

Adams County Legal Journal

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No. 10, pp. 63-66

IN THIS ISSUE

HOLLABAUGH BROTHERS, INC. VS. CRUM, ET AL.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-1113 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of August, 1996, 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 Berwick Township, Adams County, Pennsylvania, bounded and limited as follows:

TRACT NO. 1:

BEGINNING for a point at the intersection of Stanley Drive and Little Avenue (two proposed streets 50 feet wide); thence along said Little Avenue, North 67 degrees East 130 feet to a point; thence South 23 degrees East 180 feet to a point at land now or formerly of Paul Vegas; thence along said lands, South 67 degrees West 130 feet to a point at Stanley Drive; thence along said Drive, North 23 degrees West 180 feet to a point and the place of BEGINNING. Being known as Lot Nos. 8 and 10 on a draft

prepared December 30, 1965, by Leroy H. Winebrenner, C.S.

TRACT NO. 2:

BEGINNING for a point along Little Avenue (a proposed 50 feet wide street) at other lands now or formerly of Charles L. Strausbaugh and wife; thence along said Little Avenue, North 67 degrees East 130 feet to a point at lands now or formerly of Walter J. Hamm; thence along said lands, South 23 degrees East 180 feet to a point; thence South 67 degrees West 130 feet to a point at lands now or formerly of Charles L. Strausbaugh and wife; thence along said lands, North 23 degrees West 180 feet to a point, the place of BEGINNING. CONTAINING 23,400 square feet and being known as Lot No. 16 on a plan of lots prepared for Sabre Heights, Inc., by J. H. Rife, Registered Engineer, dated August 27, 1968.

BEING the same two (2) tracts of land which Ronald L. Stevens and Judith A. Stevens, husband and wife, by deed dated March 11, 1994, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 868 at page 167, granted and conveyed to Matthew L. Krug and Gail

M. Krug, husband and wife, the Defendants herein.

IMPROVED WITH a ranch-style, single family dwelling with a two-car detached garage.

SEIZED and taken into execution as the property of **Matthew L. Krug and Gail M. Krug**, and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
July 5, 1996.

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 16, 1996, 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.

7/19, 26 & 8/2

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-324 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 16th day of August, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate, lying and being in Mt. Joy Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point in Township Road T-406 at the southeastern corner of land of Frederick C. Hickman and wife; thence running in Township Road T-406 South 3 degrees 53 minutes 7 seconds West, 441.26 feet to a railroad spike in a private lane located to the south of the intersection of Township Road T-406 and Legislative Route 01003; thence crossing Legislative Route 01003, South 87 degrees 37 minutes 21 seconds West, 367.39 feet to an iron pin on land now or formerly of Timothy G. Shelly; thence by land of Shelly, North 33 degrees 12 minutes 38 seconds West, 304.37 feet to an iron pipe; thence by the same, South 87 degrees 37 minutes 21 seconds West 133.65 feet to an iron stake on land now or formerly of Robert E. Anders; thence by Anders land and by land now or formerly of Philip P. Jeffcoat, North 48 degrees 17 minutes 57 seconds West, 344.37 feet to an iron pipe; thence by Jeffcoat land and by other land now or formerly of Timothy G. Shelly, North 0 degrees 45 minutes 5 seconds East 231.79 feet to a pipe; thence running by land now or formerly of Frederick C. Hickman and wife, and through an iron pipe set back 25 feet from the end of this course, South 75 degrees 1 minute 23 seconds East, 984.75 feet to a point in Township Road T-406, the point and place of BEGINNING.

CONTAINING 9.145 acres.

This description is taken from a draft of survey of LaRue Surveys, Inc., dated January 15, 1976, which draft of survey is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 15, Page 6.

HAVING THEREON erected a frame dwelling house known and numbered as 745 Rock Creek Ford Road, Gettysburg, Pennsylvania.

BEING THE SAME PREMISES which George R. Eller and Rose M. Eller, by deed dated April 14, 1992 and recorded

in the Office of the Recorder of Deeds for Adams County in Record Book 622, Page 592, granted and conveyed unto Mark H. Kitzinger and Kimberly A. Buttry.

TAX PARCEL NO. 7A MAP G-17

SEIZED and taken into execution as the property of **Kimberly A. Buttry and Mark H. Kitzinger**, and to be sold by me
Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
July 9, 1996.

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 9, 1996, 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.

7/19, 26 & 8/2

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-961 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of August, 1996, 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 Mt. Pleasant Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point on the eastern edge of Hooker Drive at Lot No. 640; thence by said lot South 79 degrees 00 minutes 00 seconds East, 200.00 feet to a point at Lot No. 650; thence by said lot and by Lots No. 651 and 652 South 11 degrees 00 minutes 00 seconds West, 220.00 feet to a point at Lot No. 653; thence by said lot and by Lots No. 644 and 643 North 79 degrees 00 minutes 00 seconds West, 200.00 feet to a point on the eastern edge of Hooker Drive; thence along said Hooker Drive North 11 degrees 00 minutes 00 seconds East, 220.00 feet to the place of BEGINNING CONTAINING 44,000 Square feet.

The above description was taken from a plan of lots prepared by Donald E.

Worley, dated March 12, 1986.

BEING NO. 642 HOOKER DRIVE.

PARCEL #: 5-97

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

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
July 9, 1996.

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 16, 1996, 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.

7/19, 26 & 8/2

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, August 12, 1996, at 9:00 a.m.

MYERS—Orphans' Court Action Number OC-82-96. The First and Final Account of Mary G. Dennis, Executrix of the Estate of William S. Myers, deceased, late of Cumberland Township, Adams County, Pennsylvania.

OGDEN—Orphans' Court Action Number OC-83-96. The First and Final Account of Amelia C. Ogden, Executrix of the Last Will and Testament of Charles F. Ogden, deceased, late of the Borough of Bendersville, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

8/2, 9

HOLLABAUGH BROTHERS, INC. VS. CRUM, ET AL.

1. In order for an heir to obtain title by adverse possession against his or her co-heirs and co-tenants, it is necessary to prove adverse possession (a) by an actual ouster of his or her co-heirs and co-tenants twenty-one or more years before, and uninterruptedly maintained, or, (b) by positive and unequivocal act, amounting to a claim of the whole property as exclusively his or hers, brought home to the co-heirs and co-tenants twenty-one or more years before, and likewise maintained without interruption.

2. To establish adverse possession, the basic test is whether the adverse possessor so acted on the land in question as to give the record owner a cause in action in ejectment against him for the period defined by the statute of limitations.

3. The elements of adverse possession are: (1) actual, (2) visible, (3) notorious, (4) exclusive and distinct, (5) hostile, and (6) continuous use for twenty-one years.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 92-S-215, HOLLABAUGH BROTHERS, INC. VS. LARRY E. CRUM AND JULIA A. EYLER.

John White, Esq., for Plaintiff

Samuel Teeter, Esq., for Defendants

PRELIMINARY OPINION

Spicer, P.J., January 10, 1996.

In this partition case, we are called upon to determine whether plaintiff has an interest entitling it to the relief it seeks. The parties have agreed to have title adjudicated in this action, rather than requiring a separate ejectment or quiet title proceeding.

Facts are mainly undisputed. Martin L. Crum died intestate on April 12, 1950, survived by his widow and seven children. His ownership in a .9831 acre tract of land situate in Butler Township, Adams County, devolved to his heirs at law. On August 3, 1965, all heirs except one son, Robert I. Crum, (Robert), conveyed their respective interests to Oliver J. Heacock. Mr. Heacock subsequently, on January 25, 1979, deeded his undivided interest to Harold J. Hollabaugh and Donald P. Hollabaugh, co partners in a partnership known as Hollabaugh Brothers. These last mentioned grantees then conveyed to plaintiff, a family owned corporation, on May 21, 1982.

Before his death on January 30, 1991, Robert conveyed all his right, title and interest in the property to his children, defendants herein, by deed dated January 11, 1990.

Plaintiff has stipulated that Robert and his family have openly, visibly and continuously resided on the premises since at least 1965. It also concedes that defendants have periodically posted the premises with "No Trespassing" signs, which plaintiff has ignored. During the time in which it, or the partnership, have owned an undivided interest,

plaintiff has also openly used the premises for access to other land plaintiff owns. In so doing, plaintiff has trimmed trees, removed brush, widened and improved a roadway and cleaned off what might be characterized as debris left by defendants. Plaintiff paid taxes on the premises until seven or eight years before the action. Defendants have paid taxes since.

Although the subjective intent of the Hollabaughs is important only as it might explain actions, or inaction, Donald Hollabaugh testified that he and his brother intended to do something about the co-tenancy situation after Robert died. He also said that the corporation ceased making tax payments in hopes of forcing a resolution, apparently through a tax sale.

Although there is evidence of cherries being harvested from the tract, the land is suited only for present usage, that is, access and residential purposes. Plaintiff's enjoyment has, by choice, been mainly restricted to using the property for ingress and egress to and from other lands of plaintiff. Plaintiff took no steps to prevent the Crum family from residing on the land, but neither did defendants or any members of their family seek to restrict or prevent plaintiff's use.

Shortly after the Hollabaughs acquired a nine-tenth interest from Mr. Heacock, Larry E. Crum approached Donald Hollabaugh and asked if his family could remain on the property. Donald answered, "for now."

Testimony indicated that Robert may have been unhappy with plaintiff's use of the tract and that he sometimes voiced his displeasure. However, he did not convey his dissatisfaction to the Hollabaughs or any of their employees.

Plaintiff argues that defendant's possession of the tract was neither exclusive nor hostile, and could not have ripened into full ownership. It cites the case of *Hanley v. Stewart*, 155 Pa.Super. 535, 39 A.2d 323 (1944) for the rule that the possession of one co-tenant is the possession of all. The rule was stated:

The rule is established in this Commonwealth beyond peradventure that in order for an heir to obtain title by adverse possession against his or her co-heirs and co-tenants, it is necessary to prove adverse possession (a) by an actual ouster of his or her co-heirs and co-tenants twenty-one or more years before, and uninterruptedly maintained, or, (b) by positive and unequivocal act, amounting to a claim of the whole property as exclusively his or hers, brought home to the co-heirs and co-tenants twenty-one or more years before, and likewise maintained without

**LEGAL NOTICE
ADAMS COUNTY TAX CLAIM BUREAU**

Pursuant to Court Orders 96-S-378 through 96-S-385, the following real property will be offered for sale September 13, 1996 at 1:00 P.M. E.D.S.T., at the Adams County Courthouse, 111-117 Baltimore Street, 4th floor, Gettysburg, Pennsylvania. The purpose of this sale is to dispose at public sale the following parcels of real estate:

SALE NO.	OWNER(S) OR REPUTED OWNER(S)	TOWNSHIP/BOROUGH	DESCRIPTION MAP/PARCEL	ASSESSED VALUE
20	Griffith, Bryan	Berwick	1990 Skyline Mobile Home	13230
255	High Vista Estates, Inc.	Latimore	J-3-32A	4627
377	Hulse Family Properties, Inc. & Richard Krill	Mt. Pleasant	I-11-52	13208
461	Richard L. Krill & Hulse Family Properties, Inc.	Reading	J-8-107	9675
481	Aldridge, Alton & Genevieve	Straban	1975 Skyline Mobile Home	1053
496	Alvardo, Susan	Straban	1984 Atlantic Mobile Home	5699
567	Crouse, James	Union	K-16-39	44184

TERMS OF SALE: Cash in the form of currency of the United States if the purchase price is \$50.00 or less. For properties selling for more than \$50.00, \$50.00 in the form of currency of the United States and a check or other satisfactory payment of the balance. All properties shall be paid for at the time the property is struck down. The purchaser(s) shall be required to pay, in addition to the bid price, the fee for recording a deed and any applicable transfer taxes due (the assessed value x 2.39%).

The above properties were previously advertised for sale in the Adams County Legal Journal and The Gettysburg Times on August 4, 1995 and The Hanover Evening Sun on July 28, 1995.

8/4

**ADAMS COUNTY TAX CLAIM SALES
TAX CLAIM BUREAU—TAX SALES NOTICE**

TO OWNERS OF PROPERTIES DESCRIBED IN THIS NOTICE AND TO ALL PERSONS HAVING LIENS, JUDGMENTS OR MUNICIPAL OR OTHER CLAIMS AGAINST SUCH PROPERTIES:

Notice is hereby given by the Tax Claim Bureau in and for the County of Adams under the Act of 1947, P.L. 1368, as amended, that the Bureau will expose at public sale in the Adams County Courthouse, fourth floor, Jury Assembly Room, 111-117 Baltimore Street, in the Borough of Gettysburg, Pennsylvania at 9:00 a.m. E.D.S.T. on September 13, 1996, or any date to which the sale may be adjourned, re-adjourned or continued, for the purpose of collecting unpaid 1994 and any prior real estate taxes, prior liens, municipal claims, and all costs thereto, the following described set forth.

The sale of the property may, at the option of the Bureau, be stayed if the owner thereof or any lien creditor of the owner, on or before the date of the sale enters into an agreement with the Bureau to pay the taxes, claims, and all costs in installments in the manner provided by said Act, and the agreement be entered into.

There will be no Redemption Period after the date of the sale, but these taxes and costs can be paid up to the date of sale, September 13, 1996.

It is strongly urged that the prospective purchasers have an examination made of the title of any property in which they may be interested. Every reasonable effort has been made to keep the proceedings free from error. However, in every case the Tax Claim Bureau is selling the taxable interest and the property is offered for sale by the Tax Claim Bureau without guarantee or warranty whatsoever.

The property so struck down will be settled for before the next property is offered for sale. Deeds for the premises will be prepared by the Tax Claim Bureau and recorded. Buyer(s) will be required to pay, in addition to their bid, at the time the property is struck down to them, the basic sum for recording the deed, and the costs of such realty transfer stamps as required (assessed value x 2.39%). The Recorder of Deeds will mail the deeds to the address given by the purchaser.

A property will not be sold if the delinquent taxes and all costs are paid prior to the sale and it is suggested that this be done as soon as possible before the sale, as the earlier this is done, the more saving there will be in the amount of costs, etc.

It is repeated that there is no redemption after the property is sold and all sales will be final. No adjustments will be made after the property is struck down.

TERMS OF SALE: In the case of all properties selling for one hundred dollars (\$100.00) or less, cash in the form of currency of the United States must be paid in full at the time the property is struck down. In the case of properties for which more than one hundred dollars (\$100.00) has been bid, the sum of one hundred dollars (\$100.00) cash in the form of currency of the United States must be paid in full when the property is struck down and a check on a bank or other satisfactory payment for the balance must be paid at the same time. If the balance of the purchase price is not paid for any reason (for example, if a check is not paid), the one hundred dollars (\$100.00) cash paid shall be forfeited as liquidated damages.

David K. James, III
Solicitor, Tax Claim Bureau

Danielle Asper
Director, Tax Claim Bureau

SALE #	OWNER(S) OR REPUTED OWNER(S)	DESCRIPTION	UPSET PRICE
ABBOTTSTOWN BOROUGH			
1	Burke, Zebastian V. and Snyder, Jody	Map # L10-0040---109 1991 Skyline SN5011-0134D	\$1,568.45
2	PNC Bank	Map # L10-0040---111	\$1,491.00
4	Cleary, Raymond E. & Lucie S., Jr.	Map # 003-0040---000	\$2,344.00
5	Speelman, Joseph & Myra	Map # L10-0040---136 1990 Skyline SN3210-08302ABZ	\$1,845.64
BENDERSVILLE BOROUGH			
6	Bowman, Woodrow H.	Map # 007-0009---000	\$1,527.03
BERWICK TOWNSHIP			
8	Dehoff, Mary	Map # K11-0047---000	\$1,180.96
9	Hughes, Bradley & Diehl, Gwenn	Map # L11-0110---001	\$173.93
11	Hicks, Richard W. & Virginia B.	Map # L10-0040---427 1988 Fleetwood SN VAEFLJ19A2152	\$1,558.91
12	Luckenbaugh, Albert Lee & Vond	Map # L12-0094---000	\$4,072.94
13	Miller, Jeffrey P. & Shirley A.	Map # L10-0040---230 1988 Fleetwood SN VAFLEK9A23491	\$870.94
14	Miller, Joseph A. & Loretta P.J.	Map # L10-0040---268 1985 COMMODORE SN 90158	\$1,048.40
15	Richter, Denton E. & Tiffany E.	Map # L10-0040---214 1987 Parkway SN#14956	\$1,339.73
17	Stambaugh, Joel D.	Map # L10-0024B---000	\$3,134.83
18	Wentz, Dennis E. & Null, Rosella L.	Map # K11-0155---000	\$3,214.89
19	Wolf, Jack & Tamera	Map # L10-0040---319 1979 Hallmark S#78288	\$391.98
BUTLER TOWNSHIP			
23	Clapsaddle, Lee Et Al	Map # F10-0038---020 1974 Buddy SN0411-826-H	\$392.48
24	Crum, Larry E.	Map # E07-0039---001 1958 Brentwood	\$189.00
25	Gorse, George E. & Carol	Map # E08-0026B---000	\$7,684.28
27	Hufnagle, Scott A. & Teresa	Map # F10-0038---023 1985 Rosebrook SND1225574	\$1,475.22
28	Kuhn, Candance	Map # F08-0087---001 1980 Mobile Home	\$577.33
29	Myers, Ronald & Judith	Map # F10-0038---048 89FLTWD VAFLEK19A23733WG	\$1,976.10
32	Shultz, Kenneth W. & Lisa D.	Map # F08-0056---000	\$1,833.95
33	Walker, Melvin	Map # F10-0038---059 1988 Fleetwood SN 581740769	\$1,180.03
CONEWAGO TOWNSHIP			
34	Brendle, Terry Lee & Rosalind	Map # K13-0023---000	\$4,224.61
35	Kress, Ricky T. & Deborah C.	Map # L3-0002C---000 Tract 2	\$3,738.21
37	Rohrbaugh, Bradley D.	Map # K14-0116A---000	\$3,125.65
38	Topper, Robert H.	Map # L15-0024B---000	\$2,052.96
CUMBERLAND TOWNSHIP			
39	Andrew, Richard L.	Map # 614-0042A---000	\$2,662.10
40	Carson, Constance	Map # F16-0022B---000	\$3,800.00
45	Eckert, Duane D.	Map # F14-0023---000	\$8,774.96
46	Holt, John A. & Lynn S.	Map # E16-0033---000	\$5,614.45
50	Redding, Michael P. & Suzette S.	Map # F11-0130---000	\$3,145.42
51	Stone, Gary B. & Sharon E., Jr.	Map # F12-0138A---000	\$2,887.46
52	Verdier, Thomas Et Al	Map # E12-0082---305 1982 Homette SN 0311-0717R	\$608.44
53	Wells, Gerald S. & Gail F.	Map # F12-0188E---000	\$709.80

SALE #	OWNER(S) OR REPUTED OWNER(S)	DESCRIPTION	UPSET PRICE
EAST BERLIN BOROUGH			
56	Roberson, Carole S.	Map # 004-0116---000	\$4,278.33
57	Roberson, Carole S. Et Al	Map # 004-0225---000	\$5,738.82
FAIRFIELD BOROUGH			
58	Weikert, Howard L. & Mary	Map # 006-0060---000	\$283.12
59	Brodbeck, Tamara	Map # B10-0029---000	\$2900.00
FRANKLIN TOWNSHIP			
60	Denike, Brenda A.	Map # C10-009A---000	\$1,083.37
61	Dorsey, Howard R. & Janie L.	Map # D12-0040---000	\$3,569.24
62	Fackler, Charles	Map # B08-0013---049 Cabin?	\$387.17
63	Forsythe, Dan R.	Map # C10-0039A---000	\$1,047.10
64	Gorse, George E. & Carol	Map # C09-0045---000	\$7,222.36
65	Herring, Thomas James	Map # B08-0047---001 1980 Liberty SN08L17527	\$433.33
68	Murdoch, Jon P. & Judith A.	Map # C10-0048F---000	\$5,004.77
69	Murphy, Diane L.	Map # E10-0038---000	\$2,448.95
70	Myers, William J., III	Map # B09-0041---000	\$3,355.15
71	Ormsbee, Allen R.	Map # B08-0013---034 Cabin	\$748.98
72	Painter, William	Map # B08-0013---060 Cabin	\$323.15
76	Riordan, Robert M. & Antoinette	Map # C09-0030---000	\$1,933.90
77	Robinson, Betty J. Et Al	Map # B09-0170---000	\$1,156.22
78	Rodriguez, Monica S.	Map # C10-0027A---000	\$781.51
79	Runkle, Daniel H. Et Al c/o Barb Forsythe	Map # C10-0054---000	\$2,306.40
80	Stouter, Rosalee	Map # B09-0150---000	\$478.18
81	Strausbaugh, Charles W. & Alver	Map # B09-003BG---000	\$1,083.25
82	Tenney, Thomas J. & Maxine M.	Map # D12-0007---000	\$9,755.68
83	Warrenfeltz, Barry E. & Wanda K.	Map # C10-0008---000	\$2,317.30
84	Murphy, Diane L.	Map # E10-0001A---000	\$8,680.70
FREEDOM TOWNSHIP			
88	Holt, John A. & Lynn S. Jr.	Map # D17-0012C---000	\$2,892.83
89	Powers, Van S.	Map # F18-0026---000	\$765.48
GERMANY TOWNSHIP			
90	Gerber, Martha J.	Map # I17-0083---000	\$8,225.20
91	Greiber, Thomas L.	Map # I16-0013---000	\$4,753.13
92	Hatter, Brian Robert & Lisa S.C.	Map # J17-0112---000	\$3,326.04
93	Koontz, Jeffrey A.	Map # I17-0008B---000	\$430.57
94	Stambaugh, Charles E., Jr. & Judith Anne Stambaugh	Map # H18-0062---000	\$6,363.39
95	Wilson, Nancy W. A/K/A Nancy W. Rendo	Map # I18-0085---000	\$1,937.39
GETTYSBURG BOROUGH			
97	Flickinger, Carole L.	Map # 009-0146---000	\$4,599.34
102	Jones, William H. & Cindy R.	Map # 010-0346---000	\$1,968.75
103	Loy, Richard D. & Beverly M.	Map # 007-0015---000	\$5,478.03
104	Olinger, Stephen D. c/o Dianne Smith	Map # 007-0279---000	\$3,699.21
108	Sheppard, Warren H.	Map # 013-0053-000	\$9,945.32
109	Wagaman, Eddie R.	Map # 007-0102---000	\$6,340.20
111	Welshonce, John A. & Doris F.	Map # 006-0064---000	\$9,658.58
HAMILTON TOWNSHIP			
113	Stokes, Jennifer A.	Map # K09-0034---000	\$2,217.15
114	Wallen, E. Wayne	Map # K09-0041---000	\$4,084.83

SALE #	OWNER(S) OR REPUTED OWNER(S)	DESCRIPTION	UPSET PRICE
115	White Oak Leasing & Equipment Co., Inc.	Map # K10-0048---000	\$1,311.32
116	White Oak Equipment & Leasing Co., Inc.	Map # J10-0043L---000	\$2,317.83
117	White Oak Leasing & Equipment Co., Inc.	Map # J10-0043S---000	\$1,609.05
HAMILTONBAN TOWNSHIP			
120	Brown, Thomas A. & Henrietta M	Map # C14-0030---000	\$1,909.83
122	Hamrick, Arthur Kent & Thelma	Map # C15-002---000	\$3,143.95
126	Kauffman, Roanld D.	Map # A12-0006---000	\$630.52
127	Kimball, Bruce A.	Map # A17-0012---000	\$691.63
128	McCrary-Bowen, Carolyn J.	Map # B16-0100---000	\$325.30
129	Noel, J. Richard	Map # B13-0035A---000	\$1,310.61
130	Sprankle, Lawrence K. & Sharon	Map # A15-0010---000	\$1,096.30
131	Martin, Cheryl	Map # BB0-0001---000 BB-0001	\$366.75
132	Martin, Cheryl	Map # BB0-0017---000 BB-0017	\$372.18
134	Harris, Richard A. & Ronda L.	Map # D13-0075---000	\$11,537.27
135	MacPherson, Stuart B. & Marguer	Map # D13-0023B---000	\$8,236.88
136	Trostle, Rondale A. & Karen S.	Map # E12-0121---000	\$2,604.76
HUNTINGTON TOWNSHIP			
137	Baker, Tony	Map # H04-0012---010 1977 Mobile Home	\$348.89
138	Cheshier, Shirley E. & Jedd Matthew	Map # H05-0006---000	\$2,041.15
140	Howard, Melissa Ann A/K/A Melissa Ann Cherry	Map # H04-0012---008 1971 Fleetwood 7E103RS6409	\$272.59
142	Roussell, Thomas J. & Debra	Map # G02-0013---002 1972 Detroit	\$284.8
143	Shaffer, Sharon A.	Map # I05-0045---000	\$1,840.26
144	Swope, Charles	Map # G03-0122---005 1973 Princess Mobile Home	\$241.79
145	Warehime, Ricky & Melissa	Map # I07-0008A---006 1990 Sandpoint VAFLK19A25176S	\$1,370.27
146	Wolf, Larry M. & Linda M.	Map # G03-0067---000	\$2,314.48
LATIMORE TOWNSHIP			
147	Beil, Robert E. & Justine O. c/o Robert Conley	Map # I03-0049---000	\$3,409.18
148	Beil, Robert E. & Justine O. c/o Paul C. Figueroa	Map # I03-0050---000	\$7,021.11
149	Border, Kevin E.	Map # I02-0003---000	\$1,000.47
150	Kropp, Lawrence C.	Map # K04-0006A---000	\$1,652.14
151	Larue, Jerry D. Et Al	Map # I03-0017---000	\$308.02
152	Larue, Jerry D. & Judith L.	Map # I04-0133---000	\$3,415.08
153	Mandeville, Mark T. & Maria A.	Map # I01-0032---000	\$3,229.45
154	McGinty, Charles E.	Map # I02-0070---001 1982 Poloron Mobile Home	\$351.81
156	Noel, William G. Jr. & Julie A.	Map # I01-0031D---000	\$644.74
157	Wenger, Steven L. & Cynthia A.	Map # I03-0047---000	\$7,295.80
158	Hall, William H.	Map # O09-0027---000 M-1126	\$311.1
159	Shade, Sandra Lee	Map # O06-0015---000 M-1205	\$6,733.63
160	Zoeller, R. Bruce	Map # O03-0015---000 M-1249+	\$656.55
LIBERTY TOWNSHIP			
161	Cole, Mary Ellen	Map # QQ0-0056---000	\$479.49
162	Harbaugh, Richard L. & Teresa I.	Map # AB0-0024---000	\$4,705.45
163	Hobbs, Harlan C. & Lavonne c/o Cindee Thrower/Jackson	Map # QQ0-0009---000	\$352.97
164	Hurley, Gary A. & Susan S.	Map # D17-0027---001	\$317.41

SALE #	OWNER(S) OR REPUTED OWNER(S)	DESCRIPTION	UPSET PRICE
165	Marsh, Clyde J. & Margaret V.	1973 Atlantic 12x60 Map # B18-001A---000	\$4,198.54
166	Moore, Kendell E. & Janet L.	Map # QQ0-0053---000	\$771.23
167	Ott, Raymond J. & Dorothy M.	Map # A18-0032---000	\$3,662.56
168	Sheldon, William Robert Et Al	Map # OO0-0064---000	\$404.09
169	Sheldon, William Robert Et Al	Map # OO0-0061---000	\$452.70
172	Riley, Gary B. & Adela M.	Map # D18-0079---000	\$1,667.31
LITTLESTOWN BOROUGH			
209	Bloom, James A.	Map # 012-0016---000	\$5,585.27
210	Borough of Littlestown	Map # 009-0048---000	\$1,754.35
211	Brownley, Joni K.	Map # 012-0068---000	\$3,658.76
213	Littlestown Activity Center Foundation	Map # 009-0071---000	\$50,843.78
218	Trone, Victor A. Et Al c/o Paul V. Van Noord	Map # 007-0121---000	\$5,017.16
219	Wagaman, Eddie R. & Sheri B.	Map # 008-0255---000	\$8,397.81
MCSHERRYSTOWN BOROUGH			
221	Sipe, Jan B. Et Al c/o William E. Howell II	Map # 002-0111---000	\$3,742.43
222	Sipe, Jan B. Et Al c/o William E. Howell II	Map # 005-0228---000	\$3,896.38
MENALLEN TOWNSHIP			
223	Auchey, John E. Et Al	Map # C07-0048---000	\$482.20
224	Brinton, A. D. Et Al	Map # B05-0050---000	\$1,139.07
226	Hoy, Rita	Map # F04-0028---001 1970 Hillcrest	\$429.86
227	Koser, Richard & Diane	Map # B05-0055---000	\$990.90
228	Kuhn, Freeman G. & Sharon A. Jr	Map # F05-0003B---000	\$1,126.83
229	Lemoine, Robert P. & Blanche E.	Map # E05-0100A---000	\$2,148.74
230	Martens, Bette J. A/K/A Bette J. Tanner	Map # E05-0100R---000	\$2,523.88
232	McCauslin, Tim	Map # D05-0039---001 1971 Derose Mobile Home	\$306.79
233	Showers, Jack D.	Map # F05-0019A---000	\$1,785.03
235	Thomas, Richard F. Jr.	Map # D05-0028---001 1974 Amherst-Derose MH 12x70	\$426.01
MT. JOY TOWNSHIP			
236	Cecil, Harrison Ray	Map # H16-0093---001 1993 Fleetwood SN PAFLP59AB403	\$1,751.98
237	United States of America Farm Service Agency	Map # G17-0042---000	\$3,475.55
242	Evans, David A. & Karen L.	Map # G18-0004E---000	\$1,076.81
244	Higgs, Gilbert & Mary C.	Map # G14-0011---002 1972 Flamingo MH S#2202091	\$360.75
246	Mikesell, Paul M. & Lois A.	Map # H15-0064---000	\$6,301.76
252	Reaver, Thomas H.	Map # H17-0025---000	\$3,266.62
253	Reaver, Thomas H.	Map # H17-0014E---000	\$1,692.55
254	Sexton, David F.	Map # 006-0033---000 H-0241	\$439.02
255	Spicer, Harold L. & Barbara E.	Map # H17-0010---000	\$2,856.42
256	Strausbaugh, William J. & Diane	Map # 009-0071---000 H-0833	\$612.25
257	Strausburgh, William J. & Mary	Map # G17-0038---000	\$1,628.94
258	West Edge II, Inc. c/o Harry Pappas	Map # H17-0020---000	\$7,894.46
MT. PLEASANT TOWNSHIP			
259	Gebhart, Wayne A.	Map # J11-0052---029 1985 Commodore 9455	\$218.36

SALE #	OWNER(S) OR REPUTED OWNER(S)	DESCRIPTION	UPSET PRICE
260	Barnes, Willie	Map # J11-0052---053 1987 Commodore CL12987A	\$763.34
261	Benson, William E. Sr. Et Al	Map # I15-0078---000	\$1,886.12
262	Bevans, Russell L. & Sandra M.	Map # J14-0110---000	\$4,078.4f
263	Bunty, Helen	Map # J12-0061---140 1980 Liberty O8L17239	\$380.95
265	Cyryca, Jeffrey & Ania J.	Map # I14-0052---000	\$4,313.24
268	Matherly, Bryan	Map # J11-0052---005 1990 Delrose	\$967.99
269	Maxwell, Paul C. Jr.	Map # 002-0062---000 H-0513	\$665.14
270	Mullin, Richard P. Et Al	Map # J11-0006A--000	\$2,985.26
271	Mundorff, Steven & Angela	Map # J12-0061---172 1986 Skyline 1010-0464	\$933.80
272	Osborne, Jimmie	Map # 002-0014---000 H-0450	\$921.57
274	Piermatted, Florence & Michael	Map # H14-0032---046 1992 Redman/New Moon 12223293	\$1,912.07
275	Russell, Thomas A. III	Map # J12-0061---145 1993 Fleetwood 33415	\$2,096.78
276	Shuff, Susan	Map # J12-0061---002 1984 Liberty 54430	\$738.43
277	Smith, Roger & Jane	Map # J12-0061---060 1985 Liberty	\$1,207.53
279	Wagner, Marlin R. & Rhonda L.	Map # H13-0029---001 1989 Skyline SF10-0949	\$820.03
280	Wilson, Bonnie Et Al	Map # J12-0061---096 1982 Liberty 19773	\$523.27
NEW OXFORD BOROUGH			
282	Brock, Roy L. & Sandra L.	Map # 005-0172---000	\$2,136.10
283	Brotemarkie, Charles M.	Map # 005-0128---000	\$1,935.90
284	Hempfling, Richard L. & Sarah J.	Map # 005-0090---000	\$985.48
285	Sipe, Jan B. Et Al c/o Wm. E. Howells, II	Map # 005-0112---000	\$5,225.66
OXFORD TOWNSHIP			
286	Gogats, John C.	Map # K12-0032B--000	\$5,025.67
287	Hamilton Homes, Inc.	Map # J11-0131A--000	\$877.42
288	Hamilton Homes, Inc.	Map # J12-0143---000	\$468.22
289	Hamilton Homes, Inc.	Map # J12-0144---000	\$359.80
290	Kamot, Sana E.	Map # J11-0131M---000	\$1,105.55
291	Krichten, Michael S. & Doris M.	Map # K12-0081C--000	\$2,463.74
292	Massengale, Knox L. & Charlotte	Map # 009-0055---000	\$2,323.89
293	Mummert, Sandra A. & William L.	Map # K11-0175---000	\$3,354.63
294	Neiderer, Steven A.	Map # J13-0027---000	\$2,026.11
295	Rohrbaugh, Eugene	Map # K11-0105F--007 1970 Skyline	\$267.79
297	Tasker, Kim D. & Diane M.	Map # 009-0050---000	\$1,319.11
298	Wallen, E. Wayne	Map # J12-0010A--000	\$299.6f
299	Wallen, E. Wayne	Map # J11-0131L--000	\$949.22
301	Zoeller, R. Bruce	Map # K11-0057B--000	\$1,069.77
READING TOWNSHIP			
302	Altland, Karelene A.	Map # J08-0045---105 1979 Liberty S# 08-L-17364	\$393.29
303	Arentz, Glenn L.	Map # L07-0005---027 1974 Catalina 184667	\$214.16
304	Ash-Mel, Inc. (Hampton Condo Land)	Map # J08-0120---000	\$11,125.84
305	Ash-Mel, Inc.	Map # J08-0120---001	\$2,967.19

SALE #	OWNER(S) OR REPUTED OWNER(S)	DESCRIPTION	UPSET PRICE
	(30 Hampton Drive)	Condo	
306	Ash-Mel, Inc. (32 Hampton Drive)	Map # J08-0120---002 Condo	\$2,890.08
307	Ash-Mel, Inc. (34 Hampton Drive)	Map # J08-0120---003 Condo	\$2,967.19
308	Ash-Mel, Inc. (36 Hampton Drive)	Map # J08-0120---004 Condo	\$2,967.19
311	Cousler Jr., James R. & Margaret	Map # L07-0023C---000	\$5,538.12
312	Eichelberger, David M. & Susan	Map # 010-0100---000 M-0807	\$589.22
313	Fagnani, Steven T. & Patriciann	Map # 002-0041---000	\$638.80
314	Gayman, Douglas & Deborah	Map # 008-0087---000 M-0092	\$520.98
315	Grace, Richard, Jr.	Map # J08-0045---107 1979 Hillcrest 881ADLX021103	\$307.58
316	Hamilton Homes, Inc.	Map # 002-0031---000	\$3,427.19
318	Hulse Family Properties, Inc.	Map # J08-0057---000	\$492.29
319	Krill, Richard L. Et Al	Map # J08-0110A---000	\$448.09
321	Miller, Charles M. & Belinda L. Miller	Map # 001-0038---000	\$2,034.79
323	Rice, Curtis & Joyce	Map # L07-0005---051 1988 Redman 12218481	\$1,293.46
326	Sullivan, Ronald W.	Map # J09-0070F---000	\$2,944.45
328	Warne, Wilbur R., Jr. Et Al	Map # J08-0118---000	\$205.47
STRABAN TOWNSHIP			
330	Ashley, Rebecca S. A/K/A Rebecca S. Ashley Shealer	Map # 004-0052---000 H-0271	\$4,161.70
331	Boyers, Howard Et Al	Map # G12-0124---078 1973 Anthony Mobile Home	\$306.76
335	Fissel, Vicky I.	Map # H10-0017---105 1985 Skyline Mobile Home	\$557.45
336	Greentree Consumer Discount Co.	Map # - -- 78 Vista Mobile Home	\$299.32
338	Grumbine, Paul C. A.	Map # G12-0140---000	\$2,219.97
339	Haines, James & Sandy Jr.	Map # - -- 1989 Redman Mobile Home	\$235.76
340	Harris, Richard A. & Ronda L.	Map # 001-0079---000	\$1,783.92
341	Himes, John W.	Map # G12-0124---047 1974 Kennelworth SN10943	\$271.48
342	Hess, Pius & Barbara Jr.	Map # G12-0124---096 1983 Liberty 7303	\$635.23
346	Kennedy, Annette E.	Map # G13-0066---000	\$4,721.90
347	Klein, Herbert F. & Naomi C.	Map # 111-0023A---000	\$1,310.65
348	Klein, Herbert F. & Naomi C.	Map # 111-0023C---000	\$1,677.51
350	Krill, Richard III	Map # - -- 71 Apollo Mobile Home	\$170.78
351	Laughman, James & Mary Jane	Map # G12-0124---004 1975 Concord MH 12x60	\$250.20
353	Lease, Dale & Elise Labba	Map # G12-0124---006 1974 Parkwood SN 5154	\$374.32
355	Magara, Michael E. & Michelle	Map # G12-0124---086 1988 Fleetwood 21121616	\$1,481.44
356	Mickley, David L.	Map # 032-0022---000	\$3,040.77
357	Moore, Brenda	Map # G12-0124---016 1971 Broadmore SN 22864032002	\$251.70
358	McKenna, Edward J. & Patricia E.	Map # G10-0013---000	\$22,184.47
359	Oberlin, Kathy P.	Map # 111-0018---000	\$7,059.97
360	Plank, John R. & Irene M.	Map # H12-0052C---000	\$2,952.78
361	Proctor, Paulie E. & Robert	Map # G12-0124---090 1973 Homette Mobile Home	\$162.38

SALE #	OWNER(S) OR REPUTED OWNER(S)	DESCRIPTION	UPSET PRICE
362	Reaver, Stephen & Cindy	Map # G12-0124---098 1974 Homette SN 09AH1BH	\$449.83
363	Rhodes, Shelby Louise	Map # G12-0124---020 1979 Liberty SN 16759	\$508.32
364	Shealer, Frederick M.	Map # G12-0012---000	\$3,672.00
365	Shealer, Frederick M.	Map # G12-0039G--000	\$3,266.35
367	Shultz, Delores M.	Map # G12-0124---084 1977 Classic SN BC354463	\$375.29
369	Sylvester, Darlene	Map # G12-0124---053 1971 Newport MH 12x65	\$383.14
370	Taughinbaugh, Jere W. & Sue E.	Map # H10-0062---000	\$510.43
371	Taughinbaugh, Jere W.	Map # H10-61	\$800.00
372	Tipton, Nancy	Map # H10-0017---130 1986 Skyline Mobile Home	\$305.10
373	Tyrone Mobile Home Sales	Map # G12-0124---056 1986 Fantasy SNM48612219AB	\$1,690.61
374	Wagaman, Orville & Lois	Map # G12-0124---009 1970 Coburn Mobile Home	\$528.89
375	West Edge, Inc. c/o Crystal Cadillac	Map # G12-0049A--000	\$29,862.37
375	West Edge, Inc. c/o Crystal Cadillac	Map # G12-0054---000	\$2,253.87
377	Williams, Thomas	Map # G12-0124---021 1973 Kenworth MH 12x66	\$380.98
TYRONE TOWNSHIP			
379	Bosserman, David L.	Map # I07-0030B--000	\$3,954.87
380	Crum, Cynthia J.	Map # H06-0003---000	\$2,085.90
381	Funt, Geraldine I. c/o Linda Kay Wyatt	Map # G06-0009---000	\$1,336.44
382	Funt, Geraldine I.	Map # G05-0044A--000	\$524.21
385	Lener, William S.	MAP # G05-0023D--000	\$2,371.12
388	Thomas, Ralph R. Jr. Et Al	Map # G05-0043---000	\$2,704.97
UNION TOWNSHIP			
389	Arnold, James D. & Violet A.	Map # L18-0046---000	\$4,941.65
390	Barrick, Steven D. & Marilyn R.	Map # J15-0037---000	\$3,915.50
391	Lau, Patricia Ann	Map # J17-0176---000	\$7,502.70
392	Davis, Gerald W. & Laura L.	Map # K17-0050A--000	\$4,431.86
YORK SPRINGS BOROUGH			
396	Zollers, Steven J. & Connie	Map # 005-0043--	\$2,711.22
CARROL VALLEY BOROUGH			
398	Comp, Charles F. Et AL	Map # 037-0001---000	\$154.02
399	Corbin, John R. & Elisabeth C.	Map # 044-0069---000 RC-0010	\$240.78
400	Gach, Robert J. & Patricia R.	Map # 007-0010---000 K-271	\$7,239.65
401	Woodring, Kathy D.	Map # 045-0071---000 RA-0065	\$546.90
402	Grinder, James E. Jr.	Map # 038-0065---000 RI-186	\$4,959.60
404	Hamilton Homes, Inc.	Map # 025-0130---000 D-0074	\$203.90
405	Hefner, Alan Andrew & Lori Sco	Map # 004-0022---000 K-327	\$795.94
407	Jones, Joseph T. & Dorothy M.	Map # 030-0091---000 B-0010CR	\$540.32
408	Jones, Joseph T. & Dorothy M.	Map # 030-0090---000 B-0050CR	\$630.05
409	Major, James & Naomi J.	Map # 021-0029---000 W-0013	\$614.04

SALE #	OWNER(S) OR REPUTED OWNER(S)	DESCRIPTION	UPSET PRICE
410	Metzger, Kathie A. Trustee	Map # 027-0125---000 I-0060	\$302.68
411	Miller, Ricky L. & Patricia A.	Map # 008-009---000 H-0038	\$4,212.48
412	Moore, Kendall E.	Map # 025-0076---000 D-0094	\$308.20
413	Moore, Kendall E. & Janet L.	Map # 024-0021---000 A-0017CR	\$543.76
414	Moore, Kendall E. & Janet L.	Map # 025-0111---000 D-0041	\$263.38
415	Moore, Kendall E. & Janet L.	Map # 045-0094---000 R-0057	\$982.05
416	Multi Investment Corp.	Map # 006-0077---000 K-0284	\$569.76
417	McClellan, John B.	Map # 019-0063---000 D-0032	\$479.60
418	Overton, Benjamin F. & Mary T.	Map # 022-0168---000 W-0136	\$456.36
419	Petrosky, Victoria M. Et Al	Map # 002-0141---000 J-0202	\$2,673.39
420	JMPL Investments Et Al	Map # 007-0019---000 K-237	\$689.64
421	Reida, John R. & Helen E.	Map # 043-0005---000 RD-0126	\$7,149.67
422	Reutlinger, Shlomo & Blossom	Map # 030-0076---000 B-0008CR	\$237.71
423	Rogers, William A. & Dorothy	Map # 047-0107---000 R-0034	\$539.64
424	Schaffner, John C. & Lorena A. A/K/A Clyde Schaffner	Map # 034-0054---000 E-0020	\$4,322.83
425	Sedr, William W. & Delores C.	Map # 018-0049---000 C-0023	\$405.77
426	Shaffer, Margaret C.	Map # 041-0200---000 RB-0067	\$487.93
427	Turner, Ray E. & Dora E.	Map # 026-0008---000 D-0060	\$308.51
429	Wachter, Edward Ray	Map # 035-0113---000 B-0014CR	\$8,476.45
430	Wachter, Edward Ray	Map # 035-0090---000 B-0037CR	\$720.10
431	Wallen, Philip M.	Map # 038-0029---000 P-0061	\$1,177.58

interruption. Otherwise the possession of one co-heir and co-tenant is rightly held to be the possession of all.

155 Pa Super at 541

In other parts of the opinion, Superior Court uses co-heir and tenant in common more or less interchangeably.

Defendants respond that the holding in Hanley must be restricted to co-heirs, in light of *Waltmyer v. Smith*, 383 Pa.Super 291, 556 A. 2d 912 (1989). That case involved a claim of an easement by prescription, the litigants being neighbors. The owner of the servient estate claimed that use had begun by permission, and that it should have been presumed that it continued accordingly. In rejecting this argument, Superior Court ruled that, even had use begun permissively, alienation of the servient estate revoked consent as a matter of law. Furthermore, the rule concerning presumptive consent was stated in terms of familial or fiduciary relationships, seemingly restricting the rule to those situations. Thus, defendants argue (a) that the conveyance to Heacock terminated any consensual arrangement that might have existed prior to that time, and (b) since Heacock and the Hollabaughs were not defendants' co-heirs, defendants possessed the land for themselves and not for themselves and co-tenants.

Before disposing of this critical issue, we need to touch upon some other points. In some situations, possession under claim or color of title involves constructive possession of the entire tract. *Beck v. Beck*, 436 Pa. Super. 516, 648 A.2d 341 (1994). It is also true that, sometimes, if all other elements of adverse possession are established, hostility may be inferred. *Tioga Coal Company v. Supermarkets General Corporation*, 519 Pa. 66, 546 A.2d 1 (1988). However, the rule is still that the basic test comes down to a simple question: "Has the adverse possessor so acted on the land in question as to give the record owner a cause in action in ejectment against him for the period defined by the statute of limitations?...What matters is the possessor's physical relationship to the land over a sufficient length of time. Of course, if the possessor has the owner's permission, that changes the picture." *Estate of Klett v. Eboch*, 430 Pa Super. 193, 196, 633 A.2d 1204, 1206 (1993). In this last case, possession by an infant's parents was held not to be hostile, since the infant knew nothing about her interest.

Since each co-tenant holds an undivided interest in the whole estate, *General Credit. Co. v. Cleck*, 415 Pa Super. 338, 609 A.2d 553, (1992), it is difficult to find that the doctrine of constructive possession applies to this case. However, in light of discussion, *infra*, we need not determine this point.

The factual situation in our case indicates that defendants did nothing to announce that their claim to the tract had changed character and become adverse and hostile. Signs warning against trespassing did not appear, objectively, to be aimed at plaintiff. Robert's emphatic utterances were never audible to plaintiff. Unless possession, as demonstrated, can be said to be adverse and hostile, defendants have not met their burden of proving adverse possession.

We think it is important that defendants have never exclusively possessed the tract, but have shared possession with plaintiff. It is clear that plaintiff continuously and openly used the tract as it saw fit. Superior Court has said the difference between prescription and adverse possession is exclusivity. Thus, elements of adverse possession are: (1) actual, (2) visible, (3) notorious, (4) exclusive and distinct, (5) hostile, and (6) continuous use for twenty one years. *Newell Rod And Gun Club, Inc. v. Bauer*, 509 Pa. Super 75, 597 A.2d 667, (1991).

For this reason, alone, defendants' claim must fail.

Nonetheless, we return to the question of whether possession by a co-tenant, who is not a co-heir, is presumed to be the possession of both co-tenants. We think that the rule, expressed in *Hanley*, supra., cannot be interpreted as narrowly as defendants urge. Appellate courts have imposed a variety of duties on co-tenants which do not apply to strangers. Supreme Court has gone so far as to say that tenants in common stand in a confidential relationship to each other with respect to common property, while holding that one co-tenant acted for all in purchasing an outstanding title or interest. *Lund v. Heinrich*, 410 Pa. 341, 189 A.2d 581, (1963); see also, *Thompson v. Consolidated Coal Company*, 194 Pa. Super 178, 166 A.2d 286, (1960). Thus, we hold that the rule, as expressed in *Hanley*, supra, applies to this case and accordingly find that defendants have failed to establish all elements of adverse possession.

Plaintiff contends that evidence establishes that the tract is not susceptible to being divided without doing prejudice to the whole. That issue has not yet been addressed. Accordingly, we will enter an order establishing the respective interests of the parties in the tract as being, plaintiff, 90 percent and defendants, ten percent. Our Court Administrator is directed to schedule another preliminary conference.

ORDER OF COURT

AND NOW, January 10, 1996, the court denies defendants' claim based on adverse possession and determines the interest of the parties as follows: plaintiff, ninety percent and defendants, ten percent.

The Court Administrator is directed to schedule another preliminary conference.

LEGAL NOTICE

NOTICE IN THE COURT OF
COMMON PLEAS OF ADAMS
COUNTY IN AND FOR THE
COMMONWEALTH OF
PENNSYLVANIA

CIVIL

¶ RE: Dismissal of Action for Failure to Proceed Under Pa. R.J.A. 1901(c) and Local Rule of Court No. 10(e)

Pursuant to the provisions of Pa. R.J.A. 1901(c) and Local Rule of Court No. 10(e) notice is given hereby that the following cases will be listed by the Adams County Prothonotary for general call before the Adams County Court on Monday, September 16, 1996 at 9:00 a.m. to request the Court to dismiss for failure to proceed unless good cause for continuing the proceedings shall be given on or before that date.

In Re: Appointment of Board of View to Assess Benefit of Sanitary Sewer Construction in Oxford Township, Adams County, Pennsylvania - 85-S-78

Randy J. and Janis A. Miller, individually and as natural parents and guardians of Timothy Ryan Miller vs. Syntex Laboratories, Inc. - 85-S-708

Tyrone Township vs. Harry H. Fox, Jr. and Ann G. Fox - 88-S-419

David Aiello and Robert Aiello vs. Androw Fertilizer and Jack Anderson - 38-S-541

Jason Bange vs. Laurie A. Noel and Steven E. Noel - 88-S-842

Sherry Heiden, parent and natural guardian of Tiffany Heiden, a minor, vs. Arie P. Krayo - 89-S-97

H & S Supply, Inc. vs. James D. Welshonce and Stephanie D. Welshonce - 89-S-945

Francis L. Hartlaub, Sr. vs. Donna Kay Dee - 90-S-838

Richard J. Neely vs. Kimberly Anne Neely - 91-S-354

Thad Barry Trostel vs. Lisa Marie Trostel - 91-S-876

Lorna L. King vs. William W. King - 92-S-233

Jerrold R. Esaley, Margaret M. Esaley, Lau's Variety Store, Inc. and Fred M. Sauter Funeral Home vs. Frederick M. Sauter - 92-S-281

Anthony Genova vs. Carlos Gambino and Mary Ann Gambino - 92-S-296

Michael J. Wonder vs. Robert T. Miller - 92-S-384

Ambrose D. Martin and Sandra E. Martin vs. Munson Transportation Company, Inc. and Kathleen Huffer - 92-S-518

Ronald I. Higgs vs. Sharon G. Higgs - 92-S-538

Gettysburg National Bank vs. Leroy Townsend and Elizabeth D. Stober - 92-S-539

Bream Orchards, Inc. vs. Dwight H. Jones and William N. Jones, Va Jones Brothers Produce - 92-S-699

Michael Investments, Inc. vs. Yvonne McDowell - 92-S-715

Sallie L. Harris vs. Herman Anthony Campbell - 92-S-784

Hanover Architectural Products, Inc. vs. Bace Construction Company, Inc. - 92-S-1022

Janice E. Baumgardner vs. Larry E. Baumgardner - 92-S-1038

Alvin J. Cape, Jr. vs. Thomas L. Schaeffer - 92-S-1040

Dorothy M. Shriver, Administratrix of the Estate of Douglas P. Shriver, deceased vs. Marvelous Marv & Co., Inc. - 92-S-1088

Carol A. Gorse and George E. Gorse vs. Christopher A. Minter - 92-S-1120

Linda McEnany vs. Glen Charlesworth and Christy Charlesworth - 92-S-1153

Tristate Electrical Supply Company Incorporated vs. Chase Electric, Inc. - 92-S-1160

Alice B. Hall vs. Borough of Biglerville, and Dwight R. Wintrade, and Jack E. Housman, as individuals and t/d/b/a JADE, and/or J and D Enterprises - 92-S-1161

Eidon L. Baum and Gloria Baum, his wife vs. Douglas P. Shriver - 93-S-55

John F. Foster, Jr. vs. Pamela A. Foster - 93-S-64

Glenda Poole vs. B & D Detail Shop - 93-S-77

John Craigle and Ruth Craigle vs. Esther Myers and Adams County Children & Youth Services - 93-S-123

Weaver Brother Plastering vs. Robert A. Smith - 93-S-148

Eugenio G. Sandoval vs. Maybelle B. Sandoval - 93-S-223

CCNB Bank, N.A. vs. Ardyce R. Carlson - 93-S-231

Cathy A. Weaver vs. Leonard E. Weaver - 93-S-244

Commonwealth of Pennsylvania Department of Transportation vs. Zebastain N. Burke - 93-S-251

Terrence L. Hooper and Diana L. Hooper, his wife vs. Noah Hostettler and Bowman Trucking Company, Inc. and for John Bowman t/d/b/a Bowman Trucking and/or J & J Trucking, Rollie E. Bartlow and Frank W. Bartlow, t/d/b/a Bartlow Trucking - 93-S-261

H & S Supply, Inc. vs. Daniel L. Wineke, Jr. and Jill M. Wineke, t/d/b/a Wineke Refrigeration - 93-S-264

Romaine B. Copenhaver vs. Construction Management Corporation - 93-S-284

Shari L. Dietz vs. Rodney Heagey - 93-S-295

Georgia A. Solt vs. Jeffrey M. Solt - 93-S-303

Gettysburg Hospital vs. Burnett Flowers - 93-S-319

Harry E. Mummert vs. Debra A. Mummert - 93-S-322

Bonita L. Kuhn vs. Harry W. Kuhn, III - 93-S-338

William K. Rippeon vs. Yvette L. Rippeon - 93-S-382

Barbara J. King vs. Michael D. King - 93-S-427

Patrick Geoffrey Hanlon vs. Teresa Marie Hanlon - 93-S-486

Federal Home Loan Mortgage Corp. vs. Ronald McMaster and Treva McMaster - 93-S-523

Julie Lynch vs. Robert Allen Lynch - 93-S-554

Winterbrook Farms vs. J D Myers, Inc. - 93-S-557

Wylie H. Allen vs. Julianna P. Allen - 93-S-580

Ronald K. McCreary, Jr. vs. Alice E. McCreary - 93-S-585

Gwendolyn G. Shultz vs. Thomas W. Shultz - 93-S-615

James Roger Greer, Jr. vs. Denise Ellen Greer - 93-S-664

Ruth Frazier vs. William J. Fabrick, Sr. - 93-S-668

Nationwide Insurance Company as subrogee of Marilyn M. Kress vs. Michele Yvonne Portlow and Michael Lininger - 93-S-699

Residential Warranty Corp. vs. Richard Feeser - 93-S-707

Brian W. Stoops vs. Krystal M. Stoops - 93-S-720

James Topper vs. Bruce Zoeller - 93-S-740

Steven H. Riley vs. Cindy L. Riley - 93-S-755

Robert Wagner vs. Yvonne Trostle - 93-S-759

Cynthia Vial vs. The Roman Catholic Diocese of Harrisburg and Delone Catholic High School - 93-S-774

Kimberly Ruthann Sanders vs. Scott Allen Sanders - 93-S-798

Gloria Burr and Russell Burr vs. Ayanna L. Hill - 93-S-852

William T. Harris vs. Richard C. Dutrow, II - 93-S-862

Allen McDonnell vs. Dennis Applanalp - 93-S-866

George Lawrence vs. Wendy Spangler - 93-S-935

Karen T. Mathna vs. Troy L. Mathna - 93-S-956

Deborah A. E. Beck vs. Roger D. Weaver - 93-S-962

Michael J. Fissel vs. Mary Kay Fissel - 93-S-970

In Re: Appeal of Kinney Shoe Corporation from the Adams County Board of Assessment Appeals - 93-S-985

Betty Sue Mitchell vs. Andrew Ramon Mitchell - 93-S-998

GTE North Incorporated vs. Carroll E. Riebling - 93-S-1021

Patricia L. Murphy vs. William E. Summerfield and Elizabeth I. Kuczynski - 93-S-1064

Tammy Wagaman vs. Perry Sloat - 93-S-1071

Wendy Jackson vs. Gorman/Hill Partnership and William F. Hill - 93-S-1081

Robinson, Morris and Koenig vs. Cheryl Whitcomb - 93-S-1082

G & D Sales & Service vs. Kevin & Dolores Torsey - 93-S-1105

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 CLAIR D. FETTERS, DEC'D

Late of Menallen Township, Adams County, Pennsylvania
 Executors: Terry L. Fetters, 35 Hillview Road, Gardners, PA 17324; Kenneth L. Fetters, 1289 Gabler Road, Gardners, PA 17324
 Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MERLE L. HANKEY, SR., DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
 Co-Executors: Merle L. Hankey, Jr., 615 Shrivvers Corner Road, Gettysburg, PA 17325; Nora L. Keller, 418 Granite Station Road, Gettysburg, PA 17325
 Attorney: David K. James, III, Esquire, 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARY L. HOLDEN, DEC'D

Late of New Oxford, Adams County, Pennsylvania
 Executors: Lovie F. Klunk, 5950 Hanover Road, Hanover, PA 17331; Donald E. Tracy, RR2, Box 2292, Glenville, PA 17329
 Attorney: Timothy J. Shultis, Esquire, 118 Carlisle Street, Suite 110, Hanover, PA 17331

ESTATE OF JACQUELINE M. MILLER, DEC'D

Late of Franklin Township, Adams County, Pennsylvania
 Executrix: Mary M. Myers, 2583 Mummasburg Road, Gettysburg, PA 17325
 Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF DONALD F. SIPLING, DEC'D

Late of 226 Fish & Game Road, New Oxford, Adams County, Pennsylvania 17350
 Administrators: Donald E. Sipling, P. O. Box 409, Emigsville, PA 17318; Cheryl A. Markel, 143 Arch Street, York, PA 17403; Michael J. Sipling, 2100 West Mason Avenue, Lot 15, York, PA 17404
 Attorney: Lynn G. Peterson, Esq., Peterson & Peterson, 515 Carlisle Street, Hanover, PA 17331

SECOND PUBLICATION

ESTATE OF LAWRENCE J. CULLISON, DEC'D

Late of Freedom Township, Adams County, Pennsylvania
 Executrix: Nora M. Cullison, 345 Natural Dam Road, Gettysburg, PA 17325
 Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF ETHEL P. GUISE, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
 Co-Executors: D. Richard Guise, Adams County National Bank, c/o P. O. Box 4566, Gettysburg, PA 17325
 Attorney: Neal S. West, Esq., Attorney for the Estate, c/o McNeese, Wallace & Nurick, 100 Pine Street, P.O. Box 1166, Harrisburg, PA 17108

ESTATE OF ELIZABETH A. SMITH, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
 Administrator: Peter G. Wilson, 289 Oak Lane, Gettysburg, PA 17325
 Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF DONALD F. STEVENS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executors: Robert L. Stevens, John E. Stevens, Patsy Ann Keller
 Attorney: John L. Mooney, III, 250 York Street, (Gates & Mooney), Hanover, PA 17331

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-484 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of August, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in Menallen Township, Adams County, Pennsylvania, being more fully bounded, limited, and described as follows:

BEGINNING at a point in or near the centerline of Legislative Route 01080 (S.R. 4012), thence leaving said roadway and extending along the dividing line of Lots No. 2 and 3 of the hereinafter referred to subdivision plan, North 42 degrees 26 minutes 45 seconds West a distance of 465.07 feet to a point at other lands now or formerly of Wayne Ogburn; thence along the last mentioned lands, North 43 degrees 24 minutes 20 seconds East 100.00 feet to a point at the dividing line of Lots 1 and 2 on the hereinafter referred to subdivision plan; thence along said dividing line, South 45 degrees 15 minutes 05 seconds East 490.59 feet to a point in or near the centerline of Legislative Route 01080 (S.R. 4012),

thence in, along and through said last mentioned roadway South 55 degrees 41 minutes 40 seconds West 125.00 feet to the point and Place of BEGINNING.

CONTAINING 1.224 acres and being designated as Lot No. 2 on a Final Plan of Subdivision for Wayne Ogburn, prepared by J. Ruey Redding, R.S., Said Plan is recorded in Adams County Records in Plat Book 55, Page 78.

Being known and numbered as 1515 Coon Road.

BEING the same premises which Wayne B. Ogburn and Shirley D. Ogburn, his wife, by deed dated June 15, 1990, and recorded June 29, 1990 in the Office of the Recorder of Deeds in and for Adams County at Gettysburg, Pennsylvania in Deed Book 560, Page 374, granted and conveyed to Patrick S. Dietz, single man and Susan F. Hoover, single woman. The said Susan F. Hoover is now intermarried with the said Patrick S. Dietz, and is known as Susan F. Hoover.

UNDER AND SUBJECT to certain restrictions now of record.

SEIZED and taken into execution as the property of **Patrick S. Dietz and Susan F. Dietz**, and to be sold by me

Bernard V. Miller
 Sheriff

Sheriff's Office, Gettysburg, PA
 July 8, 1996.

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 16, 1996, 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.

7/19, 26 & 8/2

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, for the purpose of obtaining a Certificate of Incorporation pursuant to the provisions of the Pennsylvania Business Corporation Law of 1988, as amended.

KEYSTONE PODIATRIC MEDICAL ASSOCIATES, P.C. has been incorporated under the provisions of the Pennsylvania Business Corporation Law of 1988, as amended.

Drake, Hileman & Davis
 Suite 15
 Bailiwick Office Campus
 P. O. Box 1306
 Doylestown, PA 18901
 Solicitors

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

ACTION TO QUIET TITLE

CIVIL DIVISION—LAW
NO.

CHARLES H. MORT and AGNES A. MORT, Plaintiff,

vs.

SUSAN L. BRINGEN, her spouse, heirs and assigns and CECILIA A. FASULO, her spouse, heirs and assigns, Defendants

TO: CECILIA A. FASULO, her spouse, heirs and assigns, Defendant

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the Complaint you must take action within twenty (20) days after this publication by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections in the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for the relief requested by the Plaintiff. You may lose money, property or other rights important to you.

You should take this notice to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone

Court Administrator
Adams County Courthouse
Fourth Floor
Gettysburg, PA 17325
(717) 334-6781 Ext. 213

to find out where you can get legal help.

The Complaint, filed in the Court of Common Pleas of Adams County, Pennsylvania at No. 96-S-603, alleges that the Plaintiffs, Charles H. Mort and Agnes A. Mort, his wife, are the owners of the following parcel of property bounded and described as follows, to-wit:

ALL that certain piece, parcel or tract of land, together with the improvements thereon erected, situate, lying and being in Hamiltonban Township, Adams County, Pennsylvania, being Lot No. 103 in Section J, bounded and described as follows:

BEGINNING at a point in the center of Cross Land Trail at Lot No. 102; thence by said lot and by Lot No. 104 North 3 degrees 11 minutes 40 seconds West, 288.64 feet to a point in the center of Hillcrest Trail; thence in said Hillcrest Trail South 73 degrees 27 minutes East, 132.13 feet to a point in the intersection of Hillcrest Trail and Main Trail; thence in said Main Trail South 3 degrees 11 minutes 40 seconds East, 256.63 feet to a point in the intersection of Main Trail and Cross Land Trail; thence in said Cross Land Trail North 87 degrees 23 minutes 40 seconds

West, 125 feet to the place of BEGINNING.

The above description was taken from a plan of lots labeled "Section J, Charnita Ski Area, Inc." dated March 20, 1968, prepared by Gordon L. Brown, R.S., recorded in Adams County Plat Book No. 1 at page 24.

The Court has ordered that the notice to this action may be given by publication so that title to the property may be adjudicated. The Complaint requests the Court to decree that title to the property is free and clear of any claim or interest of any of the said Defendants, their heirs and assigns, and that said Defendants be barred from asserting any right, title and interest in and to the property inconsistent with the interest and claim of the Plaintiffs unless an action of ejectment is brought within thirty (30) days of the Court's Order.

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

8/2

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-397 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of September, 1996, 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 in Reading Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

TRACT NO. 1: BEGINNING at a post of lands now or formerly of Michael Rebert; thence South two (2) degrees East, two hundred thirty-one (231) feet to a point at the Big Conewago Creek; thence South sixty-eight (68) degrees West, one hundred ninety-eight (198) feet to a point at lands now or formerly of William Hildebrand; thence along the same, North eighteen (18) degrees West, two hundred seventy-two and twenty-five hundredths (272.25) feet to a post at lands now or formerly of William Brough; thence along the same, North seventy-nine (79) degrees East, one hundred seven and twenty-five hundredths (107.25) feet to a stone in a public road and lands now or formerly of C. M. Spangler; thence along property now or formerly of C. M. Spangler, North eighty-three (83) degrees thirty (30) minutes East, one hundred fifty-six and seventy-five hundredths (156.75) feet to a point, the place of BEGINNING. CONTAINING one (1) acre and seventy (70) perches, more or less.

TRACT NO. 2: BEGINNING at the center of a public road and intersection of another public road at lands of East Berlin Borough and now or formerly of Arthur F. Peiffer; thence through said public road and along lands now or formerly of Arthur F. Peiffer, South twenty (20) degrees thirty (30) minutes East, one hundred twenty-two and twenty-five hundredths (122.25) feet to a point; thence by land now or formerly of Arthur F. Peiffer, North sixty-four (64) degrees thirty (30) minutes East, twenty-seven (27) feet to a point; thence South five (5) degrees thirty (30) minutes East, forty-three and two-tenths (43.2) feet to a point; thence by land now or formerly of East Berlin Borough, North fifty-eight (58) degrees twenty-five (25) minutes West, one hundred six and ten hundredths (106.10) feet to a point beyond the public road; thence along land now or formerly of East Berlin Borough and in said public road North ten (10) degrees East, one hundred thirteen and eighty hundredths (113.80) feet to the place of BEGINNING. CONTAINING thirteen hundredths (.013) acres.

This description taken from a draft of survey made by George M. Wildasin, Professional Engineer, on July 17, 1954.

IT BEING the same premises which Larry W. Peterman and Nancy L. Peterman, his wife, by their Deed dated July 28, 1990 and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 560, Page 510, granted and conveyed unto Bonnie L. Schmidt.

SEIZED and taken into execution as the property of **Bonnie L. Schmidt**, and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
July 15, 1996.

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 7, 1996, 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.

7/26, 8/2 & 9

Adams County Legal Journal

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No. 11, pp. 67-82

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-507 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of September, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain piece, parcel or tract of land situate, lying and being in Conewago Township, Adams County, Pennsylvania, more particularly bounded, limited and described as follows, to wit:

BEGINNING at a point on the eastern right-of-way line of South Lincoln Drive, a sixty (60) foot wide right-of-way, at corner of Lot No. 35 on the subdivision plan hereinafter referred to; thence along the eastern right-of-way line of South Lincoln Drive, North twenty-six (26) degrees twenty (20) minutes twenty-eight (8) seconds East, sixty-five (65) feet to a point at Lot No. 37 on the subdivision plan hereinafter referred to; thence along Lot No. 37, South sixty-three (63) degrees thirty-nine (39) minutes thirty-two (32) seconds East, one hundred forty-two and seventy-nine hundredths (142.79) feet to a point at Lot No. 26 on the subdivision plan hereinafter referred to; thence along Lots No. 26 and 27, South thirty (30) degrees forty-nine (49) minutes thirty (03) seconds West, sixty-five and twenty hundredths (65.20) feet to a point at Lot No. 35 on the subdivision plan hereinafter referred to; thence along Lot No. 35, North sixty-three (63) degrees thirty-nine (39) minutes thirty-two (32) seconds West, one hundred thirty-seven and seventy hundredths (137.70) feet to a point on the eastern right-of-way line of South Lincoln Drive, the point and place of BEGINNING. CONTAINING 9,116 square feet.

Being Lot No. 36 on the final subdivision plan for Diller's Village, Phase Three, prepared by Donald E. Worley, Registered Surveyor, dated August 14, 1987, revised October 8, 1987, designated as File No. G-97 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 48, Page 44.

HAVING erected thereon a dwelling known as 218 Lincoln Drive, Hanover, PA 17331.

Map 9, Parcel 303.

BEING the same premises which Stephen E. Kuhn and Lori R. Kuhn, husband and wife, by their Deed dated July 15, 1993 and recorded in the Recorder's

Office of Adams County, Pennsylvania on July 16, 1993, in Deed Book Volume 754, Page 157, granted and conveyed unto Scott F. Bowman and Sandra L. Bowman, his wife.

SEIZED and taken into execution as the property of **Scott F. Bowman** and **Sandra L. Bowman** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
July 25, 1996.

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 7, 1996, 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.

8/9, 16 & 23

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-269 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of September, 1996, 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 ground situate, lying and being in Hamiltonban Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point in the center of said Township Road, said point being North 57 degrees 30 minutes West, 150 feet from an iron pin in the center of said Township Road and the point of original reference; thence by lands now or formerly of Allen C. Southcomb, South 32 degrees 30 minutes West, 216.5 feet to a point at lands now or formerly of Floyd J. Kump and Bessie J. Kump; thence by same, North 57 degrees 30 minutes West, 150 feet to a point at lands now or formerly of Floyd J. Kump and Bessie J. Kump, also known as Lot No. 4; thence by the same, North 32 degrees 30 min-

utes East, 216.5 feet to a point in the center of the Township Road aforesaid; thence in the center of said Township Road, South 57 degrees 30 minutes East, 150 feet to a point in the center of said road, the place of BEGINNING.

The foregoing description was taken from a draft of survey as prepared by Wilbur V. Redding, Registered Surveyor, dated October 9, 1961, and identified thereon as the western half of Lot No. 2 and all of Lot No. 3.

BEING the same which Adams County National Bank, a national banking corporation, by its deed dated September 29, 1993, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 448 at page 46, sold and conveyed unto Esther A. Stouter, the Defendant herein.

IMPROVED WITH a 1-story, single family ranch-style dwelling with a Morton-type outbuilding.

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

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
July 19, 1996.

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 7, 1996, 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.

8/9, 16 & 23

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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Second-class postage paid at Gettysburg, PA 17325.

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INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on or about June 25, 1996, for the purpose of obtaining a Certificate of Incorporation for a proposed business corporation to be organized under the Pennsylvania Business Corporation Law of 1988. The name of the corporation is RAYMOND L. HOFFMAN CONCRETE CONTRACTOR, INC., and the purpose for which it is being organized is for commercial and residential concrete contracting services, and the corporation shall have unlimited powers to engage in and to do any lawful act concerning any and all business for which corporations may be incorporated under the Pennsylvania Business Corporation Law of 1988, and for these purposes to have, possess, and enjoy all the rights, benefits and privileges of said Act of Assembly and its supplements and amendments.

The initial registered office of the corporation is 842 Dicks Dam Road, New Oxford, Pennsylvania, 17350.

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

8/9

NOTICE OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on July 19, 1996, 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 DAVID M. WALTERSDORFF, 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.

David M. Waltersdorff, Inc.
3005 Carlisle Pike
New Oxford, PA 17350-9370

8/9

NOTICE OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on 06/13/1996, 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 KITCHEN TRADITION, 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.

Kitchen Tradition, Inc.
1140 Mathias Road
Littlestown, PA 17340

8/9

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, August 12, 1996, at 9:00 a.m.

MYERS—Orphans' Court Action Number OC-82-96. The First and Final Account of Mary G. Dennis, Executrix of the Estate of William S. Myers, deceased, late of Cumberland Township, Adams County, Pennsylvania.

OGDEN—Orphans' Court Action Number OC-83-96. The First and Final Account of Amelia C. Ogden, Executrix of the Last Will and Testament of Charles F. Ogden, deceased, late of the Borough of Bendersville, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

8/2, 9

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, Harrisburg, Pennsylvania, for the purposes of obtaining a certificate of incorporation of a proposed business corporation to be organized under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 144, No. 177, as amended. The name of the corporation is MCF CONSULTING, INC.

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

8/9

PRICE VS. SCHIER-HANSON, ET AL.

1. Pursuant to the Nanty-Glo rule, summary judgment is not available where the moving party relies exclusively upon oral affidavits or depositions to establish the absence of a genuine issue of material fact, except where that oral testimony consists of admissions of the opposing party or his witnesses.

2. Summary judgment cannot be granted where it is based upon the testimony of the moving party, or interested or disinterested witnesses, even if that testimony is not contradicted.

3. There are two exceptions to the Nanty Glo rule both of which, for policy reasons, remove the issue of credibility from the summary judgment analysis; the first involves the use of documentary evidence which supports a claim or defense and the second involves the testimonial admissions of an adverse party.

4. For purposes of the adverse party exception to the Nanty-Glo rule, what constitutes an adverse party is difficult to determine where two or more defendants or their agents are using testimonial evidence of the other to support their respective motions for summary judgment.

5. In order to rely on the testimony of co-defendants as adverse party exceptions to the Nanty-Glo rule, the moving party must demonstrate that there is actual adversity among the Defendants so as to make any testimony by the co-defendant "unconditional surrender."

6. The hallmark of an employee-employer relationship is that the employer not only controls the result of the work but has the right to direct the manner in which the work shall be accomplished; the hallmark of an independent contractee-contractor relationship is that the person engaged in the work has the exclusive control of the manner of performing it, being responsible only for the result.

7. It is the exclusive function of the jury to determine, from the evidence, whether the relationship is one of employee-employer or of independent contractee-contractor except where the facts are not in dispute, in which latter event the question becomes one for determination by the Court.

8. A master can be liable for the negligence of his servant only if the negligence occurred while the servant was acting within the course and scope of his or her employment.

9. The burden of proving that the servant was acting within the scope of his or her employment is upon the one asserting it and generally the scope of one's employment is a fact question for the jury unless facts are not in dispute.

10. The standard of care set forth in the Restatement (Second) Torts §332 setting forth the duty owed to invitees by the possessor of land is one of reasonableness and foreseeability.

11. The landowner is not an insurer of the safety of his invitee and the mere happening of an accident is not, in and of itself, evidence of a breach of the landowner's duty of care to his invitees.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-123 SHARON PRICE VS. SARAH M. SCHIER-HANSON, GRACE EVANGELICAL LUTHERAN CHURCH AND ST. LUKE LUTHERAN CHURCH.

Marvin O. Schwartz, Esq., for Plaintiff

James L. Goldsmith, Esq., for Defendant Schier-Hanson

Jered L. Hock, Esq., for Defendant Grace Evangelical
Lutheran Church

Karen Durkin, Esq., for Defendant St. Luke Lutheran Church

OPINION ON MOTIONS FOR SUMMARY JUDGMENT

Kuhn, J., December 20, 1995.

This case arises out of an incident occurring on June 16, 1991, when Defendant, Sara M. Schier-Hanson, hereinafter "Schier-Hanson," drove her car from the parking lot area of the Grace Evangelical Lutheran Church onto the sidewalk situated between the parking lot and the main church building and struck Plaintiff thereby causing serious injury. Procedurally a Complaint was filed in Dauphin County on June 19, 1992, naming six defendants. After the filing of responsive pleadings, Plaintiff filed an Amended Complaint on January 4, 1993. Responsive pleadings were filed up to July 27, 1993. The Court of Common Pleas of Dauphin County dismissed two of the defendants and another one has been dropped from the suit. By Order dated January 6, 1994, the litigation was transferred to Adams County after which the parties engaged in discovery.

The counts remaining include Count I Negligence against Schier-Hanson, Count IV Vicarious Liability and Count V Premises Liability against Grace Evangelical Lutheran Church, hereinafter "Grace Lutheran" and Count VI Vicarious Liability against St. Luke Lutheran Church, hereinafter "St. Luke." The pleadings aver, and there is no dispute, that at the time of the accident Schier-Hanson was the pastor for both Grace Lutheran and St. Luke. Nor is there any dispute that she had just finished her morning service at Grace Lutheran and was ready to travel to St. Luke's to conduct another worship service when the accident occurred. Plaintiff contends that there was a master-servant relationship between the two churches and Schier-Hanson. The count for premises liability focuses on whether Grace Lutheran was negligent for not having placed a barrier between the parking lot and the walkway to help prevent vehicles from going onto the sidewalk and striking pedestrians.

Both churches filed motions for summary judgment contending that Schier-Hanson was an independent contractor. Grace Lutheran also moved to dismiss Count V which alleged premises liability. St. Luke also argues that if Schier-Hanson was an employee she was not acting within the scope of her employment at the time of the accident. In turn, Plaintiff filed a counter-motion for summary judgment wherein she sought a ruling that Schier-Hanson was an employee of both churches

and acting within the scope of her employment at the time of the accident. Those three motions are before the Court for disposition.

It has often been stated that,

Summary judgment may be granted if the pleadings, depositions, answers to interrogatories and admissions on file show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law . . . Summary judgment may be entered only in cases that are clear and free from doubt . . . The moving party . . . has the burden of proving that no material issue of fact exists . . . *Allstate Insurance Co. v. McFadden*, 407 Pa. Super. 537, 540, 595 A.2d 1277, 1278 (1991); *Alloc. den.* 602 A.2d 855 (1991) (citations omitted).

In addition, the record must be examined in a light most favorable to the non-moving party, accepting as true all well-pleaded facts in the pleadings and giving that party the benefit of all reasonable inferences drawn therefrom. *Godlewski v. Pars Manufacturing Company*, 408 Pa. Super. 425, 430, 597 A.2d 106, 109 (1991). Finally, pursuant to the Nanty-Glo rule, summary judgment is not available where the moving party relies exclusively upon oral affidavits or depositions to establish the absence of a genuine issue of material fact, except where that oral testimony consists of admissions of the opposing party or his witnesses. *Johnson v. Johnson*, 410 Pa. Super. 631, 637, 600 A.2d 965, 968 (1991).

The record before the Court consists of the pleadings, 10 depositions¹, the constitutions of Grace Lutheran, St. Luke and Lower Susquehanna Synod Evangelical Church in America; Schier-Hanson's Letter of Call, Schier-Hanson's answers to Plaintiff's interrogatories, and Grace Lutheran's answers to Plaintiff's interrogatories.

Much of the testimonial evidence presented for consideration will be subject to scrutiny under the Nanty-Glo rule. It is important to distinguish whose testimony or what source reveals a certain fact and

¹ These included the depositions of Plaintiff; Larry Miller (Plaintiff's boyfriend and a member of Grace Lutheran); Bishop Guy S. Edmiston, Jr. (Bishop of Lower Susquehanna Synod of the Evangelical Lutheran Church in America, one of the dismissed defendants); H. Raymond Reynolds (Treasurer and Council member of Grace Lutheran); Perry L. Grove (former Council member of Grace Lutheran); Sara M. Schier-Hanson; John D. Schier-Hanson; Harold Glen Whisler (lay president of St. Luke's Council); Jay Louis Waybright (lay president of Grace Lutheran Parish, one of the dismissed defendants); and Evelyn K. Reaver (lay president of Grace Lutheran Council).

who is presenting it to support that party's motion for summary judgment. The Nanty-Glo rule is basically a recognition that determining the credibility of witnesses is normally the function of a jury and one's motion for summary judgment cannot be supported by testimony which is subject to an evaluation of credibility. Thus, summary judgment cannot be granted where it is based upon the testimony of the moving party, *Melmed v. Motts*, 341 Pa. Super. 427, 431, 491 A.2d 892, 893 (1985), or interested or disinterested witnesses, *Garcia v. Savage*, 402 Pa. Super. 324, 334, 586 A.2d 1375, 1379 (1991), even if that testimony is not contradicted, *Penn Center House, Inc. v. Hoffman*, 520 Pa. 171, 176, 553 A.2d 900, 902 (1989).

There are two exceptions to the Nanty-Glo rule both of which, for policy reasons, remove the issue of credibility from the summary judgment analysis. The first exception involves the use of documentary evidence which supports a claim or defense. The second exception involves the testimonial admissions of an adverse party. What constitutes an adverse party is easy to determine as between a plaintiff and a defendant, it is more difficult, however, where two or more defendants or their agents are using testimonial evidence of the other to support their respective motions for summary judgment. As stated in *Johnson v. Johnson*, 410 Pa. Super. 631, 600 A.2d 965 (1991),

In order to rely on the testimony of co-defendants, the moving party must demonstrate that there is actual adversity among the defendants, so as to make any testimony by the co-defendant "unconditional surrender." 410 Pa. Super. at 640, 600 A.2d at 969.

The mere fact that the various defendants have not filed cross-claims against one another is not dispositive of whether they are adverse parties. *Id.* In *Johnson v. Johnson*, the several defendants were each trying to support their separate motions for summary judgment by their own testimony and that of the other defendants. The motions were denied because Superior Court determined that they were not antagonistic to one another and because no defendant tried to exculpate himself by blaming the other defendants. By comparison in *Askew By Askew v. Zeller*, 361 Pa. Super. 35, 521 A.2d 459 (1987), Defendant-Olson used the testimony of Defendant Zeller that he did not interpret a hand signal by Defendant-Olson that he could safely turn left at an intersection to support her motion for summary judgment. There the plaintiff had been injured when Defendant-Zeller made the left turn and the plaintiff tried to hold Defendant-Olson liable on a theory that

she assumed a duty of care to the plaintiff when she signaled Defendant-Zeller to turn. Because Zeller unequivocally testified that he did not rely on Olson's signal that he could proceed safely, as a matter of law, there was no basis to find Olson negligent. There the court determined that the not contradicted deposition testimony of a co-defendant (Zeller), who was an adverse party and equally liable to the plaintiff constituted a sound basis to grant Olson's motion and was not a violation of the Nanty-Glo rule.

With these principles in mind we must carefully examine the record evidence.

Schier-Hanson's deposition revealed that she began serving as pastor at St. Luke and Grace Lutheran as of July 21, 1988, but that call was not official until she was ordained in August, 1988. She testified to being called to preach the word, administer sacraments, visit the sick, bury the dead and marry persons. Her letter of call was for an indefinite period. St. Luke and Grace Lutheran formed a parish with both churches contributing equally to the parish account to pay her salary and benefits. The Grace Lutheran Parish which meets quarterly consists of all members of the respective councils of St. Luke and Grace Lutheran. It owns no real estate but does maintain its own checking account. The parish sets the budget for her salary and benefits and then each of the churches puts an equal portion of the parish budget into their individual church budgets which, in turn, is approved by that particular congregation.

Regarding her duties and responsibilities, Schier-Hanson stated that she is not accountable to any church body although she does report her activities to each church council. She decides how to administer baptism and communion, how to conduct the worship, how to provide pastoral care, when and how long to visit the sick, how to conduct funeral services and how to provide youth instruction. The congregation does not tell her how to conduct these functions. She is not given a daily schedule to follow nor told how many hours to work. St. Luke and Grace Lutheran have their own separate order of worship service and Schier-Hanson keeps separate record books for each church.

On June 16, 1991, Schier-Hanson had finished the service at Grace Lutheran at approximately 9:50 A.M. After greeting parishioners, Schier-Hanson, while still in her robes, gathered her sermon and prayers for the St. Luke service which was to begin at 10:30 A.M. She proceeded to her car which was parked in the spot designated for the pastor and was about to begin the 10 minute drive to St. Luke when she

was approached by Plaintiff. The accident occurred shortly thereafter.

John Schier-Hanson is the pastor's husband. He testified that payroll taxes are not deducted from his wife's salary but rather she pays her own quarterly taxes. The churches combined to pay 50% of her Social Security obligation.

Larry Miller is Plaintiff's boyfriend and a lifelong member of Grace Lutheran. Mr. Miller was on Grace Lutheran's council at the time of the accident and had previously served on the property committee. He testified that the church parking lot was last repaved in the early 1980s. At some time prior to this accident, the church installed bumpers and steel barriers in the lower (eastern) end of the parking lot for safety reasons. There was, however, no discussions before June, 1991 regarding the placement of bumpers or barriers at the site of this accident.

Guy S. Edmiston, Jr. is the Bishop of the Lower Susquehanna Synod of the Evangelical Lutheran Church of America. He related that St. Luke and Grace Lutheran had an agreement to secure a full-time pastor and extended a call to Schier-Hanson. He noted that each local church has its own constitution. The congregation sets the salary and benefit package for the pastor. The Synod establishes guidelines for use in setting a pastor's compensation and benefits but the guidelines are not mandatory. Generally, he finds that a pastor is considered to be self-employed for tax and Social Security purposes. Finally, Bishop Edmiston stated that discipline or termination (except for death) of a pastor must be done through consultation with the Synod.

Harold Glen Whisler is the lay president of the St. Luke council and held that position in June, 1991. Prior to July, 1988, Mr. Whisler had served on the council for 16 years and was serving on the finance committee in July, 1988. Mr. Whisler testified that St. Luke and Grace Lutheran formed the Grace Lutheran parish so the two churches could pool their resources in order to secure a full-time pastor.

Mr. Whisler stated that Schier-Hanson's compensation package includes salary, housing allowance, Social Security contributions, pension contributions, medical and dental insurance, book allowance, vacation and sick leave, all of which is paid for equally by both churches out of the joint account of the Parish. He noted Schier-Hanson has an office at both churches but generally uses the one at St. Luke to meet with and counsel members of both congregations. The pastor is involved with council and committee meetings, church school and vacation Bible school. Schier-Hanson publishes her hours of

availability in the bulletin and gives monthly reports to council. He felt that Schier-Hanson's duties were mandated by St. Luke's constitution and that she was subject to the supervision and discipline of council.

Evelyn Reaver was the lay president of the council of Grace Lutheran from 1989 through the time of her deposition. According to Ms. Reaver the church's constitution gives the congregation the right to call, discipline and terminate the pastor. The constitution also itemizes the pastor's duties. The congregation, not the pastor, determines the hours of the worship service. She testified that Schier-Hanson receives a salary, housing allowance, pension contributions, automobile allowance, continuing education, books, vacation, sick leave and disability benefits. The pastor is paid by the parish from equal contributions given by each church. Schier-Hanson maintains regular hours, conducts services, and attends council and committee meetings. The pastor has an office at each of the churches although the one at St. Luke is used for the benefit of members of both congregations.

Ms. Reaver stated that Grace Lutheran owns the real estate where that church is located and it is maintained by the property committee. She recalled no prior accidents on the church property and no discussion regarding the placement of barriers or tire stops between the parking lot and the sidewalk prior to the accident.

Jay Waybright is a member of Grace Lutheran who served on the property committee in 1991 and was the parish president in 1992. He noted that for as long as he can remember Grace Lutheran Parish existed for the sole purpose of combining the St. Luke and Grace Lutheran councils to secure a pastor for both churches and share the expenses for a pastor. The parish's combined council meets quarterly. Its officers include the president, secretary and treasurer. The parish owns a desk, chair, filing cabinet, copy machine and bank account in the name of both churches. He stated that the church's by-laws describe the function of the parish.

Perry Grove is a member of Grace Lutheran, council member for six years up to 1987, a member of the property committee in 1991 and an eyewitness to the accident. He was not aware of any discussions regarding barriers or tire stops at the site of the accident before June, 1991.

H. Raymond Reynolds is a long time member of Grace Lutheran, its treasurer of 17 years and a council member in 1991. He testified that the parish determines the pastor's salary and Grace Lutheran pays its

proportionate share on a monthly basis. He noted that Schier-Hanson's office is at St. Luke. He recalls no discussion prior to the accident regarding barriers or tire stops at the site.

Schier-Hanson's written Letter of Call dated July 21, 1988, is signed by the respective vice presidents of St. Luke and Grace Lutheran and is attested to by Bishop Edmiston. Her compensation and benefit package is set forth therein and includes salary, housing allowance, pension contributions, automobile, continuing education, resource and official meeting allowances as well as vacation, continuing education leave, sick leave, maternity leave and disability benefits. The document was executed by Schier-Hanson on August 3, 1988.

The Grace Lutheran Constitution gives to the congregation specific powers including, inter alia, the right to call and terminate a pastor, own real estate, and approve an annual budget. Chapter 9 of the Constitution discusses the duties of the pastor and matters of discipline and termination. The pastor's duties include preaching the Word, administering the sacraments, conducting public worship, providing pastoral care, offering instruction, confirming, marrying, visiting the sick, burying the dead, supervising all schools and organizations of the congregation, installing council members, administering discipline, and keeping accurate parochial records. The accepted call of the pastor is to "constitute a continuing mutual relationship and commitment." Except for death the pastor is not to be terminated without consultation with the synodical bishop.

The St. Luke Constitution is identical to the Grace Lutheran Constitution on the issues set forth above.

The Bylaws of both churches provide that the church councils shall comprise the Grace Parish Council and shall meet quarterly. The Parish Council has three officers, president, secretary and treasurer. The Parish Council oversees joint committees relating to a pastoral call, shared property, pastoral compensation, office expenses and joint endeavors such as vacation Bible school. The treasurer is to provide a monthly report to the individual church councils.

Schier-Hanson's answers to interrogatories indicates that at the time of the accident she was driving a family car which she and her husband insured. At the very least, there is no record evidence that the car was owned or insured by either church.

As noted, both St. Luke and Grace Lutheran seek summary judgment that Schier-Hanson is an independent contractor. On the basis of the Nanty-Glo rule this motion must fail. With two exceptions, all

testimonial evidence comes from members or officers of the respective churches who have mutual rather than adverse interests. Each is trying to deny a master-servant relationship with Schier-Hanson. The exceptions are the testimony of Schier-Hanson and her husband. Frankly, because Schier-Hanson is the pastor for both of these churches and because a finding that she was and continues to be an independent contractor would benefit her churches the requisite antagonism does not exist which would allow that testimony to be considered.

Somewhat out of order we next examine Plaintiff's Motion wherein she seeks a ruling that Schier-Hanson was an employee of both churches. Certainly all of the deposition testimony can be considered on this motion without violating the Nanty-Glo rule. From that testimony the record suggests the following information.

For many years the councils of St. Luke and Grace Lutheran formed a parish council for the primary purpose of securing a full-time pastor for the two churches. The basic agreement was that once a pastor was secured the parish council would set a compensation and benefit package. The respective churches would then contribute equally to that budget and the pastor would be paid by the parish. This understanding has been memorialized in the constitution and bylaws of each church.

On August 3, 1988, Schier-Hanson accepted a call extended by St. Luke and Grace Lutheran for an unlimited term. Schier-Hanson has continuously been the pastor for those churches and has served no other churches or employers since 1988. The Letter of Call set her initial compensation package. That package includes a contribution toward her Social Security tax. The various other elements of the package have been recited above and do not appear to be in dispute. Adjustments to the compensation package is reviewed pursuant to nonbinding Synod guidelines.

The constitutions of each church itemize specific duties which the pastor is expected to perform. Basically Schier-Hanson is involved in all aspects of the churches including committees, Bible school, counseling and the formal aspects of the church life. She is provided with an office and equipment at St. Luke to be used for the benefit of members of both churches.

With certain restrictions each church retains the right to discipline and terminate the pastor. Each council has a duty to oversee the operations of the church and to determine that the pastor is fulfilling her constitutionally prescribed duties. Schier-Hanson makes monthly

reports of her activities to each church.

Our Supreme Court has said in *Green v. Independent Oil Company*, 414 Pa. 477, 201 A.2d 207 (1964) that,

In ascertaining whether a person is an employee or an independent contractor, the basic inquiry is whether such person is subject to the alleged employer's control or right to control with respect to his physical conduct in the performance of the services for which he was engaged.

The hallmark of an employee-employer relationship is that the employer not only controls the result of the work but has the right to direct the manner in which the work shall be accomplished; the hallmark of an independent contractee-contractor relationship is that the person engaged in the work has the exclusive control of the manner of performing it, being responsible only for the result. 414 Pa. at 483-4, 201 A.2d at 210.

More recently that same Court in *Moon Area School District v. Garzony*, 522 Pa. 178, 560 A.2d 1361 (1989) quotes from *Feller v. New Amsterdam Casualty Co.*, 363 Pa. 483, 70 A.2d 299 (1950) that

. . . The legal distinction between an employee and an independent contractor is so well established as to require little, if any, discussion. The characteristics of the former relationship is that the master not only controls the result of the work but has the right to direct the way in which it shall be done, whereas the characteristic of the latter is that the person engaged in the work has the exclusive control of the manner of performing it, being responsible only for the result . . . It is not . . . the fact of actual interference or exercise of control by the employer, but the existence of the right or authority to interfere or control, which renders one a servant rather than an independent contractor. 522 Pa. at 190, 560 A.2d at 1367.

Various cases have identified factors which should be considered in analyzing the status of a relationship as being one of employment or independent contractor. None of the factors are determinative. In *Coleman v. Board of Education of the School District of Philadelphia*, 477 Pa. 414, 383 A.2d 1275 (1978), the Court stated that the relationship of employer-employee exists when a party has the right to select the employee, the power to discharge and the right to direct both the

work to be done and the manner in which it is to be done. The court further noted that the duty to pay a salary is often coincident with an employment relationship. *Dusquesne Truck Service v. Workmen's Compensation Appeal Board*, 165 Pa. Comlth. Ct. 145, 644 A.2d 271 (1994), *Alloc. den.* 651 A.2d 543 (1994), set forth additional factors such as 1) the nature of the work or occupation, 2) the skill required, 3) whether the one employed is engaged in a distinct occupation or business, 4) which party supplies the tools, 5) whether payment is by the time or the job, 6) whether the work is a part of the regular business of the employer, 7) the right of the employer to terminate the employment at any time, 8) carrying an individual as an employee on company records, 9) deduction of income tax and social security contributions from the worker's earnings, and 10) whether the person is covered under unemployment and workmen's compensation coverage by the employer which should be considered. 165 Pa. Comlth. Ct. at 154, 644 A.2d at 275. An employer-employee relationship can even be found where a particular occupation involves technical skill for which the employer is incapable of supervising the details of the job performance. *Kinloch v. Tonsey*, 325 Pa. Super. 476, 480, 473 A.2d 167, 169 (1984). In that situation the court should consider whether the professional is prohibited from engaging in any outside practice, whether there is a fixed salary, whether the professional gets the same benefits as other supervisory level employees and whether the employer controls the hours and days worked. *Id.*

After carefully reviewing the record, it cannot be said, as a matter of law, that Schier-Hanson is an employee of either church. Although the record suggests trappings of either status (and perhaps more respecting an independent contractor) disposition must await the jury. It is the exclusive function of the jury to determine, from the evidence, the precise nature of the relationship, except where the facts are not in dispute, in which latter event the question becomes one for determination by the court. *Melmed v. Motts*, 341 Pa. Super. 427, 430-1, 491 A.2d 892, 893 (1985). See also, *Stouch v. Brothers of the Order of Hermits of St. Augustine*, 836 F. Supp. 1134 (E.D. Pa. 1993) where summary judgment was denied on the issue of whether Stouch was an employee of the defendant because numerous factors pointed to both an employee and independent contractor relationship.

Numerous factors point toward an independent contractor relationship. For example, and most importantly, the churches may dictate the general job description and the expected results but they have no

control over how Schier-Hanson performs that work. They have no control over the contents of her sermons or the order of the worship service. They do not control the manner in which she visits the sick or the manner in which she counsels members of the congregation. The right to discharge exists in the congregations but only in limited circumstances and then only in accordance with certain procedures. Schier-Hanson is paid a salary, however, payroll taxes are not deducted and she pays self-employment taxes on a quarterly basis. Social Security contributions are made to Schier-Hanson not to the Internal Revenue Service. The pastor supplies her own robe and Bible. The churches did not supply her with a vehicle or automobile insurance. Finally, the churches have no control over her hours or the days worked except to the extent she must conduct regularly scheduled worship services and attend council and committee meetings.

We realize that some foreign courts have found that clergy are agents of the church, *Miller v. International Church of the Foursquare Gospel, Inc.*, 37 Cal. Rptr. 309 (1964), or under certain circumstances may be an agent of the church, *Anabrosio v. Price*, 495 F. Supp. 381, 385 (D. Neb. 1979). Nevertheless, the case which most closely resembles the instant case is *Brillhart v. Scherer*, 243 Kan. 591, 758 P.2d 219 (1988). There the Supreme Court of Kansas found no employee-employer relationship between a parish priest and his diocese but rather one of an independent contractor. It appears that Kansas and Pennsylvania law on the definitions of an employee and an independent contractor are identical; the primary determination being the "right to control" test. The Kansas court found, *inter alia*, that the diocese had no control over the day-to-day activities of the priest who performs his duties as he sees fit. The priest's work was considered to require a high level of skill and experience and was generally done without supervision. At the time of the accident, the priest was driving his own car which he personally insured.

Next, St. Luke contends that even if it should ultimately be determined that Schier-Hanson was its employee at the time of the accident that she was not acting within the scope of her employment at that time because, at most, she was enroute to her place of employment at that time. Plaintiff counters that Schier-Hanson was employed by both congregations as a single employer bound together by the Grace Lutheran Parish and that she was simply about to depart one job site of the employer for another.

A master can be liable for the negligence of his servant only if the

negligence occurred while the servant was acting within the course and scope of his or her employment. *Ferrell v. Martin*, 276 Pa. Super. 175, 178, 419 A.2d 152, 154 (1980). The burden of proving that the servant was acting within the scope of his or her employment is upon the one asserting it and generally the scope of one's employment is a fact question for the jury unless facts are not in dispute. 276 Pa. Super. at 180, 419 A.2d at 155. To be considered within the scope of employment the conduct must be the kind the actor was employed to perform, it must occur substantially within the authorized time and space limits and it must be actuated, at least in part, by a purpose to serve the master. *Shuman Estate v. Weber*, 276 Pa. Super. 209, 216, 419 A.2d 169, 173 (1980). Of course, referring to the control portion of the definition of a master-servant relationship where the actor uses a vehicle which causes the harm it must be proven that the master exercises actual or potential control over that vehicle or that the use of the vehicle is at the time of such vital importance to furthering the master's business that the master's actual or potential control can be inferred. *Cesare v. Cole*, 418 Pa. 173, 176-7, 210 A.2d 491, 494 (1965). Generally, if an employee is going to his place of employment in the morning or returning to his place of work after dinner he is not acting within the scope of his employment. *Gittelman v. Hoover Co.*, 337 Pa. 242, 244-5, 10 A.2d 411, 412 (1940).

The record suggests that Schier-Hanson was on her way to St. Luke's church for worship service when the accident occurred. This would be no different than if she left one part-time job and was traveling via her own personal vehicle to another part-time job. In such a situation the actor would not be acting within the scope of her employment because at that time neither employer would be exercising actual or potential use of the vehicle.

Plaintiff tries to get past this hurdle by arguing that actually Schier-Hanson was employed by two employers operating as a single employer and she was merely traveling from one job site to another. We find no basis to support that contention. If any credibility is given to the record the parish was formed simply to accommodate and facilitate the payment of a full-time pastor. Each church must act separately in matters of hiring, reporting, discipline, termination and other aspects of alleged control over Schier-Hanson. There is absolutely no evidence or suggestion that the parish itself has or actually exercises any control over the pastor. Again, however, this conclusion is supported solely by St. Luke's witnesses or other interested persons.

Of course, a person may be the servant of two masters, or at least subject to the exercise of the right of control of two different masters at the same time. Whether any negligence of the servant is imputed to one or both of the masters returns once again to the pivotal question of whether the alleged master has the right to exercise control over the actions of the alleged servant at the time of the accident. There is no cogent argument that leads the Court to conclude that at the time of this accident St. Luke's had the right to exercise any control over Schier-Hanson. However, because the record is produced by persons who are not antagonistic to St. Luke, the Nanty-Glo rule creates some reservations regarding granting the motion. If no additional evidence is produced at trial, this issue will not be presented to the jury.

Plaintiff also requested a finding that Schier-Hanson was acting within the scope of her employment when the accident occurred. With respect to this motion, the evidence does come from adverse parties and witnesses, however, that evidence is not sufficient, as a matter of law, to allow a ruling in Plaintiff's favor. As noted above, the evidence strongly supports the conclusion that Schier-Hanson was not acting within the scope of her employment with St. Luke. With regard to Grace Lutheran, the record is not as clear but it is likewise not conclusive. Although still on the premises her activities and duties with regard to Grace Lutheran had ceased and she was in the midst of departing the premises when the accident occurred. It is difficult to conceive that Grace Lutheran had the right to exercise control over the pastor's use of the vehicle at that time.

The next issue concerns Grace Lutheran's motion to dismiss Count V relating to an alleged duty on its part to erect a barrier or other device to help keep vehicles from entering the sidewalk from the parking lot. Grace Lutheran argues that there is no evidence of its negligence.

The pleadings admit that Grace Lutheran is a non-profit corporation. Thus, it can be held liable to persons, such as Plaintiff, on its premises who are injured.² The duty of a possessor of land to a third person entering the land is measured by the status of the entrant at the time of the accident. *Palange v. City of Philadelphia*, Law Department, 433 Pa. Super. 373, 377, 640 A.2d 1305, 1308 (1994). Plaintiff's status

²This is contrary to the liability of a church which was an unincorporated association and which was sued by a member of the church after falling and injuring herself while on the church property in *Zehner v. Wilkinson Memorial Methodist Church*, 399 Pa. Super. 165, 581 A.2d 1388 (1990), *Alloc. den.* 592 A.2d 1304 (1991), because a member of such an association cannot sue the association in tort.

at the time of the accident appears to be that of a public invitee. Restatement (Second) Torts §332 defines a public invitee as one who is invited to enter or remain on land as a member of the public for a purpose for which the land is held open to the public. Section 343 of the Restatement (Second) sets forth the duty owed to invitees as:

A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he

(a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and

(b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and

(c) fails to exercise reasonable care to protect them against the danger.

The standard of care set forth in this section is one of reasonableness and foreseeability. However, the landowner is not an insurer of the safety of his invitee and the mere happening of an accident is not, in and of itself, evidence of a breach of the landowner's duty of care to his invitees. *Zito v. Merit Outlet Stores*, 436 Pa. Super. 213, 216-7, 647 A.2d 573, 757 (1994).

The instant situation is an alleged unsafe condition (no barrier) which is incapable of producing injury absent the independent act or negligence of another (Schier-Hanson). Such situations can be the basis for imposing liability on the landowner. In *Pushnik v. Winky's Drive In Restaurants*, 242 Pa. Super. 323, 363 A.2d 1291 (1976), Alloc. den., the plaintiff was standing inside a glass enclosed area at a drive-in restaurant giving his order when Mr. Smith accidentally drove his car from the parking lot into the enclosed area and injured the plaintiff. The jury found that the landowner was negligent. The appellate opinion focused on whether Mr. Smith's negligence was an intervening and superseding cause which would relieve the landowner of liability. Relying on Restatement (Second) Torts §447, Superior Court found that Mr. Smith's conduct did not prevent the landowner from being liable because it is the third party's conduct that the landowner should have realized or anticipated which made the condition on the land (lack of a barrier) an unreasonably dangerous condition. Of course, in *Pushnik* there had been two similar accidents so the issue of foreseeability was clearer than here.

Nevertheless, it would be inappropriate at this time to dismiss Count V. Although the Court finds no Pennsylvania case directly on point, we are directed to two cases from other jurisdictions where the negligence of the landowner was an issue for the jury to decide when a vehicle traveled from a parking lot onto a sidewalk and struck a pedestrian who was an invitee of the landowner. *Dalmo Sales of Wheaton, Inc. v. Steinberg*, 43 Md. App. 659, 407 A.2d 339 (1979); *Cassano v. Antenan-Stewart, Inc.*, 87 Ohio App. 3d 7, 621 N.E. 2d 826 (1993). As noted by the court in *Cassano*,

we find that Rite Aid knowingly allowed automobiles to park close to a sidewalk utilized by its invitees without installing a protective barrier of any type in the parking spaces. Under these circumstances, reasonable minds could certainly differ on whether Rite-Aid should have foreseen that an automobile could be negligently moved onto the sidewalk and strike an invitee walking thereon. Consequently, the issue of foreseeability must be submitted to the trier of fact.

We agree with these cases. Summary judgment cannot be granted.

Finally, Grace Lutheran's brief (but not its Motion For Summary Judgment) requests that Plaintiff's expert architectural testimony on the issue of the safety or construction of the parking lot and adjacent sidewalk be precluded. This issue is more properly a matter for a motion in limine, and needs not, and will not, be resolved at this time.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 20th day of December, 1995, motions for summary judgment filed by Plaintiff, Grace Evangelical Lutheran Church, and St. Luke Lutheran Church are denied.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or debts 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 LYDIA C. ECKERT, DEC'D
Late of Straban Township, Adams County, Pennsylvania

Co-Executors: Susan E. Klunk, 55 Shealer Road, Gettysburg, PA 17325; John H. Eckert, 3607 Beaufort Street, Harrisburg, PA 17111

Attorney: John W. Thompson, Jr., 11 East Market Street, York, PA 17401

ESTATE OF LYDA BELLE KRALL, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Sylvia Turner, 2480 Baltimore Pike, Gettysburg, PA 17325

Attorney: Wilcox, James & Cook, 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARTIN L. SCHIRMER, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executor: Morton W. Seward, 1250 S. Washington Street, Alexandria, VA 22314

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

SECOND PUBLICATION

ESTATE OF CLAIR D. FETTERS, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executors: Terry L. Fetters, 35 Hillview Road, Gardners, PA 17324; Kenneth L. Fetters, 1289 Gabler Road, Gardners, PA 17324

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

ESTATE OF MERLE L. HANKEY, SR., DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Merle L. Hankey, Jr., 615 Shrivvers Corner Road, Gettysburg, PA 17325; Nora L. Keller, 418 Granite Station Road, Gettysburg, PA 17325

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

ESTATE OF MARY L. HOLDEN, DEC'D

Late of New Oxford, Adams County, Pennsylvania

Executors: Lovie F. Klunk, 5950 Hanover Road, Hanover, PA 17331; Donald E. Tracy, RR2, Box 2292, Glensville, PA 17329

Attorney: Timothy J. Shultis, Esquire, 118 Carlisle Street, Suite 110, Hanover, PA 17331

ESTATE OF JACQUELINE M. MILLER, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Mary M. Myers, 2583 Mummassburg Road, Gettysburg, PA 17325

Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF DONALD F. SIPLING, DEC'D

Late of 226 Fish & Game Road, New Oxford, Adams County, Pennsylvania 17350

Administrators: Donald E. Sipling, P. O. Box 409, Emigsville, PA 17318; Cheryl A. Markel, 143 Arch Street, York, PA 17403; Michael J. Sipling, 2100 West Mason Avenue, Lot 15, York, PA 17404

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

THIRD PUBLICATION

ESTATE OF LAWRENCE J. CULLISON, DEC'D

Late of Freedom Township, Adams County, Pennsylvania

Executrix: Nora M. Cullison, 345 Natural Dam Road, Gettysburg, PA 17325

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-319 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 20th day of September, 1996, 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 Menallen Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a stone at corner of lands now or formerly of Robert Garretson; thence along lands now or formerly of Orville Baldwin and lands now or formerly of Richard Sullivan, North 60 degrees East, 13.4 perches to a stone; thence continuing along lands now or formerly of Richard Sullivan, South 55-3/4 degrees East, 14.6 perches to a white oak stump; thence along lands now or formerly of Robert Garretson, South 59-3/4 degrees West, 14.1 perches to a stone; thence continuing along same, North 57 degrees West, 13.7 perches to the stone, the place of BEGINNING. CONTAINING 1 Acre and 8 perches.

The above description was taken from a draft of survey dated August 22, 1949, by P.S. Orner, County Surveyor.

BEING the same which Philip P. Peake, by his attorney-in-fact, Judy A. Peake, and Judy A. Peake, husband and wife, by deed dated April 17, 1990, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 552 at page 506 granted and conveyed unto Fred A. Miller, Sr. and Jenette K. Miller, husband and wife, the Defendants herein.

IMPROVED WITH a 1 1/2-story single family dwelling with a one-car garage.

SEIZED and taken into execution as the property of **Fred A. Miller, Sr. and Jenette K. Miller** and to be sold by me Bernard V. Miller Sheriff

Sheriff's Office, Gettysburg, PA
July 30, 1996.

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 14, 1996, 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.

8/9, 16 & 23

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-397 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of September, 1996, 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 in Reading Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

TRACT NO. 1: BEGINNING at a post of lands now or formerly of Michael Rebert; thence South two (2) degrees East, two hundred thirty-one (231) feet to a point at the Big Conewago Creek; thence South sixty-eight (68) degrees West, one hundred ninety-eight (198) feet to a point at lands now or formerly of William Hildebrand; thence along the same, North eighteen (18) degrees West, two hundred seventy-two and twenty-five hundredths (272.25) feet to a post at lands now or formerly of William Brough; thence along the same, North seventy-nine (79) degrees East, one hundred seven and twenty-five hundredths (107.25) feet to a stone in a public road and lands now or formerly of C. M. Spangler; thence along property now or formerly of C. M. Spangler, North eighty-three (83) degrees thirty (30) minutes East, one hundred fifty-six and seventy-five hundredths (156.75) feet to a point, the place of BEGINNING. CONTAINING one (1) acre and seventy (70) perches, more or less.

TRACT NO. 2: BEGINNING at the center of a public road and intersection of another public road at lands of East Berlin Borough and now or formerly of Arthur F. Peiffer; thence through said public road and along lands now or formerly of Arthur F. Peiffer, South twenty (20) degrees thirty (30) minutes East, one hundred twenty-two and twenty-five hundredths (122.25) feet to a point; thence by land now or formerly of Arthur F. Peiffer, North sixty-four (64) degrees thirty (30) minutes East, twenty-seven (27) feet to a point; thence South five (5) degrees thirty (30) minutes East, forty-three and two-tenths (43.2) feet to a point; thence by land now or formerly of East Berlin Borough, North fifty-eight (58) degrees twenty-five (25) minutes West, one hundred six and ten hundredths (106.10) feet to a point beyond the public road; thence along land now or formerly of East Berlin Borough and in said public road North ten (10) degrees East, one hundred thirteen and eighty hundredths (113.80) feet to the place of BEGINNING. CONTAINING thirteen hundredths (.013) acres.

This description taken from a draft of survey made by George M. Wildasin, Professional Engineer, on July 17, 1954.

IT BEING the same premises which

Larry W. Peterman and Nancy L. Peterman, his wife, by their Deed dated June 28, 1990 and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 560, Page 510, granted and conveyed unto Bonnie L. Schmidt.

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

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
July 15, 1996.

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 7, 1996, 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.

7/26, 8/2 & 9

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-336 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 20th day of September, 1996, 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 Germany Township, Adams County, Pennsylvania, being more particularly bounded and described as follows:

BEGINNING at a railroad spike set in the centerline of Township Route T-423, at corner of Lot No. 1 on the hereinafter referred to draft of survey; thence continuing in and along the center line of said Township Route, North 22 degrees 34 minutes 08 seconds East, 170 feet to a railroad spike at corner of Lot No. 3; thence by said Lot No. 3 South 67 degrees 25 minutes 52 seconds East, 405.50 feet to an iron pin at lands now or formerly of Merle C. Weant; thence by said lands of Merle C. Weant, South 18 degrees 42 minutes 53 seconds West, 170.39 feet to an iron pin at corner of Lot No. 1; thence by said Lot No. 1, North 67 degrees 25 minutes 52 seconds West, 416.95 feet to a railroad spike in the centerline of Township Route T-423, the point and place of BEGINNING. CONTAINING 1.605 acres.

The above description was taken from a draft of survey prepared by Gettysburg Engineering Company, Inc., dated No-

ember 14, 1974, and recorded in Plat Book 6 at page 9; revised January 8, 1979, and re-recorded in Plat Book 26 at page 30, designating the above as Lot No. 2.

IT BEING the same tract of land which Larry R. Kline and Phyllis M. Kline, husband and wife, by deed dated April 1988, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 487 at page 1084 granted and conveyed unto Charles E. Stambaugh, Jr. and Judith Anne Stambaugh, husband and wife, the Defendants herein.

SUBJECT, NEVERTHELESS, to the restrictions as contained in Miscellaneous Book 30 at page 1.

IMPROVED WITH a single-family, brick frame split level dwelling with attached garage.

SEIZED and taken into execution as the property of **Charles E. Stambaugh, Jr. and Judith Anne Stambaugh** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
July 29, 1996.

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 7, 1996, 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.

8/9, 16 & 23

Adams County Legal Journal

ol. 38

August 16, 1996

No. 12, pp. 83-88

CORRECTION NOTICE

The following Sale #567, advertised in the August 2, 1996 issue, should have read James R. Crouse.

LEGAL NOTICE ADAMS COUNTY TAX CLAIM BUREAU

Pursuant to Court Orders 96-S-378 through 96-S-385, the following real property will be offered for sale September 13, 1996 at 1:00 P.M. E.D.S.T., at the Adams County Courthouse, 111-117 Baltimore Street, 4th floor, Gettysburg, Pennsylvania. The purpose of this sale is to dispose at public sale the following parcels of real estate:

SALE NO.	OWNER(S) OR REPUTED OWNER(S)	TOWNSHIP/BOROUGH	DESCRIPTION MAP/PARCEL	ASSESSED VALUE
567	Crouse, James	Union	K-16-39	44184

TERMS OF SALE: Cash in the form of currency of the United States if the purchase price is \$50.00 or less. For properties selling for more than \$50.00, \$50.00 in the form of currency of the United States and a check or other satisfactory payment of the balance. All properties shall be paid for at the time the property is struck down. The purchaser(s) shall be required to pay, in addition to the bid price, the fee for recording a deed and any applicable transfer taxes due (the assessed value x 2.33%).

The above properties were previously advertised for sale in the Adams County Legal Journal and The Gettysburg Times on August 4, 1995 and The Hanover Evening Sun on July 28, 1995.

16

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-507 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of September, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain piece, parcel or tract of land situate, lying and being in Conewago Township, Adams County, Pennsylvania, more particularly bounded, limited and described as follows, to wit:

BEGINNING at a point on the eastern right-of-way line of South Lincoln Drive, a sixty (60) foot wide right-of-way, at corner of Lot No. 35 on the subdivision plan hereinafter referred to; thence along the eastern right-of-way line of South Lincoln Drive, North twenty-six (26) degrees twenty (20) minutes twenty-eight (28) seconds East, sixty-five (65) feet to a point at Lot No. 37 on the subdivision plan hereinafter referred to; thence along Lot No. 37, South sixty-three (63) degrees thirty-nine (39) minutes thirty-two (32) seconds East, one hundred forty-two and seventy-nine hundredths (142.79) feet to a point at Lot No. 26 on the subdivision plan hereinafter referred

to; thence along Lots No. 26 and 27, South thirty (30) degrees forty-nine (49) minutes three (03) seconds West, sixty-five and twenty hundredths (65.20) feet to a point at Lot No. 35 on the subdivision plan hereinafter referred to; thence along Lot No. 35, North sixty-three (63) degrees thirty-nine (39) minutes thirty-two (32) seconds West, one hundred thirty-seven and seventy hundredths (137.70) feet to a point on the eastern right-of-way line of South Lincoln Drive, the point and place of BEGINNING. CONTAINING 9,116 square feet.

Being Lot No. 36 on the final subdivision plan for Diller's Village, Phase Three, prepared by Donald E. Worley, Registered Surveyor, dated August 14, 1987, revised October 8, 1987, designated as File No. G-97 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 48, Page 44.

HAVING erected thereon a dwelling known as 218 Lincoln Drive, Hanover, PA 17331.

Map 9, Parcel 303.

BEING the same premises which Stephen E. Kuhn and Lori R. Kuhn, husband and wife, by their Deed dated July 15, 1993 and recorded in the Recorder's Office of Adams County, Pennsylvania

on July 16, 1993, in Deed Book Volume 754, Page 157, granted and conveyed unto Scott F. Bowman and Sandra L. Bowman, his wife.

SEIZED and taken into execution as the property of **Scott F. Bowman and Sandra L. Bowman** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
July 25, 1996.

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 7, 1996, 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.

8/9, 16 & 23

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-269 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of September, 1996, 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 ground situate, lying and being in Hamiltonban Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point in the center of said Township Road, said point being North 57 degrees 30 minutes West, 150 feet from an iron pin in the center of said Township Road and the point of original reference; thence by lands now or formerly of Allen C. Southcomb, South 32 degrees 30 minutes West, 216.5 feet to a point at lands now or formerly of Floyd J. Kump and Bessie J. Kump; thence by same, North 57 degrees 30 minutes West, 150 feet to a point at lands now or formerly of Floyd J. Kump and Bessie J. Kump, also known as Lot No. 4; thence by the same, North 32 degrees 30 minutes East, 216.5 feet to a point in the center of the Township Road aforesaid; thence in the center of said Township Road, South 57 degrees 30 minutes East, 150 feet to a point in the center of said road, the place of BEGINNING.

The foregoing description was taken from a draft of survey as prepared by Wilbur V. Redding, Registered Surveyor, dated October 9, 1961, and identified thereon as the western half of Lot No. 2 and all of Lot No. 3.

BEING the same which Adams County National Bank, a national banking corporation, by its deed dated September 29, 1993, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 448 at page 46, sold and conveyed unto Esther A. Stouter, the Defendant herein.

IMPROVED WITH a 1-story, single family ranch-style dwelling with a Morton-type outbuilding.

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

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
July 19, 1996.

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 7, 1996, 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.

8/9, 16 & 23

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-319 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 20th day of September, 1996, 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 Menallen Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a stone at corner of lands now or formerly of Robert Garretson; thence along lands now or formerly of Orville Baldwin and lands now or formerly of Richard Sullivan, North 60 degrees East, 13.4 perches to a stone; thence continuing along lands now or formerly of Richard Sullivan, South 55-3/4 degrees East, 14.6 perches to a white oak stump; thence along lands now or formerly of Robert Garretson, South 59-3/4 degrees West, 14.1 perches to a stone; thence continuing along same, North 57 degrees West, 13.7 perches to the stone, the place of BEGINNING. CONTAINING 1 Acre and 8 perches.

The above description was taken from a draft of survey dated August 22, 1949, by P.S. Orner, County Surveyor.

BEING the same which Philip P. Peake, by his attorney-in-fact, Judy A. Peake, and Judy A. Peake, husband and wife, by deed dated April 17, 1990, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 552 at page 506 granted and conveyed unto Fred A. Miller, Sr. and Jenette K. Miller, husband and wife, the Defendants herein.

IMPROVED WITH a 1 1/2-story single family dwelling with a one-car garage.

SEIZED and taken into execution as the property of **Fred A. Miller, Sr. and**

Jenette K. Miller and to be sold by me
Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
July 30, 1996.

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 14, 1996, 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.

8/9, 16 & 23

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, as amended (Act of Assembly No. 295, Approved 12/16/82, effective 03/16/83), of intention to file in the Office of the Secretary of the Commonwealth of Pennsylvania, Department of State, Bureau of Corporations at Harrisburg, Pennsylvania, a Certificate for the conduct of business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of:

BIGLERVILLE FOOT CENTER

Principal Place of Business:

23 North Main Street
Biglerville, Adams County,
Pennsylvania

The name and address of the person owning or interested in said business is:

KEYSTONE PODIATRIC
MEDICAL ASSOCIATES, P.C.
23 North Main Street
Biglerville, PA 17307

The certificate was filed on or about:
August 1, 1996

Drake, Hileman & Davis
Solicitors
P.O. Box 1306
Suite 15, Bailiwick Office Campus
Doylestown, PA 18901

8/16

**MICHAEL, ET AL. VS. GETTYSBURG FOUNDRY
SPECIALTIES CO., ET AL.**

1. The general rule is that an officer of a corporation who takes part in the commission of a tort by the corporation is personally liable therefor; but that an officer of a corporation who takes no part in the commission of the tort committed by the corporation is not personally liable to third parties for such tort, nor for acts of other agents, officers or employees of the corporation in committing it, unless he specifically directed the particular act to be done or participated, or cooperated therein.

2. Under the participation theory, a corporate officer is liable for "misfeasance", i.e., the improper performance of an act, but not "mere nonfeasance", i.e., the omission of an act which a person ought to do.

3. Significant harm, that is of a kind that would be suffered by a normal person in the community or by property in normal condition and used for normal purposes, is required for private nuisances.

4. To recover for a public nuisance, plaintiffs must show harm of a different kind than that suffered by the general public and that the harm was suffered while exercising a right common to the general public.

5. Attorneys fees are recoverable only pursuant to an agreement or statutory authority.

6. Initially, it is the court's function to determine if the evidence supports a claim for punitive damages.

7. Reckless indifference to property rights may justify imposition of punitive damages.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-482, RICHARD L. MICHAEL AND TIMELESS TOWNS OF THE AMERICAS INC. VS. GETTYSBURG FOUNDRY SPECIALTIES CO. AND CREED F. WHITE.

Marc G. Tarlow, Esq., for Plaintiff

Charles O. Beckley, III, Esq., for Defendant

OPINION ON PRELIMINARY OBJECTIONS

Spicer, P.J., December 22, 1995.

In their first amended complaint, filed July 27, 1995, plaintiffs alleged, inter alia, the following:

(1) Gettysburg Foundry Specialties Co., a Pennsylvania business corporation, owns land adjacent to that owned by plaintiffs, in Adams County. We will refer to this defendant as "GFS."

(2) Creed White, an adult individual, has been president of GFS since 1987 to present and "has taken direct responsibility of the manner in which GFS has addressed" problems described in the complaint. ¶2.2. We will refer to this defendant as "White."

(3) GFS operates a foundry on its property and has contaminated ground water by depositing what has been described as wastedross in unlined pits. Four wells are said to have been contaminated "[a]s a

direct and proximate result of the defendants' wrongful activities." ¶15. These wells are said to account for one third of the available water production on plaintiff's land. Commercial activity and development purposes are alleged, as is the unavailability of public water services.

(4) There is also a leaking fuel storage tank on GFS property. Although plaintiffs allege a possibility of contamination, either at present or in the future, there is no specific allegation that ground water on their lands has, in fact, been contaminated.

(5) GFS has violated the Clean Streams Law, (CSL), 35 P.S. 691.3 et seq., the Solid Waste Management Act, (SWMA), 35 P.S. 6018.301 et seq., and the Storage Tank and Spill Prevention Act, (STSPA), 35 P.S. 6021 et seq.

(6) White is personally liable because he "intentionally, willfully, recklessly and negligently failed to take serious action to remedy" the situation. ¶12.2

Defendants have filed preliminary objections in the nature of a demurrer, motion for more specific pleading and a motion to strike. The last motion was filed as an alternative to a demurrer, requesting that a demand for attorney's fees and punitive damages be dismissed.

Standards for ruling on demurrers are well established. The court must accept as true all of the well pleaded facts in the complaint, as well as any reasonable inferences to be drawn therefrom. Before a demurrer can be sustained, it must be clear on the face of the complaint that the claims may not be sustained and that the law will not permit a recovery, *Mellon Bank, N.A. v. Fabinyi*, 437 Pa.Super 559, 650 A.2d 895 (1994); *22 Partnership v. Philadelphia Electric Company*, 437 Pa.Super 650, 650 A.2d 1094 (1994). *Wicks v. Milzoco Builders, Inc.*, 503 Pa. 614, 470 A.2d. 86 (1983).

The question to be decided in ruling on a motion for a more specific pleading is whether the complaint is sufficiently clear to enable defendants to prepare a response, informs them with accuracy and completeness of the specific basis on which recovery is sought so they may know without question upon what grounds to make their defense. *2 Goodrich Amram 2d §1017(b):21*. Superior Court has said that the extent to which plaintiffs are required to plead involves a matter of broad discretion in the trial court, since the standard of pleading set forth in Rule 1019(1) is incapable of precise measurement. In *re Barnes Foundation*, __ Pa.Super. __, 661 A.2d 889 (1995).

With these principles in mind, we will turn our attention to specific objections.

Counts against Creed White

White requests that counts I, II and III be dismissed as against him. He argues that the amended complaint states no basis for the imposition of personal liability. He points out that wrongful acts are alleged to have occurred prior to 1988, that no particular actions are ascribed to

him and that he became president of GFS in 1987. Plaintiff responds by citing various paragraphs which describe a continued course of inaction on the part of GFS, but it is apparent that the amended complaint will rise or fall as to White on the basis of the averment that he failed to take “serious action” to remedy the source and cause of contamination.

Normally, an officer of a corporation is not responsible for torts committed by the company, or its agents, employees and other officers. However, liability may be asserted on a participation theory or by piercing the corporate veil. *First Realvest Inc. v. Avery Builders, Inc.*, 410 Pa. Super. 572, 600 A.2d 601 (1991). This case involves the former theory.

In *Wicks v. Milzoco Builders, Inc*, supra, the Pennsylvania Supreme Court set forth the following standard for assessing the liability of a corporate officer:

Pennsylvania law recognizes the participation theory as a basis for tort liability.

The general, if not universal, rule is that an officer of a corporation who takes part in the commission of a tort by the corporation is personally liable therefor; but that an officer of a corporation who takes no part in the commission of the tort committed by the corporation is not personally liable to third persons for such a tort, nor for the acts of other agents, officers or employees of the corporation in committing it, unless he specifically directed the particular act to be done or participated, or cooperated therein.

503 Pa. 614, 621, 470 A.2d 86, 90 (1983) (citing 3A Fletcher, *Cyclopedia of the Law of Private Corporations*, §1137, at 207(perm. ed. rev. 1975). The Court further stated that under the participation theory, a corporate officer is liable for “misfeasance”, i.e., the improper performance of an act, but not “mere nonfeasance”, i.e., the omission of an act which a person ought to do. *Id.* 503 Pa at 621, 470 A.2d at 90.

Loeffler v. McShane, 372 Pa. Super 442, ___, 539 A.2d 876, 879 (1988).

While accepting this rule, plaintiffs nevertheless contend that the actual holding in *Wicks* sustains their position. In that case, landowners complained that excessive surface water ran off higher elevations in a development, flooding yards and making neighboring dwellings uninhabitable. The trial court sustained preliminary objections and dismissed the complaint. Superior Court affirmed, but Supreme Court reversed. The gravamen of the action against corporate officers was that, knowing that natural drainage would concentrate the development’s

water and sewer on other land, they failed to perform adequate soil testing and provide adequate grading and landscaping for drainage facilities. In summarizing its holding, Supreme Court said:

However, the pertinent averments in these complaints can be read, generally, that the individual appellees actually knew that the location of the proposed Monroe Acres Development created, at least, an unreasonable risk of the drainage problems which occurred and that, having the power to do so, they deliberately ordered the work to proceed.

470 A.2d at 90.

Stated another way, defendants in that case, knowing that their action involved an unreasonable risk of harm to plaintiffs, proceeded to build. This is a classic example of negligence and quite different from alleging that White knew that a condition existed and failed to take steps to alleviate it. In Loeffler, the act giving rise to liability was ordering a clerk to pay a settlement check to someone not authorized to receive it. Superior Court stressed, in this last cited case, that the trial court adhered to the rule by requiring an act by the corporate.

Plaintiffs also rely on *Kaites v. Commonwealth of Pennsylvania, Department of Environmental Resources*, 108 Pa. Cmwlth. 268, 529 A.2d 1148 (1987). They are quick to point out that the case involved a failure of proof, not a ruling on a preliminary objection. Since the case involved enforcement of a law by a Commonwealth agency, it is not surprising that preliminary objections were not involved. In fact, that case involved an administrative appeal, with the argument being made that a corporate officer was not a "person" subject to an abatement order. While it may be interesting to note that Commonwealth Court said officers may be liable, the holding was that evidence supported nothing more than simple nonfeasance. The court said that, while nonfeasance can be the basis for individual liability, it must be more than mere or simple nonfeasance.

Although it might be argued that contamination by GFS constituted a continuing nuisance and that a duty existed to abate it, there are no allegations describing any act done by White, or on his orders. Ignoring conclusions about White's state of mind, we have allegations which are unquestionably nonfeasance. No allegations support a finding that inaction rose to a level sufficiently egregious to support liability. While there are allegations that GFS broke the law, nothing is said to support any inference that White was personally directed to abate the contamination, as was authorized under *Kaites*, and refused to obey. The three counts must be dismissed as to him.

Demurrers and Motions for More Specific Pleadings

GFS' contentions about the complaint may be summarized by saying that plaintiffs have failed to describe facts from which legal causation may be determined. As part of this contention, it points out that well locations and drilling dates, as well as ground water patterns are not described. It is true that plaintiffs have not specifically pointed out that the type of contamination in their wells, but the reasonable inference to be drawn is that such pollution is of the type released into the ground water by GFS. We consider the information, the lack of which GFS complains, to be evidentiary in nature. We again point out that all factual averments in the complaint must be considered. Ultimate facts, but not evidence, must be alleged. Wicks, *supra*.

Turning our attention to the specific causes of action, we find that public and private nuisances, and not trespass, are alleged. GFS is quick to point out that, while harm other than an invasion of a possessor's interest is not necessary in a trespass action, it is a requirement in nuisance cases. The Restatement of Torts, 2d, distinguishes between the two actions. Significant harm, that is of a kind that would be suffered by a normal person in the community or by property in normal condition and used for normal purposes, is required for private nuisances. §821F, *Kembel v. Schlegel*, 329 Pa.Super. 159, 478 A.2d 11 (1984). On the other hand, to recover for a public nuisance, plaintiffs must show harm of a different kind than that suffered by the general public and that the harm was suffered while exercising a right common to the general public. §821C(1). *Graham Oil Co. v. BP Oil Co.* 885 F. Supp. 716 (W.D. Pa 1994).

Allegations are obviously sufficient, in our opinion, to sustain both causes of action. The amended complaint clearly suffices with respect to a private nuisance. It also describes a specific, private, harm suffered as a result of an infringement of a public right. The CSL, *supra*, among others, clearly states that citizens of this Commonwealth have a right to clean water, and makes a violation of the act a public nuisance. The harm to plaintiffs' land results from contaminated water and is different from that suffered by the general public.

GFS has not raised the question of standing, but it appears clear that plaintiffs may sue. The STSPA specifically provides for private causes of action, §6021.1305. The trend in interpreting other legislation is to allow private actions. See, e.g., savings clauses in SWMA, *supra*, §6018.607; CSL § 691.701; *Centolanza v. Lehigh Valley Dairies, Inc.* 540 Pa. 398, 658 A.2d 336 (1995); *Smith v. Weaver*, __ Pa.Super. __, 665 A.2d 1215 (1995).

It is obvious that any case involving contamination is usually far too complicated to be settled on the basis of pleadings. Although the specific type of contamination in wells has not been set forth, a reasonable inference is that it involves the contaminants loosed in the

soil by GFS. Although the fuel spill is lacking somewhat in specificity, enough has been alleged to require GFS to respond.

Furthermore, allegations are specific enough to enable GFS to intelligently prepare its defense.

Demurrers and motions for more specific pleadings are denied.

Attorney's Fees

Probably because defendants filed a tardy brief, plaintiffs have overlooked the question of attorney's fees. Thus, we have been deprived of the benefit of those arguments.

Plaintiffs, in fact, asked the court to dismiss the preliminary objections, under a local rule, because of tardiness. We have chosen to address most of the contentions raised by defendants, but decline to dismiss the request for fees. While we have found nothing sanctioning fees in the CSL or SWMA, the STSPA authorizes recovery. §6021.1305(f). It is true, as GFS suggests, such fees are recoverable only pursuant to an agreement or statutory authority. *Pennsylvania Department of Public Transportation v. Manor Mines, Inc.* 523 Pa. 112, 565 A.2d 428 (1989). Our ruling is made without prejudice to GFS raising the issue again, when the record is more fully developed.

Punitive Damages

Initially, it is the court's function to determine if the evidence supports a claim for punitive damages. *Rizzo v. Michener*, 401 Pa.Super. 47, 584 A.2d 973 (1991). Reckless indifference to property rights may justify imposition of such damages. *Kirkbride v. Lisbon Contractors, Inc.*, 385 Pa.Super. 292, 560 A.2d. 809 (1989). In this court's opinion, the amended complaint alleges enough to expose GFS to punitive damages. Violations of the law have been alleged, as well as prolonged conduct which may be found to constitute reckless indifference to plaintiff's interest. We have held, on previous occasions, that preliminary objections are poor means of attacking punitive damages, unless the right to same is clearly inappropriate. They are not clearly inappropriate. Therefore, we deny the motion to strike and the demurrer as to those damages, without prejudice to GFS seeking a review when the record has been more fully developed.

ORDER OF COURT

AND NOW, this 22nd day of December, 1995, preliminary objections of Creed F. White are sustained and the first amended complaint is dismissed as against him. Otherwise, preliminary objections are overruled. Corporate defendant, Gettysburg Foundry Specialties Co., shall have twenty days from the date this order is mailed to counsel in which to file an answer.

Plaintiffs may file an amendment to the first amended complaint within the same twenty days, with respect to Mr. White.

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 ELIZABETH A. HAUGH, DEC'D

Late of Abbottstown Borough, Adams County, Pennsylvania

Executors: T. Michael Haugh, 4721 York Road, New Oxford, PA 17350; Ann E. Fruth, 1820 Walnut Street, Camp Hill, PA 17011

Attorney: William W. Hafer, Esquire, 215 Baltimore Street, Hanover, PA 17331

ESTATE OF WORLEY HURD, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executor: Jackie Hurd, 511 Peepytown Road, East Berlin, PA 17316

Attorney: Sharon E. Myers, Esq., 29 North Duke Street, York, PA 17401

ESTATE OF TREVA AMELIA KOONTZ a/k/a TREVA A. KOONTZ, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executors: Charles E. Koontz, Jr., 25179 Willard Road, Chantilly, VA 20152; Ester Amanda Hess a/k/a Esther Amanda Hess, 139 Boyer Street, Littlestown, PA 17340

Attorney: Stonesifer and Kelley, 209 Broadway, Hanover, PA 17331

ESTATE OF MARY A. STRICKHOUSER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Charles A. Strickhouser, 935 Fish and Game Road, Littlestown, PA 17340

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

ESTATE OF ELVA B. WARD, DEC'D

Late of the Borough of East Berlin, Adams County, Pennsylvania

Co-Executors: John Michael Hess, 2441 Brookmar Drive, York, PA 17404; Karol Sherman, 158 Locust Lane, Abbottstown, PA 17301

Attorney: Sharon E. Myers, Esq., 29 North Duke Street, York, PA 17401

ESTATE OF IONE M. WEAVER a/k/a IONE MARY WEAVER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Victor B. Smith

Attorney: David C. Smith, Esquire, 334 Main Street, McSherrystown, PA 17344, Attorney for the Estate

SECOND PUBLICATION

ESTATE OF LYDIA C. ECKERT, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Co-Executors: Susan E. Klunk, 55 Shealer Road, Gettysburg, PA 17325; John H. Eckert, 3607 Beaufort Street, Harrisburg, PA 17111

Attorney: John W. Thompson, Jr., 11 East Market Street, York, PA 17401

ESTATE OF LYDA BELLE KRALL, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Sylvia Turner, 2480 Baltimore Pike, Gettysburg, PA 17325

Attorney: Wilcox, James & Cook, 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARTIN L. SCHIRMER, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executor: Morton W. Seward, 1250 S. Washington Street, Alexandria, VA 22314

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

THIRD PUBLICATION

ESTATE OF CLAIR D. FETTERS, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executors: Terry L. Fetters, 35 Hillview Road, Gardners, PA 17324; Kenneth L. Fetters, 1289 Gabler Road, Gardners, PA 17324

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

ESTATE OF MERLE L. HANKEY, SR., DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Merle L. Hankey, Jr., 615 Shrivens Corner Road, Gettysburg, PA 17325; Nora L. Keller, 418 Granite Station Road, Gettysburg, PA 17325

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

ESTATE OF MARY L. HOLDEN, DEC'D

Late of New Oxford, Adams County, Pennsylvania

Executors: Lovie F. Klunk, 5950 Hanover Road, Hanover, PA 17331; Donald E. Tracy, RR2, Box 2292, Glenville, PA 17329

Attorney: Timothy J. Shultis, Esquire, 118 Carlisle Street, Suite 110, Hanover, PA 17331

ESTATE OF JACQUELINE M. MILLER, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Mary M. Myers, 2583 Mummasburg Road, Gettysburg, PA 17325

Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF DONALD F. SIPLING, DEC'D

Late of 226 Fish & Game Road, New Oxford, Adams County, Pennsylvania 17350

Administrators: Donald E. Sipling, P. O. Box 409, Emigsville, PA 17318; Cheryl A. Markel, 143 Arch Street, York, PA 17403; Michael J. Sipling, 2100 West Mason Avenue, Lot 15, York, PA 17404

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

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, as amended (Act of Assembly No. 295, Approved 12/16/82, effective 03/16/83), of intention to file in the Office of the Secretary of the Commonwealth of Pennsylvania, Department of State, Bureau of Corporations at Harrisburg, Pennsylvania, a Certificate for the conduct of business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of:

EAST BERLIN FOOT CENTER

Principal Place of Business:

337 West King Street
East Berlin, Adams County,
Pennsylvania

The name and address of the person owning or interested in said business is:

KEYSTONE PODIATRIC
MEDICAL ASSOCIATES, P.C.

23 North Main Street
Biglerville, PA 17307

The certificate was filed on or about:
August 1, 1996

Drake, Hileman & Davis
Solicitors
P.O. Box 1306

Suite 15, Bailiwick Office Campus
Doylestown, PA 18901

8/16

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on or about July 5, 1996 for JUNIE'S APPLESAUCE COMPANY. The said corporation has been incorporated under the provisions of the Business Corporation Law of 1988.

The purpose for which said corporation is formed are that: The corporation shall have unlimited power to engage in and do any lawful act concerning any and all lawful business for which corporations may be incorporated under the Act of December 21, 1988, P.L. 1444, its amendments and supplements, under the provisions of which said Act this corporation is incorporated.

Stonesifer and Kelley
Solicitor

8/16

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-104 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 20th day of September, 1996, 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 parcels of land lying and being in Liberty Township, Adams County, Pennsylvania, being Lot Nos. 24 and 25 in Section AB, more particularly bounded and described as follows:

LOT AB 24

Charnita Section AB Lot No. 24 as shown on the records of the Adams County Mapping Department and recorded in the Office of the Register and Recorder of Adams County, Pennsylvania on December 18, 1969 in Plat Book 1 at page 61. The property being subject to existing restrictions.

LOT AB 25

BEGINNING at a point in the center of Sydnor Trail at Lot No. 24; thence by said lot South 41 degrees 28 minutes 25 seconds West, 223.68 feet to Lot No. 37; thence by said lot and Lot No. 36 North 48 degrees 21 minutes 25 seconds West, 100.67 feet to Lot No. 26; thence by said lot North 41 degrees 38 minutes 35 seconds East, 223.68 feet to a point in the center of said Sydnor Trail; thence in said Sydnor Trail North 48 degrees 21 minutes 25 seconds East, 100.67 feet to the place of BEGINNING.

The above description was taken from a plan of lots labeled "Section AB of Charnita, Inc." dated November 18, 1969, prepared by Evans, Hagan & Holdefer, and recorded in Adams County Plat Book No. 1 at page 62.

IT BEING THE SAME TWO TRACTS OF LAND that Terry L. Stem and Rachel E. Stem, husband and wife, by Deed dated November 18, 1991 and recorded in Adams County Record Book 605 at Page 1079, sold and conveyed unto Richard L. Harbaugh and Teresa I. Harbaugh, the MORTGAGORS herein.

SEIZED and taken into execution as the property of **Richard L. Harbaugh and Teresa I. Harbaugh** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
July 16, 1996.

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 14, 1996, 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.

8/16, 23 & 30

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-336 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 20th day of September, 1996, 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 Germany Township, Adams County, Pennsylvania, being more particularly bounded and described as follows:

BEGINNING at a railroad spike set in the centerline of Township Route T-423, at corner of Lot No. 1 on the hereinafter referred to draft of survey; thence continuing in and along the center line of said Township Route, North 22 degrees 34 minutes 08 seconds East, 170 feet to a railroad spike at corner of Lot No. 3; thence by said Lot No. 3 South 67 degrees 25 minutes 52 seconds East, 405.50 feet to an iron pin at lands now or formerly of Merle C. Weant; thence by said lands of Merle C. Weant, South 18 degrees 42 minutes 53 seconds West, 170.39 feet to an iron pin at corner of Lot No. 1; thence by said Lot No. 1, North 67 degrees 25 minutes 52 seconds West, 416.95 feet to a railroad spike in the centerline of Township Route T-423, the point and place of BEGINNING. CONTAINING 1.605 acres.

The above description was taken from a draft of survey prepared by Gettysburg Engineering Company, Inc., dated November 14, 1974, and recorded in Plat Book 6 at page 9; revised January 8, 1979, and re-recorded in Plat Book 26 at page 30, designating the above as Lot No. 2.

IT BEING the same tract of land which Larry R. Kline and Phyllis M. Kline, husband and wife, by deed dated April 29, 1988, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 487 at page 1084 granted and conveyed unto Charles E. Stambaugh, Jr. and Judith Anne Stambaugh, husband and wife, the Defendants herein.

SUBJECT, NEVERTHELESS, to the restrictions as contained in Miscellaneous Book 30 at page 1.

IMPROVED WITH a single-family, brick frame split level dwelling with attached garage.

SEIZED and taken into execution as the property of **Charles E. Stambaugh,**

Jr. and Judith Anne Stambaugh and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
July 29, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that schedule of distribution will be filed by the Sheriff in his office on October 14, 1996, 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.

8/9, 16 & 23

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed in the Department of State on August 2, 1996, for JD & SONS, INC. in accordance with provisions of the Business Corporation Law of 1988 by John W. Phillips, 10 West Middle Street, Gettysburg, Pennsylvania 17325.

8/16

Adams County Legal Journal

Vol. 38

August 23, 1996

No. 13, pp. 89-94

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-507 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of September, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain piece, parcel or tract of land situate, lying and being in Conewago Township, Adams County, Pennsylvania, more particularly bounded, limited and described as follows, to wit:

BEGINNING at a point on the eastern right-of-way line of South Lincoln Drive, a sixty (60) foot wide right-of-way, at corner of Lot No. 35 on the subdivision plan hereinafter referred to; thence along the eastern right-of-way line of South Lincoln Drive, North twenty-six (26) degrees twenty (20) minutes twenty-eight (28) seconds East, sixty-five (65) feet to a point at Lot No. 37 on the subdivision plan hereinafter referred to; thence along Lot No. 37, South sixty-three (63) degrees thirty-nine (39) minutes thirty-two (32) seconds East, one hundred forty-two and seventy-nine hundredths (142.79) feet to a point at Lot No. 26 on the subdivision plan hereinafter referred to; thence along Lots No. 26 and 27, South thirty (30) degrees forty-nine (49) minutes three (03) seconds West, sixty-five and twenty hundredths (65.20) feet to a point at Lot No. 35 on the subdivision plan hereinafter referred to; thence along Lot No. 35, North sixty-three (63) degrees thirty-nine (39) minutes thirty-two (32) seconds East, one hundred thirty-seven and seventy hundredths (137.70) feet to a point on the eastern right-of-way line of South Lincoln Drive, the point and place of BEGINNING. CONTAINING 9,116 square feet.

Being Lot No. 36 on the final subdivision plan for Diller's Village, Phase Three, prepared by Donald E. Worley, Registered Surveyor, dated August 14, 1987, revised October 8, 1987, designated as File No. G-97 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 48, Page 44.

HAVING erected thereon a dwelling known as 218 Lincoln Drive, Hanover, PA 17331.

Map 9, Parcel 303.

BEING the same premises which Stephen E. Kuhn and Lori R. Kuhn, husband and wife, by their Deed dated July 15, 1993 and recorded in the Recorder's Office of Adams County, Pennsylvania on July 16, 1993, in Deed Book Volume

754, Page 157, granted and conveyed unto Scott F. Bowman and Sandra L. Bowman, his wife.

SEIZED and taken into execution as the property of **Scott F. Bowman and Sandra L. Bowman** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
July 25, 1996.

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 7, 1996, 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.

8/9, 16 & 23

LEGAL NOTICE

IN THE
COURT OF COMMON PLEAS
OF ADAMS COUNTY, PENNSYLVANIA
CIVIL ACTION-LAW

NO. 96-S-676

Action to Quiet Title

BLAINE A. ANDREW and RAQUEL M. ANDREW, Plaintiffs

vs.

DENNIS R. CONNER and MARY ANN CONNER, their heirs, administrators, successors and assigns, Defendants
TO: DENNIS R. CONNER and MARY ANN CONNER, their heirs, administrators, successors and assigns

TAKE NOTICE that on August 2, 1996, Blaine A. Andrew and Raquel M. Andrew filed a Complaint in Action to Quiet Title, against Dennis R. Conner and Mary Ann Conner, their heirs, administrators, successors and assigns, averring that Blaine A. Andrew and Raquel M. Andrew are the owners of the real property described herein. The Complaint requests the Court to extinguish any possible interest you may have in said real estate. The subject property is a tract of land situate in Liberty Township, Adams County, Pennsylvania, and described as follows:

ALL that certain tract of land situated in Liberty Township, Adams County, Penn-

sylvania, being more particularly described as Lot No. 54 in Section D, on a plan of lots labeled "Section D, Charnita," dated April 11, 1969, and duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 1 at Page 47, and subject to all legal highways, easements, rights of way and restrictions of record.

The Complaint requested the Court to enter a Decree and Order that the title of the property described above is in the Plaintiffs, and that the Defendants be forever barred from asserting any right, lien, title or interest in the said land inconsistent with the interests of the Plaintiffs as set forth in their Complaint.

WHEREFORE, by Order dated August 5, 1996, the Court of Common Pleas of Adams County, Pennsylvania, has ordered that service of the Complaint be made on the above Defendants, their respective heirs, personal representatives, successors and assigns, by publication. Plaintiffs will request the Court to enter a final judgment ordering that any possible legal interest the Defendants might have had in the property be extinguished.

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the Complaint filed in the Adams County Court of Common Pleas at No. 96-S-676 and described hereinabove, you must take action within twenty (20) days after this publication by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for the relief requested by the Plaintiff. You may lose property or other rights important to you.

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

COURT ADMINISTRATOR
Adams County Courthouse
Gettysburg, PA 17325
717-334-6781

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

717-334-3105

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-269 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of September, 1996, 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 ground situate, lying and being in Hamiltonban Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point in the center of said Township Road, said point being North 57 degrees 30 minutes West, 150 feet from an iron pin in the center of said Township Road and the point of original reference; thence by lands now or formerly of Allen C. Southcomb, South 32 degrees 30 minutes West, 216.5 feet to a point at lands now or formerly of Floyd J. Kump and Bessie J. Kump; thence by same, North 57 degrees 30 minutes West, 150 feet to a point at lands now or formerly of Floyd J. Kump and Bessie J. Kump, also known as Lot No. 4; thence by the same, North 32 degrees 30 minutes East, 216.5 feet to a point in the center of the Township Road aforesaid; thence in the center of said Township Road, South 57 degrees 30 minutes East, 150 feet to a point in the center of said road, the place of BEGINNING.

The foregoing description was taken from a draft of survey as prepared by Wilbur V. Redding, Registered Surveyor, dated October 9, 1961, and identified thereon as the western half of Lot No. 2 and all of Lot No. 3.

BEING the same which Adams County National Bank, a national banking corporation, by its deed dated September 29, 1993, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 448 at page 46, sold and conveyed unto Esther A. Stouter, the Defendant herein.

IMPROVED WITH a 1-story, single family ranch-style dwelling with a Morton-type outbuilding.

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

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
July 19, 1996.

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 7, 1996, 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.

8/9, 16 & 23

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-319 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 20th day of September, 1996, 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 Menallen Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a stone at corner of lands now or formerly of Robert Garretson; thence along lands now or formerly of Orville Baldwin and lands now or formerly of Richard Sullivan, North 60 degrees East, 13.4 perches to a stone; thence continuing along lands now or formerly of Richard Sullivan, South 55-3/4 degrees East, 14.6 perches to a white oak stump; thence along lands now or formerly of Robert Garretson, South 59-3/4 degrees West, 14.1 perches to a stone; thence continuing along same, North 57 degrees West, 13.7 perches to the stone, the place of BEGINNING. CONTAINING 1 Acre and 8 perches.

The above description was taken from a draft of survey dated August 22, 1949, by P.S. Orner, County Surveyor.

BEING the same which Philip P. Peake, by his attorney-in-fact, Judy A. Peake, and Judy A. Peake, husband and wife, by deed dated April 17, 1990, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 552 at page 506 granted and conveyed unto Fred A. Miller, Sr. and Jenette K. Miller, husband and wife, the Defendants herein.

IMPROVED WITH a 1 1/2-story single family dwelling with a one-car garage.

SEIZED and taken into execution as the property of **Fred A. Miller, Sr. and**

Jenette K. Miller and to be sold by me
Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
July 30, 1996.

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 14, 1996, 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.

8/9, 16 & 23

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Commonwealth of Pennsylvania, Department of State, at Harrisburg, Pennsylvania on July 5, 1996 for the purpose of obtaining a Certificate of Incorporation.

The name of the corporation organized under the Pennsylvania Business Corporation Law of 1988, Act of December 21, 1988, P.L. 1444, No. 177, as amended and supplemented, is

4-STAR PROPERTIES, INC.

Roger M. Morgenthal, Esquire
Flower, Morgenthal, Flower & Lindsay
11 East High Street
Carlisle, PA 17013

8/23

SMITH VS. DAVIDSON, ET AL.

1. Ordinarily the Plaintiff in an action to quiet title must be in possession of the land and if he is out of possession but has an immediate right to possession ejectment is the sole remedy.

2. The burden of proof in a quiet title action is on the Plaintiff who can only recover on the strength of his own title and not on the weakness of the Defendant's title.

3. To acquire land by adverse possession, the possession of successive occupants may be tacked, but only where there is privity between them.

4. The deed between the grantor and the grantee creates no privity as to land outside its calls nor is privity created by the bare taking of possession of land previously occupied by the grantor.

5. Where possession, at its inception, is permissive, adverse possession will not begin to run against the real owner until there has been some subsequent act of disseizin or open disavowal of the true owner's title.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-206, GARY L. SMITH AND JEAN SMITH VS. VIRGIL R. DAVIDSON AND SHARON E. DAVIDSON, HUSBAND AND WIFE, AND TED E. LUCKENBAUGH AND STEPHANIE L. LUCKENBAUGH, HUSBAND AND WIFE, AND PHILIP A. BROWN, AND MARK E. MILLER AND JOSPEHUS S. ROLAND AND AMAMDA ROLAND, HUSBAND AND WIFE, AND THEIR HEIRS, PERSONAL REPRESENTATIVES AND ASSIGNS.

Scott L. Kelley, Esq., for Plaintiffs

Samuel K. Gates, Esq., for Defendants

OPINION ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Kuhn, J., January 4, 1996.

On October 10, 1994, Plaintiffs, Gary L. Smith and Jean Smith, filed a Quiet Title action against numerous defendants. Plaintiffs own land in Berwick Township which they acquired from Charles Henry Kiser and Bonita Aileen Kiser by deed dated August 23, 1985. The real estate was described as three tracts which the Kisers acquired from John W. Sager by deed dated October 20, 1978. The deed expressly stated that the conveyance was

TOGETHER WITH ALL of the grantor's right, title, and interest in and to the alley and/or passage way more particularly described and set forth in the deed dated June 14, 1873, given by Josephus S. Roland and wife, unto Emanuel Hoke, the same being recorded in the aforesaid Recorder's Office in Deed Book LL, page 437, the above parties being predecessors in title.

The 1873 deed between Rolands and Hoke grants to Hoke for the sum of \$0.50

All that uninterrupted use liberty and Privilege of and passage in and along a certain alley or Passage of Twelve feet in breadth by six Hundred and Thirty six feet in Depth Extending out of and from the Public Road which passes by the House of Moses Wollet in the said Township of Berwick, the said alley, or passage is Bounded as follows to Wit Commencing at a point in Public Road on line of Moses Wollet and the present grantor, thence South west twelve feet in Breadth along the said Line to Emanuel Hokes gate, Six Hundred and Thirty six feet in debth, Together with free ingress, Egress and regress to and for the said Emanuel Hoke, His heirs and assigns . . . with the exception and Reservations of both parties they bind themselves their Heirs Executors, Administrators or their survivors, in making and keeping up the line fence between their lands, in good substantial order the party of the first part or his survivors or successors shall build and keep in repair the one half of said line fence Comencing at the South Western Extremity to the middle of said line, and the party of the second part or his survivors or successors shall build and keep in repair the remaining half of said line fence . . . and . . . in case there should at any time be a Public Road opened through or along the said line mentioned . . . shall return back to the grantor or his Heirs Executors Administrators or their Survivors or their successors, and then this Indenture to be Void and of no Effect, and if no Public Road is made this Indenture of agreement shall hold good and affectual to the end of Time.

A survey dated November 15, 1993, and submitted as part of the record shows a right-of-way running perpendicular from Bair Road (T-504) in a southerly direction a distance of slightly in excess of 1,000 feet. The right-of-way varies in width from 47.22 feet at Bair Road to 36.24 feet at the southern end. On the northwestern side of the right-of-way and in order from Bair Road are the properties of defendants Philip Brown, Virgil Davidson et ux., and Ted E. Luckenbaugh, et ux., respectively. On the southeastern side of the right-of-way and in order from Bair Road lies the properties of defendant, Mark E. Miller, and Plaintiffs, respectively. According to the pleadings this right of way is described in each of the defendants' deeds as forming a part of their respective boundary lines.

Plaintiffs claim that this right-of-way can be traced to the 12 foot right-of-way created in the 1873 Roland to Hoke deed. They further claim that since August 23, 1985, they have possessed and maintained a 10 foot wide dirt driveway which lies within the 40 foot wide right-of-way and which extends from Bair Road to their property. They allege that the driveway dates back to the Rolands. Defendants, Davidsons, Luckenbaughs, and Brown, deny these averments and assert that the 40 foot wide right-of-way has been used in common by them. Plaintiffs request that their deed be conformed to include the 40 foot wide right-of-way and that all the defendants be barred from asserting any right, title or interest in the same.

Defendants, Davidsons, Luckenbaugh and Brown, moved for summary judgment arguing that Plaintiffs have not shown any right to the relief requested.

It has often been stated that,

Summary judgment may be granted if the pleadings, depositions, answers to interrogatories and admissions on file show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law . . . Summary judgment may be entered only in cases that are clear and free from doubt . . . The moving party . . . has the burden of proving that no material issue of fact exists . . . Allstate Insurance Co. v. McFadden, 407 Pa. Super. 537, 540, 595 A.2d 1277, 1278 (1991); Alloc. den. 602 A.2d 855 (1991) (citations omitted).

In addition, the record must be examined in a light most favorable to the non-moving party, accepting as true all well-pleaded facts in the pleadings and giving that party the benefit of all reasonable inferences drawn therefrom. Godlewski v. Pars Manufacturing Company, 408 Pa. Super. 425, 430, 597 A.2d 106, 109 (1991). Finally, pursuant to the Nanty-Glo rule, summary judgment is not available where the moving party relies exclusively upon oral affidavits or depositions to establish the absence of a genuine issue of material fact, except where that oral testimony consists of admissions of the opposing party or his witnesses. Johnson v. Johnson, 410 Pa. Super. 631, 637, 600 A.2d 965, 968 (1991).

The record in this case consists only of the pleadings, the survey and the 1873 deed. The Court has not been given the benefit of any other deeds in the chain of title of the various parties.

An action to quiet title may be brought to determine any right, lien, title or interest in land where an action in ejectment will not lie. Pa. R.C.P. 1061. Ordinarily, the plaintiff in an action to quiet title must be

in possession of the land and if he is out of possession but has an immediate right to possession ejectment is the sole remedy. *Plauchak v. Boling*, 439 Pa. Super. 156, 653 A.2d 671, 674 (1995). The burden of proof in a quiet title action is on the plaintiff who can only recover on the strength of his own title and not on the weakness of the defendant's title. *Castronuovo v. Sordoni*, 357 Pa. Super. 187, 191, 515 A.2d 927, 929 (1986).

In this case it is not entirely clear to the Court what title or interest Plaintiffs are claiming. On the one hand they seem to aver an express interest in the right-of-way by virtue of the interest conveyed in their 1985 deed, albeit an expressed 12 foot wide right-of-way. On the other hand they discuss elements of adverse possession. On the one hand the interest conveyed is 12 feet wide but on the other hand the interest claimed is 36-47 feet wide. The 1873 deed referred to a right-of-way 636 feet in length but Plaintiffs are claiming an interest which is significantly longer.

Because Defendants' motion only addresses the issue of Plaintiffs' right to claim title to the right-of-way by means of adverse possession, we will focus solely on that issue. One who claims title by adverse possession must prove actual, continuous, exclusive, visible, notorious, distinct and hostile possession of land for a period of 21 years. *Baylor v. Soska*, ___ Pa. ___, ___, 658 A.2d 743, 744 (1995). Plaintiffs bought the land on August 23, 1985, and filed suit on March 10, 1994. That is an insufficient period of time to acquire land by adverse possession. Of course, periods of possession by prior owners may be added or tacked to the period of the present owners. In *Castronuovo v. Sordoni*, *supra.*, the Superior Court discussed the concept of tacking as follows,

The possession of successive occupants may be tacked, but only where there is privity between them . . . For our purposes, "privity" refers to a succession of relationship to the same thing, whether created by deed or other acts or by operation of law . . .

But a deed does not of itself create privity between the grantor and the grantee as to land not described in the deed but occupied by the grantor in connection therewith, although the grantee enters into possession of the land not described and uses it in connection with that conveyed * * * The deed, in itself, creates no privity as to land outside its calls. Nor is privity

created by the bare taking of possession of land previously occupied by the grantor.

. . . Our court has held that acceptance of a deed describing boundary lines confined the premises to the area within the boundaries, and that such a deed did not convey inchoate rights acquired by incomplete adverse possession . . . Each predecessor must have claimed title to the property in dispute, and in transferring to his successors must have purported to include it.

357 Pa. Super. at 193-4, 515 A.2d at 930-1 (citations omitted).

In this case the deed from Kisers to Plaintiffs did not place the right-of-way within the metes and bounds description but it certainly made express reference to the conveyance of Kisers' interest in the right-of-way as more fully set forth above. There is an exception to the general rule discussed in *Castronuovo* above and that occurs when the "instrument of conveyance" by means minimally acceptable for conveyancing of realty that which is intended to be conveyed, makes clear the grantor's intent to convey the particular interest. *Baylor v. Soska*, supra., ___ Pa. at ___, 658 A.2d at 746. Plaintiffs' deed is sufficient to meet this exception for summary judgment purposes. However, tacking Kisers' period of ownership does little to satisfy the 21 year period because Plaintiffs' deed indicates that Kisers' acquired their title on October 20, 1978 or 16 years before the action was filed. For this reason the claim of adverse possession must fail.

In addition, we note that each of the elements necessary to establish adverse possession must be present or the possession will not confer title. *Glenn v. Shuey*, 407 Pa. Super. 213, 221, 595 A.2d 606, 610 (1991). The record indicates that Plaintiffs' possession is not hostile. The term "hostile" means an assertion of ownership rights adverse to that of the true owner and all others. *Id.* 407 Pa. Super. at 223, 595 A.2d at 612. If, as Plaintiffs appear to claim, that ownership of the right-of-way came through their chain of title from the Rolands, their occupation and possession of the land is not hostile but permissive. The earlier 1873 deed created an express, but conditional, easement in favor of Hoke. Where possession, at its inception, is permissive, adverse possession will not begin to run against the real owner until there has been some subsequent act of disseizin or open disavowal of the true owner's title. *Roman v. Roman*, 485 Pa. 196, 200-1, 401 A.2d 361, 363 (1979). No such evidence exists at this time.

As stated herein, motions for summary judgment are to be granted only when the case is clear of doubt and judgment can be entered as a matter of law. Ordinarily, that standard makes the Court reluctant to grant such a motion. Nevertheless, the record as it exists and the inferences arising therefrom do not support Plaintiffs' claim of adverse possession. Perhaps this deficiency can be rectified by re-pleading.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 4th day of January, 1996, the Motion For Summary Judgments filed by Defendants, Davidsons, Luckenbaughs and Brown, is granted on any claims Plaintiffs are raising as to title by adverse possession.

Plaintiffs are granted twenty (20) days from the date of mailing of this Order to file an amended complaint.

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 M. HELLER, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Executors: Phillip W. Heller, P. O. Box 5, Biglerville, PA 17307; Edward R. Heller, 785 Bull Valley Road, Aspers, PA 17304

Attorney: Robert E. Campbell, Campbell and White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF GRACE M. HESS, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Darlene B. Dayhoff, 714 Taneytown Road, Gettysburg, PA 17325

Attorney: Robert E. Campbell, Campbell and White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF JOSEPHA. HESS, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Darlene B. Dayhoff, 714 Taneytown Road, Gettysburg, PA 17325

Attorney: Robert E. Campbell, Campbell and White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF DOROTHY J. NEWMAN, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Executors: Linn E. Newman, P. O. Box 64, Indian Head, MD 20640; Douglas J. Newman, 476 Knorr Road, Gettysburg, PA 17325; Craig Howard Newman, 8 Tree Top Trail, Fairfield, PA 17320

Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF ELIZABETH A. HAUGH, DEC'D

Late of Abbottstown Borough, Adams County, Pennsylvania

Executors: T. Michael Haugh, 4721 York Road, New Oxford, PA 17350; Ann E. Fruth, 1820 Walnut Street, Camp Hill, PA 17011

Attorney: William W. Hafer, Esquire, 215 Baltimore Street, Hanover, PA 17331

ESTATE OF WORLEY HURD, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executor: Jackie Hurd, 511 Peepytown Road, East Berlin, PA 17316

Attorney: Sharon E. Myers, Esq., 29 North Duke Street, York, PA 17401

ESTATE OF TREVA AMELIA KOONTZ a/k/a TREVA A. KOONTZ, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executors: Charles E. Koontz, Jr., 25179 Willard Road, Chantilly, VA 20152; Ester Amanda Hess a/k/a Esther Amanda Hess, 139 Boyer Street, Littlestown, PA 17340

Attorney: Stonesifer and Kelley, 209 Broadway, Hanover, PA 17331

ESTATE OF MARY A. STRICKHOUSER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Charles A. Strickhouser, 935 Fish and Game Road, Littlestown, PA 17340

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

ESTATE OF ELVA B. WARD, DEC'D

Late of the Borough of East Berlin, Adams County, Pennsylvania

Co-Executors: John Michael Hess, 2441 Brookmar Drive, York, PA 17404; Karol Sherman, 158 Locust Lane, Abbottstown, PA 17301

Attorney: Sharon E. Myers, Esq., 29 North Duke Street, York, PA 17401

ESTATE OF IONE M. WEAVER a/k/a IONE MARY WEAVER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Victor B. Smith

Attorney: David C. Smith, Esquire, 334 Main Street, McSherrystown, PA 17344, Attorney for the Estate

THIRD PUBLICATION

ESTATE OF LYDIA C. ECKERT, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Co-Executors: Susan E. Klunk, 55 Shealer Road, Gettysburg, PA 17325; John H. Eckert, 3607 Beaufort Street, Harrisburg, PA 17111

Attorney: John W. Thompson, Jr., 11 East Market Street, York, PA 17401

ESTATE OF LYDA BELLE KRALL, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Sylvia Turner, 2480 Baltimore Pike, Gettysburg, PA 17325

Attorney: Wilcox, James & Cook, 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARTIN L. SCHIRMER, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executor: Morton W. Seward, 1250 S. Washington Street, Alexandria, VA 22314

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

FICTITIOUS NAME

NOTICE IS HEREBY GIVEN that an application for registration was filed under the Fictitious Name Act of 1982, Act 295 (54 Pa. C.S. Sec. 311) in the Office of the Secretary of the Commonwealth of Pennsylvania on April 4, 1996, setting forth that Keystone Diner, Inc., owns or is interested in a business, the character of which is a motel, restaurant and bar and that the name, style and designation under which said business is and will be conducted is CRAZY HORSE SALOON AND STEAK HOUSE and the location where said business is and will be conducted is 6465 York Road, New Oxford, Pennsylvania 17350.

Paul G. Lutz
Solicitor

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-104 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 20th day of September, 1996, 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 parcels of land lying and being in Liberty Township, Adams County, Pennsylvania, being Lot Nos. 24 and 25 in Section AB, more particularly bounded and described as follows:

LOT AB 24

Charnita Section AB Lot No. 24 as shown on the records of the Adams County Mapping Department and recorded in the Office of the Register and Recorder of Adams County, Pennsylvania on December 18, 1969 in Plat Book 1 at page 61. The property being subject to existing restrictions.

LOT AB 25

BEGINNING at a point in the center of Sydnor Trail at Lot No. 24; thence by said lot South 41 degrees 28 minutes 25 seconds West, 223.68 feet to Lot No. 37; thence by said lot and Lot No. 36 North 48 degrees 21 minutes 25 seconds West, 100.67 feet to Lot No. 26; thence by said lot North 41 degrees 38 minutes 35 seconds East, 223.68 feet to a point in the center of said Sydnor Trail; thence in said Sydnor Trail North 48 degrees 21 minutes 25 seconds East, 100.67 feet to the place of BEGINNING.

The above description was taken from a plan of lots labeled "Section AB of Charnita, Inc." dated November 18, 1969, prepared by Evans, Hagan & Holdefer, and recorded in Adams County Plat Book No. 1 at page 62.

IT BEING THE SAME TWO TRACTS OF LAND that Terry L. Stem and Rachel E. Stem, husband and wife, by Deed dated November 18, 1991 and recorded in Adams County Record Book 605 at Page 1079, sold and conveyed unto Richard L. Harbaugh and Teresa I. Harbaugh, the MORTGAGORS herein.

SEIZED and taken into execution as the property of **Richard L. Harbaugh and Teresa I. Harbaugh** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
July 16, 1996.

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 14, 1996, 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.

8/16, 23 & 30

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-336 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 20th day of September, 1996, 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 Germany Township, Adams County, Pennsylvania, being more particularly bounded and described as follows:

BEGINNING at a railroad spike set in the centerline of Township Route T-423, at corner of Lot No. 1 on the hereinafter referred to draft of survey; thence continuing in and along the centerline of said Township Route, North 22 degrees 34 minutes 08 seconds East, 170 feet to a railroad spike at corner of Lot No. 3; thence by said Lot No. 3 South 67 degrees 25 minutes 52 seconds East, 405.50 feet to an iron pin at lands now or formerly of Merle C. Weant; thence by said lands of Merle C. Weant, South 18 degrees 42 minutes 53 seconds West, 170.39 feet to an iron pin at corner of Lot No. 1; thence by said Lot No. 1, North 67 degrees 25 minutes 52 seconds West, 416.95 feet to a railroad spike in the centerline of Township Route T-423, the point and place of BEGINNING. CONTAINING 1.605 acres.

The above description was taken from a draft of survey prepared by Gettysburg Engineering Company, Inc., dated November 14, 1974, and recorded in Plat Book 6 at page 9; revised January 8, 1979, and re-recorded in Plat Book 26 at page 30, designating the above as Lot No. 2.

IT BEING the same tract of land which Larry R. Kline and Phyllis M. Kline, husband and wife, by deed dated April 29, 1988, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 487 at page 1084 granted and conveyed unto Charles E. Stambaugh, Jr. and Judith Anne Stambaugh, husband and wife, the Defendants herein.

SUBJECT, NEVERTHELESS, to the restrictions as contained in Miscellaneous Book 30 at page 1.

IMPROVED WITH a single-family, brick frame split level dwelling with attached garage.

SEIZED and taken into execution as the property of **Charles E. Stambaugh,**

Jr. and Judith Anne Stambaugh and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
July 29, 1996.

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 14, 1996, 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.

8/9, 16 & 23

Adams County Legal Journal

ol. 38

August 30, 1996

No. 14, pp. 95-98

**ADAMS COUNTY TAX CLAIM SALES
TAX CLAIM BUREAU—TAX SALES NOTICE**

TAX SALE B

TO OWNERS OF PROPERTIES DESCRIBED IN THIS NOTICE AND TO ALL PERSONS HAVING LIENS, JUDGMENTS OR MUNICIPAL OR OTHER CLAIMS AGAINST SUCH PROPERTIES:

Notice is hereby given by the Tax Claim Bureau in and for the County of Adams under the Act of 1947, P.L. 1368, as amended, that the Bureau will expose at public sale in the Adams County Courthouse, fourth floor, Jury Assembly Room, 111-117 Baltimore Street, in the Borough of Gettysburg, Pennsylvania at 9:00 a.m. E.D.S.T. on September 30, 1996, or any date to which the sale may be adjourned, re-adjourned or continued, for the purpose of collecting unpaid 1994 and any prior real estate taxes, prior liens, municipal claims, and all costs thereto, the following described set forth.

The sale of the property may, at the option of the Bureau, be stayed if the owner thereof or any lien creditor of the owner, on or before the date of the sale enters into an agreement with the Bureau to pay the taxes, claims, and all costs in installments in the manner provided by said Act, and the agreement be entered into.

There will be no Redemption Period after the date of the sale, but these taxes and costs can be paid up to the date of sale, September 30, 1996.

It is strongly urged that the prospective purchasers have an examination made of the title of any property in which they may be interested. Every reasonable effort has been made to keep the proceedings free from error. However, in every case the Tax Claim Bureau is selling the taxable interest and the property is offered for sale by the Tax Claim Bureau without guarantee or warranty whatsoever.

The property so struck down will be settled for before the next property is offered for sale. Deeds for the premises will be prepared by the Tax Claim Bureau and recorded. Buyer(s) will be required to pay, in addition to their bid, at the time the property is struck down to them, the basic sum for recording the deed, and the costs of such realty transfer stamps as required (assessed value x 2.39%). The Recorder of Deeds will mail the deeds to the address given by the purchaser.

A property will not be sold if the delinquent taxes and all costs are paid prior to the sale and it is suggested that this be done as soon as possible before the sale, as the earlier this is done, the more saving there will be in the amount of costs, etc.

It is repeated that there is no redemption after the property is sold and all sales will be final. No adjustments will be made after the property is struck down.

TERMS OF SALE: In the case of all properties selling for one hundred dollars (\$100.00) or less, cash in the form of currency of the United States must be paid in full at the time the property is struck down. In the case of properties for which more than one hundred dollars (\$100.00) has been bid, the sum of one hundred dollars (\$100.00) cash in the form of currency of the United States must be paid in full when the property is struck down and a check on a bank or other satisfactory payment for the balance must be paid at the same time. If the balance of the purchase price is not paid for any reason (for example, if a check is not paid), the one hundred dollars (\$100.00) cash paid shall be forfeited as liquidated damages.

David K. James, III
Solicitor, Tax Claim Bureau

Danielle Asper
Director, Tax Claim Bureau

SALE #	OWNER(S) OR REPUTED OWNER(S)	DESCRIPTION	UPSET PRICE
		BERWICK TOWNSHIP	
1B	Gary L. Smith	Map # L11-91	\$1635.34
		BONNEAUVILLE BOROUGH	
2B	Gary L. & Virginia L. Reichart	Map # 8-80	\$20,653.05
		BUTLER TOWNSHIP	
3B	Norman K. Lady, Inc.	Map # E8-54	\$26,333.10
		CONEWAGO TOWNSHIP	
3	Timothy A. & Laurie Stotsky	Map # 9-166	\$4,151.72
		CUMBERLAND TOWNSHIP	
5B	Warren H. Sheppard	Map # E13-72	\$6,559.62
		FRANKLIN TOWNSHIP	
7B	Linwood R. & Karan S. Vedier	Map # B9-38E	\$1,634.70
		GETTYSBURG BOROUGH	
9B	Katherine E. Ivey	Map # 10-325	\$527.12
10B	Patricia Sarah Williams c/o Valerie Costley	Map # 10-228	\$1,973.26

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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HUNTINGTON TOWNSHIP		
11B'	Steven S. & Ann M. Strudwick	\$673.91
	Map # J5-35A	
LATIMORE TOWNSHIP		
12B	William R. & Nancy E. Johnson	\$1,096.08
	Map # J4-2	
MT. JOY TOWNSHIP		
14B	Terry A. Jr. & Kathryn M. Lightner	\$3,041.63
	Map # G17-3	
15B	Barry N. & Kelly A. Poole	\$7,464.28
	Map # H15-47	
READING TOWNSHIP		
17B	Irl L. & Mary J. Therit	\$840.39
	Map # L7-32	
STRABAN TOWNSHIP		
18B	Jack J. & Andree M. Goulet	\$5,788.17
	Map # H10-105	
20B	Michael D. & Deborah A. Pearce	\$673.36
	Map # 21-80	
CARROLL VALLEY BOROUGH		
21B	Charles J. & Doris Mae Lee	\$904.02
	Map # 47-15 R-56	
22B	Chester M. & Kathy M. Long	\$583.19
	Map # 35-86	

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN pursuant to the provisions of the Pennsylvania "Fictitious Names Act," 54 Pa.C.S.A. Sections 301 et seq., of the filing of an Application for Registration for Fictitious Name under the said Act. The fictitious name is SUNDAY DRIVE. The address of the principal office or place of business to be carried on under or through the fictitious name is 265 1/2 Buford Avenue, Gettysburg, Adams County, Pennsylvania. The name and address of the individual who is interested in the business is Charles William Kiehl, of 265 1/2 Buford Avenue, Gettysburg, Adams County, Pennsylvania 17325. An Application for Registration of the said Fictitious Name was filed in the Office of the Secretary of the Commonwealth of Pennsylvania on August 5, 1996.

Wolfe & Rice
 47 West High Street
 Gettysburg, PA
 Attorneys for Applicant

8/30

NOTICE

NOTICE IS HEREBY GIVEN that on June 6, 1996, Charlene Stratton of Littlestown, PA, filed suit for a Divorce in the Court of Common Pleas of Adams County, PA at 96-S-499 from Bobby R. Stratton, Jr., alleging that the parties have lived separate and apart in excess for two years.

The whereabouts of Mr. Stratton, whose last known address was 575 Kohler School Road, Lot 28, New Oxford, PA, are unknown. This advertisement is in lieu of service of process upon Mr. Stratton, who must take prompt action if he wishes to defend against this claim. Mr. Stratton or anyone who knows of his whereabouts should contact:

Muriel Anne Crabbs
 202 Broadway
 Hanover, PA 17331
 (717) 637-9799

8/30, 9/6 & 13

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 Name Act. The name of the business is BATTLEFIELD BUILDERS with its principal place of business at 430A Guernsey Road, Biglerville, Pennsylvania. The owner of the business is Gettysburg Concrete Builders, Inc., of 430A Guernsey Road, Biglerville, Pennsylvania.

Robert G. Teeter
 Teeter, Teeter & Teeter
 108 West Middle Street
 Gettysburg, PA 17325-2194

8/30

IN RE: CONDEMNATION BY ABBOTTSTOWN-PARADISE
JOINT SEWER AUTHORITY OF A RIGHT-OF-WAY
EASEMENT; MOBILE HOME BROKERS, INC. VS.
ABBOTTSTOWN-PARADISE JOINT SEWER AUTHORITY

1. The 20 day period to object to the appointment of viewers is mandatory.
2. Preliminary objections are the sole method for raising legal and factual objections to a petition for appointment of viewers alleging a de facto taking.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 88-S-1016, IN RE: CONDEMNATION BY ABBOTTSTOWN-PARADISE JOINT SEWER AUTHORITY OF A RIGHT-OF-WAY EASEMENT OVER, ACROSS AND THROUGH VARIOUS TRACTS; MOBILE HOME BROKERS, INC. VS. ABBOTTSTOWN PARADISE JOINT SEWER AUTHORITY.

Donald H. Yost, Esq., for Condemnee

Lillian M. Morgan, Esq., for Condemnor

MEMORANDUM OPINION ON PETITION OF
ABBOTTSTOWN-PARADISE JOINT SEWER AUTHORITY
FOR RULE TO SHOW CAUSE

Kuhn, J., January 4, 1996.

This matter was initiated when Abbottstown-Paradise Joint Sewer Authority, hereinafter "APJSA," filed a Declaration of Taking on December 19, 1988, pursuant to provisions of the Municipalities Authority Act of 1945, as amended, 53 P.S. §314, and under the Eminent Domain Code, to acquire a 20 foot wide right-of-way for a sewer line across the land of numerous condemnees including Mobile Home Brokers, Inc. Disposition of the instant Petition For Rule to Show Cause filed by APJSA is based upon the following procedural and factual background.

Mobile Home Brokers, Inc., hereinafter "MHB" is a Pennsylvania corporation formed in 1971 by William S. Carter and George T. Paulk who were the original stock owners. In June, 1974, MHB became the owner of certain real estate situated in both Berwick Township and the Borough of Abbottstown. On June 14, 1975, Berwick Township passed a resolution to revise its Official Act 537 Plan "to include interim waste water treatment facilities for Beaver Creek Village" which was a proposed mobile home park to be owned by MHB. The Act 537 revision was expressly subject to Beaver Creek Village 1) reserving capacity in the APJSA's proposed regional treatment plant, 2) constructing an interceptor sewer line from the Village to the Borough of Abbottstown of sufficient size to carry any additional flow which may discharge into it from Berwick Township, and 3) be included in the E.P.A. 201 study being prepared. In early July, 1975, MHB filed its planning module with the Pennsylvania Department of Environmental Resources requesting approval of its proposed new treat-

ment facility and noted that "The proposed Plant will be abandoned when Municipal Sewerage Treatment Facilities are made available." On basis of this application D.E.R. issued a Water Quality Management Permit to MHB on December 17, 1976. The treatment plant was apparently constructed in 1978. An additional permit was issued to MHB by D.E.R. to cover the period May 14, 1981, to May 14, 1986.

On June 8, 1981, MHB, by Paulk as President and Carter as Secretary filed an application with the Pennsylvania Department of State to conduct business under the fictitious name of Beaver Creek Village.

On or about May 15, 1986, MHB filed a planning module with D.E.R. to expand into the Abbottstown portion of its property. When the planning module was submitted to the Borough of Abbottstown by MHB's engineer on January 31, 1986, he wrote that "the developer intends to connect to the proposed public sewer when it becomes available. It is our understanding that construction of the system should begin sometime in 1988."

APJSA entered into separate agreements with Berwick Township on July 7, 1986, and with Abbottstown Borough on August 14, 1986, which defined the duties and responsibilities of each party in connection with a sewage treatment system which APJSA was intending to construct and operate. When the Adams County Planning Commission sent its review of the plan to Abbottstown Borough on August 31, 1987, the report stated that "It is our understanding that the BCVMHP sewage treatment plant will be discontinued upon availability of the Abbottstown-Paradise System." Carter was copied on the report.

By application filed with D.E.R. on December 2, 1986, dated December 1, 1986, and signed by Carter as Secretary-Treasurer, Beaver Creek Village sought a renewal from D.E.R. of its existing permit. D.E.R. documents dated October 2, 1987 note that it had not done a detailed evaluation "since this facility will be abandoned when the Abbottstown-Paradise system becomes operational in late 1989... Final permit should be no discharge and tie into municipal system." On March 31, 1988, D.E.R. issued a renewal permit to Beaver Creek Village to expire on January 1, 1990. The permit provided that it could not be transferred without D.E.R. approval and that connection to APJSA system was scheduled by the Fall of 1989.

On October 24, 1988, Berwick Township and on November 17, 1988, Abbottstown Borough passed ordinances requiring improved properties within their respective municipal boundaries to connect to the APJSA sewer system within 60 days after notice.

As noted above on December 19, 1988, APJSA filed its Declaration of Taking.

On December 27, 1988, MHB deeded its real estate to Carter and Norman E. Yorty. Carter testified that he owned 99.33% and Yorty 0.67% of MHB's stock before the transfer. Interestingly, by document filed February 2, 1989, with the Department of State and signed by Carter individually, he regis-

tered Beaver Creek Village as a fictitious name with the nature of its business being described as a mobile home park. Then, by deed dated June 13, 1989, Carter and Yorty conveyed the real estate to Carter and his wife. There is no record evidence that D.E.R. was notified of either of these last two conveyances.

As indicated earlier, the renewal permit issued by D.E.R. was to expire on January 1, 1990. There is no evidence of any extensions being applied for or granted beyond that date. On March 1, 1990, APJSA issued a notice for the mobile home park to be connected to its sewer system. By mid-June, 1990, the park's treatment plant had been abandoned and connection to APJSA's system had been completed.

Procedurally, on October 19, 1993, MHB filed a Petition For Appointment of Viewers pursuant to 26 P.S. §1-502, averring that the Declaration of Taking and notice to connect had substantially diminished the value of its property. Viewers were appointed by Order dated October 26, 1993. After some delays the view and hearing were scheduled for January 26, 1995, but were canceled because on January 25, 1995, APJSA filed the instant Petition wherein it requests that MHB, for numerous reasons, be denied any claim for a de facto taking. MHB responded to the Petition and a hearing was scheduled before the undersigned.

Herein the Court shall address the numerous issues raised.

Essentially MHB claims that in addition to the easement appropriated by the Declaration of Taking that APJSA has effectuated a de facto taking of its sewer treatment plant and facilities when it was forced to disconnect its system and connect to the public system.

The Eminent Domain Code at 26 P.S. §1-502 allows a condemnee to request the appointment of viewers to determine just compensation for a de facto taking. A "condemnee" is defined as the owner of a property interest taken. 26 P.S. §1-201. As of December 27, 1988, MHB was no longer the owner of the property. However, the alleged taking of the sewage system did not occur until at least March 1, 1990, when the notice to connect was issued. At that time Carter et ux were the owners. Therefore, on the surface it would appear that MHB is not a proper party to petition for viewers. However, MHB contends that APJSA has waived the issue of standing on lack of ownership by not filing preliminary objections within 20 days after the appointment of the viewers as required by 26 P.S. §1-504. At this stage of the proceedings we must agree. The 20 day period to object to the appointment of viewers is mandatory. *Janeski v. Borough of South Williamsport*, 58 Pa. Comlth. Ct. 369, 374-5, 429 A.2d 768, 770 (1981). APJSA has attempted to raise issues in the instant petition which it is precluded from raising by way of preliminary objections. Courts have held that preliminary objections are the sole method for raising legal and factual objections to a petition for appointment of viewers alleging a de facto taking. *Borough of Barnesboro v. Pawlowski*, 100 Pa. Comlth. Ct. 94, 97, 514 A.2d

268, 269 (1986). For these reasons all issues raised in APJSA's instant petition must fail.

Whether this conclusion results in a pyrrhic victory must await another day. The viewers must determine just compensation for the taking as of March 1, 1990. Under the circumstances of this case, the amount of those damages, if any, will be strongly contested.

We pass on one other issue raised by APJSA wherein it argues that MHB waived any right to assert a de facto taking when it failed to file preliminary objections to the Declaration of Taking under 26 P.S. §1-406(a). APJSA cites to *Nelis v. Redevelopment Authority*, 4 Pa. Comlth. Ct. 533, 287 A.2d 880 (1972); *Nelis v. Redevelopment Authority*, 12 Pa. Comlth. 338, 315 A.2d 893 (1974) and *Vercheak v. Redevelopment Authority*, 44 Pa. Comlth. Ct. 481, 405 A.2d 559 (1979). Those cases stand for the proposition that a property owner, not having exercised his right to assert a de facto taking under 26 P.S. §1-502(e), prior to the filing of a declaration of taking, must exercise that right by filing preliminary objections to the declaration of taking or the right to assert the de facto taking will be waived. Those cases are distinguishable because they involve the claim of a de facto taking before the filing of the formal condemnation. Here, that alleged claim did not exist according to MHB's petition until at least March 1, 1990, or over 14 months after the filing of the Declaration of Taking. Preliminary objections to a declaration of taking are to be filed within 30 days after service of the notice of condemnation. 26 P.S. §1-406(a). Within that time period, MHB could not have raised a claim which did not then exist. We find no error in MHB filing a petition for appointment of viewers as to the de jure and the de facto taking at one time in this case. On the contrary, APJSA has offered no legitimate excuse why it failed to file preliminary objections to MHB's petition from October 19, 1993, to the present.

At hearing on this matter MHB, through Carter, expressed a desire to amend its petition for viewers to allege that the de facto taking occurred prior to December 27, 1988, when MHB transferred the property to Carter. Such a procedure would appear to raise two potential concerns. First, under the *Nelis* rationale the claim for de facto taking may be waived and, second, allowing the amendment would open the door for APJSA to file preliminary objections as to those claims raised in the amendment including MHB's standing to assert a claim as a condemnee when it no longer is an owner of the property affected. Although the Court has doubts about MHB's ability to raise a viable claim by amendment, permission will be granted to do so.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 4th day of January, 1996, the Petition of Abbottstown-Paradise Joint Sewer Authority For Rule To Show Cause is denied.

Mobile Home Brokers is granted twenty (20) days from the date of mailing of this Order to file any amendments to its Petition For Viewers.

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 EDITH C. DULL, DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Executrix: Shirley D. Seybolt, 2021 Grandview Road, Hanover, PA 17331
Attorney: James T. Yingst, Esquire, Rudsill, Guthrie, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331, 717-632-5315

ESTATE OF MARY A. FIDLER a/k/a MARY ANN FIDLER, DEC'D
Late of the Borough of Gettysburg, Adams County, Pennsylvania
Executrix: Dorothy E. Fidler, 146 Gettys Street, Gettysburg, PA 17325
Attorney: Chester G. Schultz, Esquire, Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF GEORGE J. GARNER, SR., DEC'D
Late of Reading Township, Adams County, Pennsylvania
Executrix: Linda E. Garner
Attorney: Angela N. Dobrinoff-Blake, Esquire, Anderson Converse and Fennick, P.C., 1423 East Market Street, York, PA 17403-1254

SECOND PUBLICATION

ESTATE OF ROBERT M. HELLER, DEC'D
Late of Tyrone Township, Adams County, Pennsylvania
Executors: Phillip W. Heller, P. O. Box 5, Biglerville, PA 17307; Edward R. Heller, 785 Bull Valley Road, Aspers, PA 17304
Attorney: Robert E. Campbell, Campbell and White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF GRACE M. HESS, DEC'D
Late of Cumberland Township, Adams County, Pennsylvania
Executrix: Darlene B. Dayhoff, 714 Taneytown Road, Gettysburg, PA 17325
Attorney: Robert E. Campbell, Campbell and White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF JOSEPH A. HESS, DEC'D
Late of Cumberland Township, Adams County, Pennsylvania
Executrix: Darlene B. Dayhoff, 714 Taneytown Road, Gettysburg, PA 17325
Attorney: Robert E. Campbell, Campbell and White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF DOROTHY J. NEWMAN, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania
Executors: Linn E. Newman, P. O. Box 64, Indian Head, MD 20640; Douglas J. Newman, 476 Knorr Road, Gettysburg, PA 17325; Craig Howard Newman, 8 Tree Top Trail, Fairfield, PA 17320
Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF ELIZABETH A. HAUGH, DEC'D

Late of Abbottstown Borough, Adams County, Pennsylvania
Executors: T. Michael Haugh, 4721 York Road, New Oxford, PA 17350; Ann E. Fruth, 1820 Walnut Street, Camp Hill, PA 17011
Attorney: William W. Hafer, Esquire, 215 Baltimore Street, Hanover, PA 17331

ESTATE OF WORLEY HURD, DEC'D
Late of Reading Township, Adams County, Pennsylvania
Executor: Jackie Hurd, 511 Peepytown Road, East Berlin, PA 17316
Attorney: Sharon E. Myers, Esq., 29 North Duke Street, York, PA 17401

ESTATE OF TREVA AMELIA KOONTZ a/k/a TREVA A. KOONTZ, DEC'D
Late of Straban Township, Adams County, Pennsylvania
Executors: Charles E. Koontz, Jr., 25179 Willard Road, Chantilly, VA 20152; Ester Amanda Hess a/k/a Esther Amanda Hess, 139 Boyer Street, Littlestown, PA 17340
Attorney: Stonesifer and Kelley, 209 Broadway, Hanover, PA 17331

ESTATE OF MARY A. STRICKHOUSER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania
Executor: Charles A. Strickhouser, 935 Fish and Game Road, Littlestown, PA 17340
Attorney: Bigham & Raffensperger, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF ELVA B. WARD, DEC'D
Late of the Borough of East Berlin, Adams County, Pennsylvania
Co-Executors: John Michael Hess, 2441 Brookmar Drive, York, PA 17404; Karol Sherman, 158 Locust Lane, Abbottstown, PA 17301
Attorney: Sharon E. Myers, Esq., 29 North Duke Street, York, PA 17401

ESTATE OF IONE M. WEAVER a/k/a IONE MARY WEAVER, DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Executor: Victor B. Smith
Attorney: David C. Smith, Esquire, 334 Main Street, McSherrystown, PA 17344, Attorney for the Estate

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Commonwealth of Pennsylvania, Department of State on July 19, 1996, for ENTERPRISE-WIDE INTERGRATION TECHNOLOGIES, INC. The said Corporation has been incorporated under provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444, No. 177.

David C. Smith, Esquire
Solicitor

8/30

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed by SLAYBAUGH'S HUNTING CONNECTIONS, INC. with the Department of State, Commonwealth of Pennsylvania, at Harrisburg, PA, for the purpose of incorporating under the PA Business Corporation Law of 1988.

Wm. D. Schrack, III, Esquire
124 West Harrisburg Pike
P. O. Box 310
Dillsburg, PA 17019

8/30

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-104 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 20th day of September, 1996, 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 parcels of land lying and being in Liberty Township, Adams County, Pennsylvania, being Lot Nos. 24 and 25 in Section AB, more particularly bounded and described as follows:

LOT AB 24

Charnita Section AB Lot No. 24 as shown on the records of the Adams County Mapping Department and recorded in the Office of the Register and Recorder of Adams County, Pennsylvania on December 18, 1969 in Plat Book 1 at page 61. The property being subject to existing restrictions.

LOT AB 25

BEGINNING at a point in the center of Sydnor Trail at Lot No. 24; thence by said lot South 41 degrees 28 minutes 25 seconds West, 223.68 feet to Lot No. 37; thence by said lot and Lot No. 36 North 48 degrees 21 minutes 25 seconds West, 100.67 feet to Lot No. 26; thence by said lot North 41 degrees 38 minutes 35 seconds East, 223.68 feet to a point in the center of said Sydnor Trail; thence in said Sydnor Trail North 48 degrees 21 minutes 25 seconds East, 100.67 feet to the place of BEGINNING.

The above description was taken from a plan of lots labeled "Section AB of Charnita, Inc." dated November 18, 1969, prepared by Evans, Hagan & Holdefer, and recorded in Adams County Plat Book No. 1 at page 62.

IT BEING THE SAME TWO TRACTS OF LAND that Terry L. Stem and Rachel E. Stem, husband and wife, by Deed dated November 18, 1991 and recorded in Adams County Record Book 605 at Page 1079, sold and conveyed unto Richard L. Harbaugh and Teresa I. Harbaugh, the MORTGAGORS herein.

SEIZED and taken into execution as the property of **Richard L. Harbaugh and Teresa I. Harbaugh** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
July 16, 1996.

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 14, 1996, 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.

8/16, 23 & 30