distance of North 38 degrees 14 minutes 30 seconds West, 71.30 feet to a steel rod on the edge of a 50 foot right of way known as Glenwood Drive at corner of Lot No. 5, as shown on said Plan, the place of BEGINNING. CONTAINING 12,060 square feet.

BEING THE SAME premises which Glenn E. Simpson & Son, Inc., a Pennsylvania corporation, by its Deed dated September 11, 1992, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania on September 25, 1992 in Record Book 642, page 981, granted and conveyed unto Donald G. Heffner and Debra W. Heffner, husband and wife, the Defendants herein.

Tax I.D. No.: Map 6, Parcel 140

SEIZED and taken into execution as the property of **Donald Heffner & Debra W. Heffner** and to be sold by me

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 15, 2001, and distribution will be made in accordance with said schedule, unless

exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/13, 20 & 27

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
NO. 01-S-504

IN RE: LOGAN WAYNE GAY TO BE
KNOWN AS LOGAN WAYNE SHIRLEY

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that on May 11, 2001, the Petition of Ann Shirley was filed in the above-named Court, requesting an Order to change the name of Logan Wayne Gay to Logan Wayne Shirley.

The Court has fixed the day of August 8, 2001, at 9:00 o'clock a.m. in a Courtroom to be designated of the Adams County Courthouse, Gettysburg, Pennsylvania, as the time and place for the hearing on said Petition, when and where all interested parties may appear and show cause, if any, why the request of the Petition should not be granted.

BY THE COURT:
/s/Oscar F. Spicer, P.J.

7/20

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
NO. 01-S-531

IN RE: RENEE MARIA NOWAK TO BE
KNOWN AS RENEE MARIA MARTIN

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that on May 21, 2001, the Petition of Catherine M. Martin was filed in the above-named Court, requesting an Order to change the name of Renee Maria Nowak to Renee Maria Martin.

The Court has fixed the day of September 26, 2001, at 9:00 o'clock a.m. in a Courtroom to be designated of the Adams County Courthouse, Gettysburg, Pennsylvania, as the time and place for the hearing on said Petition, when and where all interested parties may appear and show cause, if any, why the request of the Petition should not be granted.

BY THE COURT:
/s/Oscar F. Spicer, P.J.

7/20

Adams County Legal Journal

Vol. 43

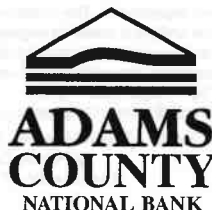
July 27, 2001

No. 9, pp. 61-70

IN THIS ISSUE

SMITH BROTHERS VS. SMITH

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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

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

Periodicals postage paid at Gettysburg, PA 17325.

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

All rights reserved.

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 Wednesday, August 8, 2001, at 9:00 o'clock a.m.

INSKIP—Orphans' Court Action Number OC-64-01. The First and Final Account of Anita Inskip Schulze, Personal Representative of the Estate of Irene E. Inskip, deceased, late of Hamiltonban Township, Adams County, Pennsylvania.

MOTTER—Orphans' Court Action Number OC-80-01. The First and Final Account of Kenneth C. Motter, Executor of the Estate of Lewis U. Motter, deceased, late of Cumberland Township, Adams County, Pennsylvania.

REYNOLD—Orphans' Court Action Number OC-108-00. The First and Final Account of Larry G. Reynold and Deborah A. Reynold Breighner, Co-Executors of the Estate of Gladys I. Reynold, deceased, late of Mt. Pleasant Township, Adams County, Pennsylvania.

TRUMP—Orphans' Court Action Number OC-83-01. The First and Final Account of Arlene M. Smith, Executrix of the Will of Elizabeth K. Trump a/k/a Elizabeth H. Trump, deceased, late of Butler Township, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

7/27 & 8/3

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation - Domestic Non-Profit Corporation were filed with the Department of State, Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on May 23, 2001, for COLONIAL HILLS UNIFORM PLANNED COMMUNITY, INC., under the provisions of the Pennsylvania Non-Profit Corporation Law of 1988.

Barley, Snyder, Senft & Cohen, LLC
Solicitors

7/27

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation - Domestic Non-Profit Corporation were filed with the Department of State, Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on May 30, 2001, for WOODRIDGE HUNT UNIFORM PLANNED COMMUNITY, INC., under the provisions of the Pennsylvania Non-Profit Corporation Law of 1988.

Barley, Snyder, Senft & Cohen, LLC
Solicitors

7/27

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation - Domestic Nonprofit Corporation, were filed by CAMP HOPE OF EAST BERLIN, PA, with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, under the provisions of 15 Pa. C.S. Section 5306, on June 13, 2001. The corporation is incorporated under the nonprofit corporation law of 1988 for the purpose of religious experiences in a camping environment.

Thomas R. Nell, Esq.
340 Nell Road
East Berlin, PA 17316

7/20, 27 & 8/3

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 June 25, 2001, for the purpose of obtaining a Certificate of Incorporation of a business Corporation organized under the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444, No. 177.

The name of the corporation is DANIEL L. GEBHART MASONRY, INC.

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

Daniel L. Gebhart Masonry, Inc.
15 Hillside Drive
Ortanna, PA 17353

7/27

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, in compliance with the requirements of Section 311, of Act 1982 - 295 (54 Pa. C.S. 311), the undersigned entity (ies) announce their intention to file in the Office of the Secretary of the Commonwealth of Pennsylvania, on approximately May 23, 2001, a certificate for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of INCH ENTERPRISES, with its principal place of business at 365 Camp Gettysburg Rd., Gettysburg, PA 17325. The names and addresses of the persons owning or interested in said business are H. J. Tobey, residing at 365 Camp Gettysburg Rd., Gettysburg, PA 17325. The character or nature of the business is children's entertainment.

7/27

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of an Act of the General Assembly, approved December 16, 1982, P.L. 1309, of the filing in the Office of the Secretary of the Commonwealth of Pennsylvania, an Application for Registration of Fictitious Name for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name of "KEVIN'S HEATING & COOLING", with its principal place of business at 33 Appler Court, Littlestown, Pennsylvania 17340. The name and address of the entity owning and/or interested in said business is Kevin O. Strevig, 33 Appler Court, Littlestown, Pennsylvania 17340.

Kevin O. Strevig
33 Appler Court
Littlestown, PA 17340

7/27

SMITH BROTHERS VS. SMITH

1. Generally, the right to preverdict interest for money owing on a contract is a legal right.
2. Even though the jury was not instructed on the issue of prejudgment interest, a trial court may mold the verdict to include it.
3. We rule that plaintiff has not given up its right to preverdict interest by omissions at trial.
4. When interpreting a rule of procedure we are guided by the Rules of Construction.
5. Where a Rule 238 motion for delay damages is not timely filed, the issue is not preserved on appeal. Supreme Court has likened delay damages under Rule 238 to prejudgment interest in respect to encouraging settlement of meritorious claims as soon as reasonably possible.
6. We feel that equitable considerations excuse us from marching in lockstep toward a conclusion commended by logic but decried by common principles of justice.
7. The rules are essential in order to insure [sic] the orderly and equal administration of justice and it is within the discretion of the trial court to require compliance. Looking at the special circumstances of our case, however, we have to recognize that the law until specifically addressed by this opinion may have been confusing. While not excusing the plaintiff's delay, the lack of clear direction makes it less egregious.
8. While it is true that tender of an inadequate amount does not abate interest, no case cited by plaintiff involved cashier's checks retained by plaintiff. Plaintiff still had control of those funds, even though the check was not negotiated. Thus, plaintiff would ordinarily be entitled to post-verdict interest only on the unpaid portion of the verdict.

In the Court of Common Pleas of Adams County, Pennsylvania,
Civil, No. 98-S-637, SMITH BROTHERS, INC. VS. DANIEL A.
SMITH AND CINDY M. SMITH, HIS WIFE.

Henry O. Heiser, III, Esq., for Plaintiff

L. C. Heim, Esq., for Defendants

Spicer, P.J., October 10, 2000.

OPINION ON PETITION TO MOLD VERDICT

This case arises out of a contract for the construction of a new home. Following completion, plaintiff submitted a bill that was based upon time and materials. Contending that the agreement was for a fixed price, defendants paid only a portion. Plaintiff instituted suit for the balance of \$32,464.83.

At trial, the parties agreed that they entered into a contract, but disputed whether it was for a fixed sum or time and material. The jury agreed with plaintiffs, but did not award them the full amount sought. Instead, a verdict for \$30,016.46 was entered on June 21, 2000. The jury was not instructed on interest and none was awarded.

Thus matters stood for awhile, even after the expiration time for the filing of post trial motions. Plaintiff did not enter judgment. The dispute was revived July 21, 2000, when defendants delivered a cashier's check to plaintiff's counsel for the exact amount of the verdict. Counsel refused to mark the case settled, because payment did not include preverdict interest of \$4.93 per day computed from March 4, 1998. Although counsel has not cashed the check, he has not returned it.

On July 31, 2000, plaintiff filed a petition¹ to mold the verdict. However, it withdrew this petition and filed another on August 8, 2000, on which a rule was issued on defendants to show cause why interest should not be added. An answer was filed and argument has occurred. Issues have slightly expanded, with plaintiff presently seeking not only preverdict, but also post verdict interest.

As we view issues raised by the petition and answer, they are:

1. Has plaintiff, by failing to request that the jury award preverdict interest, waived its right to collect it?
2. Is plaintiff's request for preverdict interest properly a motion for post trial relief?
3. If the request properly is a motion for post trial relief, has plaintiff waived the right to relief by failing to file its request for relief within ten days after the verdict?
4. Does plaintiff's retention of the cashier's check for the face amount of the verdict work to stop running of postverdict interest on the amount of the check?

DISCUSSION

1. Waiver by failing to request submission to the jury:

Plaintiff made a demand for interest in its complaint and reaffirmed its demand in reply to new matter. No instruction regarding preverdict interest was requested and no objection was made to instructions given.

¹ The pleading was not verified, nor was it required to be. No facts outside the record were alleged. The requirement that a petition be verified, when facts are alleged that do not appear of record, is no longer expressly required, although comments to Pa.R.C.P. 206.1 indicate the requirement continues. We comment only because the styling of the request may have indicated counsel's belief that he was not filing a post trial motion.

Generally, the right to preverdict interest for money owing on a contract is a legal right.² *Fernandez v. Levin*, 519 Pa. 375, 548 A.2d 1191 (1988). Pennsylvania has adopted the *Restatement of Contracts* § 354, which reads in relevant part:

§ 354. Interest as Damages

- (1) If the breach consists of a failure to pay a definite sum in money or to render a performance with fixed or ascertainable monetary value, interest is recoverable from the time for performance on the amount due less all deductions to which the party in breach is entitled.

Comment:

c. *Where amount due is sufficiently definite.*

Under the rule stated in Subsection (1), a party is not chargeable with interest on a sum unless its amount is fixed by the contract or he could have determined its amount with reasonable certainty so that he could have made a proper tender. Unless otherwise agreed, interest is always recoverable for the non-payment of money once payment has become due and there has been a breach. This rule applies to debts due for money lent, goods sold or services performed, including installments due on a construction contract. The fact that the breach has spared

² We have reviewed cases where preverdict interest was awarded by the trial court molding the verdict or by an appellate court reviewing the case, and have not found any instances where the request was not preserved properly by timely motion at trial. But see *Commonwealth to the Use of Walters Tire Service, Inc.*, *infra* (trial court molded verdict to add interest even though question of interest had never been submitted to jury. Facts indicate that after the jury returned with its verdicts, attorneys for both parties computed the interest); *Fernandez, supra* (right to prejudgment interest is legal right, regardless of when it is demanded. Even though demand for interest was not made in the complaint, demand was made in answer to new matter and raised again following trial in “exceptions to verdict”); *Metropolitan Edison Company v. Old Home Manor, Inc.*, 334 Pa. Super. 25, 482 A.2d 1062 (1984) (trial court added prejudgment interest to verdict after appeal was taken. Issue was not submitted to jury; however, plaintiff timely petitioned for correction of the verdict). It is axiomatic that issues not preserved for appellate review may not be considered by a reviewing court even where the error involves a basic or fundamental mistake. *Arthur v. Kuchar*, 546 Pa. 12, 682 A.2d 1250 (1996).

some expense that is uncertain in amount does not prevent the recovery of interest. The sum due is sufficiently definite if it is ascertainable from the terms of the contract, as where the contract fixes a price per unit of performance, even though the number of units performed must be proved and is subject to dispute. The same is true, even if the contract does not of itself create a money debt, if it fixes a money equivalent of the performance. It is also true, even if the contract does not fix a money equivalent of the performance, if such an equivalent can be determined from established market prices. The fact that the extent of the performance rendered and the existence of the market price must be proved by evidence extrinsic to the contract does not prevent the application of these rules.

Here, the obligation to pay was for a definite sum of money, based on time and materials. Even though the jury was not instructed on the issue of prejudgment interest, a trial court may mold the verdict to include it. *Commonwealth to the Use of Walters Tire Service, Inc. v. National Union Fire Insurance Company*, 434 Pa. 235, 252 A.2d 593 (1969); *Verner v. Shaffer*, 347 Pa. Super. 206, 500 A.2d 479 (1985).

It would have been a simple matter to add interest at or shortly after the conclusion of trial. Complications in this case have not arisen from omissions at trial, but what occurred thereafter. Plaintiff made no move to add to its recovery and defendants tendered what they thought was owing. Legal positions, if not murky, at least lacked crystal clear definition. Defendants, apparently unhappy with the results of trial, discharged trial counsel and acquired another attorney. A great deal of litigious effort has been expended since the three-day trial. We rule that plaintiff has not given up its right to pre-verdict interest by omissions at trial.

2. Rule 227.1 applicability.

As far as we can determine, the rule's applicability to a request to mold a verdict has never been specifically addressed. If we determine that the request does not apply, plaintiff's request must be granted. If

the rule applies, we will have to address the scope and effect of Pa.R.C.P.227.1(c)(1).³

There are suggestions that post verdict motions and motions to mold a verdict may be two different types of motions.⁴ *Verner, supra*. However, language of the rule is certainly broad enough to cover the type of relief plaintiff seeks, and we believe that the numbers of hybrid situations falling outside the rule's ambit should be discouraged.

When interpreting a rule of procedure we are guided by the Rules of Construction. Of particular relevance, "the object of all interpretation and construction of rules is to ascertain and effectuate the intention of the Supreme Court". And, "every rule shall be construed, if possible, to give effect to all its provisions. When words of a rule are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." Pa. R.C.P. 127 (a), (b).

³ Rule 227.1 Post Trial Relief

- (a) After trial and upon the written Motion for Post-Trial Relief filed by any party, the court may (1) order a new trial as to all or any of the issues; or (2) direct the entry of judgment in favor of any party; or (3) remove a nonsuit; or (4) affirm, modify or change the decision or decree nisi; or (5) enter any other appropriate order.
- (b) Post trial relief may not be granted unless the grounds therefor, (1) if then available, were raised in pre-trial proceedings or by motion, objection, point for charge, request for findings of fact or conclusions of law, offer of proof or other appropriate method at trial; and (2) are specified in the motion. The motion shall state how the grounds were asserted in pre-trial proceedings or at trial. Grounds not specified are deemed waived unless leave is granted upon cause shown to specify additional grounds.
- (c) Post-Trial motions shall be filed within ten days after (1) verdict, discharge of the jury because of inability to agree, or nonsuit in the case of a jury trial; or (2) notice of nonsuit or the filing of the decision or adjudication in the case of a trial without jury or equity trial.

⁴ In describing the procedural history of the case the court stated, "Subsequently, defendants' post-verdict motions were denied, as was plaintiffs' Motion for Molding of the Verdict to include prejudgment interest from January 12, 1983." However, the court did not reference or quote the Rules of Civil Procedure when it made this statement and the facts do not indicate the dates that the above motions were filed in relation to the jury's entry of the verdict. We note the court in *McMahon v. Caravan Refrigerated Cargo*, 406 Pa. Super. 303, 309, 594 A.2d 349, 352 (1991) *alloc. dn.* 529 Pa. 621, 600 A.2d 538 (1991) found the issue of prejudgment interest waived on appeal. Distinguishing the facts in *McMahon* from *Verner*, the court stated the issue was not raised in post trial motions and therefore not properly before the court on appeal.

Rule 227.1 (adopted October 19, 1983, effective January 1, 1984)⁵ provides:

- (a) After trial and upon the written Motion for Post-Trial Relief filed by any party, the court may
 - (1) order a new trial as to all or any of the issues; or
 - (2) direct the entry of judgment in favor of any party; or
 - (3) remove a nonsuit; or
 - (4) affirm, modify or change the decision or decree nisi; or
 - (5) **enter any other appropriate order.**

This language is certainly clear enough, and there is nothing ambiguous about it. Some forms of special relief, such as is afforded in Rule 238, are specifically addressed elsewhere. That rule provides, in part,

- (c) Not later than ten days after the verdict or notice of the decision, the plaintiff may file a written motion requesting damages for delay and setting forth the computation.

Where a Rule 238 motion for delay damages is not timely filed, the issue is not preserved on appeal. *Hodges v. Rodriguez*, 435 Pa. Super. 360, 645 A.2d 1340 (1994). Supreme Court has likened delay damages under Rule 238 to prejudgment interest in respect to

⁵ The Explanatory Comment – 1983 following the rule states “The Judicial Code and the Judiciary Act Repealer Act (JARA) have repealed Acts of Assembly which formed the basis for the entry of compulsory nonsuits and post-trial practice. The Code and JARA contemplate that the subject matter of the repealed statutes shall be governed by general rules. These amendments to the Rules of Civil Procedure supply the necessary procedure.

The amendments abolish the distinctions which have existed heretofore in post-trial practice. A party who seeks post-trial relief will do so by filing a Motion for Post-Trial Relief irrespective of whether the action is at law or in equity or whether the action is tried with or without a jury. New Rules 227.1 to 227.4 inclusive apply to all such actions.

Rule 227.1 is entirely new. It includes several subjects not previously covered by the Rules of Civil Procedure. Subdivision (a) authorizes the court to grant post-trial relief upon motion. This provision is necessary because JARA has repealed the statutes which formerly provided that authorization. The rule specifies the relief which may be granted and does not alter the prior practice.

encouraging settlement of meritorious claims as soon as reasonably possible. *Anchorstar v. Mack Trucks, Inc.* 533 Pa. 177, 620 A.2d 1120 (1993).

Rule 238 applies to a special computation for interest and, although based upon policy relating to judicial resources, recognizes that plaintiffs in personal injury cases are entitled to their money from the time of injury. That right, like almost all others, can be waived by failure of a party to assert it in a timely manner.

We discuss Rule 238 because 1) it deals with molding a verdict by awarding delay damages, 2) it is a special form of post verdict motion with specific rules applicable, and 3) its ten day provisions indicates an intent to subject post trial requests to a uniform time frame.

No rule exempts other ordinary requests for molding a verdict from 227.1, and in our mind the rule clearly encompasses plaintiff's petition.

3. Failure to file within ten days

Having determined that plaintiff's application is subject to Rule 227.1(c)(1), we must now decide whether violation of the rule's time requirement means that plaintiff's request must be denied.

In *Carlos R. Lefler, Inc. v. Hutter*, Pa. Super. , 696 A.2d 157 (1997), Superior Court held that a trial court erred in refusing to consider a post trial motion filed one day late. That court said that not all transgressions are equal and that sanctions such as waiver should be reserved for situations where indulgence of late filing would actually prejudice the opposing party or the orderly administration of justice.

Unfortunately, observance of this principle could reduce rules to meaningless collections of words.

We recognize that trial courts embark on dangerous voyages when trying to effect simple justice. Discretion may be the better part of valor, but it is rarely a commendation during appellate review. Even so, we feel that equitable considerations excuse us from marching in lockstep toward a conclusion commended by logic but decried by common principles of justice.

Rule 126 of the Pennsylvania Rules of Civil Procedure certainly permits us to overlook a procedural error, but rules are important and orderly administration of justice sometimes requires courts to make

examples of litigants so that others do not follow in the pathway of bad practice. We may dismiss plaintiff's motion for its 29-day delay in filing. Supreme Court has affirmed our right to "enforce the rules of civil procedure, even when the result has a serious adverse effect on the party violating the rules; the rules are essential in order to insure [sic] the orderly and equal administration of justice and it is within the discretion of the trial court to require compliance." *Paden v. Baker Concrete Construction, Inc.*, 540 Pa. 409, 414, 658 A.2d 341, 344 (1995).

Looking at the special circumstances of our case, however, we have to recognize that the law until specifically addressed by this opinion may have been confusing. While not excusing plaintiff's delay, the lack of clear direction makes it less egregious. We have yet to discuss post verdict interest, but we think the approach we follow is just from each party's standpoint. Plaintiff was entitled to interest and it is a simple matter of computation. Plaintiff's equivocal and tardy actions have, however, required defendants to further litigate this unfortunate dispute.⁶

As indicated infra., we rule that plaintiff has not entirely waived its right to preverdict interest.

4. Interest on the verdict.

Section 8101 of the Judiciary Act provides:

Except as otherwise provided by another statute, a judgment for a specific sum of money shall bear interest at the lawful rate from the date of the verdict or award, or from the date of the judgment, if the judgment is not entered upon a verdict or award. 42 Pa. C.S.A. § 8101.

Plaintiff argues that even though a check was tendered in the amount of the verdict, interest should be calculated on the whole amount due since the tender did not include any preverdict interest. However, the tender might have failed to include such interest because plaintiff had taken no steps to mold the verdict.

⁶Defendants never contended that workmanship was substandard. This judge viewed the house and found it to be well constructed. We chatted with all parties during the view (about inconsequential subjects, of course, and in the presence of counsel) and think everyone is of commendable character. Nice people sometimes get involved in litigation.

While it is true that tender of an inadequate amount does not abate interest, no case cited by plaintiff involved cashier's checks retained by plaintiff.⁷ Plaintiff still had control of those funds, even though the check was not negotiated. Thus, plaintiff would ordinarily be entitled to post-verdict interest only on the unpaid portion of the verdict. See *Johnson v. Singleton*, 442 Pa. Super. 206, 658 A.2d 1372 (1995) *alloc. dn.* 530 Pa. 655, 608 A.2d 31 (1992).

CONCLUSION

Considering all of the circumstances in this case, we determine:

1. It would be unjust to deprive plaintiff of preverdict interest to the time of verdict, and to interest on the verdict's face amount, to the date the cashier's check was tendered. The verdict is molded to add interest at the rate of six (6) percent per annum from March 4, 1998 to June 21, 2000.
2. Plaintiff is further entitled to interest, also at the legal rate from July 21, 2000.
3. Since we have granted equity to plaintiff, we also extend it to defendants. Defendants shall not be obligated to pay any additional interest, other than specified in 1 and 2, *supra.*, for the period of time occurring after July 21, 2000 to the date of this order.
4. Plaintiff is entitled to interest at the legal rate on the unpaid portion of the molded verdict, that is the amount thereof less the amount of the cashier's check, from the date of this order until payment in full.

⁷ In *Gold & Co. Inc. v. Northeast Theater Corp.*, 281 Pa. Super. 69, 421 A.2d 1151(1980) a real estate broker brought a breach of contract action against principals seeking recovery of commissions. Early on in the dispute, the principal admitted it was obligated to the broker and offered to pay a sum in full settlement. Plaintiff declined the offer. The trial court in deciding the issue of prejudgment interest considered the offer of money a good faith effort on the part of the principal and denied plaintiff's request for prejudgment interest. Superior Court held that while sufficient tender could stop the running of prejudgment interest, an offer and no payment did not constitute sufficient tender.

In *Englehart v. Cassatt*, 305 Pa. 117, 157 A. 256 (1931) an employee of a stockbroker mistakenly delivered the incorrect stock to a customer. Shortly after a claim was brought to recover the difference with interest of lost dividends, stockbroker sent a check for the exact amount of dividend lost. The customer returned the check since it did not include the costs accrued or the interest. Tender was also ineffective since defendants did not follow up by payment into the court.

ORDER

AND NOW, this 10th day of October, 2000, the verdict is molded to \$34,156.26. Plaintiff is entitled to \$168.44 on this sum to the date of this order. Interest for the sum of \$4,139.80 shall accrue at the legal rate from this date until payment.

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 ROBERT S. CICALA, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Victoria Cicala, 1317 East Street, Apt. 621, New Britain, CT 06053

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

ESTATE OF LYDIA M. KRESSLER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Terry L. Wright, c/o 29 North Duke Street, York, PA 17401

Attorney: Ronald Perry, Esq., CGA Law Firm, Countess Gilbert Andrews

SECOND PUBLICATION

ESTATE OF KENDALL GRANT BRUMGARD, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Co-Administrators: Rose Marie Brumgard, 2667 York Road, Gettysburg, PA 17325; Gerald L. Brumgard, 2667 York Road, Gettysburg, PA 17325

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

ESTATE OF PAUL R. KNOX, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Sally Ann Raymond, 5819 Hanna Road, Eldersburg, MD 21784

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

ESTATE OF WILLIAM L. LARCAMP, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Diane M. Larcamp, 125 Ridgewood Drive, Gettysburg, PA 17325

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

ESTATE OF SHAWN M. McCLOSKEY, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Administrators: William McCloskey, 4599 Chambersburg Road, Biglerville, PA 17307; Vickie McCloskey, 4599 Chambersburg Road, Biglerville, PA 17307

ESTATE OF HELEN L. SEGRAVES, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Alfred Segraves, 224 N. Stevens Place, Hanover, PA 17331

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

ESTATE OF GLENN E. SHEFFER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrices: Betty Maser, 105 Station Avenue, Haddon Heights, NJ 08035; Ann Wickes, 106 South Jackson Street, Woodbury, NJ 08096

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

ESTATE OF C. AGNES SNEERINGER a/k/a CECELIA AGNES SNEERINGER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Antoinette M. Geiselman, 206 S. Franklin Street, Gettysburg, PA 17325

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

ESTATE OF E. BURNELL WARNER a/k/a ELMER BURNELL WARNER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Lydia F. Warner, 631 South Street, McSherrystown, PA 17344

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

THIRD PUBLICATION

ESTATE OF LOUISA J. CURRENS, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Ms. June Warner, 46 Crouse Park, Littlestown, PA 17340; Ms. Bernice J. Fasnacht, 105 Holler Avenue, Shippensburg, PA 17257-2133

Attorney: David K. James, III, Esq., 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF ANNE W. DICKERSON, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Carol L. Dickerson, 14 Stephen Circle, Hanover, PA 17331

Attorney: Claudia L. DeArment, Esq., Korsak & DeArment, 33 North Queen Street, York, PA 17403

ESTATE OF WILLIAM C. NEWELL, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Personal Representative: Virginia E. Newell, c/o Patterson & Kiersz, PC, 239-B East Main Street, Waynesboro, PA 17268-1681

Attorney: Patterson & Kiersz, PC, 239-B East Main Street, Waynesboro, PA 17268-1681

ESTATE OF RUTH Y. ROBERTS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Earl W. Roberts, Jr., 1210-205 Clements Bridge Road, Barrington, NJ 08007

Attorney: Donald W. Dorr, Esq., Buchen, Wise & Dorr, 126 Carlisle Street, Hanover, PA 17331

ESTATE OF MARY HELEN SWOPE, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Susan Marie Thompson, 158 Early Avenue, Gettysburg, PA 17325

Attorney: Robert E. Campbell, Esq., Campbell & White, 112 Baltimore Street, Gettysburg, PA 17325

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 00-S-1171 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 31st day of August, 2001, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

BEING Lot No. 215 in Section W, Chamita, Inc. dated January 3, 1970, prepared by Gordon L. Brown, R.S., recorded in Adams County Plat Book No. 1, page 66 bounded and described as follows, to wit:

BEGINNING at a point in the center of Bonnie Trail at Lot No. 216; thence by said lot, South 60 degrees 17 minutes 40 seconds East, 225 feet to land now or formerly of Joseph M. Farkas; thence by said lands South 29 degrees 42 minutes 20 seconds West, 100 feet to Lot No. 214; thence by said Lot, North 60 degrees 17 minutes 40 seconds West, 225 feet to a point in the center of said Bonnie Trail, thence in said Bonnie Trail North 29 degrees 42 minutes 20 seconds East, 100 feet to the place of BEGINNING.

BEING the same premises which Dwayne E. Mort and Sharon K. Mort, by Deed dated December 30, 1996 and recorded in the Office of the Recorder of Deeds of Adams County on December 31, 1996, in Deed Book Volume 1310, Page 118, granted and conveyed unto Kenneth R. Hurley, Sr. and Mary A. Hurley.

Parcel No. 28-96

GRENE & BIRSIC, P.C.
By: /s/Kristine M. Faust
Kristine M. Faust, Esquire
Attorneys for Plaintiff
One Gateway Center, Nine West
Pittsburgh, PA 15222
(412) 281-7650

SEIZED and taken into execution as the property of **Kenneth R. Hurley, Sr. & Mary A. Hurley** and to be sold by me

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 24, 2001, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/13, 20 & 27

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-326 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of September, 2001, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in the Borough of Arendtsville, Adams County, Pennsylvania, containing 12,060 square feet, being designated as Lot No. 6 as shown on a plan of lots known as Glenwood Development in Plat Book 60 at page 90, having an address of 33 Glenwood Drive.

BEGINNING at a steel rod on the edge of a 50 foot right of way known as Glenwood Drive at corner of Lot No. 5, as shown on the Final Plan of Glenwood Development identified below; thence by Lot No. 5 North 39 degrees 58 minutes 15 seconds East, 154.10 feet to a steel rod at corner of Lot No. 5, as shown on said Plan and on line of other land now or formerly of Glenn E. Simpson & Son, Inc.; thence on line of other land now or formerly of Glenn E. Simpson & Son, Inc., South 16 degrees 42 minutes 35 seconds East, 133.55 feet to a steel rod at corner of Lot No. 7, as shown on said Plan; thence by Lot No. 7, South 63 degrees 32 minutes 45 seconds West, 104.02 feet to a steel rod at corner of Lot No. 7, as shown on said Plan and on the edge of a 50 foot right of way known as Glenwood Drive; thence continuing along the 50 foot right of way known as Glenwood Drive by a curve to the left, the radius of which is 175.00 feet, having an arc distance of 72.01 feet and a chord bearing and distance of North 38 degrees 14 minutes 30 seconds West, 71.30 feet to a steel rod on the edge of a 50 foot right of way known as Glenwood Drive at corner of Lot No. 5, as shown on said Plan, the place of BEGINNING. CONTAINING 12,060 square feet.

BEING THE SAME premises which Glenn E. Simpson & Son, Inc., a Pennsylvania corporation, by its Deed dated September 11, 1992, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania on September 25, 1992 in Record Book 642, page 981, granted and conveyed unto Donald G. Heffner and Debra W. Heffner, husband and wife, the Defendants herein.

Tax I.D. No.: Map 6, Parcel 140

SEIZED and taken into execution as the property of **Donald Heffner & Debra W. Heffner** and to be sold by me

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 15, 2001, and distribution will be made in

accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

7/13, 20 & 27